



# KOSOVO JUSTICE SECTOR INTEGRITY SCAN

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**Kingdom of the Netherlands**

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## About the report

This report has been developed at the request of the Royal Netherlands Embassy in Kosovo by the [Center for International Legal Cooperation \(CILC\)](#) in close cooperation with two Kosovar NGOs: [FOL Movement](#) and [Kosova Democratic Institute \(KDI\)/Transparency International](#).

The Dutch Ministry of Foreign Affairs promotes rule of law projects in Kosovo as it recognizes the importance of a strong judicial sector for the stability in the region and in improving public confidence in Kosovo's justice system.

This report responds to the ever-growing need to address the level of integrity within the justice sector that is in line with Kosovo's reform agenda, complementary to existing and planned initiatives of other donor institutions and based on the good practice set by FOL and KDI.

Previous research conducted by FOL and KDI underlined the need for a more structured and systemic approach to address the challenges and shortcomings of the Kosovar judicial and prosecutorial services. CILC has extensive experience in the Balkans working within the justice sector and capacity-building while FOL and KDI have both been working with the justice sector to increase transparency and efficiency.

By having direct access to prominent lawyers from the Dutch judiciary to the Netherlands Ministry of Justice, and to law faculties in the Netherlands, CILC in partnership with FOL and KDI will utilize them to support the upcoming activities that aim to increase the integrity of judges and prosecutors.

CILC, FOL and KDI believe that the findings in this report will make a strong contribution to the judicial reform agenda in Kosovo. In particular we expect that the findings will bring together all actors in justice sector to take inclusive steps in finding best remedies that address integrity matters. Of particular importance are the revision of Code of Ethics (CoE) for Kosovo Judicial Council (KJC) and Kosovo Prosecutorial Council (KPC) in line with the findings of this report. Together with a renewed CoE there will be developed an explanatory memorandum that should be disseminated among judges and prosecutors. As the findings in this report point out, there is a need to address the issue of Office of Disciplinary Prosecutor (ODP), whose future is not yet clear.

The report reminds us that there is still to work on training for judges and prosecutors on the integrity area.

Upgrading current CoE and disseminating an explanatory memorandum for judges and prosecutors; training for judges and prosecutors and working with current ODP, KJC, KPC and Ministry of Justice to address the important issue of disciplinary measures when there is violation of CoE are all part of the upcoming activities from CILC, FOL and KDI.

We look forward to implement all such activities in 2018, together with all justice sector partners, in particular with KJC, KPC and Ministry of Justice.

# 1. State of affairs in the court system

## 1.1 Basic information

The court system in Kosovo is comprised of Basic Courts, the Court of Appeals and the Supreme Court.<sup>1</sup> The Basic Courts are first instance courts, established in the seven largest municipalities: Prishtina, Gjilan, Prizren, Gjakova, Peja, Ferizaj and Mitrovica.<sup>2</sup> The Court of Appeals is a second instance court, established in Prishtina, as a court with jurisdiction in reviewing appeals against rulings and conflicts of jurisdiction between the Basic Courts.<sup>3</sup> All Courts have the following three departments dealing with (1) serious crimes, (2) general matters, and (3) juvenile matters.<sup>4</sup> In addition, Prishtina Basic Court is the seat of (1) Department for Commercial Matters and (2) Department for Administrative Cases for the entire territory of the Republic of Kosovo.

The Supreme Court is the highest court responsible for deciding on the third instance for complaints allowed by law<sup>5</sup>, adjudicating requests and revisions against final court rulings, determining legal principles and remedies requiring uniform application, and for cases within the scope of activities of the Kosovo Property Agency (KPA) and the Kosovo Trust Agency (KTA).<sup>6</sup> Further, the Constitutional Court is the final authority to determine whether general acts and laws comply with the Constitution.<sup>7</sup> In April 2014, Kosovo agreed on a new mandate for EULEX by June 2016, and on the establishment of a special temporary war crimes tribunal. Under the new EULEX mandate, all the institutions of the rule of law are led by Kosovo officials. In June 2016, it was again decided to extend the mandate of EULEX to 15 June 2018.

## 1.2 Resources

### Legal framework

Laws and regulations are adequate in seeking to ensure the appropriate salaries and working conditions for the judiciary. In June 2015, the Law on Courts was amended and supplemented, whereas the Law on the Kosovo Judicial Council (KJC) was amended in April 2016. The Law on Courts defines the hierarchy of the judiciary (3 levels) and salaries levelled to those of the government. The Basic Courts, the Court of Appeals and the Supreme Court replaced the old judicial system that consisted of district and municipal courts.

The law does not yet require a fixed part of the public budget for the judiciary. According to the law, it is at the discretion of the KJC to prepare and submit the budget to the Assembly of Kosovo.<sup>8</sup> According to the previous law, the budget should first be revised and reviewed by the government before being sent to the Assembly.<sup>9</sup> That is no longer the case, since KJC now has full power to require a considerable budget. Once the budget is approved, it remains with KJC to execute it, overseeing expenditures, allocating funds and keeping accurate financial statements.<sup>10</sup>

The legal provisions regulating salaries of the judiciary are included in the Law on Courts. It mandates the same hierarchy of salaries of judges levelled to those of the government as foreseen in 2011. In

1 Official Gazette of the Republic of Kosovo. No. 79. Law no. 03/L-199. Law on Courts, Article 4, May 2017, p. 2.

2 Idem, Article 9, p. 3.

3 Idem, Article 18, p. 7.

4 Idem, Article 12, p. 5.

5 Law no. 04/L-171 on Amending and Supplementing the Law no. 03/L-199 on Courts, Article 3.

6 Official Gazette of the Republic of Kosovo. No. 79. Law no. 03/L-199. Law on Courts, Article 22, May 2017, p. 9.

7 Constitution of the Republic of Kosovo. Article 112, p. 45.

8 Official Gazette of the Republic of Kosovo. No. 17. Law no. 05/L-033. Law on Amending and Supplementing the Law on the Kosovo Judicial Council. Article 9. May 2017, p. 5.

9 Official Gazette of the Republic of Kosovo. No. 84. Law no. 03/L-223. Law on the Kosovo Judicial Council. Article 15. May 2017, p. 7.

10 Idem

the new law, the wording "equivalent to" is replaced by "not less than that of" when it comes to comparing the salaries of judges to those of government officials.<sup>11</sup> In the Supreme Court, the President earns no less than the Prime Minister<sup>12</sup> and Judges earn a salary of 90 percent of the salary of the President of the Supreme Court.<sup>13</sup> At the Court of Appeals, the President receives a salary equivalent to that of the President of the Supreme Court and Judges are paid as much as 90 percent of the salary of the President of the Court of Appeals.<sup>14</sup>

For any extracurricular activity (e.g. lectures and trainings), a judge will be paid only 25 percent of his basic salary.<sup>15</sup> The law also sets an important legal provision against income reduction for judges. In Article 29, it says that the salary of a judge shall not be reduced during his/her term unless there are disciplinary sanctions imposed by the Kosovo Judicial Council (KJC).<sup>16</sup> Such consequences could only occur if there is a case of misconduct for which the KJC initiates a disciplinary measure of temporary reduction of salary up to 50 percent.<sup>17</sup>

## Factual situation

Despite a solid legal framework, courts continue to have the minimal resources and working conditions to perform their duties. Although under KJC's new law it is stipulated that the KJC submits the budget proposal directly to the Assembly, this provision is, according to the interpretation by the MoF, in violation of the Law on Public Financial Management and Accountability (Article 20)<sup>18</sup>. Therefore, according to them, if the KJC fails to submit the budget proposal to the Minister, the Minister has the right to propose a budget based on the KJC funds and expenditures from the previous year.<sup>19</sup> Consequently, funds will be allocated only for the number of positions occupied in the previous year and the number of vacant positions for judges and personnel will not be taken into account. This results in a situation where the required number of judges and staff cannot be recruited.<sup>20</sup> In practice, KJC officials have to consult with MoF officials since the Assembly cannot vote a budget in contradiction to the decision of the MoF.<sup>21</sup>

The 2017 budget allocated to the judiciary was 21,797,640 euros. Compared to 2016 (20,745,490 euro<sup>22</sup>), the budget for the judiciary in 2017 has increased by 1,052,150 Euros or by 5 percent. This amount is not required by law to be apportioned for a specific share of the state budget. In 2017, the amount allocated to the judiciary amounts to 1.089% of the state budget.<sup>23</sup> A relatively small budget makes it difficult for the KJC to recruit professional associates to assist judges in solving court cases more efficiently, as part of the strategy for backlog reduction. The courts already bear the costs as a consequence of their absence, according to the Kosovo Law Institute (KLI). They report that a judge spends 70 per cent of his/her time dealing with technical preparations.<sup>24</sup> In 2017, according to KJC information, the judicial system had a total of 56 professional associates.<sup>25</sup> Besides the KJC has also failed to retain its judges. The un-kept promise of the Ministry of Justice to increase the salaries of judges led to a three-week strike in March 2015. As a consequence, 6,000 court sessions had to be

11 Official Gazette of the Republic of Kosovo. No. 17. Law no. 05/L-032. Law on Amending and Supplementing the Law on Courts. Article 11. May 2017, p. 4.

12 Official Gazette of the Republic of Kosovo. No. 79. Law no. 03/L-199. Law on Courts, Article 29. May 2017, p. 11.

13 Official Gazette of the Republic of Kosovo. No. 17. Law no. 05/L-032. Law on Amending and Supplementing the Law on Courts. Article 11. May 2017, p. 4.

14 Official Gazette of the Republic of Kosovo. No. 79. Law no. 03/L-199. Law on Courts, Article 29. May 2017, p. 11-12.

15 Official Gazette of the Republic of Kosovo. No. 17. Law no. 05/L-032. Law on Amending and Supplementing the Law on Courts. Article 12. May 2017, p. 4.

16 Official Gazette of the Republic of Kosovo. No. 79. Law no. 03/L-199. Law on Courts, Article 29. May 2017, p. 12.

17 Official Gazette of the Republic of Kosovo. No. 84. Law no. 03/L-223. Law on the Kosovo Judicial Council. Article 37. May 2017, p. 15.

18 PECK II - "Corruption risk assessment in the Kosovo judiciary".

19 Idem

20 Idem

21 Idem

22 Law No. 05/L-109 on Amending and Supplementing the Law No. 05/L-071 on the Budget of the Republic of Kosovo for the year 2016. Table 3.1. p 39.

23 Law no. 05/L-125 Law on the Budget of the Republic of Kosovo for 2017. Table 3.1. p 52.

24 Kosovo Justice Institute. Independence of the Judiciary in Kosovo.

25 Interview with Vahid Limani, Coordinator of the administrative and personnel unit. KJC.

cancelled. On the other hand, judges of serious crime departments receive monthly top-ups of 300 euros. This was made possible following the request of the KJC addressed to the government, which was approved by the government during its 148th meeting.<sup>26</sup>

The total number of judges in 2016 was 350 local judges and 39 EULEX judges<sup>27</sup>. The number of judges who have solved cases in 2016 is 322.<sup>28</sup> During 2016, 479,937 cases were solved, thereby showing a higher number of cases solved compared to the number of cases received that year (438,412). In total, the courts had 879,039 cases, including 440,627 cases inherited from previous years. In the budget for 2017, 452 positions for judges were approved. The number of judges in 2017 is 379 (adding the 42 judges from the Brussels Agreement).<sup>29</sup> The number of judges at all levels of courts is insufficient to handle the caseload. KJC stated that delays in recruiting judges occur due to the fact that approval by the Ministry of Finance and Ministry of Public Administration is required prior to initiating this process<sup>30</sup>.

The unfavourable working conditions, complaints on the lack of space, offices, equipment etc., accompany the work of the judiciary. In this regard, in order to improve the working conditions of the judiciary, the EU and the government have co-financed a EUR 30 million project for the construction of the Palace of Justice. There are more than 1000 staff members accommodated in this building from different judicial institutions. However, this project was not implemented as planned. It took almost four years to complete, and even after coming into use, there were many problems: the toilets are not functional; there is a lack of heating and air conditioning, as well as technical problems with elevators.

With regard to court staff, there is a lack of institutional culture, standards and discipline. The staffs continue to communicate only verbally and not in writing.<sup>31</sup> The majority of the staff lacks the skills and experience, and a proper educational qualification.

In recent years there have been many training opportunities provided by local and international organizations. The Kosovo Judicial Institute (now the Academy of Justice) was active in developing training programs and activities for judges and prosecutors. KJI had training programs for (1) initial legal education, and (2) continuous legal education. The former was designed to train judges before they start exercising their functions, whereas the latter was to train judges in meeting the needs and expectations of an independent and professional judiciary.

In February 2017 the Law on the Academy of Justice came into force, by which the Kosovo Judicial Institute becomes the Academy of Justice. The Academy of Justice has the same scope as the KJI. The Academy prepares training programs and organizes trainings for judges and prosecutors and in coordination with the KJC assesses training needs, organizes trainings for other judicial professionals and administrative staff. During 2014, KJI organized 111 trainings, while in 2015 it conducted 115 trainings.<sup>32</sup>

## 1.3 Independence

### Legal framework

The Constitution and laws guarantee to a large extent that the judicial system is independent. The Constitution defines the Supreme Court as the highest judicial authority<sup>33</sup>. Some legal provisions have been contested because they have given undue authority to the Assembly in selecting the members

<sup>26</sup> [http://www.kryeministri-ks.net/repository/docs/Vendimet\\_e\\_Mbledhjes\\_s%C3%AB\\_148-t%C3%AB\\_t%C3%AB\\_Qeveris%C3%AB\\_s%C3%AB\\_Republik%C3%ABs\\_s%C3%AB\\_Kosov%C3%ABs\\_2017.pdf](http://www.kryeministri-ks.net/repository/docs/Vendimet_e_Mbledhjes_s%C3%AB_148-t%C3%AB_t%C3%AB_Qeveris%C3%AB_s%C3%AB_Republik%C3%ABs_s%C3%AB_Kosov%C3%ABs_2017.pdf)

<sup>27</sup> Progress Report for 2016

<sup>28</sup> Court Statistics Report 2016

<sup>29</sup> Interview with Mr. Vahid Limanin, Administrative and Personnel Unit Coordinator. Kosovo Judicial Council.

<sup>30</sup> "Corruption risk assessment in Kosovo's prosecutorial system" PECK II, p.29

<sup>31</sup> Kosovo Democratic Institute, National Integrity System in Kosovo, October 2015.

<sup>32</sup> Work Report 2015. KJI

<sup>33</sup> Constitution of the Republic of Kosovo, Article 103



of the Kosovo Judicial Council (KJC). The Constitution requires judges and prosecutors to be independent and impartial in exercising their functions.<sup>34</sup> Judges are appointed for life and are restricted from joining any political activity or party.<sup>35</sup> It is the role of the KJC to preserve such judicial independence. Its final decision to appoint or remove a judge may be contested by the president of Kosovo only if there is violation of procedure.

By law, the KJC is an independent institution responsible for recruiting and appointing judges. Its role is also to initiate disciplinary measures and transfer judges in addition to conducting judicial inspections and administering courts. The Council is composed of 13 members with a professional judicial preparation, elected for five years. The Constitution states that five members of KJC must be appointed directly by the courts and the remaining eight members by the parliament.<sup>36</sup> The majority rule by the parliament indicates that the KJC is not fully independent. With the new Amendment (No.25) of the Constitution, adopted in February 2016, it is envisaged that seven KJC members should be judges elected by members of the judiciary, while six others from the Assembly. Even in the 2016 Progress Report on Kosovo, the adoption of this amendment is seen as a strengthening of the judiciary independence against political influence. However, the law on the KJC has not yet been amended in order to reflect the changes made to this constitutional amendment.

Judges are appointed, reappointed and dismissed by the president of Kosovo upon the proposal of the Kosovo Judicial Council (KJC).<sup>37</sup> The KJC makes proposals based on an open process and the merits of candidates taking into account both gender equality and ethnic composition.<sup>38</sup> The Law on Courts requires that candidates meet the following criteria for eligibility: be a citizen of Kosovo, have a valid law degree, pass the bar and judge exam, be of high professional reputation and integrity, have a clean criminal record and have at least three years of legal experience.<sup>39</sup>

An important provision on training of judges has changed in the new law. Now it is required that judges are not assigned to any case during initial training.<sup>40</sup> Appointment will ultimately depend on the evaluation following the results of the initial training. In addition, in the new law, extra qualifications in terms of legal experience are less demanding than they were in the past, depending on the court level and department. In the previous law, 10 years of legal experience were required to serve as a judge in the Court of Appeals whereas 15 years of legal experience as a judge in the Supreme Court.<sup>41</sup> Today almost a half of that is required – five years for the judge of the Court of Appeals and eight years for the judge of the Supreme Court.<sup>42</sup>

The initial mandate for the newly appointed judge is three years and after the reappointment, he/she will continue with court proceedings until retirement.<sup>43</sup> In a way, job security is not a concern if the reappointment process is successfully concluded. This is process that requires a rigorous initial exam and additional training activities.<sup>44</sup> For this reason, there are no threats of arbitrary contract termination unless a judge is to be dismissed for having been convicted of a serious crime or failure to perform the duty.<sup>45</sup>

## Factual situation

In recent years, the judicial system has suffered from government interference. This situation im-

34 Constitution of the Republic of Kosovo. Article 102, p. 37.

35 Official Gazette of the Republic of Kosovo. No. 79. Law No. 03/L-199. Law on Courts, Article 34.

36 Constitution of the Republic of Kosovo. Article 108, p. 38.

37 Constitution of the Republic of Kosovo. Article 104, p. 36.

38 Constitution of the Republic of Kosovo. Article 108, p. 38.

39 Official Gazette of the Republic of Kosovo. No. 17. Law no. 05/L-032. Law on amending and supplementing the Law on Courts. Article 26. p. 2

40 Idem, Article 27. p. 3.

41 Official Gazette of the Republic of Kosovo. No. 79. Law No. 03/L-199. Law on Courts, Article 26. p. 10.

42 Official Gazette of the Republic of Kosovo. No. 17. Law No. 05/L-032. Law on amending and supplementing the Law on Courts. Article 27. p. 3

43 Constitution of the Republic of Kosovo. Article 105, p. 37.

44 OSCE. Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions. Jan 2012, p. 13.

45 Constitution of the Republic of Kosovo. Article 104, p. 37

proved with the adoption of the new laws in June 2015. So far, the budget has been under the complete control of the government. In other words, the government has had the ultimate authority to decide how much the KJC can spend each year without being seriously contested by the parliament. Besides its control over the budget, according to the KJC, the government has gone as far as making transactions from the KJC account without any approval or informing the Council.<sup>46</sup>

The KJC is subject to the risk of political bargaining since three out of its nine judge members are elected by the parliament.<sup>47</sup> This makes it difficult for the KJC to act independently in appointing members and judges on clear and professional criteria. It has been noted by the KLI that often political parties negotiate in secret and propose candidates who will be more responsive to the interests of a specific political party once appointed.<sup>48</sup>

The judiciary is also subject to undue external interference in judicial proceedings. Investigations against senior politicians for war crimes committed in the late 1990s have been under constant political pressure. This was the case when the punishment was confirmed in the case "Drenica 2" by the Court of Appeals, where the Assembly held a parliamentary debate on the values of the KLA. Similar cases from previous years are the statements regarding war crimes in "Klečka Case" and "Kiqina Case".

EULEX has also suspected political interference in the judiciary. In January 2014, it issued a letter warning that local judicial institutions were unable to assume responsibility in certain cases that involve political influence.<sup>49</sup> The most relevant situation relates to arrests of politicians and senior public officials regarding corruption charges that ultimately led to no concrete results or criminal convictions, suggesting that they were politically motivated.<sup>50</sup> Eventually, many political figures were discharged or condemned to house arrest due to lack of credible evidence.<sup>51</sup>

## 1.4 Transparency

### Legal framework

The Law on Courts has general legal provisions regarding judicial transparency. It requires that all the decisions of the Court of Appeals<sup>52</sup> and Supreme Court are made public<sup>53</sup>, at a minimum in the webpages of the KJC. In the new Law, it is required that all courts publish final judgments on their official website, "in a time limit of sixty (60) days from the day the decision becomes final." In general, the legal framework requires that court hearings are open and calls for a more transparent court administration. Further, certain dispositions set in the Criminal Code require that Basic Courts oversee criminal investigations by assigning cases in an objective and transparent manner starting from a pre-trial to a single trial judge.<sup>54</sup>

The KJC is required by the Constitution to prepare and present its annual report to the parliament.<sup>55</sup> In addition, it is required to make public all of its activities and decisions. The KJC's meetings are open and the agenda must be disclosed 24 hours prior to the meeting.<sup>56</sup> Activities that may be organized in closed meetings include: personal matters concerning judges and staff, non-public information that is sensitive, on-going investigation for misconduct or any criminal activity, performance assessment of

46 Interview with Albert Avdiu, Kosovo Judicial Council (KJC), 23 Feb 2015.

47 Council of Europe. Assessment Report on compliance with international standards in the anti-corruption (AC) area. Cycle II Report. PECK. p. 11.

48 Interview with Betim Musliu, Kosovo Justice Institute (KJI), 21 Feb 2015.

49 UNDOC & UNDP. Judicial Integrity in Kosovo. p. 7.

50 Interview with Lorik Bajrami, Çohu, Feb 24, 2015.

51 Idem

52 Official Gazette of the Republic of Kosovo. No. 79. Law no. 03/L-199. Law on Courts, Article 19. p. 8.

53 Idem, Article 24. p. 9.

54 Official Gazette of the Republic of Kosovo. No. 37. Law no. 04/L-123. Criminal Procedure Code. Article 23. p. 13

55 Constitution of the Republic of Kosovo. Article 108, p. 39.

56 Official Gazette of the Republic of Kosovo. No. 84. Law no. 03/L-223. Law on the Kosovo Judicial Council. Article 14. p. 6.

judges, and proprietary information.<sup>57</sup>

Judges are required to disclose their assets and make them available every year to the Kosovo Anti-Corruption Agency (KACA), since they are considered senior public officials. The Law on Declaration, Origin and Control of Property of Senior Public Officials sets up legal requirements and procedures for judges to report their property, revenue and gifts to KACA.<sup>58</sup> This may include real estate, property in value of more than 5,000 euro, shares in commercial enterprises, valuable letters, and savings in banks and other financial institutions, financial obligations, and annual revenue.<sup>59</sup>

Public officials, including judges, are restricted from soliciting or accepting gifts or other favours that may have an influence on the exercise of their duties.<sup>60</sup> There are exceptions for only protocol or casual gifts brought by foreign representatives and organisations for a visit or an event. These protocol gifts once registered automatically become institutional property. Failure to disclose assets or making false declarations to the KACA is classified as a criminal offense according to the new Criminal Code, which entered into force in January 2013. Additionally, the Code of Professional Ethics for Judges, which entered into force in September 2016, prohibits gifts and favours that aim to ensure an act or omission during the exercise of judicial function.

## Factual situation

The judicial system is relatively transparent. To date, it has a working website offering information on general case statistics, decisions, activities, and overall spending. The website does not meet the needs of the public since it does not provide detailed reports on court decisions. Hence, court judgments are not made public, and statistical reports are difficult to understand. Currently, a small number of final judgments are published. The KJC justifies this with the technical problems and the lack of human resources.<sup>61</sup> Although each court has a public information officer, they are not competent to publish court decisions on the website, as this activity requires a legal professional capable of redacting decisions, in accordance with the Administrative Instruction on anonymization and publication of final court judgments.<sup>62</sup>

According to the Director of the Court Performance Review, the statistical reports provide only numbers without any narrative behind them.<sup>63</sup> There is no reliable access to information on judicial statistics, court procedures and judgments. The main reason for this according to a civil society activist from Çohu is that courts do not have a reliable tracking mechanism.<sup>64</sup> He explains that there is a statistical gap between what is registered in the field, in courts, and passed on to the KJC.<sup>65</sup> The Kosovo Law Institute (KLI) indicates that there is a statistical mismatch owing to the lack of resources and cooperation between judicial institutions in the harmonisation of all data.<sup>66</sup> There are also a number of corruption cases that are either unregistered or registered late in the tracking mechanism.<sup>67</sup> The judiciary does not have a reliable tracking mechanism of cases being investigated and closed.<sup>68</sup>

In the meantime, the KJC has taken many initiatives to improve relations with the public. For instance, KJC has signed several Memorandums of Understanding with civil society and media entities.<sup>69</sup> It has also established information offices and appointed press officers in almost all courts across the coun-

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<sup>57</sup> Idem

<sup>58</sup> Official Gazette of the Republic of Kosovo. No. 16. Law no. 04/L-050. Law on Declaration, Origin, and Control of Property of Senior Public Officials and on Declaration, Origin, and Control of Gifts of all Public Officials. Article 1. p. 1.

<sup>59</sup> Idem, Article 5. p. 3.

<sup>60</sup> Idem, Article 11.

<sup>61</sup> Kosovo Judicial Council. Annual Report 2016. p.25.

<sup>62</sup> Corruption Risk Assessment in Judiciary system of Kosovo 2017. PECK II. p. 68.

<sup>63</sup> Interview with Hydajet Hyseni, Court Performance Review Unit, Feb 23, 2015.

<sup>64</sup> Interview with Lorik Bajrami, Çohu, Feb 24, 2015.

<sup>65</sup> Interview with Lorik Bajrami, Çohu, Feb 24, 2015.

<sup>66</sup> Gashi, Adem & Betim Musliu. Accountability of the Judicial System. KJI. p. 60.

<sup>67</sup> Idem, p. 63.

<sup>68</sup> Interview with Kreshnik Gashi, Justice in Kosovo, Mar 26 2015.

<sup>69</sup> Kosovo Judicial Council. Annual Report 2016. p.28.

try. Today there is the video recording of court sessions according to a reporter from “Justice in Kosovo”.<sup>70</sup> Many civil society activists are satisfied with how progressively the KJC has managed to create an open-door policy in the last four years. However, much is to be desired, considering that courts continue to not have websites and do not respond to media requests in due time.<sup>71</sup>

When it comes to asset and income declaration, judges overall disclose their assets to the Anti-Corruption Agency (ACA), as required by law, considering that they may be charged with a criminal offense if they fail to do so. The Agency updates information on wealth and income of all senior public officials on an annual basis and this is available to the public.<sup>72</sup> So far, the ACA has not reported any issues regarding judges disclosing their assets. During 2016, 356 or 100 percent of judges reported their assets to the Agency.<sup>73</sup>

## 1.5 Accountability

### Legal framework

The laws that govern judicial accountability are comprehensive. The current judicial system consists of three court layers including Basic Courts, Court of Appeals, and Supreme Court. In the new court levels, all parties have the right to appeal decisions to higher court instances. They can also address their concerns in the Constitutional Court. The Constitution guarantees the right to file a complaint against the decision issued by any court.

The Constitution gives full authority to the KJC to conduct judicial inspections and administer the courts of law.<sup>74</sup> The KJC has a critical role in holding judges accountable for any misbehaviour or misconduct in their decision-making, following which they initiate disciplinary proceedings. Misconduct is defined as a conviction of criminal offense, failure to perform or abuse of functions, and violation of the Code of Ethics. There are two important institutions that facilitate this process, the Office of the Disciplinary Counsel (ODC) and the Disciplinary Committee.

The ODC is a separate and independent institution elected by KJC and the Kosovo Prosecutorial Council (KPC), responsible for investigating judges when there is a reasonable complaint or doubt of misconduct.<sup>75</sup> The ODC has the right to investigate all matters and from evidence obtained decide whether to present disciplinary action to the Disciplinary Committee of the KJC.<sup>76</sup> The ODC consists of a director, counsels, inspectors and management staff who report to the KJC and KPC on an annual basis on its activities and expenses.<sup>77</sup>

The Disciplinary Committee of the KJC consists of three (3) members, which are appointed by the KJC.<sup>78</sup> The Disciplinary Committee makes its final decision on whether or not to impose sanctions in accordance with the rules and procedures set on disciplinary proceedings.<sup>79</sup> The disciplinary measures that may be imposed include a reprimand, temporary salary reduction, and propose the removal of a judge.<sup>80</sup> Appeals against the Disciplinary Committee may be submitted to the KJC within 15 days from the receipt of the final decision.<sup>81</sup> Legal discretions that justify an appeal include a violation of law or any disciplinary procedure and mistaken or incomplete evidence.<sup>82</sup>

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70 Interview with Kreshnik Gashi, Justice in Kosovo, 26 Mar 2015.

71 UNDOC & UNDF. Judicial Integrity in Kosovo. Sep 2014, p. 33.

72 Gashi, Adem & Betim Musliu. Accountability of the Judicial System. KJI. f. 17.

73 Annual Report of the Anti-Corruption Agency 2016.

74 Constitution of the Republic of Kosovo. Article 108, p. 38.

75 Official Gazette of the Republic of Kosovo. No. 84. Law no. 03/L-223. Law on the Kosovo Judicial Council. Article 45. p. 17.

76 Idem

77 Official Gazette of the Republic of Kosovo. No. 84. Law no. 03/L-223. Law on the Kosovo Judicial Council. Article 49. p. 19.

78 Idem, Article 33. p. 14.

79 Idem, Article 37. p. 15.

80 Idem, Article 37. p. 15.

81 Idem, Article 40. p. 16.

82 Idem, Article 40. p. 16.

Immunity does not apply to corruption and other criminal offences. Judges are immune only from prosecution, civil lawsuits and dismissals for actions and decisions taken within their scope of responsibility.<sup>83</sup> However, there are no legal provisions either in the Constitution or respective laws that protect judges from criminal offences. Judges are not immune to even a small violation of an international law according to Article 107 of the Constitution.<sup>84</sup>

## Factual situation

The judicial system has not grown more accountable in practice since 2011. The KJC is not entirely effective and independent in investigating complaints and imposing sanctions. The ODC lacks human resources and the financial capacity to conduct investigations for any breach of conduct by a judge according to the Kosovo Judicial Council (KJC).<sup>85</sup> In addition, part of the problem is that the ODC is dependent on both judicial and prosecutorial councils. These councils make the final decision on what and to whom disciplinary measures should be applied. In practice, there is the risk that decision-making is not objective, given that this includes the punishment of their friends and colleagues.

KJC's Disciplinary Commission in 2016 has received a total of thirteen (13) final reports and two (2) recommendations for suspension from the Office of the Disciplinary Counsel (ODC).<sup>86</sup> The Commission, upon reviewing these reports, has rendered a total of 14 decisions, whereby in two cases imposed the measure of motion for dismissal of the judge, 5 cases released from responsibility, 1 reprimand, 1 temporary suspension and in 4 cases the disciplinary procedure was ceased.<sup>87</sup>

A new provision has been added to the new law, which stipulates that the disciplinary procedure shall not be initiated and applied in the Commission after the one year deadline has expired from the notification received at the Office of the Disciplinary Counsel for the alleged violation and five years from the day of the alleged violation.<sup>88</sup> Taking into account its capacities, the one-year deadline is short, and this will cause the investigation of many violations not to go through.

The ODC, in particular, is slow<sup>89</sup> and closed<sup>90</sup> in investigating and sharing its final decisions with the public or even with the parties involved over whether a judge should be punished or not. This hinders the accountability of the judiciary, as judges are known for making complex decisions or in contradiction to the law.<sup>91</sup>

In many cases, it takes up to nine months for the ODC to investigate and make a final decision.<sup>92</sup> Once the decisions are made and sanctions imposed, the KJC fails to record and monitor whether they are being implemented (e.g. nominating a member who is already under disciplinary measures).<sup>93</sup> In theory, disciplinary measures are meant to hold judges accountable in delivering justice in a timely manner. However, in practice they were not effective, according to a civil society activist from Çohu, especially in reducing the number of cases (11,000) of statutory limitations.<sup>94</sup>

According to the 2016 Kosovo Progress Report, the implementation of the Code of Ethics of the KPC and KJC remains weak.<sup>95</sup> The database for registering all information submitted to the Disciplinary Commission by the ODC is still not developed as it is in the Kosovo Police Inspectorate.<sup>96</sup> The police

83 Constitution of the Republic of Kosovo. Article 107, p. 37.

84 Idem

85 Peci, Enver, Kosovo Judicial Council (KJC). NIS Advisory Group.

86 Kosovo Judicial Council. Annual report 2016. p. 16-17.

87 Idem

88 Law no. 05 / L-033 for amending and supplementing the Law on the KJC. Article 15.

89 Interview with Kreshnik Gashi, Justice in Kosovo, 26 Mar 2015.

90 Interview with Kushtrim Kaloshi, Advocacy Training and Resource Center (ATRC), 25 Feb 2015.

91 Nimoni, Genc. Annual Monitoring Report of Courts. BIRN. f. 9.

92 Interview with Kreshnik Gashi, Justice in Kosovo, 26 Mar 2015.

93 Idem

94 Interview with Arton Demhasaj, Çohu, 27Feb 2015.

95 Council of Europe. Progress Report on Kosovo 2016. p.15.

96 Council of Europe. Assessment Report on compliance with international standards in the anti-corruption area. Project PECK. p. 13.

has a database that is periodically updated with statistics on disciplinary measures. Moreover, disciplinary measures are not applied enough and there is not a strict mechanism for monitoring the implementation of the ethical rules and disciplinary proceedings.<sup>97</sup>

Nevertheless, initiatives to strengthen disciplinary measures are underway. Recently, there has been some progress in protecting complainants and offering acceptable legal remedies. For instance, the ODC has created a functional complaints mechanism with the support of the Advocacy Training and Resource Centre (ATRC) for citizens to upload the form online and fill in with relevant information.<sup>98</sup> Meanwhile, the Ministry of Justice has already started to amend the laws with regard to a new functioning of the ODC completely independent from both the KJC and the KPC. The necessity of drafting such a law is also foreseen in the 2016 Kosovo Progress Report.

## 1.6 Integrity mechanisms

### Legal framework

Judicial integrity is fairly regulated and there are a number of laws and codes of ethics requiring judges to be professional. In August 2016, the KJC adopted the Code of Professional Ethics for judges. Code of Ethics and Professional Conduct for judges of 2006 was the one applicable before the adoption of the new Code. KJC has also adopted a Code in 2012 that applies only to Council members.<sup>99</sup> According to the 2016 Progress Reports, application of these codes is low.

The Code of Professional Ethics for Judges<sup>100</sup> is a universal document that applies to *all judges with the aim of strengthening the superiority of the rule of law and the protection of individual freedoms*. It demands that judges maintain high professional standards, perform their duties impartially and with due-diligence, avoid potential conflicts of interest, and respect the law. The KJC's Code applies only to its members, but it has the same tenor. The Council members, in addition, are asked to respect the principle of collective decision-making and joint responsibilities on behalf of the KJC.<sup>101</sup>

Two additional mechanisms that ensure judicial integrity are the (1) citizens' right to appeal a court decision, and (2) prevention of conflict of interest of judge performing his or her duty. The right to appeal a court decision is protected by the Constitution<sup>102</sup> and the Law on Courts.<sup>103</sup> It is the Court of Appeals that is competent to reveal all appeals from the decisions issued by the Basic Courts.<sup>104</sup> On contested issues, however, the Supreme Court is competent to revise and adjudicate a case.<sup>105</sup>

Judicial integrity is further protected due to the existence of many laws that govern conflicts of interest, exchange of gifts and hospitality for judges. The Law on Prevention of Conflict of Interest defines the rules and responsibilities on how to identify, treat and solve cases of conflicts of interest.<sup>106</sup> Conflicts of interest refer to the private interests of a judge that "*may influence*" the objectivity, legitimacy, and transparency of the judge's official duty/function. Important activities that are restricted by this law are the exchange of gifts and rewards.

The principle of the conflict of interest is a problem because it has not been harmonized with the Criminal Code, similar to the gifts and rewards which were criminalized under the Law on Declaration, Origin, and Control of Property of Senior Public Officials. The EC Progress Report mentions that there

97 Idem, p. 14.

98 Interview with Kushtrim Kaloshi, Advocacy Training and Resource Center (ATRC), 25 Feb 2015.

99 Kosovo Judicial Council. Decision on adoption of the Code of Ethics and Professional Conduct for Kosovo Judicial Council members. p. 2.

100 Kosovo Judicial Council (KJC). Code of Professional Ethics for Judges.

101 Kosovo Judicial Council. Decision on adoption of the Code of Ethics and Professional Conduct for Kosovo Judicial Council members. p. 4.

102 Constitution of the Republic of Kosovo. Article 102, p. 36.

103 Official Gazette of the Republic of Kosovo. No. 79. Law no. 03/L-199. Law on Courts, Article 18.p. 7.

104 Idem, Article 18.p. 7.

105 Idem, Article 22.p. 9.

106 Official Gazette of the Republic of Kosovo. No. 16. Law no. 04/L-051. Law on Prevention of Conflict of Interest in Discharge of Public Functions. Article 2. p. 1.

are no clear measures and means to prevent or penalize conflicts of interest.<sup>107</sup> Also, it is not regulated what is acceptable and what is not acceptable during the exercise of function and after, nor is the dismissal or suspension of officials after being indicted or punished for corruption.<sup>108</sup> Further, as reported in this report, ACA has found 1552 senior officials holding two or more functions funded by the state budget, which creates the possibility of conflict of interest.<sup>109</sup>

Judges, in the capacity of the Senior Public Officer with the Law on Declaration, Origin, and Control of Property of Senior Public Officials, are obliged to report their assets to the Kosovo Anti-Corruption Agency. The Law on Courts allows judges to engage in activities permitted by the Code of Ethics, but judges who receive remuneration for these activities cannot exceed twenty-five percent (25%) of the basic salary and for this reward and are obliged to inform the Council.<sup>110</sup>

## Factual situation

The integrity of the judiciary has deteriorated in recent years. The Public Pulse organised by the UNDP shows that the satisfaction of the public with the judicial system has increased slightly compared to the previous year. In 2016 satisfaction with the judicial system increased to 18 percent from 13, 17 percent respectively in 2015.<sup>111</sup> However, these numbers are lower when compared to 2014, where satisfaction was 38 to 23 percent respectively. The civil society activist and director of ATRC refers to a selective justice system to explain why there is so much public distrust in the judiciary.<sup>112</sup> In his view, justice is not equally and fairly served to all citizens, which indicates that judges and politicians get to make their own rules and violate them when and if necessary.<sup>113</sup>

The judiciary reports to the Anti-Corruption Agency (ACA) on a regular basis. In 2016, all 356 judges (100%) have reported their assets to the agency<sup>114</sup>. In its annual report, ACA reports that there was no case of corruption involving a judge. With regards to conflicts of interest, out of 210 cases reported by the Agency, only 36 involved judges and prosecutors (or 1 percent).<sup>115</sup> The public officials that were more exposed to conflicts of interest include central government officials (91 cases or 41 percent) and municipal authorities (71 cases or 33 percent).<sup>116</sup>

The judiciary's integrity in relation to the agency has been criticized by many in civil society. The main problem according to the civil society activist and director of Çohu is that assets declared by judges are not verified and thus there are almost no violations identified.<sup>117</sup> It is certain that the agency has the capacity to verify the origin and authenticity of their assets, but there are, however, two important limitations. The agency has no legal access to the (1) bank accounts of the public officials and (2) assets abroad.<sup>118</sup> This makes it impossible to investigate and sanction. Thus, for all the charges the agency has made, no legal actions are taken.

In the anti-corruption assessment report of the Council of Europe, the issue of conflicts of interest has come up in reference to statistics shared by the agency, indicating that judges, in particular, exercise "simultaneously several remunerated functions outside working hours".<sup>119</sup> The issue of the judge taking publicly and privately funded work was discussed at the meeting of the 2015 National Integrity System Advisory Group held in November 2014. Laura Pula from the KPC expressed her concerns re-

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107 The European Commission (EC). Progress Report on Kosovo, 2016. p. 19

108 Idem

109 Idem, p. 18.

110 Law on Courts. Article 32

111 UNDP Kosovo. Public Pulse Report XI. May, 2016. p.4.

112 Interview with Kushtrim Kaloshi, Advocacy Training and Resource Center (ATRC).

113 Interview with Kushtrim Kaloshi, Advocacy Training and Resource Center (ATRC).

114 Annual Report of the Anti-Corruption Agency 2016

115 Idem

116 Idem

117 Interview with Lorik Bajrami, Çohu, Feb 24, 2015.

118 Idem

119 Council of Europe. Assessment Report on compliance with international standards in the anti-corruption (AC) area. Cycle II Report. PECK. p. 14.



garding the engagement of judges and prosecutors in lecturing in private and public universities during their regular work hours.<sup>120</sup>

The KJI explains that judges are too comfortable being engaged in non-judicial activities, which are continuously under public scrutiny, and deserve further discussion and analysis of whether they are legitimate or not.<sup>121</sup> A reporter from “Justice in Kosovo” says that there is no conflict of interest mechanism ensured in practice since the Code is not specific on certain matters (e.g. working hours for a judge).<sup>122</sup> That is why there are many cases of conflicts of interest that are not monitored and reported even by the Office of the Disciplinary Counsel.

## 1.7 Prosecution of corruption

The judiciary continues to be ineffective in its fight against corruption, according to assessments by international and local organisations including the European Commission, United Nations, and civil society. In the 2016 Progress Report, it is stated that Kosovo's fight against corruption is at an early stage but there is progress when compared to previous years. In the 2016 Corruption Perception Index published by Transparency International, Kosovo ranks last among the countries in the region.<sup>123</sup> Kosovo has received a scoring of 36 points and is now ranked 95<sup>th</sup> out of 176 countries around the world.<sup>124</sup> Evaluation is done according to the Transparency International methodology, which is done on a scale where 100 points implies that a country is 'perceived as very clean' and zero point means 'perceived as very corrupted'.<sup>125</sup> In the 2016 Kosovo Report, it is stated that Kosovo is at an early stage in the fight against corruption but there is progress in this direction when compared to previous years.<sup>126</sup> The low sentences, dismissals of indictments and release of senior officials prove the low rate of corruption fighting in the country.<sup>127</sup> The lack of political will to build an independent judiciary with sufficient capacities is the reason for the ineffective fight against corruption.<sup>128</sup>

In December 2015, an advanced digital platform was created to track all stages of criminal proceedings for high-level corruption cases and organized high-profile crime, including confiscation of property and confiscation cases. In order to coordinate the handling of these cases, a multi-disciplinary team was established. Out of 33 high-level cases currently in the system, 21 indictments (17 for corruption and 4 for organized crime) have been filed involving 150 defendants (including a number of political and senior public officials). There were convictions in three cases for corruption offenses, including a case against a prosecutor.

Fundamental reasons why judges are so ineffective are well argued by the Kosovo Institute for Policy Research and Development (KIPRED). They (1) lack capacity and (2) hesitate to deal with corruption cases that are either sophisticated or involve high-profile political leaders who are accused for corruption.<sup>129</sup> Thus far, the most serious verdict issued by the Basic Court was in May 2013 in sentencing the former head of the Anti-Corruption Task Force, Nazmi Mustafa, to five years in prison. He was found guilty of accepting a bribe to drop charges in an on-going investigation in 2012.<sup>130</sup>

It is the role of prosecutorial institutions to initiate corruption charges based on credible evidence for courts to do their job. However, courts are inefficient in their performance. The KJI has reported that from January to September 2014, only 152 of corruption cases out of 599 were closed.<sup>131</sup>

120 Transparency International-Kosovo (TIK). Meeting of the National Integrity System. 19 Nov 2014.

121 Gashi, Adem & Betim Musliu. Accountability of the Judicial System. KJI. p. 15.

122 Interview with Kreshnik Gashi, Justice in Kosovo, 26 Mar 2015.

123 <http://www.kdi-kosova.org/index.php?id=229&fq=2>

124 [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/news/feature/corruption_perceptions_index_2016)

125 <http://www.kdi-kosova.org/index.php?id=229&fq=2>

126 European Commission. Progress Report on Kosovo 2016. p. 17.

127 Çohu! Access to justice and human rights. May 2016-May 2017. p. 39.

128 KIPRED. Analysis of anti-corruption high-profile policies. 2016. p. 9.

129 Kursani, Shpend. A comprehensive EULEX analysis: What's next? Jan 2013, p. 16.

130 Gashi, Krenar. Kosovo: Ranking and average results of States in Transition. 2014, p. 331

131 Gashi, Adem & Betim Musliu. Corruption in Kosovo. Dec 2014, p 60.



The reports of the KJC are too broad and do not provide separate data on corruption-related cases. Ultimately, it is up to civil society to request detailed information in person since they are not made public on the website. Those more active in observing the performance of the judiciary in fighting corruption besides civil society are organizations such as KLI, Fol and Çohu.

The judiciary has the expertise and experience to initiate reform for improving the situation. However, for now, there is no political will to make that possible. The Anti-Corruption Council formed in 2012 by the president has been endorsed, however the follow-up work in implementing its recommendations leaves a lot to be desired. Thus far, there are no concrete results and public perception remains sceptical of the role of the judiciary in fighting corruption.

## 2. State of affairs in the prosecution system

### 2.1 Basic information

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.<sup>132</sup> The state prosecutor consists of the Basic Prosecution Office, Special Prosecution Office, Appellate Prosecution Office and Chief State Prosecution Office.<sup>133</sup>

The Basic Prosecution Office consists of the general department and department for minor and serious crime.<sup>134</sup> Any case involving commercial and administrative matters must be assigned within the general department of the Basic Prosecution Office.<sup>135</sup> This office is established in the seven largest municipalities: Pristina, Ferizaj, Gjakova, Gjilan, Mitrovica, Peja, and Prizren.<sup>136</sup>

The Appellate Prosecution Office consists of the general department and department for serious crimes.<sup>137</sup> It was established to operate for the Court of Appeals, headquartered in Prishtina.<sup>138</sup> The Office of the Chief State Prosecutor has exclusive jurisdiction over third instance cases before the Supreme Court, cases involving extraordinary legal remedies or any other case in the prosecution office.<sup>139</sup> It is also responsible for the management of the state prosecutor and the adoption of rules and decisions for the internal regulation of the prosecutorial system.<sup>140</sup> In addition, there is a Special Prosecution, consisting of ten prosecutors who have exclusive competence over the most complicated and most risky cases involving terrorism, genocide, war crimes, armed conflicts, organized crime and money laundering.<sup>141</sup>

### 2.2 Resources

#### Legal framework

The legislation, in general, is comprehensive in ensuring appropriate salaries, working conditions and tenure policies for prosecutors. It defines a hierarchy of the prosecutorial institutions and salaries.<sup>142</sup> In June 2015, the Law on the State Prosecutor and Law on Kosovo Prosecutorial Council (KPC) were slightly amended and supplemented. Accordingly, the government is required to provide suitable funds for the state prosecutor to perform its role.<sup>143</sup> However, the law does not require a fixed share of the public budget apportioned for the state prosecutor.

The budget is drafted and proposed by the Kosovo Prosecutorial Council (KPC) and sent to the Assembly of the Republic of Kosovo.<sup>144</sup> Once it is discussed and approved, the KJC is responsible for manag-

132 Official Gazette of the Republic of Kosovo. Nr. 83. Law no. 03/L-224. Law on State Prosecutor. Article 4. 29 Oct 2010, p. 2.

133 Official Gazette of the Republic of Kosovo. No. 17. Law no. 05/L-034. Law on Amending and Supplementing the Law on State Prosecutor. Article 14. 30 Jun 2015, p. 4.

134 Official Gazette of the Republic of Kosovo. Nr. 83. Law no. 03/L-224. Law on State Prosecutor. Article 14. 29 Oct 2010, p. 4.

135 Idem, p. 5.

136 Idem, Article 15, p. 5.

137 Idem, Article 14, p. 5.

138 Idem, Article 17, p. 6.

139 Idem, Article 11, p. 3.

140 Idem

141 Official Gazette of the Republic of Kosovo. Nr. 27. Law no. 03/L-052. Law on Special Prosecution Office. Article 3. 03 Jun 2008, p. 2.

142 Official Gazette of the Republic of Kosovo. Nr. 83. Law no. 03/L-224. Law on Kosovo Prosecutorial Council. Article 1. 29 Oct 2010, p. 2.

143 Idem, Article 31, p. 10.

144 Official Gazette of the Republic of Kosovo. Nr. 17. Law no. 05/L-035. Law on Amending and Supplementing the Law on Kosovo Prosecutorial Council. Article 13. 30 Jun 2015, p. 6.

ing the budget, overseeing expenditure, allocating funds and maintaining accurate financial accounts.<sup>145</sup> According to changes made to the law, the KPC is much more independent. It is no longer required to get the government to approve the budget prior to sending it to the Assembly. The Office of the Chief State Prosecutor is no longer required to prove administrative support to the Council as was previously regulated.

Prosecutors are appointed for life unless they are removed upon conviction of a serious crime.<sup>146</sup> Their salaries are similar to the salaries of judges. The chief state prosecutor is paid the same salary as the president of the Supreme Court.<sup>147</sup> The chief prosecutor of the Special Prosecution Office receives the salary equivalent to 95 per cent of the salary of the chief state prosecutor. Prosecutors receive the salary equivalent to 90 per cent of the salary of the chief state prosecutor. The chief prosecutor of the Appellate Prosecution Office is paid the salary equivalent to that of the president of the Court of Appeal.<sup>148</sup> For any extracurricular activity (e.g. lecturing and training), a prosecutor will be paid only 25 per cent of their basic salary.<sup>149</sup>

The law also sets an important legal provision against income reduction of prosecutors. In Article 21 of the Law of State Prosecutor, it states that a salary of a prosecutor shall not be reduced during his/her term unless there are disciplinary sanctions imposed by the Kosovo Prosecutorial Council (KPC).<sup>150</sup> Such consequences could occur if there is a case of misconduct for which KPC initiates a disciplinary measure of temporary reduction of a salary by up to 50 per cent.<sup>151</sup>

## Factual situation

Despite the legal framework, the existing financial, human and infrastructural resources of the state prosecutor are minimal to effectively carry out its duties. The KPC's budget for 2017 is 9,483,682.<sup>152</sup> Compared to last year, where the amount allocated to KPC after the budget review was 8,327,478,<sup>153</sup> in 2017 the budget for KPC has increased by 1,156,202 euros. The budget amount allocated to KPC in 2017 represents 0.47% of the state budget.

Given a small budget, prosecutors continue to work in old buildings without enough office space or adequate equipment.<sup>154</sup> As an extreme example, the Basic Prosecution Office in Mitrovica operates in less than 40 meters square office space.<sup>155</sup>

To improve the conditions, the EU and the government have co-financed a 30 million euro project to build the Justice Palace.<sup>156</sup> The palace is built to accommodate more than 1,000 staff members from 12 different judicial institutions.<sup>157</sup> However, this project did not go as planned and certainly does not affect the work of a prosecutor working at the regional/local level. This project took almost four years to complete and since its inauguration numerous problems have come up: as mentioned, toilets are not functional, lack of heating and air-conditioning, and technical problems with elevators.<sup>158</sup> Since costs are higher to travel the 4 kilometre distance to the new building, which is located in the outskirts of Pristina, employees also experience financial issues.

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<sup>145</sup> Idem

<sup>146</sup> Constitution of the Republic of Kosovo. Article 109, p. 39.

<sup>147</sup> Official Gazette of the Republic of Kosovo. Nr. 83. Law no. 03/L-225. Law on State Prosecutor. Article 21. 29 Oct 2010, p. 7.

<sup>148</sup> Idem

<sup>149</sup> Official Gazette of the Republic of Kosovo. Nr. 17. Law no. 05/L-034. Law on Amending and Supplementing the Law on State Prosecutor. Article 25. 30 Jun 2015, p. 7.

<sup>150</sup> Official Gazette of the Republic of Kosovo. Nr. 83. Law no. 03/L-225. Law on State Prosecutor. Article 21. 29 Oct 2010, p. 7.

<sup>151</sup> Idem, Article 27, p. 12.

<sup>152</sup> Law on the Budget of the Republic of Kosovo for 2017. Table 3.1. p.48

<sup>153</sup> Law on Amending and Supplementing the Law no. 05/L-071 on the Budget of the Republic of Kosovo for 2016. Table 3.1. p.36

<sup>154</sup> Mustafa, Ariana Q. Compliance with EU requirements in the field of Anti-Corruption and Organized Crime. KIPRED. Nov 2014, p. 13.

<sup>155</sup> Sylja, Shyqri. Prosecutor. Basic Prosecution Office in Mitrovica. Kosovo Justice Institute. Conference: Publication of the Report on Corruption in Kosovo. 8 Apr 2015.

<sup>156</sup> EULEX. <http://www.eulex-kosovo.eu/en/news/000302.php> [seen on 17 Mar 2015].

<sup>157</sup> Idem

<sup>158</sup> Koha Ditore. <http://koha.net/?id=27&l=44939> [accessed on 17 Mar 2015].

A relatively small budget makes it difficult for the KPC to make up for travel costs, and more importantly, recruit additional prosecutors and staff. By the end of 2016, the number of prosecutors in the State Prosecutor was 171.<sup>159</sup> The number of prosecutors in 2017 is 201<sup>160</sup>, including 14 Serbian prosecutors foreseen in the Justice Agreement, reached in Brussels in 10<sup>th</sup> of February 2015. Meanwhile in the process of recruitment are 18 prosecutors.<sup>161</sup> According to KPC, with the recruitment of these 18 new prosecutors, the prosecutorial system will reach the optimal number of prosecutors. On the other hand, the number of professional associate is too low. There are only 10 professional associates in the whole prosecutorial system.<sup>162</sup>

As a result, often prosecutors are occupied dealing with technical tasks rather than the content of a case. Far worse, prosecutors lack skills and experience. Their indictments are overall poorly written and do not last more than a page.<sup>163</sup> According to the GLPS, when it comes to more complex issues involving international trade or corruption, they are not experienced to put together an effective case.<sup>164</sup>

Basic financial constraints whether they are the additional travel costs or salaries of prosecutors indicate that the Council lacks authority in decision-making. Each year the Government takes a decision to allocate a budget to compensate the additions of chief prosecutors and prosecutors for serious crimes and for the minor at the request of the Special Prosecution through the Prosecutorial Council.<sup>165</sup>

On the other hand, in recent years there have been many training opportunities offered by local and international organisations, in many instances involving more specialised crime. The Academy of Justice (former Kosovo Judicial Institute) has been active in developing training programmes and activities for both judges and prosecutors. The training program covers many topics from case management and planning to more specialized case studies, such as domestic violence or juvenile delinquency. KJI reported that training activities increased from 70 in 2011 and 110 in 2014 to 115 in 2015.<sup>166</sup>

## 2.3 Independence

### Legal framework

The Constitution requires that prosecutors<sup>167</sup> are independent and impartial in exercising their functions.<sup>168</sup> Prosecutors are appointed for life and are restricted from joining any political activity or party.<sup>169</sup> It is the role of the KPC to preserve such independence.<sup>170</sup> In any case of performing other duties or services that may interfere with their independence, prosecutors may be deemed incompatible.<sup>171</sup> The Criminal Code also puts emphasis on avoiding undue influence in case assignments.<sup>172</sup> For any personal safety issue, such as intimidation during criminal proceedings<sup>173</sup> or attacking a prosecutor while performing official duties<sup>174</sup> the perpetrator shall be punished by imprisonment of up to

159 Performance Report 2016, State Prosecutor. p.7.

160 Intervistë me Lavdim Krasniqin, Drejtor i Sekretariatit KPK. 2017

161 Idem

162 Idem

163 Interview with Kreshnik Gashi, Justice in Kosovo Mar 26, 2015.

164 Interview with Fisnik Korenica, Group for Legal and Political Studies, 30 Mar 2015.

165 [http://www.kryeministri-ks.net/repository/docs/Vendimet\\_e\\_Mbledhjes\\_s%C3%AB\\_147-t%C3%AB\\_t%C3%AB\\_Qeveris%C3%AB\\_s%C3%AB\\_Republik%C3%ABs\\_s%C3%AB\\_Kosov%C3%ABs\\_2017.pdf](http://www.kryeministri-ks.net/repository/docs/Vendimet_e_Mbledhjes_s%C3%AB_147-t%C3%AB_t%C3%AB_Qeveris%C3%AB_s%C3%AB_Republik%C3%ABs_s%C3%AB_Kosov%C3%ABs_2017.pdf)

166 Kosovo Judicial Institute. Annual Working Report. 2015, p.21

167 Constitution of the Republic of Kosovo. Article 109, p. 39.

168 Constitution of the Republic of Kosovo. Article 106, p. 37.

169 Official Gazette of the Republic of Kosovo. Nr. 83. Law no. 03/L-225. Law on State Prosecutor. Article 26. 29 Oct 2010, p. 9.

170 Constitution of the Republic of Kosovo. Article 110, p. 40.121

171 Official Gazette of the Republic of Kosovo. No. 83. Law no. 03/L-225. Law on State Prosecutor. Article 26. 29 Oct 2010, p. 8.

172 Kosovo Prosecutorial Council (KPC). Code of Ethics and Professional Conduct for Prosecutors. 31 Jul 2012, p. 7.

<http://www.kgjk-ks.org/repository/docs/Gjyqtar%20anglisht.pdf> [Accessed on 20 Mar 2015].

173 Official Gazette of the Republic of Kosovo. Nr. 19. Code no. 04/L-082. Criminal Code of the Republic of Kosovo. Article 395. 13 Jul 2012, p. 126.

174 Idem, Article 410. 13 Jul 2012, p. 130.

three years.

The KPC is an independent institution<sup>175</sup> responsible to “recruit, propose, promote, train, transfer, re-appoint and discipline prosecutors.”<sup>176</sup> 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.<sup>177</sup>

The remaining three members come from other sectors. They include a lawyer appointed by the Chamber of Advocates, a professor from a law faculty, and a civil society representative.<sup>178</sup> 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 of votes 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.<sup>179</sup>

Prosecutors are appointed, reappointed and dismissed by the president of Kosovo upon the proposal of the Kosovo Prosecutorial Council (KPC).<sup>180</sup> The KPC must propose candidates based on merit and in a transparent manner, taking into account the gender equality and ethnic composition.<sup>181</sup> In April 2015, however, the president was heavily criticised for taking almost two months to approve the new chief state prosecutor. Furthermore, the KPC in cooperation with the Academy of Justice<sup>182</sup> must set the standards for recruiting, organising and advertising the preparatory exams for interested and qualified applicants.<sup>183</sup> The Council, at first makes the advertisement public and then develops and implements procedures for recruiting and nominating candidates.<sup>184</sup>

The law requires that candidates meet the following criteria for eligibility: be a citizen and resident of Kosovo, have valid law degree, pass the bar and preparatory exam, be of high professional reputation and integrity, have a clean criminal record and at least three years of experience working in the field of law, and pass the evaluation process.<sup>185</sup> In addition to the minimum qualification, there are special requirements for certain state prosecutors regarding years of legal experience. For instance, three years of legal experience are required for the Basic Prosecution Office, four years for the Appellate Prosecution Office, and five years for the Special Prosecution Office, and six years for the Office of Chief State Prosecutor.<sup>186</sup>

The state prosecutor is appointed for three years and reappointed until retirement, unless he/she is dismissed upon conviction for a serious crime or neglect of duty.<sup>187</sup> Hence, job security is not an issue if the reappointment process is successfully completed. As far as career-making, there are no mechanisms that regulate promotion based on merits and good performance. In addition, the chief state prosecutor is appointed by the Council for seven years without the possibility of reappointment. The chief prosecutor is appointed for four years with the possibility of being appointed for one additional

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175 Constitution of the Republic of Kosovo. Article 110, p. 40.

176 Official Gazette of the Republic of Kosovo. Nr. 83. Law no. 03/L-224. Law on Kosovo Prosecutorial Council. Article 1. 29 Oct 2010, p. 1.

177 Official Gazette of the Republic of Kosovo. Nr. 17. Law no. 05/L-035. Law on Amending and Supplementing the Law on Kosovo Prosecutorial Council. Article 3. 30 Jun 2015, p. 2.

178 Idem

179 Idem

180 Official Gazette of the Republic of Kosovo. No. 83. Law No. 03/L-224. The Law on Kosovo Prosecutorial Council. Article 19. 29 Oct 2010, p. 9.

181 Constitution of the Republic of Kosovo. Article 110, p. 40.

182 Law on Academy of Justice Article 29.7

183 Official Gazette of the Republic of Kosovo. No. 83. Law No. 03/L-224. The Law on Kosovo Prosecutorial Council. Article 4. 29 Oct 2010, p. 2.

184 Idem, Article 17, p. 8.

185 Official Gazette of the Republic of Kosovo. Nr. 17. Law No. 05/L-034. The Law on Amending and Supplementing the Law on State Prosecutor. Article 19. 30 Jun 2015, p. 5.

186 Idem, Article 20, p. 6.

187 Constitution of the Republic of Kosovo. Article 109, p. 39.

term.<sup>188</sup>

## Factual situation

In practice, the government and political leaders constantly exert influence over activities and decisions of the state prosecutor. Over the last years, the budget of the Kosovo Prosecutorial Council (KPC) was determined by the government and the agenda controlled by the Minister of Justice who was a Council member. On a positive note, that is no longer the case since the legal provisions that were adopted as of June 2015 do not require that the government approves the budget for the judiciary and the Minister is no longer a member of the Council.

The government's threats and demands in public against the KPC exemplify its interference in decision-making. A decision in March 2015 to not approve the additional payment of 800 euro for special prosecutors depicts the government's authority over the state prosecution service. As a result, the KPC will be forced to pay its special prosecutors from its budget, which will ultimately lead to a budget deficit. This may threaten financial sustainability, making it difficult for the KPC to recruit and retain professional prosecutors.

It is difficult to measure the depth of political influence on the state prosecutor. The lack of initiative to indict high-ranking officials for corruption may suggest that politics has a hand in the prosecutorial system. Delays and discretion on investigating large government contracts perhaps may validate such allegation. For instance, there have been allegations involving a one billion euro contract of building an 80km highway from Merdare to Vermica, which until now has not been cleared (for two years) by either EULEX or the state prosecutor.

The highway contract has ample "indications" of corruption and has been publically contested by the former head of the economics unit of the International Civilian Office, Andrea Capussela. He explains that the cost of building the highway has no economic rationale; its per-km cost is between 40 to 50 percent higher than the comparable EU average calculated by the European Court of Auditors. Far worse, the price paid to the consortium rose from the initial bid of 400 million euro for 102 km to the final price of 838 million euros for 77.4km; the total cost, including expropriation and other peripheral costs, came to 1.13 billion euro.

## 2.4 Transparency

### Legal framework

In general, the legislation regarding transparency of the state prosecutor is in place. *The public relations clause* in the Law on State Prosecutor is perhaps the key legal provision that requires the state prosecutor to inform the public on his activities.<sup>189</sup> Clearer provisions are provided in the Law on Access to Public Documents, which guarantees the right to any natural and legal person to have access to official documents maintained, drawn or received by public institutions.<sup>190</sup>

According to the previous law, the Kosovo Prosecutorial Council had to report to the Assembly, the President and the Public. The provision stipulating that the KPC had to report to the Assembly and the President has been removed from the Law with the amendment and supplement of the Law on KPC, and the Law now stipulates that the KPC shall report to the public on the implementation of its objectives every six months.<sup>191</sup> However, there are a few legal gaps in the secondary legislation. For instance, the Code of Ethics states that prosecutors "may" keep active communication with the public

188 Official Gazette of the Republic of Kosovo. No. 83. Law No. 03/L-224. Law on Kosovo Prosecutorial Council. Article 20. 29 Oct 2010, p. 9.

189 Official Gazette of the Republic of Kosovo. No. 83. Law No. 03/L-225. The Law on State Prosecutor. Article 10. 29 Oct 2010, p. 3.

190 Official Gazette of the Republic of Kosovo. No. 88. Law No. 03/L-215. Law on Access to Public Documents. Article 1. 25 Oct 2010, p. 1.

191 Law no. 05/L-035 on Amending and Supplementing the Law no.03/L-224 on Kosovo Prosecutorial Council. Article 4.1.33.

(Article 3).<sup>192</sup> The word “may” seem rather soft and implies that it is at the state prosecutor’s discretion to choose whether to be transparent to the public or not. Certainly, there are exceptions to the rule, particularly in disclosing information while investigating a criminal activity or disciplinary proceedings.<sup>193</sup>

The meetings of the Council are required to be open. The agenda must be publicly disclosed at least 48 hours before the meeting.<sup>194</sup> The Council may close a meeting if the following issues are to be discussed: official state secrets, personnel matters, performance assessments, proprietary information that is confidential, an on-going investigation, and any information that may violate a law.<sup>195</sup> The chair must explain all the reasons and with the majority of votes decide and justify why the meeting was kept closed.<sup>196</sup>

The KPC is also required to make public the rules of procedure for its own functioning and the selection of the Council.<sup>197</sup> Moreover, the Council is required to provide and publish information and statistical data on the prosecution system.<sup>198</sup> However, the law does not specify how and where all of this information should be made public since there are no legal provisions (as in the judicial system) that require prosecutorial institutions to have a webpage. Nonetheless, all the mandatory documents that must be published in the web page are regulated by the Law on Access to Public Documents (Article 16)<sup>199</sup> and they include: mission and vision, strategic document, basic legislation, public activity, and contact information.

In addition, prosecutors are required to disclose their assets and make them available every year to the Kosovo Anti-Corruption Agency (ACA) since they are considered senior public officials. The Law on Declaration, Origin and Control of Property of Senior Public Officials envisages legal requirements and procedures for prosecutors to report their property, revenue and gifts.<sup>200</sup> This may include real estate, property in value of more than 5,000 euro, shares in commercial enterprises, securities, and savings in banks and other financial institutions, financial obligations, and annual revenue.<sup>201</sup>

Prosecutors are prohibited from soliciting or accepting gifts or other favours, which may have an influence on the exercise of their duties.<sup>202</sup> There are exceptions only for protocol or casual gifts brought by foreign representatives and organisations during a visit or an event. These protocol gifts once registered automatically become institutional property.<sup>203</sup> Failure to disclose their assets and false declarations to the Anti-Corruption Agency is classified as a criminal offense according to the new Criminal Code, which entered into force in January 2013.<sup>204</sup>

## Factual situation

In practice, the public does not have full access to information on the activities and decisions taken by the state prosecutor. The Council’s website is not comprehensive in providing general reports on its decisions and statistics. In addition to the quarterly reports of various prosecutions that are not up to

192 Kosovo Prosecutorial Council (KPC). The Code of Ethics and Professional Conduct for Prosecutors. 31 Jul 2012, p. 3. <http://www.kgjk-ks.org/repository/docs/Gjyqtar%20anglisht.pdf> [Accessed on 20 Mar 2015].

193 Official Gazette of the Republic of Kosovo. No. 88. Law No. 03/L-215. Law on Access to Public Documents. Article 12. 25 Nov 2010, p. 5.

194 Official Gazette of the Republic of Kosovo. No. 83. Law No. 03/L-224. Law on the Kosovo Prosecutorial Council. Article 12. 29 Oct 2010, p. 6.

195 Idem.

196 Idem.

197 Official Gazette of the Republic of Kosovo. No. 83. Law No. 03/L-224. Law on Kosovo Prosecutorial Council. Article 4. 29 Oct 2010, p. 3.

198 Idem.

199 Official Gazette of the Republic of Kosovo. No. 88. Law No. 03/L-215. Law on Access to Public Documents. Article 16. 25 Nov 2010, p. 6.

200 Official Gazette of the Republic of Kosovo. No. 16. Law No. 04/L-050. Law on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials. Article 1. 14 Sep 2011, p. 1.

201 Idem, Article 5, p. 3.

202 Idem, Article 11, p. 5.

203 Idem.

204 Gashi, Adem & Betim Musliu. Accountability of the Justice System. IKD. Mars 2014, f. 17.

date, there is no report on the work, spending, and strategy.<sup>205</sup> Meanwhile, the website of the state prosecutor is more functional and offers information and reports on its activities and work.<sup>206</sup>

The council should be more transparent in practice as there are three members coming from different sectors, including civil society, the bar association and the academy. Each member is responsible for sharing information with his colleagues outside the Council.<sup>207</sup> However, this has not always been the case. For example, a member of the Council representing civil society has been criticized for not consulting civil society on any matter.<sup>208</sup> Part of the problem among many others is the lack of rules and procedures for appointing a civil society representative and holding him/her accountable to those who have chosen him.<sup>209</sup>

Beyond the role of the Council, the state prosecutor is closed and hierarchical. There are only three spokesmen representing the Office of the Council, the Chief State Prosecutor and the Special Prosecutor, all of whom are in Prishtina. The spokesman's role is crucial in informing the public; otherwise it becomes difficult for the entire state prosecutor's office to share information only when asked. In many instances, it is a matter of the working culture that all intentions to hide information from the public. Appointing a spokesman for each office can be a solution to this problem.

Setting aside the KPC's issues with its website and internal legitimacy, there are signs of progress. Overall, both the KPC and state prosecutor have become more transparent to the media and civil society. They issue press releases on a regular basis and provide information if demanded.<sup>210</sup> The Council has taken many initiatives in partnering with civil society. In December 2013, the Council signed a Memorandum of Understanding (MoU) with the Kosovo Law Institute (KLI) for monitoring and assessing the implementation of the action plan for the fight against corruption.<sup>211</sup> So far, the partnership has proven to be successful; it was extremely praised by both the prosecutorial and judicial councils in a conference organised in April 2015.<sup>212</sup>

Further, prosecutors disclose their assets to the Kosovo Anti-Corruption Agency (ACA), which makes them available to the public. Thus far, the KACA has not reported any issues regarding prosecutors disclosing their assets. In 2016, 100% of prosecutors declared their property to the ACA.<sup>213</sup> However, it is difficult to judge the accuracy of the information as the Agency does not investigate and compare them with other institutional registries in greater depth.

## 2.5 Accountability

### Legal framework

The legislation governing the accountability of the state prosecutor is comprehensive. The Constitution gives authority to the Kosovo Prosecutorial Council (KPC) to initiate disciplinary actions in a manner provided by law,<sup>214</sup> holding prosecutors accountable for any misbehaviour or misconduct in their decision-making. Misconduct is defined by the Constitution as a criminal offense or neglect of duty.<sup>215</sup> There are two institutions that conduct disciplinary procedures, the Office of the Disciplinary Counsel (ODC) and the Disciplinary Committee. By the end of 2016, the Ministry of Justice has commenced work in drafting the law on disciplinary responsibility of judges and prosecutors, which aims reforming

205 Kosovo Prosecutorial Council (KPC). <http://www.kpk-rks.org/StatisticsAndReports/PerformanceStatistics> [Accessed on 7 May 2015].

206 State Prosecutor. <http://www.psh-ks.net/?page=1,1> [Accessed on 7 May 2015].

207 KDI, Report of the National Integrity System, Jun 2016

208 Conference. BIRN. 2 Apr 2015.

209 Idem

210 Interview with Shqipdon Fazliu, State Prosecutor, 24 Mar, 2015.

211 [http://www.psh-ks.net/repository/docs/Nr.1515.2013\\_Memorandum\\_of\\_Understanding\\_KPC-KLI.pdf](http://www.psh-ks.net/repository/docs/Nr.1515.2013_Memorandum_of_Understanding_KPC-KLI.pdf) [Accessed on 23 Apr 2015].

212 Kosovo Law Institute. Conference: Publication of Report on Corruption in Kosovo. 8 Apr 2015.

213 Anti-Corruption Agency. Annual Report 2016. p.15.

214 Constitution of the Republic of Kosovo. Article 110, p. 40.

215 Constitution of the Republic of Kosovo. Article 109, p. 39.



disciplinary mechanisms in the judicial and prosecutorial system. The extraordinary general elections in June 2017 have caused delays in finalizing the draft law. The need for drafting such a law is also foreseen in the Kosovo Progress Report 2016.

ODC is a separate and independent institution elected by the KJC and KPC, responsible for investigating judges and prosecutors when there is a reasonable complaint or doubt of misconduct.<sup>216</sup> The ODC has the right to investigate all matters and from the obtained evidence to decide whether to present disciplinary action to the Disciplinary Commission.<sup>217</sup> The ODC consists of the director, advisors, inspectors and management staff who are responsible for reporting annually on their activities and expenditures to the KJC and KPC.<sup>218</sup> The budget allocated to the ODC in 2017 is 230,170 and administered by the Secretariat of the Kosovo Judicial Council. The KPC has no legal authority to limit or otherwise direct costs or to reallocate the budget.<sup>219</sup>

The Disciplinary Committee of KPC consists of three members appointed by the Council.<sup>220</sup> The Commission renders the final decision on whether to impose sanctions or not in accordance with the rules and procedures set on disciplinary proceedings.<sup>221</sup> The disciplinary measures that may be imposed by the Commission include reprimand, temporary salary reduction or dismissal or proposal to remove the prosecutor.<sup>222</sup> Appeals against the Disciplinary Commission may be submitted to the KPC within 15 days from the receipt of the final decision.<sup>223</sup> Legal discretions that justify an appeal include a violation of the law or any disciplinary procedure and mistaken or incomplete evidence.<sup>224</sup>

## Factual situation

The Councils have been criticised for not being responsive in investigating complaints and imposing sanctions. Part of the problem is that the Office of the Disciplinary Council (ODC) lacks the human resources to conduct investigations for any breaches of conduct by prosecutors.<sup>225</sup> In a common opinion expressed by both the president of KJC and the Supreme Court, the ODC inspectors besides lacking both legal and investigative experience, have no clue what goes on inside the courts or the prosecution office.<sup>226</sup> According to the KLI, the small number of inspectors is not enough to investigate over 130 prosecutors and 350 judges.<sup>227</sup>

The KPC seems withdrawn from its role in ensuring that prosecutors exercise their function in a professional and impartial manner. In practice, the Council is least active in assessing and sanctioning prosecutors according to a former member of KPC.<sup>228</sup> It seems that the KPC has its own internal problems, as has been the case during the election process for nominating the new chief state prosecutor. There was a set of political smear campaigns and conflicts among KPC members that spiralled out of control, e.g. bitter complaints regarding past experience and legitimacy.<sup>229</sup> As a consequence, according to a former member of the KPC, all the efforts made for the last three years to establish a capable and independent KPC have been rejected.<sup>230</sup>

While complaints are filed to the ODC, only a small number of prosecutors are sanctioned. None of the punishments are due to poor performance, for example, when a prosecutor does not give priority

216 Official Gazette of the Republic of Kosovo. No. 83. Law No. 03/L-224. Law on Kosovo Prosecutorial Council. Article 33. 29 Oct 2010, p. 13.

217 Idem, Article 35. 29 Oct 2010, p. 14.

218 Idem, Article 36. 29 Oct 2010, p. 14.

219 Idem, Article 39. 29 Oct 2010, p. 16.

220 Idem, Article 23. 29 Oct 2010, p. 11.

221 Idem, Article 25. 29 Oct 2010, p. 11.

222 Idem, Article 27. 29 Oct 2010, p. 12.

223 Idem, Article 29. 29 Oct 2010, p. 12.

224 Official Gazette of the Republic of Kosovo. No. 83. Law No. 03/L-224. Law on Kosovo Prosecutorial Council. Article 30. 29 Oct 2010, p. 13.

225 Gashi, Adem & Betim Musliu. Accountability of the Justice System. KLI. Mar 2014, p. 18.

226 Hasani, Fejzullahu and Enver Peci. Advisory Group NIS. 29 Apr 2015.

227 Gashi, Adem & Betim Musliu. Accountability of the Justice System. KLI. Mar 2014, p. 18.

228 Interview with Kujtim Kërvesh, former member of KPC, 31 Mar, 2015.

229 KALLXO.COM <http://live.kallxo.com/sq/MTL/Syle-Hoxha-Ringjall-Rahman-Morinen-5514> [Access on 2 Aug 2015].

230 KLI, Report of the National Integrity System, Jun 2015

and does not raise indictments for corruption cases. In addition, the ODC is slow and closed in issuing its final decisions to the public and the involved parties as regards to whether a prosecutor has been punished or not by the Disciplinary Committee. During 2016, the Disciplinary Committee received ten disciplinary cases from the Office of the Disciplinary Counsel and held twenty sessions for handling and reviewing twenty disciplinary cases, where in one case a measure of removal of the prosecutor was proposed, 2 cases of suspension, some reprimands and a part were rejected.

On a positive note, in 2013, in cooperation with the KJC and the Kosovo Police, the Council established a tracking mechanism to assess its progress in the fight against corruption and organized crime. This is a database application that registers information regarding the activities of prosecutors and other involved institutions.<sup>231</sup> Unfortunately, the tracking mechanism is for internal use and neither the parties involved nor the general public can track indictments issued. Access to the database may expose the public to confidential information and this may jeopardise investigations. However, it is important that at least the parties involved are informed through a web/electronic interface about the progress of their case and justification as to why it is pending.

The database of filing all information submitted to the Disciplinary Commission by the ODC is still not developed as it is in the Kosovo Police Inspectorate.<sup>232</sup> In addition, there is no mechanism for monitoring the implementation of ethical rules and disciplinary procedures.<sup>233</sup> For instance, there is no mechanism in place that ensures that in time past sanctions are removed from the record, so that the prosecutor's record can go back to clean after a set period of time. When it comes to performance evaluation, there are no mechanisms that inspire them to become more accountable. Hence, many prosecutors who abide by the ethical rules and perform well go almost unnoticed and unrewarded.

## 2.6 Integrity

### Legal framework

The integrity of the state prosecutor is defined in the Law on State Prosecutor and the Code of Ethics and Professional Conduct for Prosecutors. The KPC has also approved a Code of Conduct that applies only to the Council. Given the critics from the European Council (EC), Codes do not specify in detail all the actions, although they "provide a good basis for interpreting what constitutes inadequate behaviour."<sup>234</sup> However, the anti-corruption assessment team of European Council has indicated that the three sectors (judges, prosecutors and police) lack clear rules and procedures for creating conditions for foreign activities.<sup>235</sup>

The Code of Ethics and Professional Conduct for Prosecutors was adopted in July 2012. It defines the standards of ethics and professional conduct for all state prosecutors.<sup>236</sup> The Code requires that state prosecutors respect the applicable laws, act independently in exercising their function, avoid any potential conflict of interest, and perform in conformity with international principles of human rights.<sup>237</sup> The Code, for example, requires that prosecutors do not engage in any non-prosecutorial activity without the prior approval of the KPC.<sup>238</sup> The KPC Code applies only to its members but has the same content.

With regards to regulating integrity, there are two important mechanisms which include the (1) presumption of innocence, and (2) prevention of conflicts of interest for the prosecutor to perform his or

231 European Commission (EC). Progress Report on Kosovo. Oct 2014, p. 52.

232 Council of Europe. Evaluation Report for Compliance with International Standards in the Anti-Corruption field. PECK project. 10 Jun 2013, p. 13.

233 Idem, p. 14.

234 Gashi, Adem & Betim Musliu. Accountability of the Justice System. KLI. Mar 2014, p. 14.

235 Council of Europe. Evaluation Report for Compliance with International Standards in the Anti-Corruption field. Cycle Report II. PECK. 3 Dec 2014, p. 15.

236 Kosovo Prosecutorial Council (KPC). Code of Ethics and Professional Conduct for Prosecutors. 31 Jul 2012, p. 2. <http://www.kgjk-ks.org/repository/docs/Gjyqtar%20anglisht.pdf> [Accessed on Mar 20, 2015].

237 Idem

238 Idem, p. 6

her duty. The state prosecutor must be objective in searching for the truth in taking into account all evidence and must act with integrity and honour the presumption of innocence at all times.<sup>239</sup> Further, the prevention of conflicts of interest is regulated in the Code of Ethics (Article 3), which requires that prosecutors do not accept gifts, favours, privileges, or promises for material help from any person having a direct or indirect interest in a particular case.<sup>240</sup>

In addition, the integrity of the state prosecutor is highly protected owing to the existence of many laws that govern conflicts of interest, exchange of gifts and hospitality for judges. The Law on Prevention of Conflict of Interest defines rules and responsibilities how to identify, treat and solve cases of conflicts of interest.<sup>241</sup> Conflict of interest refers to a private interest of a prosecutor that “may influence” the objectivity, legitimacy and transparency of his official duty/function.<sup>242</sup> Important activities restricted by this law are the exchange of gifts and rewards.<sup>243</sup>

However, the conflict of interest principle is a problem for not being aligned/sanctioned according to the Criminal Code the same way as the gifts and rewards are regulated as a criminal offense by the Law on Declaration, Origin and Control of Property of Senior Public Officials. The EC Progress Report mentions that there are no clear measures and means to prevent or penalize the conflict of interest.<sup>244</sup> Also, it has not been regulated what is acceptable and not, during the exercise of the function and neither the dismissal nor suspension of officials after charges or punishment for corruption.<sup>245</sup> Further, as reported in this report, ACA has found 1552 senior officials holding two or more functions funded by the state budget, which creates the possibility of conflict of interest.<sup>246</sup>

## Factual situation

The public prosecutor lacks integrity in practice as indicated in the eighth edition of the Public Pulse study of the UNDP. The study shows that the public's satisfaction with the public prosecutor has dropped from 38 respectively 17 % in 2014 to 17 respectively 13 % in 2015, and to 17 % in April 2016. The prosecution is the institution to which citizens have the lowest satisfaction in 2016.<sup>247</sup> This is largely due to a system generally perceived as corrupt, selective and unfair to those who have no financial and political power. In addition, according to a survey “Kosovo Security Barometer”, 48 % of citizens who took the survey said they did not trust the prosecution.<sup>248</sup>

The main problem as to why there is injustice stems from its approach of taking legal actions against anyone who is less influential and politically connected, according to a representative from the Group for Legal and Political Studies (GLPS). That is why the majority of corruption cases, if not all, involve petty corruption by public officials at a lower level. There are hardly any high-profile cases of corruption with the exception of the arrest of the head of the Anti-Corruption Task Force, Nazmi Mustafi. As mentioned above, Mustafi was sentenced to five years in prison in May 2013.<sup>249</sup> He was found guilty of accepting a bribe in dropping charges in an on-going investigation in 2012.<sup>250</sup>

Lack of institutional integrity has been noted in the anti-corruption assessment report of the Council of Europe, in reference to concerns shared by the Anti-Corruption Agency, indicating that prosecutors “exercise simultaneously several remunerated functions outside working hours.”<sup>251</sup> Accordingly, the

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239 Idem, p. 3

240 Idem, p. 6

241 Official Gazette of the Republic of Kosovo. Nr. 16. Law no. 04/L-051. Law on Prevention of Conflict of Interest in exercising public function. Article 2. 14 Sep 2011, p. 1.

242 Idem, Article 6, p. 3.

243 Idem, Article 9, p. 4.

244 European Commission (EC). Progress Report for Kosovo, 2016. p. 19

245 Idem

246 Idem, p. 18.

247 Public Pulse May XI, 2016. P.4.

248 KCSS. Kosovo security barometer sixth edition. Dec 2016. P.13.

249 Gashi, Krenar. Kosovo: Nations in Transit Ratings and Averaged Scores. 2014, p. 331.

250 Idem

251 Council of Europe. Assessment Report on Compliance with International Standards in the Anti-Corruption (AC) Area. Cycle II Report. PECK. 3 Dec 2014, p. 14

implementation of the Codes of Ethics of the KPC and the KJC remain weak, especially regarding disciplinary proceedings.<sup>252</sup> The issue of the prosecutor taking up publicly and privately funded work while working was discussed in the meeting of the NIS 2015 Advisory Group held in November 2014. Laura Pula from the State Prosecutor Office expressed her concerns regarding the engagement of judges and prosecutors in lecturing in private and public universities during their regular work hours.<sup>253</sup>

The state prosecutor in joint efforts with the Kosovo Police and Kosovo Anti-Corruption Agency signed an agreement in May 2014 on how to administer more efficiently and vigorously conflicts of interests and false declaration of assets.<sup>254</sup> The chief state prosecutor issued a decision in June 2014 that “for every case presented by the KACA, a preliminary consultation amongst case prosecutors and KACA officials must take place”.<sup>255</sup> However, there was never a follow-up plan and it is uncertain whether or when the judiciary is or will be part of this formalised plan.<sup>256</sup> So far, there is no track record of processing and “sanctioning of conflicts of interest”<sup>257</sup> and false declarations of assets.

The state prosecutor reports on a regular basis to the Anti-Corruption Agency. In 2016, 145 prosecutors or 100 percent reported their assets to the Agency.<sup>258 259 260</sup> Concerning the conflict of interest, of the 210 cases reported by the Agency, only in 3 cases were included judges and prosecutors (less than 1.5 percent).<sup>261</sup>

## 2.7 Prosecution of corruption

The state prosecutor is ineffective in fighting corruption. Corruption continues to be present and one of the biggest problems. The EC Progress Report 2016 states that Kosovo is at an early stage, but that there is preparation for the fight against corruption. It is mentioned that Kosovo has strengthened its institutional capacity to fight corruption and organized crime. However, the specialization of prosecutors for investigating and effective prosecution of criminal offenses with priority such as corruption, organized crime, and economic crime remains a challenge for the Prosecutorial Council.<sup>262</sup> Overall, prosecutors are not active and lack the initiative to prosecute cases. Almost all cases are initiated by the public or another institution, in the form of a letter that is sent to the prosecutor’s office denouncing any criminal activity.

The state prosecutor in 2016 had a good performance in the fight against corruption in the quantitative point of view. Prosecution offices managed solve a larger number of cases compared to the number of cases received within the year.<sup>263</sup> With regard to the fight against corruption, the State Prosecutor in 2016 received 438 cases involving 849 persons, while solved 468 cases involving 1164 persons.<sup>264</sup> In percentage 106.84% of criminal reports for corruption offenses have been solved by SP.<sup>265</sup>

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252 Idem, p. 13.

253 Transparency International-Kosovo (TIK). National Integrity System Meeting. 19 Nov 2014.

254 Council of Europe. Assessment Report on Compliance with International Standards in the Anti-Corruption (AC) Area. Projekti PECK. 10 Jun 2013, p. 15.

255 Idem

256 Council of Europe. Assessment Report on Compliance with International Standards in the Anti-Corruption (AC) Area. PECK Project. 10 Jun 2013, p. 15.

257 Council of Europe. Assessment Report on Compliance with International Standards in the Anti-Corruption (AC) Area. Cycle II Report. PECK. 3 Dec 2014, p. 14.

258 Anti-Corruption Agency. Annual Report 2016. p.15.

259 Anti-Corruption Agency. Annual Report 2014. Mar 2015, p. 20.

260 Kelmendi, Blerim. Kosovo Anti-Corruption Agency (AKK). Kosovo Law Institute (KLI). Conference: Publication of Report on Corruption in Kosovo. 8 Apr 2015.

261 Anti-Corruption Agency. Annual Report 201. p. 20.

262 KPC Annual Report, 2016. p. 36.

263 Performance of Judiciary in the Fight Against Corruption, Lëvizja Fol, Apr 2017. p.30.

264 Work Report 2016, State Prosecutor. p.11.

265 Idem, p.13.

At the end of the year there were 447 cases at work involving 1248 people.<sup>266</sup> Whereas, the SPRK database contains 35 high-profile organized crime and corruption cases.<sup>267</sup> In total, 26 indictments were filed during 2016.<sup>268</sup>

Besides lacking integrity, the state prosecutor is seen also as incompetent and unprofessional in practice. According to a journalist from Justice in Kosovo, critics say that often indictments are poorly written and not well investigated, making it difficult for a judge to take a decision. When it comes to corruption charges, they tend to go beyond the comprehension of the state prosecutor although as a sign of improvement, recently the KPC has certified 11 experts from respective public institutions to help prosecutors on more specialised cases involving corruption. Moreover, prosecutors often violate procedures and deadlines to collect and present evidence in the courts of law. Or they exceed the maximum time period of the statutes of limitations to a point that a claim can no longer be valid.

It is extremely difficult for the state prosecutor to improve in the short-term since there is no political will to support its cause. The National Anti-Corruption Council established by the president of Kosovo in 2012 is considered largely ceremonial and to date is not active.<sup>269</sup> The new Anti-Corruption Strategy and Action Plan (2013–2017) has also been criticised for lacking content, not being well budgeted, and without concrete steps on how it will be implemented.<sup>270</sup> To many critics, the strategy is a paper that in principle is designed to serve EU integration purposes and to present the government's intentions in a positive light to the public.<sup>271</sup>

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266 The Annual Report (2016) of the Inter-Institutional Tracking Mechanism for Harmonization of Statistics for Specific Criminal Offenses. p. 14.

267 Work Report 2016, State Prosecutor. p.12.

268 Idem

269 Gashi, Krenar. Kosovo: Nations in Transit Ratings and Averaged Scores. 2014, p. 331.

270 Idem

271 Idem

## 3. Survey on integrity in the justice sector

### 3.1 Methodology

Most studies on the work of the judiciary in Kosovo, including those on issues of integrity and ethics, have essentially been **analysis of externally observable facts that result from its work**. To this end, various claims have been made on the justice system based on administrative data, interviews with stakeholders, secondary sources such as media reporting, or even anecdotal evidence. While many problems and challenges have been pinpointed so far, one limitation of this qualitative approach is that what is externally observable is not necessarily representative of the entirety of what happens within the justice sector. The analysis of externally observable data might tend to be skewed by availability bias.<sup>272</sup> Furthermore, it makes it more difficult to understand the specific dimensions: for example, you can't really tell whether biases among judges are a bigger or smaller problem than transparency.

The second most common evaluation of the performance of the justice sector have been **quantitative perception surveys with citizens**. While being tremendously insightful on issues such as general fairness and efficiency of the system – because citizens are the end-users of the system – citizen perception studies have their limitations in understanding integrity challenges within the system. Citizens are not intricately familiar with the inner workings of the judicial system and do not have proportionate experiences with the system to be able to, for example, assess how often conflicts of interest emerge and how they are dealt with.

This particular integrity scan attempted to understand adherence to ethical standards within the judicial system by also capturing a third perspective. Namely, it aims **to assess adherence to ethical and professional standards by looking at the perceptions of the main actors involved in the judicial system – namely, judges and prosecutors**. It does so by applying a scientific methodology – a quantitative survey with a representative sample of judges and prosecutors. As such, it aims to complement other studies done on the justice sector by: (1) portraying a representative picture of the situation as seen through justice system workers and; (2) understanding the relative weight of particular integrity challenges in order to identify priority areas for intervention.

**There are obvious limitations to a perception survey conducted with judges and prosecutors in getting an objective picture of the situation.** In a way, this survey is essentially a self-evaluation tool for the judicial system. Albeit guaranteed anonymity, the respondents are aware that the results of the survey might have a public impact and could be used to advocate for changes which would impact them in their work in the future. Furthermore, since the survey looks at integrity issues, those who might have not adhered to ethical standards have an incentive not to be truthful in order to create a different public impression, thus skewing the results. Even for those who have not committed breaches, the creation of a public perception that laws are broken might entail knowledge of particular facts by respondents, and knowledge entails complicity or legal liability. The results of this survey therefore should be taken with a grain of salt and, depending on the question, the analysis of the data should attempt to be between the lines and have in mind the above listed limitations.

**Several steps were taken to ameliorate some of the challenges of this methodology.** To give guarantees of anonymity, respondents were allowed to fill the questionnaire by themselves while researchers were present to ensure they are filled and to provide clarifications to questions. Secondly, questions were framed in such a way so as to allow respondents to talk in more abstract terms rather than in specifics, which makes respondents more likely to respond and be truthful. For example, we did not ask respondents whether someone ever attempted to influence their decision-making from outside, but asked what they thought was the frequency of occurrence of such cases in general. Thirdly, we made sure answers were scaled on a considerable range (From 1-5 or “very low” to “very high”) to not pressure respondents into binary answers “yes” or “no” on delicate questions. In this way, by allowing to say that a problem has “average occurrence”, we made it easier for respondents who are

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<sup>272</sup> Availability bias is a concept in behavioural economics which posits that “people make judgments about the likelihood of an event based on how easily an example, instance, or case comes to mind.”

otherwise critical but do not want to make it public, to admit that the problem actually exists.

**Despite the limitations, we believe that the findings are highly relevant and still provide useful insights.** Just as there are respondents who might not be truthful, there are obviously those within the justice sector who are critical and ethical and want the problems to become visible. It is obvious from the results that there is a portion of judges and prosecutors who are somewhat or highly critical. While the data might not capture the full scale of problems, it gives a sense of the particular weights of specific problems and their drivers.

**Data collection for the survey was conducted in the most professional manner by UBO Consulting – a renowned polling agency operating in Kosovo.** The field research was conducted during the months of July, August and September 2017 with a total of 341 respondents (229 judges and 112 prosecutors) working across a wide range of institutions (see Table 2 below). The findings are therefore representative as they capture a considerable percentage of the sample population (total number of judges and prosecutors), as Table 1 illustrates. Researchers administered a questionnaire with 28 main questions (many with sub questions). The graphs below provide information on the demographic and professional characteristics of the respondents and their representation (share) in the surveyed sample (age groups, gender, years in service).

Table 1 Number of survey respondents and share of total

Type	Number surveyed	Number active <sup>273</sup>	% surveyed
Judges	229	341	67.2%
Prosecutors	112	142	78.9%
<b>Total</b>	<b>341</b>	<b>483</b>	<b>70.6%</b>

Table 2 Number and share of respondents by type of institution

Type of institution	Nr. of respondents	%
Supreme Court	8	2,3
Appeals Prosecution	5	1,5
Special Chamber	9	2,6
Special Prosecution	10	2,9
Appeals Court	22	6,5
Basic Prosecution	93	27,3
Basic Court	194	56,9
<b>Total</b>	<b>341</b>	<b>100,0</b>

Figure 1 Age groups of respondents (percentage)

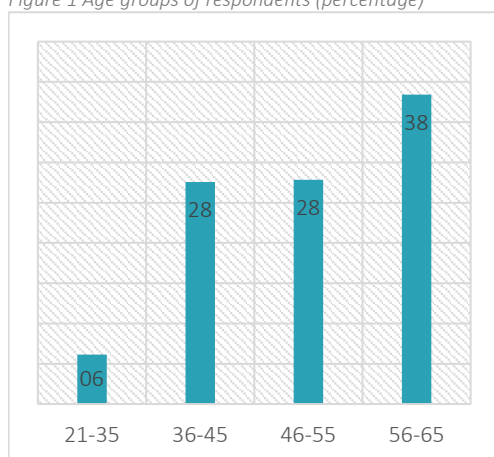
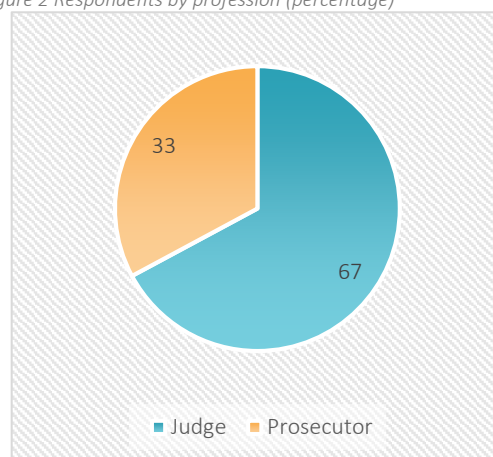
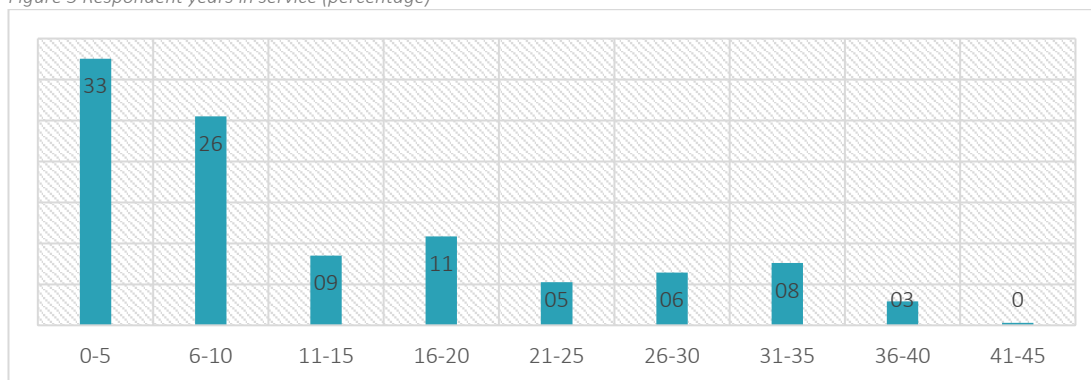


Figure 2 Respondents by profession (percentage)



<sup>273</sup> Numbers from Jan 2017 as received from official KPC and KJC data.

Figure 3 Respondent years in service (percentage)



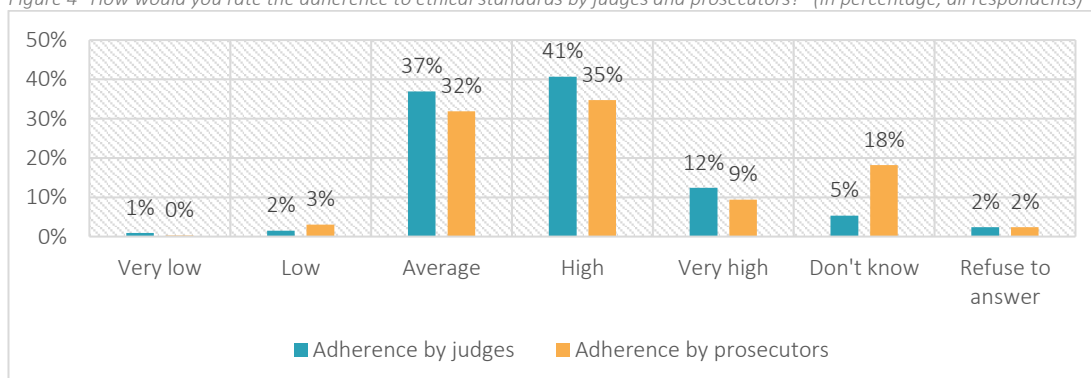
### 3.2 General questions related to integrity in the justice system

It is standard practice in surveys of this nature to start with general and broad questions about the subject that is being studied. This allows to then potentially see discrepancies with answers to specific issues that result from availability bias. For example, it is likely that many people would be inclined to say that the situation with the judiciary is generally positive, but then be less positive about it when thinking about specific aspects of the system.

In the first substantive question, judges and prosecutors were asked to rate the general adherence to ethical standards by judges and prosecutors. Note that in the way that the question is framed, they are essentially not just evaluating their colleagues but also themselves, which naturally reduces the likelihood of negative responses.

As Figure 4 below illustrates, **the majority of judges and the biggest share of prosecutors think that adherence to ethical standards is high or very high.** It is worth noting though that while most view the judiciary as ethical, around a third of respondents think that adherence to ethical standards is average (37% of judges and 32% of prosecutors). The term “average” in this case means that **a considerable body of workers in the justice system admits that ethical breaches are somewhat systematic phenomenon and not just a rare exception.** The option “average” in this case is inserted with the purpose of allowing a channel of expression to judges and prosecutors who have seen problems occur but are reluctant to rate negatively the very same justice system where they work. Also, it is worth noting that judges only seem slightly more positive than prosecutors, because a larger share of prosecutors responded with don’t know (18%), which reduces the share for each other answer.

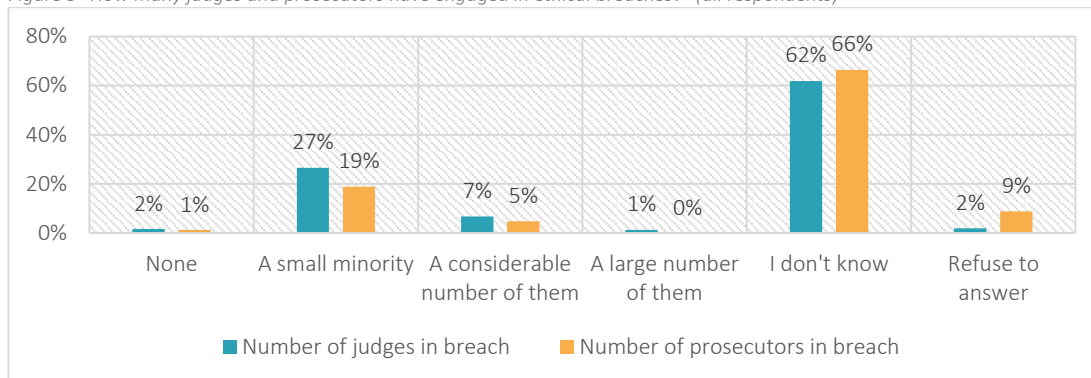
Figure 4 “How would you rate the adherence to ethical standards by judges and prosecutors?” (in percentage, all respondents)



The second question in Figure 5 illustrates how one can get different answers in more abstract and impersonal questions (like the previous one) and different ones when asking something essentially similar but more specific and personal. When asked to say “how many judges have engaged in specific breaches”, a majority of respondents (62-66%) chose to say that they “don’t know”.



Figure 5 "How many judges and prosecutors have engaged in ethical breaches?" (all respondents)



It is difficult to see why the same respondents who were able to answer the previous question on the frequency of ethical breaches, don't know the answer to an essentially similar question when asked to think in terms of number of people involved in those breaches. So in this sense, **the answer "I don't know" can be interpreted more as a refusal to reveal an opinion, rather than lack of knowledge.**

The reluctance to answer is probably due to the way the question is framed: an answer would imply knowledge of specific people and cases involved in ethical breaches, which in some cases would mean that respondents filling the survey felt makes them legally liable. Also, having been informed about the purpose of the survey, respondents might be reluctant to answer due to an awareness on the consequences of their response to their colleagues and to themselves. What gives weight to this interpretation is the fact **that almost none of the respondents were willing to say that none of the judges and prosecutors have engaged in ethical breaches.** Out of those who provided an answer, most think that a small minority have engaged in ethical breaches while 5-7% of respondents think that a considerable number of judges have engaged in ethical breaches.

So what does the data from these two general questions suggest in terms of the frequency of unethical behaviour in the justice sector and the number of people involved in such breaches? How prevalent is unethical behaviour and how much should we be concerned? Is an "average" rate of unethical behaviour acceptable for a judicial system when ethical rules are largely strict, and is a third of respondents rating it as average too much? What is the metric for judgement in this case?

This is a matter of interpretation. In principle, **while a majority seems self-satisfied with ethical standards, the share of those admitting the existence of problems does suggest that problems do occur.** This is a concern because even a marginal phenomenon of unethical behaviour can be disruptive to justice. Lacking good enforcement mechanisms, the virus could spread. What is especially of concern is the fact that this is an admittance of problems within a "self-evaluation" survey, which means that the scope of the problem might be even bigger than what the survey answers suggest. On the flipside, though, it is encouraging that there are prosecutors and judges who are willing to admit the existence of unethical behaviour and want us to know about it, which could be interpreted as a sign that they object to it and show resistance.

So what, according to judges and prosecutors, are the causes of the "average" unethical behaviour? In the third question, respondents were asked to rate specific pre-determined drivers of unethical behaviour in the justice system on a scale from very low to very high. They were asked to rate the five types of drivers separately.

Based on responses (Figure 6), **the high workload is the driver that stands out as a driver of unethical behaviour.** Around 2/3 of respondents find this driver to be in the range of average to very high (which suggests that it has considerable weight). One explanation here is that a high workload puts pressure on judges and prosecutors to resolve issues quickly and potentially to cut corners. The second most important self-reported driver is lack of knowledge on ethical practices. Slightly less than 30% consider it as average and 8% high.

The survey responses seem to suggest that **respondents consider unethical behaviour to be not intentional and driven by malice but the product of circumstances (workload and no knowledge).** The more malicious motives such as financial gains or personal favours are scored lower and have a higher

“don’t know” response rate (see Figure 7). Nevertheless, around one quarter of respondents’ rate financial motives and personal favours somewhere between average to very high – which means that they are a factor to be taken into account in marginal cases. Higher refusal to answer questions on financial or material motives of judges and prosecutors is a systematic occurrence throughout the survey, and it might suggest a defensive knee-jerk reaction against perceptions of corruption.

Figure 6 "Please rate the drivers of unethical behaviour in the justice system" (All respondents, in percentage)

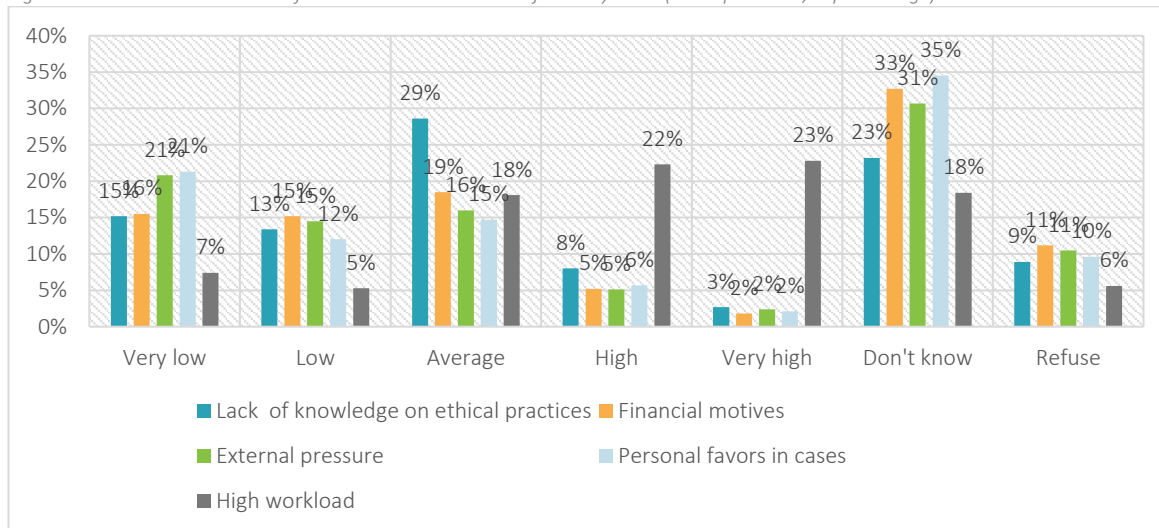
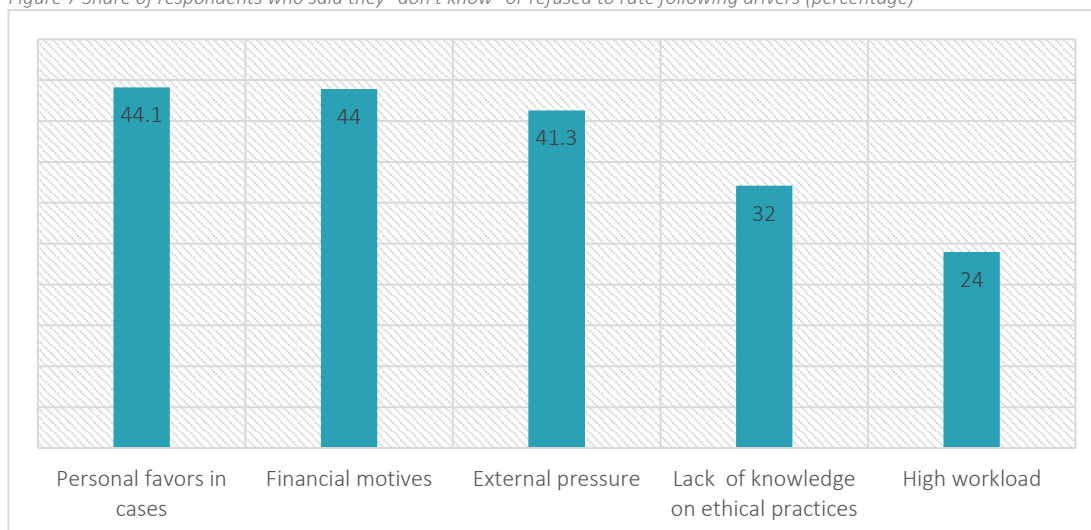


Figure 7 Share of respondents who said they "don't know" or refused to rate following drivers (percentage)



### 3.3 Independence and impartiality

The next set of questions in the questionnaire aimed to assess perception of judges and prosecutors with regard to the specific issues of independence and impartiality. In sum, **both judges and prosecutors consider themselves as being largely independent**. Only around 15-20% rate independence as average and an almost negligible share rate the judiciary as not independent or not independent at all. This means that, in general, perceptions on the independence of judges and prosecutors are somewhat more positive than the general attitudes towards adherence to ethical standards.

One thing to note is the slight difference in the perception of judges about prosecutors and vice versa. This perception is different because of a large number saying that they “don’t know” about the other side – namely, of the inability of judges to have an opinion about prosecutors and vice versa due to a lack of information to form an opinion. Nevertheless, **it is worth noting that prosecutors are much more willing to express an opinion about judges – i.e. a more negative one - than vice versa**. This could

be the result of the fact that prosecutors are highly impacted by judges in their work and create negative opinions about judge's independence due to decisions on their cases.

Figure 8 "How judges rate the independence of judiciary sector workers?"

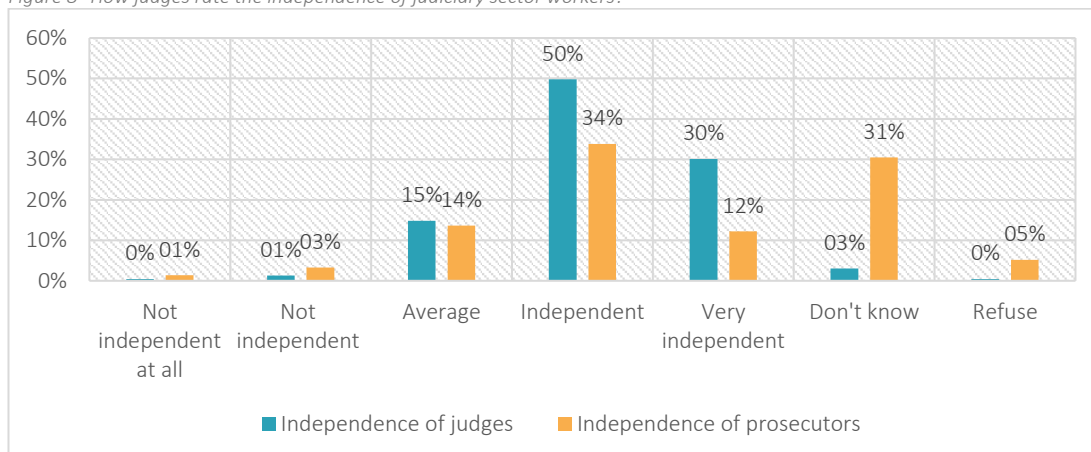
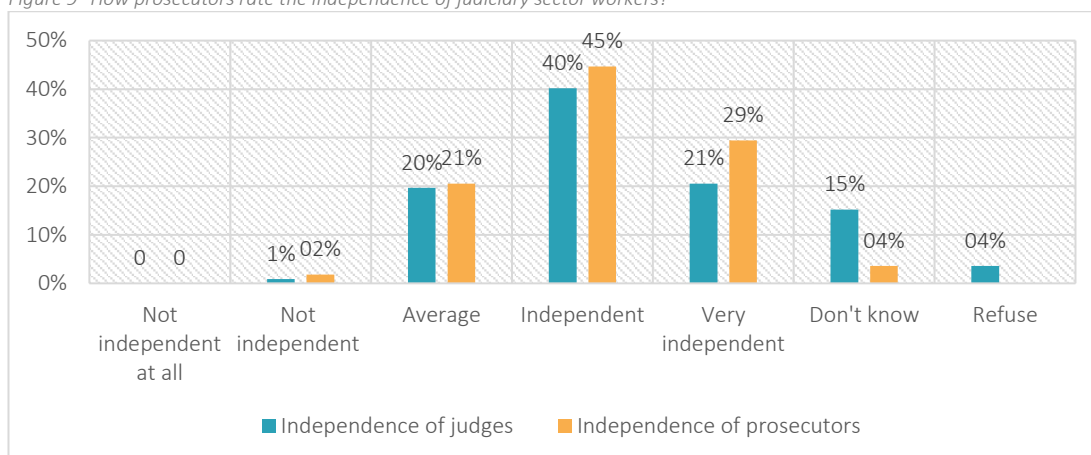
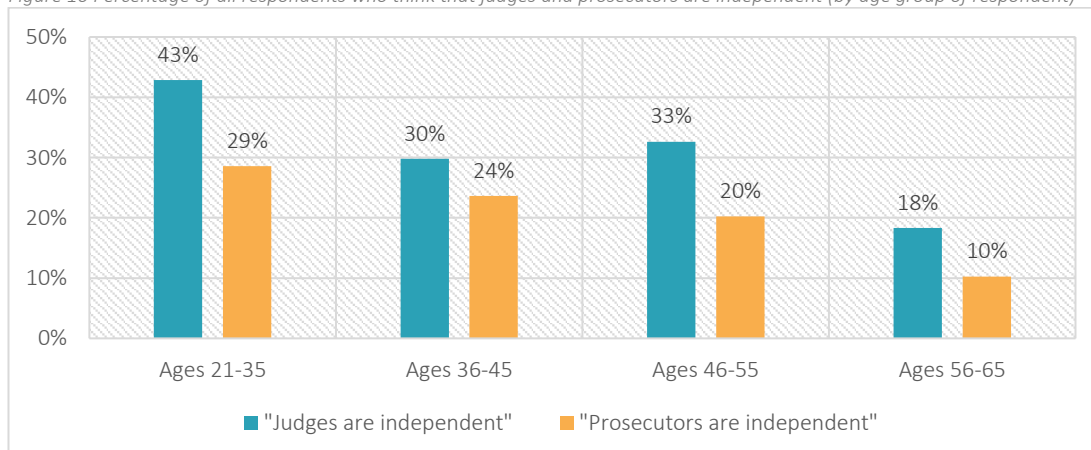


Figure 9 "How prosecutors rate the independence of judiciary sector workers?"



Further disaggregation of the data through cross-tabulations reveals interesting insights related to the issue of independence in terms of the age of respondents. The share of those who are most positive and think that the judiciary is "very independent" decreases with age. As the graph below illustrates, **the younger the respondent, the higher the perception that judges and prosecutors are "very independent", and vice-versa!** The older the respondent, the more likely he/she was to be less positive about independence and chose simply "independent" instead of "very independent". The obvious interpretation of this pattern is that the more experience one has with the judicial system, the more experiences have been witnessed with external intrusion.

Figure 10 Percentage of all respondents who think that judges and prosecutors are independent (by age group of respondent)



The survey also attempted to assess the frequency of occurrence of various type of external pressures. Judges and prosecutors are in the best position to give information about this as they are in the front lines and face these potential pressures. The data on this question is consistent with the finding that around 15-20% of judiciary system workers see independence as “average” – i.e. of external intrusion occurring somewhat systematically. **A similar share (10-20%) is also willing to admit the existence of various forms of external pressures.** For example, the graphs below illustrate the response of judges and prosecutors on the types of pressures that are most frequent. For more effective illustration purposes, the graph does not report those who reported no pressure but only those who rated pressures as “average”, “high” or “very high” – namely, who admit that they occur.

Figure 11 Frequency of types of pressures on judges (response by judges only)

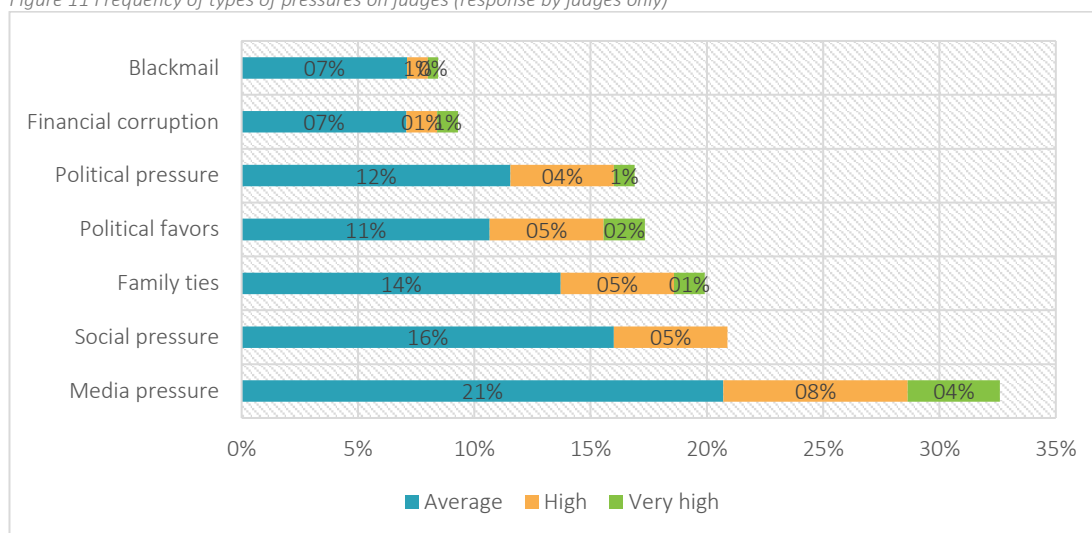
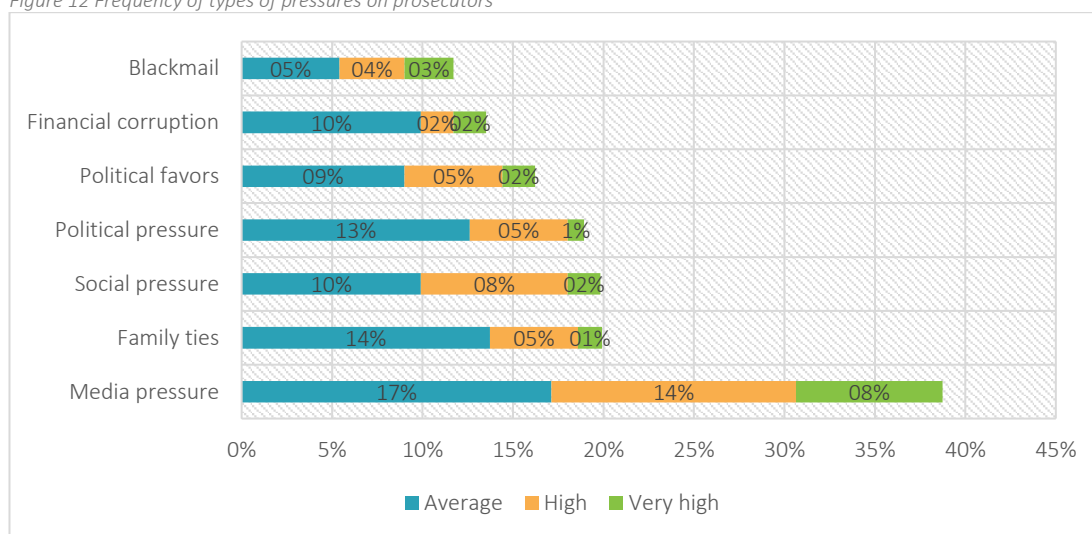
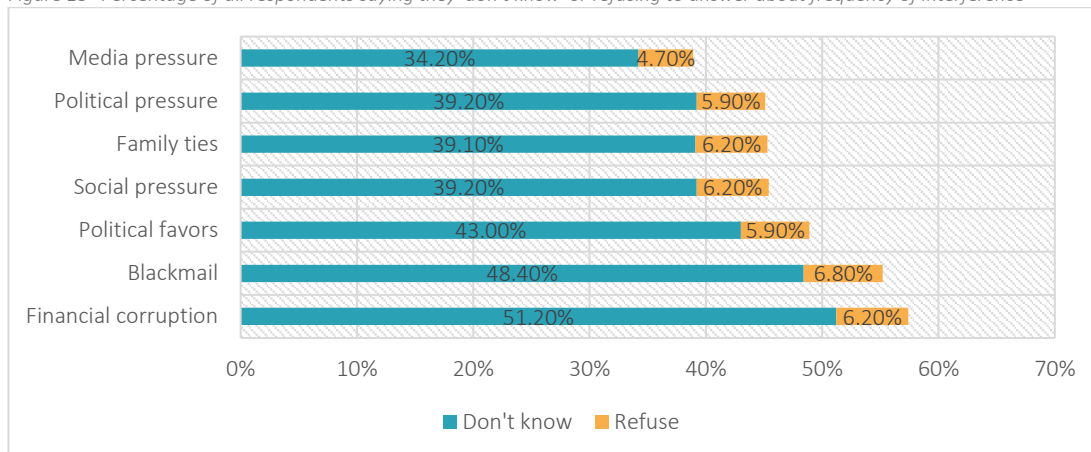


Figure 12 Frequency of types of pressures on prosecutors



**An interesting finding is that the type of external pressure that judges say they are most faced with is media pressure.** In total, 33% of judges and just slightly less than 40% of prosecutors consider media pressure as a more serious occurrence. One interpretation is that increased media scrutiny in particular cases, while obviously having a positive effect in terms of demands for accountability, seems to be making judges feel under pressure to give more attention to those cases compared to others that might not be gaining much publicity. **The second more frequent pressures are those related to personal bonds (social and family ties) followed by political pressures.** It is worth noting that the lowest reported type of pressures are those related to financial corruption or blackmail. Similarly, these two types of interferences drew the highest responses of “don’t know” or “refuse”, with almost half or respondents choosing this option. This is part of a trend of **respondents generally being more evasive or non-responsive particularly on issues of financial gain.** Responses to these questions do not differ in terms of ages of respondents or the courts they are working in.

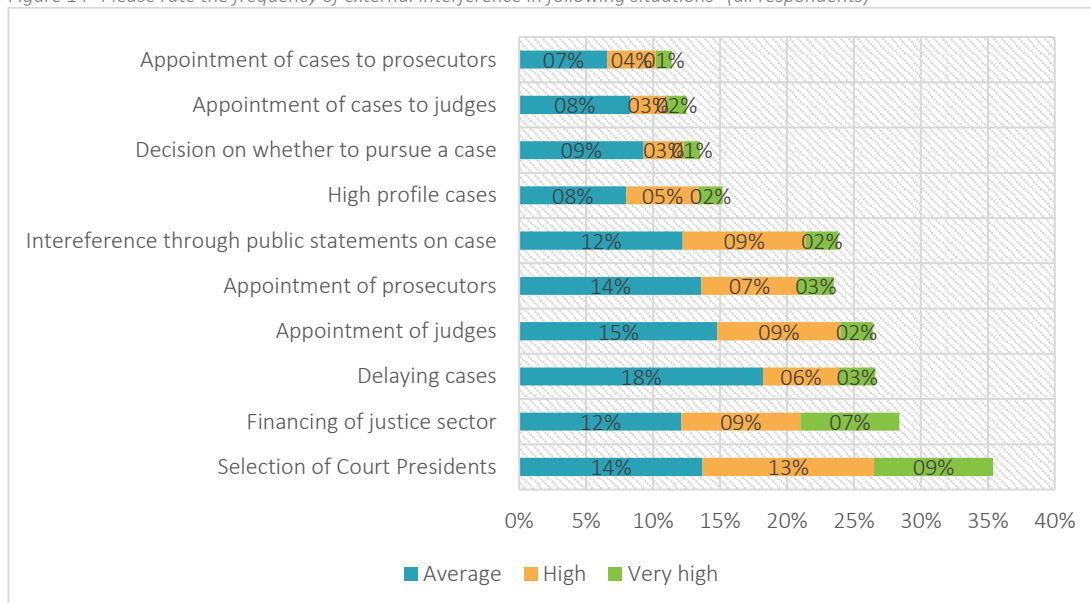
Figure 13 "Percentage of all respondents saying they 'don't know' or refusing to answer about frequency of interference"



Another way to test the weight and scale of external interference is not by focusing on the type (source) of interference but on the type of situation where interference occurs. Asking the question this way both removes the respondent from thinking about their own actions and motives and forces them to pass judgement in more abstract terms. To this end, respondents were asked to rate the frequency of external interference in various situations on a range (very low to very high). The results are presented only for those who admit to occurrence (average to very high).

It is interesting to note that when the question is phrased in such a way, the share of judges and prosecutors who admit to external interferences is slightly higher than in the previous question, reaching 20-30% in most cases. In this regard that the types of situations where interferences in the judicial system are more readily admitted are those that are beyond the control of judges and prosecutors, but are more political in nature and higher up in the chain of command of the justice sector. **The two types of situations where external interference stands out is the selection of Court Presidents and financing decisions on the justice sector.** Namely, a third of respondents think that external interference in the selection of Court Presidents is an occurrence, with 10% saying the occurrence is "high" and 7% saying "very high". A slightly lower occurrence of interference (a quarter) is recorded in the appointment of judges and prosecutors. It is also interesting to note that almost a quarter of judges and prosecutors think that there is interference through public statements on cases – namely, that they view statements by public figures as an external pressure on their work.

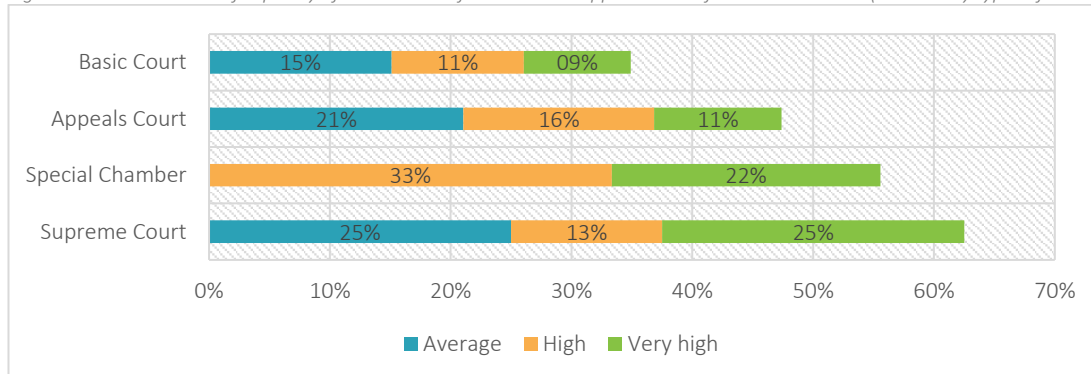
Figure 14 "Please rate the frequency of external interference in following situations" (all respondents)



There are not many differences in the answers to this question between judges and prosecutors, or between age groups. However, when it comes to external interference in the appointment of Court

Presidents, there is a difference in perception between various types of courts. **The graph below shows that the higher the court, the higher the perception of external interference in selection of Court Presidents.** Note that for the Supreme Court and the Special Chamber the surveyed sample is small, but it is representative of the small body.

Figure 15 "Please rate the frequency of external interference in the appointment of Court Presidents" (answers by types of court)



One thing that is interesting to note with regard to the answers related to the external interference in the appointment of judges and prosecutors is the age dimension to the answers. While the appointment of judges and prosecutors was not rated as having the highest occurrence, it is worth noting that **the older the respondent is, the higher the perception of external interference in appointments.** Around a third of prosecutors and judges who are in the age group of 56-65 think that there is external interference. This can be once again interpreted as showing that by having more experience, judges and prosecutors can recall more cases of what they perceived to be external interference.

Figure 16 "Please rate the frequency of external influence in appointing judges" - (by age group)

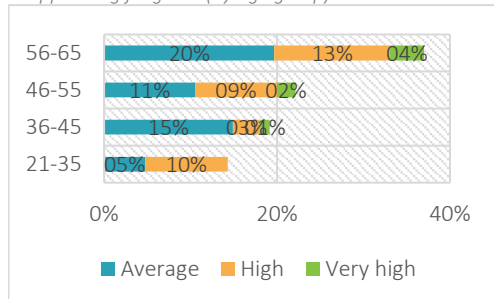
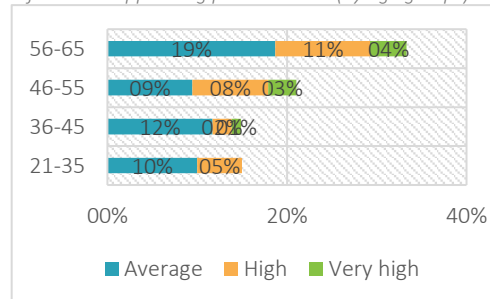


Figure 17 "Please rate the frequency of external influence in appointing prosecutors" - (by age groups)



Another interesting observation is the difference in the answer to the same question by type of court or prosecution. As the graphs below illustrate, the Special Prosecution is visibly more critical to external interferences in appointment of prosecutors. With regard to judges, perception of external interference in appointments is higher the higher the status of the court is. The judges of the Supreme Court rated external interferences in appointments as being highest, followed by judges in the Appeals Courts and twice as much as judges in the Basic Courts.

Figure 18 "Please rate the frequency of external interference in the appointment of prosecutors" (answers by type of prosecution)

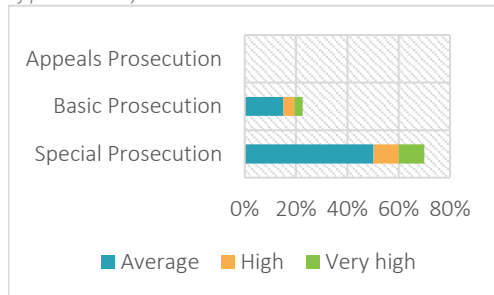
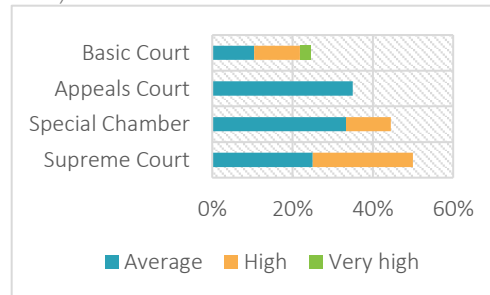
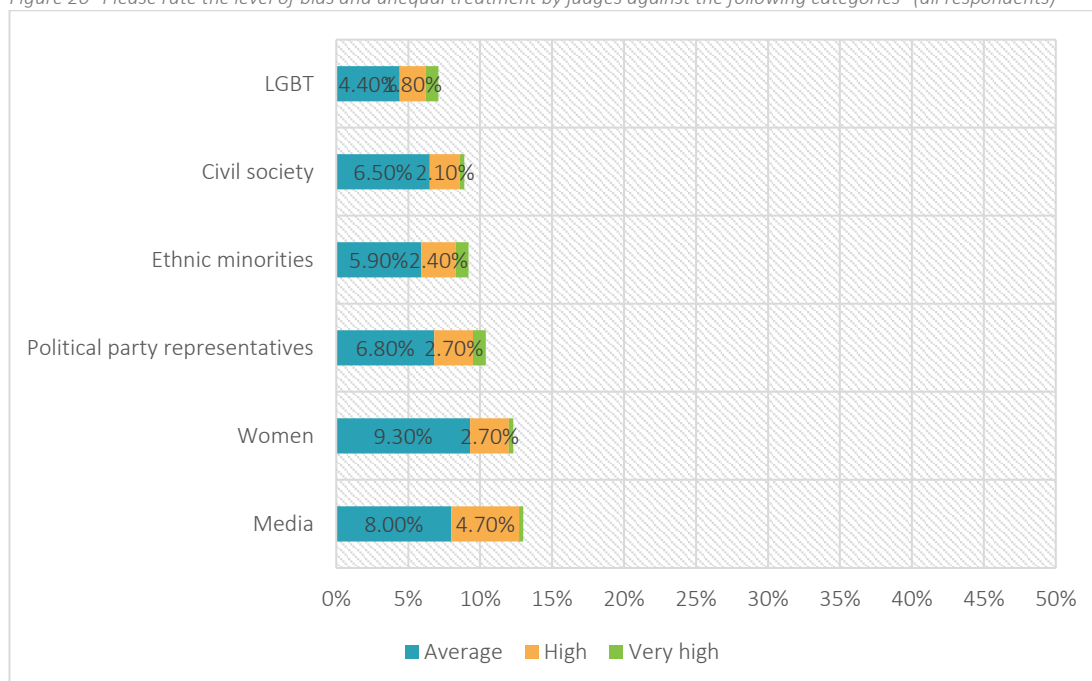


Figure 19 "Please rate the frequency of external interference in the appointment of judges" (answers by type of Court)



Ethical standards are impacted not by independence from external actors but also by impartiality from personal beliefs or biases. The survey attempted to see whether it could dissect the level of bias and unequal treatment of social categories by judges by asking respondents (both judges and prosecutors) to rate level of bias and unequal treatment. Self-assessment on something of this nature is difficult as most people are not able to identify behaviours as being biased if they themselves have the same widely held biases. This is also evident in the results, which show **that very few respondents see any kind of bias and unequal treatment based on particular identity existing within the judiciary**. Only 6% of respondents think that there is bias against LGBTI community in the judiciary, the lowest rate of bias reported. And although external assessments have identified problems in terms of treatment of women (especially on property rights), only 12% of respondents think that women are treated unequally. Therefore, the answers to this question should be taken with a bit of a grain of salt and it is difficult to draw inferences from them.

Figure 20 "Please rate the level of bias and unequal treatment by judges against the following categories" (all respondents)



### 3.4 Consultation mechanisms and disciplinary action

Respondents were first of all asked to rate the Codes of Ethics produced by the Kosovo Judicial Council and the Kosovo Prosecution Council. The question was asked to judges and prosecutors separately per their respective Code of Ethics. The Codes were evaluated based on five different criteria and respondents were asked to rate the code on a scale from "very low" to "very high".

**In general, most respondents (a majority) rated the quality of ethical codes on all aspects with "high" or very "high" and a very small minority give a "low" and "very low" rating (not more than 10%).** However, In the graph below we present the findings only for those who responded with "average", "low" and "very low", because their insights are most useful for any potential improvements to the system.

In general, the results show that **prosecutors are slightly less satisfied with their Code of Ethics than judges**. The results also show that in both the case of the judges and prosecutors, the Codes of Ethics are rated the lowest in terms of the scopes of issues they cover. Slightly more than 51% of prosecutors rate the scope of issues as "average", "low" or "very low", and around 48% of judges think the same about the scope of their Code of Ethics. Judges are also slightly more concerned with the clarity of content. However, a small minority of judges, around 10-12%, are more vocally concerned about the ease of implementation and the effectiveness in practice – scoring the Code of Ethics on these points as "very low" or "low".



Figure 21 "Please rate the following aspects of the code of ethics produced by the Kosovo Judicial Council" (response by judges only)

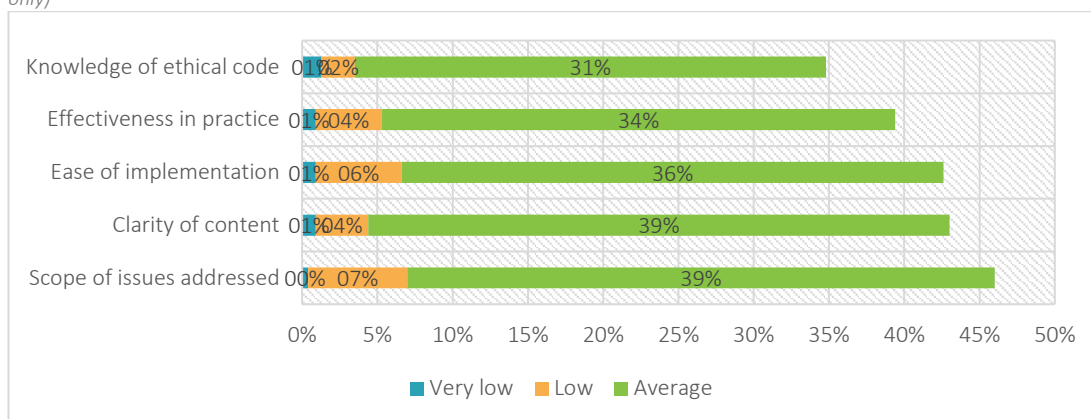
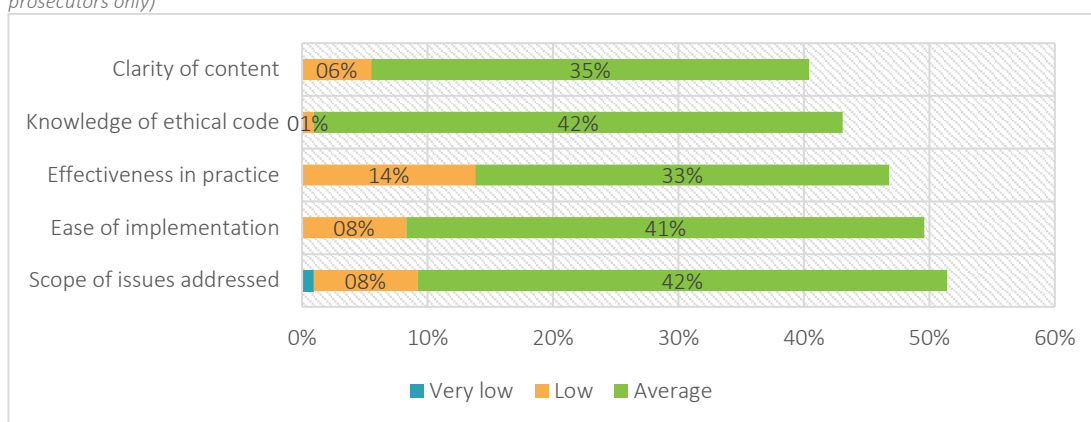


Figure 22 "Please rate the following aspects of the code of ethics produced by the Kosovo Prosecution Council" (response by prosecutors only)



The survey also aimed to assess the perception of judges and prosecutors on the current mechanisms for disciplinary action in the judicial system. The first question that was asked was very general and related to the sufficiency of the current institutional mechanisms for consultations on codes of ethics. **In general, most respondents think that there are sufficient mechanisms for consultations (43%), while just slightly less see the mechanisms as being somewhat sufficient (41%).** Only 10% of respondents view the consultation mechanisms as insufficient. Nevertheless, note that there is a **significant difference in the answers to this question by age groups (Figure 24)**. The youngest respondents (up to 35 years of age) are much more likely to say there are no sufficient mechanisms or not to know the answer to the question. **Almost 40% of young judges and prosecutors have no information about consultation mechanisms or don't think they are sufficient, compared to 10-15% of other age groups.**

Figure 23 "Are there sufficient mechanisms within the justice sector where judges and prosecutors can consult on codes of ethics?" (all respondents, in percentage)

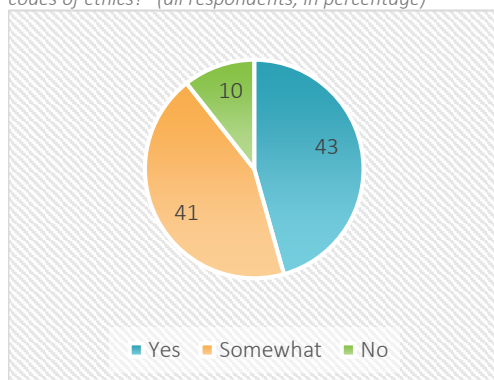
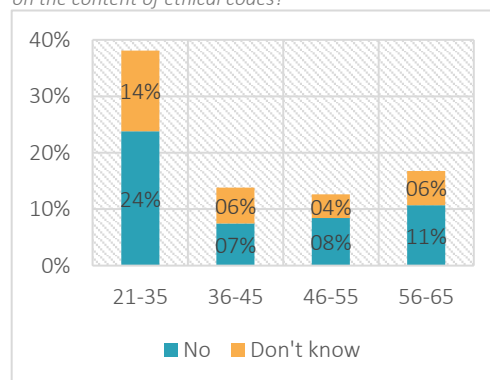


Figure 24 "Are there sufficient mechanisms within the justice sector where judges and prosecutors can consult on the content of ethical codes?"





The third question aimed to rate the quality of trainings on ethics offered by the Kosovo Institute for Justice. **Most respondents (42%) rate the quality of trainings as average and 39% think it is high or very high.** A very small minority rate the quality as very low. There is once again a difference in terms of age groups, as a majority of young respondents rate the quality as ranging from average to very low. There were no significant differences to answers to this question between prosecutors and judges or between various courts or prosecution offices.

Figure 25 "How would you rate the quality of trainings on ethics offered by the Kosovo Institute for Justice?" (all respondents, in percent)

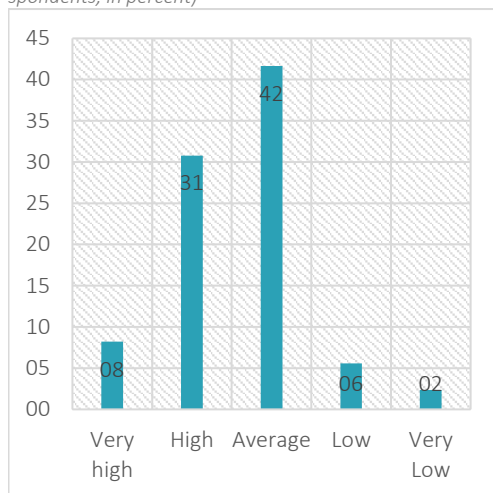
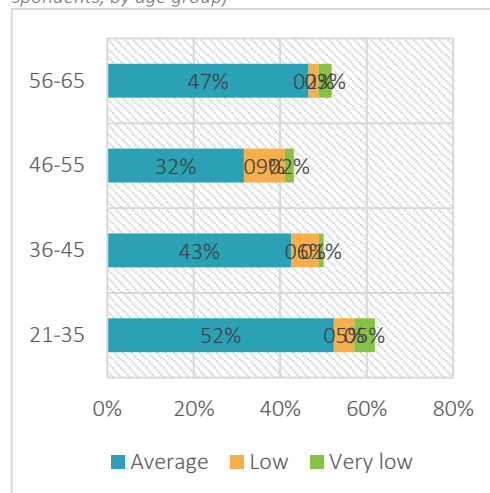
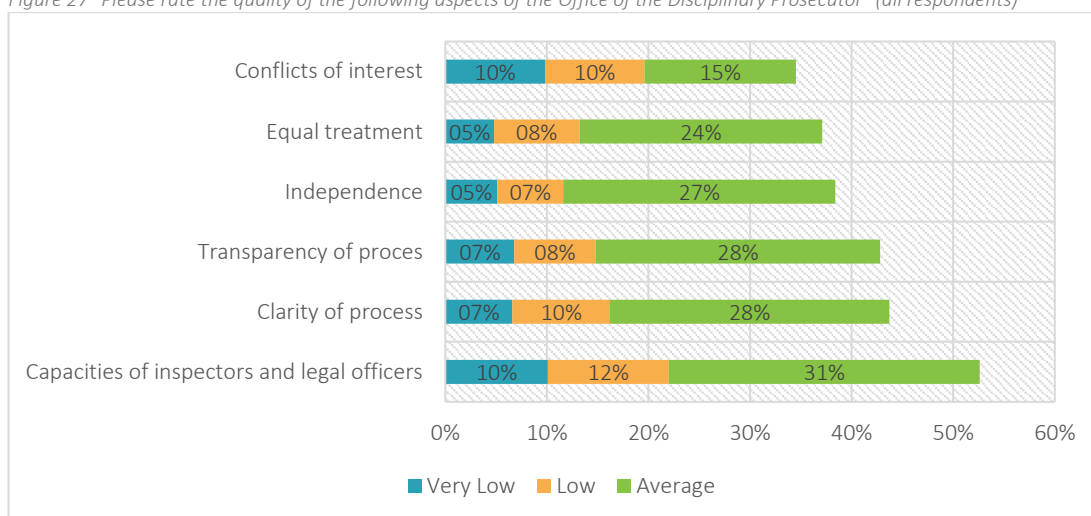


Figure 26 "How would you rate the quality of trainings on ethics offered by the Kosovo Institute of Justice?" (all respondents, by age group)



The last question aimed to evaluate the work of the Office of the Disciplinary Prosecutor. Respondents were asked to rate the quality of several aspects on a range from very low to very high. The graph below illustrates the results for each of these dimensions, but only presenting the share of those rating "average", "low", or "very low". This would give some kind of a scale to understand in what area there is more space for improvement, as even a rating of "average" indicate some degree of dissatisfaction. **The graph illustrates that a majority of judges and prosecutors think there are issues with the capacities of inspectors and legal officers.** In fact, 10% of respondents find these capacities to be "very low". The second least rated quality are the transparency and the clarity of the process. Nevertheless, please note that while conflicts of interest are the least problematic in first sight, they have the second highest negativity rate among respondents – "very low" (10%) or "low" (10%).

Figure 27 "Please rate the quality of the following aspects of the Office of the Disciplinary Prosecutor" (all respondents)



### 3.5 Transparency and confidentiality

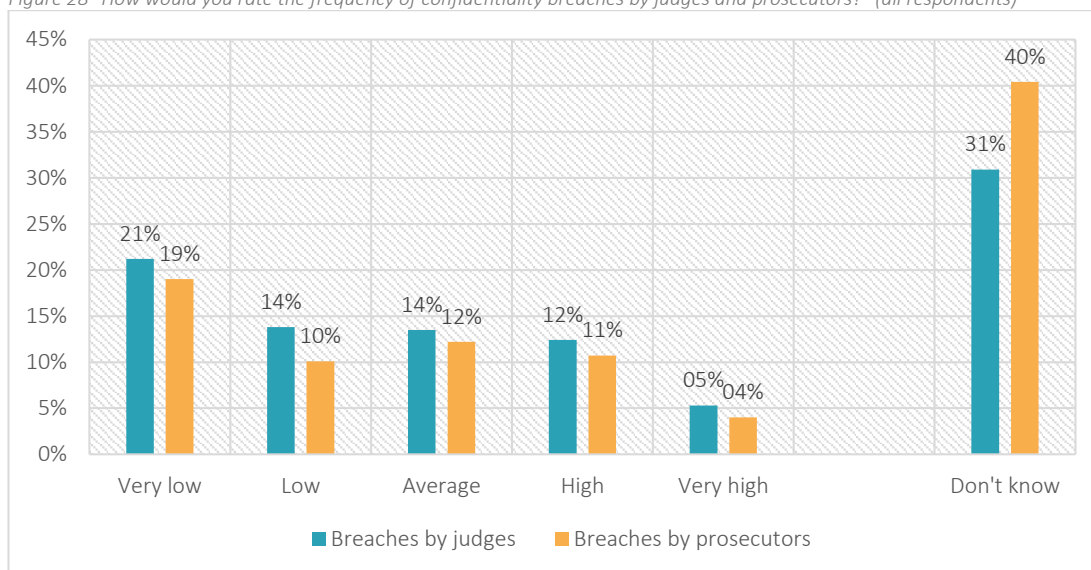
Judiciary system workers handle sensitive information and have to juggle between being transparent on the one hand and protecting citizens' private information on the other hand. To this end, the survey also attempted to assess the judicial system in terms of the practices related to transparency and confidentiality.

The first question in this section attempted to understand the degree to which confidentiality breaches were a common phenomenon. Respondents were asked to rate the frequency of confidentiality breaches by judges and prosecutors on a range from very low to very high. The results are presented in the graph below.

From those respondents who provided an answer, **there is a general tendency to say that the frequency is on the low side of the spectrum**. Around a third of respondents say that confidentiality breaches are a low or very low occurring phenomenon. However, **the share of respondents who said "don't know" is also very high**, capturing again a third or even 40% of respondents (in the question on prosecutors). This once again follows the pattern of high non-response rates or reluctance to express an opinion when the matter at hand is more sensitive, or when the answer would have direct implications on the respondent – i.e. where knowledge of breaches would even create potential legal liability.

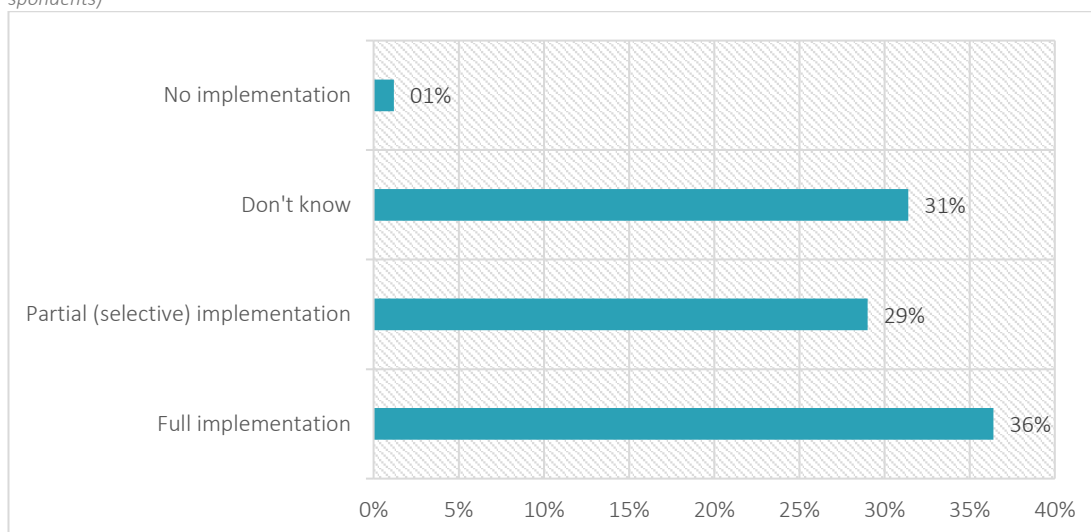
What is also worth noting is that **around a third of respondents find confidentiality breaches to be an occurring phenomenon by rating it as "average", "high" or "very high"**. There is a need to remind again that this does not mean that 1/3 of judges and prosecutors engage in breaches of confidentiality – objectively this number could be smaller or larger. What this means is that at least 1/3 of judges and prosecutors admit there is a problem and are willing to be critical towards the judiciary and unethical practices. And a third of respondents expressing their concern is not a negligible number.

Figure 28 "How would you rate the frequency of confidentiality breaches by judges and prosecutors?" (all respondents)



The following question attempted to assess the degree of transparency in the judiciary. The question could be asked in general, but one proxy way of getting a feel of the practice is by making it more specific and tying it to the Law on Access to Official Documents, which has been in place for more than a decade. Respondents were asked to rate the implementation of the Law within the justice sector. Interestingly, respondents are once again divided into thirds on this question. As illustrated by the graph below, **most respondents think that there is full implementation of the law (36,4%)**, but 31,4% are unable to provide an answer. However, **29% think that implementation is partial and selective**.

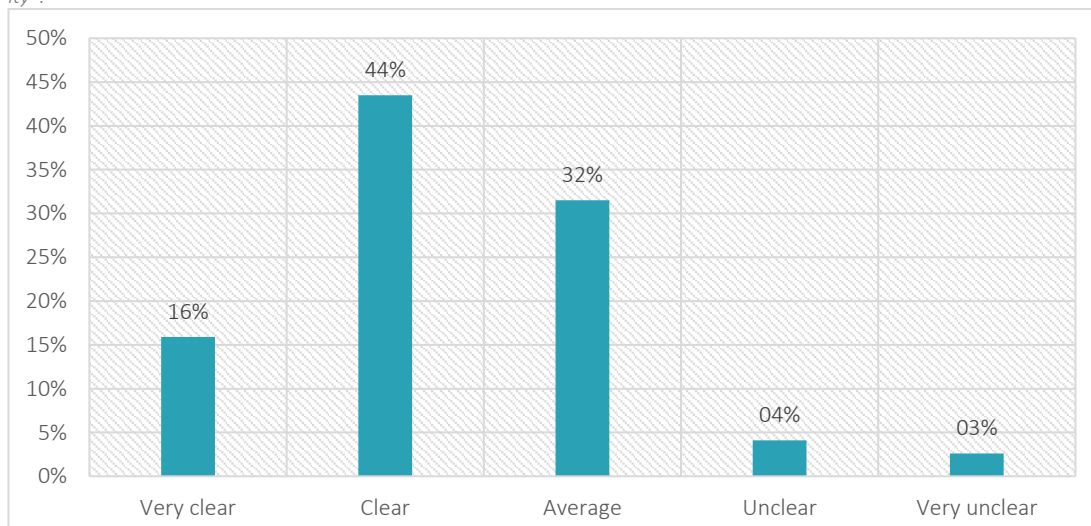
Figure 29 "How would you rate the implementation of the Law on Access to Official Documents by the justice sector" (all respondents)



The third question was related to whether the ethical codes were clear in terms of the rules related to transparency and protection of confidentiality. In sum, a majority of respondents (60%) think that the ethical codes are clear or very clear on these matters. Nevertheless, it must be noted that **the remaining 40% rate the ethical codes on a range from average to very unclear**. There is no clear difference to the answers on this question between judges and prosecutors.

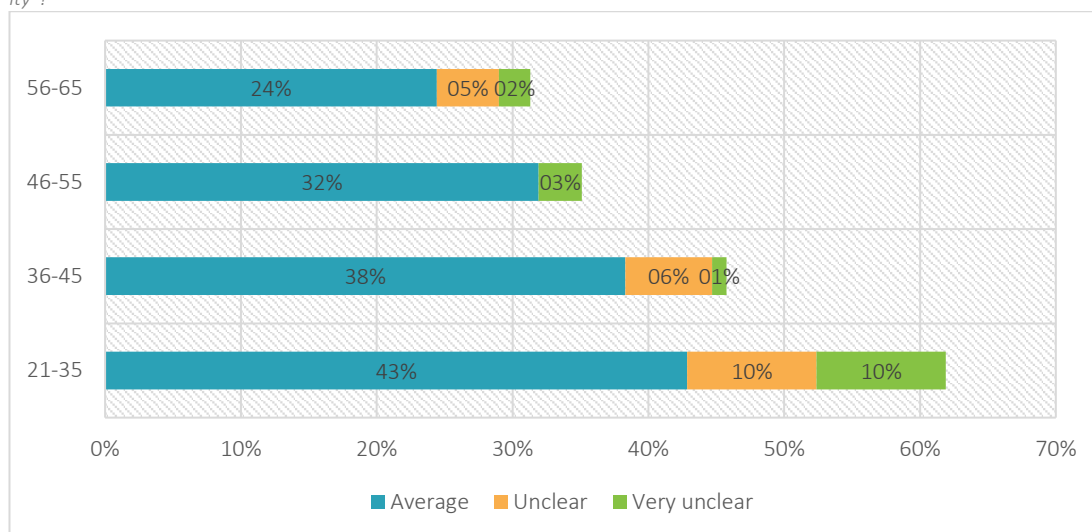
Here in this question, we are once again faced with a dilemma of interpretation: is the perception of the majority a sign that the ethical codes are clear and very clear, or does the fact that 40% see some issue with it a sign of concern? If 40% of judges and prosecutors find that there are issues with the clarity of ethical codes, and 7% see them as unclear or very unclear, that means **there are a considerable number who are uninformed and would not know how to react to certain situations, therefore creating undesired outcomes in the judiciary**. Furthermore, there is no reason to doubt the honesty of respondents in this question, as judges and prosecutors have no vested interest in the matter and face no direct consequences from answering one way or another.

Figure 30 "Are laws, regulations and ethical codes clear in terms of rules related to transparency and protection of confidentiality"?



One important thing to note is the difference in the response to this question by age groups. As the graph below illustrates, **younger judges and prosecutors have much greater concerns with regard to the clarity of laws, regulations and ethical codes on transparency and confidentiality**. The younger the age, the higher the lack of clarity of laws, regulations and ethical codes. This could be the result of lack of experience or lack of familiarity with regulations or ethical codes.

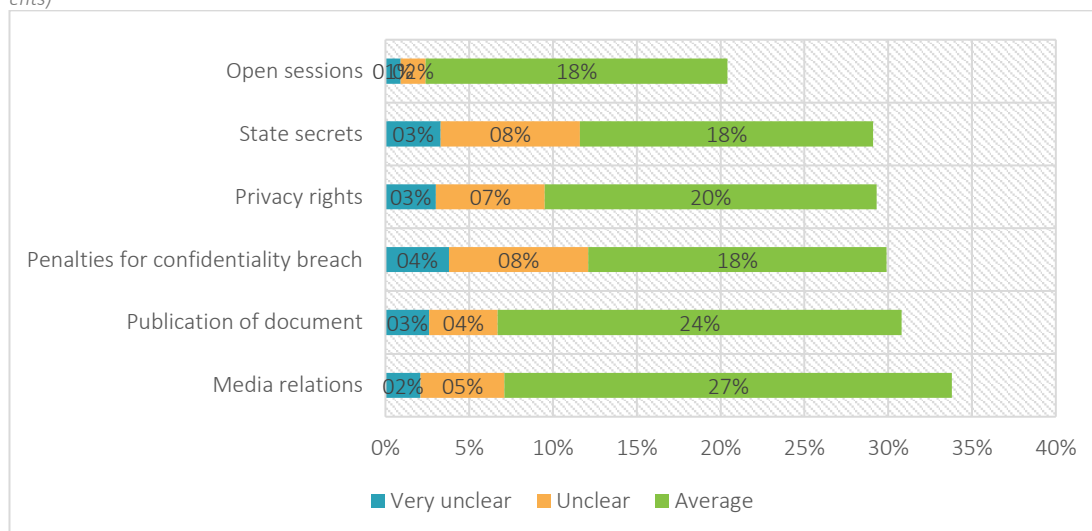
Figure 31 "Are laws, regulations and ethical codes clear in terms of rules related to transparency and protection of confidentiality?"



The following question attempted to delve a bit deeper in the issue of clarity of laws, regulations and ethical codes by looking into particular aspects that are unclear. To this end, respondents were asked to rate which aspects of the ethical codes were the least or most clear, on a scale from very unclear to very clear. Once again, we present the answers only from those who admitted to some kind of lack of clarity and answered: "average", "unclear" or "very unclear".

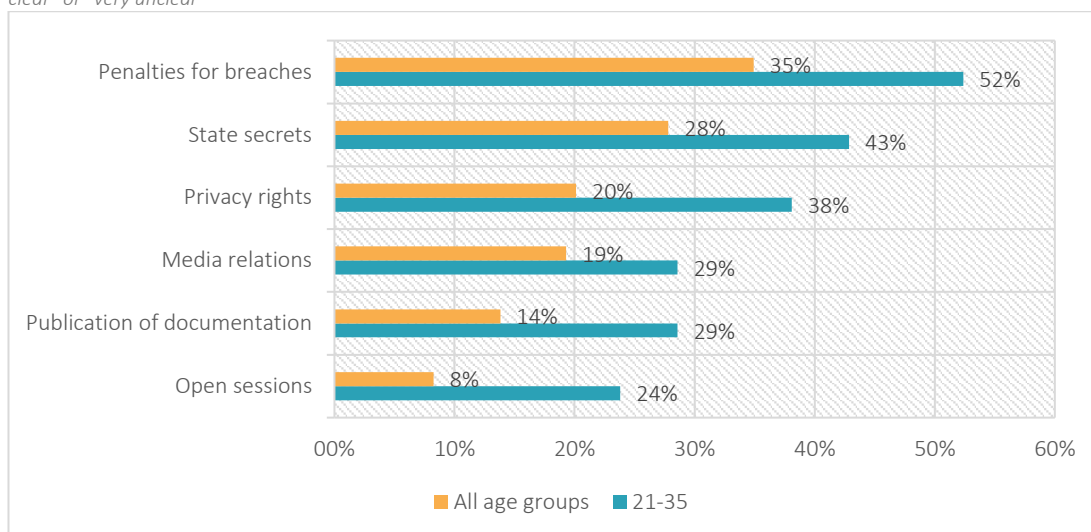
To this end, the issues with **the highest rate of lack of clarity is media relations**. Namely, a third of judges and prosecutors said that there is a bit of lack of clarity in general in terms of how they should handle the media. But if "media relations" is too general, the other issues are a bit more specific. What should specifically be noted is that the highest rate of those who were most negative answered "very unclear" and "unclear" reported issues with state secrets (12%) and penalties for breaches of confidentiality (13%). The answers to these questions provide some clarity in terms of areas of intervention.

Figure 32 "Please rate the laws, regulations and current codes of ethics in relation to their clarity on these issues" (all respondents)



Once again, the answers to this question differ by age groups. **The younger generation of judges and prosecutors seem to have much less clarity with regard to the clarity of rules on transparency and confidentiality.** The graph below shows the disaggregation of the answers to this question based on how the age group 21-35 answered and how the rest of the respondents answered. In almost all issues, the age group 21-35 had a much higher rate of lack of clarity.

Figure 33 "Please rate laws, regulations and codes on following issues" (age comparison) - those who answered "average", "unclear" or "very unclear"

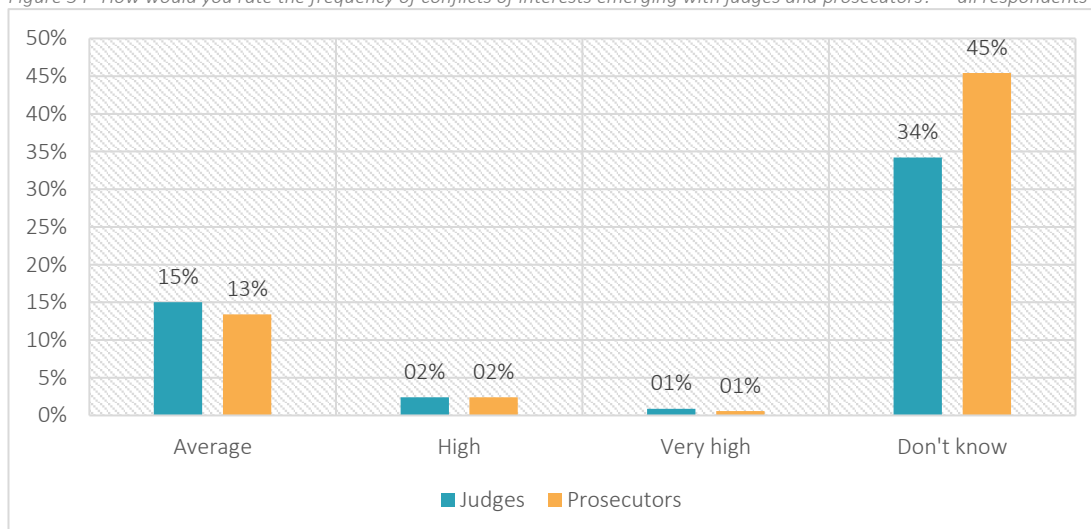


### 3.6 Conflict of interest

Conflicts of interest hamper the ability of justice sector workers to pass unbiased and fair judgments in their work. The following set of questions aimed to assess the degree of occurrence of conflicts of interest within the judiciary. The first question was a general question where respondents were asked to rate the frequency of conflicts of interests.

As the graph below illustrates, **a very small share of respondents think that conflicts of interests are a high (1%) or very high occurrence (2%)**. Around 13-15% of respondents think that conflicts of interest are an average occurrence. Most respondents chose to say that they “don’t know”. There is no significant difference in the answers to this question based on respondent characteristics (age, court where serving, etc.).

Figure 34 "How would you rate the frequency of conflicts of interests emerging with judges and prosecutors?" - all respondents



While only a small share of respondents see conflicts of interest as an occurring phenomenon, **a bit higher share of them is willing to admit when asked to think of their occurrence in particular situations**. The following question (graph below) asked respondents to rate the frequency of various types of conflict of interest situations occurring among judges. Here, a bit more than 20% of respondents admit that family ties or social ties to cases do occur “sometimes”. A considerably smaller share (around 3%) think that these types of conflicts of interest occur “very often”. The two other types of conflicts

of interest have a reportedly much lower occurrence.

Just like in other questions that are more sensitive and have direct implications on the respondents, the answers to this question also have a large share of respondents choosing “don’t know” as an option. Similarly, the “don’t know” option is chosen more frequently on more sensitive questions related to financial and material benefits.

Figure 35 "Please rate the frequency of the following types of conflict of interests emerging with judges"

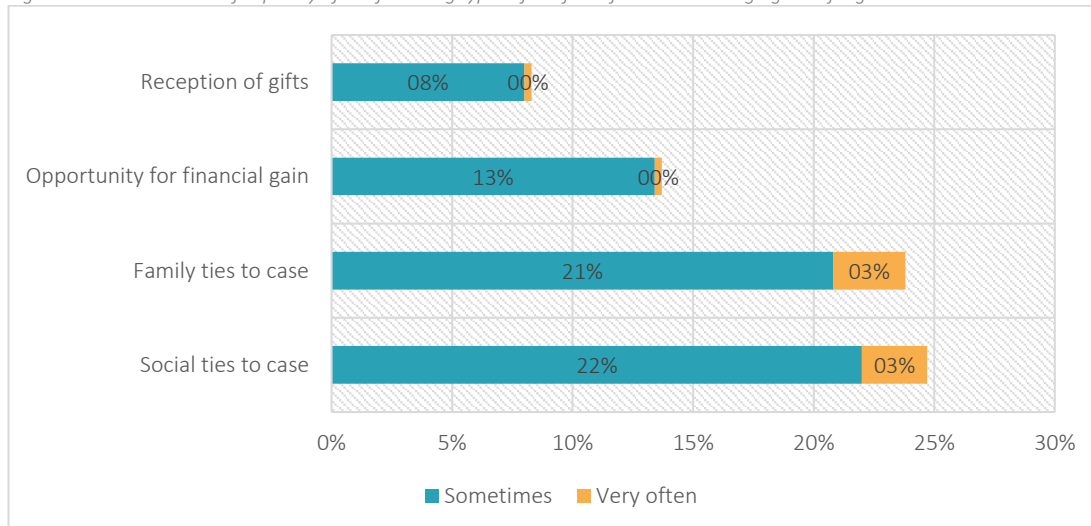
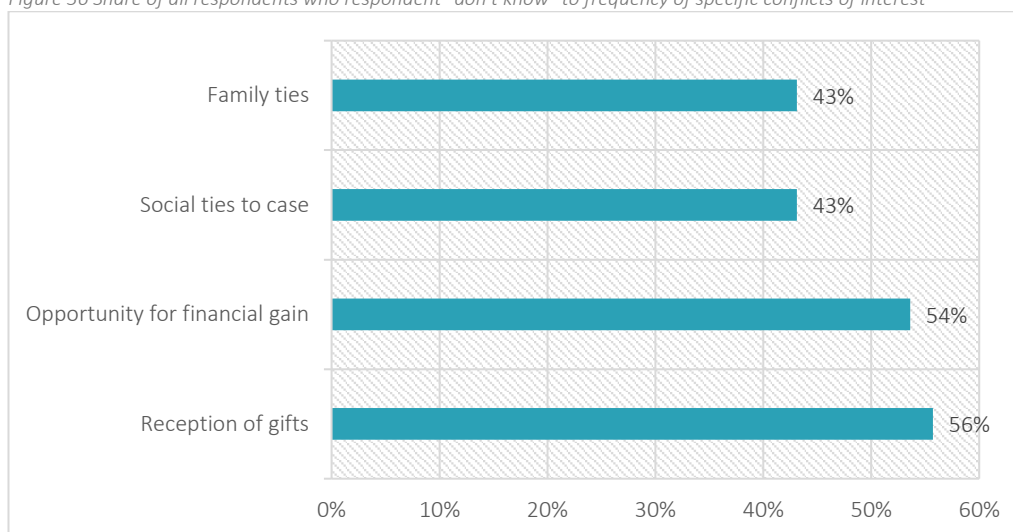


Figure 36 Share of all respondents who respond "don't know" to frequency of specific conflicts of interest



The final question in the survey asked respondents to assess the sufficiency of the existing mechanisms within the justice sector for judges and prosecutors to consult or react / resolve conflicts of interest. Respondents were asked to answer with “yes”, “somewhat” and “no”. The graph below presents the results.

In general, **most respondents think that there are sufficient mechanisms to solve and consult on conflicts of interest.** A larger share are more positive about mechanisms to resolve conflicts of interests than they are for mechanisms for consultation. Nevertheless, a considerable number (around 1/5) think these mechanisms are not sufficient or chose not to answer. The following graph also illustrates a slight difference in answers between the younger generation of judges and prosecutors (21-35) and the other age groups. The younger age group is more likely to respond with no or to refuse to answer – a quarter of respondents from this age group are a bit more sceptical.

Figure 37 "Are there sufficient mechanisms within the justices sector for judges and prosecutors to consult on conflicts of interest?" (all respondents)

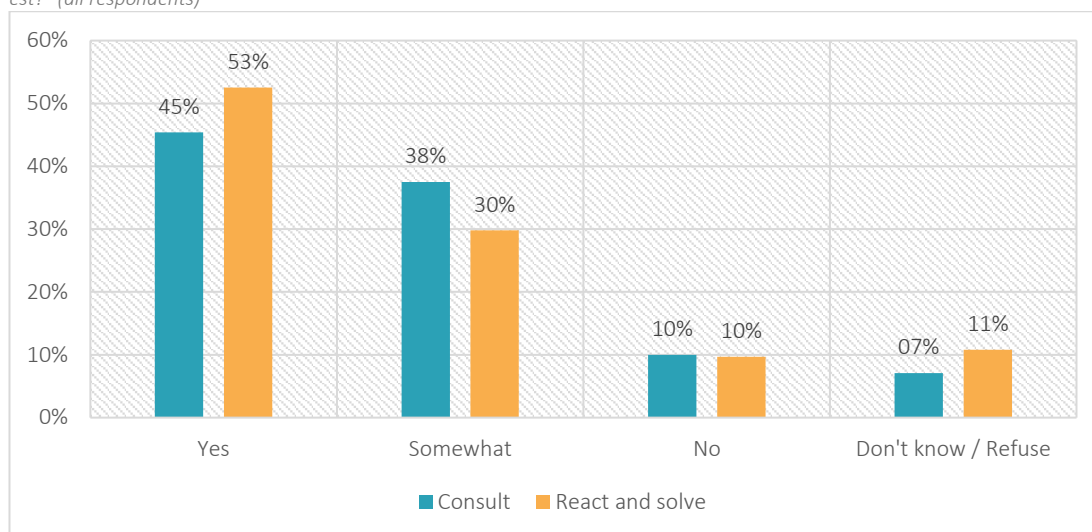
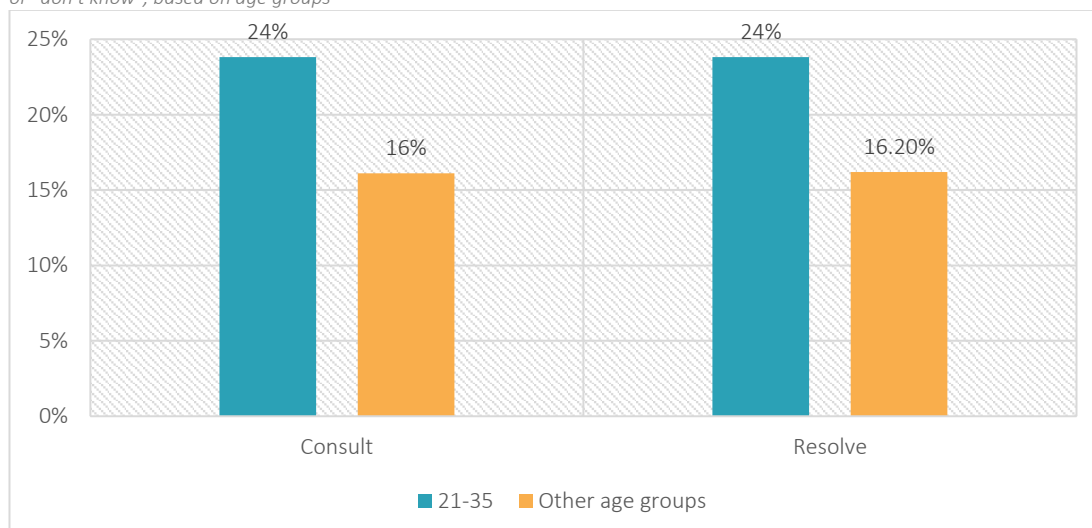


Figure 38 "Are there sufficient mechanisms to resolve or consult on conflicts of interest" - Share of all respondents who said "no" or "don't know", based on age groups



### 3.7 Survey conclusions

#### 1. In general, most judges and prosecutors rate the judicial system as playing fair and view ethical problems as coming from a minority of judges and prosecutors.

When excluding those who responded with “don’t know” or “refused to answer” and if not prejudging their motives for not expressing an opinion, those who are satisfied with standards of integrity constitute a majority of respondents on almost all issues. To this end, and in contrast to public perception surveys, most judges view the judiciary as generally independent from external influences. They also consider conflicts of interest and breaches of confidentiality as rare occasions and the trainings by the Kosovo Judicial Institute (now the Academy of Justice) as qualitative. According to this group, ethical breaches are seen by most respondents as the work of a small minority of judges and prosecutors. Furthermore, the majority rate existing mechanisms for integrity – ethical codes and bodies such as the Office of the Disciplinary Prosecutor – as generally clear and comprehensive documents.

As noted in the introductory chapter on methodology, these are not necessarily objective facts about adherence to integrity standards in the judiciary, but perceptions held by those who work in the system. For the most part they may be true. But the fact that there is a discrepancy between what the

judiciary thinks of itself and the low public trust in its fairness, this indicates the existence of a challenge for the judiciary to communicate its successes more effectively. There is therefore a need to counter balance the tendency of media reports to focus on scandals and negative aspects of the work of the judiciary (which is a normal occurrence in countries like Kosovo), by allowing public opinion to also see positive cases and get a more balanced view.

**2. Nevertheless, there is a considerable share of judges and prosecutors (20-35%) who show varying degrees of concern with integrity standards in the system. The existence of this segment within the system and their answers indicate that ethical breaches are in some cases not just sporadic, but somewhat systematic occurrences, even if they are coming from a minority of judges and prosecutors (which most judges think is the case).**

It was noted in the elaboration of the methodology that this is somewhat of a self-evaluation survey, with many sensitive questions, and that there are obvious incentives for respondents to perhaps not be truthful in their responses. To this end, the survey attempted to create some pathways for respondents to feel freer to admit that problems exist without explicitly rating the system in which they work negatively. One of the key ways to do this was to allow them to rate certain aspects on a five scale range, from “very low” to “very high”.

From an interpretation perspective, the first key question here was what to make of those who report adherence to ethical standards or frequency of ethical breaches being “average”? What does “average” mean for integrity standards? Our assessment is that the selection of this option is an admission of the existence of problems in the particular area that are not just sporadic but occur somewhat frequently. Ostensibly, the choice of this option is a sign of being critical without wanting to appear to criticize.

Having said that, the segment of the judiciary which seems to admit to the existence of more systematic problems within the system can be roughly said to constitute, depending on the issues, somewhere between 20% and 35% of the judges and prosecutors. This group is divided into two categories. There is a portion of the respondents (hovering between 5-10%) who are openly willing to express high or very high dissatisfaction with integrity standards on most issues. Then there is the group choosing “average”, which adds another 10-25%.

Most judges and prosecutors nevertheless consider unethical behaviour to be not intentional and driven by malice but as the product of circumstances (high workload and no knowledge on ethical standards). Nevertheless, a quarter of respondents’ view financial motives and personal favours as drivers to be taken into account.

**3. Most judges and prosecutors view the judiciary as independent and as having no systematic biases against social groups. Nevertheless, a considerable share of respondents admit to some level of intrusions. The selection of court presidents, financing decisions on the judiciary as well as public statements in the media related to cases are seen as the most common situation where external interventions occur.**

The independence of the judiciary is the area which judges and prosecutors rate the system most positively in terms of adherence to ethical standards. Even in those cases where dissatisfaction is expressed, criticism is directed towards those higher up the chain of command, especially at the political level. Judges and prosecutors admit to the existence of ethical problems more when they are asked to think about specific situations where interferences occur (20-30%), rather than when asked to rate the types of pressure they face (10-20%). Among judges, perception of interference is greater the higher the level of the court is, whereas within the prosecution, the Special Prosecution is the most critical institution

In terms of the drivers of external influence, media pressure as well as social and family ties to cases seem to be a more frequently occurring phenomenon. In terms of situations where interferences occur, of particular concern with regard to independence of the judiciary are the processes of appointing Court Presidents, making financing decisions for the judiciary. The appointment of judges seen as facing less external intervention, but older judges and prosecutors are more sceptical than young



ones. At least one fifth of judges and prosecutors also find public statements in the media as a frequently occurring phenomenon.

**4. Most judges and prosecutors are generally satisfied with their ethical codes but many see some obvious areas for improvement. They are slightly less satisfied with the mechanisms for disciplinary action or trainings on ethics. In some cases, there are clear differences in opinion between younger and older respondents.**

Most judges and prosecutors are generally satisfied with the quality of their respective ethical codes. Prosecutors, however, are slightly less satisfied with the quality of their code than judges. Areas where there is room for improvement in both ethical codes include the scope of issues that they cover and, somewhat less, their clarity. Judges and prosecutors are slightly less enthusiastic about mechanisms for consultation on ethical practices – especially the younger generations, a considerable number of whom have no information about them or think they aren't sufficient.

The degree of satisfaction is smaller when it comes to trainings on ethics and mechanisms for disciplinary action. Most respondents view the quality of trainings by the Kosovo Judicial Institute as average while a majority of younger respondents (21-35) see the trainings as "average" to "very low". A majority of respondents also find issues with the capacities of the inspectors working for the Office of Disciplinary Prosecutor and a considerable minority (20%) think conflicts of interest within this office are a problem.

**5. A considerable number of judges and prosecutors see confidentiality breaches as an occurring phenomenon and transparency as selective and partial. Many also find that ethical codes are not necessarily very clear on these two points.**

While most respondents rate the judiciary as performing well in terms of respecting confidentiality and transparency rules, a considerable share are critical. At least a third of judges and prosecutors admit, to varying degrees, that there is a problem with confidentiality breaches. A similar share think that the implementation of the Law on Access to Official Documents, a proxy for transparency, is partial and selective. An even higher share (40%) express concerns with regard to the clarity of ethical codes on these matters. This means that there are a considerable number who are uninformed and would not know how to react to certain situations. Younger judges and prosecutors have much greater concerns with regard to the clarity of laws, regulations and ethical codes on transparency and confidentiality.

**6. Conflicts of interest are seen as less of an issue, but quite a few think that social and family ties to cases do occur.**

A small minority of respondents view conflicts of interest as a very frequent occurrence. Nevertheless, there are a lot of rejections to the answer to this question (a third) and respondents are more likely to admit to conflicts of interests occurring "sometimes" or "very often" when asked about specific situations rather than in general. To this end, slightly less than a quarter of judges find that social and family ties to cases do occur. More respondents are aware of mechanisms to resolve conflicts of interest rather than mechanisms to consult about them. Younger generation of judges and prosecutors (21-35) generally show less awareness on these mechanisms.

## 4. Recommendations

**1. Public trust in the judiciary can only be regained through comprehensive reforms, but it can also partially improve through more effective communication and increased transparency.** The KJC and KPC should work more effectively and more systematically with media and civil society to raise public awareness on internal integrity mechanisms and showcase positive cases. The KJC and KPC should also increase the level of transparency of disciplinary proceedings so that citizens receive sufficient information on the measures taken against prosecutors and judges. Also, 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. The KJC should also consider issuing a charter of service that clearly informs citizens of the ethical commitment and standards applicable to judges and staff. Last but not least, creative public information campaigns or media stories illustrating internal accountability mechanics could somewhat help in bridging the gap between the perception from the outside and the perception from the inside the justice system.

**2. Judges and prosecutors need to be further empowered to voice their concerns about integrity issues and to get involved in designing solutions.** The KJC and KPC need to continue to create spaces for dialogue and free expression so that the voice of those within the system who have objections can be heard. Anonymous integrity scans of this nature should be made periodic and with a consistent methodology so that those who are critical can express their objections and changes (improvements or regressions) can be measured year-on-year. In addition, judges and prosecutors need to be more involved in designing solutions to integrity challenges. The KJC and KPC, as well as court presidents and chief prosecutors should convene discussion meetings with judges/prosecutors and professional 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.

**3. Specific measures need to be taken to address external influences in the work of the judiciary from political, commercial or other interests.** The Ministry of Justice and political leaders in general should take necessary steps to eliminate all doubts related to political interference in judiciary processes, including here refraining from making public statements about cases. Court presidents and the KJC should meet periodically with those responsible for court security and conduct a review of security measures. Chief prosecutors and KPC should do the same. 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. 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.

**4. There is space to improve process of recruitments and case assignments, as they are critical, among other things, in ensuring public trust in judicial outcomes.** The KJC and KPC should use objective criteria, always based on merit and integrity, in the selection process of judges and prosecutors, as well as office staff. The KJC should also 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. The KPC should also 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 by both the KPC and KJC 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.

**5. Codes of Ethics should be updated in order to expand the scope of issues covered and give clearer definitions, while trainings on ethics should become mandatory and periodical.** A process of consultations should be initiated to update the Codes of Ethics, as it is normal for documents of this nature to improve based on inputs from experiences. Consultations should take into account recommendations from judges and prosecutors on expanding the scope of issues with which they are faced with should clarify and unequivocally define specific situations. Some of the issues that could be clarified are those

identified in this report's survey. The Codes of Ethics should also be associated with explanatory memoranda. 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. Particular focus should be given to young judges and prosecutors. The KJC should consider something similar for judges and court staff, through something like the KBA Continuous Compulsory Legal Education Program. Both the KPC and KJC should also request continuous legal education training on judicial ethics to the Academy of Justice that is based on needs identified by prosecutors and judges.

**6. The technical capacities of the disciplinary mechanisms need to be strengthened, as do the trainings related to ethics.** Both judiciary and prosecution attach low trust and confidence on the capabilities of ODC to carry out investigations, which begs the need to reform ODC. Efforts need to be undertaken to strengthen the technical capacities of the Office of the Disciplinary Prosecutor (ODC). A mapping of capacity building needs would be a first start that would be followed by at least a training program to be offered and possible other measures to be undertaken by the disciplinary mechanisms. KJC and KPC need to take measures to inform and instruct young judges and prosecutors entering the system on the available mechanisms for consultation on ethical standards, as many seem to be uninformed. The Academy of Justice also needs to review its training program on ethics to reflect the concerns expressed by judges and prosecutors.

**7. General reforms in the justice sector should aim to reduce the high workload of judges and prosecutors, which increases stress to reach performance targets and creates incentives to cut corners on integrity issues.** KJC and KPC should use their constitutional power as independent branches of government to ensure adequate resources (budget, physical infrastructure and human resources) as a means of not only improving general effectiveness, but also lowering high workload of judges and prosecutors. They also need to assess ways how to modify incentives so that judges and prosecutors don't have to prioritize speed in resolving cases ahead of professional and integrity standards. An internal dialogue is needed on how to balance performance measurement so as not to be overtly focused on number of cases solved but also include quality components related to ethical standards.