





REPORT OF THE LEGAL ADVICE CENTER FOR VICTIMS, **WITNESSES AND REPORTERS OF CORRUPTION**











TRANSPARENCY AND ANTI-CORRUPTION









WAITING FOR JUSTICE

REPORT OF THE LEGAL ADVICE CENTER FOR VICTIMS, WITNESSES AND REPORTERS OF CORRUPTION

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ABBREVIATIONS

KDI → Kosovo Democratic Institute

KJC → Kosovo Judicial Council **BCP** → Basic Court in Prishtina

ALAC → Advocacy and Legal Advice Center

KPA → Kosovo Property AgencyKTA → Kosovo Trust Agency

EULEX → European Union Rule of Law Mission in Kosovo

EXECUTIVE SUMMARY

In 2015, the Legal Advice Center for victims, witnesses and those reporting corruption within the KDI published a report titled Corruption: What is your story?, thereby presenting the main statistics of the Center. The majority of cases reported were related to the judicial sector, respectively the time taken by courts to handle individual cases. Also, during 2016, the KDI continued to receive reports on cases related to courts and their poor performance.

This report aims to find the causes of such poor performance of courts in handing the cases. According to the statistics provided by Kosovo Judicial Council, the KDI analysed the status of backlog of cases by the end of 2015. The report also reflects on the backlog of cases in different years. Special emphasis was given to concrete cases reported to the KDI through the toll-free helpline 0800 77777.

Research has found that our courts still have pending cases since 1999. For four cases reported to the KDI Legal Advice Center, the issue of delayed proceedings pertains to delays in scheduling sessions, large number of cases under court proceeding within a year, and consequently the absence of judges and judicial support staff to handle such cases. There are other cases reported to the KDI further testifying to delay in proceedings, but parties involved in such cases have not consented to their publication, due to their fear of revenge by judges by further delaying of their cases. Delays in resolving such matters are confirmed by the KJC itself in a report, which states that the enforcement of a court ruling takes anywhere from 650 to 1500 days. Failure to ensure trial within reasonable time represents a violation of the Article 6 of the European Convention on Human Rights, a principle also enshrined in the laws and the Kosovo Constitution.

Based on such findings, the KDI recommends the KJC to address such issues in the shortest time possible, namely by increasing the number of judges and support staff for the courts (legal officers, legal advisors, professional associates and interns). The KDI requests KJC to address the need for establishing a functional system of handling cases, based on the following factors: case profiling or specialization (e.g.: organized crime, commercial cases,

property issues, fight against corruption, etc.), age, volume of work and potential conflicts of interest. It is recommended to KJC to improve the case management system, reporting and access to statistics.

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650 to 1500 days.

ABOUT THE REPORT

Awareness raising of citizens in reporting and addressing corruption remains one of the objectives of the KDI, respectively the Advocacy and Legal Advice Center (ALAC). By providing free legal advice, reporters of corruption, witnesses and victims of corruption are supported and empowered to demand justice and accountability for their cases, thereby becoming active stakeholders in the fight against corruption.

This report is a compilation of cases reported to the ALAC, presenting violations of fundamental rights of Kosovo citizens by the justice system. For a better understanding of the issue, the report illustrates the court tier system and statistics of judicial proceeding of cases.

COURT SYSTEM

Since 2013, the courts changed their titles and instances. The current judiciary system in Kosovo is comprised of the Basic Courts, the Court of Appeals and the Supreme Court.¹ The Basic Courts are courts of first instance, established in the seven largest municipalities: Prishtina, Gjilan, Prizren, Gjakova, Peja, Ferizaj and Mitrovica.² 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 Basic Courts.³ All basic courts have three departments handling (1) serious crimes, (2) general matters, and (3) juveniles, excluding the Basic Court in Prishtina, which has two additional departments: (1) commercial cases, (2) administrative cases, with jurisdiction Kosovo-wide.⁴

The Supreme Court is the highest court responsible for 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).⁵ In 2016, Kosovo consented to a new mandate for the EULEX, while earlier, in 2014, it also consented to the establishment of a provisional special tribunal for war crimes.

Before 2013, the judicial system had these structures: Municipal Courts, District Courts, and the Supreme Court. The system also comprised of the Minor Offence Court, the District Commercial Court in Prishtina, and the Special Chamber of the Supreme Court.

CASE HANDLING BY COURTS

According to the KJC report, all levels of the judiciary employ a total of 343 judges, supported further by a personnel of 1,441 people, including professional associates, legal secretaries, case management office employees, archiving officers, mailing clerks, spokespersons, aiding staff and administrators. Out of the 343 judges, the Supreme Court employs 14 judges, the Special Chamber has 13 judges, the Court of Appeals has 38 judges, while the basic courts have 278 judges.

The 343 judges carry the heavy burden of adjudicating more than 350 thousand cases, throughout the country, per one year, cases of very different nature: criminal, civil, administrative and minor offences. The heaviest burden of adjudicating the cases within a year falls upon the judges at the Basic Court level. The reason for such a large number of cases is that the Basic Court is the first instance court. Normally, these courts have the largest number of judges and support personnel.

According to a statistical report by the Kosovo Judicial Council, ⁸ by the end of 2014, all levels of judiciary had a total of 430,923 cases pending. These cases were carried over to 2015 as backlog cases, while this contingent of

¹ Official Gazette of the Republic of Kosovo. No. 79. Law no. 03/L-199. Law on Courts, Article 4. 24 August 2010, p. 2.

² Official Gazette of the Republic of Kosovo. No. 79. Law no. 03/L-199. Law on Courts, Article 9. 24 August 2010, p. 3.

³ Official Gazette of the Republic of Kosovo. No. 79. Law no. 03/L-199. Law on Courts, Article 18. 24 August 2010, p. 7.

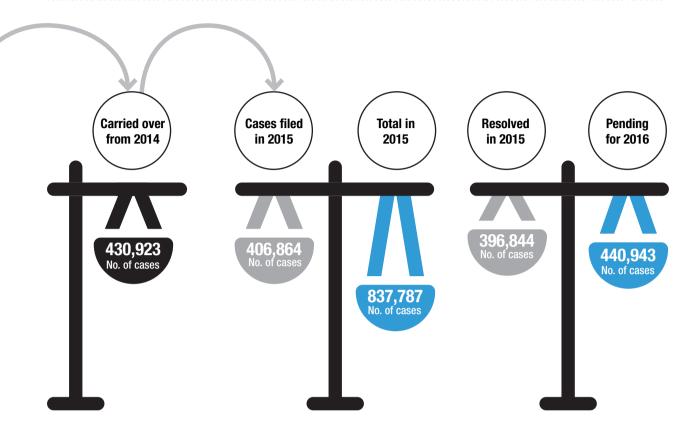
⁴ Official Gazette of the Republic of Kosovo. No. 79. Law no. 03/L-199. Law on Courts, Article 12. 24 August 2010, p. 5.

⁵ Official Gazette of the Republic of Kosovo. No. 79. Law no. 03/L-199. Law on Courts, Article 22. 24 August 2010, p. 9.

⁶ See: http://www.gjyqesori-rks.org/sq/kjc/report/list/1 page 3

⁷ Ibid.

⁸ Ibid.



matters was adduced with another 406,864 new cases filed in 2015. Consequently, courts throughout the country had a total of 837,787 cases ongoing or to be handled.9 By the end of 2015, our courts managed to resolve 396,844 cases, while a total of 440,943 pending and unsolved cases. of very different nature and category were carried over to 2016. This figure does not include fresh cases being filed in the year of 2016. Such a great number of pending cases has created the perception of poorly performing courts in the eyes of the general public. However, the courts continue to work on handling the cases. Only in 2015, a judge in the Basic Court handled an average of 29 cases per month. If we disaggregate further on the number of cases per working day, this means that a judge adjudicates, or handles in average 1,32 cases per working day. Despite the volume of performance of judges, citizens of Kosovo continue to suffer from the absence of timely proceeding of their cases, thereby representing a violation of Article 6, Paragraph 1¹⁰ of the European Convention on Human Rights, which provides on trial within reasonable time, a principle enshrined also in the laws and the Constitution of Kosovo.

The Kosovo courts continue to harbour unsolved cases filed before 10 years, and for which no court session has been scheduled, and no procedural action has been taken to even initiate handling of such cases.

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⁹ KDI has recognized that the generic table of cases as presented in the KJC official report has technical omissions in data disaggregation and further in their collection, and therefore, the conclusion was reached after data collection from tables for each judicial tier.

¹⁰ http://www.echr.coe.int/Documents/Convention_SQI.pdf

WHAT HAS (NOT) BEEN DONE TO REDUCE THE BACKLOG?

In 2013 the KJC approved a strategy for reducing the backlog of cases in courts. 11 According to this strategy, by the August of 2013, there were 142 thousand cases defined as old cases, including 91 thousand cases of enforcement. 2013 strategy considers all cases, which had been unsolved by our courts by the end of 2011, as old cases. The Backlog Reduction Strategy provided duties for the KJC and courts' management. According to the Strategy, these are strategic duties that the KJC and the courts would perform in implementing the strategy. Amongst others, it provided that all cases prescribed (statute of limitation) would be adjudicated with a template court decision on dismissal, prompt ruling on all cases involving guilty pleas and settlements, engagement of interns at no cost for the KJC, reappointment of judges depending on the needs of courts, etc. Most of the duties and assignments set forth by the Strategy have been completed or are ongoing, but the results, according to the statistics, show that despite all these efforts, there has not been much of a satisfactory result in reducing the backlog of cases.

Further, the number of pending cases before courts is further exacerbated by the minor offence proceedings. Only in 2015, the courts had 516,947 minor offence cases under proceeding, while cases that remained unhandled by the end of the year were 211,087, for a difference from the previous year, which had 189,785 cases pending. Therefore, the KJC statistics show that there is an increase by 21,302 cases only in minor offences. In September 2016, a new Law on Road Traffic12 entered into force, a law which sets forth new rules and higher fines for minor traffic offences. However, this Law, in its Article 259, provides that every fine that exceeds the amount of 60 Euros, would automatically turn into a case for court handling¹³ and at the same time, the majority of fines in the law exceed the amount of 60 Euros. Consequently, with the entry into force of the new Law, the courts will potentially receive even more minor offence cases to try. Only in 2015, the courts had

516,947

minor offence cases under proceeding,

On the other hand, if the KJC fails to take measures in considerably increasing the number of judges and support staff, then for several years, the number of pending cases may as well double.

A reoccurring concern is the number of older cases in criminal, civil, commercial and administrative law that have been left unsolved. By the end of 2015, according to official KJC statistics¹⁴ pending cases in all these sectors totalled 63,281¹⁵. When comparing statistics in different years, one looks at cases dating since 1999 that haven't been processed or handled by the court.¹⁶

The trend in backlog of cases in the following years is only on the rise. Hence, in 2000, cases were carried over, in 2001 -51 cases, in 2002 - 79 cases, while in 2003, 132 cases were unfinished. By the end of 2015, there were already 20,546 pending cases. All these data can be viewed in the following table:

¹¹ NATIONAL STRATEGY FOR BACKLOG REDUCTION http://www.gjyqesori-rks.org/sq/kjc/report/list/3

¹² Law on Road Traffic Provisions 05/L-088, https://gzk.rks-gov.net/ ActDocumentDetail.aspx?ActID=12822

¹³ Article 259: Fines in cash: The Police officer who regulates and oversees the road traffic at the place of the offense shall impose a fine of up to sixty (60) Euros. Offenses above this amount shall be proceeded to the competent court.

¹⁴ KDI filed an application for access to public documents and obtained the KJC statistics.

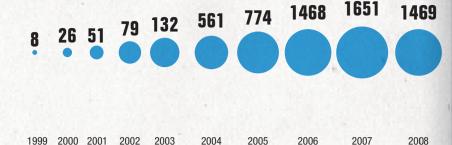
¹⁵ The total does not include minor offence cases and cases pending enforcement in criminal and civil law.

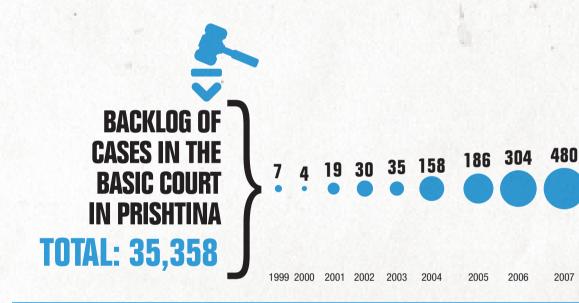
¹⁶ The Basic Court in Prishtina has inherited 5 civil cases, and 2 criminal cases in the Department of Serious Crimes, while the Basic Court in Mitrovica has one criminal law case again in the Department of Serious Crimes.



CASE BACKLOG TRENDS BY 2015

TOTAL: 63,281







The number of pending criminal cases (excluding serious crimes and juvenile criminal cases) in the Basic Court in

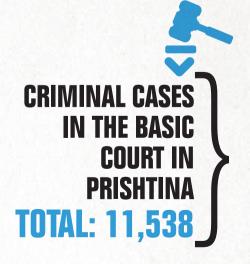
Prishtina by the early 2016 totalled 11,538. See Table 3 below:

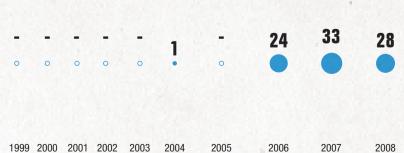
1017

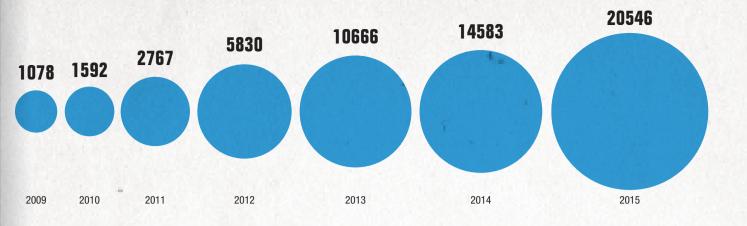
2008

727

2009



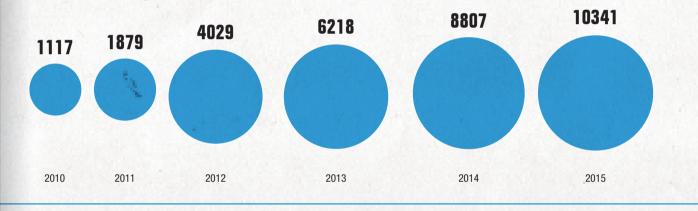


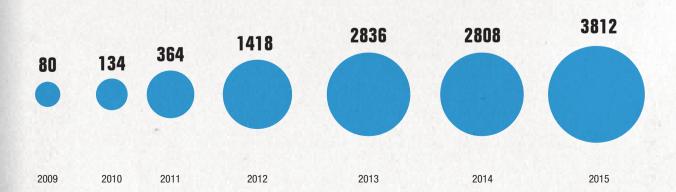




Based on KJC statistics, the Basic Court in Prishtina, the largest one in the country, leads with the unsolved cases in years. The Basic Court in Prishtina, with its branches in Lipjan, Drenas, Podujeva and Graçanicë, has a total of

44,785 cases pending. Only the Basic Court in Prishtina, without its branches, has a record figure of 35,358 cases remaining unsolved by the end of 2015. See Table 2 below:





In its report on courts' performance in enforcement of mortgage, bankruptcy or tax-related cases, the KJC states that the courts needed an average of 650 - 1500 days to handle one case.¹⁷ This is amongst the first public KJC reports related to the time needed for the Kosovo Judiciary to enforce the rulings, without calculating the time these cases took to come to a final ruling. The KJC has never published any analysis on the average time needed for a case to be resolved. from the time of filing to the finality of the ruling on that matter, and then enforcement thereof. Also, there is no analysis on the budget required per case until its total conclusion, or the budget spent in each tier of the court. On the other hand, there is no statistical report showing how much the citizens spend on civil, administrative, commercial or criminal disputes.

17 See: http://www.gjyqesori-rks.org/GetDocument/2414

Only the Basic Court in Prishtina, without its branches, has a record figure of



cases remaining unsolved by the end of 2015

The number of pending criminal cases (excluding serious crimes and juvenile criminal cases) in the Basic Court in Prishtina by the early 2016 totalled





STATUTE OF LIMITATION AS A "MEASURE" TO REDUCE BACKLOG

Poor performance of the judges, but also the insufficient number of judges, have often resulted in unprocessed or prescribed cases. According to reports of civil society organizations, it is not rare for the cases to fall under statute of limitation, and there are cases being prescribed every day of the year. According to such research consulted by the KDI, it results that many cases were prescribed due to passivity of judges, namely due to relative statute of limitation. In such cases, the judges failed to take timely action as provided by law, and that is why the cases were prescribed. In cases of relative statute of limitation, prevention of such prescription is rather simple, because a minor procedural action (e.g. scheduling a hearing and sending summons) halts such prescription. On the other hand, we also see a considerable number of cases of absolute prescription, which according to the law, would apply only if the time reaches at least double the harshest sentence for the relevant offence. Thus, in both cases, it is clear that the courts fail to take measures pursuant to applicable legislation, and therefore, the cases become old, and parties do not get any verdict on their liability or discharge. According to a report by the Organization Çohu!18, from 2000 and until 2013, a total of 10,504 cases in criminal law and enforcement of criminal sentences fell under statute of limitation, of which 5226 cases were subject to absolute prescription¹⁹. Pursuant to an earlier report of this organization, the justifications of judges in cases of prescription are: "a large number of cases, lack of judges, failure of the court and police to apprehend defendants, inaccurate addresses, hiding defendants, etc.".20

¹⁸ Report on Prescription in Basic Courts, page 21 http://cohu.org/repository/docs/Parashkrimi_2001-2013_cohu_735470.pdf

¹⁹ Report on Prescription in Basic Courts, page 33 http://cohu.org/repository/docs/Parashkrimi_2001-2013_cohu_735470.pdf

²⁰ Report on Prescription in Basic Courts, page 22 http://cohu.org/re-pository/docs/Parashkrimi_final_2013_84095_304261.pdf

CASES REPORTED TO THE KDI

The KDI has established a Legal Advice Center for witnesses, victims and reporters of corruption, thereby receiving quite a few cases related to trial within reasonable time. Protraction in handling these cases has given a way to officers that may influence their acceleration to demand a

bribe for it. Corrupt acts occur also when giving priority to cases that pertain to relatives of court personnel. Bribe was requested from two clients of our Centre, the cases of whom are elaborated below.



NN1²¹ from the Municipality of Podujeva had begun work as a security guard immediately after the war, in one of the largest enterprises in the country²² PAfter more than one year of work, while going to the workplace, the person was involved in an accident. The accident was caused by another employee of the enterprise. After spending some time in the hospital under due care, the enterprise offered the employee early retirement, and without clearly knowing what was being offered, he agreed. Later, he understood that he cannot go back to work, and due to occupational injury, he sued the employing enterprise, under the argument that, the accident had caused partial disability on his working place. The claim suit was

filed with the court in 2002. The hearings had begun in 2005, and after such hearings, NN1 had not won the dispute, and had appealed the ruling. The complaint was reviewed only in 2008, when the second instance court had remanded the case to trial. Upon retrial, NN1 had won the dispute, but now the responding enterprise had filed appeal with the higher court. Again, the second instance court remanded the case to trial, and the first instance court decided against NN1. Further, NN1 filed an appeal to the second instance court, and since 2014, is waiting for a ruling in his dispute. NN1 has been waiting for 14 years for an end to his case. Administrative fees that he has paid for these 14 years, according to the claimant, amount to over 10 thousand Euros. Much cost has been incurred by the courts in their hearings and rulings, and they continue to incur costs without concluding the case with a merit-based ruling, avoiding repeated remand to trial.

²² KDI protects the identity of parties involved in the case due to the request of the complaining/reporting party.



Administrative fees that he has paid for these **14 years**, according to the claimant, amount to **over 10 thousand Euros**.

²¹ NN1, a party registered in the KDI Legal Advice Center database, though protected in identity upon request.



NN2²³ from Mitrovica has a similar case of delay in court instances, and lacking enforcement. His case pertains to failure to compensate property acquired by the Municipality before the last war, namely the property was taken in 1996. Since compensation for the property was not adequate, NN2 had filed a claim with the former Municipal Court in Mitrovica, already in 1997, thereby winning the case. After the war, the ruling had not been enforced. Immediately after the war, NN2 regained interest in his case and proceeding. Initially, NN2 did not find the case files in the Court, the files being lost somewhere in the court's archives during the war. After much effort, NN2 managed to find the court ruling, and all case files, and the court did recreate the files. As soon as the enforcement decision was taken by the municipality, it disputed the same with the argument that it is not a legal heir of the pre-war municipality, and that there are no funds for compensation. NN2 replied to every complaint or letter of the municipality, and every court ruling was in his favour. The case must be enforced, the court had ordered, but no action was taken in terms of enforcement, and NN2, due to protracted proceeding and waiting in queues, decided to address a private enforcement

agent. When the municipality received the decision of the enforcement agent on the enforcement of the court judgment, it filed again a complaint to the court, initially to the first instance court (which was rejected), and further to the second instance court. NN2 is still waiting today for a conclusion of his case in the second instance court. His case hasn't reached a conclusion for 17 years. The case is characterized by consecutive delays at the various tiers of the judiciary, causing numerous expenses for NN2 and without administering justice in this case. If one calculates material and moral losses suffered by NN2 due to non-enjoyment of his rights, the figures would be high. Initially, loss of his property, from which the person would have generated minimum revenues, if he had been leasing the premises for 17 years, or a sale of property would be sufficient grounds to purchase a similar property. On the other hand, the party has incurred costs in terms of payment of counsel fees for the enforcement case, together with attendance in the court in case hearings, commitment to the case, emotional and mental investment, absence at work, and ultimately, submission of the case to the enforcement agent and costs related.

23 NN2, a party registered in the KDI Legal Advice Center database, though protected in identity upon request.



NN3²⁴ from the Municipality of Mitrovica is the third case reported to the KDI Legal Advice Center. In 2009, NN3 had filed a claim initiating a labour dispute with the Court. Initially, he had won the case at first instance court, but the responding enterprise had filed

24 NN3 a party registered in the KDI Legal Advice Center database, though protected in identity upon request.

for appeal, and the second instance court had remanded the case to trial. After four years, the first instance court had decided that the claimant had no grounds in his claims, and the case was rejected. Due to lack of funds, NN3 had missed all legal deadlines to file appeal, and therefore, he had lost the case and his job.



NN4²⁵ is different from the three first cases. NN4, from the Municipality of Skenderaj, had filed a claim suit in the early 2015, in relation to a property dispute with the Basic Court in Peja, Istog Branch. After the war, NN4 had bought some land in the Municipality of Istog, but due to personal circumstances, he did not register such land to his name. Since he could not notarize the purchase agreement with the Notary, because monetary transactions were not made through the bank, he had to sue the seller before the court. The seller, according to NN4, consented to the sale of the property made after the war, and agreed to transfer ownership to NN4. The latter had requested a hearing for several times in 2015, thereby notifying the court that the case would conclude by a settle-

ment between parties, and that there was only one hearing session to be held. Until the end of August 2016, two years after filing the case, the court failed to take any action in handling the case. Backlog of civil cases in the Basic Court in Peja, Branch in Istog, by the end of 2015 included 458 cases, of which most originated from 2014 and 2015²⁶. In this case, the party continues to be deprived of opportunity to enjoy the benefits of his property, since the certificate does not state his name as owner. In case of any investment, the party would not be able to mortgage his bought property for collateral. This problem would render impossible for the person to obtain any loan from a financial institution, and consequently prevent him from making any such investment.

25 NN4 a party registered in the KDI Legal Advice Center database, though protected in identity upon request

26 KDI filed an application to access public documents, and obtained statistics from the KJC.



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THE STATUS OF THESE CASES TODAY?

The KDI Legal Advice Center has received cases and has provided free legal advice in these cases, in which every principle of justice and trial within reasonable time has been violated. The four parties used the toll-free helpline 0800 77 7 777, thereby requiring legal assistance in their cases. In the first two cases and the last case, the KDI Legal Advice Center is still working and in permanent contact with the parties to obtain information on actions of the courts or other institutions. In the third case, after having requested access to the case files for NN3, KDI found that NN3 has no way to regain the missed deadlines in filling any complaint or appeal. The KDI Legal Advice Center continues its work in assisting the reporters, witnesses and victims of corruption that contact the helpline, or report to the KDI in other ways.

MAIN FINDINGS

Protraction in handling the cases, or failure to administer justice within a reasonable time remain current issues. If a party, be it in a civil, criminal, administrative or commercial proceeding, does not enjoy justice in a reasonable time, these citizens will not have many other paths to take before they resort to other means of handling such cases. The cases above are related to civil law proceedings and enforcement, in which the parties have been waiting for years to get final rulings, but also enforceable rulings. Despite all investment made in the justice system, courts still make the parties wait for years in concluding their cases.

Material and economic costs incurred by the parties, and the state itself, due to the endless trials for the same cases is another finding none the less important. The parties of these cases have double damages, initially as taxpayers, and secondly as parties to the proceedings. Based on the fees of the Bar²⁷, every procedural action by an attorney bears a certain cost, and when adding other costs, such as travel, absence from work, lost time, etc., it is clear that the parties have much to lose due to inefficiency and failure to administer justice in reasonable time.

Chronic lack of judges and support staff for the judges is another factor contributing to protraction of cases. An increase of budget for the judiciary would automatically translate into a larger number of judges and support staff. This increase would actually reduce the other costs incurred by the courts in handling and managing cases, and would considerably improve the performance of judges in handling cases. This would also reduce considerably the procedural expense the parties bear, and also legal counsel fees.

RECOMMENDATIONS



KJC must develop a functional system of case allocation, built upon a series of factors: case relevance, age, complexity of work, and potential conflicts of interest.



KJC must improve the functional case management system, reporting and access to statistics, respectively, KJC must be more transparent in offering statistics for the public.



KJC must complete, as soon as possible, the recruitment of judges for all instances in Kosovo, and specifically for the Basic Court in Prishtina, the largest court in the country, with the largest number of departments.



KJC must as soon as possible publish vacancies and recruit as many legal advisors, legal officers, professional associates, and interns. Legal advisors, professional associates and legal officers must be paid at a ratio of 70% of the judges' salaries, depending on the court level, while interns would be paid 30% of the salary paid to a professional associate.



KJC must increase its accountability and transparency in updating its website and the courts' websites, thereby publishing court judgments and decisions, and scheduled hearings, and detailed statistical reports for specific areas or issues.



KJC must pay due attention to performance assessment of each judge and support staff for the courts.



KJC must continue legal education to develop capacities and to facilitate specialization on the categories of cases.



KDI is a Non-Governmental Organization (NGO) engaged in supporting democratic development, by involving citizens in public policy-making and empowerment of the civil society sector, with a goal of increasing transparency and accountability of public institutions.

For more information on KDI, please visit www.kdi-kosova.org

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