



DEMAND FOR JUSTICE
KËRKO DREJTËSI
TRAŽI PRAVDU



JUDICIAL INTEGRITY INITIATIVE SURVEY REPORT

NOVEMBER - 2017



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FOREWORD

We are deeply grateful for the opportunity to introduce the Judicial Integrity Initiative (JII) in Kosovo. The initiative was developed by the International Bar Association (IBA) as an extension of IBA’s anti-corruption efforts worldwide. When the survey was launched in 2015, David W. Rivkin, the former IBA president, stated that ‘the aim of the Judicial Integrity Initiative is to raise awareness of the legal consequences of judicial corruption where it exists, combat it through promoting the highest standards of integrity among judges, prosecutors, court personnel, and lawyers, and further the best practices of countries that have worked effectively to eliminate corruption. It is clear that we have a lot of work to do.’

Kosovo Democratic Institute (KDI) acknowledges that justice system plays a key role in the fight against corruption, thus it is indispensable for the judiciary to preserve its independence and impartiality. The emergence of corrupt conduct in judiciary weakens the rule of law and causes citizens to lose faith in the public institutions and its ability to provide services. On the other hand, in countries with higher level of judicial corruption, it is impossible to fight such conduct in other branches of government.

KDI is indebted to the heads of key institutions of justice system in Kosovo (Kosovo Judicial Council, Kosovo Prosecutorial Council, Kosovo Bar Association, Kosovo Police and Kosovo Police Inspectorate) for their continuous support throughout the project. KDI is also grateful to National Centre of State Courts (NCSC) for their trust in the capacities of KDI to conduct an impartial and objective survey with justice actors in Kosovo.

Ismet Kryeziu,

Executive Director of Kosovo Democratic Institute





EXECUTIVE SUMMARY

This report is the outcome of the joint work of Kosovo Democratic Institute (KDI) and Kosovo Bar Association (KBA) and represents the first case of JII survey adoption in the local context with a representative population sample. The survey aims to help justice system leadership in identifying patterns of corruptive practices during the interaction between justice system actors and promoting the highest standards of integrity among judges, prosecutors, advocates, police, and relevant judicial and prosecutorial staff.

This survey initially was designed and implemented by the International Bar Association (IBA) as part of Judicial Integrity Initiative (JII). This initiative offered justice system actors a unique opportunity to anonymously share their concerns over mechanisms of corrupt conduct and current circumstances that represent “barriers to their integrity” within the system. The questions presented during the survey attempted to understand:

- 1 The most prevalent patterns of corruption within the justice system
- 2 Corruption risks in the interactions among the actors in justice system and
- 3 The risks arising at the different stages of a judicial process.

Because the questionnaire was designed for global dissemination, the concepts and categories included had to be adapted to suit a Kosovo-specific context.

Kosovan citizens continue to perceive the justice system as the least trusted of institutions. Kosovo Democratic Institute in its “Assessment of the National Integrity System in Kosovo” (October, 2015) states that institutions of justice system (judiciary, prosecution and police) lack institutional integrity, the quality of being honest and having strong moral principles in serving public interest. KDI further describes how these institutions are predisposed to political influence that could explain the absence of serious convictions of senior politicians on corruption charges. Similarly, at the global level, International Bar Association emphasises how “undue political influence over the judiciary is exercised

to guarantee the impunity of members of the political and economic elites” (“Justice System and Corruption”: May, 2016). More recently, on August 2017, Group for Legal and Political Studies (GLPS) published a Report titled, “Index on the Performance of Rule of Law Institutions in Kosovo.” According to the report, the public perception on the level of political influence in different institutions show that most influenced by politics are the courts (77.4 percent), the prosecution (67.9 percent), the police (41.7 percent), and the European Rule of Law Mission in Kosovo, EULEX (17.6 percent).

The purpose of this typologies report is to present the results of this multidimensional research consisting of extensive pre-survey activities, JII survey itself, post-survey focus groups, and individual interviews with key players of Kosovo judicial sector. KDI acknowledges the efforts of members of the judiciary in the fight against corruption and encouraging the independence and impartiality in judicial decision-making. It also encourages Kosovo Bar Association, Kosovo Judicial Council, Kosovo Prosecutorial Council, and Kosovo Police to develop appropriate measures to address the findings of this report. KDI and other civil society are willing to participate in such discussions and provide valuable input during any process aimed at designing solutions to the problem of judicial integrity.

The launch of this report completes the first phase of the Judicial Integrity Initiative. The Initiative will focus on practical actions that may have an impact in reducing judicial corruption where it occurs. These actions will include:

- a **Compilations of best practices** in addressing deficiencies of judicial integrity;
- b A potential **system of certification** of justice systems as having procedures designed to prevent corruption;
- c A compact agreement that would contain an **anti-corruption declaration** signed by professionals;
- d A **study of current code of ethics**, with emphasis on provisions regarding judicial corruption.





STUDY CONTEXT

Corruption continues to thrive in Kosovo - a country that is reported to have the highest poverty and unemployment rate in Europe¹. After nearly a decade of independence, most government efforts to address corruption problems have ended with national anti-corruption strategies and action plans that remain wish-lists rather than viable solutions.² When, on occasion, anti-corruption strategies are discussed in a course of government action, the results remain superficial.

While Kosovo’s justice system should be at the forefront of the battle against corruption, the scarcity of successful prosecution of cases of corruption indicates that justice system actors are not autonomous and capable enough to exercise their powers to fight corruption. The latest UNDP Public Pulse (November, 2016) on citizens’ perception of large-scale corruption not only shows its prevalence in central institutions but also indicates significant increase during the last six months (36.5%, compared to 27.5% in April 2016). Three most corrupt institutions perceived are: healthcare providers (50% as compared to 38% in April 2016), Kosovo’s courts (49% compared to 42% in April 2016) and Central Administration/Institutions (49% compared to 37% in April 2016 (UNDP, Public Pulse XII, November, 2016).

The executive and legislative branches of government exert adverse influence over the judiciary. An example that questions the autonomy of judiciary is the process of budget planning for the judiciary and prosecutorial institutions. Moreover, the number of prosecutors and support staff is far from satisfactory and only a few have the necessary skills to indict suspected criminals.³

1 Kosovo Democratic Institute, National Integrity System Assessment Report, October 2015, page 18
 2 Ibid, page 18
 3 Ibid, page 18

Corrupt acts under Kosovo Criminal Code

This section provides a general overview of the current Kosovo legal framework that sets the rules and builds mechanisms for fighting official corruption and criminal offenses against official duty. Criminal Code of Republic of Kosovo in its chapter XXXIV (“Official corruption and criminal offenses against official duty”) stipulates that “an official person can be punished by imprisonment from six (6) months to five (5) years, if he/she takes advantage of his office or official authority, exceeds the limits of his or her authorization or fails to execute his or her official duties with the intent of acquiring any benefit for himself or another person or to cause damage to another person or to seriously violates the rights of another person. The following types of official corruption are set out in Criminal Code of Republic of Kosovo”⁴:

- **Misuse of official information** occurs when an official person misuses official information,⁵ aiming to acquire any undue gain or advantage for himself or herself or another person⁶.
- **Conflict of interest** occurs when an official person participates⁷ personally in any official matter⁸ in which he or she, a member of his/her family, or any related legal person⁹, has a personal or financial interest¹⁰.

4 Criminal Code of Republic of Kosovo, Chapter XXXIV, Article 422, Paragraph 1
 5 The official information is any piece of information that an official person has access to by means of his office or employment and which has not been made public.
 6 Code No. 04/L-082 Criminal Code of Republic of Kosovo, Chapter XXXIV, Article 423, Paragraph 1, available at: <https://gzk.rks-gov.net/ActDocument-Detail.aspx?ActID=2834>.
 7 Participation is defined as exercising official authority through decision, approval, disapproval, recommendation, rendering advice, investigation, or otherwise exercising influence over an official matter.
 8 Official matter includes judicial or other official proceeding; an application, request for a ruling or other official determination; a contract or claim; a public auction or other procurement action; or, another matter affecting the financial or personal interests of the official or another person.
 9 Related legal person means any legal person in which the official or a member of the family has a financial relationship, including a relationship or a prospective relationship as a responsible person or employee.
 10 Code No. 04/L-082 Criminal Code of Republic of Kosovo, Chapter XXXIV, Article 424, Paragraph 1, available at <https://gzk.rks-gov.net/ActDocument-Detail.aspx?ActID=2834>.





- **Misappropriation in office** occurs when an official person aims to obtain an unlawful material benefit for himself, herself or another person, appropriates property entrusted to him or her because of his or her duty or position¹¹.
- **Fraud in office** occurs when an official person intends to obtain unlawful material benefit for himself, herself or another person, by presenting a false statement of an account or in any other way deceives an authorized person into making an unlawful disbursement¹².
- **Unauthorized use of property** occurs when an official person, without authorization, uses money, securities or other movable property which has been entrusted to him or her¹³.
- **Accept bribes** occurs when an official person requests or receives, directly or indirectly, any undue gift or advantage for himself, herself or for another person, or accepts an offer or promise of such gift or advantage, so that the official person acts or refrains from acting in accordance with his or her official duties¹⁴.
- **Give bribes** can be initiated from whoever promises, offers or gives, directly or indirectly, any undue gift or advantage to an official person so that the official person acts or refrains from acting in accordance with his or her official duties¹⁵.
- **Trade in influence** occurs when whoever requests or receives, directly or indirectly, any undue gift or advantage, for himself or herself or for another person, or accepts an offer or promise of such gift or advantage, to exert an improper influence over the decision making of an official person or foreign public official, whether or not the influence is exerted and whether or not the supposed influence leads to the intended result¹⁶.
- **Issue unlawful judicial decisions** occurs when a judge with the intent to obtain any unlawful benefit for himself, herself or another person or cause damage to another person, issues an unlawful decision¹⁷.

11 Ibid, Article 425, Paragraph 1.

12 Ibid, Article 426, Paragraph 1.

13 Ibid, Article 427, Paragraph 1.

14 Ibid, Article 428, Paragraph 1.

15 Ibid, Article 429, Paragraph 1.

16 Ibid, Article 431, Paragraph 1.

17 Ibid, Article 432, Paragraph 1.





Failure to report or falsely report property, revenue/income, gifts, other material benefits or financial obligations occurs when a person, obligated by law to file a declaration of property, income, gifts, other material benefits or financial obligations, fails to do so.

- **Disclose official secret**¹⁸ occurs when an official person, without authorization, communicates, sends, or in some other way makes available to another person information which constitutes an official secret¹⁹.
- **Falsify official document** occurs when an official person enters false information or fails to enter essential information or with his or her signature or official stamp certifies a document, official register or file which contains false data or enables the compilation of such document²⁰.
- **Unlawful collection and disbursement** is considered any case when an official person collects from another fund that such person is not bound to pay or collects more than such person is bound to pay or who, in a payment or delivery pays or delivers less than what is required.²¹
- **Unlawful appropriation of property during a search or execution of a court decision** occurs when an official person during a search of premises or a person or during the execution of a court decision takes movable property with the intent of obtaining an unlawful material benefit for himself, herself or another person.²²
- **Failure to report or falsely report property, revenue/income, gifts, other material benefits or financial obligations** occurs when a person, obligated by law to file a declaration of property, income, gifts, other material benefits or financial obligations, fails to do so.²³

18 Official secret is defined as information or documents proclaimed by law, other provisions, or by a decision by the competent authority issued based on law to be an official secret and whose disclosure has caused or might cause detrimental consequences.

19 Criminal Code of Republic of Kosovo, Chapter XXXIV, Article 433, Paragraph 1

20 Ibid, Article 434, Paragraph 1

21 Ibid, Article 435, Paragraph 1

22 Ibid, Article 436, Paragraph 1

23 Ibid, Article 437, Paragraph 1



METHODOLOGY

When delivered for the first time in 2015, the IBA's global JII survey could not adhere to strict, scientific survey requirements. It was thus designed to start a global discussion amongst justice system actors from a range of countries with various legal traditions. Accordingly, the IBA's informal methodology relied upon the voluntary participation of a very modest percentage of the justice system actors (judges, prosecutors and advocates) of countries wherein IBA had established solid contacts.²⁴

By sharp contrast, this nation-wide survey conducted in Kosovo required the support and written commitment from the entire justice system leadership so that KDI and Kosovo Bar Association (KBA) could rely upon the active consideration, and anonymous and truthful participation of all individual justice system actors randomly selected to complete the JII survey. Accordingly, both KDI and NCSC recognized the sensitivity required for conducting a justice system corruption survey seeking candid, experience-based perspectives of actual judges, prosecutors, advocates, police, and disciplinary investigators. Thus, the project used a mixed-method research design utilizing both quantitative and qualitative data.

- 1 **Research design** started in November 2016 when KDI and NCSC in Kosovo worked with KBA and IBA to build rapport and trust of key justice system leadership.
- 2 **Desk research** enabled KDI to review available literature on corruption in justice systems including a compilation of information on international guidelines, standards and principles, and to review a variety of recent reports covering Kosovo's justice system challenges.
- 3 **Signed Letters of Cooperation** from the heads of institutions (Kosovo Judicial Council, Kosovo Prosecutorial Council, Kosovo Bar Association, Kosovo Police and Kosovo Police Inspectorate) ensured both institutional support and respondents' high response rate.
- 4 **Pre-survey focus groups** were utilized to test and validate the methodology of the Judicial Integrity Initiative (JII), more specifically to ensure clarity and concision of individual questions of the survey.
- 5 **Implementation of a comprehensive survey** at the national level with the key actors of justice system in Kosovo (judges, prosecutors, lawyers, police investigators, police inspectorate, court and prosecutorial staff).
- 6 **Post-survey activities** (focus groups and interviews with individuals) held with regional actors of justice system aimed at test and validating the preliminary findings of the survey.

²⁴ IBA survey was conducted online from 2 October 2015 to 30 October 2015 and was promoted through the IBA's individual members, its network of national bar associations, its committees, such as the Judges' Forum and several partner organizations. The survey was provided in eight languages: English, French, Chinese, Russian, Arabic, Japanese, Korean and Indonesian. A total of 1,577 responses from 120 countries were received. The limited responses received from 89 of the surveyed countries were too few to allow for a meaningful and reliable analysis and for that reason, and to ensure the validity of our results, IBA restricted the analysis to those countries for which we received a minimum of ten responses. The survey findings that we reported in IBA report emanate from a total of 1,204 respondents from 31 countries.

SAMPLING PLAN

The table below (Table 1) presents the total population of the Justice System in Kosovo based on the number of relevant personnel of the institutions. The column with percentages shows the share that each institution holds in the Justice System as defined for the purposes of this research. **The total sample size for this survey is 1,100.** The last column shows the number of interviews allocated to each subgroup based on their share in the justice system and the total sample size.

After the computation of sample quotas, the number of interviews for police investigators was reduced. The process of selection of respondents and the methodology for conducting the survey with police investigators differed from the other groups of respondents' due to the special request from the heads of Kosovo Police. This issue is further discussed in the limitations of this survey.

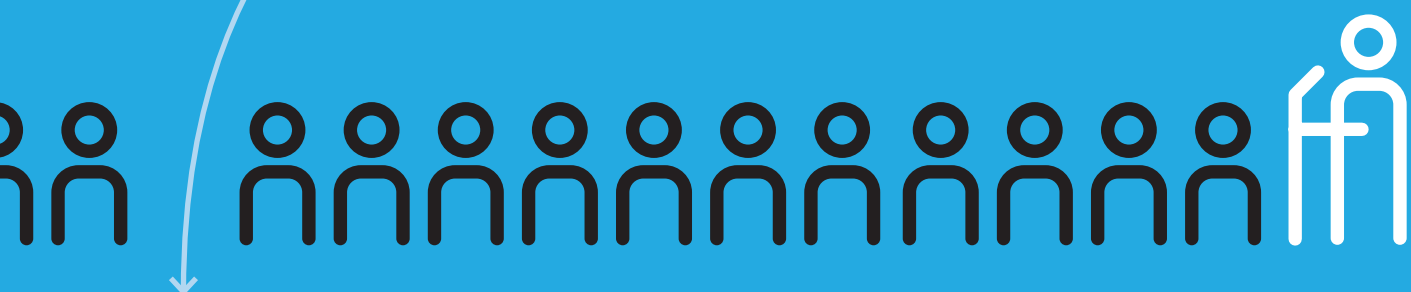


TABLE 1: TOTAL POPULATION OF THE JUSTICE SYSTEM IN KOSOVO

No.	Institution	Sample Frame	%	Sample Size
1	Judges	326	9.5	105
2	Court Personnel	693	20.2	222
3	Lawyers	714	20.8	229
4	Prosecutors	165	4.8	53
5	Prosecutors' Office Staff	272	7.9	87
6	Police Investigators	1,200	35.0	385
7	Investigators of Police Inspectorate	61	1.8	20
TOTAL		3,431	100	1,100



250 INTERVIEWS

The table below presents the final recalculated population sample for the different groups within the justice system, their shares as well as corresponding sample sizes, after the Police Investigators have been allocated a fixed amount of **250 interviews**.

TABLE 2: THE “RECALCULATED” POPULATION OF THE JUSTICE SYSTEM IN KOSOVO

No.	Institution	Sample Frame	%	Sample Size
1	Judges	326	14.6	124
2	Court Personnel	693	31.1	264
3	Lawyers	714	32.0	272
4	Prosecutors	165	7.4	63
5	Prosecutors' Office Staff	272	12.2	104
6	Investigators of Police Inspectorate	61	2.7	23
TOTAL		2,231	100	850

TABLE 3: QUOTA FOR POLICE INVESTIGATORS

No.	Institution	Sample Frame	%	Sample Size
7	Police Investigators	1,200	N/A	250



TESTING AND VALIDATION OF THE SURVEY INSTRUMENT

KDI convened focus groups of targeted subgroups to gather feedback and adapt the IBA’s global survey to Kosovo’s local context.²⁵ Consequently, KDI directed UBO Consulting to carry out pilot testing of the JII survey which enabled them to validate survey reliability and to flag potential problems that may have arisen during the administration of the actual survey, such as the length of time required to complete the survey.²⁶



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SURVEY IMPLEMENTATION

UBO Consulting’s team²⁷ conducted survey fieldwork between April 4 and May 18, 2017 in central and local institutions throughout Kosovo. Field supervisors and enumerators communicated constantly. During this time, the supervisors conducted regular review sessions with the interviewers and advised them on problems that they faced during the fieldwork, so that the survey process could be completed successfully.

The respondents of each sub-group were randomly selected from the lists of officials provided by each institution. The enumerators were also provided with lists of substitutes in case the selected respondents could not be reached. For the first six groups, the survey was conducted utilizing strictly anonymous method whereby the randomly selected respondent was delivered a questionnaire in hard copy with clear instructions regarding the purpose and process of completing the survey, and the anonymous and strictly confidential nature of the process. The questionnaire was, thus, administered by the respondent him/herself and delivered in a sealed envelope to the enumerator upon completion.

A week after the survey process began, the UBO personnel started entering the data into the database. The tables below (table 4 and 5) show the outcome of the fieldwork.

25 This expert feedback triggered survey language modifications including: editing or reformulated questions, and adding/changing filters to certain questions. The finalization stage of the questionnaire produced the final versions of the survey questionnaire in three languages. The changes in questions were also reflected in these three languages, that is: English, Albanian, and Serbian.

26 More specifically, pilot testing was conducted for the following purposes: 1. to identify potential logical errors; 2. to identify substantial errors related to the phrasing of questions and answers in the questionnaire, 3. to add filters to certain questions if necessary; 4. to measure the time required to successfully complete an interview.

27 The fieldwork team consisted of 23 enumerators (19 Albanians and 4 Serbs), 8 regional coordinators (7 Albanians and 1 Serb) and 1 technical controller. Since the study involved Serbian-speaking individuals, UBO Consulting also recruited interviewers who are native speakers of Serbian language to ensure high response rates among individuals. All interviewers have completed university degree.

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TABLE 4: FIELDWORK OUTCOME OF THE SURVEY

Institution	N	%
Completed Interviews	1,050	69.6
Unreachable respondents (annual leave, not present in the office, etc.)	79	5.2
Refusals due to lack of time	178	11.8
Refusals due to the questionnaire's content	137	9.1
Interrupted interview	29	1.9
Interrupted interview due to lack of time	18	1.2
Invalid interview	17	1.1
TOTAL	1,508	100

TABLE 5 COMPLETED INTERVIEWS (BREAKDOWN BY POSITIONS)

No.	Institution	Sample Size	Completed Interviews
1	Judges	124	114
2	Court Personnel	264	255
3	Lawyers	272	259
4	Prosecutors	63	58
5	Prosecutors' Office Staff	104	102
6	Investigators of Police Inspectorate	23	23
6	Police Investigators	250	239
	TOTAL	1,100	1,050

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LIMITATIONS AND CONSTRAINTS

The survey had to overcome several difficulties in the field to complete the allocated interviews. The resistance expressed by the respondents was subdued after consistent communication and meetings which aimed to reveal to the participants the importance of the project. Given that these obstacles were fully overcome and did not impede the whole process, their impact on the survey is estimated as marginal.

The main limitation in the survey, which must be emphasized, is the method of conducting the survey with the Police of Kosovo. This institution was reluctant to become part of JII and strictly opposed to delivering lists of their employees, which would have been utilized for the random selection of respondents. Given the paramount importance of this institution in the system of justice, the project team were obligated to make certain compromises in the method of conducting the survey to include them as well.

The selection of respondents for the other targeted groups in the sample was made randomly based on the lists of all officials of a given institution. After the selection, our enumerators met with the respondents and explained the survey and its questionnaire. Once the selected respondent expressed their willingness to become part of the survey, he/she was delivered the questionnaire and they had to complete it on their own without inputting any personal information which could identify them. The completed questionnaire was then handed to our enumerators in a sealed envelope.

This procedure was modified for the interviews allocated to Kosovo Police. Given their reluctance to provide lists of employees, the enumerator met with the Chief Commander of the Police of a given municipality. In the meeting, our staff delivered the questionnaires in hard copy to the Chief-commander as well as the quotas of interviews which needed to be completed. The Chief-commander then delivered the questionnaires to his/her staff. Our enumerator was then notified to pick up the interviews once they were completed. The absence of random selection as well as lack of transparency in the administration of the interviews with Kosovo Police poses significant limitations for the data received from this group mostly on their reliability and truthfulness.

FOLLOW-UP RESEARCH ACTIVITIES

KDI conducted a qualitative analysis of research findings obtained from the survey which suggest that perceptions of corruption reported by respondents can be either minimized or exaggerated. This is the main reason that follow-up research activities were important to maximize the validity of the survey findings.

- 1 Post-survey **focus groups** held with a variety of groups of stakeholders (e.g. independent institutions, business community and civil society organizations). The data tested and gathered contributed to a new perspective and this may explain the variation when compared with the outcomes of the survey results.
- 2 One-on-one **interviews** with different actors of justice systems. The interviews as an in-depth data collection served as a valuable method of gaining insight into people’s perceptions, understandings, and experiences with judicial integrity in Kosovo.
- 3 Regional **Bench Bars**, organized regularly by Kosovo Bar Association, were utilized to present research findings in front of regional justice actors and collect their feedback.

TERMS AND DEFINITIONS USED DURING THE JII SURVEY

To ensure that all survey takers shared a common understanding of the JII survey, KDI integrated the following glossary of terms into the JII survey:

- **Justice system** is defined as pertaining or relating to the courts of justice, prosecutor’s office, lawyers, the judicial department of government, or the administration of justice including the role of police in processing criminal cases.





- **Corruption** in the justice system is defined as all forms of inappropriate influence that may damage the impartiality of justice and may involve any actor within the justice system, including (but not limited to) judges, prosecutors, lawyers, administrative support staff, police, police inspectorate, parties and public servants.
- **Bribery** is defined as encompassing the:

 - Promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
 - The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for himself or herself or other persons or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.²⁸
- **Extortion** is defined as an extension of the act of bribery. It states that the solicitation of bribes is the act of asking or enticing another to commit bribery. It becomes extortion when this demand is accompanied by threats that endanger the personal reputation, integrity, or the life of the actors involved.²⁹
- **Political influence** is defined as the manipulation of policies, institutions and rules of procedure including, but not exclusive to, the allocation of resources and financing by political and institutional decision makers, who abuse their position to sustain their power, status and wealth. In this context, “decision-makers” includes political leaders and decision-makers within the justice system.³⁰
- **Misuse of funds** is defined as an act by a person who holds office in an institution, organization or company and who dishonestly and illegally appropriates, uses or traffics public funds, public property or public assets, directly or indirectly for personal enrichment (or the enrichment of others) or other activities.
- **Favouritism and nepotism** (family-driven favouritism) are defined as interferences with fairness because they give undue advantage to someone who does not necessarily merit this treatment³¹.
- **Regulatory authorities** refer to independent regulatory agencies responsible for autonomous authority over specific areas of human activity in a regulatory or supervisory capacity (in several fields such as competition, railway, energy, postal communications etc.)³²
- **Investigators** are defined as individuals who carry out a formal inquiry or investigation. For the purposes of this survey, this category covers a wide range of other investigators such as tax administration and customs inspectors and investigators from independent agencies such as the Anti-Corruption Agency (ACA), whereas police investigators are included in the special category of police.
- **Commercial disputes** mean disputes of a commercial or business nature involving businesses.³³
- **Administrative disputes** mean disputes of an administrative nature concerning the exercise of public authority.
- **Civil status disputes** mean disputes relevant to an individual’s personal status, such as divorce, custody or other family law disputes.³⁴

28 The International Bar Association (2016), Judicial Integrity Initiative, page 11
 29 Ibid, page 12
 30 Ibid, page 12

31 Nadler J. and Schulman M. “Favoritism, Cronyism and Nepotism”, Santa Clara University (2006)
 32 Williams G. D. “The EU’s independent agencies: institutionalising responsible European governance?” In: Political Studies, Vol. 53, No. 1, 01.03.2005, p. 82-99.
 33 The International Bar Association (2016), Judicial Integrity Initiative, page 12
 34 Ibid



RESEARCH FINDINGS AND ANALYSIS

Corruption in the justice system has a serious impact on citizens’ trust on the system and can seriously compromise the legitimacy and stability of democratic institutions. While justice systems and justice sector professionals play a key role in the fight against corruption, justice sector professionals themselves can be exposed to risks of corrupt practices within justice system. Because of the narrower focus and purpose of the JII survey, it is necessary to assess the findings from JII methodology against the background of other studies that help to contextualise the observations on the conduct of key actors within justice system.

Studies on judicial integrity have revealed that the one of the main challenges of any justice system is the optimal balance between independence and accountability. This balance is essential to protect judicial professionals from undue influence of any nature in the performance of their duties. On the other hand, adequate monitoring and transparency mechanisms should be imposed to ensure that judicial conduct observes the highest standards of impartiality and justice. According to IBA (2016), some legal systems emphasise accountability, whereas others have strong provisions for independence. For example, in the appointment of judges, systems that emphasize accountability may choose to appoint judges by popular vote, which in turn runs the risk of political interference whereas systems that emphasize independence appoint them for life, running the risk of insularity in judicial decision-making.

The Constitution of Republic of Kosovo guarantees to a large extent the independence of justice system. It requires judges and prosecutors to be independent and impartial in exercising their functions. Judges are appointed for life and are restricted from joining any political activity or party. However, this report continues, the justice system has suffered from government interference. Since four (4) out of its nine (9) judge members are elected by the parliament, KJC is subject to the risk of political bargaining. The budget planning process has also been under complete control of the government, in other words, the government has had the ultimate authority to decide how much the KJC can receive and spend each year. Furthermore, there were cases reported when the government has gone as far as making transactions from the KJC account without any approval or informing the Council.³⁵

This section will provide a thorough analysis of the survey results. It is organized in subsections to reflect the structure of the JII questionnaire utilized in this survey:

- 1 Level of perceived corrupt conduct
- 2 Forms of corrupt conduct
- 3 Actors of corrupt conduct
- 4 The intermediaries of corrupt conduct
- 5 Intended outcomes
- 6 Corruption inclined groups
- 7 Incentives for corruption
- 8 Stages of judicial process
- 9 Risks of corruption

³⁵ Kosovo Democratic Institute, National Integrity System Assessment Report, October 2015, page 66

MAIN FINDINGS

1

The overall perception of the level of corruption in justice system is lower **(58.5% of respondents)** compared to the general level of corruption in Kosovo **(79.4% of respondents)**.

2

Favouritism/nepotism (52.9%) and **political interference (50.4%)** are the two most common forms of corrupt conduct in the justice system

3

Lawyers are perceived as the most common intermediaries **(14.9%)** followed by family members **(9.0%)**, **friends (7.5%)** and **political party officials (7.2%)**

4

Prosecutors **(44.4% of respondents)** are seen at greater risk of coming directly in contact with stakeholders outside justice system (political actors and organised crime).

5

The two most intended outcomes of corrupt conduct are perceived a) Selection of a preferred judge and prosecutors to determine a case/action **(54.9%)** and b) attainment of preferred outcome **(53.3%)** are considered.

6

The two most common corruption-inclined groups of citizens are perceived to be wealthy citizens and current politicians and government officials

7

The most frequent types of incentive to acquiesce into engaging in acts of corruption in Kosovo are the material benefits (for oneself, family member or the professional's community) with **46.7%** followed by maintaining good relations with the political actors that would lead to rewards through appointments and the lack of independent oversight (approximately 8% each).

8

With regard to the stages of judicial process, respondents perceive each phase of proceedings vulnerable to corruption **(19%)**. The final act (sentencing) is perceived to be more susceptible to corruption **(16.9%)**, followed by prosecutor assignment **(15%)** and judge assignment to the case **(14.8%)**.

9

Three most important factors underlying corruption risks in the justice system in Kosovo are politician's intent to cover their own corrupt conduct **(15.4%)** followed by mutual interests between members of organized crime and business groups with certain politicians **(12.3%)**.





1. LEVEL OF PERCEIVED CORRUPTION



The literature reviewed for this study suggests that in countries where political corruption is widespread, the justice system is perceived to be highly corrupt as well. The survey results show that justice system professionals perceive the general level of corruption in Kosovo as very high. 79.4 per cent of respondents consider it as either moderate, high or very high (see Table 6).

TABLE 6: THE PERCEPTION OF GENERAL LEVEL OF CORRUPTION IN KOSOVO

Answer	Frequency	Percent
Very low	68	6.5
Low	109	10.4
Moderate	387	36.9
High	324	30.9
Very high	122	11.6
No answer	40	3.8
TOTAL	1,050	100.0





When asked about their perception of the level of corruption in the justice system of Kosovo, survey results show that 58.5% of respondent consider it as either moderate, high or very high (see Table 7). Compared with the results of the question on the level of perceived corruption in Kosovan society (79.4 per cent) the justice system is perceived as “less corrupt”.

TABLE 7: THE PERCEPTION OF THE LEVEL OF CORRUPTION IN JUSTICE SYSTEM

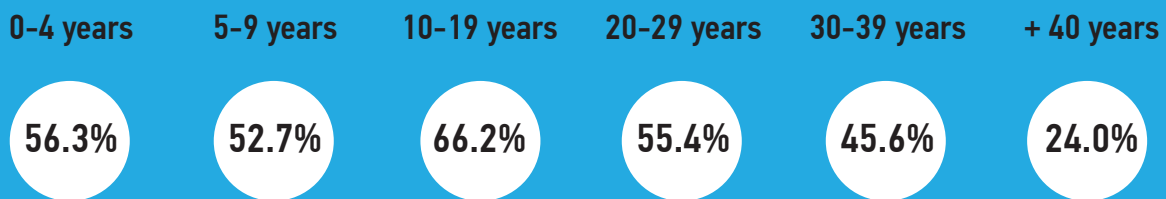
Option	Frequency	Percent
Very low	67	6.4
Low	115	11.0
Moderate	302	28.8
High	230	21.9
Very high	82	7.8
Don't know	213	20.3
No answer	41	3.9
TOTAL	1,050	100.0



Further, when results were broken down by respondent's years of service, the data shows that justice sector professionals at entry level (0-4 years) and mid-career (10-19 years and 20-29 years of service) perceive corrupt conduct in the justice system (56.3% and 66.2%/55.4% respectively), while the longer the period

of service in the justice the less aware of corrupt conduct or less willing to admit that such conduct exists in the justice system. These findings are of concern as they indicate negative perception among both new entrants into the system and mid-level professionals who form the backbone and future leadership of the system.

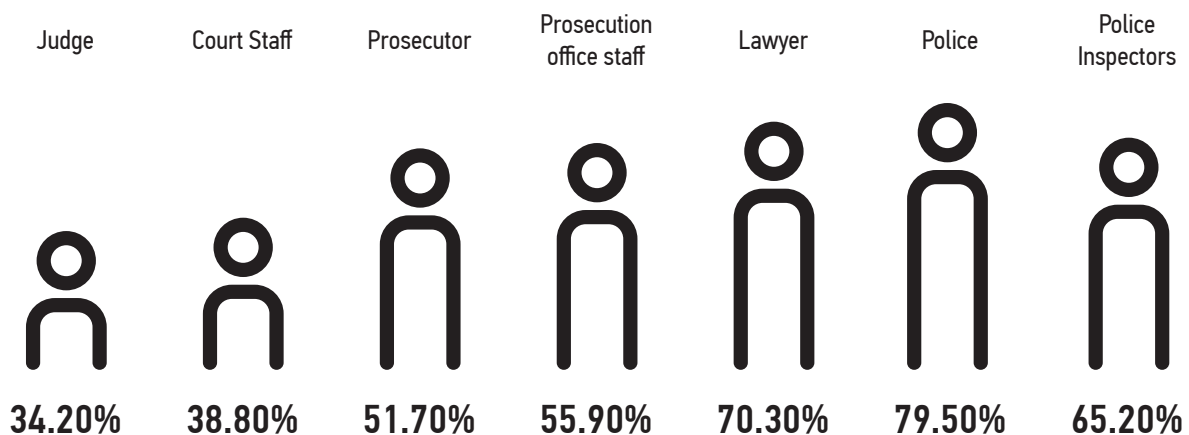
TABLE 8: THE PERCEPTION OF THE LEVEL OF CORRUPTION IN JUSTICE SYSTEM (BREAKDOWN BY YEARS OF SERVICE)



Data breakdown by respondent's profile shows that police investigators, lawyers, and police inspectors are the three groups with the highest perception of corrupt conduct in the justice system. A summary of results for each category of professionals are presented in figure 1. As the figure shows 79.5% of investigative police, 70.3% of lawyers, and 65.2% of police inspectors perceive corruption as either moderate, high or very high. By contrast, judges and court staff indicate the lowest levels of perceived corruption at 34.2% and 38.8% re-

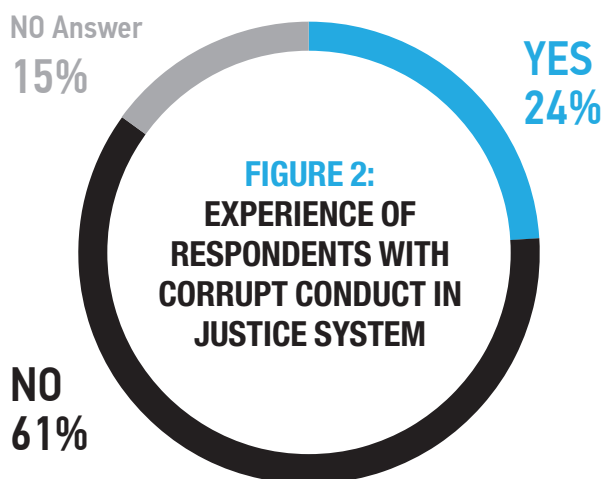
spectively. This data suggests that corruption may be less prevalent at the adjudicative stage than in earlier stages of the judicial process such as the investigative and prosecutorial stages. The decreasing level of perceived corruption should be discussed in both homogeneous professional roundtables (e.g., among police, prosecutors, and judges separately) and in Bench-Bar settings to determine whether the likelihood and occurrence of corruption varies at different stages of the criminal chain.

FIGURE 1: THE PERCEPTION OF THE LEVEL OF CORRUPTION IN JUSTICE SYSTEM (BREAKDOWN BY JUSTICE SYSTEM PROFESSIONALS)



|||||

However, when respondents were asked about their own experience encountering any person who works within or in connection with the justice system in Kosovo involved in any form of corrupt conduct (bribery, extortion, political influence or misuse of funds) only 24% confirmed that they have had such encounters, 61% have answered that they have never had such experience while 15% of respondents refused to give any answer. These result shows certain level of consistency with UNDP Public Pulse results on the question regarding the factors that shape citizens' perception on the presence of large scale corruption in local and international institutions in Kosovo. UNPD findings reveal that almost half (49%) of them formed their opinions through print and electronic media and conversations with friends and relatives (34%). However, only 12% of respondents declared that they formed their opinions based on personal experiences, where in order to obtain certain services they were asked for money, gifts or any other favour (UNDP Public Pulse XII, November 2016).



Kosovo Democratic Institute considers this as one of the main findings of this research. The hesitancy and uncertainty characterised this survey and leads up to the conclusion that Kosovar society, in general, and the justice system in particular, are not ready yet to discuss openly about the corrupt conduct and thus tackle this devastating phenomenon. This has a twofold negative consequence:

- 1 It feeds into a negative narrative about the justice system and creates an increased perception of corruption, even if there is no evidence or experience to back it up and
- 2 It increases the risk that litigants or justice system professionals will engage in corrupt conduct because of the expectation that the system is corrupt and a litigant could offer money that a justice system professional never asked for.

2. FORMS OF CORRUPTION

The IBA survey measures the level of four different types of corruption (bribery, political interference, extortion and misuse of public funds). Based on feedback from the pre-survey focus group participants, KDI and KBA decided to add the fifth category: favouritism and nepotism. While IBA treats these two forms of corruption under the misuse of public funds (e.g. judges hiring family members to staff their courts or offices) the decision to add it a separate category was fully justified by the survey results that placed favouritism and nepotism as the most frequent form of corruption in Kosovo justice system.

Table 9 below summarizes responses on the question regarding the rate of incidence of the types of corrupt conduct in the justice system in Kosovo (either directly or through an intermediary). The table presents the frequency distribution of options “moderate”, “high” and “very high” and aggregates these three options under the last column. When the results from the last column are compared, and analysed the most common forms of corruption are favouritism and nepotism (38.5 per cent), followed by political interference (34.8 per cent) and bribery (23.9 per cent).



TABLE 9 FORMS OF CORRUPT CONDUCT IN JUSTICE SYSTEM IN KOSOVO

Option	High (%)	Very high (%)	Total (%)
Favouritism/ Nepotism	21.5	17.0	38.5
Political interference	20.6	14.2	34.8
Bribery	16.9	7.0	23.9
Misuse of funds	16.1	7.3	23.4
Extortion	12.9	5.5	16.4

The result of analysis by respondent’s profession are presented in table 10. The percentage values include the distribution of options “common” and “very common”. Data confirms that favouritism/nepotism and

political interference are the top two most common expression of corruption, across all professions except lawyers.

TABLE 10: FORMS OF CORRUPT CONDUCT AND JUDICIAL SECTOR ACTORS

Option	Judges	Lawyers	Prosecutors	Police Investigators	Court staff	Prosecutors staff
Favouritism/ Nepotism	27.8	21.3	25.3	13.0	21.2	18.0
Political interference	26.0	18.2	24.2	12.7	13.9	13.4
Bribery	16.9	22.3	15.3	9.5	11.0	8.0



2.1 FAVOURITISM AND NEPOTISM

This form of corruption also known as family-driven favouritism is defined as interference because it denotes undue advantage to someone who does not necessarily deserve this treatment. The survey results provided enough evidence to prove the determination of participants during the pre-survey consultations to add it in Kosovar context. More than half of respondents (52.90%) perceive favouritism and nepotism as the most common form of corruption in Kosovo. While this type of corrupt conduct is not perceived as directly linked to the outcome of judicial review of cases it is an imperative in expediting the court review of cases (28% of respondents perceive expediting the review of court cases as the desired outcome). A respondent in an open-ended question stated that “Nepotism is a tool for employment, lighter sentences, prescription of statutory limitation of a court case, intentional delays and failure to execute court verdicts”.

This brings forward the recurring theme of integrity and the loyalty towards family and state institutions. Van de Haar (2013) in her study seeking to answer the question on who do people turn to for human security in the conflict-affected and transitional societies stresses “the importance of home-grown, non-state institutional arrangements to cater for some of the functions that the ‘missing’ state cannot or does not fulfil”. A lawyer of Kosovo, does not consider the act of having lunch with a judge “for the sake of their friendship from college days” as a potential conflict of interest even if they discuss matters or issues which involve them.³⁶

Among the measures that could be considered:

- 1 Clear rules on the conflict of interest and transparency and their application;
- 2 Merit-based hiring for judges, prosecutors and their court/prosecution staff;
- 4 Clear objective criteria for performance evaluations;
- 5 Stricter performance evaluation and real consequences for good/ bad behaviour (reward/discipline).

³⁶ Interview with a lawyer, July 26, 2017.

2.2 POLITICAL INFLUENCE AND INTERFERENCE

The literature review provides salient examples on how different actors from within and outside justice systems can seek to unduly influence the judicial process³⁷. A relatively common risk is that the overall independence of the justice system can be undermined at the political level. This might involve appointment and promotion procedures, budget allocations and oversight mechanisms.

Less than one-fifth of survey participants provided feedback on the open-ended questions as part of this research survey. Many of their comments clearly indicate undue political influence in judicial proceedings. Comments such as “*When politics fly in the window, justice walks out of the door*”³⁸; “*Big fish in the sea, small ones in the frying pan*”³⁹; “*During the judicial review of the case, a phone call from a politician can make the difference*”⁴⁰ do not require much explanation.

The IBA Report (2016) suggests that informal social networks based on kinship, political affiliation, ethnicity, or other types of connection are permeated throughout public and private sectors and operate across government, business, politics and justice systems. The responses of survey participants indicate the existence of such informal networks. “There is political influence, and it is mainly done by appointing politically affiliated people in important positions and not considering competent professionals with personal integrity” stated one of the survey participants. “Even the court staff is hired based on their political ties so they could have more influence later,” is the answer of another participant in the question related to describing a mechanism of political interference in the justice system in Kosovo. A prosecutor, when answering this question clearly stated, “Please refer to the case of appointment of Chief Prosecutor of the Basic Prosecution”.

In 2015, the European Commission on Enlargement described Kosovo’s justice system to be at “an early

³⁷ The International Bar Association (May 2016), Judicial Integrity Initiative “Justice systems and Corruption”.

³⁸ From an answer of a respondent from JII Survey conducted in Kosovo (April-May 2017).

³⁹ From an answer of a respondent from JII Survey conducted in Kosovo (April-May 2017).

⁴⁰ From an answer of a respondent from JII Survey conducted in Kosovo (April-May 2017).

stage of development . . . remain[ing] prone to political interference”. This impression has been resonated over the years by several international organizations highlighting substantial corruption risks within the Kosovo justice system driven by the lack of independent decision making and true resolve for justice actors to exercise their respective powers in the fight against corruption. The appointment of judges and prosecutors is hampered by political divisions. The report also points out the poor administration of justice and insufficient accountability of administrative staff.

2.3 BRIBERY

According to data from the IBA survey (2016). Bribery seems to be very common in the justice system. Hiding or mishandling evidence after receiving the requested cash amount is also a pattern of bribery. On the other hand, bribery is perceived as most common in the process of selecting preferred judges to attain a preferred outcome in a criminal case (21.1% of respondents) and a preferred outcome in commercial disputes (18.2% of respondents).

Based on IBA report (2016), judges and lawyers may accept bribes from political actors, lawyers, one of the parties – especially where economic interests of a company are at stake – or other external actors, to tamper with a case or grant access to legal services otherwise not granted. Moreover, lawyers are perceived as playing an active role as intermediaries in corruption by requesting from their clients to pay additional fees so that they can pay bribes to influence one or more justice sector professionals.





Survey responses indicate that both judges and lawyers perceived bribery at almost the same level (39.1% and 40.2% respectively). To a lesser extent (34.6 per cent) prosecutors may also ask for bribes to delay or accelerate the judicial process. Reportedly, bribes are also being paid to prosecutors to tamper with evidence, such as police records and reports, to lose documents, inappropriately accept/deny plea offers or interfere with the investigation process.

According to the survey data, 28% of respondents consider court staff as initiator of corrupt conduct. When asked to provide more details on the role of court staff, they describe them as mediators between the judge and litigants. On the same question, a young prosecutor raised a series of rhetorical questions: “What level of education our court staff have? Where are they from? How are they employed? What was their economic basis before their employment? What standard of living do they have today?” This type of attitude indicates high level of mistrust between different actors of justice system and especially between judges/prosecutors and their respective administrative staff. To address this trust deficit, Court Presidents and Chief Prosecutors may consider team building efforts and internal communication approaches such as staff meetings to re-build trust across professionals in their organizations.

3. THE INTERMEDIARIES OF CORRUPT CONDUCT

Respondents were asked to share their perception on the frequency of involvement of intermediaries (external parties) in facilitating corrupt conduct in the justice system in Kosovo. 39.8 per cent of respondents think that intermediaries are involved in facilitating corrupt conduct in the judiciary system of Kosovo. Lawyers are perceived as the most common intermediaries (14.9 per cent) followed by family members (9.0 per cent), friends (7.5 per cent) and political party officials (7.2 per cent). After the analysis of answers to open ended question related to the intermediaries, the prevalent form of such actions consists of extortion of large amounts of money from clients, allegedly to be used for bribing judges or prosecutors. These claims made by survey participants highlight the importance of better communication lines between judges, prosecutors and Kosovo Bar Association.

TABLE 11: INTERMEDIARIES OF CORRUPT CONDUCT

INTERMEDIARIES	Lawyer	Family member	Friend	Political party official
				
PERCENTAGE (%)	14.9%	9.0%	7.5%	7.2%
NUMBER	156	94	79	76

Cross-tabulation analysis of the survey results yields interesting findings on how different justice system professionals perceive the intermediaries of corrupt conduct. While, 15.8 per cent of judges and 15.5 per cent of prosecutors perceive lawyers in the role of intermediaries, the lawyers themselves perceive family members (12.7 per cent) and friends (11.6%) as intermediaries. The most interesting finding resulting from this question is that 27.2 percent of police investigators think that lawyers are the most frequent intermediaries. This finding requires further investigation to determine whether this perception comes from

- a** a misunderstanding of lawyer fees requested legitimately,
- b** lawyers acting as intermediaries to corrupt others, or
- c** lawyers extorting money from clients pretending to be intermediaries and pocketing the money instead.

The KBA should act to address perception and fact related to this finding. If (1.a) is more common than they should inform other justice system professionals about lawyer fees to avoid “false positives”. If (1.b) or (1.c) are more common than they should take appropriate sanctions to eliminate these behaviours.

Other similar studies in the countries with high level of judicial corruption suggest that litigants use the intermediaries to bypass the high red tape applied by the justice system actors. They prefer using intermediaries instead of offering a bribe directly due to uncertainty over which officials are corrupt (accept a bribe offer) and how much bribe should be given to the corrupt officials (Bayar, 2003).



4. INTERACTIONS BETWEEN DIFFERENT PROFESSIONS

4.1 JUDGES' INTERACTIONS WITH OTHER JUSTICE SYSTEM PROFESSIONALS

Our survey data suggests that judges are not immune to corrupt conduct. Reportedly, judges most frequently approach other judges, with the highest incidence reported (34.3 per cent), prosecutors (31.20 per cent) and lawyers (30.9 per cent). Judges are also perceived as being involved in corrupt conduct initiated by other justice system professionals (30.9 per cent initiated by lawyers and 26.3 per cent by prosecutors). All participants recognized the fact that judges are the key figures in the judiciary because the power of conviction or acquittal lies with them. This fact makes judges extremely attractive to other parties in their attempts to corrupt decision-makers.

Overall, our survey findings are in full compliance with the findings of IBA Report that judges are perceived most frequently to engage in corrupt conduct in their interactions with other judges and lawyers, which indicates that such conduct is predominantly focused on internal interactions within the justice system as opposed to third parties.

4.2 LAWYERS' INTERACTIONS WITH OTHER JUDICIAL PROFESSIONS

According to IBA Report (2016) due to the attorney – client privilege, lawyers are exposed to many corruption risks. Report further continues that, while it is a crucial precondition for lawyers to fulfil their mandate, and advise clients in their best interest, at the same

time, it decreases transparency and can potentially be used to hide conduct that, while legal, may be unethical.

In total, 30.9 per cent of respondents believed lawyers were the judicial professionals most likely to initiate corrupt conduct in their interactions with other judicial professions. This corrupt conduct most frequently occurred in interactions with other lawyers (32.6 per cent), judges (30.9 per cent) and prosecutors (28 per cent). Based on the survey data, lawyers are most frequently approached by other lawyers (32.6 per cent), judges (30.9 per cent) and prosecutors (28 per cent).

In addition to this, survey results also show that lawyers, unlike other justice system actors, interact more frequently with third parties and thus are more inclined to serve as intermediaries to influence the outcome of cases. Thus, the bribery comes as the most common form of corrupt conduct among lawyers (40.2 percent). Many respondents describe lawyer's bribe request from lawyers made on behalf of other justice system actors (mainly on behalf of judges and, more rarely, prosecutors).

4.3 PROSECUTORS' INTERACTION WITH OTHER JUSTICE SECTOR PROFESSIONS

When prosecutors were perceived to initiate corrupt conduct, it was in the context of approaching other prosecutors (29.8 per cent), lawyers (28.1 per cent) and judges (26.3 per cent). The risk of third-party influence on prosecutors may also be high. The fact that 44.4% of respondents sees prosecutors as not being immune to favouritism and nepotism, indicates that prosecutors are at risk of coming directly in contact with stakeholders outside justice system (political actors and organised crime).





4.4 COURT PERSONNEL'S INTERACTION WITH OTHER JUSTICE SECTOR PROFESSIONS

Court personnel is identified by survey participants as the fourth most common group inclined to corruption in justice system. 21 per cent of respondents believed that court personnel initiate corrupt conduct in their interactions with other justice sector professions. Corrupt conduct was most frequently believed to occur in interactions with other court staff (21.7 per cent), judges (21 per cent) and lawyers (20.3 per cent).

With regard to the underlying motivation, staff is reportedly seeking to extract material benefits by promising a more expeditious court process. Our survey provides limited indications of corrupt conduct among court personnel but some interviewees offered interesting insight on their role in expediting court cases by collaborating directly with the judges or intervening to the higher level (i.e. court president) who would later warn judges to accelerate the case review.

5. INTENDED OUTCOMES

This section of the questionnaire sought to measure the intended outcome through the four most common types of corrupt conduct used in this study (bribery, political influence, extortion and favouritism/ nepotism). The survey shows that regardless of the type of corrupt conduct the most common intended outcomes are the efforts (see table 12):

- 1 to attain a preferred outcome in criminal cases
- 2 to select a preferred judge to determine a case
- 3 to select a preferred prosecutor of the case
- 4 delay or accelerate judicial procedures

TABLE 12: INTENDED OUTCOMES

	Bribery	Political influence	Extortion	Favouritism/ nepotism
1.	Attain a preferred outcome in criminal cases	Select a preferred judge to determine a case	Attain a preferred outcome in criminal cases	Select a preferred judge to determine a case
2.	Select a preferred judge to determine a case	Attain a preferred outcome in criminal cases	Select a preferred prosecutor for a criminal case	Attain a preferred outcome in criminal cases
3.	Select a preferred prosecutor for a criminal case	Select a preferred prosecutor for a criminal case	Select a preferred judge to determine a case	Select a preferred prosecutor for a criminal case
4.	Delay or accelerate judicial procedures	Delay or accelerate judicial procedures	Delay or accelerate judicial procedures	Delay or accelerate judicial procedures



Selection of a preferred judge and prosecutors to determine a case/action and attainment of preferred outcome are considered the most intended outcomes (54.9% and 53.3% respectively). Kosovo Judicial Council should take further actions to randomize case assignments and/or provide better information to justice system professionals and the public about existing random case assignment procedures. The KJC should also inform justice system professionals and the public about measures to parameters under which assignments can be modified, especially conflict of interest rules or case consolidation for efficiency purposes. Both general rules and specific instances of reassignment should be publicized to prevent perceptions of corrupt action having triggered the changes where instead the change is often intended to prevent corruption. Initial assignments to a judge or prosecutor should be done through an electronic system and the initial selection may then be adjusted by the court either to avoid potential conflicts or to allow related cases to be handled by the same judge.

6. CORRUPTION INCLINED GROUPS

The perception of respondents on the groups of citizens that are most likely to resort to some form of corrupt conduct when dealing with the justice system in Kosovo is presented in table 13. The same question was asked individually for each group and the attitudinal scale provided the options starting from *very unlikely* to *very likely*. The percentage values given in the right column are the sum of percentages for options *likely* and *very likely*.

TABLE 13: CORRUPTION INCLINED GROUPS

Groups	Percentage (%)
Current government officials	54.5
Current politicians	53.1
Wealthy citizens	53.0
Members of criminal organizations	47.4
Large national corporations	46.4
Former government officials	43.4
Former politicians	42.7

When groups inclined to corruption and the types of corrupt conduct are compared, the survey results show that government officials realize their intentions through political influence (same as politicians and former government officials) while wealthy residents predominantly offer bribe to attain their goals. Extortion is most commonly used by members of criminal organizations. These findings are aligned with the expected strength or influence potential of each of the individual groups.

About 54.5% of respondents answered that it is likely for current government officials to be prone to some sort of corrupt conduct when dealing with the justice system in Kosovo and this trend continues after that official loses his position (43.4% of respondents think that the former government officials continue to exert influence in justice system through connections established during their tenure). Regarding other corruption inclined groups, wealthy citizens are chosen by 53.0% of respondents. As one of survey participant stated: “These differences harms the principle of equality of citizens under the law. A suspect who lives off social assistance cannot expect equal treatment as another litigant belonging to the higher social class”.

7. INCENTIVES FOR CORRUPTION

The summary of data results from the question related to respondent perceptions on the most important incentive or vulnerability for professionals in the justice system to acquiesce into engaging in acts of corruption in Kosovo is illustrated in the table below:

TABLE 14: INCENTIVES OF CORRUPTION

Incentives	Total answers	Percentage
Material benefits – for oneself, for one or more family members or for the professional’s community	490	46.7
Maintaining good relations with the political actors	83	7.9
Lack of independent oversight	80	7.6
Rewards through appointments	79	7.5
Fear of losing one’s job	74	7.0

At a general level, the most frequent incentive or vulnerability for professionals in the justice system to engage in acts of corruption in Kosovo is, by far, the material benefits for oneself, or family members or for the professional’s community (46.7%). Other incentives or vulnerabilities were ranked at similar levels of importance, much lower than material benefits, and include maintaining good relations with the political actors that would lead up to rewards through future career appointments and the lack of independent oversight (with approximately 8% of respondents each).

These results were carefully matched with findings on the category of citizens more likely to resort to some form of corrupt conduct when dealing with the justice system. Wealthy citizens that were identified by 62.4% of respondents as the most common group to initiate corruption in justice system match with the most common incentive – material benefit for oneself, member of family or other. Current government officials who are acknowledged as highly prone to corrupt conduct through undue political influence when dealing with

the justice system in Kosovo were matched with the intention of justice system actors to maintain good relations with political actors and rewards through appointments.

8. STAGES OF JUDICIAL PROCESS

One of JII survey goal was to identify which stage of judicial process is more susceptible to corrupt conduct. The table below aggregates the percentage of respondents who answered with *frequent* and *very frequent*. Based on the results from the survey, 19.0% of respondents consider the overall judicial proceeding vulnerable to corruption. When asked about specific stages of the judicial process, the final act (sentencing) is perceived by 16.9% of respondents to be more susceptible to corruption followed by action allocation to a



prosecutor (15.0 per cent), action allocation to a judge (14.8 per cent) and charging (in criminal process) with 14.52 per cent. See table 15.

TABLE 15: STAGES OF JUDICIAL PROCESS

Stage of judicial process	Percentage (%)
Overall proceeding	19.0
Sentencing	16.9
Action allocation to a prosecutor	15.0
Action allocation to a judge	14.8
Charging (in criminal process)	14.2
Investigation	13.7
Court proceedings	13.6
Enforcement of decisions	13.5

Possible solutions that could be considered by the key justice sector actors are concrete actions aiming to increase transparency of court proceedings, trial monitoring and public attendance at hearings. All these actions toward increase of transparency during court proceedings should be developed in the form of guidelines for sentencing/ charging aiming to reduce discrepancies.

Regarding types of cases in judicial process, criminal cases are most vulnerable to corrupt conduct (24.1 per cent) followed by civil cases (21.8 per cent) and commercial cases (21.5 per cent). See table 16.

TABLE 16: TYPES OF CASES IN JUDICIAL PROCESS

Types of cases	Percentage (%)
Criminal cases	24.1
General civil cases	21.8
Commercial cases	21.5
Property cases	20.1
Financial and Tax cases	18.7
Minor offenses	12.6
Administrative cases	12.4
Enforcement procedure	10.8
Bankruptcy cases	10.6
Cases related to law on labour and pensions	10.4
Family cases	9.7
Environmental cases	7.7

The literature suggests that different risks arise and different actors are most at risk of corruption at different stages of the process: before a case reaches the court⁴¹. Lawyers, prosecutors and police investigators are most at risk as they build up the case. Risks include political influence or bribery to tamper with evidence and the charges brought before the court. During court proceedings, judges, lawyers and clerks might be approached to influence the outcome of the case, to delay or expedite it, drop charges or sway the judge’s final verdict.

41 The International Bar Association (May 2016), Judicial Integrity Initiative “Justice systems and Corruption”

9. RISKS OF CORRUPTION

Three most important factors underlying corruption risks in the justice system in Kosovo perceived by survey participants are politician’s intent to cover their own corrupt conduct (15.4 per cent) followed by mutual interests between members of organized crime and certain politician (12.3 per cent) and common interests of business groups and certain politicians (11.5 per cent).

TABLE 17: COMPLETED INTERVIEWS (BREAKDOWN BY POSITIONS)

Risks of corruption	Number of responses	Percent
Desire of influential political figures to cover their own corrupt conduct	449	15.4%
Mutual interests between members of organized criminal networks and certain politicians or political leaders	360	12.3%
Mutual interests of business groups and certain politicians or political leaders	337	11.5%
Low salaries	237	8.1%
Lack of professional capacities and courage to fight corruption	199	6.8%
Justice not being served on time	145	5.0%
Selective justice being served in a form of pardoning the powerful	124	4.2%
Weak internal control mechanisms and disciplinary outcomes	111	3.8%

A more detailed analysis of results under “low salaries” option reveals that 96 responses (out of 237) are given by court and prosecutorial personnel that indicates that court and prosecutorial staff are not satisfied with the level of their salaries and perceive this as a potential risk when corrupt conduct emerge in justice system.

Favouritism and nepotism followed by political interference are the most common forms of corruption perceived by justice sector actors⁴². On the other hand, the

most common incentives were revealed to be material benefits (for oneself, or family members or for the professional community) followed by maintaining good relations with the political actors. These findings suggest that there is a correlation between these two as they acknowledge a serious threat to the justice sector’s integrity and very difficult to tackle.

⁴² Table 4





CONCLUSIONS

Judicial Integrity Initiative survey was originally designed and implemented by the International Bar Association (IBA) and was conceptualized as a unique opportunity for justice system actors to anonymously share their concerns over corrupt practices within the system. The Report is the outcome of collaboration between Kosovo Democratic Institute (KDI) and Kosovo Bar Association (KBA) in its first adoption of JII survey in the local context and with a representative sample. The purpose of this Report is to present the results of that multidimensional research, including the extensive implementation JII Survey, post-survey focus groups, and individual interviews with players of Kosovo justice system.

The main goals of the research were to identify the most prevalent patterns in which corruption manifests in justice systems, corruption risks in the interactions among the actors in justice system, drivers of corruption, the intermediaries of corrupt actions and the risks of corrupt conduct emerging at different stages of a judicial process. Below is the list of key findings of the JII Survey conducted during April and May 2017:

- The survey results indicate that overall perception of the level of corruption in the judiciary is lower compared with the general level of corruption in Kosovo.
- Favouritism and nepotism is the most common form of corruption in Kosovo justice system. “Nepotism is a tool for securing employment, receiving lighter sentences, causing intentional delays for acquiring court case statutory time limitation and ensure failure to execute court verdicts.”⁴³
- As unemployment is generally perceived to be the most challenging social and economic problem, our survey reveals that the employment prospects in justice system are compromised by corruption.
- Different actors from within and outside justice systems are exerting undue influence over the judicial process. This phenomenon puts the overall independence of the justice system at risk.
- Material benefits for oneself or family member is the

most important incentive to acquiesce into engaging in acts of corruption in Kosovo. Consequently, wealthy citizens are the most common group to initiate corruption in justice system match with the most common incentive.

- Regarding corrupt conduct in interactions between different justice system actors, judges most frequently approach other judges, lawyers are more likely to initiate corrupt conduct in their interactions with other lawyers and judges while prosecutors are perceived to initiate corrupt conduct with other prosecutors.
- Court personnel is perceived as seeking to extract material benefits by promising a more expeditious court process.
- Lawyers, due to the nature of their profession and their regular contacts with third parties are more inclined to serve as intermediaries to influence the outcome of cases.
- Selection of a preferred judge and prosecutors to determine a case/action through political interference is considered the most intended outcome.
- Wealthy citizens and current government officials are more likely to resort to some form of corrupt conduct when dealing with judicial institutions.
- Judicial proceeding is perceived to be vulnerable to corruption at all stages. The initial act (filing action), judge assignment, court proceedings and investigation stage are considered the most susceptible.
- Regarding types of cases in judicial process, criminal cases are most vulnerable to corrupt conduct followed by civil cases and commercial cases (36.6 per cent).

KDI and KBA will continue to pursue the JII to identify and develop, in the context of these findings, appropriate measures to provide support to justice systems seeking to improve the effectiveness and legitimacy of their judicial processes.

43 From an interview with justice system actor, June 2017





RECOMMENDATIONS

RECOMMENDATIONS TO THE KJC, COURT PRESIDENTS, JUDGES, AND COURT STAFF

- 1 The KJC should use objective criteria, always based on merit and integrity, in the selection process of judges and court staff.
- 2 The KJC should exercise its constitutional power as an independent branch of government, to ensure adequate resources (budget, physical infrastructure and human resources) for the judiciary.
- 3 The KJC should take further actions to randomize case assignments. Initial assignments to a judge should be done through an electronic system and the initial selection may then be adjusted by the court either to avoid potential conflicts or to allow related cases to be handled by the same judge. Efforts should be made to communicate to the public reasons for re-assignment so they are understood as measures to mitigate conflicts of interest or improve efficiency rather than as means to manipulate case processing.
- 4 Court Presidents and the KJC should meet periodically with those responsible for court security and conduct a review of security measures. Based on these reviews, detailed plans should be crafted and periodically updated to confront existing and future threats to the physical security of judicial actors.
- 5 Court presidents should institute periodic meetings among the judges and/or court staff to review measures that can decrease improper influence such as restricting the access of the public to judges' private offices and screening all phone calls to judges.
- 6 The KJC should consider making continuing legal education training on judicial ethics mandatory on a set periodic basis (e.g., annually, every three years, etc.) for judges and court staff, like KBA Continuous Compulsory Legal Education Program.
- 7 The KJC should request legal education training on judicial ethics to the Academy of Justice for judges and court staff.
- 8 The KJC should increase the level of transparency of disciplinary proceedings so that citizens receive sufficient information on the measures imposed to judges.
- 9 The KJC or Court Presidents should convene discussion meetings with judges and/or court staff to discuss findings regarding the risks and vulnerabilities to corruption and design their own solutions to offset these perceptions or mitigate these risks and vulnerabilities.
- 10 The KJC should consider issuing a charter of service that clearly informs citizens of the ethical commitment and standards applicable to judges and staff.
- 11 Courts should consider increasing communications to the public that better explain court procedures, applicable fees, reasons for procedural delays, and other issues that can be misinterpreted as corruption or increase the risk of corruption.



RECOMMENDATIONS TO THE KPC, CHIEF PROSECUTORS, PROSECUTORS, AND PROSECUTION OFFICE STAFF

- 1 The KPC should use objective criteria, always based on merit and integrity, in the selection process of prosecutors, and prosecution office staff.
- 2 The KPC should exercise its constitutional power as an independent branch of government, to ensure adequate resources (budget, physical infrastructure and human resources) for the prosecution service.
- 3 The KPC should take further actions to inform the public regarding case assignments. While initial assignments to a prosecutor are at the discretion of the Chief Prosecutor, the initial selection may then be adjusted by the prosecution office either to avoid potential conflicts or to allow related cases to be handled by the same prosecutor. Efforts should be made to communicate to the public reasons for re-assignment so they are understood as measures to mitigate conflicts of interest or improve efficiency rather than as means to manipulate case processing.
- 4 Chief Prosecutors and KPC should meet periodically with those responsible for prosecution office security and conduct a review of security measures. Based on these reviews, detailed plans should be crafted and periodically updated to confront existing and future threats to the physical security of prosecutorial actors.
- 5 The KPC should consider making continuing legal education training on judicial ethics mandatory on a set periodic basis (e.g., annually, every three years, etc.) for prosecutors and prosecution office staff.
- 6 The KPC should request legal education training on judicial ethics to the Academy of Justice for prosecutors and prosecution office staff.

7 The KPC should increase the level of transparency of disciplinary proceedings so that citizens receive sufficient information on the measures imposed to prosecutors.

8 The KPC or Chief Prosecutors should convene discussion meetings with prosecutors and/or prosecution office staff to discuss findings regarding the risks and vulnerabilities to corruption and design their own solutions to offset these perceptions or mitigate these risks and vulnerabilities.

RECOMMENDATIONS TO THE KBA, KBA BRANCH PRESIDENTS, AND LAWYERS

1 The KBA should increase the level of transparency of disciplinary proceedings so that citizens receive sufficient information on the measures imposed to advocates.

2 The KBA should take action to sanction lawyers who act or pretend to act as intermediaries for judges or prosecutors.

3 The KBA should convene Bench-Bar meetings specifically focused on integrity to encourage the joint development of a pledge in support of integrity and measures to mitigate risks and vulnerabilities to corruption as well as actual or perceived corrupt behaviour.

RECOMMENDATIONS FOR THE KOSOVO POLICE

1 The Kosovo Police should increase the level of transparency of disciplinary proceedings so that citizens receive sufficient information on the measures imposed to police.

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ANNEX 1: LITERATURE REVIEW

During the literature review confirmed concerns raised by IBA that “there are a range of studies and projects that focus on how corruption affects some specific justice systems. However, studies that focus specifically on patterns of corruption within justice systems and interactions between judicial professionals are limited and lack the approach needed to sustain the development of evidence-based anti-corruption strategies.”⁴⁴ The IBA Report distinguishes the UNODC’s Judicial Integrity Technical Assistance programmes and their comprehensive assessment of justice system integrity and capacity at the initial stage of program implementation.⁴⁵

Many authors use different definitions of the term “integrity” but all definitions have in common the concept of consistency of actions, values, methods, measures, principles, expectations, and outcomes. In ethics, integrity is regarded as the honesty and truthfulness or accuracy of one’s actions, is the qualification of being honest and having strong moral principles. Integrity is a personal choice, an uncompromising and predictably consistent commitment to honour moral, ethical, spiritual, and artistic values and principles (Killinger, 2010). The word itself evolved from the Latin adjective *integer*, meaning *whole* or *complete*. In this context, integrity is the inner sense of “wholeness” deriving from qualities such as honesty and consistency of character. An individual’s value system provides a framework within which the individual acts in ways which are consistent

and expected. Integrity is the state or condition of having such a framework, and acting congruently within the given framework. Integrity may be given a variety of meanings, and its scope may be influenced by culture and history, among other factors.

In a judicial context, integrity includes honesty, fairness, and trust. Integrity may also be defined by what it is not. Where a person in a position of power acts for his or her own self-interest, or for ulterior or improper purposes, it is widely understood that such a person lacks integrity. Across the globe, for many decades now, governments have been searching for an effective system that would protect and advance judicial integrity. The fundamental principle of judicial ethics (namely judicial independence) was mentioned in Article 10 of **the Universal Declaration of Human Rights (1948)**, which stated the following:

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

The same principle has been further elaborated in Article 14 of the International Covenant on Civil and Political Rights that was adopted in 1966, in the following wording:

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

44 The International Bar Association Judicial Integrity Initiative “Justice systems and Corruption”, (May 2016), page 5

45 To confront the judicial corruption, the UNODC takes a variety of approaches. A detailed examination on the level of corruption is followed by Agency’s efforts to identify means of addressing it, in higher and lower levels of court systems. UNODC utilizes the following three-step process:

1. Formulation of the concept of judicial integrity and devise the methodology for introducing that concept without compromising the principle of judicial independence,
2. Facilitation of a safe and productive learning environment for reform-minded chief justices around the world and
3. Awareness raising regarding judicial integrity and develops, guides, and monitors technical assistance projects aimed at strengthening judicial integrity and capacity.

The same principle, as well as other important standards that should guide judicial conduct were later considerably expanded in **the United Nations Basic Principles on the Independence of the Judiciary**, adopted by the United Nations Congress in 1985, which stated:

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

The Bangalore Principles of Judicial Conduct, adopted by the General Assembly of the UN Human Rights Commission in May 2003, establish guidelines for ethical judicial conduct in the form of six values:

- independence
- impartiality
- integrity
- propriety
- equality
- competence
- diligence

Various regions around the world have further refined these principles with their own legal traditions and histories in mind. At the regional European level, there are many major instruments pertaining to judicial ethics. They are the **“Judges’ Charter in Europe”** adopted on March 20, 1993 in Wiesbaden (Germany) by the European Association of Judges, which is a regional group of the International Association of Judges.

The Judge is only accountable to the law. He pays no heed to political parties or pressure groups. He performs his professional duties free from outside influence and without undue delay (Article 2), and that “Not only must the Judge be impartial, he must be seen by all to be impartial.”

The Recommendation on the Independence, Efficiency and Role of Judges, adopted by the Committee of Ministers of the Council of Europe in 1994, and **the European Charter on the Statute for Judges** adopted by the Council of Europe in Strasbourg in 1998 expand the principle of independence and responsibility of judges and contain provisions about the preconditions for ensuring judicial independence by ensuring proper methods of selecting and recruiting judges, ensuring proper working conditions, and safeguarding judicial independence by a judicial association or administration body.

Principles of judicial accountability. The judicial branch of government must be accountable for the effectiveness of the judicial process and the expenditure of public funds. Principles of judicial accountability include:

1. Judges should provide reasons for their decisions;
2. Judicial decisions should be rendered in a timely fashion;
3. Judges must act – and be seen to act – in a fair and reasonable manner;
4. Courts budgets and expenditures should be transparent
5. Judges must be accountable to the public and the public interest.



Principles of judicial independence. While judicial accountability is important, it should not be understood as permitting government or any external individual, group or organization from influencing the decision-making of judges. For example, Canada’s *Ethical Principles* states that “[a]n independent judiciary is indispensable to impartial justice under law. Judges should, therefore, uphold and exemplify judicial independence in both its individual and institutional aspects.” While providing an exhaustive list of the factors that constitute judicial independence in various jurisdictions seems impossible, the most important features of judicial independence include:

- Judges must be free from political direction or interference from the Government over judicial decision-making;
- The conditions of office (security of tenure, financial remuneration) are set and determined objectively rather than at the discretion of the Government; and
- Judicial discipline and supervision of judicial conduct is carried out by the judiciary.

Role of other branches of government. Other branches of government (executive and legislature) has an important role to play in ensuring judicial integrity, independence and impartiality including:

- Respecting the autonomy of judges in their decision-making;
- Providing a sustainable budgetary environment for the administration of justice;
- Ensuring the highest merit-based standards in judicial appointment; and
- Establishing a fair and objective process, where necessary, for judicial removal.
- To the extent possible, the relationship between the Government and the judiciary should be “depoliticized.”

Judicial corruption strikes at the very heart of the rule of law. Once the Bar Association and the public lost confidence in the independence and impartiality of the

judiciary, it may prove difficult to restore. Further, it is even more difficult to attract law students of integrity to pursue judicial careers.

A vital legal tool to address improper influence is a robust scheme of disclosure and recusal. Upon becoming judges, individuals may be required to disclose business and economic interests, and interests of relevant family members. This reporting/ disclosure requirement may be an annual feature of judicial accountability.

Corruption may both be caused by and may contribute to the capture of the justice system by economic elites. This corruption may also compromise the independence of the Bar and other key aspects of the justice system. Capture may be explicit (e.g. bribery) or implicit (e.g. judges connected to economic elites through shared experience and perspectives).

Recusals and conflicts of interest. There has been some debate concerning the appropriate procedure to be followed when disqualification of one member of a multi-member panel of judges is sought, but it is generally conceded that the proper approach is for that party to make a motion that will be decided by the judge whose disqualification is being sought. This can cause some difficulty if the judge rejects the application to disqualify himself or herself and the other members of the panel believe that this decision is incorrect. Judges swear an oath upon taking office that they will discharge their duties in an impartial manner. There is as well a professional or ethical duty to decide all matters impartially. A judge may therefore disqualify himself or herself on his or her own motion in any case in which an issue of bias (or apprehension of bias) might arise. This self-disqualification is known as recusal.

Judicial integrity is thus of utmost importance: a fair and impartial judicial process can be said to be a precondition for accountable governance and for anti-corruption safeguards to take effect. Integrity in justice system serves both as a preventive and catalysing function: impartial judiciary by ensuring due process in punishing wrong-doings, not only curbs corruption within the justice system but also fights it at all levels of society. KDI strongly believes that improving judicial integrity is perhaps the most effective mean to gaining public confidence and fighting corruption.



ANNEX 2: KOSOVO JUSTICE SYSTEM

COURTS OF KOSOVO

As of January 1, 2013, a re-structured Kosovo Justice system has been introduced with seven (7) basic courts⁴⁶ as courts of first instance, the Court of Appeals (with competence to hear and determine appeals from decisions of basic courts), and the Supreme Court as the highest judicial authority in Kosovo. In each basic court, a president judge is responsible for the “management and operations” for the Court, while in each branch, a supervising judge is responsible to the relevant president judge for the “operations” of that branch⁴⁷. All judges are appointed and dismissed by the President of Kosovo on the proposal of the Kosovo Judicial Council⁴⁸ (KJC). In addition to recruiting and proposing candidates for appointment to judicial office, the KJC is also responsible for a range of oversight and administrative tasks.⁴⁹

STATE PROSECUTOR

In Kosovo, the role of the state prosecutor is to initiate criminal investigations, discover and collect evidence and information, and finally file indictments and prosecute suspected persons for criminal offenses. It con-

sists of the Basic Prosecution Office, Special Prosecution Office, Appellate Prosecution Office and Chief State Prosecution Office. The Basic Prosecution Office consists of the general department and department for minor and serious crime. Any case involving commercial and administrative matters must be assigned within the general department of the Basic Prosecution Office. This office is established in the seven largest municipalities: Pristina, Ferizaj, Gjakova, Gjilan, Mitrovica, Peja, and Prizren. Prosecutors are appointed, re-appointed and dismissed by the President of Kosovo upon the proposal of the Kosovo Prosecutorial Council⁵⁰. The KPC proposes candidates based on merit and in a transparent manner, considering the gender equality and ethnic composition.

KOSOVO BAR ASSOCIATION

Kosovo Bar Association (KBA) is a self-governed organization of Kosovar lawyers functioning independently from state institutions. The Assembly of Kosovo established Kosovo Chamber of Advocates (KBA), following adoption of the Law on the Bar and other legal assistance. The legal framework for KBA activities constitutes the Law on Advocacy No. 03/ L-117 dated 12th February 2009, which repeals the Law on Advocacy and Other Legal Aid, Official Gazette of SAPK, no.

46 The 7 Basic Courts in Pristina, Prizren, Peja, Mitrovica, Gjilan and Ferizaj each have several “Branch Courts”. The twenty (20) Branch Courts are in smaller municipalities.

47 Judicial Integrity in Kosovo, United Nations Development Program and UN Office on Drugs and Crime (2014).

48 Based on the Constitution, the mandate of the Council members is five (5) years and the Council consists of 13 members, eight of them are elected by the Assembly of Republic of Kosovo, while five (5) members are elected from among the judges. The Secretariat assists the Council in implementing the rules and its policies regarding the management, budget and courts administration. Within the Council, the Court Performance Review Unit (CPRU) and the Office of Disciplinary Prosecutor (ODP) are functioning.

49 The KJC transfers judges as needed, conducts and rules upon judicial disciplinary proceedings, conducts judicial administration and oversees the courts’ judicial audit function, develops court rules, hires and supervises court administrators, develops and oversees the judicial budget, determines the number of judges in each jurisdiction and recommends establishment of new courts to the assembly.

50 The KPC is an independent institution responsible to “recruit, propose, promote, train, transfer, reappoint and discipline prosecutors.” Its composition expanded and reformed according to the changes made in the law in June 2015. The Council has 13 members and it is much more representative. Of those, 10 members are appointed from each prosecution office including one from the State Prosecution Office, seven from Basic Prosecution Offices, one from the Basic Appellate Prosecution Office, and one from the Special Prosecution Office.

The remaining three members come from other sectors. They include a lawyer appointed by the Chamber of Advocates, a professor from the Law Faculty, and a civil society representative. The minister of justice is no longer a member of the KPC, as was the case until June 2015. The three non-prosecutor members must be elected by the majority in the Assembly. In the changed law, the new requirement for the civil society representative is that he/she must have legal work experience of more than five years, have not been member or affiliate of any political activity in the last three years and have the support of more than five CSOs.



011-69/79. KBA Statute being a normative act of the highest level, ensures a full internal organization of the Chamber. KBA is the only lawyers' license authority in Kosovo as an integral part of the justice system. The Association aims the advancement of the rule of law by supporting the process of legal reforms. KBA should be the guarantee of high standards of professionalism, competency, trust and ethical conduct.

The Investigation Department consists of the following units:

- Division for Crime Investigation
- Division Against Organized Crime and
- Special Anticorruption Department/ Anticorruption Task Force

KOSOVO POLICE

The Kosovo police force is a law enforcement institution responsible for preserving public order and safety across the country. Kosovo Police is an institution that aspires to provide professional, effective and efficient law enforcement in Kosovo through the protection of life and property, maintenance of public law and order, prevention and detection of crime, protection of human rights and freedoms and equal treatment of all citizens regardless of their race, colour, religion, gender or age. Kosovo Police is organized around five (5) departments:

1. Department of Operations
2. Investigation Department
3. Department of Border Police
4. Department of Support Service
5. Human Resources Department

Special Anti-Corruption Department (SACD) or so-called 'Anti-Corruption Task Force' operates as a specialized unit within the Investigation Department and aims to prevent, investigate and detect the criminal offences against the economy, finances and corruption. SACD's mission is the investigation and combating of criminal offences of high level corruption in the Republic of Kosovo. Together with the Special Prosecution of the Republic of Kosovo, the Department conducts investigation of perpetrators of criminal offences, documentation of criminal activity and bringing suspects in front of the justice bodies.



ANNEX 3: INTERNAL CONTROL MECHANISM

This section provides a brief description of internal control mechanisms responsible for investigating justice systems actor when doubt of unacceptable or bad conduct is reported. The Institute is fully aware that these mechanisms are not responsible for fighting corruption among the justice actors, however often charges for misconduct can lead to serious allegations for corruption. The information provided in this section will contribute to a comprehensive picture of Kosovo justice system.

KJC DISCIPLINARY COMMITTEE

KJC exercises disciplinary control over the judges through its permanent Disciplinary Committee which, in turn, relies on the Office of the Disciplinary Counsel (ODC). In cases where misconduct is found to have occurred, the Disciplinary Committee may impose sanctions that include a warning, a fine, the transfer or suspension of the judge and, in particularly serious cases, the removal of the judge from their position.

KJC Disciplinary Committee (KJC-DC) consists of three members appointed by the KJC. Committee makes its final decision on whether to impose sanctions in accordance with the rules and procedures set on disciplinary proceedings. Such measures include a reprimand, temporary salary reduction and proposal of the removal of a judge/prosecutor. Appeals against Committee's decision may be submitted to the KJC within 15 days from the receipt of the final decision.

KPC DISCIPLINARY COMMITTEE

KPC Disciplinary Committee (KPC-DC) consists of three members appointed by the KPC. Committee makes its final decision on whether to impose sanctions in accordance with the rules and procedures set on disciplinary proceedings. Such measures include a reprimand, temporary salary reduction and proposal of the removal of a judge/prosecutor. Appeals against Committee's decision may be submitted to the KPC within 15 days from the receipt of the final decision.

OFFICE OF DISCIPLINARY COUNSEL

Office of Disciplinary Counsel (ODC) is a separate and independent institution elected by the Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC) responsible for investigating judges and prosecutors when there is a reasonable complaint or doubt of misconduct. Misconduct is defined as:

- (1) conviction for a criminal offence;
- (2) negligence in performing, a failure to perform, or abuse of judicial functions;
- (3) failure to perform judicial functions independently and impartially;
- (4) a violation of the applicable code of ethics.

ODC has the right to investigate all matters and from evidence obtained decide whether to present disciplinary action to the KJC and KPC Disciplinary Committee, respectively. The office reports to the KJC and KPC on annual basis on its activities and expenses.

The ODC, in its 2016 Annual Report, presented a series of challenges. Some of the challenges are related to the ODC inability to independently administer its budget that is reflected in the recruitment of staff. ODC continues to face insufficient professional and administrative capacities to fulfil its legal duties (to conduct investigations for any breach of conduct by a judge or prosecutor). The ODC further highlights that the Ministry of Finance has never taken these remarks with sufficient level of seriousness.

ODC is dependent on both judicial and prosecutorial councils. Both councils are the ultimate authority on what and to whom disciplinary measures should be applied”.⁵¹ In its 2016 Annual Report, ODC reports “five-hundred and fifty-six (556) complaints submitted by citizens, institutions, legal entities that compared to previous year is a slight increase of 7 per cent.⁵² During the same period of report, 643 cases are refused after preliminary investigation (a number of these complaints were submitted at ODC during 2015) 78 complaints are attached to other cases, 142 are carried to year 2017. According to the ODC, majority of complaints are refused due to the lack of well based facts and circumstances that obliges the ODC to initiate a disciplinary investigation.⁵³

During 2016, ODC filed, in total, twelve (12) final reports to KJC-DC and eight (8) reports to KPC-DC. KJC-DC reviewed and decided upon 18 disciplinary cases against judges (some cases reviewed DC were received in 2015). Similarly, KPC-DC reviewed and made decision on 19 disciplinary cases against prosecutors. Disciplinary committees of KJC reprimanded one judge, six (6) judges were acquitted and one judge received temporary suspension, while KPC-DC issued 6 reprimands, 2 prosecutors were temporary suspended, 3 prosecutors were acquitted and one prosecutors received temporary salary reduction.

KBA DISCIPLINARY OFFICE

There is an ethical framework and a discipline system embedded in the principles of disciplining from the Statute of KBA. The new system of discipline consists of the Investigation Disciplinary Commission, Disciplinary Review Committee and the Complaints Commission, whose members are appointed by the KBA Assembly upon the KBA Steering Board proposal.

The mandate of disciplinary office lasts for three years with a possibility of re-appointment. The new system expands the number of entities which can institute a disciplinary procedure against a lawyer, also setting the required guarantee for fair, unbiased and effective disciplinary procedures.

KOSOVO POLICE INSPECTORATE

The Police Inspectorate is an independent institution in charge of investigating high profile disciplinary offenses. High profile disciplinary cases include: conflicts between the police and community; the use of lethal force; death in police custody and fatal traffic accidents involving police staff. The Inspectorate is also responsible for preventing, investigating and documenting any criminal activity committed by police members for which they are not entitled to immunity.

The Agency combines the two primary functions in pursuit of the principles of accountability and transparency – the pillars of democratic police:

- Prevention, detection, documentation and investigation of the criminal offences committed by Police employees, regardless the position and gender during the exercising of the duty or off duty, including also the investigations of high profile disciplinary incidents and disciplinary investigation of the police officers with the highest grade of the highest managerial level and senior executive level officers.
- Inspection of Kosovo Police (KP) structures and functions to ensure accountability, efficiency and effectiveness when enforcing law, statutory law and standard operation procedures.

51 A participant in the JII Focus Group, Prishtina, June 28, 2017
 52 Office of the Disciplinary Counsel (2017) , Annual Work Report 2016, page 6
 53 Ibid, page 7

