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Introduction

The Judicial Reform Index (JRI) is an assessment tool implemented by the American Bar Association’s Rule of Law Initiative (ABA ROLI). It was developed in 2001 by the ABA’s Central European and Eurasian Law Initiative (ABA/CEELI), now a division of ABA ROLI, together with the other regional divisions in Africa, Asia, Latin America, and the Middle East/North Africa. Its purpose is to assess a cross-section of factors important to judicial reform in emerging democracies. In an era when legal and judicial reform efforts are receiving more attention than in the past, the JRI is an appropriate and important assessment mechanism. The JRI will enable ABA ROLI, its funders, and the emerging democracies themselves, to better target judicial reform programs and monitor progress towards establishing accountable, effective, independent judiciaries.

ABA ROLI embarked on this project with the understanding that there is not uniform agreement on all the particulars that are involved in judicial reform. In particular, ABA ROLI acknowledges that there are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after a decade of working in the field on this issue, ABA ROLI has concluded that each of the thirty factors examined herein may have a significant impact on the judicial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the JRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department’s Country Reports on Human Rights Practices and Freedom House’s Nations in Transit. This assessment will not provide narrative commentary on the overall status of the judiciary in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country’s judicial system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, this analytic process will not be a scientific statistical survey. The JRI is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country’s legal system.

Assessing Reform Efforts

Assessing a country’s progress towards judicial reform is fraught with challenges. No single criterion may serve as a talisman, and many commonly considered factors are difficult to quantify. For example, the key concept of an independent judiciary inherently tends towards the qualitative and cannot be measured simply by counting the number of judges or courtrooms in a country. It is difficult to find and interpret “evidence of impartiality, insularity, and the scope of a judiciary’s authority as an institution.” Larkins, Judicial Independence and Democratization: A Theoretical and Conceptual Analysis, 44 AM. J. COMP. L. 611 (1996). Larkins cites the following faults in prior efforts to measure judicial independence:

1. the reliance on formal indicators of judicial independence which do not match reality,
2. the dearth of appropriate conditions on the courts which is common to comparative judicial studies,
3. the difficulties inherent in interpreting the significance of judicial outcomes, or
4. the arbitrary nature of assigning a numerical score to some attributes of judicial independence.

Id. at 615.

Larkins goes on to specifically criticize a 1975 study by David S. Clark, which sought to numerically measure the autonomy of Latin American Supreme Courts. In developing his “judicial effectiveness score,” Clark included such indicators as tenure guarantees, method of removal,

The problem, though, is that these formal indicators of judicial independence often did not conform to reality. For example, although Argentine justices had tenure guarantees, the Supreme Court had already been purged at least five times since the 1940s. By including these factors, Clark overstated ... the independence of some countries’ courts, placing such dependent courts as Brazil’s ahead of Costa Rica’s, the country that is almost universally seen as having the most independent judicial branch in Latin America.

Larkins, supra, at 615.

Reliance on subjective rather than objective criteria may be equally susceptible to criticism. E.g., Larkins, supra, at 618 (critiquing methodology which consisted of polling 84 social scientists regarding Latin American courts as little more than hearsay). Moreover, one cannot necessarily obtain reliable information by interviewing judges: “[j]udges are not likely to admit that they came to a certain conclusion because they were pressured by a certain actor; instead, they are apt to hide their lack of autonomy.” Larkins, supra, at 616.

Methodology

In designing the JRI methodology, ABA ROLI sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on some fundamental international norms, such as those set out in the United Nations Basic Principles on the Independence of the Judiciary and the Bangalore Principles on Judicial Conduct. In addition, these criteria also rely upon norms elaborated in regional documents, such as the Council of Europe Recommendation R(94)12 “On the Independence, Efficiency, and Role of Judges”; the European Charter on the Statute for Judges; the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region; the Arab Justice Conferences’ Beirut and Cairo Declarations on Judicial Independence; and the Caracas Declarations of the Ibero-American Summit of Presidents of Supreme Justice Tribunals and Courts. Reference was also made to a Concept Paper on Judicial Independence prepared by ABA/CEELI and criteria used by the International Association of Judges in evaluating membership applications.

Drawing on these norms, ABA ROLI compiled a series of 30 statements setting forth factors that facilitate the development of an accountable, effective, independent judiciary. To assist assessors in their evaluation of these factors, ABA ROLI developed corresponding commentary citing the basis for the statement and discussing its importance. A particular effort was made to avoid giving higher regard to American, as opposed to other regional concepts, of judicial structure and function. Thus, certain factors are included that an American or a European judge may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading judicial cultures have to offer. Furthermore, ABA ROLI reviewed each factor in light of its decade of experience and concluded that each factor may be influential in the judicial reform process. Consequently, even if some factors are not universally-accepted as basic elements, ABA ROLI determined their evaluation to be programmatically useful and justified. The categories incorporated address the quality, education, and diversity of judges; jurisdiction and judicial powers; financial and structural safeguards; accountability and transparency; and issues affecting the efficiency of the judiciary.

The question of whether to employ a “scoring” mechanism was one of the most difficult and controversial aspects of this project, and ABA ROLI debated internally whether it should include one at all. During the 1999-2001 time period, ABA ROLI tested various scoring mechanisms. Following a spirited discussion with members of ABA/CEELI's Executive and Advisory Boards, as well as outside experts, ABA ROLI decided to forego any attempt to provide an overall scoring of a country’s reform progress to make absolutely clear that the JRI is not intended to be a complete assessment of a judicial system.
Despite this general conclusion, ABA ROLI did conclude that qualitative evaluations could be made as to specific factors. Accordingly, each factor, or statement, is allocated one of three values: positive, neutral, or negative. These values only reflect the relationship of that statement to that country’s judicial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of “positive” for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a “negative.” If the conditions within the country correspond in some ways but not in others, it will be given a “neutral.” Cf. Cohen, *The Chinese Communist Party and ‘Judicial Independence’: 1949-59*, 82 HARV. L. REV. 972 (1969) (suggesting that the degree of judicial independence exists on a continuum from “a completely unfettered judiciary to one that is completely subservient”). Again, as noted above, ABA ROLI has decided not to provide a cumulative or overall score because, consistent with Larkin’s criticisms, ABA ROLI determined that such an attempt at overall scoring would be counterproductive.

Instead, the results of the 30 separate evaluations are collected in a standardized format in each JRI country assessment. Following each factor, there is the assessed correlation and a description of the basis for this conclusion. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits end users to easily compare and contrast performance of different countries in specific areas and – as JRsIs are updated – within a given country over time.

The follow-on rounds of implementation of the JRI will be conducted with several purposes in mind. First, they will provide an updated report on the judiciaries of emerging and transitioning democracies by highlighting significant legal, judicial, and even political developments and how these developments impact judicial accountability, effectiveness, and independence. They will also identify the extent to which shortcomings identified by earlier JRI assessments have been addressed by state authorities, members of the judiciary, and others. Periodic implementation of the JRI assessments will record those areas where there has been backsliding in the area of judicial independence, note where efforts to reform the judiciary have stalled and have had little or no impact, and distinguish success stories and improvements in judicial reform efforts. Finally, by conducting JRI assessments on a regular basis, ABA ROLI will continue to serve as a source of timely information and analysis on the state of judicial independence and reform in emerging democracies and transitioning states.

The overall report structure of follow-on JRI reports as well as methodology will remain unchanged to allow for accurate historical analysis and reliable comparisons over time. However, lessons learned have led to refinements in the assessment inquiry, which are designed to enhance uniformity and detail in data collection. Part of this refinement includes the development of a more structured and detailed assessment inquiry that will guide the collection and reporting of information and data.

Follow-on JRI reports will evaluate all 30 JRI factors. This process will involve the examination of all laws, normative acts and provisions, and other sources of authority that pertain to the organization and operation of the judiciary, and will again use the key informant interview process, relying on the perspectives of several dozen or more judges, lawyers, law professors, NGO leaders, and journalists who have expertise and insight into the functioning of the judiciary. When conducting the follow-on assessments, particular attention will be given to those factors which received negative values in the prior JRI assessment.

Each factor will again be assigned a correlation value of positive, neutral, or negative as part of the follow-on JRI implementations. In addition, all follow-on assessment reports will also identify the nature of the change in the correlation or the trend since the previous assessment. This trend will be indicated in the Table of Factor Correlations that appears in the JRI report’s front-matter and will also be noted in the conclusion box for each factor in the standardized JRI report template. The following symbols will be used: ↑ (upward trend; improvement); ↓ (downward trend; backsliding); and ↔ (no change; little or no impact).
Social scientists could argue that some of the assessment criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Sensitive to the potentially prohibitive cost and time constraints involved, ABA ROLI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of judges, lawyers, journalists, and outside observers with detailed knowledge of the judicial system. Overall, the JRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

One of the purposes of the JRI assessment process is to help ABA ROLI – and its funders and collegial organizations – determine the efficacy of their judicial reform programs and help target future assistance. Of course, many of the issues raised (such as judicial salaries and improper outside influences) cannot necessarily be directly and effectively addressed by outside providers of technical assistance. ABA ROLI also recognizes that those areas of judicial reform that can be addressed by outsiders, such as judicial training, may not be the most important. Having the most exquisitely educated cadre of judges in the world is no guarantee of an accountable, effective, or independent judiciary; and yet, every judiciary does need to be well trained. Moreover, the nexus between outside assistance and the country’s judiciary may be tenuous at best: building a truly competent judiciary requires real political will and dedication on the part of the reforming country. Nevertheless, it is important to examine focal areas with criteria that tend toward the quantifiable, so that progressive elements may better focus reform efforts. ABA ROLI offers this product as a constructive step in this direction and welcomes constructive feedback.

Acknowledgements

Lisa Dickieson, Director, Judicial Reform Programs, the American Bar Association’s Central and East European Law Initiative (1995 to 2000), and Mark Dietrich, Member, New York State Bar and Advisor to ABA/CEELI, developed the original concept and design of the JRI. Scott Carlson, Director, Judicial Reform Programs at ABA/CEELI (2000-2003) directed the finalization of the JRI. Assistance in research and compilation of the JRI was provided by Jenner Bryce Edelman, Program Associate at ABA/CEELI, and James McConkie, Student Intern, ABA/CEELI.

During the course of developing the JRI, ABA ROLI benefited substantially from two expert advisory groups. ABA ROLI would like to thank the members of ABA/CEELI’s First Judicial Advisory Board, including Tony Fisser, Marcel Lemonde, Ernst Markel, Joseph Nadeau, Mary Noel Pepys, and Larry Stone, who reviewed earlier versions of this index. Additionally, ABA ROLI would like to thank the members of the Second Judicial Advisory Board, including Luke Bierman, Macarena Calabrese, Elizabeth Dahl, Elizabeth Lacy, Paul Magnuson, Nicholas Mansfield, Aimee Skrzek-Torres, Roy T. Stuckey, Robert Utter, and Russell Wheeler, who stewarded its completion. Finally, ABA ROLI also expresses its appreciation to the experts who contributed to the ABA/CEELI Concept Paper on Judicial Independence: James Apple, Dorothy Beasley, Nicholas Georgakopoulos, George Katrougalos, Giovanni Longo, Kenneth Lysyk, Roy Schotland, Terry Shupe, Patricia Wald, and Markus Zimmer.

Assessment Team

The Kosovo JRI 2010 assessment team was led by Dawn Schock, an American attorney, with the assistance of ABA ROLI Kosovo Staff Attorney Arben Isufi. The assessment team received strong support from ABA ROLI staff in Pristina, including Kosovo Country Director Gina Schaar, Senior Staff Attorney Fatmir Kutlivci, and Staff Attorney Kushtrim Tolaj; and in Washington, D.C., including Director of Research and Assessments Simon Conté, Europe and Eurasia Division Director Donna Wright, Deputy Director Julie Garuccio, Program Officer Megan Niedermeyer, and Program Associate Ellen Davis. ABA ROLI Research Coordinator Olga Ruda and Legal Analyst Jessie Tannenbaum served as overall project coordinators and editors of the report. The conclusions and analysis are based on interviews conducted in Kosovo in October.
and November 2009, follow-on interviews conducted in September 2010, and relevant materials reviewed at that time. Records of relevant authorities and a confidential list of individuals interviewed are on file with ABA ROLI. We are extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project.
Executive Summary

Brief Overview of the Results

The 2010 Judicial Reform Index (JRI) for Kosovo reveals a judicial system that, having recently endured severely disruptive interventions, may be on the cusp of important systemic reforms. In 2008, Kosovo declared its independence and adopted a new Constitution that enshrines the judiciary as an independent, co-equal branch of government. Nonetheless, of the 30 factors analyzed in this assessment, the correlations assigned for only four factors (judicial review of legislation, adequacy of judicial salaries, judicial buildings, and distribution and indexing of Kosovo’s many newly enacted new laws) improved since 2007. At the same time, correlations for two factors (system of appellate review and public and media access to court proceedings) declined from positive to neutral, and those for additional four factors (minority and gender representation, judicial jurisdiction over civil liberties, removal and discipline of judges, and judicial associations) deteriorated from neutral to negative. Overall, the total number of negative factor correlations increased from 12 to 13 between 2007 and 2010. This group includes seven particularly intractable factors that have consistently received negative correlations over the course of four JRI assessments implemented in Kosovo between 2002 and 2010: judicial oversight of administrative practice, judiciary’s contempt, subpoena, and enforcement powers, case assignment, judicial decisions and improper influence, publication of judicial decisions, maintenance of trial records, and court support staff. Five factors (those relating to judicial qualification and preparation, transparency of selection and appointment process, continuing judicial education, judicial code of ethics, and distribution of the current law) received positive correlations in 2010, down from six positive factors in 2007. The remaining 12 factors were assigned neutral correlations, which is the same as in the 2007 Kosovo JRI.

The 2010 Kosovo JRI was conducted at a critical point in time, allowing to record several unique events in the history of Kosovo’s justice system. The new Constitution mandates a one-time, Kosovo-wide vetting and reappointment of all judges pursuant to a Special Appointment Process overseen by the Independent Judicial and Prosecutorial Commission (IJPC). This Process, which was being implemented during this assessment, is discussed throughout a number of factors evaluated in this JRI. In addition, the much-anticipated new Law on Courts, providing for major reform and reorganization of the Kosovo court system, was promulgated in August 2010, with an effective date of January 2013;¹ and the new Law on the Kosovo Judicial Council (KJC) was promulgated in October 2010. Finally, the assessment records the ongoing impact, across a number of factors, of the closure of the court complex in the Mitrovica District due to protests spurred by the declaration of Kosovo’s independence.

Positive Aspects Identified in the 2010 Kosovo JRI

- The Constitutional Court of Kosovo was established by the Constitution as an independent institution and became operational in September 2009. With the advent of the Constitutional Court, legislation passed by the Assembly and executive regulations are now subject to review for constitutionality. The Constitution provides for a broad standing before the Court, including the right of individuals and regular courts to petition the Court directly. While the Court is still a relatively new institution, so far it appears to be living up to the high expectations that it will be an independent and scrupulous body that will increase public respect for the judiciary as a whole.

¹ Because the majority of provisions in the new Law on Courts are not scheduled to enter into force for two years following the publication of this assessment and thus have impact on the de jure regulation of Kosovo’s judiciary as presented throughout this report, most factors in this assessment will not contain a detailed analysis of the new Law’s requirements.
After a decade of severe underfunding, judicial salaries have finally been increased to the level comparable with the salaries of comparable senior Government officials. Long criticized as emblematic of the government’s refusal to recognize the judiciary as a co-equal branch and as a primary contributor to judicial corruption, judges’ salaries should now be sufficient attract and sustain judges of the caliber and independence required for lasting reforms. Significantly, the salary increase will take effect on January 1, 2011, two years earlier than most other provisions of the Law on Courts, which is attributed to the new KJC leadership’s urging that this critical change be implemented immediately.

The Kosovo Judicial Institute (KJI) further developed its critical training programs for judicial candidates and sitting judges. Since 2008, the KJI’s Initial Legal Education Program that was previously offered as a pilot program has been fully institutionalized as a required 15-month theoretical and practical course for judicial candidates. Competitive entry examinations that reflect international best practices were devised for those seeking admission into the program. Additionally, the curriculum for training of sitting judges is continuously expanding to include courses on newly enacted domestic legislation and applicable international laws.

The past three years have seen an improvement in the indexing and availability of Kosovo’s many newly enacted laws. The Official Gazette is published in a timely manner and distributed free of charge to all judges. Additionally, all courts and most judges now have access to the Internet, and thus judges widely rely on electronic publication of legislation on the Official Gazette’s and the Assembly’s websites.

**Issues Relating to the Special Appointment Process**

The Special Appointment Process employed objective and transparent criteria and procedures designed to minimize political influences in the reappointment of judges. The IJPC has been scrupulous in devising and implementing procedures and systems that comport with international standards (including passage of a judicial ethics exam), are uniformly applied, and readily accessible by those interested in the Process. Interviewees were generally satisfied that the Process had eliminated many corrupt influences from the system. However, because it is a one-time process that is not yet completed, it remains to be seen whether comparable standards will ultimately be adopted as a permanent mechanism for future judicial appointments in Kosovo.

While the reappointment process suggests considerable progress toward achieving guaranteed judicial tenure, it has also had a negative impact on judicial morale, as judges are forced to reapply for jobs that some have held for many years. Particularly problematic was the fact that judges who were virtually assured of not being reappointed due to failing the required ethics examination or other obstacles continued hearing cases until their successors were appointed. The performance of these lame-duck judges was severely impacted, to the point that the delivery of justice generally has suffered.

The Special Appointment Process also temporarily increased the number of unfilled judicial vacancies, contributing to delays in already critically backlogged courts. There was little incentive to fill vacancies immediately before the Special Appointment Process began and no mechanism for filling them outside of this Process while it was underway. Some of the judges who expected not to be reappointed have left the bench, resulting in increased caseloads for those remaining. The consequences were likely most pronounced in the lower courts, as their judges were reappointed to positions with higher courts, thus vacating their current positions on already understaffed courts. As a result, critics of the Special Appointment Process believe that, even if it eventually improves the state of the judiciary, it has been conducted in too
disruptive a manner and at too high a cost to the system for it to be considered ultimately beneficial.

Concerns Relating to Judicial Selection and Discipline

- Following the formation of the IJPC, the KJC became almost completely non-functional, a hiatus that lasted between December 2008 and late August 2009, with deleterious consequences. Judicial vacancies went unfilled from at least June 2008 onwards; judicial disciplinary processes or other oversight of the judiciary came to a complete standstill, resulting in a backlog of 120 disciplinary cases; and the judiciary was left without an institutional advocate for its interests. A temporary KJC resumed functioning in August 2009 and is working to address the backlogged disciplinary cases.

- Difficulties in recruiting minority and women candidates for judicial positions persist. Ethnic Serbs remain reluctant to seek appointments to the judiciary, due primarily to family and community pressures, as well as the fear of possible physical danger. In addition, women continue to be underrepresented. Low, and even decreasing, minority and female participation in the legal education, judicial praktikant programs, and bar examination portend an even greater ethnic and gender imbalance in the future.

Concerns Relating to the Lack of Adequate Funding

- Despite the progress in increasing the budget for judicial salaries, other aspects of supporting the judiciary’s operations remain underfunded. The KJC’s Committee on Budget, Finances, and Human Resources was largely non-functional throughout the assessment period, and the KJC itself was seen as ineffective in lobbying for necessary budgetary changes and increases. Insufficient funding also results in shortages of court support staff, including law clerks and praktikants to help with legal research, drafting of decisions, and managing judges’ caseloads.

- The quality of judicial infrastructure also suffers as a result of limited financial resources. Although considerable progress has been made in upgrading and remodeling a number of courthouses through the Model Courts Program, work conditions of many judges and court staff still remain not conducive to the delivery of good services. The lack of adequate space negatively affects the public’s guaranteed right of access to trials. Proceedings often occur in judges’ chambers, where there is little room for public or media access. Moreover, overcrowded conditions prevent orderly and secure maintenance of court files and records.

Other Concerns Identified in the 2010 Kosovo JRI

- Political uncertainties continue to undermine some reform efforts. The court complex in Northern Mitrovica was closed in March 2008 as a result of political protests over the declaration of Kosovo’s independence, and was operating only on a very limited basis at the time of this assessment. This fosters a number of human rights violations for residents of the district, as detentions are prolonged and trials indefinitely delayed.

- Improper influence in the judiciary reportedly remains widespread. The courts are widely perceived among the least trusted and most corrupt of Kosovo’s public institutions, believed to be influenced by pressures from parties and other branches of government, family, friendship ties, and outright bribery. While the Special Appointment Process, which included comprehensive background checks and minute vetting of candidates, was undertaken, in large part, to rid the judiciary of corrupt members, it will take additional time to determine whether the Process has succeeded in that goal and whether the new judges will be able to improve the public’s perception of the courts.
Kosovo Background

The Republic of Kosovo, the world’s newest independent state, was formally created in February 2008, when the Assembly of Kosovo unanimously passed a declaration announcing its independence from Serbia. As of the writing of this assessment, 72 United Nations [hereinafter UN] member states, including the United States and a majority of European Union [hereinafter EU] member states, have formally recognized Kosovo’s independence. Despite its declaration of independence and adoption of a new Constitution in June 2008, Kosovo does not yet enjoy full political autonomy, but is subject to external oversight by the recently commissioned European Union Rule of Law Mission in Kosovo [hereinafter EULEX]. Likewise, Kosovo’s security at this time is ensured through the continued military presence of the North Atlantic Treaty Organization [hereinafter NATO] Kosovo Force [hereinafter KFOR].

Kosovo’s present status can be understood only within the broader context of the dissolution of the Socialist Federal Republic of Yugoslavia [hereinafter SFRY] during the 1980s and 1990s. For most of the twentieth century, Kosovo was an administrative region of Yugoslavia, as part of the territory of South Serbia within the monarchical Yugoslavia that existed between the two World Wars, or as a province of the Serbian Republic, which was one of the constituent entities within the SFRY federation created in 1944. Under the 1974 SFRY Constitution, Kosovo enjoyed the status of an “autonomous province” within the territory of the Serbian Socialist Republic, with some attributes of limited sovereignty, such as power over its own police, courts, and civil defense. However, following Serbian President Slobodan Milosevic’s rise to power, Kosovo’s autonomy became severely restricted. In 1989, the over 80% ethnic Albanian majority in Kosovo was placed under martial law. War broke out in Serbian-controlled Kosovo in 1997-1998, as the Kosovo Liberation Army conducted a political and military struggle for an independent Kosovo. Following a period of bitter local conflict and periods of international negotiations, NATO forces began an air war against Yugoslavia in March 1999. The 78-day war ended in June 1999, when Yugoslav forces withdrew from Kosovo.

After the cessation of major hostilities and continuing through to its declaration of independence in 2008, Kosovo was administered as a UN Protectorate with an international civilian administration and military security presence as authorized by the UN. See generally UN SECURITY COUNCIL RESOLUTION 1244 (Jun. 10, 1999) [hereinafter RESOLUTION 1244]. The international civilian administration, known as the United Nations Mission in Kosovo [hereinafter UNMIK], was headed by the Special Representative of the UN Secretary-General [hereinafter SRSG] and was charged with such functions as policing, defense, foreign affairs, and certain justice matters, until the status of Kosovo could be resolved. See RESOLUTION 1244; see also generally UNMIK REGULATION No. 2001/9 ON A CONSTITUTIONAL FRAMEWORK FOR PROVISIONAL SELF-GOVERNMENT IN KOSOVO (May 15, 2001, last amended by UNMIK REGULATION No. 2007/29, Oct. 4, 2007) [hereinafter CONST. FRAMEWORK]. The international security presence was separately operated through KFOR, whose troops and international personnel were not subject to the authority of UNMIK and enjoyed immunity from the Kosovo justice system. In a major initiative to resolve Kosovo’s status during this period, UN Special Envoy Martti Ahtisaari devised a step-by-step proposal for Kosovo’s independence. REPORT OF THE SPECIAL ENVOY OF THE SECRETARY-GENERAL ON KOSOVO’S FUTURE STATUS (S/2007/168) AND THE COMPREHENSIVE PROPOSAL FOR THE KOSOVO STATUS SETTLEMENT (S/2007/168/Add.1) (Mar. 26, 2007) [hereinafter AHTISAARI PLAN]. Because that plan was opposed in the UN Security Council by Russia, the UN Secretary-General Ban Ki-moon proceeded instead with a different plan, entailing that the UN maintain a position of strict neutrality on the question of Kosovo’s status. At the request of Serbia, a UN General Assembly resolution adopted in October 2008 requested that the International Court of Justice [hereinafter ICJ] issue an opinion on the legality of Kosovo’s unilaterally proclaimed independence. UN GENERAL ASSEMBLY RESOLUTION No. 63/6 (Oct. 8, 2008). On July 22, 2010, the ICJ issued an advisory opinion holding that the declaration of independence did not violate international law. See Accordance with International Law of the

Kosovo’s declaration of independence has been accompanied by significant changes in its international oversight arrangement. The EU has established the EULEX Mission, which is a deployment of 2,000 EU police and civilian resources in continuation of the UNMIK presence in Kosovo envisaged by Resolution 1244. See COUNCIL OF THE EUROPEAN UNION JOINT ACTION 2008/124/CFSP ON THE EUROPEAN UNION RULE OF LAW MISSION IN KOSOVO (Feb. 4, 2008, as amended by COUNCIL OF THE EUROPEAN UNION JOINT ACTION 2009/445/CFSP, Jun. 9, 2009) [hereinafter EU COUNCIL JOINT ACTION ON EULEX]. EULEX is led by a Head of Mission, who serves as its highest executive authority. EULEX’s key objective is to assist and support Kosovo’s authorities on rule of law matters, specifically those related to the police, judiciary, and customs. As a result, UNMIK has downsized its mission and turned many of its operations over to EULEX. However, because Resolution 1244 can be derogated only by a new UN Security Council resolution and Russia opposes any such resolution, as of the drafting of this report, UNMIK remains indefinitely in Kosovo as a secondary international mission, with its reserved powers transferred to the Government of the Republic of Kosovo and EULEX. Like the UN, the EU as a whole has refrained from taking a position on the status of Kosovo. As before, KFOR continues to operate separately from EULEX’s administration.

Legal Context


The executive power is exercised by the Government of Kosovo led by the Prime Minister, with the President as the head of state. Id. arts. 83, 92(1). The President is elected by the Kosovo Assembly. Id. arts. 65(7), 86(1). The President is charged with representing Kosovo abroad and overseeing the implementation of foreign policy; promulgating laws approved by the Assembly; and appointing the Prime Minister. See generally id. art. 84. Upon the recommendation of the Kosovo Judicial Council [hereinafter KJC], the President appoints and dismisses all judges, including the President of the Supreme Court. Id. arts. 84(15)-(16), 104. Upon the recommendation of the Kosovo Prosecutorial Council [hereinafter KPC], the President also appoints and dismisses prosecutors.2 Id. art. 84(17).

Legislative power is exercised by the single-chamber, 120-member Kosovo Assembly. Id. art. 64(1). Members are elected proportionally, every four years, with representation based on the share of votes received by each party, coalition, citizens’ initiative, or independent candidate. Id. arts. 64(1), 66(1). Of the 120 seats, 20 are reserved for representatives of ethnic minorities, including 10 seats reserved for Kosovo’s ethnic Serbs. Id. art. 64(2). Among others, the Assembly is empowered to pass laws; amend the Constitution; ratify international treaties; elect and dismiss the President of Kosovo; elect members of the KJC and the KPC; and nominate Constitutional Court judges. See generally id. art. 65.

By law, the judiciary is independent and impartial. Id. art. 102(2). The judiciary is comprised of several different levels of courts: minor offenses courts, municipal courts, district courts, a commercial court, the Supreme Court; as well as the separate Constitutional Court, which was created in 2008 and began operating in 2009. There is also a 13-member KJC, which performs judicial administration functions to ensure independence and impartiality of the judiciary.

2 Until a separate KPC is established, these and other administrative functions for the prosecutors’ offices are delegated to the KJC – except that prosecutors and their staff now receive their salaries from the Ministry of Justice [hereinafter MOJ] budget.
The Constitution also contains transitional provisions that recognize the Ahtisaari Plan and mandate cooperation with the international civilian authorities envisioned there, including an International Civilian Office [hereinafter ICO]. *Id.* arts. 146-147. All Kosovo governmental institutions, including the judiciary, are subject to the ultimate authority of the International Civilian Representative [hereinafter ICR]. *Id.* art. 147. KFOR is also recognized in the Constitution. *Id.* art. 153.

The laws applicable in Kosovo are a combination of laws passed by the Kosovo Assembly, certain UNMIK regulations, and subsidiary instruments, and laws that were in force in Kosovo on March 22, 1989 – the last day on which Kosovo held autonomous status within the SFRY. The latter body of law includes the federal provisions of the former SFRY, Kosovo’s former provincial laws, as well as some provisions of the law of the former Socialist Republic of Serbia. Laws promulgated in Kosovo after March 22, 1989 may be applied only if they address a situation not covered by a prior law and are nondiscriminatory. UNMIK regulations and subsidiary instruments take precedence over any conflicting prior laws. UNMIK REGULATION NO. 1999/24 ON THE LAW APPLICABLE IN KOSOVO § 1 (Dec. 12, 1999). In addition, the Constitution incorporates by reference and makes directly applicable in Kosovo several international human rights instruments, including the Universal Declaration on Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms [hereinafter ECHR] and its protocols, the International Covenant on Civil and Political Rights [hereinafter ICCPR] and its protocols, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. CONST. art. 22. In case of a conflict between these international agreements and instruments and domestic laws or acts of public institutions, the international instruments have priority. *Id.*

**History of the Judiciary**

As part of the former SFRY, Kosovo shares its legal tradition, including the influence left behind as part of the Austro-Hungarian Empire. As an “autonomous province” since 1974, Kosovo had its own Constitution, Assembly, Supreme Court, and Constitutional Court. It shared criminal and civil procedure codes with the rest of the SFRY but had its own criminal code, augmented by federal and Serbian provisions. As common in other socialist systems, executive branch and party influence in the judiciary were pervasive.

Following the 1997-98 war and the Milosevic takeover, virtually all Kosovo Albanian judges and prosecutors were dismissed from their positions. Ethnic Albanian students and professors were banned from the “official” law school at the University of Pristina, and members of Kosovo Albanian community established a parallel education system funded by a 3% “tax” on personal income of Kosovar Albanians within and outside Kosovo. This system included a law faculty that operated out of private houses in Pristina, providing legal education to ethnic Albanian students on a clandestine basis. It is acknowledged that this home-based education was substandard at best. The credentials awarded by this underground law school were not, of course, recognized by the Serbian authorities, and graduates were unable to take the bar examination, which the Serbian authorities ceased administering entirely by 1992, further restricting the access of ethnic Albanians to the legal profession. In the following decade, many professionals who had served in the judiciary fled the province. The remaining legal professionals lacked recent judicial experience and many had not worked within the profession for a decade. Moreover, the experience from the prior socialist system was not adequate preparation for work in a new democracy. Few had direct knowledge of international human rights standards incorporated into domestic law by the Constitutional Framework.

Thus, after cessation of hostilities in 1999 and commencement of UNMIK administration, there was a severe lack of competent judges and other legal professionals. Furthermore, many court facilities were dilapidated and in a state of severe disrepair. Due to the efforts of UNMIK,
Organization for Security and Cooperation in Europe [hereinafter OSCE], and several international NGOs, the bar examination resumed in Kosovo in December 2001 and was administered every three months until January 2008. No exam was held through early 2010, due to the Assembly’s inability to form the Committee on Bar Examination; however, it resumed in April 2010 and has been administered regularly since then. The Kosovo Judges Association [hereinafter KJA] and the Kosovo Chamber of Advocates [hereinafter KCA] were reactivated and assisted by donors’ institution building efforts. However, even with these steps, the system is still in the process of trying to fill the human resources gap both as to quantity and quality.

Under the UNMIK administration, Kosovo’s Provisional Institutions of Self-Government received limited powers regarding judicial affairs, such as participation in judicial appointments and training, organization of judicial qualification examinations, appointment, training, and dismissal of court personnel, and provision of material resources to the judiciary. The tasks of a traditional justice ministry were divided between the internationally-run UNMIK Department of Justice [hereinafter DOJ] and the Kosovo-led Department of Judicial Administration [hereinafter DJA] under the Ministry of Public Services. In addition, there was a Kosovo Judicial and Prosecutorial Council [hereinafter KJPC], appointed by the SRSG and consisting of local and international members. The KJPC served as an advisory body to the SRSG, consulting on matters related to judicial appointment, removal, and discipline. See CONST. FRAMEWORK § 9.4.8; UNMIK REGULATION NO. 2001/8 ON THE ESTABLISHMENT OF THE KOSOVO JUDICIAL AND PROSECUTORIAL COUNCIL (Apr. 6, 2001). In late 2005, a Kosovo MOJ was established with limited competencies. See UNMIK REGULATION NO. 2005/53 AMENDING UNMIK REGULATION NO. 2001/19 ON THE EXECUTIVE BRANCH OF THE PROVISIONAL INSTITUTIONS OF SELF-GOVERNMENT OF KOSOVO (Dec. 20, 2005). In addition, the KJC was established in 2005 to replace the KJPC, as an independent body under the authority of the SRSG. See UNMIK REGULATION NO. 2005/52 ON THE ESTABLISHMENT OF THE KOSOVO JUDICIAL COUNCIL (Dec. 20, 2005) [hereinafter KJC REGULATION].

The transitional provisions in the 2008 Constitution mandated a one-time, Kosovo-wide comprehensive review of the suitability for permanent reappointment of all judges, pursuant to a Special Appointment Process overseen by the Independent Judicial and Prosecutorial Commission [hereinafter IJPC], an “autonomous body of the KJC” that submits its recommendations to the KJC. CONST. art. 150; UNMIK ADMINISTRATIVE DIRECTION NO. 2008/2 IMPLEMENTING UNMIK REGULATION NO. 2006/25 ON A REGULATORY FRAMEWORK FOR THE JUSTICE SYSTEM IN KOSOVO § 2.2 (Jan. 17, 2008) [hereinafter IJPC REGULATION]. The IJPC initially consisted of five international commissioners appointed by the President of Kosovo (IJPC REGULATION § 7.2) and proceeded to interview and vet judges in three phases: judges of the Supreme Court of Kosovo (Phase One); judges of the district and commercial courts and the High Court for Minor Offenses (Phase Two); and judges of the municipal courts and municipal courts for minor offenses (Phase Three). IJPC REGULATION § 2.3. The IJPC’s mandate expired on October 31, 2010.

The beginning of the Special Appointment Process and the appointment of the IJPC displaced the Kosovo members of the KJC. To fill that void, the Assembly adopted the Law on the Temporary Composition of the Judicial Council, which entered into force in late January 2009; however, that law requires that any judicial member of the temporary KJC have been vetted and passed the Special Appointment Process. LAW ON THE TEMPORARY COMPOSITION OF THE JUDICIAL COUNCIL art. 4.3.1 (Law No. 03/L-123, adopted Dec. 16, 2008) [hereinafter LAW ON THE TEMP.

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3 The number of commissioners gradually increased following the completion of each Phase of the appointments, to add new national commissioners selected from among judges and prosecutors appointed during the immediately preceding Phase. During Phase Two, two newly appointed Supreme Court judges and a newly appointed prosecutor from the Office of the Public Prosecutor were added, bringing the total number of commissioners to eight; and during Phase Three, a newly appointed district court judge and a newly appointed district prosecutor were added, bringing the total number of commissioners to ten. IJPC REGULATION § 7.3-7.4.
Thus, accommodation during Phase One was reached in the form of appointing three non-judicial members (an Albanian, a Serb, and a Bosniak) and two EULEX representatives (a judge and a prosecutor) who served on the Disciplinary Committee. In that configuration, the temporary KJC began functioning in late August 2009. The non-judge temporary president of the KJC served in that post until February 2010, when a Supreme Court judge who has passed the vetting and appointment process joined the KJC and was elected president.

Similarly to the IJPC, the size of the KJC is to increase as judges and prosecutors are appointed, to comprise eight members following the completion of Phase One and ten members following the completion of Phase Two appointments (with the same local members to serve on both the IJPC and the KJC).

By the time the temporary KJC resumed functioning, eight months had already passed since its last official meeting. The consequences were grave, with one highly placed government official calling the damage done by the non-functioning KJC “incalculable.” For example, judicial vacancies caused by deaths, resignations, indictments, and suspensions of judges went unfilled from at least June 2008 onward, and the judicial discipline process within the KJC came to a complete standstill. Less tangible, but perhaps of greatest importance, was the public spectacle of one of the three branches of government without leadership for a significant period of time, leaving the already beleaguered judiciary with no institutional advocate.

Two major legal developments in the history of Kosovo’s judicial system occurred during the summer and fall 2010. First, a much awaited new Law on Courts was adopted in July 2010 and promulgated by the President on August 9, 2010. The new Law will eventually replace the SFRY-era Law on Regular Courts, which dates back to 1978 and continues to regulate a number of important aspects of organization of Kosovo’s judiciary. Most of the provisions of the new Law will take effect on January 1, 2013, with only a handful of articles, notably those mandating a significant increase in judicial salaries and formally making the judicial ethics code binding on all judges, going into force on January 1, 2011.

Second, a new Law on the KJC was adopted by the Assembly in September 2010 and promulgated by the President on October 18, 2010. That Law will take effect six months after its publication in the OG.

Because the majority of provisions in the new Law on Courts are not scheduled to enter into force for two years following the publication of this assessment and thus have impact on the current de jure regulation of Kosovo’s judiciary as presented throughout this report, most factors in this assessment will not contain a detailed analysis of the new Law’s requirements. Instead, the assessment team opted to provide the following brief summary of the key changes that are anticipated when the new Law takes effect.

- Perhaps the most important novelty under the new Law is the complete reorganization of Kosovo’s court system into basic courts, a unified intermediate Court of Appeals, and the Supreme Court, which will result in clarifying and simplifying the system of appellate jurisdiction in the country. See generally LAW ON COURTS arts. 8-23; see also Structure of the Courts, below, for a more detailed overview the new system.

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4 All laws passed by the Kosovo Assembly are published in the Kosovo Official Gazette [hereinafter OG], which is available at http://www.ks-gov.net/GazetaZyrtare.

5 While the appointees to the temporary Council were lawyers of considerable stature and reputation, many judges who were undergoing the reappointment process were, nevertheless, incensed that lawyers were placed at the helm of the judiciary.
• In a major improvement that will take effect on January 1, 2011, judicial salaries will be increased significantly and tied to the equivalent positions within the executive branch of the Government. See LAW ON COURTS arts. 29, 36.2; see also Factor 11 below for a detailed analysis of the new salary provisions.

• After the transitional period ending on January 1, 2015, judges of the Court of Appeals and the Supreme Court, as well as of specialized departments within the basic courts, will be required to have prior judicial experience to qualify for appointment, rather than simply prior legal experience. LAW ON COURTS arts. 26.2, 27. Lay judges will be required to complete training and meet other criteria that will be established by the KJC. Id. art. 28.

• All judges appointed through the Special Appointment Process will be deemed appointed permanently until reaching the retirement age or being lawfully removed from office for cause. Id. art. 27.5.

• The new Law reinforces select provisions of the judicial ethics code, by incorporating these provisions as judicial duties. See, e.g., id. art. 34. Notably, judges will be required by Law to participate in continuing legal education [hereinafter CLE], according to criteria to be developed by the KJC. Id. art. 34.5.

• Judges will specifically be allowed membership in professional organizations that promote judicial independence, enhance judicial education, and encourage the effectiveness of the courts. Id. art. 32.1. Judges will also be expressly authorized to receive compensation for participating in “professional or scientific meetings, lectures and trainings, or other legal projects,” as long as there is no conflict of interest and the compensation is reported to the KJC. Id. arts. 32.2, 32.4. In addition, judges will have the right to request that the KJC provide special protective measures when they have received a threat to their lives or the lives of their family members in connection with the exercise of their judicial duties. Id. art. 30.

• All judicial decisions will have to be in writing, and decisions of the Supreme Court and the Court of Appeals will be required to be published on the KJC’s website and otherwise be made available to the public. Id. arts. 6.1, 19.2, 24.

• Finally, the new Law envisions a significantly more decentralized management of the daily operations of the courts that will lie with the court presidents. Id. arts. 12.2, 20.2, 21.7; see also KJC LAW art. 24.

Structure of the Courts

Until the new Law on Courts takes effect on January 1, 2013, the structure of Kosovo’s court system will be set forth by the 1978 Law on Regular Courts. See generally LAW ON REGULAR COURTS (Law No. 21, adopted Apr. 28, 1978) [hereinafter LAW ON REGULAR COURTS]. At present, the regular court system is composed of 26 municipal courts, 5 district courts, the Commercial Court of Kosovo, and the Supreme Court. Id. arts. 22-23. The minor offenses court system includes 26 municipal courts of minor offenses and the High Court for Minor Offenses. According to the 2009 KJC statistics, prior to the start of the Special Appointment Process, the judiciary had 330 judicial positions with 282 serving judges, including 13 sitting judges on the Supreme Court, 4 on the Commercial Court, 5 on the High Court for Minor Offenses, 48 on the district courts, 126 on the municipal courts, and 86 judges on the minor offenses courts. Following the Special Appointment Process, the number of authorized judicial positions decreased to 329, with 246 judges appointed, including 11 sitting judges on the Supreme Court, 3 on the Commercial Court, 5 on the High Court for Minor Offenses, 46 on the district courts, 122 on the municipal courts, and 55 judges on the minor offenses courts. An additional four judges were appointed to eight authorized judicial positions on the Supreme Court’s specialized chambers. See IJPC, REPORT
Minor offenses courts are located within each municipality and have jurisdiction over traffic tickets and cases where the offense is punishable by a fine or imprisonment of no more than 60 days. Decisions appealed from minor offenses courts are taken to the High Court of Minor Offenses, which has territorial jurisdiction covering all of Kosovo.

Municipal courts operate in each of Kosovo’s municipalities and serve as courts of first instance for criminal offenses punishable with sentences of up to five-year imprisonment, for property and labor disputes, inheritance matters, and other civil matters. LAW ON REGULAR COURTS art. 26; see also CODE OF CRIMINAL PROCEDURE OF THE REPUBLIC OF KOSOVO art. 21 (promulgated by UNMIK REGULATION NO. 2003/26, Jul. 6, 2003, as amended by Law No. 03/L-003, Nov. 6, 2008) [hereinafter CRIM. PROC. CODE]. Municipal courts generally adjudicate in panels of one professional and two lay judges. Criminal offenses punishable by a fine or by imprisonment of less than three years are considered by an individual judge. CRIM. PROC. CODE art. 22.

District courts are located in each of Kosovo’s five regional capitals (Pristina, Gjilan, Peja, Prizren, and Mitrovica). They hear appeals from the decisions of the municipal courts. They also serve as courts of first instance for criminal offenses punishable by prison sentences of more than five years, major property disputes, intellectual property rights disputes, and other enumerated matters. LAW ON REGULAR COURTS art. 29; CRIM. PROC. CODE art. 23. First instance panels generally consist of one professional and two lay judges. Panels of two professional and three lay judges hear cases punishable by imprisonment of more than 15 years, as well as appeals from the municipal courts. CRIM. PROC. CODE art. 24.

The Commercial Court of Kosovo is located in Pristina and has Kosovo-wide first instance jurisdiction over disputes between private business entities, bankruptcy proceedings, and certain commercial criminal offenses. LAW ON REGULAR COURTS art. 30.

The Supreme Court of Kosovo is the highest body in the regular court system. CONST. art. 103(2). It operates as a third instance appellate court in a limited number of criminal cases; i.e., it hears appeals from district court decisions on appeal from municipal courts. It also hears direct appeals in cases originating in the district courts and serves as a court of first instance for extraordinary matters and other matters as provided by law (e.g., administrative disputes). LAW ON REGULAR COURTS art. 31; CRIM. PROC. CODE art. 25. A Special Chamber of the Supreme Court, consisting of up to seven local judges and up to 13 international judges, was established to resolve challenges to privatization decisions by the Kosovo Trust Agency [hereinafter KTA]. See UNMIK REGULATION NO. 2002/13 ON THE ESTABLISHMENT OF A SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON KOSOVO TRUST AGENCY RELATED MATTERS §§ 3.1, 4 (Jun. 13, 2002, last amended by UNMIK REGULATION No. 2008/29, May 31, 2008) [hereinafter REGULATION ON SPECIAL CHAMBER ON KTA MATTERS]. The Supreme Court is also charged with ensuring uniform application of the law by all courts and it may give instructions to lower courts. LAW ON REGULAR COURTS art. 31. The Supreme Court generally operates in panels of three professional judges; however, five-judge panels hear cases in which imprisonment may exceed 15 years, and where the Court is sitting as a third instance court. CRIM. PROC. CODE art. 26. The Special Chamber on KTA Matters hears first instance cases in five specialized panels, each consisting of one local and two international judges and chaired by an international judge. REGULATION ON SPECIAL CHAMBER ON KTA MATTERS § 3.2. It also has an appellate unit consisting of two local and two international judges and the President of the Special Chamber (an international judge), which sits as a panel of at least three judges, the majority of whom are international judges. Id. § 3.3.
When the reorganization of Kosovo’s court structure per the new Law on Courts takes effect on January 1, 2013, the judiciary will consist of three tiers of courts: basic courts, the Court of Appeal, and the Supreme Court. Minor offenses courts and the Commercial Court of Kosovo will be eliminated altogether. The basic courts will generally serve as first instance courts for all matters, including cases previously heard by the minor offenses courts and the first instance crimes previously within the jurisdiction of the district courts. LAW ON COURTS art. 11. Each basic court will include a General Matters Department to hear all first instance civil and criminal cases, a Serious Crimes Department to hear specifically enumerated serious criminal cases, and a Juvenile Department. Id. arts. 12.1.3-12.1.5, 15-16. Additionally, the basic court in Pristina will include a Commercial Matters Department that will resolve all first instance commercial and property (other than real property) disputes involving corporations or other legal entities, bankruptcies, liquidations and reorganizations, and other enumerated cases; and an Administrative Matters Department that will hear first instance complaints against final administrative acts. Id. arts. 12.1.1-12.1.2, 13-14. As a second instance, the unified Court of Appeals, located in Pristina and consisting of departments that correspond to those in the basic courts, will generally hear all appeals of basic court decisions, and will also decide jurisdictional conflicts between basic courts. Id. arts. 17-18, 20.1. Finally, the Supreme Court, also located in Pristina, will be the highest judicial authority in Kosovo, with appellate jurisdiction over Court of Appeals decisions, as well as cases that present important and unique issues in the application of the law by Kosovo courts. Id. arts. 21-22. The Supreme Court will also retain jurisdiction over all disputes involving decisions of the KTA, the Kosovo Privatization Agency, and the Kosovo Property Agency [hereinafter KPA]. Id. art. 22.1.4-22.1.5.

The Constitutional Court of Kosovo was established with the entry into force of the Constitution in January 2009. The Constitutional Court, which is fully independent, is the final judicial authority for the interpretation of the Constitution and the compliance of laws with the Constitution. CONST. art. 112. The Constitution provides for a broad standing before the Court. Generally, issues of constitutionality of legal acts may be referred to the Court by the Assembly, the President of Kosovo, the Government, or the Ombudsperson. Regular courts may also challenge the constitutionality of a law when such an issue arises during judicial proceedings and the referring court is uncertain as to its constitutionality, provided that the court’s decision in the given case hinges upon the compatibility issue. Further, individuals can challenge violations by public authorities of their constitutional rights and freedoms, provided that all legal remedies have been exhausted. Id. art. 113. Kosovo’s first appointed judges to the Constitutional Court were sworn in on June 26, 2009. The present Court is composed of six local judges and three international judges.

Lay judges serve alongside professional judges on municipal court and district court panels. Lay judges are not required to have special legal training and have equal votes to those of professional judges. See LAW ON REGULAR COURTS arts. 92-97.

EULEX judges are inserted in the national judicial structure in order to assist authorities in developing and strengthening the judicial system, and to ensure that it is free from political interference and adheres to international and regional standards and best practices. In addition to their judicial functions, they should monitor, mentor, and advise Kosovo judges. LAW ON THE JURISDICTION, CASE SELECTION, AND CASE ALLOCATION OF EULEX JUDGES AND PROSECUTORS IN KOSOVO art. 2.4 (Law No. 03/L-053, adopted Mar. 13, 2008) [hereinafter LAW ON JURISDICTION]. EULEX judges technically ought to be fully integrated in the Kosovo judicial system, although in practice they operate under the authority of EULEX Head of the Justice Component. They are managed and regulated by the Assembly of the EULEX Judges, which is composed of judges appointed by the EULEX Head of Mission and is charged with being a watchdog of judicial independence. Id. art. 4; see also EULEX Kosovo, Assembly of the EULEX Judges, available at http://www.eulex-kosovo.eu/en/justice/assembly-of-the-eulex-judges.php.

The judicial administration functions are performed by the independent KJC. First established by UNMIK in 2005, the KJC is now constitutionally mandated to oversee the judiciary, with the
principal aims of ensuring judicial independence, impartiality, professionalism, and diversity. CONST. art. 108(1)-(2); see also generally KJC REGULATION. Once the Special Appointment Process is completed, the KJC will eventually consists of 13 members, including five judges selected by the judiciary; two additional judges, one member of the KCA, and one other member elected by the Assembly; one Serb judge and one other Serb member elected by the Serb members of the Assembly; and one additional minority judge and one other ethnic minority member elected by minority members of the Assembly. CONST. arts. 108(6), 108(9)-(10). The KJC is responsible for training, recruitment, appointment, assignment, evaluation, promotion, and discipline of judges and court personnel, and also functions as the administrative office of the courts, setting administrative policies for the judiciary, preparing and managing judicial budgets, and overseeing judges and courts. Id. art. 108(3)-(5). It also maintains statistics concerning judges and court administration. Nevertheless, as discussed above, while the KJC’s inclusion in the new Constitution and the fact that it is an independent institution can be seen as a strengthening of the KJC, in reality it has been almost completely non-functional between December 2008 and late August 2009, with deleterious impact on the judicial discipline and administrative processes, and leaving the judiciary without an institutional advocate for its interests.\(^6\)

**Conditions of Service**

**Qualifications**

To qualify for appointment as a professional judge in Kosovo, a candidate must be a habitual resident of Kosovo, be of high moral integrity, hold a law degree recognized as valid under Kosovo law, pass the bar examination or already be a member of the bar, pass the Judicial Entry Examination, complete a judicial training program provided by the Kosovo Judicial Institute [hereinafter KJI], and have a minimum of three years of legal experience. See KJC REGULATION § 6.1; see also IJPC REGULATION § 3.1. Additionally, when making recommendations for reappointment as part of the ongoing Special Appointment Process, the IJPC must also take into account the following criteria: (a) professional knowledge, work experience and performance, including an understanding of, and respect for, human rights; (b) capacity for legal reasoning as proved through professional activities in the legal field, including as judges and public prosecutors, academic written works, other professional activities and during the course of the interview; (c) professional ability based on previous career results, including participation in organized forms of training in which performance has been assessed; (d) capability and capacity for analyzing legal problems; (e) ability to perform impartially, conscientiously, diligently, decisively and responsibility the duties of the office for which the candidate is being considered; (f) communication abilities; (g) relations with colleagues, conduct out of office, and integrity; and (h) in relation to the positions of court presidents, managerial experience and qualifications. IJPC REGULATION § 3.2.

Constitutional Court judges must be citizens of Kosovo who are distinguished jurists with the highest moral character and excellent professional reputation, have at least 10 years of professional experience, have full legal capacity, and have not been convicted of a criminal offense. CONST. art. 114(1); CONST. COURT LAW art. 4. Preference is given in particular to professional experience obtained in the field of public and constitutional law, through professional work as judges, prosecutors, lawyers, civil servants, university professors, or “other relevant working experience in the legal field.” CONST. COURT LAW art. 4(1)(2). International judges

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\(^6\) In fact, it has been suggested that the KJC’s dysfunction predated the advent of the Special Appointment Process, encompassing most of 2008 as its mandate became unclear and was eroded by the anticipated Special Appointment Process, but also extending well into its past. This extended hiatus and ineffectiveness is perceived to be at the core of a number of the more severe problems, leading a number of interviewees to characterize the situation as the judiciary always being “without a roof.”
appointed to the Constitutional Court may not be citizens of Kosovo or any of the neighboring countries. CONST. art. 152(4).

To serve as a lay judge, one must be a habitual resident of Kosovo for five years who are at least 25 years old, have high moral integrity, and “not have been engaged in discriminatory practices as defined by law and judicial rules and procedures.” KJC REGULATION § 6.2.

It is not clear what qualifications are used for the appointment of EULEX judges.

**Appointment and Tenure**

The President of Kosovo appoints, reappoints, and dismisses judges upon the proposal of the KJC. CONST. arts. 84(15)-(16), 104(1). He/she also appoints the President of the Supreme Court, who is selected among the Court’s judges. Id. art. 103(4). Proposals for appointments of judges must be made using an open appointment process, based on the merit of the candidates, and in consultation with the court in question. Id. arts. 104(3), 108(4). The composition of the judiciary should reflect the ethnic diversity of Kosovo and internationally recognized principles of gender equality, and the composition of each court should also reflect the ethnic composition of the territorial jurisdiction of that court. Id. arts. 104(2), 108(4). At least 15%, and not fewer than three, of the Supreme Court judges must be from minority communities. Id. art. 103(3).

Judges are initially appointed to three-year periods. After the initial appointment, judges are reappointed permanently until retirement age, unless they are removed from office for conviction of a serious criminal offense or for serious neglect of duties. Id. arts. 105(1), 104(4). The KJC decides upon the criteria and procedures for reappointment. Id. art. 105(2). The President of the Supreme Court serves a non-renewable term of seven years. Id. art. 103(4).

Under the IJPC Special Appointment Process, sitting judges and other candidates who met appointment criteria were required to pass an examination on the Code of Ethics and to undergo a standard interview. IJPC REGULATION §§ 2.9, 2.11. Applicants who were not sitting judges also had to pass a Judicial Entry Examination; however, sitting judges were not required to take this examination unless requested to do so by the IJPC. Id. §§ 3.4, 2.10. IJPC then recommended candidates for appointment or reappointment to the KJC, which in turn proposed them to the President of Kosovo. CONST. art. 150(2)-(3). Judges who were appointed or reappointed pursuant to this process will serve regular tenures, and all judges who held office for at least two years prior to reappointment will be deemed appointed until retirement age. Id. art. 150(4)-(5).

Until the end of international supervision over Kosovo, six of the Constitutional Court’s judges are appointed by the President of Kosovo upon the Assembly’s proposal, with two judges serving each the non-renewable terms of three years, six years, and nine years. Four of them are proposed by a two thirds majority of the Assembly members present at the hearing, while the other two judges must be proposed by the majority vote of Assembly members present, and with the consent of the majority of Assembly members holding seats reserved for ethnic minorities. The remaining three judges are international judges appointed by the ICR in consultation with the President of the European Court of Human Rights. Id. art. 152. The President and Deputy President of the Court are elected by secret ballot by the Court’s judges for a term of three years. Id. art. 114(5). Eventually, all Constitutional Court judges will be appointed by the President upon the Assembly’s proposal for non-renewable terms of nine years. Appointments should respect the principles of gender equality and ethnic diversity, and two out of nine judges will need to be recommended with the consent of the majority of Assembly members holding seats reserved for ethnic minorities. Id. art. 114(2)-(3).

EULEX judges are nominated through an EU procedure and hold office for one-year renewable terms. The final decision on appointment is entrusted to the Head of Mission.
**Training**

The KJC is charged with setting policy and regulating training of judicial personnel, in conjunction with the Supreme Court, in whole or in part through the KJI. KJC REGULATION § 1.7(d). The KJI was established in 2000, originally as an OSCE-administered entity, but since April 2006, it has become an independent entity, funded by the Kosovo Consolidated Budget [hereinafter KCB] with supplementation by a number of donors.

To be eligible for appointment, candidates for judgeships must complete a judicial training program at the KJI. *Id.* § 6.1(g). Beginning in 2008, the KJI has fully institutionalized its Initial Legal Education Program [hereinafter ILEP]. The ILEP includes 15 months of theoretical and practical training conducted in three phases: (1) a six-month-long review of Kosovo national laws, EU laws, the ECHR, and other international laws; (2) a three-month-long training on pertinent skills; and (3) a six-month-long mentorship in judicial offices. Participants are selected through a competitive Judicial Entry Examination and must commit to serve in the judiciary for two years after completion of their training. LAW ON ESTABLISHING THE KOSOVO JUDICIAL INSTITUTE art. 7 (Law No. 02/L-25, adopted Feb. 23, 2006, promulgated by UNMIK REGULATION NO. 2006/23) [hereinafter KJI LAW]. The first ILEP class launched in September 2008 and consisted of 30 candidates, who graduated in December 2009 and were all appointed judges or prosecutors. The second class of 23 candidates started in September 2009 and is scheduled to graduate at the end of 2010, while the third ILEP class of 30 candidates started in September 2010.

Sitting judges are not explicitly required by any law to attend CLE courses, although a provision to that effect can be found in the judicial ethics code. Nonetheless, through its progressively expanding Continuing Legal Education Program [hereinafter CLEP], the KJI has organized numerous training programs for judges. Its trainings currently cover a range of topics, including criminal, civil, and administrative law and procedure; judicial ethics; newly enacted domestic legislation, such as Law on Arbitration, Law on Economy and Finance, or Juvenile Justice Code; the ECHR and EU laws; and practical skills instruction.
Kosovo JRI 2010 Analysis

While the correlations drawn in this assessment may serve to give a sense of the relative status of certain issues present, ABA ROLI would underscore that these factor correlations and conclusions in the Kosovo JRI 2010 possess their greatest utility when viewed in conjunction with the underlying analysis and compared to the Kosovo JRI 2007. ABA ROLI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA ROLI invites comments and information that would enable it to develop better or more detailed responses to future JRI assessments. ABA ROLI views the JRI assessment process as part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

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I. Quality, Education, and Diversity

Factor 1: Judicial Qualification and Preparation

 Judges have formal university-level legal training and have practiced before tribunals or, before taking the bench, are required (without cost to the judges) to take relevant courses concerning basic substantive and procedural areas of the law, the role of the judge in society, and cultural sensitivity.

<table>
<thead>
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<th>Conclusion</th>
<th>Correlation: Positive</th>
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<td>All judicial candidates are required to hold a law degree from an accredited university, complete at least a year-long internship, pass the bar examination and the Judicial Entry Examination, undergo a 15-month pre-appointment training at the KJI, and have at least three years of legal experience. The year 2008 marked a significant new chapter in the progressive initial judicial training program at the KJI, and there has been some progress in the quality of university training of law students. Opportunities for jurists to fulfill the praktikant requirement for judicial appointment, however, are not well-supported.</td>
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Analysis/Background:

To qualify for appointment as a professional judge in Kosovo, a candidate must be a habitual resident of Kosovo, be of high moral integrity, have a law degree recognized as valid under Kosovo law, pass the bar examination or already be a member of the bar, pass the Judicial Entry Examination, complete an additional judicial training program, and have a minimum of three years of legal experience. KJC REGULATION § 6.1. In order to sit for the bar examination, the applicant’s law degree must be either from a four-year Bachelor’s program or a diploma from a Master of Laws program. KOSOVO ASSEMBLY LAW ON THE BAR EXAMINATION art. 2.1 (Law No. 02/L-40, adopted Jan. 20, 2006) [hereinafter LAW ON THE BAR EXAMINATION]. A one-year internship, or praktikant training, is also a prerequisite to sitting for the bar examination. Id. arts. 3.1, 3.2. The authority to establish and evaluate the additional training qualifications for Kosovo’s judiciary is generally vested in the KJC. CONST. art. 108; KJC REGULATION §§ 1.4, 1.7. The KJI is charged with the administration of the Judicial Entry Examination and a pre-appointment 15-month training program required of all candidates for judicial positions. KJI LAW arts. 2.1, 7, 8.

Legal education in Kosovo consists of programs leading to a Bachelor of Law degree and a Master of Laws degree. STATUTE OF THE UNIVERSITY OF PRISTINA art. 101 (adopted Jul. 5, 2004) [hereinafter UNIVERSITY STATUTE]. The four-year Bachelor of Law degree is awarded following the completion of 240 European Credit Transfer and Accumulation System [hereinafter ECTS] credits after graduating from secondary school. The Master of Laws degree requires completion of a Bachelor of Law degree and the successful completion of an additional 60 ECTS credits in the course of one year.

Beginning in July 2008, Kosovo’s system of legal education has undergone a comprehensive process of accreditation and re-licensing administered by the Ministry of Education, Science, and Technology [hereinafter MEST]. ABA ROLI, LEGAL PROFESSION REFORM INDEX FOR KOSOVO, VOLUME III at 24-25 (May 2009) [hereinafter 2009 KOSOVO LPRI]; see also generally LAW ON HIGHER EDUCATION IN KOSOVO §§ 4, 10-11 (Law No. 2002/3, adopted Sept. 26, 2002, promulgated by UNMIK REGULATION No. 2003/14). Accreditation and licensing are to ensure that Kosovo’s higher education institutions meet comprehensive European quality assurance standards, such as those set by the Joint Declaration of the European Ministers of Education on the European Space for Higher Education [hereinafter Bologna Declaration]. See generally ADMINISTRATIVE INSTRUCTION ON LICENSING OF PRIVATE PROVIDERS OF HIGHER EDUCATION (MEST Instruction No. 14/2003, Jul. 17, 2003); ADMINISTRATIVE INSTRUCTION ON ACCREDITATION OF HIGHER EDUCATION
INSTITUTIONS IN KOSOVO (MEST Instruction No. 2/2009, Jan. 6, 2009); see also MEST, STRATEGY FOR DEVELOPMENT OF HIGHER EDUCATION IN KOSOVO (2005-2015) at 5 (2004). During its initial stages, the accreditation process resulted in the revocation of the licenses of all private universities that previously offered law degrees. Since then, nine private institutions have been accredited and licensed to award law degrees at both the Bachelor’s and the Master’s levels. Additionally, the Law Faculty at the University of Pristina, the primary institution awarding law degrees, had its Bachelor’s, Master’s, and Ph.D. programs accredited in May 2010 for a two-year term. Additionally, in early October 2010, the MEST accredited a new public university in Prizren, which has a Law Faculty that admitted 100 new undergraduate students for the 2010-2011 academic year.

The University of Pristina in Mitrovica operates separately as a component within the educational system of the Republic of Serbia, serving primarily Kosovo’s ethnic Serbs, pursuant to the Serbian Law on Higher Education. See STATUTE OF THE UNIVERSITY OF PRISTINA AT MITROVICA arts. 2-4. Although it is not licensed by the MEST, Kosovo’s government nevertheless recognizes the University of Pristina in Mitrovica. The MEST treats the degrees received from the University as awarded by the University of Pristina proper; thus, in practice, law graduates from its Law Faculty who choose to sit for the bar examination are allowed to do so.

The quality of the formal legal education of Kosovo’s judges has been severely criticized over the years, with much of that criticism still valid despite some recent positive trends. In particular, many judges are said to lack adequate analytical, reasoning, and writing skills. Many of these remaining deficiencies are the legacy of the 10-year interruption in the formal schooling and legal careers of Kosovo’s majority Albanian citizens during the civil strife of the 1990s. See ABA ROLI, JUDICIAL REFORM INDEX FOR KOSOVO, VOLUME III at 13 (Aug. 2007) [hereinafter 2007 KOSOVO JRI]. However, the MEST also forces the University of Pristina Law Faculty to admit too many students each year, without consideration to the available resources, which results in overcrowded classes that preclude the use of interactive teaching methods and lead to overly theoretical instruction. For the 2010-2011 academic year, 3,000 undergraduate law students were admitted, compared to 1,866 new students admitted in 2009, bringing the current enrollment to nearly 7,500 undergraduate students. There are also approximately 1,300 students enrolled in the Master’s program at the Law Faculty. The Law Faculty is attempting to address the overcrowding issue by offering first-year law classes in Peja and Gjilan, in facilities currently run there by other faculties of the University, starting in the fall semester of 2010. Half of the new Bachelor’s students being admitted to the University of Pristina Law Faculty will receive instruction in the two new campuses. The classes are taught by current law professors, who will commute from the Pristina campus to the remote locations. It is unclear whether the Law Faculty might move to a new building in the foreseeable future. There have been some speculations whether a new building currently under construction at the University of Pristina would be assigned to the Law Faculty, but there has been no decision on this subject thus far. Aside from that building, there are no plans for major renovations or construction of a new building to house the Law Faculty.

The Law Faculty has made some slow progress in addressing the weaknesses in its curriculum. Most notably, its curriculum was revised in 2007-2008 in cooperation with international partners, to more closely comply with the Bologna Declaration’s requirements. The curriculum includes a number of elective clinical components in topics such as civil law, family and inheritance law, criminal law, and financial law. In addition, there is a mandatory Legal Writing Methodology course and an elective Legal and Professional Ethics course. All of these practical skills courses were initially provided in cooperation with ABA ROLI, but are now fully self-sustainable and offered by the Law Faculty independently. In the past, the Law Faculty, in cooperation with ABA ROLI and with the support of the United States Agency for International Development [hereinafter USAID], also offered courses on trial advocacy and live-client clinics. Two new Master’s programs in civil law and international relations were recently instituted in partnership with World University Service-Austria, and another program in international commercial law is being designed in conjunction with the University of Pittsburgh with the support of USAID. The Law
Faculty is also supported by the European Commission [hereinafter EC], among others, in its efforts to further reform the legal education.

Before sitting for the bar examination, law graduates must complete a one-year internship as a praktikant in a court, a prosecutor’s, or an advocate’s office, or a two-year internship in a public administration office. LAW ON THE BAR EXAMINATION arts. 3.1, 3.2. It is widely thought that praktikant opportunities with the courts must be expanded in order to create a sufficient pool of talented candidates for future judicial appointments. While the pre-war courts paid their praktikants, the majority now are volunteers, causing a precipitous decrease in their numbers and concern that the most talented of the law graduates are taking higher-paying jobs elsewhere. The situation is most acute in the Serbian enclaves, particularly in the Mitrovica region, where the official courts are not functioning on a full-time basis, obviating even volunteer praktikant opportunities. During 2009, the United Nations Development Program [hereinafter UNDP] funded a training program for 140 praktikants, 60 of whom worked with the courts for 9-12 months (there were 180 applicants for these 60 positions). Each praktikant was paid a monthly stipend of EUR 158 (USD 205).\(^7\) Unfortunately, that program has concluded, with no apparent alternative source of funding for praktikant stipends.

After completion of the praktikant internship, judicial candidates may sit for the bar examination. The bar examination is governed by a seven-member Committee on Bar Examination and should be given three times a year. Id., art. 9.1. No examination was offered from 2008 through early 2010, due to a political dispute over the composition of the Committee on Bar Examination, creating a backlog of over 500 candidates. Administration of the bar examination resumed in early 2010; 118 candidates took the exam in April 2010, and an additional 115 candidates sat for it in June 2010. The backlog of candidates has reportedly been addressed, as all those who wanted to take the exam were reportedly able to do so.

The training for judicial candidates required under the KJC Regulation is under the purview of the KJI, which has significantly developed its pre-appointment program for judges, consisting of the Preparatory/Entry Examination [hereinafter Entry Exam] and ILEP. KJC REGULATION § 6.1(f), (g); KJI LAW arts. 1.7, 2.1(a)-(b), 7, 8. In early June 2008, the KJI, with support from the UNDP, formed a drafting and assessment commission for the Entry Exam and hosted a workshop to draft the Exam utilizing international best practices. ANNUAL REPORT OF THE KOSOVO JUDICIAL INSTITUTE 2008 at 8 (Jan. 2009) [hereinafter 2008 KJI ANNUAL REPORT]. At that time, the KJI, jointly with the KJC, publicly invited interested candidates to apply for the Entry Exam, which was administered in July. Over 170 candidates registered for the exam, with 148 passing (87% passage rate). Id. at 9. The 30 candidates with the highest scores were invited to participate in the first ILEP.

A second Entry Exam was administered in June 2009 under different circumstances. Beginning in 2008, the entire Kosovo judiciary was placed under the auspices of the IJPC, charged with carrying out a Special Appointment Process that involves the complete vetting and appointment of a new judiciary. See CONST. art. 150; IJPC REGULATION § 1.1; see also Factor 2 below for additional details. The Special Appointment Process required the administration of two different Entry Exams for those candidates who were not already sitting judges and prosecutors: one for those with more than seven years of legal experience, and another for those with less than seven years of legal experience. IJPC REGULATION § 2.10; see also KJI and IJPC, REPORT ON THE ORGANIZATION, DRAFTING, AND EVALUATION OF THE PREPARATORY/ENTRY EXAM FOR THE POTENTIAL CANDIDATES FOR JUDGE AND PROSECUTOR at 3-4 (Jul. 2009), available at www.kjjudicial.org [hereinafter 2009 ENTRY EXAM REPORT]. The KJI prepared and administered a new examination for the first category of candidates. 2009 ENTRY EXAM REPORT at 4. All other applicants took an

\(^7\) In this report, Euros (EUR) are converted to United States dollars (USD) at the average rate of conversion during September 2010, at the time when the JRI interviews were conducted (USD 1.00 = EUR 0.77). Historical conversions rely on the average rate of conversion during the applicable year.
examination similar to that used by the KJI for entry into its 2008 ILEP. *Id.* at 4-5. In consultation with the IJPC, the passing score for both exams was set at 60%. Both exams relied on such practices as anonymous grading, independent monitors, seating each candidate at an individual desk, forbidding of personal articles in the test-taking area, etc. *See id.* at 8-13. Out of 129 candidates with more than seven years of experience, 79 passed (61.2% passage rate), as did 56 out of 196 candidates with less than seven years of experience (28.6%). *Id.* at 14. The second ILEP class consists of 23 candidates with less than seven years of legal experience who passed both the Entry Exam and the bar examination.

A third, unified Entry Exam was administered in July 2010, in the same format as the 2009 exam for candidates with less than seven years of legal experience. A total of 82 candidates took the exam, and 30 of them passed and were accepted into the ILEP (36.6% passage rate). *See generally* KJI, *ORGANISATION, DRAFTING AND ASSESSMENT OF THE PREPARATORY EXAM FOR THE POTENTIAL CANDIDATES FOR JUDGES AND PROSECUTORS* at 2-4, 7-11 (Jul. 2010).

A progressive new chapter in judicial training in Kosovo began in 2008, as the KJI fully institutionalized its ILEP. 2008 KJI ANNUAL REPORT at 18. The ILEP includes 15 months of theoretical and practical training that is conducted in three phases. Phase One is a six-month-long review of Kosovo national laws, EU laws, the ECHR, and other international laws, as well as instruction in judicial ethics and legal research, writing, and reasoning, which judicial and prosecutorial candidates attend jointly. The three-month-long Phase Two breaks the groups into their chosen specializations and focuses on pertinent substantive and skills training. In Phase Three, also six months, the candidates are mentored in judicial offices. *Id.* at 10; *see also* KJI, 2009 ANNUAL REPORT: LEGAL EDUCATION FOR JUSTICE at 17-21 (Jan. 2010) [hereinafter 2009 KJI ANNUAL REPORT]. The candidates meet three times a week during Phases One and Two. 2008 KJI ANNUAL REPORT at 11. Beginning in 2009, Phase Three also includes two mentoring coordinators who conduct bi-weekly meetings with the mentees and perform ongoing written assessments to ensure that all work focuses directly on cases and that the candidates perform concrete tasks such as drafting tentative decisions. 2009 KJI ANNUAL REPORT at 22. The candidates also write a law review article, perform community outreach, visit other governmental and law-related institutions, and have taken study visits to Macedonia and Albania. Midterm and final exams are administered during each ILEP, and the results are forwarded to the appointing authority. 2008 KJI ANNUAL REPORT at 11-12; 2009 KJI ANNUAL REPORT at 21; *see also* KJI, 2010 WORKING PROGRAM at 5. Participants in the ILEP must commit to serve in the judiciary for two years after completion of their training, and they are paid a stipend of half of a judge’s salary during their training. KJI LAW arts. 7.5, 8.3.

The 30 candidates in the first ILEP class graduated in December 2009. All of them applied for judicial and prosecutorial positions, and were ultimately appointed, through the Special Appointment Process. The 23 candidates who entered the second ILEP class in September 2009 are scheduled to graduate at the end of 2010. The third ILEP class of 30 candidates commenced in September 2010 and is projected to graduate in December 2011.

KJI has been receiving some financial assistance from donors to help run the ILEP. For example, courses in judicial ethics, legal research, writing, and reasoning, constitutional and administrative law, and case management, medication, and communication skills have been supported by USAID. UNDP has supported the program through publication of all required training materials, writing and implementation of several study modules, organization of international study visits, and publication of the KJI’s law review journal, JUSTICIA. 2008 KJI ANNUAL REPORT at 15; 2009 KJI ANNUAL REPORT at 32-33.

The process of appointing international judges has become less transparent under EULEX than it was under UNMIK administration, although EULEX reportedly applies eligibility criteria similar to those applied by UNMIK. Previously, to be eligible for appointment as an international judge, candidates were required to have: (1) a university degree in law; (2) five years of service as a judge or prosecutor in his/her own country; (3) high moral integrity; and (4) no criminal record.
UNMIK REGULATION No. 2000/6 ON THE APPOINTMENT AND REMOVAL FROM OFFICE OF INTERNATIONAL JUDGES AND INTERNATIONAL PROSECUTORS § 2 (Feb. 15, 2000). It is no longer apparent whether this regulation remains applicable, and EULEX has not publicly divulged its criteria for selection. A number of the local participants in the justice system criticized the preparation and diligence of international judges, especially those under UNMIK, who were ill-prepared to implement Kosovo’s often-confusing patchwork of Yugoslavian, UNMIK, and Kosovo Assembly created laws and regulations.

Service as a lay judge presently does not have any specific educational or training prerequisites. Lay judges must be residents of Kosovo, at least 25 years of age, be of high moral integrity, and not have engaged in discriminatory practices. KJC REGULATION § 6.2.

Factor 2: Selection/Appointment Process

Judges are appointed based on objective criteria, such as passage of an exam, performance in law school, other training, experience, professionalism, and reputation in the legal community. While political elements may be involved, the overall system should foster the selection of independent, impartial judges.

<table>
<thead>
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<tr>
<td>During 2009-2010, Kosovo’s professional judiciary has undergone a nationwide Special Appointment Process, designed to eliminate corrupt judges, minimize political influences in the appointment process, and transform the functioning of the courts. Overseen by a specially-formed commission, the IJPC, the process utilized objective criteria such as the passage of written ethics examinations and thorough review of candidates’ professional and personal backgrounds as selection criteria. Although the Special Appointment Process caused significant disruption to the functioning of the court system, the appointment procedure itself was transparent, uniformly applied, and generally met internationally recognized standards.</td>
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Analysis/Background:

The President of Kosovo appoints professional judges to the regular courts upon recommendation by the KJC, which is a fully independent institution charged with ensuring the independence and impartiality of the judicial system. CONST. arts. 104(1), 108(1)-(2). When the new KJC Law goes into effect, the KJC will be required to develop and implement procedures for selecting and nominating judicial candidates. KJC LAW art. 16.2. In particular, all appointment processes will have to be transparent in publicizing open positions and inviting applications. Id. arts. 4.1.12, 16.1. In making its selection decisions, the KJC will be required to consider at least the following criteria: professional knowledge, performance, and ability, including understanding of and respect for human rights and participation in organized trainings; demonstrated capacity for legal reasoning and analysis; impartiality, diligence, and responsibility; communication skills; conduct outside of office; and personal integrity. Id. art. 17.4. Additionally, the KJC will consider the opinion of the court to which the candidate is being proposed. Id. art. 17.3. Finally, the President will be required to provide, in writing and within 60 days, the reasons for rejecting a candidate recommended by the KJC, and the KJC may then resubmit the candidate along with its written justification. Id. art. 18.2.

At the time of this assessment, however, all judicial seats in the regular courts were subject to a Kosovo-wide Special Appointment Process\(^8\) overseen by the IJPC, an autonomous body of the

\(^8\) At the time of the second interviews for this assessment, the Special Appointment Process was in the final stages of Phase Three and has not yet concluded. Since the process began in 2008,
KJC that submits its recommendations to the KJC. *Id.* art. 150; *IJPC Regulation* § 2.2. The IJPC’s mandate terminated with the conclusion of the Special Appointment Process on October 31, 2010. The Special Appointment Process was based on a model successfully implemented in Bosnia to increase the professional level of the judiciary by ridding it of corrupt, ineffectual, and poorly-skilled members and beginning to replace an entrenched mindset that resists independent and proactive decision-making with one trained in the principles of a strong judiciary that functions as a co-equal branch of government. The work of the IJPC was funded by the EC and the US government.

In a novel provision, as part of the Special Appointment Process all candidates were required to pass a written examination in order to test their working knowledge of the applicable Codes of Ethics, or be eliminated from consideration. *IJPC Regulation* § 2.11; see also *KJC Regulation* §§ 6.1, 6.2; see also Independent Judicial and Prosecutorial Commission, IJPC Ethics Exam Report at 3-4 (Jun. 2009) [hereinafter *Ethics Exam Report*]. The IJPC also considered criteria such as professional knowledge, work experience, and performance; respect for human rights; proven capacity for legal reasoning and analysis; assessed trainings; communication skills, including a writing sample; conduct and integrity; managerial experience (with regard to the position of court president); and internationally recognized principles of gender and minority equality. *IJPC Regulation* §§ 3.2, 3.3; *KJC Regulation* § 5.2. In addition, the IJPC received and considered full reports of the Judicial Investigation Units [hereinafter JIU] of UNMIK and the KJC, and their successors, regarding their investigations of complaints against an applicant. *IJPC Regulation* § 5; *Law on the Temp. KJC* art. 10. The IJPC also independently collected and reviewed personal background and financial information through memoranda of understanding with more than 30 investigative agencies (both local and international) and governmental entities. See Factor 5 below regarding separate criteria for Constitutional Court judges.

Appointments pursuant to Special Appointment Process proceeded in three stages: judges of the Supreme Court (Phase One); judges of the district courts, the Commercial Court, and the High Court for Minor Offenses (Phase Two); and judges of the municipal courts and municipal courts for minor offenses (Phase Three). *IJPC Regulation* § 2.3. For each phase, the KJC or the IJPC publicly announced the number of positions, the requirements, and the application procedures, including the deadline to complete all necessary steps. *Id.* § 2.1. The tenures of those serving as judges at the commencement of the process but who were not participating in reappointment or have not been reappointed were extended to the date that newly appointed judges take their positions. *Id.* § 2.16. Mandatory retirement dates for any sitting judges were temporarily suspended during the Special Appointment Process, but to be eligible for an appointment, a candidate had to be under the age of 65 at the announced deadline for completing his/her application for the desired position. *Id.* § 14.1; see also IJPC Special Advisory to Applicants Who Will Reach 65 in 2009 or 2010. Judges newly appointed under the Special Appointment Process will initially serve for three-year terms. Thereafter, the appointments will be permanent until the judge reaches retirement age, is lawfully dismissed from office, resigns, or otherwise vacates the seat. The appointment of judges under the Special Appointment Process who had previously served as judges for at least two years will be permanent until they reach retirement age. *Const.* arts. 105(1), 150(5).  

there has been significant disruption in the functioning of the court system, particularly with regard to increased case backlog, as some judges vacate their seats before new judges are appointed to fill them, as well as lowered morale among judges who do not expect to retain their seats. These concerns are evaluated in detail in the analysis for this Factor, as well as in Factors 14 and 27 below. Additionally, while the Special Appointment Process has thus far been objective and fosters the selection of independent, impartial judges, it is not yet complete and, as it is a one-time process, there is no guarantee that comparable standards will ultimately be adopted by the KJC, despite an expression of intent to do so.

9 When the new Law on Courts goes into effect in January 2013, all judges appointed through the Special Appointment Process will be deemed appointed permanently until reaching the retirement age or being lawfully removed from office for cause. *Law on Courts* art. 27.5.
The President of the IJPC, an experienced international judge who had served in Kosovo for over two years, and the head of the IJPC Secretariat, an international lawyer who was involved in the Bosnia reappointment process, began their work in February 2008. The IJPC initially consisted of five international commissioners. The number of commissioners gradually increased following the completion of each Phase of the appointments, to add new national commissioners selected from among judges and prosecutors appointed during the immediately preceding Phase. During Phase Two, two newly appointed Supreme Court judges and a newly appointed prosecutor from the Office of the Public Prosecutor were added, bringing the total number of commissioners to eight; and during Phase Three, a newly appointed district court judge and a newly appointed district prosecutor were added, bringing the total number of commissioners to ten. IJPC REGULATION § 7.3-7.4. The IJPC’s work was supported by a Secretariat with a staff of 70-75, the majority of whom were Kosovo citizens. Many of the 15-20 international staff had prior experience in the Bosnian reform process or were nationals of surrounding states such as Croatia, Bosnia, and Bulgaria, with knowledge of court structures similar to Kosovo’s. All IJPC members were required to declare conflicts of interest and recuse themselves in those cases, and they were forbidden to have ex parte communications with candidates. IJPC REGULATION § 9; IJPC RULES OF PROCEDURE RELATING TO CONDUCT OF INTERVIEWS art. 7. The IJPC was housed in a new facility on the outskirts of Pristina paid for by a group of international donors.

Initially, the IJPC developed procedures and established a comprehensive website, http://www.ijpc-kos.org, that served as its main point of communication with applicants and the public. See IJPC RULES OF PROCEDURE FOR SUBMISSION OF APPLICATIONS FOR SPECIFIC POSITIONS art. 7. Each applicant was required to register with the IJPC, in part to receive an identification number, which was then used on all examination- and application-related forms and procedures, to ensure anonymity. The IJPC posted its initial announcements of judicial vacancies and its procedures in at least three nationally-distributed newspapers and on its website, along with detailed instructions and forms for the submission of Preliminary Applications. Id. art. 1. It received 898 Preliminary Applications, which made those candidates potentially eligible to take the ethics examination.

The ethics examination took place in the spring of 2009. The multiple-choice, closed-book examination questions were written by a group of international and Kosovo legal experts during a workshop held in Macedonia. Detailed rules and instructions were adopted to ensure the integrity of the drafting, administration, and grading of the examination, and international proctors monitored its administration. ETHICS EXAM REPORT at 3, 5. The large number of applicants necessitated that the exam be administered in two sessions, the first for candidates with seven or more years of legal experience and the second for those with less than seven years of experience, with an attempt made to fairly balance the two tests. Id. at 6. Three different versions of each test were produced, which varied the sequence but not the content of the questions. Id. at 7. Storage and dissemination of the printed examinations were closely controlled; computer and other controls were put in place to guarantee confidentiality and security. Id. Candidates were informed about the dates and nature of the examination through the IJPC website, newspapers, posters in the courthouses and prosecutors’ offices, and emails to the individual candidates. Id. at 8. Candidates’ assigned examination dates were posted on the IJPC website utilizing their anonymous identification numbers. Id. Additionally, the rules of the examination, a sample question, and an acknowledgment form were provided there.

A total of 463 candidates took the exam on April 26, 2009, and 407 on May 23, 2009. Id. at 9. The test-takers were randomly distributed throughout large examination rooms, with international monitors present in each, except that all ethnic Serb test-takers were placed together to allow for a single translator. Id. at 10. No personal items were allowed in the testing rooms, and each candidate was seated at a separate table. The candidates were given 90 minutes to complete the 50 test questions. Announcements were made when 30, 15, and 5 minutes remained. The passing score was set at 60%. Id. at 13. The test papers were anonymously graded by IJPC.

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10 The website has been disabled following the expiration of the IJPC’s mandate.
commissioners and professional staff, and the results posted by the candidates’ identification numbers on the website. Id. at 12. A procedure to challenge the grades was established. Id. at 13. Overall, 77% passed the examination. Id. However, in some districts, as many as 40-50% of the sitting judges reportedly failed. While a number of those who failed complained within the allowed five-day period, they did not pursue challenges once they were shown that their tests were accurately graded. Id. at 11. In addition, as discussed in Factor 1 above, all candidates who were not sitting judges or prosecutors had to pass a Judicial Entry Exam. As a result, after the passage of all required exams, there were 418 eligible candidates for 461 advertised judicial and prosecutorial positions. IJPC FINAL REPORT at 2.

Candidates still eligible for appointment after passage of the required exams submitted their signed applications and supporting documentation. IJPC RULES OF PROCEDURE FOR SUBMISSION OF APPLICATIONS FOR SPECIFIC POSITIONS art. 10. The IJPC Judicial Vetting Unit, staffed by 10 international and 10 Kosovar investigators, and the Professional Assessment Unit, staffed by four international and six local lawyers, also received and thoroughly reviewed copious financial and other background documentation obtained through the IJPC’s cooperation with more than 30 institutions, such as the Kosovo Anti-Corruption Agency, the Kosovo Police Service, the Office of Disciplinary Counsel [hereinafter ODC], cadastre, tax department, the KPA, as well as Interpol. The Judicial Vetting staff, which met individually with each applicant, focused on candidates’ non-judicial activities, warning that “the applicant’s life will be an open book.” IJPC RULES OF PROCEDURE FOR SUBMISSION OF APPLICATIONS FOR SPECIFIC POSITIONS art. 10(3). At the same time, the Professional Assessment staff focused on verifying professional details. If either Unit uncovered troubling information, the burden was placed on the applicant to provide additional contrary information. Id. art. 10(6).

Applications were then referred to the three-commissioner Evaluation Panels that were to apply uniform criteria to determine which candidates qualified for 90-minute interviews, utilizing standardized questions and procedures. IJPC REGULATION §§ 2.7, 2.8; IJPC RULES OF PROCEDURE RELATING TO CONDUCT OF INTERVIEWS art. 3. After the Phase One appointments were concluded, two Supreme Court judges and one prosecutor also joined the Evaluation Panel. IJPC representatives reported that the interviews were structured to target the specific position the applicant was being considered for, including an assessment of managerial skills for leadership positions, with the goal of achieving merit-based appointments based upon objective criteria. In addition, all candidates were evaluated on their verbal communication skills and writing ability, on the basis of a short written assignment completed immediately after the interview.

Before the interview, applicants had the right to review all materials provided to the IJPC relevant to their applications; to receive from the IJPC information regarding the application and appointment procedure; to address any opinion or information submitted to the IJPC affecting his/her application; and to review all information pertaining to his/her application, unless it impacted the rights of third parties or prejudiced a criminal investigation or other judicial process. IJPC REGULATION §§ 4.1, 4.2, 5. After the interviews, the Professional Assessment Unit compiled the applicants’ scores. The candidates had to obtain a minimum of 60 and a maximum of 90 points for the evaluation criteria pertaining to their integrity, and could also obtain a maximum of 80 points for the competency criteria and a maximum of 40 points for managerial competency. IJPC FINAL REPORT at 9. The Evaluation Panels then met to review and discuss the candidates and to vote on each application. Candidates were ranked based on their scores, and the decisions, along with a brief explanation of the vote, were presented to the full IJPC. The files of those applicants receiving a unanimous vote by the Evaluation Panel were forwarded to the KJC for review and submission to the President with a recommendation for appointment. IJPC REGULATION § 2.12; see also LAW ON THE TEMP. KJC art. 9(2). Applicants who did not receive a unanimous vote were presented to the full IJPC, and those receiving a simple majority of votes from the full IJPC were then forwarded to the KJC for submission to the President with a recommendation for appointment. IJPC REGULATION § 2.12. Applicants were notified in writing of decisions taken on their applications by the IJPC. Id. § 2.7. An unsuccessful applicant could,
within 15 days of notification of the IJPC decision, file for reconsideration by the IJPC Review Panel on the grounds that the decision was based on material errors or omissions, that new material information has become available, or that the IJPC made a serious procedural error or omission in applying the mandated criteria. Id. § 6.1. Overall, the IJPC received 23 requests for reconsideration following Phase One appointments and 44 requests following Phase Two appointments; all but one of these requests were found to be ungrounded. IJPC Final Report at 16. The KJC could reject candidates recommended by the IJPC but could not recommend any candidate who was not recommended by the IJPC. In practice, the KJC recommended the majority of candidates nominated by the IJPC.\footnote{Although exact breakdowns were not available to the assessment team at the time of publication of this report, during Phase One and Two appointments to the Supreme Court, the KJC recommended 8 out of 11 IJPC-nominated candidates, as well as four out of five candidates nominated for the Supreme Court’s specialized panels. During Phase Two appointments, the KJC forwarded to the President “most” of the IJPC’s recommendations, while Phase Three appointments resulted in appointment of 222 out of 227 IJPC-recommended judges and prosecutors. IJPC Final Report at 10, 13-14.}

At the time of the interviews for this assessment, the Phases One and Two appointments were completed, although some vacancies still remained at those court levels due to a lack of qualified applicants. The IJPC had completed its Phase Three work and passed on to the KJC its recommendations for appointments to the municipal and minor offenses courts. These appointments were finalized on October 22, 2010, after this assessment was completed. The IJPC itself was in the process of disbanding, as its mandate expired on October 31, 2010, at which time the KJC was to resume its authority over judicial appointments. Two MOUs have been signed between the IJPC and the KJC, under which four local members of each of the IJPC’s Professional Assessment and Judicial Vetting Units would join respective units within the KJC Secretariat. Considerable negotiations around the logistics of transfer of most of the IJPC’s resources, including procedures, internal organizational rules, some personnel, and office hardware, to the KJC were taking place at the time of this assessment. The KJC’s lack of physical space for additional staff and office equipment poses a challenge, as the KJC is housed in movable trailers left by UNMIK that are already insufficiently large. Another challenge is that salaries at the KJC will be markedly lower than what the staff currently receive at the IJPC.

Overall, the Special Appointment Process resulted in appointment of new occupants to 60% of the positions, including seven completely new Supreme Court judges. IJPC Final Report at 17. Interviewees uniformly believed that the Process was successful in filtering corrupt judges from the system, although it could not guarantee that all corrupt judges were eliminated. The IJPC procedures and implementation were generally approved of, with the exceptions discussed below, although some senior judges expressed concern that the process did not seek their input as to the abilities and character of judges with whom they were familiar. A few interviewees opined that the appointments may still have been politically influenced at the level of the temporary KJC and the President’s office. A number of respondents also criticized and questioned the authority of the initial composition of the IJPC as it existed before the Phase One appointments were completed. At that point, it was composed of three lawyers and two international judges, because no Kosovar judges had yet been appointed pursuant to the Special Appointment Process. The quality of the judges who were appointed was generally approved of. See, e.g., id. (stating that the appointments, including the new President of the Supreme Court, were widely applauded by both the legal community and the general public). Nonetheless, a significant number of interviewees remarked on the large number of appointees with limited judicial experience.

Despite the overall transparency and objectivity of the Special Appointment Process, it has yielded some results that are, at least in the short-term, deleterious. Among the most serious negative consequences have been a slowdown in the already backlogged courts, reportedly verging on paralysis or collapse, an increase in unfilled judicial vacancies, and low judicial
morale. These negative implications are discussed in greater detail in Factors 14 and 27 below. Even supporters of the process have criticized the length of time it has taken to complete. Some respondents commented on the long start-up period at the IJPC, while others remarked that recommendations lingered at the President’s office before being finalized. A frequently heard suggestion for improving the process would be to conduct all reappointments at the same time, in order to avoid the dearth of judges at the municipal and minor offenses courts that resulted from appointments of judges from those courts to higher courts during Phases One and Two. Furthermore, concerned critics believe that, even if the state of the judiciary is improved within two to three years as a result of the process, it has been conducted in too disruptive a manner and at too high a cost to the justice system generally for it to be considered ultimately beneficial. Notwithstanding these criticisms, international observers, particularly those with experience of the similar process in Bosnia, report that the two-year process in Bosnia was equally disruptive, but nevertheless yielded significant results and greatly reduced the power of political affiliation over the courts.  

One of the most criticized aspects of the Special Appointment Process was the ethics examination, particularly since nearly a quarter of those taking it failed. The five members of the temporary KJC, as it was constituted at the time of the examination, unanimously and publicly recommended that the IJPC give the examination again. They noted that written judicial ethics codes are virtually unheard of in Europe, as is the administration of an eliminatory test without the possibility of retaking it. The inability of a written examination to evaluate a judge’s moral character was also a common theme with interviewees, many of whom observed that some of those who failed the exam were judges who serve as role models, while others who passed likely include those with ethics complaints against them. Many stated that the candidates did not understand that the examination would be eliminatory. Most respondents stated that many judges failed because they did not take the test seriously and did not study, that the questions were overly long and awkwardly worded, and that not enough time was allotted. Finally, it was noted that for those corrupt judges who failed, the examination has served as a perverse incentive to maximize their corrupt activities while they are still in office and before the inevitable end of their judicial tenures.

Defenders of the examination emphasized that the questions were professionally written using international best standards; that every answer could be found verbatim in one of the applicable ethics codes; that each question was carefully reviewed during the exam writing workshop; that the questions were a standard mix of 25% difficult, 50% medium difficulty, and 25% easy; and that the passing score was set at a low 60%. Ultimately, however, given the shortage of qualified candidates to fill all of the positions and the arguments advanced by the KJC and others, the decision was made to administer a new ethics examination in October 2010.

In the meantime, the second ethics exam was being drafted to be administered on October 16, 2010. It is anticipated that the repeat examination will result in a sufficient number of additional qualified candidates to fill vacancies left due to a lack of qualified applicants after the Special Appointment Process. When the Special Appointment Process was completed, there were nine such vacancies on the Supreme Court (including four vacancies on its Special Chamber on KTA Matters), one vacancy on the Commercial Court, 11 vacancies on the district courts, 28 vacancies on the municipal courts, and 42 vacancies on the minor offenses courts. IJPC FINAL REPORT at 17-19. The KJC reportedly intends to adopt the same process as developed by the IJPC in filling the vacancies. It was noted, however, that the KJC’s ability to fully implement the IJPC’s appointment procedures will be limited by the budgetary allocations provided by the Kosovo government.

Another significant concern underlying the Special Appointment Process is the fact that a much awaited new Law on Courts that mandates a wholesale reorganization of Kosovo’s judiciary,

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12 See, e.g., ABA/CEELI, JUDICIAL REFORM INDEX FOR BOSNIA AND HERZEGOVINA, VOLUME II at 11-13, 33-34 (Feb. 2006).
including the elimination of the minor offenses courts, has not been passed before the Process began. This means that the Special Appointment Process has filled judicial seats that will eventually be eliminated, and appointed judges to offices the jurisdictions of which will change (for example, from trial to appellate) in the near future. Throughout the next two years, the KJC will develop a detailed implementation plan and oversee the assignment and transfer of judges within the reorganized courts, in preparation for the new Law on Courts taking effect on January 1, 2013. LAW ON COURTS arts. 36.1, 37.2.6, 38.

As discussed in Factor 1 above, it is not clear what criteria are applied in appointing EULEX judges. These appointments continue to be made under the SRSG’s authority pursuant to Resolution 1244. REPORT OF THE SECRETARY-GENERAL ON THE UNITED NATIONS INTERIM ADMINISTRATION MISSION IN KOSOVO (S/2009/149) at 4 (Mar. 17) [hereinafter SG REPORT ON UNMIK]. EULEX judges must be accepted by the EULEX Head of Mission.

Factor 3: Continuing Legal Education

Judges must undergo, on a regular basis and without cost to them, professionally prepared continuing legal education courses, the subject matters of which are generally determined by the judges themselves and which inform them of changes and developments in the law.

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While not legally mandated, CLE for professional judges is obligatory under the Code of Ethics for Judges. The KJI offers, without charge to judges, a yearly curriculum of trainings developed and implemented by its staff of professional trainers and a group of judges, law professors, and other legal practitioners who have undergone training-of-trainers programs. The curriculum is prepared annually by a Managing Board comprised of legal professionals and is based, in part, on questionnaires completed by sitting judges. Some of the trainings are roundtable discussions among judges that specifically address recent enactments and changes in the law.

Analysis/Background:

Under the existing legal framework, CLE is not specifically mandated for Kosovo’s professional judges, although the Code of Ethics and Professional Conduct for Judge requires that judges maintain and improve the highest standards of professionalism and legal expertise and engage in CLE and training as determined by the KJC and when not incompatible with other judicial duties. CODE OF ETHICS AND PROFESSIONAL CONDUCT FOR JUDGES § III(A)(3) (adopted by the KJC, Apr. 25, 2006) [hereinafter JUDICIAL ETHICS CODE]; see also KJC LAW art. 50 (KJC to set training policy and standards for judges in coordination with the KJI. Violations of the Judicial Ethics Code constitute grounds for sanction. KJC REGULATION § 7.5; JUDICIAL ETHICS CODE Preamble; see also UNMIK ADMINISTRATIVE DIRECTION NO. 2006/8 ON THE IMPLEMENTATION OF UNMIK REGULATION NO. 2005/52 ON THE ESTABLISHMENT OF THE KOSOVO JUDICIAL COUNCIL § 5.3(d) (Jun. 6, 2006) [hereinafter JUDICIAL DISCIPLINE DIRECTION].

Judicial training is conducted through the KJI, which is an independent legal entity. KJI LAW art. 1.1. The Managing Board consists of 13 members, including representatives from the Government, the Supreme Court, the Public Prosecutor’s Office, the University of Pristina Law Faculty, the KJA, the Kosovo Prosecutors Association, the KCA, the KJC President, OSCE, UNMIK, and the DJA Director (or their successors). Id. arts. 3.1-3.4. Of these, nine are appointed by the Kosovo Assembly and two must come from Kosovo’s minority communities. Id. arts. 3.3, 3.5. The Managing Board is tasked with adopting the KJI’s annual budget and training program, and overseeing the methodology employed for KJI trainings. Id. art. 3.6.
The daily operations of the KJI are under the administration of a Director, who is a former Kosovo judge and has held the directorship since 2006. Id. art. 4.2. There is also a Program Council, which acts in a consultative capacity to the Managing Board. OSCE has a Special Advisor to the KJI, who provides day-to-day coaching and mentorship to the KJI’s management and staff. 2008 KJI ANNUAL REPORT at 16; 2009 KJI ANNUAL REPORT at 33-34. In 2008, the KJI had a total of 17 employees; that number increased to 21 during 2009. 2008 KJI ANNUAL REPORT at 2; 2009 KJI ANNUAL REPORT at 3, 34. With support from the UNDP, the KJI has developed and adopted a strategic plan for 2008-2011.

The KJI is funded by the KCB, with supplementation by donors, including USAID (through a program implemented by the National Center for State Courts [hereinafter NCSC]), UNDP, the Council of Europe, United Nations Children’s Fund [hereinafter UNICEF], EULEX, the EC, OSCE, the U.S. Department of Justice, United Nations Development Fund for Women [hereinafter UNIFEM], and others. It also hosts regular donor coordination meetings. 2008 KJI ANNUAL REPORT at 17; 2009 KJI ANNUAL REPORT at 30. In 2008, the KJI had an approved budget of EUR 341,468 (USD 502,158). That amount was increased to EUR 612,425 (USD 850,590) in 2009, with a doubling of the budget for pre-appointment judicial training. 2009 KJI ANNUAL REPORT at 35. The KJI is housed in its own new facility on the outskirts of Pristina that has, in addition to offices, a large and well-equipped conference room and at least two large classrooms.

In addition to the ILEP program discussed in Factor 1 above, the KJI also administers a CLEP that offers a progressively expanding number of training seminars for sitting judges. According to the training statistics provided by the KJI to the assessment team, the KJI offered 88 trainings in its CLEP in 2007, 96 in 2008, 101 in 2009, and 110 thus far in 2010. These trainings drew 1,179 judicial participants in 2007, 1,254 in 2008, 1,446 in 2009, and 1,211 thus far in 2010. The majority of trainings occur at the KJI facility in Pristina, although at least four to five trainings are held in the regions each year. For example, during 2008 and 2010, UNICEF supported regional trainings on aspects of juvenile justice. Starting from 2008, USAID, through NCSC, has been supporting regional trainings on the Judicial Ethics Code, while the U.S. Department of Justice supports trial advocacy skills trainings in the regions.

The CLEP curriculum is set each year by the Director and Managing Board, in consultation with a Program Council, and is based, in part, on evaluation forms completed by seminar attendees, a training needs assessment conducted in 2007, training needs assessment surveys distributed among all Kosovo’s judges, discussions with the Supreme Court judges, KJI trainers, and donors, monthly reviews of international justice sector monitoring reports, and daily press reviews focusing on specific problems affecting the training of judges. Flexibility is allowed in the annual curriculum, to accommodate the need for seminars on newly enacted laws. Once the curriculum is set, it is published on the KJI website, http://www.kijudicial.org, and distributed to judges. The training topics are wide-ranging. For example, during 2009, 37 CLEP training sessions have focused on criminal law and juvenile justice, 32 on civil, constitutional, administrative, and labor law, 5 on ethics, 4 on the ECHR and the EU law (acquis communautaire), and three on trial advocacy. 2009 KJI ANNUAL REPORT at 5. The training program for 2010 covers a variety of international laws and treaties; skills-based trainings, such as prosecuting human trafficking cases, surveillance techniques, pretrial hearings, opinion writing and reasoning, and building of trial advocacy skills; as well as a host of new domestic laws, such as Law on Business Organizations, Law on Arbitration, Law on Mediation, Law on Road Traffic Safety, Law on Executive Procedure, and the Juvenile Justice Code. Where appropriate, some of the judicial trainings are combined with trainings of other legal practitioners, most often prosecutors. While most are single-day seminars, some last two to three days.

Kosovo’s judges are in the unique position of serving in a justice system governed by a Constitution that is only a few years old. The result has been a rapid enactment of a large number of new laws by the Kosovo Assembly. Due to the speed of enactment of these laws and their publication with little or no explanation or academic commentary, it has fallen upon the practicing judges to implement this untested, largely unexplained, and, at times, incongruent body
of laws. The KJI attempts to address this problem by hosting roundtable discussions on the new laws within 30 days of enactment, with participation by drafters or others knowledgeable about the new enactments. The KJI hosted 25 roundtables during 2008, some of which resulted in written recommendations for revisions to newly enacted laws sent to the MOJ. 2008 KJI ANNUAL REPORT at 12. Approximately a dozen sessions were added to the curriculum upon enactment of the new provision on plea bargaining, and new sessions have also been devised to address the formation of the Constitutional Court in 2009. As reported by the KJI, three roundtables were held during the first four months of 2010. These roundtables are among the CLEP’s best attended and most popular events, and judges report the need for even more trainings on new laws, particularly those that will be frequently applied (such as the Law on Contested Procedure and the Law on Economy and Finance).

The KJI has also focused on the training of its trainers, which include both permanent KJI staff and part-time trainers drawn from the legal community. With support of USAID and, starting in 2010, other donors, the KJI held three training-of-trainers sessions in 2007, two in 2008, three in 2009, and five through the first four months of 2010. While many of the KJI’s trainers during 2007 were international experts, now 95% are local. Trainers are paid through the KJI budget, but if they are otherwise salaried by the government, they receive honoraria only for their preparation time. Currently, the KJI has approximately 50 trainers. The KJI also conducted basic and advanced training-of-trainers courses on the Judicial Ethics Code, which were offered to 30 candidates; seven or eight of them were selected and are now available to teach the KJI’s ethics trainings.

The KJI also sponsors trainings for its staff and personnel. A portion of staff trainings held in 2008 focused on cultural sensitivity, and in 2009, USAID, through NCSC, supported a training to help develop team building, writing, communication, and other professional skills among the KJI staff. Additionally, in 2008, the Program Council members and the President of the Managing Board undertook a study visit to the Magistrates School of Albania and, with aid from the Council of Europe, the KJI Managing Board and Director attended study tours to the Council of Europe and the National Magistrates School of France. 2008 KJI ANNUAL REPORT at 13; 2009 KJI ANNUAL REPORT at 34.

In 2008 and 2009, the KJI, with the support of USAID, started to expand its trainings to include court administrators, presidents, and staff (including law clerks). In 2010, the KJI also began developing and implementing a new training program for newly promoted judges, as mandated by the law. See KJI LAW art. 10; see also Factor 15 below. This program also focuses on developing post-appointment trainings for individuals appointed under the Special Appointment Process who were not sitting judges but had more than seven years of legal experience, because those appointees will not have had the benefit of participating in the ILEP. Additionally, there is a legal requirement that those appointed through the IJPC process must attend the KJI trainings during their initial probationary period. KJI LAW art. 10.2. The KJI is also mandated to train lay judges. Id. art. 9.1; see also KJC LAW art. 50. It offered five such trainings in 2007, three in 2008, three in 2009, and one so far in 2010.

Interviewees generally commend the KJI as an institution that functions better and more professionally than many others in the justice sector. Its success is attributed to its independence, which allows its Board and leadership to chart a direction for the institution largely divorced from political concerns, and to undertake its own budgetary process separate from the general court budget proposed, with less positive effect, through the KJC – a comparison that was drawn by multiple interviewees. Respondents also gave positive assessments of the KJI trainings, although it was noted that the quality of its offerings vary with the trainer. In particular, roundtables which allow the judges to discuss and share ideas on the application of Kosovo’s many new laws are lauded, and more were called for. Most judges interviewed lamented that their workloads prevent them from attending more seminars. Judges in outlying regions generally did not find the KJI’s location in Pristina to be an impediment to attending the trainings.
**Factor 4: Minority and Gender Representation**

_Ethnic and religious minorities, as well as both genders, are represented amongst the pool of nominees and in the judiciary generally._

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The new KJC Law mandates targeted recruitment to foster participation in the judiciary by ethnic minorities. While ethnic minorities are represented in roughly the same percentages as in the general population, most Kosovo Serb judges have not worked since the declaration of independence on February 17, 2008, and there was speculation that those appointed during the Special Appointment Process may not serve. Low participation by minorities in law schools, _praktikant_ programs, and bar examination, which are precursors to judicial service, portends a possible shortage of minority candidates for appointment in the future, particularly in the Northern Mitrovica courts that have been closed since early 2008. Women’s representation in the judiciary and its institutional precursors is below their proportion in the general population, and the number of female undergraduate law students has decreased in recent years. The Constitutional Court has achieved a good balance of minorities and women.

**Analysis/Background:**

The courts are constitutionally required to reflect Kosovo’s multiethnic population and international principles of gender equality. CONST. art. 104(2). At least 15% of the Supreme Court judges, but not fewer than three judges, must be from minority communities. _Id._ art. 103(3). At least 15% of judges on each appellate court, but not fewer than two judges, must be from minority communities. _Id._ art. 103(6). Further, each court should reflect the ethnic composition of the territorial jurisdiction of the respective court. _Id._ art. 104(3). The KJC is likewise constitutionally required to ensure the judiciary reflects Kosovo’s multiethnic nature and follows the principles of gender equality, and to give preference in appointments to underrepresented community members. _Id._ art. 108(2); _see also_ KJC _LAW_ art. 17.1. To this end, the KJC will review the ethnic composition of the basic courts at least every five years and request additional funding, where necessary, to undertake steps to ensure that all minority communities are adequately represented among the judges of each jurisdiction. KJC _LAW_ art. 17.2. The IJPC’s appointment process was guided by UNMIK regulations that recognize the importance to the rule of law and reconciliation process of an integrated justice system, and is to work towards the objective of achieving internationally recognized principles of gender equality. IJPC _REGULATION_ § 3.3; _see also_ UNMIK _REGULATION_ NO. 2006/25 ON A REGULATORY FRAMEWORK FOR THE JUSTICE SYSTEM IN KOSOVO § 2 (Apr. 27, 2006) [hereinafter _JUSTICE SYSTEM FRAMEWORK REGULATION_].

According to the most recent estimates available from the Statistical Office of Kosovo, as of 2006, Kosovo’s population was comprised of 92% ethnic Albanians, 5.3% Serbs, 1.1% Romas, 0.4%
Turks, and 1.2% representatives of other ethnic or national minorities. Statistical Office of Kosovo, Demographic Changes of the Kosovo Population 1948-2006 at 7 (Feb. 2008). Of approximately 298 sitting judges in the regular courts at the beginning of the reappointment process, there were 15 ethnic Serbs, 11 Bosniaks, 5 Turks, and 3 Roma, Egyptian, Ashkali, or Gorani. Kosovovo Judges Association, Participation of Women and Representatives of Minorities in the Justice System in Kosovo at 14 (2009) [hereinafter KJA Statistics]. This was proportional to or exceeded the percentage of those minorities in the society as a whole. As the following Table demonstrates, ethnic proportions of Kosovo’s judges have not varied considerably since 2007, and minority communities have consistently been represented in proportion to their respective representation in the society, which has remained fairly constant throughout this period. See 2007 Kosovovo JRI at 19. Nevertheless, interviewees indicated that some courts are more integrated and are used more by minority communities than others. For example, the Prizren region is said to be generally well-integrated, with a majority of the population being multilingual in Albanian, English, Serbian, and Turkish. Both prior to and following the completion of the Special Appointment Process, courts in that region had three Bosniak judges, and the region’s Bosniak minority was reported to fully utilize the court system.

The number of ethnic minority judges decreased dramatically after the completion of the Special Appointment Process. As part of the Special Appointment Process, a number of judicial positions at each court level were reserved for minority candidates, including three positions on the Supreme Court, two positions on each of the district courts (for a total of 10 positions), 11 to 14 positions on the municipal courts, and 9 to 10 positions on the minor offenses courts. IJPC Final Report at 17-19. At the same time, according to information obtained by the assessment team, few Serb candidates had applied for appointment. Overall, the Process resulted in the appointment of only 12 ethnic minority judges, including 5 Serb judges, 6 Bosniak judges, and 1 Egyptian judge; none of these appointments were for the Supreme Court positions. Id. Some respondents further speculated that it was not certain whether those who were appointed would take the positions, as the Serbian government was not in favor of their service in Kosovo courts and some were reportedly threatened by members of the Serb community.

<table>
<thead>
<tr>
<th>Minority Representation in the Judiciary, 2007-2010</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of judges</td>
<td>309</td>
<td>284</td>
<td>298</td>
<td>246</td>
</tr>
<tr>
<td>Albanian judges</td>
<td>274</td>
<td>251</td>
<td>264</td>
<td>234</td>
</tr>
<tr>
<td>Serb judges</td>
<td>15</td>
<td>14</td>
<td>15</td>
<td>5</td>
</tr>
<tr>
<td>Other ethnic judges</td>
<td>19</td>
<td>19</td>
<td>19</td>
<td>7</td>
</tr>
</tbody>
</table>

There is currently one Serb and one Turkish judge, out of six local judges on the Constitutional Court.

Kosovo’s declaration of independence on February 17, 2008 has occasioned new challenges to a multi-ethnic judiciary. Ethnic Serb judges working for UNMIK were ordered by the Serbian government to discontinue their work in the Kosovo courts and were invited back into the Serbian judiciary. Two Serb judges working in the Pristina Municipal Court did not work for a week following the declaration of independence; the Gracanica branch of the Pristina Municipal Court was nonoperational during February 18-22; two Serb lay judges in the Lipjan Municipal Court ceased working altogether, as did two Serb professional judges in the Gjilan Municipal and District Courts. OSCE Mission in Kosovo, Monitoring Department, Legal System Monitoring Section Monthly Report – March 2008 at 5 (Mar. 30, 2008) [hereinafter Mar. 2008 Monitoring Report]. Reportedly, only two of Kosovo’s Serb judges were active after the disturbance. Additionally, the Serbian Ministry of Justice annexed the municipal and minor offenses courts in Leposaviq and Zubin Potok after independence, and those courts have been either completely or largely non-functioning ever since. SG Report on UNMIK at 4; OSCE Mission in Kosovo,
The problems are particularly acute in the Mitrovica region, where the court complex that housed the district, municipal, and minor offenses courts was first forced to operate at a limited capacity after the declaration of independence and then closed altogether as of March 14, 2008, due to protests. The protestors included Serb members of the pre-1999 court staffs, who demanded a return of the region’s courts to the Serbian court system. See MAR. 2008 MONITORING REPORT at 2. Some of the Serb judges from those courts are now working in a parallel Serbian court in Mitrovica, which operates out of a former house. Until 2010, some also worked in the Serbian-annexed court in Leposaviq, which has now been closed. The region’s Serb judges have been invited by EULEX to participate in their judicial operations, but they have so far elected not to do so absent authorization from Serbia. They have also been discouraged from applying for positions within Kosovo’s regular court system due to a variety of factors, including the Serbian government’s opposition to their doing so, the more generous salaries and benefits available to them through employment with the Serbian courts, and threats from their Serb communities. In the meantime, Serbia’s new Law on Courts became effective as of January 2010, launching a reappointment process of the country’s judiciary. In connection with this, it was reported that the KJC will not entertain future applications by those Serb judges who served in Kosovo’s judiciary under UNMIK, but who opted to go through the Serbian reappointment process rather than Kosovo’s Special Appointment Process. It is also not clear whether the increase in Kosovo’s judicial salaries will encourage more Serb candidates to apply.

The situation in Northern Mitrovica also negatively impacts the majority judges in the region, most of whom are not working and, due to security concerns, have been unable to cross the bridge into Northern Mitrovica to attend the court complex. Instead, a small taskforce of about 15-25 of the non-Serb judges, prosecutors, and staff from the Mitrovica courts has been working on a rotating basis out of the Vushtri Municipal Court, 12 kilometers away. Some of these judges stated that the security threat to them is exaggerated for political purposes and that, if allowed by authorities, they and their staff would be more than willing to work in Northern Mitrovica. In the meantime, some EULEX judges and prosecutors began scheduling limited proceedings in Northern Mitrovica in December 2008; however, only a small number of these cases have actually been completed. Since July 16, 2009, through cooperation between the MOJ and EULEX, a team of administrative personnel, consisting of Serbs and Albanians, has been working in the court complex to organize, register, and prioritize pending cases and to select some for trial. The work has proceeded in stages, addressing the District Court’s files first and then working through the Municipal Court’s and the prosecutor’s office files. This task was nearly complete at the time of this assessment, with all of the files organized and accounted for. Another option for processing the stalled cases that was purportedly offered but rejected by the local judges was for the courts to convene in the Southern side rather than Northern Mitrovica. The local judges saw that option as an unacceptable de facto segregation of Kosovo court system.

Ethnic Albanian and Serb judges reported they have always had and continue to have an excellent working relationship, and their pride in that achievement was evident during the interviews. Judges uniformly emphasized that the citizens of districts without functioning courts are most harmed by the situation. Judges from all communities believe that a majority of Serb and Albanian citizens in the region support the resumption of the operational multi-ethnic court. It was particularly noted by more than one interviewee that the ethnic Serb community is especially harmed by the lack of participation by Serb judges in the regular court system. However, an OSCE monitoring report concluded that non-Albanian participants in the justice system, including Serbs, are treated equally to Albanian participants. See OSCE MISSION IN KOSOVO, MONITORING DEPARTMENT, DIFFERENT COMMUNITIES BEFORE THE KOSOVO JUSTICE SYSTEM: A PRELIMINARY
STATISTICAL OVERVIEW OF PUNISHMENTS AND TRIAL OUTCOMES IN DISTRICT, MUNICIPAL, AND MINOR OFFENSES COURTS at 19 (Dec. 2008). The leadership of the courts has made efforts to lobby for the resumption of normal court functioning by contacting the Kosovo President, Prime Minister, Minister of Justice, the Supreme Court, the U.S. Embassy, EULEX, and ICO, but to no avail.

Most indications are that there is insufficient minority participation in the Law Faculty, praktikant programs, and bar examination (i.e., prerequisites for judicial appointment) to assure a fully multiethnic judiciary in the future. In both the 2007-2008 and 2008-2009 academic years, for example, the Law Faculty in Pristina had only 16 minority students, none of whom were Serbs. For the 2009-2010 academic year, the Law Faculty had a minority enrollment of 29 (however, this number also included ethnic Albanians from neighboring countries); again, none of these students were Serbs. In addition, 30 new undergraduate students from ethnic minorities were admitted for the 2010-2011 academic year, including two Bosniaks, seven Turks, and 21 ethnic Albanians from outside of Kosovo. A nominal 3% of the candidates that passed the bar examination between January 2007 and the end of 2009 were minorities. Moreover, the closure of the courts in the Mitrovica region has obviated virtually all judicial praktikant opportunities for its minority students.

Despite a gradual increase in the percentage of women judges and the legal guarantees outlined above, de facto gender equality has also proved elusive, although the judges interviewed for this assessment uniformly reported that female judges are treated equally and are offered equal opportunities to their male counterparts. The Law on Gender Equality sets forth several provisions for the promotion of women’s rights, including a guarantee of equal rights within the judiciary. The Law calls for 40% of appointments to governmental bodies, including the judiciary, to be women. LAW ON GENDER EQUALITY IN KOSOVO §§ 3.1-3.3 (Law No. 2004/2, adopted Feb. 19, 2004, promulgated by UNMIK REGULATION NO. 2004/18). However, as indicated in the following table, the percentage of women judges in the regular courts has increased only negligibly since 2007 and remains well below 40%.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total No. of Judges</th>
<th>No. of Female Judges</th>
<th>% of Judges</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>309</td>
<td>82</td>
<td>26.5</td>
</tr>
<tr>
<td>2008</td>
<td>284</td>
<td>80</td>
<td>28.2</td>
</tr>
<tr>
<td>2009</td>
<td>298</td>
<td>82</td>
<td>27.5</td>
</tr>
</tbody>
</table>

Source: KJC Secretariat, Statistics Department.

Although the assessment team did not obtain the exact breakdowns regarding the number of female judges appointed through the Special Appointment Process, a total of 95 women (28.4%) were appointed to the 334 judicial and prosecutorial positions filled as a result of the Process. IJPC FINAL REPORT at 2. Furthermore, although official KJC statistics on this matter is not available, according to interviewees, women judges very rarely hold court president or other leadership positions, and the assessment team did not obtain information as to how many women were appointed to these positions as a result of the Special Appointment Process. The Special Appointment did, however, succeed in significantly increasing the number of female judges on the Supreme Court, with women judges now occupying 5 out of 11 regular judicial positions (45.5%) on the Court. Id. at 17.

In the Constitutional Court, two of the six local judges and one of the three international judges are women.

Women are also generally admitted to the institutions critical to obtaining judicial appointment in percentages lower than that in the general Kosovo population – although, according to data provided to the assessment team by the University of Pristina, the gender statistics in both the undergraduate and the Master’s levels of study at the Law Faculty have improved in the short-term. Female representation in the undergraduate student body increased from approximately...
44% in the 2007-2008 academic year to 49% in the 2008-2009 academic year, and to nearly 56% in the 2009-2010 academic year. The percentage of women enrolled in the Master’s program at the Law Faculty increased from approximately 30% in 2007-2008 to nearly 38% in 2009-2010. At the same time, the percentage of graduates who are women is significantly lower than the overall percentage of enrolled women students. Women represented just under 38% of the Bachelor’s program graduates in 2008, and this percentage increased to just under 42% in 2010. Only 8% of the Master’s level students who graduated in 2010 were women. Of those passing the bar examination in 2007, 31.8% were women. Of the candidates who passed the bar exams in April and June 2010, women made up 21.7% and 22%, respectively. According to information provided to the assessment team by the KJI, the 2008 ILEP class included 24 men and 6 women (21%), while the 2009 class includes 18 men and 5 women (22%); no information was made available regarding the 2010 ILEP class. While statistics were not available on women’s participation as praktikants in the courts, the KCA reports that its praktikant program had 32% female participation in 2008, more than 50% in 2009, and 40% in 2010. 2009 Kosovo LPRI at 35.

Some measures have been taken to address under-representation of women and minorities in the profession, albeit with limited success. The University Senate has authorized special admission procedures for minority students, although no specific minority recruitment policy exists at the Law Faculty itself. UNIVERSITY STATUTE art. 77.5. The KJI had plans to hire a minority community liaison officer and a gender expert to develop methods of enhancing gender and minority balance in the candidate pool for judicial appointments. Minority candidates in the Special Appointment Process were provided with information on the process through publications in Serbian newspapers. For some critical events, such as the ethics examination, informational bulletins are also distributed for posting in court and municipal buildings in Serb-populated areas through the Court Liaison Office in Gracanica, in addition to the regular postings on the IJPC web site. See, e.g., ETHICS EXAM REPORT at 8.

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13 According to the KJA, however, enrollment in the Law Faculty for the 2009-2010 and 2008-2009 academic years was only 35% and 33% female, respectively, which represents a significant downturn from a 45% female enrollment in 2006-2007 and 44% in 2007-2008. KJA STATISTICS at 4.
II. Judicial Powers

Factor 5: Judicial Review of Legislation

A judicial organ has the power to determine the ultimate constitutionality of legislation and official acts, and such decisions are enforced.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
<th>Trend: ↑</th>
</tr>
</thead>
<tbody>
<tr>
<td>The newly formed Kosovo Constitutional Court began functioning in September 2009 as an independent governmental institution with the ultimate jurisdiction to determine the constitutionality of legislation and official acts, albeit subject to the ultimate ICR oversight. Thus far, the Constitutional Court appears to have lived up to the high expectations that it will be an independent and scrupulous body that will increase respect for the judiciary as a whole.</td>
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</tbody>
</table>

Analysis/Background:

The Constitution establishes a Constitutional Court as the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution. CONST. art. 112(1). The Court is guaranteed to be fully independent in the performance of its responsibilities. Id. art 112(2). This includes organizational, administrative, and financial independence. CONST. COURT LAW art. 2.1. The Court determines its own organizational structure and rules of procedure and decision-making. Id. art. 2.2. The decisions of the Court are binding on all other courts, as well as all persons and institutions in Kosovo. CONST. art. 116. The ICR, however, retains final authority regarding civilian aspects of the Ahtisaari Plan. See id. art. 147.

The Court is composed of nine judges, all of whom are appointed by the President of Kosovo upon proposal by the Assembly for non-renewable nine-year terms. Appointments should respect the principles of gender equality and ethnic diversity, with seven judges proposed by a two thirds majority of the Assembly members present at the hearing, and the other two judges proposed by the majority vote of Assembly members present and with the consent of the majority of Assembly members holding seats reserved for ethnic minorities. Id. art. 114(2)-(3). The Court’s President and Deputy President are elected by secret ballot by the other judges for a term of three years. Id. art. 114(5). The judges must be citizens of Kosovo who are distinguished jurists with at least 10 years of professional legal experience, have excellent reputations, and no criminal convictions. Id. art. 114; see also CONST. COURT LAW art. 4.1. Constitutional Court judges may not be members of political parties, movements, or organizations; members of the boards of publicly-owned enterprises, trade associations, or non-governmental organizations; or members of trade unions. CONST. COURT LAW art. 5.1. Each judge swears an oath to uphold the Constitution and to perform honorably, responsibly, impartially, and ethically. Id. art. 7.4. Nearly all those interviewed for this assessment were pleased with the caliber and backgrounds of the judges appointed to the Court, most of whom were law professors, although a few complained that only one of the local judges had prior judicial experience. It was noted that of the six Kosovo national judges, there are two ethnic minorities and two women, percentages that compare very favorably to other institutions in the region.

14 In the interim, until the end of ICO supervision over Kosovo, six of the Court’s judges are appointed by the President upon the Assembly’s proposal, with two judges serving each the non-renewable terms of three years, six years, and nine years; two of them will need to be recommended with the consent of the majority of Assembly members holding seats reserved for ethnic minorities. The remaining three judges are international judges appointed by the ICR in consultation with the President of the European Court of Human Rights. CONST. art. 152.
The Constitution delineates standing before the Constitutional Court as follows:

- the Kosovo Assembly, President, Government, and Ombudsperson have standing with respect to the constitutionality of laws, President’s or Prime Minister’s decrees, Government regulations, and municipal statutes; these entities (except Ombudsman) may also bring challenges with respect to conflicts in their competencies, the constitutionality of a proposed referendum, declarations of and actions taken during a state of emergency, the constitutionality of procedures with respect to a proposed constitutional amendment and the compatibility of any such amendment with binding international agreements ratified under the Constitution, and issues concerning violations of the Constitution during Assembly elections;
- a municipality has standing with respect to the constitutionality of certain laws or governmental acts;
- Ten or more Assembly members may contest the constitutionality of acts of the Assembly within eight days of adoption, while 30 or more Assembly members may challenge the constitutionality of an act of the President;
- individuals have the right to bring claims concerning the violations by public authorities of their constitutionally guaranteed rights and freedoms, after exhausting all other legal remedies;
- regular courts may challenge the constitutionality of a law when such issue is raised during judicial proceedings and the court is uncertain as to its constitutionality, if the court’s decision in the underlying case hinges upon the compatibility issue; and
- the President of the Assembly may bring a claim to test proposed constitutional amendments before the Assembly votes.

**CONST. art. 113.**

Some observers have questioned whether the Constitutional Court’s jurisdiction extends to the review of the compatibility not only of new laws, but also of old SFRY laws with the new Constitution and the principles enshrined therein. The Court’s jurisdiction generally does not extend to the review of UNMIK Regulations and sub-legal acts. In addition, all Kosovo institutions, including the Constitutional Court, remain subject to the ultimate authority of the ICR. **Id. art. 147.**

Decisions of the Court are made by a majority vote of the judges present, with a seven-judge quorum requirement. Those present must vote and cannot abstain. **CONST. COURT LAW** art. 19. The Court votes after hearing oral argument, although the parties may waive an oral hearing. **Id.** art. 20. The decisions are in writing, announced publicly, and published in the OG. **Id.** art. 20.3. Unless otherwise provided, they are effective on the day of publication. **CONST. art. 116.**

The Constitutional Court, through its President, prepares its own annual budget proposal, which is protected against modification, amendment, or influence by the Government or the budget agency. The Court’s budget proposal is passed on to the Assembly and must be included in its entirety in the KCB. **CONST. COURT LAW** art. 14.2. The Court also manages its own budget, but is subject to external audits by the General Auditor. **Id.** art. 14.3. There was some, arguably unconstitutional, attempt by the Assembly to withhold approval of a portion of the Court’s 2010 budget proposal, but that issue was ultimately resolved and the Court’s budget was approved.

A Working Group on the Establishment of the Constitutional Court was convened in May 2008 to prepare a legal framework, preliminary budget, organizational structure, and planned location for the Constitutional Court. The Working Group developed the infrastructure through December 2008. The Constitutional Court President and Deputy President took office in June 2009, and four other local judges, including two representatives from Kosovo’s minority communities, began on September 1, 2009. Three international judges were appointed later: a Bulgarian judge who has served on the European Court of Human Rights, a Portuguese judge, and an American. The international judges have an equal vote with local judges on cases, but they are paid by the ICO
and have only a three-year term (i.e., until the end of ICO oversight). The judges have had study visits to the UK and other European countries, and a USAID-funded visit to the US Supreme Court is planned. Judges meet weekly to conduct court business.

The Court is housed in a newly remodeled building in downtown Pristina. The intake office and file room are located on the ground floor, with a courtroom on the top floor and offices in between. While adequate to allow for public hearings of its cases, the courtroom is in need of translation equipment. However, the Court is already short on space, and once it is fully staffed, with a full complement of 50 to 60 employees, the current building will not be sufficient. Additionally, interviewees expressed concerns that the Court’s email system, used extensively by the judges to discuss pending cases, is a part of the Government’s network and should, for confidentiality reasons, be made separate and secure.

The court has six staff attorneys, including three Kosovo citizens and three internationals. All staff attorneys speak English, which is essential to the Court’s reliance on the decisional law generated by the European Court of Human Rights. Eventually, two additional staff attorneys, representing ethnic minority communities, will be hired. The staff attorneys are experienced jurists who conduct legal research and analyze and preliminarily prepare the cases. Interviewees emphasized that the Court has an exceptionally well-qualified professional legal staff. The Court received 1,090 applications for 25 advertised staff positions.

The Court receives cases according to its internal regulations. Upon filing, the case is sent to the protocol department, where it is registered and assigned to a judge on a rotating alphabetical basis. The reporting judge, and his/her staff, research and analyze the case and prepare a report and recommendation for a panel of three additional judges on whether the complaint meets the Court’s jurisdictional requirements. If accepted, the case goes to the Court en banc for decision on whether to proceed, which requires seven votes. If they decide to go forward, the matter is scheduled for a hearing. A tentative decision is reached before the hearing, at which all judges have the right to question the litigants. The judges’ names and votes are reflected in the written decision.

While many of the early filings with the Court involved human rights issues, interviewees noted a recent trend toward more cases involving governmental institutions, reflecting, what is believed to be a growing sense that the governmental system overall is becoming “constitutionalized.” In its first decision on the merits, the Court unanimously declared the municipal logo of Prizren unconstitutional, on the grounds that it did not represent the diverse population of the city. The Court ordered that the emblem be redesigned in consultation with the minority communities. See *Hoxha et al. v. Municipal Assembly of Prizren* (Case No. KI 56/09, May 14, 2010). In addition to the Kosovo Constitution, the decision relied on a variety of international instruments setting forth international human rights standards. In September 2010, the Court rendered a decision heralded by some as the *Marbury v. Madison* of Kosovo jurisprudence. The Court interpreted a constitutional provision limiting outside activities of the President of Kosovo and declared that he could not hold the position of a party leader while also serving as President. See *Naim Rrustemi et al. v. His Excellency Fatmir Sejdiu* (Case No. KI 47/10, Sept. 28, 2010). The Court has also reviewed a number of decisions of the Kosovo Supreme Court, both reversing and affirming them.

Additionally, the Court has not admitted a number of submissions on the grounds of jurisdictional deficiencies. Reportedly, cases in the latter category often involved litigants who have failed to completely exhaust administrative remedies. Through a program in cooperation with East-West Management Institute, the Court’s judges have been delivering trainings for citizens, lawyers, judges, prosecutors, and other government official on the Court’s procedures and jurisdiction.

Observers note that the Court’s written decisions have been detailed and relatively well-reasoned. The decisions have been made publicly available, as required by law, and some have been widely covered by the media. In split decisions, the dissenting opinion has also been
published. The expertise of the international judges on the Court has reportedly contributed to the professional development of the local members, particularly in the drafting of judicial opinions, which does not have a tradition in Kosovo and other former Yugoslav countries.

Barely over a year old, the Constitutional Court appears to be living up to the high expectations. Although not technically a part of the regular court system, the Court has the potential as a new institution to increase public trust in the judiciary as a whole.

**Factor 6: Judicial Oversight of Administrative Practice**

*The judiciary has the power to review administrative acts and to compel the government to act where a legal duty to act exists.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
<th>Trend: ↔</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Constitution protects the individual’s right to review of governmental actions. That right is exercised through a statutorily provided administrative review procedure in the regular courts and may form the basis for review by the Constitutional Court. While the advent of the Constitutional Court has clarified somewhat the judiciary's jurisdiction over administrative acts and decisions, recent developments in domestic law and continued exceptions to the courts' jurisdiction over the acts of international entities allow significant gaps in the courts' powers over administrative actors.</td>
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**Analysis/Background:**

Every person has the constitutional right to pursue legal remedies against administrative decisions that adversely impact his/her rights and freedoms. CONST. art 32. The Law on Administrative Procedure provides for judicial review of administrative decisions and orders, as well as acts done in the implementation of them, but not for review of “administrative acts of regulatory character.” LAW ON ADMINISTRATIVE PROCEDURE arts. 1.4, 2 (Law No. 02/L-28, adopted Jul. 22, 2005, promulgated by UNMIK REGULATION NO. 2006/33). Thus, any discretionary administrative act is subject to judicial review. Id. art. 140. Appeals to the courts are permitted only after an exhaustion of all administrative remedies, i.e., a request for review by the offending agency and/or an appeal to a higher administrative body. Id. arts. 126, 127, 129. Individuals may challenge in court either the decision of a second instance administrative authority or the decision of a first instance administrative authority if no administrative appeal is possible from such a decision. LAW ON ADMINISTRATIVE LAWSUITS art. 7 (effective Jul. 1, 1977).

While the law on administrative procedure governs procedures in the administrative bodies, the law on administrative lawsuits controls administrative review proceedings in the courts. The acceptable grounds for challenging an administrative decision include: (a) if the laws upon which the decision was based were not properly applied; (b) if the administrative authority which reached the decision was incompetent; or (c) if administrative procedure was not correctly followed, or the facts were not correctly ascertained. Id. art. 10. Any individual with a personal stake in the administrative decision may bring an appeal. Id. art. 13. After a court makes a decision regarding an administrative appeal, it has the power to compel administrative bodies to act where a legal duty exists. Id. arts. 42, 62-65.

Within the regular court system, jurisdiction over administrative appeals lies principally with the Administrative Panel of the Supreme Court. LAW ON REGULAR COURTS art. 31(5). Currently, three judges have been designated to sit on the Administrative Panel (prior to 1989, there were five Supreme Court judges designated to hear administrative appeals). OSCE MISSION IN KOSOVO, DEPARTMENT OF HUMAN RIGHTS, DECENTRALIZATION AND COMMUNITIES, REPORT ON THE
The new Constitutional Court's jurisdiction also extends to administrative review, which can include cases brought by the Ombudsperson with respect to the constitutionality of President's or Prime Minister's decrees and Government regulations, or by individuals for the violation by public authorities of their constitutionally guaranteed rights and freedoms after an exhaustion of all legal remedies. CONST. arts. 113(2), 113(7). The ICR, in this area as in others, is the final authority on civilian matters and is insulated from any Kosovo governmental institution's attempt to review, diminish, or otherwise restrict his mandate. Id. art. 147.

The system of administrative review is complicated by special provisions covering a variety of particularized disputes. The KTA was established to administer socially owned enterprises. A Special Chamber of the Kosovo Supreme Court has exclusive jurisdiction over all suits against the KTA and primary jurisdiction for, inter alia, challenges to KTA decisions. UNMIK REGULATION NO. 2002/12 ON THE ESTABLISHMENT OF THE KOSOVO TRUST AGENCY §§ 30.1, 4.1 (Apr. 22, 2005, last amended by UNMIK REGULATION NO. 2008/4, Feb. 5, 2008). The Special Chamber may also refer matters to the regular courts for decision, and has appellate jurisdiction over those matters. REGULATION ON SPECIAL CHAMBER ON KTA MATTERS §§ 4.2-4.3; UNMIK ADMINISTRATIVE DIRECTION NO. 2008/6 AMENDING AND REPLACING UNMIK ADMINISTRATIVE DIRECTION NO. 2006/17, IMPLEMENTING UNMIK REGULATION NO. 2002/13 ON THE ESTABLISHMENT OF A SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON KOSOVO TRUST AGENCY RELATED MATTERS § 15 (Feb. 5, 2008); see also OSCE MISSION IN KOSOVO, MONITORING DEPARTMENT/RULE OF LAW DIVISION, PRIVATIZATION IN KOSOVO: JUDICIAL REVIEW OF KOSOVO TRUST AGENCY MATTERS BY THE SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO at 35 (May 2008) [hereinafter KTA JUDICIAL REVIEW REPORT]. In 2007, the Special Chamber declared the KTA to be an administrative body within the purview of the Law on Administrative Procedure and its circumscriptions on administrative discretion. KTA JUDICIAL REVIEW REPORT at 9-10.

Until May 2008, the Special Chamber consisted of three international and two Kosovo judges; it was then expanded, by law, to comprise up to 20 judges (13 international and 7 local). REGULATION ON SPECIAL CHAMBER ON KTA MATTERS § 3.1. However, the Chamber was never fully staffed, and had only one local judge immediately before the start of the Special Appointment Process. Thus, because the Special Chamber was required to sit in mixed panels, it was not clear that it was functioning. The Special Chamber is now continuing under EULEX, and the IJPC has published a notice to take applications for five vacancies on the Chamber’s trial panel and two vacancies on the appellate panel during Phase Two appointments. Ultimately, two judges were appointed to the trial panel and one to the appellate panel. IJPC FINAL REPORT at 14. There are also currently five EULEX judges serving on the Chamber’s trial panel and three EULEX judges on the appellate panel. EULEX, ANNUAL REPORT 2009 ON THE JUDICIAL ACTIVITIES OF EULEX JUDGES at 9 [hereinafter EULEX JUDGES 2009 ANNUAL REPORT]. There has also been no cooperation between the Special Chamber and the regular courts, especially with respect to delineating jurisdiction. As a result, the courts were unable to appropriately identify cases over which they had jurisdiction and, accordingly, refer cases to the Special Chamber. Thus, regular courts accepted for hearing certain disputes against socially owned enterprises even though such disputes were outside of their jurisdiction, and as such they purportedly acted in violation of the law. See OMBUDSPERSON INSTITUTION OF THE REPUBLIC OF KOSOVO, EIGHTH ANNUAL REPORT 2007-2008, ADDRESSED TO THE ASSEMBLY OF KOSOVO at 24 (Jul. 2008).
Similarly, the KPA was devised to resolve the extraordinary number of real property disputes that arose after the war. Litigants have the right to appeal first instance decisions of the KPA to a specialized panel within the Supreme Court that is to consist of two international judges and one local judge. The Supreme Court currently has two EULEX judges assigned to this panel. EULEX JUDGES 2009 ANNUAL REPORT at 9. During Phase Two appointments, the IJPC announced it would accept applications for a local judge position on the specialized panel, and the successful candidate was appointed on October 22, 2010. IJPC FINAL REPORT at 14.

Other unique lapses and complexities in the Kosovo judiciary’s jurisdiction over administrative acts have been occasioned by the singular role played by the UNMIK DOJ. At least 18,000 claims by Kosovo Serbs for property damages allegedly attributable to NATO’s intervention in 1999 were reportedly placed “on hold” pursuant to a letter of instruction issued by the UNMIK DOJ to the presidents of Kosovo’s courts. MAY 2008 MONITORING REPORT at 6. While the directive was later revised to urge processing of some claims against identified natural persons, few had been heard as of November 2008. Some municipal courts (e.g., those in Skenderaj, Gjakova, Prizren, and Kamenica) have reportedly made progress during 2009 and 2010 in processing these cases. In addition, an independent Human Rights Advisory Panel was established at the end of 2007 to review these and other cases. Id.; see also Factor 7 below for additional details on the Advisory Panel. Additionally, UNMIK, KFOR, and EULEX are immune from legal processes in Kosovo. See UNMIK REGULATION NO. 2000/47 ON THE STATUS, PRIVILEGES AND IMMUNITIES OF KFOR AND UNMIK AND THEIR PERSONNEL IN KOSOVO (Aug. 18, 2000); EU COUNCIL JOINT ACTION ON EULEX art. 10.

Some of Kosovo’s purely domestic laws also pose obstacles to the courts’ jurisdiction over governmental actors. For example, there is a controversial provision in the Law on Economy and Finance, which mandates that in cases against any institution funded by the KCB, the case must be stayed for 180 days and copies of the file sent to MOJ and the Ministry of Economy and Finance, who decide whether the case may proceed. LAW OF THE REPUBLIC OF KOSOVO ON PUBLIC FINANCIAL MANAGEMENT AND ACCOUNTABILITY art. 68 (Law No. 03/L-048, adopted Mar. 13, 2008). At least one interviewee worried that a violation of this provision could lead to prosecution under a separate provision that criminalizes the issuance of “unlawful judicial decisions.” See CRIMINAL CODE OF THE REPUBLIC OF KOSOVO art. 346 (promulgated by UNMIK REGULATION NO. 2003/25, Jul. 6, 2003, as amended by Law No. 03/L-002, Nov. 6, 2008) [hereinafter CRIM. CODE].

A separate problem exists with governmental agents ignoring the authority of the courts. For example, in order to accommodate road construction, the mayor of a municipality destroyed a house without any manner of judicial process, despite the fact that the house was known to be the subject of an ownership claim in the courts. Another problem is evident with the jurisdiction of the Commercial Court over the actions of municipal inspection agencies. Apparently, the competent authorities apply the Law on Construction (Law No. 2004/15, adopted May 27, 2004, promulgated by UNMIK REGULATION NO. 2004/37) in an arbitrary manner, with illegal construction being the rule in Kosovo rather than the exception. When these agencies do issue notices of delinquencies, the district prosecutor would then bring an action in the Commercial Court. In the past two years, however, these types of cases have virtually disappeared from the Commercial Court’s docket, because the inspectors are issuing no delinquency notices – reportedly, due to corruption. The Court apparently sees itself as powerless to compel action by the inspectors.
Factor 7: Judicial Jurisdiction over Civil Liberties

The judiciary has exclusive, ultimate jurisdiction over all cases concerning civil rights and liberties.

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<th>Conclusion</th>
<th>Correlation: Negative</th>
<th>Trend: ↓</th>
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Although the new Constitution vests jurisdiction over its enumerated civil rights and freedoms in Kosovo’s judiciary and the advent of the Constitutional Court would appear to broaden that jurisdictional mandate, the final authority over all civilian aspects of Kosovo’s governance remains with the ICR. The closure of the courts in the Mitrovica region has been interpreted to mean that the courts are not only failing to protect against, but are, in fact, contributing to, human rights violations. Concerns are voiced over unintentional but pervasive gender discrimination in the courts with respect to the protection of women’s property rights and protection against domestic violence. Gaps still exist in the courts’ jurisdiction over UNMIK- and EULEX-related cases.

Analysis/Background:

The Constitution declares the Republic of Kosovo to be based on and bound to protect indivisible, inalienable, and inviolable human rights and fundamental freedoms. CONST. art. 21. Some 29 separate rights and freedoms are listed, including equality before the law (see id. art. 24); the right to a judicial assessment within a specified time of a detention without a court order (id. art. 29(2)); the right to challenge a detention in a speedy proceeding (id. art. 29(3)); the right to a fair and impartial trial within a reasonable time (id. art. 31); a right to legal remedies against infringing judicial and administrative decisions (id. art. 32); the protection of property (id. art. 46); and the rights of children (id. art. 50). The Constitution also expressly incorporates the rights and freedoms contained in the following international instruments: Universal Declaration of Human Rights, ECHR, ICCPR, Council of Europe Framework Convention for the Protection of National Minorities, Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child< and Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment. The rights and freedoms spelled out in these instruments are incorporated into the domestic law and supersede contrary domestic provisions. Id. art. 22. All of these constitutional provisions are to be interpreted consistent with the decisional law of the European Court of Human Rights. Id. art. 53. Anyone whose constitutionally guaranteed rights and freedoms have been violated or denied has the right to seek judicial protection of that right and to obtain an effective legal remedy. Id. art. 54. Additionally, the jurisdiction of the Constitutional Court includes cases brought by individuals for the violation by public authorities of their constitutionally guaranteed rights and freedoms after an exhaustion of all legal remedies. Id. art. 113(7). Finally, the office of the Ombudsperson is charged with monitoring, defending, and protecting individual rights and freedoms from violations by public authorities. Id. art. 132. The transitional provisions of the Constitution also provide that the ICR is the “final authority” with respect to the civilian enactments of the Ahtisaari Plan, and that no “Republic of Kosovo authority shall have jurisdiction to review, diminish, or otherwise restrict” that mandate. Id. art. 147.

Several pieces of domestic legislation also directly address the judiciary’s role in the protection of civil liberties. Generally speaking, courts have the jurisdiction to review cases involving alleged human rights violations, and to assure that standards regarding detention, speedy trial, public hearings, and the like are followed in criminal prosecutions and civil matters. Thus, judges have jurisdiction to “make decisions on actions and measures which limit the human rights and basic freedoms of persons” during pretrial proceedings. CRIM. PROC. CODE art. 9.3. Detained persons are entitled to a judicial review of the legality of their detention and other deprivation of liberty, and they must be brought before a judge within 48 hours of arrest. Id. art. 4. The Criminal
Procedure Code also has a provision which is analogous to habeas corpus: at any time during detention, a detainee may petition a judge to determine the lawfulness of his/her continued confinement. *Id.* art. 286(3). Additionally, the judiciary has the power to hear discrimination-related cases and appeals from cases before administrative bodies, so long as all administrative appeals are exhausted. *See* ANTI-DISCRIMINATION LAW arts. 3, 7.

At the same time, interviewees indicated that, given the rapid enactment of a large number of laws after the Constitution took effect, some of the new laws contain potential human rights violations. For example, with respect to post-indictment detention, a criminal panel has the right to order the detention of the indicted without the presence of the prosecutor or the defendant. CRIM. PROC. CODE art. 306(4). But one interviewee understood the ECHR to guarantee the right of the accused to be present with counsel whenever detention is ordered, and the prosecutor is obliged to justify the reasons underlying the indictment. *See generally* ECHR art. 5 (Nov. 4, 1950). It was reported that many such contradictions require correction.

The formation and functioning of the Constitutional Court was generally seen as a positive development for the protection of human rights within Kosovo. But some aspects of the regular courts fall short of protecting the citizens’ civil liberties. In particular, the closure of the Mitrovica courts following the protests in March 2008 and their aftermath has led to reports of ongoing human rights violations. *See, e.g.*, OSCE MISSION IN KOSOVO, DEPARTMENT OF HUMAN RIGHTS AND COMMUNITIES, THE USE OF DETENTION IN CRIMINAL PROCEEDINGS IN KOSOVO: COMPREHENSIVE REVIEW AND ANALYSIS OF RESIDUAL CONCERNS – PART I at 22 (Nov. 2009) [hereinafter OSCE DETENTIONS REPORT – PART I]. Since that time, the Mitrovica judges have been working, in a limited capacity, out of the courthouse in neighboring Vushtrri. Those judges are holding detention-related hearings in the Vushtrri Municipal Court, but for the most part, these hearings result simply in continued extensions. *Id.* There are also reports that confirmation hearings for many indictments filed after February 21, 2008 have not been held within the time limits required by law. *See* CRIM. PROC. CODE arts. 309(1), 312(2); *see also* ECHR art. 6(1); ICCPR art. 14(3). The OSCE reported that 61 criminal cases brought for offenses perpetrated on or after February 21, 2008, and a number for offenses prior to that date, were still pending confirmation of indictment as of December 2008. DEC. 2008 MONITORING REPORT at 5. Another report states that, as of March 2009, approximately 45 persons were being held in pretrial detention in the region, some since 2007. REPORT OF THE COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS’ SPECIAL MISSION TO KOSOVO, 23-27 MARCH 2009 at 11 (Jul. 2009) [hereinafter COUNCIL OF EUROPE HUMAN RIGHTS REPORT]. In one particularly egregious case, a defendant charged with serious crimes, including aggravated murder, has been in detention without a completed trial since February 7, 2007. OSCE DETENTIONS REPORT – PART I at 22. Interviewees note, however, that there simply are no facilities to try the incarcerated, and that the alternative – freeing potentially dangerous criminals who might then harm the community – is an equally difficult one. Additionally, for some time, judges in the Mitrovica District Court were unable to access court files that were ransacked in March 2008, contributing to the delays. COUNCIL OF EUROPE HUMAN RIGHTS REPORT at 11.

Some urgent civil and criminal cases pending in Mitrovica have been assigned to go forward in Vushtrri; however, the criteria for determining priority are unknown, even to those involved in and benefitting from that system. Some speculate that the priority designation is largely based on the discretion of a prosecutor, a judge, or a clerk reviewing the case files; others report that a number of important appellate cases, especially those involving disputes between parties of different ethnicities, have been kept pending despite apparent urgency.

Despite these attempts, the number of cases that do go to trial is extremely limited, particularly in the civil field, and not adequate to provide the population with access to justice and to trials within a reasonable time. Between February 2008 and February 2010, the Mitrovica Municipal Court completed approximately 16 criminal cases and 13 civil cases. OSCE, DEPARTMENT OF HUMAN RIGHTS AND COMMUNITIES, THE MITROVICÉ/MITROVICÁ JUSTICE SYSTEM: STATUS UPDATE AND CONTINUING HUMAN RIGHTS CONCERNS – ISSUE 1 at 2 (Feb. 2010). EULEX judges that were
deployed in December 2008 to sit in the Mitrovica court complex have managed to complete only five cases as of February 2010. Id. at 1-2. Additional complaints were raised that ethnic Serb prisoners are being deployed throughout Kosovo for detention while the detention center in the North is only one-quarter filled, adding costs and complications to attorney-client consultations and family visits; and that transportation is not provided for Serb litigants in the North, who must now travel to Vushtrri for hearings. With respect to the latter complaint, it was also noted that when ethnic Albanians had to travel into the Northern Mitrovica to attend court proceedings, regular transportation was provided.

The nonfunctioning of Kosovo’s courts also means that the right to a tribunal established by law is routinely violated for those citizens wishing to enforce their civil rights (see ECHR art. 6(1)), nor is the parallel Serbian court system capable of effectively protecting those rights. In Mitrovica, the parallel Serbian court operates from a former residence that is too small to accommodate the great need for court services. Additionally, this court has no power to summon parties or witnesses. Consequently, its jurisdiction is severely limited only to divorce and other family law matters, as well as inheritance cases for property located in Serbia. Similarly, the court in Leposaviq, which was annexed and run by the Serbian government and reportedly handled only some executions of judgments from previous UNMIK cases, is no longer functioning since the reorganization of the Serbian court system at the beginning of 2010. Even when the official Mitrovica courts were functioning, the unsettled issues pertaining to Kosovo’s status and its impact on the courts in the Mitrovica region created severe problems for those wishing to protect property, marriage, and civil rights. Given the jurisdictional uncertainties, parties in that region would routinely file their case in both court systems, to be assured that one of the resulting judgments would ultimately be honored. This increased the parties’ indebtedness for court, attorney, and related fees.

Reportedly, even regularly functioning courts in other parts of Kosovo fail to protect certain civil liberties. For instance, a number of human rights concerns have been raised by Kosovo’s use of detention, including the frequent practice of the courts to impose detention when other, less restrictive measures, would suffice. OSCE DETENTIONS REPORT – PART I at 1. Other professional monitors of the courts opined that gender discrimination is evident in 90% of the cases, even those with female judges presiding. Interviewees reported that courts fail to recognize and protect women’s right to property, and to recognize and punish domestic violence. With respect to both issues, a lack of awareness of the underlying issues and entrenched traditional notions of appropriate gender roles were cited as the cause, rather than intentional discrimination. In another example, the Special Chamber of the Supreme Court with jurisdiction over privatization issues requires that all submissions and all proceedings be conducted in English, apparently in violation of the Kosovo Constitution.

Also evident from the interviews is the need for greater public education on civil rights. As an example, a large number of government employees, most of whom were women, were illegally discharged just two years before their pension benefits vested. But without the Ombudsperson’s intervention, the workers were ignorant of their rights to go to court to file claims.

Of concern to many in Kosovo charged with monitoring the enforcement of international human rights standards is the inaccessibility of the decisions of the European Court of Human Rights to non-English speaking judges inexperienced in understanding and applying case law that interprets the ECHR and is made applicable in Kosovo by incorporation in the Constitution. The opinion was also expressed that Kosovo’s judges, trained in a civil law system, tend to adhere to a mindset that limits their powers to the laws as written and allows for no interpretation, although the Constitutional Court is seen as playing a role in expanding the role of judicial interpretation in Kosovo.

Gaps in the courts’ jurisdiction over UNMIK matters still persist, although some progress, albeit both late and little, in resolving those matters is evident. In November 2007, a Human Rights Advisory Panel became operational to handle complaints of alleged human rights violations tied
to UNMIK’s operations. **UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel** (Mar. 23, 2006, as amended by UNMIK Regulation No. 2007/3, Jan. 12, 2007). As of January 2009, 108 cases had been filed with the Advisory Panel, 20 of which were concluded (a majority through summary dismissal). SG Report on UNMIK at 8. UNMIK and EULEX were cooperating to support police and judicial investigations in the cases before the Advisory Panel. However, as of March 2009, no mechanism yet existed for the payment of compensation where recommended by the Panel. *Id.; see also Council of Europe Human Rights Report* at 12-14.

**Factor 8: System of Appellate Review**

*Judicial decisions may be reversed only through the judicial appellate process.*

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<th><strong>Conclusion</strong></th>
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<td>By law, judicial decisions may only be reversed through a judicial appellate process. However, the appellate courts are inefficient in reviewing decisions. The jurisdiction of the courts continues to be laid out by a SFRY law dating to 1978, and the appellate jurisdiction of the courts is unduly complicated. The new Law on Courts, scheduled to take effect in January 2013, promises to significantly reorganize and streamline the appellate process.</td>
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**Analysis/Background:**

The right to appeal judicial decisions is, with limited exceptions, guaranteed by the Constitution. **Const.** art. 102(5). The 1978 Law on Regular Courts, which remains in effect at the time of this assessment, sets out the jurisdiction of Kosovo’s regular courts, including appellate jurisdiction, as follows. Single judges of the minor offenses courts have first-instance jurisdiction in criminal cases punishable by a sentence of up to 60 days. The High Court for Minor Offenses, which sits in panels of three judges, exercises exclusive and final appellate jurisdiction over those cases. Municipal courts try criminal offenses where the maximum punishment is a fine or imprisonment of up to five years and most civil cases. **Law on Regular Courts** art. 26; **Crim. Proc. Code** art. 21. All appeals from those decisions lie with the district courts, which also conduct first-instance trials in criminal cases where the maximum punishment exceeds five years of imprisonment, as well as certain civil matters. District courts may conduct de novo review of both the facts and the legal reasoning behind the municipal court decisions. District courts hear appeals and certain criminal cases (those punishable by more than 15 years of imprisonment) in panels of two professional and three lay judges; other first instance cases are heard by panels of one professional and two lay judges. **Law on Regular Courts** art. 29; **Crim. Proc. Code** arts. 23-24. The Supreme Court, which is the highest judicial body in Kosovo, hears appeals of the district courts’ and the Commercial Court’s first instance decisions. In limited instances, there is also a right to a second appeal of certain criminal judgments to the Supreme Court, i.e., the right to appeal to the Supreme Court a district court’s second instance decision in a case on appeal from a municipal court. **Law on Regular Courts** art. 31; **Crim. Proc. Code** art. 25. These include cases where a district court imposed long-term imprisonment (i.e., ranging 21-40 years), or reversed a municipal court acquittal and rendered a conviction in its place, or based its decision on appeal on a different conclusion of fact than the municipal court that rendered the original decision. See **Crim. Proc. Code** art. 430; **Crim. Code** art. 37. Depending on the type of jurisdiction exercised by the Supreme Court in a given case, it conducts hearings in panels of three or five professional judges. **Crim. Proc. Code** art. 26. Finally, after exhausting all other legal remedies, individuals may bring complaints before the new Constitutional Court in cases involving the violation by public authorities of their constitutionally guaranteed rights and freedoms. **Const.** art. 113(7).
Appellate jurisdiction in the regular courts is reported to be unduly complicated, confusing, and fraught with inefficiencies and redundant procedures. See NCSC, Kosovo Justice Support Program: Annual Report, June 2008-June 2009 at 9 (Jul. 2009) [hereinafter KJSP Annual Report]. However, it is anticipated that the reorganization of Kosovo’s regular courts pursuant to the recently passed new Law on Courts will clarify and simplify the system of appellate jurisdiction. Under the new scheme, Kosovo courts system will have three tiers. The Basic Courts will generally serve as first instance courts for all matters, including administrative and commercial cases, as well as cases previously heard by the minor offenses courts and the first instance crimes previously within the jurisdiction of the district courts. Law on Courts art. 11. While most basic court cases will heard by one professional judge, each of the serious criminal cases, according to a list of specifically enumerated crimes, will be heard by a panel of three professional judges in the Serious Crimes Department within each basic court. Id. arts. 12.1.3, 15, 16.2. Each basic court will also have a Juvenile Department. Id. art. 12.1.5. Additionally, the basic court in Pristina will include a Matters Department that will resolve all first instance commercial and property (other than real property) disputes involving corporations or other legal entities, bankruptcies, liquidations and reorganizations, and other enumerated cases; and an Administrative Department that will hear first instance complaints against final administrative acts. Id. arts. 12.1.1-12.1.2, 13-14. As a second tier, the Court of Appeals, located in Pristina and consisting of departments that correspond to those in the basic courts, will generally hear, in panels of three professional judges, all appeals of basic court decisions, and will also decide jurisdictional conflicts between basic courts. Id. arts. 17.1-2, 18, 19.1. 20.1. Finally, the Supreme Court, as the highest judicial authority also located in Pristina, will have appellate jurisdiction over Court of Appeals decisions, as well as cases that present important and unique issues in the application of the law by Kosovo courts. Id. arts. 21.1, 21.4, 22. The Supreme Court will also continue exercising jurisdiction over all disputes involving decisions of the KTA, the Kosovo Privatization Agency, and the KPA. Id. art. 22.1.4-22.1.5. The Supreme Court will generally hear matters in panels of three professional judges; however, in cases involving decisions that promote unique application of the law, it can sit in a General Session comprised of all of its judges. Id. arts. 21.6, 23.2.

In the meantime, it is reported that the existing high rate of remands for retrial by the district courts sitting as second instance courts contributes to a debilitating backlog of cases. For example, more than 61% of the civil appellate cases in the Prizren District Court result in remands to the trial courts. Nationwide, 43.6% of the civil cases in 2008 were remanded prior to conclusion. EULEX Programme Office, EULEX Programme Report at 86 (Jul. 2009) [hereinafter EULEX Report]. There are also complaints that the remands lack detailed instructions from the appellate judges. Id.

An additional problem with appellate jurisdiction is reportedly based on the courts’, counsels’, and parties’ incorrect valuation of their civil claims. The right to an appeal to the Supreme Court in property disputes is determined by the amount in controversy. However, based at least partially on litigants’ undervaluing their initial claims in order to benefit from lower filing fees, and exacerbated by the trial courts’ subsequent failure to accurately quantify the amount in controversy, the OSCE has documented several abridgements that could ultimately negatively impact litigants’ appellate rights. OSCE Mission in Kosovo, Monitoring Department, Legal System Monitoring Section Monthly Report – June 2008 at 5-6 (Jun. 6, 2008) [hereinafter JUN. 2008 Monitoring Report].

As an illustration of yet another problem, a case was reported to the assessment team, in which a junior judge’s decision was improperly altered by a senior judge, with his interlineations written directly on the final order, resulting in the release of a convicted criminal during the pendency of an appeal. The new counsel hired by the convict to pursue the appeal was reportedly a friend of the senior judge. Finally, it must be noted that the closure of the court complex in Mitrovica has meant not only a cessation of pretrial and trial proceedings, but also an inability to appeal municipal court cases to the district court.
Other legal provisions create special appellate rights and procedures. For example, under the Regulatory Framework for the Justice System, a special right was created to petition the SRSG for an appeal before international judges of any judicial decision allegedly based on discrimination on the basis of community membership. JUSTICE SYSTEM FRAMEWORK REGULATION § 6. Similarly, as discussed in Factor 6 above, a Special Chamber of the Supreme Court was created under UNMIK to hear appeals of privatization issues. Distinct problems are reported in appeals involving those cases. Until June 2008, judgments rendered by the Special Chamber in cases within its primary jurisdiction, including cases against the KTA, were final and binding, with no opportunity to appeal. Under a new framework, a decision of a trial panel (typically, one local and two international judges) of the Special Chamber may be appealed to the appellate panel (two international and two local judges, and the Chamber President) within 30 days. REGULATION ON SPECIAL CHAMBER ON KTA MATTERS §§ 3.2, 3.3, 4.4, 9.5. But it is not clear that prior to the Special Appointment Process, the Special Chamber has ever been sufficiently staffed to perform its functions. Two appointments to the Special Chamber’s trial panel and one to the appellate panel were made through the IJPC process, although five trial panel and two appellate panel vacancies had been announced. IJPC FINAL REPORT at 14.

Another special provision created the KPA for the processing and resolution of real property claims. UNMIK REGULATION NO. 2006/10 ON THE ESTABLISHMENT OF KOSOVO PROPERTY AGENCY (Mar. 4, 2006, as amended by LAW NO. 03/L-079, Jun. 13, 2008). Complainants may lodge an appeal against first instance decisions of the KPA before a specialized panel within the Supreme Court consisting of three judges, one of whom is local. The Supreme Court expects approximately 800-900 appeals in this category in the next two years. The Supreme Court currently has two EULEX judges assigned to this panel. EULEX JUDGES 2009 ANNUAL REPORT at 9. During Phase Two appointments, the IJPC announced a vacancy for one local judge position, and the successful candidate was appointed on October 22, 2010. IJPC FINAL REPORT at 14. The challenge for these judges is the complex mixture of property laws that arguably apply in these disputes, which have now been further complicated by the passage of a new immovable property law that creates additional sources for proof to establish property ownership.

**Factor 9: Contempt/Subpoena/Enforcement**

Judges have adequate subpoena, contempt, and/or enforcement powers, which are utilized, and these powers are respected and supported by other branches of government.

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<th>Conclusion</th>
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<tr>
<td>While the written laws provide subpoena, contempt, and enforcement powers, these powers are not effectively utilized due to circumstances both internal and external to the courts. Court orders of all types are generally not respected and supported by other branches of government, actors in the justice sector, or the public.</td>
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**Analysis/Background:**

The judiciary in Kosovo has the power to summon parties, subpoena witnesses, and hold parties and their counsel in contempt of court. Courts summon defendants based on addresses provided by plaintiffs in their claims. LAW OF THE REPUBLIC OF KOSOVO ON CONTESTED PROCEDURE art. 103 (Law No. 03/L-006, adopted Jun. 30, 2008) [hereinafter LAW ON CONTESTED PROC.]. The courts also have the power to summon witnesses and fine them for the failure to appear. Id. art. 292; CRIM. PROC. CODE art. 167. Anyone called as a witness is obliged to appear and provide testimony, with a few exceptions based on evidentiary law (e.g., self-incrimination) as determined by the presiding judge of the court panel. LAW ON CONTESTED PROC. art. 339, 342-345; CRIM. PROC. CODE arts. 158(3), 159-162. In civil proceedings, the court may also order the production
of documents in a litigant’s or third party’s possession within a specified time. **Law on Contested Proc.** arts. 333, 337. The court may issue a default judgment if a civil respondent fails to appear at a hearing, to deny allegations of the complaint, or to submit a defense to the claim. *Id.* art. 151. A witness who fails to appear, or who fails to testify upon appearance, may be fined or imprisoned for failing to do so. If the witness repeatedly refuses to testify even after being fine, the court may imprison him/her until the witness agrees to testify or the testimony becomes unnecessary, but in no event for longer than 30 days. *Id.* art. 292; Crim. Proc. Code art. 167. Expert witnesses who fail to appear or submit their opinion may be compelled to do so in certain circumstances, and may also be fined. **Law on Contested Proc.** art. 293; Crim. Proc. Code art. 177. Judges are also empowered to warn, fine, and have parties, their representatives, prosecutors, and other participants in proceedings removed from proceedings if they insult the court or otherwise fail to conform their behavior to court orders, although the lawyers have the right to appeal the sanctions. **Law on Contested Proc.** art. 289; Crim Proc. Code arts. 85, 335-337. The court may also deny an advocate who disrupts proceedings the right to represent or defend his/her client. **Law on Contested Proc.** art. 289.3; Crim. Proc. Code art. 336(3). When the court imposes a fine or removes from the courtroom a prosecutor or an advocate, attorney in training, or another representative, it must also notify, respectively, the competent public prosecutor’s office or the KCA of its decision. **Law on Contested Proc.** art. 289.4; Crim. Proc. Code arts. 85(1), 336(6).

In practice, it appears that little progress has been made in increasing the efficacy of the courts’ summonses of parties and witnesses since this problem was negatively assessed in the 2007 JRI. 2007 Kosovo JRI at 27. Reportedly, this routinely leads to multiple postponements of proceedings. Indeed, it is even widely reported that counsel for parties often fail to appear at judicial hearings. Some interviewees attributed the difficulty with summoning parties and witnesses to the lack of an official address system, making location of the persons difficult, although at least one judge asserted the problem was not a lack of addresses but a pervasive lack of respect by the public for all official acts and orders of the courts. This lack of respect can extend even to official sources. For example, in one case reported to the assessment team, a judge summoned to court a defendant accused of sexual abuse, only to set and postpone a number of hearings and eventually issue an arrest warrant due to his non-appearance. The judge called the police station in the city of the defendant’s residence with regard to the warrant and was told that the defendant was in Germany. Six months later, the defendant’s lawyer told the judge the defendant would appear voluntarily if the judge revoked the arrest warrant. When the defendant did finally appear and was questioned, the judge discovered he had never been in Germany, that the police had lied about that fact, and that there was no clear procedure for her making a complaint against the police for that dereliction of duty. Severe delays have particularly been noted in cases where parties or witnesses reside outside of Kosovo. The problems of delivering summonses are particularly severe in the Mitrovica region because, prior to the closure of the court complex there, Kosovo’s courts wishing to mail orders to those living in the North part of the city would forward that mail to the Mitrovica District Court, which then sent it through the Serbian postal system. Since that avenue of delivery is now inaccessible, the courts have been forced to rely on a small and understaffed court liaison office in the region.

There is a distinct reluctance among some judges to exercise their sanction powers against attorneys. This seems particularly true of younger judges. One gave an example of a lawyer who insulted her and resisted her command that he leave her office. But she did not sanction the attorney because he was old, and thus presumably excused for his insubordinate manner. Some also stated that if they sanction lawyers, they will generally lose the respect of the practicing bar and develop a poor reputation. For example, a judge with 10 years of experience had her first conflict with a lawyer during proceedings and expelled him due to offensive behavior. The lawyer then filed a criminal report against the judge and went to the media. Ultimately the prosecutor found no basis to proceed, but the judge required the aid of her court president to publicly address the allegations against her in the media.
The enforcement of judgments also continues to pose a significant problem and contributes to a debilitating backlog in unresolved cases within the justice system. The problem is most severe with civil execution cases. Enforcement of civil judgments is not automatic. To have a civil judgment enforced, the prevailing party must file a request for enforcement with the municipal courts, which oversee the enforcement of judgments handed down by both district and municipal courts. The judiciary also oversees the enforcement of administrative decisions. See generally LAW OF THE REPUBLIC OF KOSOVO ON EXECUTIVE PROCEDURE (Law No. 03/L-008, adopted Jun. 2, 2008). Decisions made by first instance courts are enforced by an individual judge. Id. art. 9. Court clerks handle the enforcement process after enforcement orders have been rendered. Reportedly, the new Executive Procedure Law makes it more difficult for the judgment debtor to create procedural delays in the procedure.

Two types of civil enforcement cases contribute generally to the civil enforcement caseload: those based on so-called “authentic documents,” reflecting unpaid utility bills, and those based on court judgments in civil lawsuits and court fees attendant to criminal proceedings. One study of select municipal court caseloads in 2008 revealed that civil execution cases constituted 36% of the total number of pending cases, and the authentic document cases comprised 64% of the total civil execution caseload. Further, the study surmised that, system-wide, the vast majority of backlogged cases (defined as pending for more than 24 months), were based on unpaid utility bills valued under EUR 500 (USD 650). KOSOVO JUSTICE SUPPORT PROGRAM [hereinafter KJSP], CIVIL EXECUTION CASELOAD REPORT: ANALYSIS OF PENDING CASELOAD IN SELECT MUNICIPAL COURTS at 3-4, 17-18 (Mar. 2008). For those execution cases based on civil judgments, two thirds are filed by the court for the collection of expenses attendant to processing criminal cases. Id. at 7. The following table illustrates the composition of backlogged civil execution cases in four select municipal courts (Ferizaj, Gjilan, Peja, and Prizren).

<table>
<thead>
<tr>
<th>Type of Case Based on Creditor</th>
<th>% of Backlogged Civil Execution Caseload</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authentic documents</td>
<td>85</td>
</tr>
<tr>
<td>Civil judgments, court expenses</td>
<td>9</td>
</tr>
<tr>
<td>Civil judgments, banks</td>
<td>2</td>
</tr>
<tr>
<td>Civil judgments, private parties</td>
<td>4</td>
</tr>
</tbody>
</table>

Source: Id. at 13.

The number of authentic document collection cases has, reportedly, dramatically increased even further during 2010. Interviewees emphasized that the courts are so overwhelmed by the sheer volume of the cases that they have responded with paralysis. For example, according to the NCSC, there were 104,317 civil executions pending in Kosovo’s 22 operating municipal courts as of end of June 2010. On average, a municipal court enforcement officer clears 20 cases per month. The largest of Kosovo’s municipal courts employs only between five and nine enforcement officers. The scope of the backlog is so large that in many courts, it is thought that the limited number of poorly resourced enforcement clerks do not even address the civil execution cases. It is estimated that, overall, courts have been able to clear less than 6% of their civil enforcement dockets, and many courts are enforcing less than 5% of the pending civil cases. SYSTEMS FOR ENFORCING AGREEMENTS AND DECISIONS [hereinafter SEAD PROGRAM IN KOSOVO, STREAMLINING ENFORCEMENT OF CONTRACTS: REPORT AND RECOMMENDATIONS REGARDING COMMERICAL CASE PROCEDURES AND ENFORCEMENT OF JUDGMENTS at 12 (Apr. 2010) [hereinafter SEAD ENFORCEMENT OF JUDGMENTS REPORT]. By one estimate, it would take more than eight years to work through this backlog at the present rate, even if no new cases were filed. INTERNATIONAL CRISIS GROUP, THE RULE OF LAW IN INDEPENDENT KOSOVO at 14 (Europe Report No. 204, May 2010). The enforcement clerks have problems not only with the volume of cases but also with finding correct addresses for the debtors and, at times, with inaccurate amounts for collection provided by the utilities. A few interviewees have noted that the KJC has had EUR 200,000 (USD 259,740) for several years in its budget for backlog reduction, but the funding has
not been used for this purpose. It was also suggested that there may be a problem with corrupt enforcement clerks, which will need to be addressed to make the system efficient.

Another factor contributing to difficult executions involves the banks warning their clients of collection attempts against their accounts, thus allowing the clients to place funds outside the reach of the courts’ collection processes. The banks are legally prohibited from giving such notice, but employees nevertheless convey the information informally in an attempt to keep their customers. Additionally, although all legal business entities are required to publicly register a bank account, many reportedly transact all of their business in cash to prevent the enforcement of judgments against them.

The KJC has established a working group to come up with recommendations for addressing the backlog in civil executions and to support the development of a National Backlog Reduction Strategy, with an anticipated implementation date of January 1, 2011. The working group, which includes representatives of the USAID-funded KJSP and the SEAD program, held its first meeting in September 2010. Several strategies are being considered, including: revisions to the tax laws to encourage the closure and discourage the filing of cases that show no realistic possibility of collection; possible privatization of all or some of the document authentication and enforcement procedures; linking enforcement clerk compensation to amounts collected; increase in the cost of filing collection cases; revisions to the Law on Obligations; and developing alternative dispute resolution mechanisms. It was also suggested that the order requiring cases to be processed according to date of filing be altered, to allow for the processing of large groups of cases that are procedurally or substantively similar (so-called “batch” processing). In addition, the KJC, building on prior initiatives and with the support of USAID’s SEAD program, has initiated a pilot program that includes pairing court personnel and the utilities in cooperatively locating debtors and delivering notices to them. SEAD ENFORCEMENT OF JUDGMENTS REPORT at 9. It was reported that teams consisting of enforcement clerks and utilities personnel successfully served notices in over 500 cases in just the initial 20 days of the pilot’s operation. Finally, trainings for enforcement officers are being provided by the NCSC, with support of USAID, in cooperation with the Dutch Government and Germany’s Gesellschaft für Technische Zusammenarbeit (GTZ).
III. Financial Resources

Factor 10: Budgetary Input

The judiciary has a meaningful opportunity to influence the amount of money allocated to it by the legislative and/or executive branches, and, once funds are allocated to the judiciary, the judiciary has control over its own budget and how such funds are expended.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
<th>Trend: ↔</th>
</tr>
</thead>
<tbody>
<tr>
<td>Despite nearly a decade of effort, the judiciary has not effectively influenced other branches of government to fund it at a level adequate to effectively deliver justice to Kosovo’s citizens or to place the judicial branch on par with its counterparts in the executive and legislative branches. While steps have been taken to increase the participation of individual courts in the KJC’s overly centralized budgetary process, individual courts still have little control over the budgets to manage their own daily operations.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

The judiciary’s budget is overseen by the KJC, but allocated by the Assembly. The KJC oversees the budget drafting, management, and execution, and is responsible for monitoring the expenditure of allocated funds, as well as the accounting and auditing functions. The KJC is independent in performing these functions. CONST. arts. 108(2), 108(5); see KJC REGULATION § 9; KJC LAW art. 15.2. In managing the court budgets and preparing the annual court budgets, the KJC is to work in cooperation and consultation with the presidents of the courts; however, the KJC Regulation and the new KJC Law are both silent on how this cooperation is to occur. KJC REGULATION § 9.2; see also KJC LAW art. 15.1. Ostensibly, each court president has the responsibility for managing the budget of his/her court. LAW ON REGULAR COURTS art. 57.

The KJC is to perform its budgetary functions through a Committee on Legal Issues, Administration, Human Resources, and Budget (see KJC LAW art. 9.1.2; see also KJC, INTERNAL ORGANIZATION REGULATIONS § 10.3 (Jul. 2007, as amended Sept. 2, 2009) [hereinafter KJC, INTERNAL REGULATIONS]), although that committee has not been functional as per the Law on the Temp. KJC. When functioning normally, the Committee is supposed to analyze current and anticipated caseloads of the courts, as well as expenditures from the previous year in drafting a budget proposal. The Committee is to then submit a draft judicial budget to the entire KJC for approval, after which it is submitted as a proposal to the Ministry of Economy and Finance (with a prior copy provided to the MOJ). See KJC REGULATION § 9.5; KJC, INTERNAL REGULATIONS § 10.10. Per the new KJC Law, the KJC will submit the proposed operating budget for the judiciary directly to the Government. If the Ministry of Finance and Economy then alters the KJC’s budget request, it must also submit to the Assembly the KJC’s original request and any comments on it. KJC LAW art. 15.1.

The KJC Secretariat has largely performed the Committee’s functions during the hiatus in the KJC’s functioning. In May 2010, the long-time Director of the Secretariat resigned, and the position will not be filled until the reappointment process is concluded and the KJC has its full membership. In the meantime, the former human resources director is acting as the Secretariat’s Director. Reportedly, this change in leadership of the Secretariat is seen as an opportunity to enact needed reforms in the functioning of the Secretariat, in order to create a focus on serving the courts and being more responsive to their needs.

The judiciary’s budget increased slightly between 2007 and 2010 after a number of years of steady decrease. See 2007 Kosovo JRI at 30. According to the KJC, the judiciary’s 2009 budget was approximately 1% of the total KCB of EUR 1.43 billion (USD 1.86 billion).
budgets have included increases for needed capital improvements, moving from a EUR 1.57 million (USD 2 million) capital allocation in 2008 to approximately EUR 2.3 million (USD 3 million) each in 2009 and 2010. See Factor 12 below for details on courts’ physical infrastructure. Additionally, the judiciary’s 2011 budget proposal was being amended at the time of drafting of this assessment to reflect the judicial salary increases that will take effect on January 1, 2011 pursuant to the new Law on Courts. See Factor 11 below for additional information on judicial salaries.

**JUDICIARY BUDGET: FUNDS REQUESTED AND FUNDS RECEIVED, 2007-2010**

<table>
<thead>
<tr>
<th>Year</th>
<th>Funds Requested by the KJC</th>
<th>Funds Received/Approved</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>EUR</td>
<td>USD</td>
</tr>
<tr>
<td>2007</td>
<td>10,196,024</td>
<td>13,967,156</td>
</tr>
<tr>
<td>2008</td>
<td>17,926,846</td>
<td>26,363,008</td>
</tr>
<tr>
<td>2009</td>
<td>15,234,489</td>
<td>21,159,013</td>
</tr>
<tr>
<td>2010</td>
<td>15,901,140</td>
<td>21,201,520</td>
</tr>
</tbody>
</table>

Source: KJC Secretariat, Statistics Department.

In some respects, Kosovo’s framework for its judicial budget is more progressive than in many countries in the region, where the court budget is under the auspices of the MOJ rather than an independent institution like the KJC. But that process has failed to live up to expectations due to a number of problems. The budgetary process internal to the Kosovo judiciary has been highly centralized in the Finance Department of the KJC Secretariat, to the degree that until recently some presidents and chief administrators of individual courts generally did not know the yearly expenditures of their institutions. One court president indicated that although he is not told precisely his court’s yearly expenditures, he is generally aware of the amounts and each year simply asks for 10-20% more, a request that is always ignored. The Secretariat responds to these criticisms by contending that the problems with the budget stem not from the lack of consultation with the courts, but from the insufficient funds allocated by the Assembly and the general non-responsiveness of the Government to the judiciary’s needs. Court fees collected in the individual courts go directly to the KCB rather than to the courts’ budget.

One of the KJC’s strategic goals for the Kosovo Judiciary is to “establish effective procedures and practices for budgeting and financial management in and for the courts.” See KJC, STRATEGIC PLAN FOR THE KOSOVO JUDICIARY 2007-2012, Goal 3 at 12 (2007). To this end, the KJC Secretariat, with the support of USAID, participated in four regional one-day trainings in May 2009. KJSP ANNUAL REPORT at 10. The trainings were very well attended by court presidents, administrators, and cashiers. Budget forms for personnel and expenditure forecasts were presented, and all courts then submitted their input within a week to 10 days of the training. This effort marked the first concrete involvement of local courts in the budget planning process. During the 2009 and 2010 budgetary process, court presidents were asked for their annual budget requests. That process received mixed reviews from interviewees. Some court presidents complained that their input was ignored, while others believe that their requests were given serious consideration. Some within the KJC Secretariat purportedly hold the view that court presidents routinely inflate their budgetary requests, and so discount these requests out of hand. On the other hand, another interviewee reported that members of the KJC Secretariat have been pleased by the accuracy and genuineness of the court presidents’ input.

The management of the individual court budgets by the Secretariat is also criticized by interviewees as overly centralized. Interviewees complained that the Secretariat is unresponsive to requests for information and supplies and is consistently late in the tendering process, guaranteeing, for example, that requests for air conditioning will not be fulfilled until the summer has passed. The Pristina Municipal Court, easily one of the nation’s busiest, purportedly has so small a monthly allowance for expenses that it is always short of hygienic supplies for the bathrooms, cleaning supplies, and the like. Most judges and court personnel interviewed complained that the courts are frequently short on paper and toner, causing significant
interruptions in court proceedings. A number of interviewees suggested that the individual court presidents must be given greater control over the budgets for daily operations of the courts. Currently, court presidents report that they have little to no access to funds for daily operations, and have access only to an inadequate petty cash account.

The KJC is seen by interviewees as ineffectual in lobbying for necessary budgetary changes and increases. Evidence of this fact is found in comparison with other justice sector institutions, such as the KJI, which have been more effective in developing a transparent, efficient, verifiable, and ultimately effective budgeting process. Other evidence is the fact that the KJC itself is housed in cramped quarters in trailers that previously were used by UNMIK. KJC meetings are generally open to the public, at the discretion of the KJC President (see KJC INTERNAL REGULATIONS § 5.3); however, it is unclear whether the KJC’s existing facilities would provide for sufficient space to accommodate the public once the permanent KJC is operational with the full complement of its members. In the past, meetings have been held at the KJI in order to accommodate public participation, but this was not possible when the KJI conference room was occupied. Some interviewees pointed to a lack of effective leadership in the past, a perception that was fed by the hiatus in the functioning of the KJC during 2008 and a portion of 2009. Since the temporary KJC began functioning in August 2009, though, the leadership has met with the Ministry of Economy and Finance and the ICO to lobby for additional funds, including increased judicial salaries. In fact, the KJC’s lobbying for increased judicial salaries has been successful, as evidenced by the advanced effective date for the judicial salary provisions in the new Law on Courts and the new KJC leadership’s urging that this critical change be implemented immediately. See also Factor 11 below for more detailed information on judicial salary increases.

Budgetary complications related to the international oversight of some aspects of Kosovo’s justice system arose during the transition of competencies from UNMIK to EULEX. For example, there was an approximately eight month period when the management of the ODC and the Special Chamber of the Supreme Court on the KTA Matters were in flux. By oral agreement, their budgets were transferred to MOJ oversight. Once the temporary KJC was established, the ODC budget was transferred to the KJC. See LAW ON THE TEM. KJC art. 3.

The Vushtrri Municipal Court reports getting no extra budgetary support despite the influx of an additional 20-25 personnel from the Mitrovica courts.

**Factor 11: Adequacy of Judicial Salaries**

*Judicial salaries are generally sufficient to attract and retain qualified judges, enabling them to support their families and live in a reasonably secure environment, without having to have recourse to other sources of income.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
<th>Trend: ↑</th>
</tr>
</thead>
</table>

For the past decade, Kosovo’s judicial salaries have been inadequate to attract and retain qualified judges or to enable judges to support their families without having to resort to outside sources of income. The continued inadequacy reflected a drastic and long-standing situation that is widely perceived as underlying most of the judiciary’s serious problems to date. Effective January 1, 2011, judicial salaries are scheduled to be significantly increased and tied to equivalent positions and salaries in the executive branch of the Kosovo Government. This step is applauded as long-overdue and critical to support other reform efforts in the justice system.
Analysis/Background:

For the past decade, Kosovo’s judges have been underpaid, a situation that is repeatedly criticized as demonstrating a disregard of judicial independence. The last increase in judicial salaries, by 5%, occurred in 2002, and there have been no legal provisions to protect judicial salaries. The low salaries are uniformly cited as a factor contributing to judicial corruption. See Factor 20 below.

This negative situation is about to change, as the new Law on Courts ties judicial salaries to equivalent positions in the executive branch of the Government. In some cases, the new scheme represents a 60% increase over previous judicial salaries. Originally set to become effective in 2013 with the other articles of the Law on Courts, the provision on judicial salaries will become effective on January 1, 2011. LAW ON COURTS arts. 36.2, 43. Thus, effective January 1, 2011, judicial salaries will be set by law as follows:

**JUDICIAL SALARIES UNDER THE NEW LAW ON COURTS**

<table>
<thead>
<tr>
<th>Court Level/Position</th>
<th>Salary Equivalent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court, President</td>
<td>Prime Minister</td>
</tr>
<tr>
<td>Supreme Court, other judges</td>
<td>Government Minister</td>
</tr>
<tr>
<td>District court, presidents</td>
<td>Supreme Court judge</td>
</tr>
<tr>
<td>District court, other judges</td>
<td>90% of a district court president</td>
</tr>
<tr>
<td>Municipal court, presidents</td>
<td>District court judge</td>
</tr>
<tr>
<td>Municipal court, other judges</td>
<td>No less than 70% of a municipal court president</td>
</tr>
<tr>
<td>Minor offenses courts, judges</td>
<td>90% of a municipal court judge</td>
</tr>
</tbody>
</table>

*Source: Id. arts. 29.1, 36.2.*

The following table compares existing judicial salaries with the scheduled 2011 increases:

**COMPARISON OF CURRENT AND 2011 MONTHLY JUDICIAL SALARIES**

<table>
<thead>
<tr>
<th>Court Level</th>
<th>Current Salary</th>
<th>2011 Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Judge</td>
<td>Court President</td>
</tr>
<tr>
<td></td>
<td>EUR USD</td>
<td>EUR USD</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>628 816</td>
<td>667 866</td>
</tr>
<tr>
<td>District courts</td>
<td>550 714</td>
<td>589 765</td>
</tr>
<tr>
<td>Municipal courts</td>
<td>472 613</td>
<td>511 664</td>
</tr>
<tr>
<td>Minor offenses courts</td>
<td>393 510</td>
<td>446 579</td>
</tr>
<tr>
<td>High Court of Minor Offenses</td>
<td>550 714</td>
<td>589 765</td>
</tr>
</tbody>
</table>

*Source: KJC Secretariat, Statistics Department.*

In addition, a judge’s salary is protected from any reduction for any reason during a judge’s tenure, other than as a disciplinary sanction imposed by the KJC. LAW ON COURTS art. 29.2.

A judge of the Constitutional Court earns 1.3 times the salary of a Supreme Court judge. CONST. COURT LAW art. 15.

The advanced effective date for the salary provisions is attributed to the new KJC leadership, who reportedly forcefully urged that this critical change be implemented immediately. Nevertheless, some judges, long promised salary increases to no avail, remain skeptical that increases will, in fact, materialize. Given that the Law on Courts has already passed and signed, the assessment team did not feel this was a realistic concern. Reportedly, the KJC’s draft budget for 2011 was being amended at the time of the interviews for this assessment, to reflect the increases. Some interviewees also noted that, despite the equivalency provisions, the Ministers will still earn more
than the judges, because they are also entitled to such benefits as travel allowances and the like, which are unavailable to judges. These concerns notwithstanding, all justice sector stakeholders interviewed by the assessment team, including those outside the judiciary, applaud the upcoming increase in judicial salaries as long overdue and see it as forming a critical foundation for further reforms.

The importance of judicial salary increases cannot be overstated. During 2009, the average monthly wage for a Kosovo citizen with higher education was EUR 551 (USD 715). Statistical Office of Kosovo, Household Budget Survey 2009 at 22 (Jun. 2010). District court judges earned EUR 550 (USD 714) and municipal court judges earned EUR 472 (USD 613). After retirement, judges at all levels are entitled to pensions of only about EUR 40 (USD 52) a month. It is unclear whether, and how, the 2011 salary increases will impact the problem of low pensions. A number of interviewees expressed concern for those judges, some of whom served for many years, who were not reappointed and now will now face the low pension payments.

The low judicial salaries and pensions have been particularly problematic as the cost of living has risen considerably in recent years, particularly in locales such as Pristina with large international populations. As a result, judges had been routinely leaving the judiciary after years of service to enter other fields, such as private practice as advocates, where they can earn higher incomes. For example, many of the candidates currently undergoing a training and licensing program for notaries were judges. The program will ultimately license notaries to verify documents, such as witness statements and other court-related documents, as well as draft and verify contracts and other business documents, pursuant to the new Law on Notaries. Notaries will be privately paid rather than salaried by the courts and will constitute a select group that will eventually be no larger than 1 for every 20,000 citizens.

Lay judges do not receive regular salaries for their work, but are paid a modest per case fee. EULEX does not reveal information regarding the salaries of international judges.

The negative impact on the judiciary and judicial reform efforts of the decade-long under-payment of Kosovo’s judges is readily apparent. Interviewees from all parts of the justice sector and its international partners widely expressed the opinion that a fully independent and strong judiciary is only possible with respectable salaries for judges, commensurate with those of equivalent officials in other branches of the government, and that the dire situation with judicial salaries has existed for so long in the face of such uniform and persistent criticism due to a deliberate attempt by other branches of government to keep the judiciary subservient and ineffective. Additionally, low judicial salaries are widely perceived as simply the most visible evidence of a lasting legacy of the SFRY years: a political culture that values the executive and legislative functions of government over the judiciary and does not recognize, much less foster, judicial independence as a pillar of strong governance. Others believe that the undervaluing of Kosovo’s judiciary began with and is a lasting legacy from UNMIK. Many feel that the judiciary has been a convenient scapegoat for other governmental departments, such that it was to the benefit of certain governmental actors to keep it weak. Still others attribute the problem, at least in part, to the past ineffective leadership in the KJC, which was seen to have failed in its mission to advocate on behalf of the judges. It was also reported that in the early post-war years, a lack of professionalism and blatant self-interest created a backlash against the judiciary that still impacts it today.

That Kosovo’s authorities have now legislated an increase in judicial salaries, together with the imminent completion of the Special Appointment Process, is seen as holding the most promising potential to date of moving Kosovo’s judicial system toward effectiveness and independence.
Factor 12: Judicial Buildings

Judicial buildings are conveniently located and easy to find, and they provide a respectable environment for the dispensation of justice with adequate infrastructure.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
<th>Trend: ↑</th>
</tr>
</thead>
<tbody>
<tr>
<td>Many of Kosovo’s regular courts are housed in overcrowded, substandard buildings. Frequently, each courthouse has only one small courtroom, inadequate to meet the needs of the entire court. Judges’ offices are generally readily accessible by the public, resulting in continuous interruptions of the chambers’ work, and are usually shared with at least one staff member. Recently, however, a Model Courts Program has refurbished seven courthouses, significantly improving infrastructure and introducing innovations that improve the delivery of justice.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

There are no requirements concerning judicial buildings set forth by law. Although many of the courthouses are easy to locate and generally accessible, many are overcrowded and substandard. Parking is often completely absent for judges, staff, and the public.

Most courthouses have only one courtroom to be shared among all judges, which leads to it being used only for criminal trials. As it is impossible for all proceedings in most courthouses to proceed in the courtroom, in practice most trials and other proceedings must be held in the judges’ offices, which are too small to serve this purpose adequately. Even the Supreme Court lacks an adequate courtroom. This leads to a number of reported procedural violations. In one reported case involving multiple defendants, the defendants could not all fit in the judge’s office, forcing some to wait in the hallway while others gave testimony, although defendants have the right to examine or have their counsel examine witnesses. CRIM. PROC. CODE art. 10(2). In human trafficking trials, victims are reportedly often required to testify in the presence of the accused, which can lead to intimidation and altered testimony, although the law guarantees witnesses the right to request that the judge take measures to protect their mental health or physical safety. See id. arts. 168-170. One exception is the courtroom in Prizren, which has video equipment that allows the victim to testify from a remote location.

Judicial offices are generally small and frequently shared between the judge and his/her support staff. Praktikants, lay judges, and the few staff attorneys employed by the courts generally do not have a separate working space. During interviews at the Pristina Municipal Court, a lay judge and a praktikant of the court were invited to participate in the interview along with a professional judge, because they had no other space available to them for the interview. The judges’ offices are also generally accessible to the public, and several of the interview sessions with judges in their offices were interrupted repeatedly by counsel and litigants opening the door and entering with questions, requests for files or information, or looking for other nearby offices. Many of the judges complained that the constant interruptions make impossible the concentrated effort required to render and draft considered judicial decisions. At least one well-qualified judge based the decision not to seek reappointment at least in part on the constant interruptions that negatively impacted judicial working conditions. The offices are also generally poorly equipped, with only a desk, two or so chairs, and one or two filing cabinets or shelves, although all judges have computers supplied by the EC. The offices visited during the interviews were all neatly kept, but many were obviously overcrowded with case files stacked on the floors or on top of cabinets that were already full.

The intake offices in some of the courts are also substandard. In the Pristina Municipal Court, three or four filing clerks inhabit a cramped space that is literally overflowing with case files, some of which are stored in stacks behind the desks. In that court, case files – even confidential ones –
are stored in standard metal file cabinets that line the public hallways and are locked only with rudimentary, standard locks on the handles that appear to be easily manipulated.

Some courts have common areas, such as bathrooms, that are dilapidated and without reliable running water. This is the case in the Pristina Municipal Court, which hosts approximately 200-300 people per day. The entire facility is served by two janitors, one of whom quit just days before the interviews. Some employees bring their own vacuum cleaners and cleaning supplies to their offices. The building's roof also leaks. Reportedly, there will be no offices for the three new judges that are anticipated to be assigned to the Court through the Special Appointment Process.

The closure of the court complex in the Mitrovica region, which housed the District, Municipal, and Minor Offenses Courts, has created particularly difficult working conditions both for the judges of those courts and for those who are acting as hosts for the displaced courts. Currently, a group of 15-25 staff and judges from the Mitrovica District, Municipal, and Minor Offenses Courts are sharing space with the Vushtri Municipal Court on a rotating basis. The Mitrovica District Court has established an intake office in the Vushtri court, is using an upstairs office to process a very limited number of civil cases and hear witnesses in criminal matters, and the presidents of the two courts are sharing a single office. As discussed in Factor 7 above, this lack of space has a profound impact on the delivery of justice in the region, greatly impacting, for example, the number of indictments issued and confirmed. In the meantime, the building of Mitrovica District Court, which was renovated as part of the Model Courts Program described below, was damaged by an earthquake in March 2010 and is reportedly not safe for use.

With USAID support, the NCSC has implemented a Model Courts Program to renovate and refurbish seven court buildings, which house a total of 11 courts. These include: the Ferizaj Municipal Court, the Commercial Court building in Pristina, the Peja Municipal and District Courts, the Skenderaj Municipal and Minor Offenses Courts, the Prizren Municipal and District Courts, the Gjilan Municipal Court, and the Kamenica Municipal and Minor Offenses Courts. Renovations at the Gjakova Municipal and Minor Offenses Courts building were ongoing at the time of the interviews, and discussions were underway with respect to the Pristina Municipal Court building and the court complex in Mitrovica. The KJC, with continued USAID and KCB support, is also in the process of constructing new minor offenses courthouses in Gjilan, Malishevo, and Prizren.

In all cases, the renovations attempted to introduce, where possible, structural innovations to support a more transparent and effective delivery of justice. As an example, the Ferizaj courthouse has been extensively renovated and praised for introducing state-of-the-art concepts in the housing and managing of court functions. The facility houses the filing and records departments on the first floor in a space that has been completely opened up and is now fully transparent to the public, in an effort to prohibit improper transactions between court staff and the public, such as the charging of inappropriate fees for filing or copying documents. This also allows for a system of central filing, taking the case files out of the individual judges’ offices and providing trained staff to uniformly maintain them. The Ferizaj courthouse now has three new and well-equipped courtrooms, instead of one. All judges’ and prosecutors’ offices have been moved to the top floor where they are no longer readily accessible to members of the public. The KJC also added security cameras throughout the facility and supplied additional amenities. Additional improvements include such upgrades as the refurbishment of intake and registry offices, the construction of new uniform shelving and open, transparent service counters, and the addition of courtrooms. The Model Courts Program has worked with the KJC to assemble a team of court personnel and international advisors to draft a list of standards for the program, to select the courts for the program, and to identify the improvement goals for each court. Surprisingly, given the dire conditions of some of the courthouses, there has been resistance to some of the Model Courts Program’s improvements, presumably because the increased transparency of court functions that the program fosters is seen to threaten entrenched and improper ways of doing the courts’ business. Nonetheless, USAID has made a commitment to refurbish an additional 20 court buildings throughout Kosovo.
With donor support from the EC, reportedly amounting to EUR 25 million (USD 32.47 million), the construction of a new Palace of Justice is projected in the near future. All of the courts located in Pristina and the KJC will reportedly be housed in the new structure, which is to be located on the outskirts of Pristina. While most interviewees from those institutions welcome the anticipated new construction, at least one noted that the location of the courts on the outskirts of Pristina will hamper citizens’ ease of access to the courts.

It is expected that, with the impending reorganization of Kosovo's court structure in accordance with the new Law on Courts, the overcrowded conditions in existing courthouses should improve. The minor offenses courts will be eliminated and all intermediate appellate matters will be heard in a unified Court of Appeals located in Pristina, which means that the existing minor offenses and district court building will be used as departments of the new basic courts. In many cases, this will allow for separate civil and criminal buildings for basic courts. The planning stage for the reorganization will begin in 2011. See LAW ON COURTS art. 36.1.

Factor 13: Judicial Security

_Sufficient resources are allocated to protect judges from threats such as harassment, assault, and assassination._

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<td>While security personnel and some metal detectors are generally positioned at the entrances to the courthouses, no uniform or systematic placement of security personnel throughout the buildings is in place. However, security cameras have recently been installed in most courthouses. No security is provided outside most courthouses, unless the police are called due to a specific threat.</td>
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**Analysis/Background:**

Currently, there are no laws addressing specific judicial security requirements. Ensuring the security of the court will be specifically included among the responsibilities of the court administrator, subject to directions of the court president and relevant rules and regulations of the KJC. KJC LAW art. 31.3.4. Additionally, it will be possible to call urgent meetings of the KJC to address security emergencies related to both court facilities and court personnel. _Id._ art. 14.3.

While most courts visited for this assessment have security guards at the entrances and some have metal detectors, there is no uniform or systematic placement of security personnel throughout the buildings, which is most notable on those floors housing the judges’ offices. Additionally, it is not clear that strict screening protocols are followed for all visitors to the courthouses, and some interviewees indicated that security personnel tend to lack professionalism and authoritativeness. Particularly concerning was the direct accessibility of the judges’ chambers to the members of the public once they have entered the courthouse. In the Pristina District Court, there are typically two to three police on the first floor, and prison police are present when accompanying prisoners. But there is no coordination between the court administration and the police about the safety of court personnel. One judge noted that he has tried serious criminal cases without any security personnel present.

Little to nothing is done to secure the judges’ security out of the courthouses. Most courthouses, except for the Pristina Municipal Court and the Mitrovica, Leposaviq, and Zubin Potok court complexes, now have security cameras. Most of the judges are not provided with a parking space, let alone secure parking. A notable example is the Prizren courthouse, which is equipped with security cameras throughout the facility and in the parking lot outside the building. These cameras are projected on a bank of monitors contained in small security office in the building.
At least one attack on a judge, three threats, and one criminal conviction for an earlier threat against a judge were reported within the past two years, all of which resulted in the initiation of criminal proceedings against the perpetrators. JUN. 2008 MONITORING REPORT at 2-3. When a judge receives a concrete threat and the police are called to intervene, they are reportedly responsive and helpful. One judge, who was involved in a case with an unbalanced party that threatened her, feared most for her children’s safety. She reported the matter to the police, but asked that they not make their presence seen as she did not want to frighten her children. In another case, where a judge reported receiving an anonymous letter threatening to burn the courthouse, the judge transferred the case to EULEX judges. Nevertheless, the majority of judges interviewed for this assessment stated that they were not overly concerned about their security and did not feel threatened; although a few held the contrary opinion. Most of the administrative staff interviewed for this assessment did not report feeling unsafe as a result of their jobs, but it was reported that a litigant set a staffer’s car on fire while it was parked next to the staffer’s home.

A unique situation with respect to court and judicial security exists in the Mitrovica region of Kosovo where, following Kosovo’s declaration of independence, civil unrest forced closure of the courthouse housing the District, Municipal, and Minor Offenses Courts. Protestors, some of whom were pre-1999 employees of the justice system demanding a return to the Serbian court system, forcibly occupied the courthouse on March 14, 2008, and were arrested by UNMIK and KFOR personnel. See MAR. 2008 MONITORING REPORT at 2. Immediately following the onset of unrest, the Albanian judges of the Mitrovica courts were prevented by police for security reasons from crossing the bridge into Northern Mitrovica and thus precluded from working. By a letter to the Kosovo Government, the KJC, the SRSG, KFOR, and UNMIK, the District Court President has requested sufficient security to allow resumption of court functions, but to date, the court remains closed to regular proceedings. UNMIK had a three-phase plan for reactivating proceedings in Mitrovica, but apparently made little to no progress in that regard before operational control of all courts, and largely all UNMIK cases, was transferred to EULEX in December 2008. See DEC. 2008 MONITORING REPORT at 9-10. The transfer of the rule of law operations from UNMIK to EULEX was not accompanied by any significant security breaches or threats. SG REPORT ON UNMIK at 10.

In the meantime, some of the judges have been working out of the Vushtri Municipal Court facility. Some reported that they and some staff remain willing to go across the bridge to begin working again in Northern Mitrovica; however, based on a prior unsuccessful request for official permission to do so, they believe they would still be prevented due to security concerns. However, pursuant to a Memorandum of Understanding between the MOJ and EULEX, since October 2009, a small multiethnic administrative staff has been working in the Mitrovica court complex organizing case files. Security for the team was originally provided by EULEX, which reportedly led to considerable delays. Kosovo police forces are now providing the security transport for the team over the bridge into Northern Mitrovica, apparently with more efficiency.

Some interviewees believed the security dangers are being exaggerated and exploited for political reasons. Judges with long experience in the region noted that the security threat to them was far greater during 1999 and early 2000, but that they were nevertheless allowed to continue working and functioned successfully in Northern Mitrovica. Some interviewees perceive the threat as coming from members of their own community determined to keep the status quo. Still others reported that, at least initially, UNMIK did not provide them with enough security and that what security was provided was too visible, which only agitated the protesters. Judges reported concerns about the fact that, when in operation, the Mitrovica Municipal, Minor Offenses, and District Courts, as well as the Municipal and District prosecutors’ offices, are connected within the courthouse complex in such a way that a party who enters via security for one court or office can pass unimpeded to the other courts. Additionally, judges in civil courtrooms in the Mitrovica courthouse indicated that, when the court was fully functioning, they had no way to contact security in an emergency, and the floors were not guarded by security personnel. Judges in the Mitrovica region also highlighted the need for personal security to be provided to judges.
It must be noted that Kosovo police and KFOR personnel are very active and visible in the region, particularly in monitoring traffic going across the two bridges that link Northern and Southern Mitrovica, so the underlying potential for violence cannot be denied. Nevertheless, the sentiment uniformly expressed by both Albanian and Serb interviewees, most of whom live in these communities and are in constant proximity to factions on all sides of these issues, was a desire to resume normal court functions as soon as possible. Everyone seemed to agree that the real issue was political, and that the greatest harm posed was not to them but to the surrounding communities. Due to lack of a properly functioning prosecutor’s office and courts, criminal suspects who might otherwise be investigated and indicted are operating freely, those suspects whose detentions can no longer be prolonged are being released, and the area has come to be described as an “utopia” and “oasis” for both Albanian and Serb criminals seeking a relatively safe haven, creating considerable fear in the surrounding communities. For example, a 2007 prosecution of three customs officials for participation in an oil smuggling network was interrupted by the court closures before it was completed. Documents indicated that at least 700 oil tankers had illegally entered Kosovo without being taxed, costing millions in losses to the Kosovo Government. This was described as merely the “tip of the iceberg.”
IV. Structural Safeguards

Factor 14: Guaranteed Tenure

Senior level judges are appointed for fixed terms that provide a guaranteed tenure, which is protected until retirement age or the expiration of a defined term of substantial duration.

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<td>Upon completion of the Special Appointment Process and expiration of a three-year probationary period, Kosovo’s senior judges will serve for terms that expire upon their reaching retirement age. While the legal framework that will exist at the conclusion of the Special Appointment Process suggests considerable progress toward achieving guaranteed tenure, in the near term, the process has created uncertainty and low morale among sitting judges, many of whom lost their jobs.</td>
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Analysis/Background:

Initial judicial appointments are made for three-year terms, and subsequent reappointments are guaranteed until a judge reaches the retirement age or is legally removed from office for cause. CONST. art. 105. The KJC is constitutionally mandated to set criteria and procedures for permanent reappointment, which may differ in degree from the criteria being developed for the removal of a judge from office (see id. art. 105(2)), but it has yet to do so. The criteria being developed for reappointment will reportedly include participation in a training program that the KJI is currently developing.

The tenure of Kosovo’s judges was in flux during the one-time, nationwide, comprehensive Special Appointment Process described in detail in Factor 2 above. Judges already serving in positions previously thought secure were required to reapply for appointment. Id. art. 150. Pursuant to the Special Appointment Process, each judge’s term has been extended until his/her seat was filled by a judge appointed through the Special Appointment Process, even if the sitting judge reached mandatory retirement age during that period. IJPC REGULATION at Preamble, § 14.1. However, all judges who previously held office for two years prior to reappointments made during the Special Appointment Process are deemed appointed until retirement age or removal for cause. CONST. art. 150(5).

Reportedly, the newly appointed members of Kosovo’s judiciary feel confident that their tenures are protected.

While the Special Appointment Process appears to be a significant step forward in achieving guaranteed judicial tenure in Kosovo, in the immediate term, it has created uncertainty for some in the judiciary, leading to negative impacts on the delivery of justice generally. Judges who failed the ethics examination and thus expect to be replaced, are still hearing cases until their successors are appointed. The performance and productivity of some of these lame-duck judges have reportedly suffered considerably. Others who failed the examination or otherwise expect not to be reappointed have already left the bench, resulting in increased caseloads and a concomitant erosion of morale for those remaining. The general judicial morale was severely negatively impacted throughout 2010, as judicial appointments were announced in higher courts, leaving vacancies in the lower courts and leaving then-current judges to continue in their positions until their replacements took offices. Moreover, as mentioned above, while the new Law on Courts remained pending, the Special Appointment Process proceeded to fill judicial

15 When the new Law on Courts goes into effect in January 2013, all judges appointed through the Special Appointment Process will be deemed appointed permanently until reaching the retirement age or being lawfully removed from office for cause. LAW ON COURTS art. 27.5.
seats that will eventually be eliminated and to appoint judges to offices the jurisdictions of which will change in the near future, necessitating the transfer of judges to other courts and jurisdictions.

The situation for the Kosovo Serb judges in the Mitrovica district is uniquely difficult. Members of the Serbian judiciary, they served in the Kosovo courts that were run under the auspices of UNMIK. Once Kosovo declared independence, however, the Serbian government withdrew its authorization for these judges to work in Kosovo’s courts and discouraged them from participating in Kosovo’s Special Appointment Process. Despite fears to the contrary, some of these judges were reappointed as judges within the Serbian justice system during its reorganization of 2010, while some are now working on a very limited basis in the parallel courts run by Serbia within the territory of Kosovo but not recognized by the Kosovo Government. These judges have now been warned, however, that they may never be accepted to work in Kosovo courts as a result of their decision to seek reappointments in the Serbian judiciary.

Factor 15: Objective Judicial Advancement Criteria

Judges are advanced through the judicial system on the basis of objective criteria such as ability, integrity, and experience.

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Criteria for the advancement of Kosovo’s judges upon completion of the one-time, nationwide, comprehensive reappointment of all judges are anticipated, but have not yet been developed by the KJC.

Analysis/Background:

The President of Kosovo appoints judges upon recommendation by the KJC. CONST. art. 104(1). At the time of drafting of this assessment, however, there were no written criteria for judicial advancement or for the appointment of candidates to the court president positions, nor were there procedures established for regular assessment of judges, although the KJC was charged with promulgating the relevant regulations. KJC REGULATION § 8.6.

When the new KJC Law takes effect, municipal court presidents will be appointed by the KJC, in consultation with the judges of the respective courts. The KJC will be required to take candidates’ managerial skills into consideration in making these appointments. KJC LAW art. 22.2. Court presidents, in turn, will appoint supervising judges for the branches of their court. Id. art. 22.3. President and supervising judges serve for four-year terms, with an opportunity for reappointment for one additional term. Id. art. 22.5-.6. The KJC is mandated to establish procedures and standards against which to assess the performance of judges and for use in judicial promotions. Id. art. 19. At least the following criteria must be considered: professional work history and performance, including a demonstrated respect for human rights; legal reasoning, analysis, and communication skills; impartiality, responsibility, and personal integrity; and conduct outside of the office. Id. art. 19.2. The judge being evaluated may object in writing to any assessment results. Id. art. 19.4.

As reported by interviewees to the assessment team, prior to the Special Appointment Process the KJC did nothing to vet judges prior to recommending them for appointment or advancement, and that it only acted if a direct complaint was made against a judge. Virtually no ongoing judicial evaluations have occurred since 1999, but in August 2008, the KJC formed a working group to establish criteria against which monthly judicial performance can be measured. EULEX and USAID (through NCSC) supported the KJC in developing appointment, transfer, promotion,
disciplinary, and investigation procedures to become effective upon completion of the Special Appointment Process; however, thus far, no such guidelines or procedures have been published by the KJC. See KJSP ANNUAL REPORT at 7.

During 2010, the KJI launched a new training program for newly promoted judges, as well as those judges with more than seven years of legal experience who were newly appointed under the Special Appointment Process. This program took place throughout September-November 2010.

With the passage of the new Law on Courts, the KJC will be assigning and transferring a significant number of Kosovo’s newly reappointed judges to fill positions within the new court structure. These transfers and reassignments are to be done taking into account the appointments and information developed during the Special Appointments Process, particularly with respect to the newly appointed court presidents. LAW ON COURTS arts. 37.2.6, 38.1.1. No transfer can occur without a judge’s consent. Id. art. 38.1.3.

EULEX judges serving in Kosovo are, reportedly, to be evaluated annually for promotion and future appointments, according to procedures and templates to be established by a working group that was formed in March 2009. It is unclear, however, whether formal annual evaluations are regularly conducted, nor what criteria are evaluated.

Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

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Although the new Constitution appears to improve immunity protections for Kosovo's judges, another legal provision is reportedly applied in such a way as to subject judges to arguably unconstitutional and unwarranted investigation and indictment. Many judges feel placed in an untenable position, on the one hand faced with what they perceive to be threats to their independence but, on the other, legally prohibited from publicly responding and, at least until late 2009, lacking a functioning KJC to act as a public advocate on their behalf.

Analysis/Background:

Professional and lay judges are immune from criminal prosecution, civil lawsuits, and dismissal from office for actions taken, decisions made, or opinions expressed within the scope of their role as judges. CONST. art. 107(1). The current Law on Regular Courts, however, provides only for limited civil immunity, stating that a judge cannot be held liable because of an opinion given in making a court decision. LAW ON REGULAR COURTS art. 11.

Judges interviewed for this assessment complained of a controversial provision of the Criminal Code that allows for prosecution of judges for “unlawful” decisions, rather than just those that rise to the level of criminal conduct. CRIM. CODE art. 346. Reportedly, prosecutors are launching formal investigations pursuant to this article based solely on letters of complaint from losing parties alleging that a judge’s decision was illegally influenced. Prosecutors with little civil law experience are then in a position to review case files in complex civil matters and conclude whether the decisions were based on improper influence rather than the law and evidence or simply a non-deliberate judicial mistake. This is also seen as a challenge to the appellate jurisdiction of the higher courts. Additionally, interviewees explained that, by pressing for such procedures, the losing party can benefit by delaying the enforcement of the judgment under investigation. This is asserted to be a violation of the Prosecutors’ Ethics Code, which states they
cannot interfere with the enforcement of judgments. Code of Ethics and Professional Conduct for Prosecutors art. 7.8 (adopted by KJC, Apr. 25, 2008). The possibility that prosecutors may open investigations and bring indictments against judges for decisions that are merely mistaken rather than criminal is seen as an attack on both judicial immunity and independence. The judges see themselves as placed in untenable positions, because notice of an indictment against a judge goes to the KJC, not to the judge, and therefore judges understand that they cannot publicly respond to an indictment. Const. art. 107. During the period that Kosovo lacked a fully functioning KJC, no one in authority has addressed this growing threat on the judges’ behalf.

In one case cited as an example of this problem, a property case in the enforcement stage that had previously been decided three times in the municipal court, twice in the district court, and two or three times in the Kosovo Supreme Court, all with consistent results, was interrupted by a prosecutor’s intervention and assertion that the result was based on corruption. After the point at which the property had been valued and the debtor had already begun making installment payments, the prosecutor allowed him to discontinue payments because the decision was allegedly illegal. The prosecutor brought charges against the municipal and district court judges involved, and the enforcement of the judgment has been pending for at least two years. Cases of this nature are also raised as examples of the potential for abuse and corruption by the prosecutors, as well as to call into question the validity of many pending investigations and indictments against judges. Indeed, during the fall 2009, as many as 30% of the judges were under indictment as publicly announced by the Chief Prosecutor and EULEX during the interviews. Similar complaints were made that ODC investigators cross the line from investigating allegations of corruption into reviewing judges’ decisions for errors.

In defense of their procedures and actions, however, the prosecutors indicate that investigations are undertaken only in those instances that contain an indication of misconduct. Some examples of cases that have triggered investigations and concluded with convictions include a case with an unusual procedure arranged between the prosecutor and the judge that resulted in a criminal indictment not being reviewed. After seeing pictures indicating a conspiracy between the prosecutor and judge, both were indicted and eventually convicted and sentenced to imprisonments of 5-6 months. Another civil case was investigated by prosecutors based on the fact that it went to judgment much faster than similarly situated cases.

Interviewees recommended that the KJC establish strict procedures for prosecutors to bring indictments against judges. Some expressed the belief that current indictments are sometimes based more on a disagreement with the outcome of a particular case rather than actual judicial misconduct. They also emphasized the need for increased training of ODC staff. Further, respondents criticized the KJC for not advocating on judges’ behalf or intervening in cases of bogus charges, as judges are professionally prohibited from publicly speaking on their own behalf. With the expiration of the IJPC’s mandate and the full resumption of the KJC’s functioning, interviewees expressed hope that the new KJC would prove a better advocate on behalf of the judges. In at least one respect – successfully advocating for increased judicial salaries to go into effect in 2011 rather than 2013 – the new KJC leadership received considerable praise from interviewees, who were hopeful the improved leadership would be also evident in other areas of the KJC’s mandate.
**Factor 17: Removal and Discipline of Judges**

*Judges may be removed from office or otherwise punished only for specified official misconduct and through a transparent process, governed by objective criteria.*

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<td>The judicial disciplinary system did not fully function for most of 2008-2009, resulting in a backlog of over 120 disciplinary cases that are yet to be resolved by the KJC’s Judicial Disciplinary Committee [hereinafter JDC]. During the Special Appointment Process, a temporary committee consisting of international judges was formed in October 2009, which made some effort at instituting a regular, transparent, and reliable judicial disciplinary system; however, its work is incomplete and its composition and authority questioned. The new KJC Law mandates a JDC and the ODC, and outlines transparent policies and procedures for judicial discipline and removal.</td>
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**Analysis/Background:**

Judges of the regular courts may be removed from office by the President upon recommendation of the KJC for conviction of a serious criminal offense or serious neglect of duties. **CONST. art. 104(4).** A written recommendation of dismissal may be made to the President only after disciplinary proceedings, within 15 days of completion of proceedings. **KJC LAW art. 38.** A dismissed judge may appeal his/her dismissal directly to the Supreme Court. **CONST. art. 104(5).** Judges of the Constitutional Court may be dismissed by the President upon the proposal of two-thirds of the Court’s judges for the commission of a serious crime or for serious neglect of duties. **Id. art. 118.**

At the time of drafting this assessment, the KJC had jurisdiction over both judicial inspections and disciplinary proceedings against judges. **CONST arts. 108(3), 108(5); KJC REGULATION § 1.4(c).** Prior to the UNMIK transition, the investigation of judicial complaints was handled by the UNMIK DOJ’s JIU, which has since become the ODC. **UNMIK ADMINISTRATIVE DIRECTION No. 2001/4 IMPLEMENTING UNMIK REGULATION NO. 2000/15 ON THE ESTABLISHMENT OF THE ADMINISTRATIVE DEPARTMENT OF JUSTICE §§ 2.1(c), 2.2 (May 11, 2001).** The IJPC was expected to incorporate the ODC within its organizational structure for the period of the Special Appointment Process. **UNMIK ADMINISTRATIVE DIRECTION No. 2008/7 IMPLEMENTING UNMIK REGULATION NO. 2006/25 ON A REGULATORY FRAMEWORK FOR THE JUSTICE SYSTEM IN KOSOVO § 1.2 (Jun. 14, 2008) [hereinafter ODC ADMIN. DIRECTION].** But the IJPC did not do so, instead receiving feedback from the ODC as one of the sources of information for review by its own professional vetting staff. **IJPC REGULATION § 5; see also Factor 2 above.** The ODC was left as a stand-alone institution, with its financial control shifted for a time to the MOJ, spurring a debate over whether the MOJ might gain unwarranted influence over the judiciary as a result. The budget for the ODC has since been transferred from the MOJ to the KJC. The new KJC Law reinforces the ODC as a “separate and independent body” serving both the KJC and the anticipated KPC. **KJC LAW art. 43.** Among other qualifications, the ODC Director must have at least five years experience as a lawyer, judge, police officer, prosecutor, or similar practitioner within the criminal justice system, and is to receive a salary equivalent to that of a Court of Appeals (until 2013 – district court) judge. **Id. arts. 46.3, 47.** Other counsel and inspectors within the ODC must have at least three years of pertinent legal and/or criminal justice experience. **Id. arts. 48.2.3, 48.4.2.** The ODC Director will propose its budget directly to the Ministry of Finance and Economy. **Id. art. 49.** Although the approved ODC budget will be administered through the KJC Secretariat, the KJC will have no authority to limit the ODC’s expenditures or to reallocate the ODC’s funds. **Id.**

Judicial inspections continued during the hiatus in the KJC’s functioning between at least November 2008 and August 2009, even though no action could be taken with respect to the
inspections. A November 2009 ODC statistics provided to the assessment team indicates that during 2008, the ODC received 420 complaints, resulting in the opening of 60 disciplinary cases with improper behavior identified in 37 cases. During 2009, the ODC received 230 complaints, resulting in 54 disciplinary investigations and identification of improper behavior in 7 instances. So far in 2010, the ODC received 272 complaints, resulting in 95 disciplinary investigations and referral of 84 cases to the KJC. At the time of the interviews for this assessment, an MOU had been signed between the IJPC and the KJC, under which four of the IJPC’s local investigative staff will join the KJC Secretariat.

Under the current scheme, disciplinary process against a judge may be initiated by filing a complaint with the ODC, which can be done by any individual or organization, as well as by the ODC or the KJC acting ex officio. JUDICIAL DISCIPLINE DIRECTION § 2.1; see Factor 22 below for a full description of the complaint process. Grounds for misconduct include the commission of a criminal offense, neglect of judicial duties, failure to act independently and impartially, failure to comply with the KJC’s decisions or orders, giving false or incomplete information to the KJC in regards to appointment, promotion or discipline, and any breach of the relevant code of ethics. Id. § 5.3; see also KJC LAW art. 34.1. The judge may be temporarily suspended until a final decision is rendered, if public confidence in the judiciary may otherwise be damaged. KJC LAW art. 34.2; JUDICIAL DISCIPLINE DIRECTION § 4.1. However, it was reported that judges have continued to serve for lengthy periods while subject to investigations of multiple charges of serious misconduct, until the matters were resolved.

After charges are filed with the KJC’s JDC, the ODC prosecutes the case at a hearing before the Committee according to detailed procedures. See Factor 22 below. The disciplinary hearing must be held within 30 working days from the date of the ODC’s notice. KJC LAW art. 36.1; JUDICIAL DISCIPLINE DIRECTION § 2.5. The accused judge has a right to counsel, to access the complete disciplinary file, to call witnesses, and to present arguments. KJC LAW art. 36.3; JUDICIAL DISCIPLINE DIRECTION §§ 2.6, 5.1, 5.2. Following oral arguments, the Disciplinary Committee deliberates during a closed session, and then must file a “reasoned decision in writing on the charges” within 30 working days from the date of the hearing. JUDICIAL DISCIPLINE DIRECTION § 5.5. If the Committee finds the judge guilty of misconduct, it may impose any of the following sanctions: reprimand; reprimand and warning; suspension from office without pay for up to six months; and recommending that the President remove the judge from office. KJC REGULATION § 7.5. The new KJC Law provides for a somewhat different classification of disciplinary sanctions, including: reprimand; reprimand with a directive to take corrective actions; temporary reduction in salary by up to 50%; and recommendation on removing the judge from office. See KJC LAW art. 37.1. Any sanctions imposed must be proportionate to the severity of proven misconduct. Id. art. 37.2; see also KJC REGULATION § 7.5; JUDICIAL DISCIPLINE DIRECTION § 6.2(e). The judge or the ODC may then appeal this decision to the full KJC, which will confirm, revise, overrule, or remand the decision. KJC LAW art. 39; see also KJC REGULATION § 7.6; JUDICIAL DISCIPLINE DIRECTION §§ 6.1, 9; KJC INTERNAL REGULATIONS § 12. The KJC will make its decision on the basis of written submissions unless one of the parties to the case requests oral hearing. JUDICIAL DISCIPLINE DIRECTION §§ 8.5-8.6; KJC INTERNAL REGULATIONS §§ 12.5-12.6. As is the case for the Disciplinary Committee’s decisions, the KJC’s decisions on appeal must be in writing and include reasoning for the decision. JUDICIAL DISCIPLINE DIRECTION § 9.2; KJC INTERNAL REGULATIONS § 12.10(b). It is anticipated that, following the promulgation on the new KJC Law, the KJC will issue new internal regulations to govern the disciplinary process.

The KJC is currently required to maintain a public registry of the JDC’s and the KJC’s decisions, with the name of the judge excised if the sanction that was handed down is something other than a recommendation for removal. JUDICIAL DISCIPLINE DIRECTION § 11. No disciplinary proceedings were held while the KJC was not functioning during 2008-2009, leaving a backlog of approximately 120 cases for the reconstituted JDC that began functioning in October 2009. The oldest of the backlogged cases dated back to 2006. The JDC temporarily included the international judge members of the KJC, because European rule of law experts in Kosovo advised that the non-judicial members of the KJC could not, under prevailing European practices,
be given the authority to discipline judges. At the time of the interviews for this assessment, the JDC was not yet fully functional, since the IJPC was still in existence and the Special Appointment Process has not yet concluded. Reportedly, only one case has been resolved completely through the appeals process during the reappointment process. Many interviewees noted, however, that a number of judges facing disciplinary charges have resigned, and have either established law practices or are undergoing training as notaries. It was repeatedly stated that allowing corrupt judges to practice law damages the reputation and image of the justice system overall.

Interviewees emphasized that the KJC hiatus harmed both the accused judges, who suffered a lack of swift justice, and the public, as judges presided over matters under the clout of ethics complaints and actual indictments. A number of such situations further undercut the public’s trust in the judicial system. For example, the President of the Peja Municipal Court was indicted on corruption charges, but was still presiding over cases. Although an indictment is not a basis for removal and the accused is not presumed guilty, the delay in resolving such a public case while the suspect continues hearing cases was said to undercut the authority and efficacy of the justice system.

Other interviewees noted that the ODC staff must be better trained to distinguish between a complaint that simply disagrees with the result reached by a judge and a substantive allegation of misconduct. At least one interviewee believed that the ODC misunderstood its role and tried to improperly assume the function of an appellate court rather than a disciplinary investigator. Another interviewee emphasized that it will take years for the judicial discipline system to mature.

**Factor 18: Case Assignment**

*Judges are assigned to cases by an objective method, such as by lottery, or according to their specific areas of expertise, and they may be removed only for good cause, such as a conflict of interest or an unduly heavy workload.*

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<th>Conclusion</th>
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<td>Case assignments are not made according to any uniform or transparent procedures. In many courts, assignments are overseen by the court president, who exercises considerable discretion. The KJC has recently adopted a Court Management Manual, which recommends that case assignment be handled by a registration clerk in accordance with the procedures developed by the collegium of judges; however, the Manual was too new at the time of this assessment to adequately evaluate its implementation in practice.</td>
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**Analysis/Background:**

No rule or regulation currently provides specific guidelines or procedures for a system of case assignment that minimizes the potential for corruption. See, e.g., KJA, KOSOVO PROSECUTORS ASSOCIATION, AND KCA, STRATEGIC PLAN FOR A TRANSPARENT AND NON-CORRUPTED JUDICIAL SYSTEM (Oct. 2007); KOSOVA DEMOCRATIC INSTITUTE, INDICATORS OF THE SPREAD OF CORRUPTION IN KOSOVO’S JUDICIAL SYSTEM at 31 (Oct. 2009) [hereinafter CORRUPTION INDICATORS REPORT]. The Rules on Internal Activity of the Courts merely provide that the chief of the clerk’s office is in charge of delivering new cases to a competent judge or panel of judges. RULES ON INTERNAL ACTIVITY OF THE COURTS art. 167 (1981) [hereinafter INTERNAL COURT RULES]. The Judicial Ethics Code does state that case assignment should not be influenced by wishes of a party or any other interested person, and that the case assignment system should be “based on drawing of lots, automatic distribution according to alphabetic order, or some similar system.” JUDICIAL ETHICS CODE § III(B)(5). Additionally, each court president is charged with devising, implementing, and
reviewing annual case management plans for his/her court, which take into account, among others, the assignment of cases to departments and judges so as to ensure the efficient disposition of cases. KJC LAW art. 24(3).

Individual judges are required to recuse themselves from hearing any case where their participation might be in violation of the conflicts of interest or other provisions of the Judicial Ethics Code. See id. § II(A)(3)(c). Parties may also request dismissals of judges from individual cases, which are decided by the court presidents. INTERNAL COURT RULES art. 175. Court presidents are also authorized to remove disqualified judges from cases at a party's request, based on conflicts of interest, bias, or participation in an earlier hearing of the case. CRIM. PROC. CODE art. 40; LAW ON CONTESTED PROC. arts. 67-72.

During 2011, the KJC will begin promulgating regulations and developing an implementation plan that reclassifies and renumbers case files to comport with the newly reorganized court structure, as well as transferring the cases to the appropriate courts or branches and assigning or reassigning the cases to the appropriate departments and judges. LAW ON COURTS art. 37. That process had not yet commenced at the time of the interviews for this assessment.

In practice, Kosovo’s regular courts have no uniform, transparent system for the assignment of cases. Judges interviewed for the assessment reported that each court determines its own case assignment system, which is often administered by the intake staff with oversight by the president of the court. In some courts, the president alone makes all assignments; in others, the judges are assigned to panels designated for certain types of cases, and the intake clerk delivers the cases by type. Even in those jurisdictions with an allocation system enforced by the president of the court, exemptions are allowed to an extent that threatens the objectivity of the system. See EULEX REPORT at 98. Likewise, there are no procedures for transferring cases after they are assigned to balance judicial workloads or for other reasons. In some courts, the judges reassign cases among themselves, often without any report of doing so to the president or the registry office. In other jurisdictions, there is no reallocation system or strategy at all. In still others, the president reallocates the workload. Some aspects of the case assignment methodologies are also dictated by limited judicial staff. For example, in the Pristina District Court, there is only one judge designated to hear all first instance civil cases, two judges to hear pretrial matters on a rotating basis, one judge to hear criminal appeals, one judge to handle sentencing, and three to four judges to hear civil appeals; the court president handles cases pertaining to judicial discipline and other special categories of cases. When cases in these categories are filed, the registrardesignates the case type and sends it to the judge assigned for that specialization. At least one former judge reported that there are many cases that are not timely assigned or reassigned after a vacancy, with some cases going unassigned for as long as three years.

As part of the Model Courts Program supported by the USAID’s KJSP, in April 2010 the KJC has approved an administrative manual, which has since been distributed to all courts. See generally KJC, MODEL COURT PROGRAM, MANUAL ON COURT MANAGEMENT AND STANDARD OPERATING PROCEEDURES (Apr. 2010) [hereinafter COURT MANAGEMENT MANUAL]. Included in the Manual are suggestions for the development of procedures for assigning cases to judges by the collegium of judges as part of an annual work plan, as well as for the performance of the assignment functions by court registration clerks, subject to the audit by the chief clerk. Id. at 73. The Manual was so newly distributed at the time of this assessment, however, that compliance with it could not yet be adequately evaluated.

Lay judges are typically assigned to cases by the court administrator, although it was reported that the same professional and lay judges tend to serve together repeatedly.

The intake clerk of the Constitutional Court initially assigns each new case to the next judge on an alphabetical list.
A problem with the lack of a system for the assignment of cases is that, in some courts, the workload varies considerably among the judges. For example, in one court assessed in 2008, the caseload per judge varied between 735 and 1,802 with no apparent reason, such as a particular specialization, to account for the variance. KJSP, CIVIL CONTESTED PROCEDURE QUESTIONNAIRE FOR PRISTINA MUNICIPAL COURT JUDGES at 2 (Apr. 2008).

Under the UNMIK system, a prosecutor, accused, or defense counsel could request the UNMIK DOJ for an assignment of international judges or a change of venue in criminal proceedings. UNMIK REGULATION NO. 2000/64 ON THE ASSIGNMENT OF INTERNATIONAL JUDGES/PROSECUTORS AND/OR CHANGE OF VENUE (Jun. 10, 1999, last amended by UNMIK REGULATION No. 2007/21, Jun. 27, 2007). As a consequence, many of the more serious criminal cases, often involving allegations of war crimes or interethnic violence, were assigned to international judges. OSCE MISSION IN KOSOVO, MONITORING DEPARTMENT, LEGAL SYSTEM MONITORING SECTION MONTHLY REPORT – AUGUST 2008 at 2 (Aug. 2008). Some confusion over case assignments to international judges occurred during the transition from UNMIK to EULEX. Id. Cases are now assigned to EULEX judges pursuant to the Law on Jurisdiction. The President of the Assembly of EULEX Judges also has the authority to make case assignments for unspecified but “grounded reason.” LAW ON JURISDICTION art. 3.2; see also EU COUNCIL JOINT ACTION ON EULEX art. 3(d).

Factor 19: Judicial Associations

An association exists, the sole aim of which is to protect and promote the interests of the judiciary, and this organization is active.

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<td>The KJA is a voluntary professional organization of active judges formed in 2001 to protect and promote the interests of the judiciary. The KJA’s membership has dropped by 70% since 2008, largely due to judicial attrition and uncertainty among judges whether they would be reappointed under the Special Appointment Process. The latter has also interfered with the KJA’s leadership transition. Many judges reported that the KJA is ineffective or never having interacted with the organization.</td>
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Analysis/Background:

The KJA is a voluntary non-governmental organization of Kosovo’s active judges, which was formed in May 2001. It is focused “on the protection and enhancement of judges’ interests and advancement of the judicial system through building an independent and impartial judiciary system based on rule of law and protection of human rights.” KJA, STRATEGIC PLAN 2007-2009 at 4 (Oct. 2007). The KJA has a nine-member Managing Board, consisting of judges from all levels of the judiciary and all regions of Kosovo. One position on the Managing Board is reserved for a judge from the ethnic Serb community, and another from the international community. There are five regional branches of the KJA, each with its own delegates who vote on the Managing Board for four-year terms. Each branch has its own meetings, assembly, and membership. The KJA has the following committees: praktikant, human resources, disciplinary, seminars and conferences, administrative issues, gender and minorities, criminal law, and civil law. See id. The last two committees are a mechanism for involving experts who can draft laws and/or comment on them. There is also an editorial board that produces the Bulletin, which is published quarterly. The KJA is supported by a part-time administrative assistant who also works at the KJI. The KJA holds its meetings at the KJI and at the Pristina District Court, where it has an office. The KJA members pay monthly dues, which are set at EUR 2.5 (USD 3.25). At present, these dues appear to be the only source of funding for the KJA, as the organization no longer
receives support from international donors (e.g., ABA ROLI or UNIFEM) that it enjoyed in the past.

In practice, the KJA has not been very active over the past several years. For instance, in the past it focused on judicial education and professional development of its members; however, it has not organized any trainings since March 2009, when it held an event on transparency and combating corruption in the judiciary. The Special Appointment Process and the insecurity it has fostered with respect to the continuation of judges’ jobs have contributed to a 70% decrease in the KJA’s membership during the past several years. Prior to the Special Appointment Process, the KJA met with its regional presidents to inform them of the details of the process, with the intent that the presidents would then pass on this information to their regional members. The KJA also attempted to meet with the IJPC regarding the process but was not granted a meeting. After the ethics examination results were released, the KJA sent a letter to the IJPC, asking that the passing score be lowered due to the short time given to take the test, but the letter was returned asking for it to be resent in translation. Additionally, there has been very little response from the membership to the KJA’s attempts to schedule debates or programs in the past two years. It is also reported that there has been little cooperation between the KJC and the KJA in the past.

One notable achievement of the KJA during this difficult period was the publication of its comprehensive statistical report on the participation of women and minorities in all sectors of the Kosovo justice system. KJA STATISTICS; see also Factor 4 above. The project was headed by the KJA’s gender and minorities committee and was implemented in cooperation with the Kosovo Prosecutors Association and the KCA, with funding from UNIFEM.

Most of the judges interviewed are members of the KJA, but many, especially the younger ones, reported never having had any contact with the organization and being generally unaware of its activities. Nevertheless, some still rated it favorably. Others reported that the KJA has not functioned effectively and pointed to its unsuccessful attempts to organize in opposition to the IJPC process and the ethics examination, all apparently without impact. The Association’s leadership was due to be replaced in July 2009, but has been asked by the Board to continue until the Special Appointment Process is completed, on the grounds that the members’ positions are too much in flux to warrant elections and risk the possibility that those elected may not be reappointed. Nevertheless, preparations for the elections, such as drafting of work reports, have been undertaken. By one report, the organization should be properly functioning again by May 2011.
V. Accountability and Transparency

Factor 20: Judicial Decisions and Improper Influence

*Judicial decisions are based solely on the facts and law without any undue influence from senior judges (e.g., court presidents), private interests, or other branches of government.*

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<td>Judicial decisions are widely perceived as based on outside influences rather than the facts and law. The outside influences are believed to be political pressures from parties and other branches of the government, family, and friendship ties and some consist of outright bribes. Attempts to combat corruption, such as formation of the Anti-Corruption Agency, have so far proved ineffective in combating judicial corruption. Interviewees expressed the hope that the Special Appointment Process will significantly clean up the judiciary from corrupt and politically influenced judges, and the increased judicial salaries that are scheduled to take effect in January 2011 would also help diminish external influence on the outcome of cases.</td>
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**Analysis/Background:**

The Constitution provides for an independent, impartial, and apolitical judiciary, as do the international documents which it incorporates by reference. CONST. art. 102. By law, courts are independent and judges must make decisions on the basis of the facts and evidence presented by the parties and the applicable law. LAW ON REGULAR COURTS art. 6; see also CRIM. PROC. CODE art. 8; LAW ON CONTESTED PROC. art. 7. Judges must act impartially and independently, perform their duties free from any outside influence, and avoid any conduct that could lead to questioning of their impartiality or independence or otherwise be incompatible with their judicial duties. JUDICIAL ETHICS CODE § I(2)(d); see also LAW ON COURTS art. 35.1. They must perform their duties based on the facts and the applicable law, without any direct or indirect restriction, improper influence, inducements, pressures, or threats of interference. JUDICIAL ETHICS CODE § II(A)(3)(a). Judges are also called upon to avoid conflicts of interest based on family, social, financial, or professional relationships, and to remove themselves from cases accordingly. Id. § II(A)(3)(b)-(c). Finally, judges are constitutionally prohibited from working in any state institution other than the judiciary and from involvement in political activities, illegal activities, or activities incompatible with the principles of judicial independence and impartiality. CONST. art. 106(1)-(2); see also LAW ON COURTS art. 35.2. Judges are specifically banned from membership in a political party, movement, or other political organization, as well as from seeking or holding any political office. LAW ON COURTS art. 35.2.

Despite these guarantees, the courts remain the least trusted of Kosovo’s public institutions, with the public satisfaction level at 26% as of April 2010. UNDP IN KOSOVO, EARLY WARNING REPORT NO. 28: FAST FACTS at 2 (May 2010). In one measure of the public’s perception of corruption in the judiciary, rating on a scale of 1 (least corrupt) to 5 (most corrupt), the judiciary earned a score of 4, the worst rating among Kosovo’s official institutions and worse than it was rated in 2007. CORRUPTION INDICATORS REPORT at 32.

One international observer of Kosovo’s judicial system stated that, in some aspects, corruption is not yet recognized as such, particularly so in regard to helping family members, which is expected behavior in this tradition-bound society. Another stated flatly that there is no independent judiciary in Kosovo, as its judges are under constant political and other pressures to reach certain results. Reportedly, the problem has grown since the 2007 Kosovo JRI, and extends to court clerks and other court staff as well. It is also reported that judges and prosecutors do not take bribes directly, but that lawyers serve as intermediaries for that purpose, collecting extra money from their clients to pass on to the authorities.
While some judges reported no attempted interventions in their affairs, others cited specific examples of outside pressures. One instance was referred to by a judge who presided over a financial embezzlement case, in which he was told by sources he did not identify to release the defendant, which he declined to do. Some judges opined that organized criminal syndicates have a hold on other branches of government, members of which attempt to utilize their positions to influence judicial decisions.

In a publicly reported case, a former judge who purportedly owns a construction company and a number of unlicensed buildings – one of which is located directly across from the courthouse – warned two construction inspectors that their telephones were being tapped in an investigation to which he was privy. The judge was tried by EULEX judges for divulging confidences but was not convicted, because no specific law was clearly violated. Vehbi Kajtazi, Special Prosecution Office Reinitiates Investigations against Judge Selman Bogiqi, KOHA DITORE (May 5, 2009). As often happens in these types of cases, the discredited, albeit not convicted, judge left the judiciary and is now licensed as an advocate. In another widely reported case, an Albanian judge sitting on a panel with EULEX judges participated in the conviction of a former Kosovo Liberation Army member in a trial for war crimes. After the decision, the local judge publicly announced that he had been pressured to vote the way he did. The judge was immediately suspended by the temporary JDC. At least one observer opined that the judge made the public statement for his own safety. See also BALKAN INVESTIGATIVE REPORTING NETWORK, MONITORING THE COURTS 36-38 (May 2009) [hereinafter MONITORING THE COURTS].

A majority of the interviewees see low judicial salaries and benefits and poor working conditions as key contributing factors to the widespread corruption. Not surprisingly, most of them expressed the hope that the recent reappointment of Kosovo’s judges through the Special Appointment Process, with its thorough review of all appointees’ finances and backgrounds and oversight by an independent commission of politically disinterested internationals, coupled with the scheduled significant increases in judicial salaries, will help. Many of the corruption cases against judges involve large sums of money (in one example, EUR 150,000 (USD 194,805)), as against paltry judicial salaries and the promise of a EUR 40 (USD 52) pension upon retirement. Other interviewees noted that there has been essentially no vetting of candidates prior to appointment to the judiciary until the recent launching of the Special Appointment Process. Just as many interviewees insist that an even more fundamental problem is the lack of regard for the judiciary as an important branch of government. This is seen as a lasting legacy of the SFRY years said to be apparent throughout the Balkans: a political culture built on a monolithic concept of the party that values the executive and legislative functions of government over the judiciary and does not recognize, much less foster, judicial independence as a pillar of strong governance. A few respondents also opined that allegations of judicial corruption are too freely made in Kosovo without any evidentiary basis, and that this tendency has greatly harmed the judicial system.

Some credible observers of the judiciary also note that factors other than judicial conduct that meets a legal definition of corruption may also contribute to the public’s low regard for the justice system. Litigants often attribute delays in the processing of cases to corruption, when other forces, such as the inefficiencies in case processing and management, may be at work. Additionally, members of the public may apply a definition of corruption that does not comport with a legal definition. Thus, there have been calls to more closely scrutinize the cases where judicial corruption is alleged.

The Anti-Corruption Agency is an independent institution charged with preventing and combating corruption through implementation of the Law on the Suppression of Corruption. See generally SUPPRESSION OF CORRUPTION LAW Chap. 2 (Law No.2004/34, adopted Apr. 22, 2005) [hereinafter ANTI-CORRUPTION LAW]. It does so, in part, by referring suspicious cases to the prosecutors for criminal investigation, but it has been largely ineffective in this regard despite a recent upturn in the number of cases it has referred for investigation. Of the more than 100 cases referred by the Agency for prosecution, very few have actually proceeded to resolution, in part because the
Agency lacks the resources and competence to conduct investigations. **CORRUPTION INDICATORS REPORT** at 33. The result is that the entire investigation must be duplicated once the matter is referred to a prosecutor. *Id.* In another aspect, the Anti-Corruption Law has had some slight effect on the judiciary. According to that law, senior officials, including judges, are to provide annual information regarding real estate, valuable movable property, shares held in commercial companies, securities, cash held in banks, debts, sureties, and other obligations, as well as annual income. **ANTI-CORRUPTION LAW** art. 41. The KJC is to verify these declarations. In 2008, 14 judges failed to comply with this requirement, with the result that three were dismissed for breach of the Judicial Ethics Code, two were suspended without salary, one had her salary cut by 20%, and one was reported to be in prison. Four of the noncompliant judges were reported to be minority members, although it is not clear how the latter designation impacts application of the law. Of the eight judges who failed to provide financial asset declarations in 2009, four had had their salaries cut as of June 1, one was on sick leave without salary, and four were reported to be minority members. **EULEX REPORT** at 93-94.

**Factor 21: Code of Ethics**

* A judicial code of ethics exists to address major issues such as conflicts of interest, *ex parte* communications, and inappropriate political activity, and judges are required to receive training concerning this code both before taking office and during their tenure.*

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Ethics codes for professional and lay judges specifically address major issues such as conflicts of interest, *ex parte* communications, and inappropriate political activity. Kosovo’s professional judges are required, as part of the KJI’s ILEP, to receive training on the Judicial Ethics Code prior to appointment. Although CLE specifically in ethics is not mandated, the KJI continues to offer seminars in basic and advanced ethics. The Judicial Ethics Code took on new prominence in 2008, when all candidates for appointment through the Special Appointment Process were required to pass an examination that tested their working knowledge of the judicial, prosecutorial, attorney, and lay judge codes of ethics.

**Analysis/Background:**

The codes of ethics and professional conduct for Kosovo’s professional and lay judges remain in force and have not been amended since being described in the 2007 Kosovo JRI. The Judicial Ethics Code applies to all professional judges in Kosovo and defines ethical standards that judges should adhere to. It also states that the types of misconduct defined in the Code are not exhaustive, and a judge may be sanctioned for any actions that are not specifically contemplated by the Code but have a similar effect. See **JUDICIAL ETHICS CODE** at Preamble. Generally, the Code of Ethics and Conduct for Lay Judges contains substantially similar rules, with a few exceptions. See **CODE OF ETHICS AND CONDUCT FOR LAY-JUDGES (adopted by KJC, Apr. 25, 2005).** The Judicial Ethics Code is further reinforced by the new Law on Courts; one of the provisions that is scheduled to take effect on January 1, 2001 specifically prohibits judges from participating in any activities that may be incompatible with the provisions of the Judicial Ethics Code. **LAW ON COURTS** art. 35.1.

The Judicial Ethics Code adheres to internationally recognized basic principles that require judges to perform their judicial and extra-judicial activities in a manner which promotes public confidence in the integrity and independence of the judiciary. See **JUDICIAL ETHICS CODE §§ I(1), I(3).** Judges must also apply the law without discrimination. *Id.* § II(A)(1)-(2). Judges are required to act impartially and independently in all cases, to be free from any outside influence, and to perform judicial duties based on the facts and the law applicable in each case, without any
restriction, improper influence, inducements, pressures, threats of interference, direct or indirect, from any quarter. *Id.* § II(A)(3)(a). The Code also addresses conflicts of interest and non-judicial activities, specifically prohibiting judges from engaging in political activity or any other activity incompatible with judicial functions, holding membership in political parties, or engaging in legal practice or privately carrying out any adjudicative functions. *Id.* §§ II(A)(3)(b), II(B)(2)(a)-(b), II(B)(8).

Judges are further prohibited from using their position for personal gain for themselves or anyone else, participating in financial and business transactions that can adversely affect their impartiality or performance of judicial duties, or accepting any kind of gifts, favors, privileges, or promises of material help (the latter prohibition also extends to members of a judge’s family). *Id.* §§ II(B)(5), II(B)(7), II(B)(9). There is no comprehensive prohibition on judges earning outside income; rather, judges may not accept compensation for outside activity during working hours without the KJC’s approval. *Id.* § II(B)(2)(c). For judges who obtain such permission, the compensation must be reasonable and may not exceed 25% of the judge’s usual salary, nor may it create the appearance of impropriety. *Id.* § II(B)(3). Judges also should not engage in outside activities that are incompatible with confidence in, impartiality of, or independence of judges, or may impair their ability to deal with judicial matters attentively and within a reasonable period. *Id.* § II(B)(1). These provisions correspond to the KJC Regulation, which generally prohibits judges from holding any other public or administrative office or engaging in any occupation of professional nature, regardless of whether it is remunerative or not, but allows the KJC to authorize a judge to engage in certain outside activities, such as scholarly work, lecturing, or activities related to the law, the legal system, and the administration of justice, as long as those activities do not affect the independence or dignity of the judicial office. KJC REGULATION § 5.3; see also JUDICIAL ETHICS CODE § II(B)(1)(a). The limited nature of Kosovo’s prohibition on earning outside income by judges reflects the reality of meager judicial salaries – although, as discussed in Factor 11 above, this situation is about to improve with the increase in judicial salaries scheduled to take effect in January 2011.

The Judicial Ethics Code requires judges to engage in CLE and training “when available.” *Id.* § III(A)(3). The KJI offers ethics trainings as part of its ILEP for those seeking judicial appointment and its CLEP for sitting judges. See Factors 1 and 3 above for additional information on these training programs. The KJI’s CLEP ethics seminars are conducted by seven or eight trainers competitively selected from a pool of 30, all of whom attended a training-of-trainers program specifically focused on ethics. With support from USAID, during 2007, the KJI focused on delivering basic ethics training and conducted five such trainings. During 2008-2009, it began providing advanced ethics training. In 2008, it conducted six or seven such regional trainings throughout Kosovo. See 2008 KJI ANNUAL REPORT at 7 (supplemental statistics were provided to the assessment team by the KJI). During 2009, five regional trainings, both basic and advanced, were devoted to ethics. 2009 KJI ANNUAL REPORT at 5, 14. The trainings relied on case studies and provided participants with instruction on such topics as judicial independence, impartiality, media relations, and increasing public confidence in the judiciary. One interviewee suggested that ethics training could be more comprehensive, focusing on raising the general awareness of improprieties considered normal in Kosovo society, such as providing special help to family and friends. The KJI also conducted training seminars on the ethical obligations of lay judges, or incorporated ethics subjects into the general lay-judge trainings. 2008 KJI ANNUAL REPORT at 7; 2009 KJI ANNUAL REPORT at 14.

As explained in Factor 2 above, the judicial, prosecutorial, attorney, and lay judge ethics codes took on new importance for the judiciary by virtue of the new requirement that all candidates for judicial appointment must pass an ethics examination. The exam was administered for the first time as a prerequisite to appointment under the Special Appointment Process, and 23% of those who took it failed, including approximately 80 sitting judges. None of the interviewees for this assessment expressed the opinion that the failure rate was due to a lack of available training on the ethics codes. Instead, many interviewees were of the opinion that a number of experienced judges did not take the examination process seriously enough, believing that their years of
experience and general familiarity with the rules of ethics gleaned from attendance at trainings over the years could substitute for concentrated study prior to taking the examination. One interviewee stated that the experienced judges debated whether to take the examination without studying for it. Many claim not to have understood that the exam would exclude them from consideration for appointment; rather, they thought it would be one of many factors in consideration and hoped instead to rely on their records of no disciplinary complaints. A number of interviewees pointed out that the vast majority of European countries do not have written judicial ethics codes. Given these complaints about the ethics exam, as well as the shortage of qualified candidates to fill all positions during the Special Appointment Process, the KJC and the IJPC announced the administration of a second ethics examination in October 2010.

In June 2010, the KJC adopted a binding ethics code for court employees, which was developed with the support of USAID’s KJSP. The Code covers such areas as professionalism and public service; use of public resources, property, and funds; confidentiality; impropriety; dress code; conflict of interest and gifts; prohibition against providing legal advice, drafting documents, recommending legal representatives, or expressing opinions on the merits of the case; and restriction against active political engagement. The Code constitutes an integral part of court support staff’s employment contract and is considered a condition of employment, with violations resulting in disciplinary actions, including termination of employment. See CODE OF CONDUCT FOR JUDICIAL ADMINISTRATION PERSONNEL art. 11. In addition, court personnel are subject to general civil service rules and code of conduct. At the time of the interviews for this assessment, the KJI was in the process of designing training-of-trainers programs to educate court staff on the new Code.

**Factor 22: Judicial Conduct Complaint Process**

*A meaningful process exists under which other judges, lawyers, and the public may register complaints concerning judicial conduct.*

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<th>Conclusion</th>
<th>Correlation: Neutral</th>
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<tr>
<td>The already-confusing process for lodging complaints against judges, under which complaints were often not reviewed and processed according to procedure, suffered even more as a result of the transition of rule of law competencies from UNMIK to EULEX and the hiatus of the KJC functions due to the Special Appointment Process.</td>
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**Analysis/Background:**

Prior to the UNMIK transition, the investigation of judicial complaints was handled by the JIU of the UNMIK DOJ. In 2008, the investigative function of the JIU was officially transferred to the ODC. See generally ODC ADMIN. DIRECTION. As discussed in Factor 17 above, because the KJC was largely non-functional during 2008-2009 and in the wake of the transition from UNMIK to EULEX, the ODC was left for a time as a stand-alone institution. The new KJC Law reinforces the ODC as a “separate and independent body” serving both the KJC and the anticipated Kosovo Prosecutorial Council. KJC LAW art. 43.

Any individual or organization, as well as the ODC or the KJC acting *ex officio*, may initiate disciplinary process against a judge by filing a complaint with the ODC. JUDICIAL DISCIPLINE DIRECTION § 2.1; see also KJC LAW art. 45.2. Complaints may be submitted in writing, verbally, or electronically. All complaints against judges that present a reasonable basis to believe misconduct has occurred, from whatever source, are referred to the ODC for investigation. KJC REGULATION § 7.3; see also KJC LAW art. 45.1. ODC investigators are empowered to interrogate those who may have relevant information and to obtain pertinent documents and access judicial
proceedings. The investigation includes an interview of the accused judge. After investigation, the ODC may either close those cases which it finds unfounded, or file formal charges with the JDC regarding those claims that it deems worthy of prosecution. JUDICIAL DISCIPLINE DIRECTION §§ 2.2, 2.3. The ODC is prohibited from reviewing complaints based solely on dissatisfaction with the court’s decisions. The ODC may recommend disciplinary action against a judge only after an investigation and based on supporting evidence. KJC LAW art. 45.6.

The ODC’s phone and fax number are made publicly available on the KJC’s website, http://www.kgjk-ks.org/?cid=2,152. It was reported that the ODC continued to receive complaints and conduct judicial inspections despite the complications occasioned by the transition from UNMIK to EULEX and the Special Appointment Process. A November 2009 ODC statistics provided to the assessment team indicates that, during 2008, the ODC received 420 complaints, resulting in the opening of 60 disciplinary investigations with improper behavior identified in 37 cases. The complaints received during 2008 were for breaches of the ethics code (24), neglect of judicial functions in the form of delays (155), other forms of neglect of judicial functions (172), lack of judicial independence and impartiality (19), commissions of criminal offenses (7), and 53 others. During 2009, the ODC received 230 complaints, resulting in 54 investigations and identification of improper behavior in 7 instances. Of the complaints received in 2009, 7 were for breaches of the ethics code, 95 based on neglect of judicial functions in the form of delays, 122 other types of neglect of judicial functions, 1 for lack of independence and impartiality, 3 for the commission of criminal offenses, and 2 unspecified complaints. The ODC has referred a total of 77 complaints to the KJC. So far in 2010, the ODC received 272 complaints, including 7 for breaches of the ethics code, 113 based on neglect of judicial functions in the form of delays in adjudicating disputes, 1 for lack of independence and impartiality, and 146 for unspecified grounds. A total of 84 of these complaints were referred to the KJC.

Despite the continued acceptance and investigation of complaints, however, any further action on those complaints was prevented by the lack of a JDC during much of the 2008-2009 period, as outlined in Factor 17 above. That left a backlog of approximately 120 cases for the reconstituted JDC that began functioning in October 2009. It was reported that only a small portion of that backlog had been resolved as of the time of the assessment interviews. The JDC is expected to continue adjudicating disciplinary complaints brought by the ODC based on its investigations. KJC LAW art. 35.

The failure to process disciplinary complaints harmed both the accused judges, who suffered for a lack of swift justice, and the public’s already negative perception of the official institutions that make up Kosovo’s justice sector, as judges were allowed to continue presiding over cases long after complaints had been made against them. Additionally, the transitions in competencies over judicial inspections have further obscured the complaint procedures that were already confusing, inaccessible, or utterly unknown to the general public. For example, a judge interviewed for this assessment did not register a complaint against a senior judge for improperly altering a court order because, during the period the KJC was not functioning, the junior judge was unsure of the proper place to lodge the complaint and also felt that any complaint could endanger the junior judge’s position. International judges working for EULEX have also reported that they frequently receive complaints from local citizens about the local judiciary which, if transparent procedures were in place and functioning, would be directed instead to the KJC. EULEX REPORT at 102.

Complaints of judicial misconduct may also be lodged with the independent Anti-Corruption Agency, charged with preventing and combating corruption, in part, by referring suspicious cases to the prosecutors for criminal investigation. See Factor 20 above. The Agency, however, has been largely ineffective, despite a recent upturn in the number of cases it has referred for investigation. It is noted that the ease of filing complaints with both the Anti-Corruption Agency and the ODC is reportedly hampered because neither entity has any representation outside of Pristina. EULEX has supported a district court’s request to the KJC to establish and staff an information office to receive public complaints and requests pertaining to judges. EULEX REPORT at 102; COUNCIL OF EUROPE HUMAN RIGHTS REPORT at 11.
Factor 23: Public and Media Access to Proceedings

Courtroom proceedings are open to, and can accommodate, the public and the media.

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<th>Conclusion</th>
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<tr>
<td>Although the law guarantees that court proceedings are open to the public and the media, due in part to the lack of courtrooms, many hearings routinely occur in judges’ offices that are too small to accommodate members of the public and the media. The existing courtrooms are also often too small to allow attendance by many members of the public or the media, although at least a few of Kosovo’s courts have been recently remodeled to update and add new courtrooms.</td>
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Analysis/Background:

Both international and domestic laws entitle Kosovo’s citizens to public hearings, with some limitations. Everyone has the right to an impartial public hearing as to the determination of one’s rights and obligations or as to any criminal charges. Const. art. 31(1); see also Universal Declaration of Human Rights art. 10 (Dec. 10, 1948); ECHR art. 6(1); ICCPR art. 14(1). This is echoed in the Law on Regular Courts, which provides that the work of the courts is public. Courts must guarantee public access to each proceeding by announcing the names of judges who will hear the case, informing the public on the progression of the case through the media, and publicly announcing court decisions. See Law on Regular Courts art. 7; see also CRIM. PROC. CODE arts. 328-331; Law on Contested Proc. art. 4. Court presidents are charged with ensuring public access to the courts, including access for individuals from ethnic minority communities. KJC Law art. 24.5. On the motion of one of the parties or on the judge’s own motion, after hearing arguments from the parties or the public, including media, a judge may close the courtroom for all or part of a criminal trial. CRIM. PROC. CODE art. 329. Closure depends upon a finding of necessity to protect official secrets, the confidentiality of information, to maintain law and order, protect personal or family life of participants, protect interests of children, or protect injured parties or witnesses. Id. However, parties, victims, their representatives, and defense counsel may not be excluded from proceedings, and the court may also permit certain officials, academics, public figures, and the spouse or extra-marital partner of the accused to attend proceedings that are closed to the public. Id. art. 330. The ruling on the issue of closure must be justified and made public, and is not subject to an interlocutory appeal. Id. art. 331. Regarding the extent of the media’s access during criminal hearings, the law forbids photography, video-, or audio-recording during the confirmation hearing or the main trial, unless specifically requested by the parties or the court president and authorized by the President of the Supreme Court. Id. art. 93(2)-(3).

To ensure that the media and the public will be aware of the court’s proceedings, the relevant legislation requires that a list of cases be posted in a place accessible to the public in all courthouses. See Internal Court Rules art. 8; UNMIK DOJ, Justice Circular No. 2003/7 on Public Access to Justice. The Justice Circular also requires that such information be made available upon request to all members of the public. However, the assessment team saw no indication that these procedures are followed in practice. See also Monitoring the Courts at 28. The newly appointed President of the Supreme Court has recently circulated a letter instructing the judges to take all possible measures to increase the transparency of court proceedings and to employ recording equipment in those courtrooms where it is available.

The Constitutional Court may exclude the public from its proceedings, if it is necessary to protect national secrets, the public order, or morals; secret information that would be put at risk by public exposure; or the private affairs or business secrets of a party. Const. Court Law art. 17.2-3. The deliberations of the Constitutional Court are closed to all but the judges. Id. art. 17.4.
In practice, the right to a public hearing is routinely violated due to the lack of sufficient space. Many courthouses have only one courtroom, regardless of the number of judges. Often the courtroom is quite small and will accommodate only a limited audience. For example, the sole courtroom in the Pristina Municipal Court can accommodate roughly 20 seated members of the audience. Until the completion of its renovation in 2010, the single courtroom in Prizren was reportedly always full. The Court now has an additional five courtrooms. As a consequence, the majority of court hearings throughout Kosovo are conducted in the judges’ offices, most of which are prohibitively small and preclude or, at the very least, greatly hinder, public or media participation. According to one monitor, out of 513 court sessions that were observed, 375 occurred in judges’ offices. Monitor the courts at 22. In fact, judges are reported to hold sessions in their offices even when the courtrooms are free. Id. at 21-22. There are a number of documented cases where relatives of the accused, members of the public, and the media have not had access to proceedings that would otherwise have been held publicly but for the lack of a large enough space. Additionally, at least one case was reported where multiple defendants were unable to remain in the courtroom for the testimony of their co-defendants due to the lack of space. OSCE Mission in Kosovo, Monitoring Department, Legal System Monitoring Section Monthly Report – February 2008 at 5 (Feb. 29, 2008). It was also reported that the use of mobile phones and smoking, even by judges, are very common during the sessions held in judges’ offices. Monitor the courts at 21-22; see also Corruption Indicators Report at 37. Per the recent letter circulated by the newly appointed President of the Supreme Court, judges were instructed that the use of mobile phones not be allowed during proceedings.

The Model Courts Program described in Factor 12 above promises some improvement with respect to the sufficiency of courtroom space in some of the courts renovated through the program. A total of 18 new courtrooms have been created in the refurbished courthouses, and there will be an additional three courtrooms once the renovations on the final model court building are completed. Since some of the courts that are housed in the renovated buildings are minor offenses courts, which do not hold courtroom hearings, these 21 new courtrooms will actually serve a total of 10 courts.

Factor 24: Publication of Judicial Decisions

Judicial decisions are generally a matter of public record, and significant appellate opinions are published and open to academic and public scrutiny.

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<th>Conclusion</th>
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<tr>
<td>Although technically a matter of public record, judicial decisions issued by regular courts are difficult to obtain from court files, are not published, and are generally inaccessible for academic and public scrutiny. The Constitutional Court has complied with its obligation to publish its written decisions.</td>
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Analysis/Background:

Kosovo’s procedural laws require well-drafted and reasoned decisions. Civil cases are to conclude with a final decision that contains an explanation of the facts and evidence upon which it is grounded, as well as the legal provisions relied upon. Law on Contested Proc. art. 160. A lack of reasoning constitutes a breach of procedure that can supply grounds for reconsideration or appeal. See id. art. 182.2(n); OSCE Mission in Kosovo, Department of Human Rights and Communities, Report on the Commercial Court of Kosovo at 11 (Jul. 2009) [hereinafter Commercial Court Report]. A final judgment in criminal cases must be written and is to contain the grounds for each point, including an exhaustive statement of facts that were and were not proven, the evidence adduced, the criminal law provisions applied, and the grounds for any
punishment. CRIM. PROC. CODE art. 396. A decision is to be communicated to the parties orally if they are present during the hearing, or otherwise provided via a certified copy; and copies of decisions that may be appealed are to be served on parties with instructions for appeal. Id. art. 123.

The Law on Access to Official Documents establishes the rules for public access to judicial decisions. Under this law, judicial decisions may be classified as “official documents.” See LAW ON ACCESS TO OFFICIAL DOCUMENTS §§ 2(b), 3.3 (Law No. 2003/12, adopted Oct. 16, 2003, promulgated by UNMIK REGULATION No. 2003/32). All official documents are accessible to the public either following a written application, or directly in electronic form or through a register. Id. § 3.4. Access can be denied only in specified circumstances, where disclosure could negatively affect the protection of public interests in the areas of public security, defense, military matters, or international relations, or if disclosure could negatively affect individual privacy and integrity interests. Id. §§ 4.1-4.2.

The decisions of the Constitutional Court must be published in the OG. CONST. COURT LAW art. 20(3); see also RULES OF PROCEDURE OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO art. VII. Likewise, decisions issued by the Supreme Court’s Special Chamber on KTA Matters must be made available to the public, in addition to being made available to the parties. REGULATION ON SPECIAL CHAMBER ON KTA MATTERS §§ 9.5-9.7.

Though technically available to the public, in practice, the decisions of Kosovo’s regular courts are generally provided only to the interested parties, are not easily accessed in court files, and are neither published nor posted on the Internet. A limited number of select Supreme Court decisions have been published and disseminated on a CD-ROM, but this is not routine. See, e.g., COMMERCIAL COURT REPORT at 11. The Commercial Court has been the subject of a report on its failure to comply with the requirements of making its decisions public, but it is by no means an isolated example. Id. at 12-13.

One reported problem occasioned by the failure to publish judicial decisions is that similar cases end with disparate results from one court to another. This is particularly true given the flurry of legislative enactments after the declaration of independence, many of which have contradictory or ambiguous provisions that pose challenges to judges who are asked to apply them without the benefit of others’ written decisions or academic commentary. Judges acknowledged disparate applications of the laws among the courts. For example, the law provides that juvenile victims should have their own lawyers in court proceedings, but this law is often ignored by civil judges in domestic violence cases, whereas judges who specialize in juvenile cases do adhere to this provision. One judge interviewed stated that she frequently consults judgments from the Croatian courts, which are available online. The KJI hosts roundtable discussions and other trainings that focus on new developments in the law and provide opportunities for judges to discuss uniform applications of the laws. One judge interviewed stated that this opportunity for the judges to discuss applications of new laws is the most valuable service provided by the KJI. Additionally, in at least one court, the civil judges meet regularly, in part to hold discussions to foster uniform outcomes in similar cases.

The quality of the written judicial decisions is also widely criticized as reflecting poor analytical, research, and writing skills. This is attributed to a number of factors: the 10-year hiatus in Albanian language education during the 1990s; a poor educational system generally; poor legal education that is too focused on theoretical, non-interactive teaching methods; a judicial mindset that resists interpreting the laws; and caseloads so heavy that the judges do not have time to draft reasoned, articulate decisions. One judge with a civil caseload stated that she should set aside four to five days a month to draft reasoned, thorough decisions, but that is difficult to do given her busy caseload, lack of adequate support staff, and generally poor working conditions. One example given of poor writing skills was a Supreme Court decision impacting a large group of workers, which recited the basic facts incorrectly. One interviewee characterized the judicial decisions generally as “incoherent.” The OSCE has also noted that in a “vast majority” of cases,
the reasons for detention decisions are legally inadequate and fall short of international standards. OSCE DETENTIONS REPORT – PART I at 15; see also generally OSCE MISSION IN KOSOVO, DEPARTMENT OF HUMAN RIGHTS AND COMMUNITIES, THE USE OF DETENTION IN CRIMINAL PROCEEDINGS IN KOSOVO: COMPREHENSIVE REVIEW AND ANALYSIS OF RESIDUAL CONCERNS – PART II (Mar. 2010). As a result of these and similar concerns, the IJPC required candidates for appointment to submit writing samples, which many judicial candidates considered demeaning. Additionally, the KJI has incorporated legal reasoning and writing into its ILEP curriculum.

The Constitutional Court is fulfilling its mandate to publish by posting its decisions on its public website, http://www.gjk-ks.org, and in the OG, http://www.ks-gov.net/GazetaZyrtare. The Court’s decisions are reported to be comprehensible and well-reasoned. The fact that dissenting opinions are also published is seen as a favorable development. The Court’s judges report that the international members contribute significantly by producing examples of well-drafted opinions.

Factor 25: Maintenance of Trial Records

A transcript or some other reliable record of courtroom proceedings is maintained and is available to the public.

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<tr>
<td>Although legally required, accurate records of court proceedings are not well kept. Significant challenges remain with respect to both the production and maintenance of reliable and timely records of court proceedings and with the maintenance, storage, and safekeeping of case files. The records are generally not available to the public.</td>
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Analysis/Background:

Kosovo’s procedural laws require that written minutes of court proceedings be kept, documenting at least the place, date, and time of the hearing, title of the dispute, and the names of those present. See LAW ON CONTESTED PROC. art. 135; INTERNAL COURT RULES art. 182. In criminal proceedings, a detailed record is to be kept of all actions taken and is to be recorded simultaneously with the action or immediately thereafter. CRIM. PROC. CODE arts. 86-88. Additionally, the prosecutor, pretrial judge, or presiding judge may order that an examination be video- or audio-recorded. Id. art. 90. Similarly, in civil matters, records must be made of all important actions undertaken at court proceedings. These records must include the name of the court, the time and date of the action, the parties and their representatives, as well as the relevant object of the dispute. This should include a record of whether the trial is open to the public, what statements and evidence parties give, the questions asked of witnesses, and any decisions made by the court. LAW ON CONTESTED PROC. arts. 134-135.

Maintenance of complete and accurate court files and ensuring public access to court records and information that is subject to public disclosure are among the enumerated duties of court administrators. KJC LAW arts. 31.3.3, 31.3.8. The courts’ administrative functions also include duties pertaining to the training and conduct of judicial secretaries, who are the staff persons largely responsible for producing the minutes of court proceedings. See COURT MANAGEMENT MANUAL at 94.

In practice, the minutes of proceedings are often based on the judge’s oral summation, although the law allows the recording to be conducted via stenographic or audio-recording methods. See CRIM. PROC. CODE arts. 86, 90, 92, 348; LAW ON CONTESTED PROC. arts. 137-138; INTERNAL COURT RULES arts. 182-186. Parties may read and comment on the minutes; non-parties may read and provide comment on only the portion that reflects their statements. Corrections and
additions are contained at the end of the minutes, and those corrections or additions proposed but overruled can also be included upon request. The final minutes are then to be signed by the presiding judge, the recorder, the parties or their representatives, and any interpreter. Witnesses also sign their statements made to the court. CRIM. PROC. CODE arts. 350-351; LAW ON CONTESTED PROC. arts. 137, 139. If a case was heard by a panel of judges, a record must also be made of their voting, and if the vote was not unanimous, a record must be made of their conferring as well. CRIM. PROC. CODE art. 353; LAW ON CONTESTED PROC. art. 140.

There are no provisions guaranteeing public access to transcripts or other records of court proceedings. Only parties to the case have direct access, and other interested parties can obtain access at the discretion of the court president. LAW ON REGULAR COURTS art. 113; CRIM. PROC. CODE art. 89(1).

Generally, minutes of court proceedings are taken down by the judges’ assistants, and interviewees reported a shortage of such personnel, which causes delays in trials. Court monitors report that the courts persistently violate the obligation to maintain accurate minutes, with examples cited of minutes reflecting the presence of a party that had died the day before the hearing, reconciliation attempts in the absence of a party, and showing as present two lay judges who were, in fact, absent from the proceeding. OSCE MISSION IN KOSOVO, MONITORING DEPARTMENT, LEGAL SYSTEM MONITORING SECTION MONTHLY REPORT – JULY 2008 at 6 (Jul. 6, 2008). In those courts equipped with electronic recording devices, the equipment is rarely used. MONITORING THE COURTS at 23. Monitors reported that of 513 court proceedings observed, only 8 utilized recording equipment. Some court personnel reported they do not know how to use the equipment. Id. However, at least one court visited during this assessment reported the routine use of audio- and video-recording equipment in its main courtroom that had been supplied by an earlier USAID-funded project. See 2007 KOSOVO JRI at 51.

Like all court documents, the minutes are maintained in the case files, which are stored in the office of the judge presiding over the matter. Frequent complaints were heard that adequate and timely translations of the minutes are not readily available, that copies of transcripts and other documents from court files – even those to which litigants are guaranteed a right by law – are often unavailable due to shortages of paper or toner for the copiers, and lack available court staff to produce the copies.

The closure of the court complex in the Mitrovica district has created unique challenges with respect to the maintenance of court records. When the courthouse was forcibly occupied by protestors on March 14, 2008, the contents of court files were reportedly strewn about, and some documentation and files may be missing altogether. It was also reported that KFOR soldiers were employed during the unrest to move court files, with the belief by some in the local legal community that some files will never be retrieved and that many will not be complete. The press reported that some files were actually burned during the unrest. Recently, local court staff has reentered the court facility for the purpose of reconstructing and organizing some 3,000 court files.

Efforts by internationally-supported programs hold some promise for ameliorating some of these difficulties. As a part of the Model Courts Program, a centralized filing system is being introduced, which takes the storage and maintenance of case files from the individual judges and places them in a central file room with trained staff located, where possible, on the first floor of the courthouses. For example, in the recently opened model courthouse in Ferizaj, the filing facilities and staff are located on the first floor, where they are easily accessible to the public and are housed in large open spaces, providing an environment transparent to members of the public.
VI. Efficiency

Factor 26: Court Support Staff

*Each judge has the basic human resource support necessary to do his or her job, e.g., adequate support staff to handle documentation and legal research.*

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<th>Conclusion</th>
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<td>The judges generally lack sufficient human resource support to adequately research the law, manage their caseload, and carefully deliberate before making and writing decisions.</td>
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Analysis/Background:

There are no current legal requirements pertaining to sufficiency or qualifications of court support personnel. The Kosovo judiciary lacks sufficient support staff to adequately perform its functions. Nationwide, the courts employ 1,292 non-judicial employees, only 2.24% of whom reportedly provide direct professional support to judges. EULEX REPORT at 89. For example, immediately prior to the reappointment process, the Supreme Court had 13 judges with only 18 staff members. Even the President of the Supreme Court, with considerable managerial and administrative responsibilities, personally performs most tasks due to a lack of support personnel. By contrast, the President of the Supreme Court in Montenegro reportedly has a support staff of 15.

**SUPPORT STAFF IN KOSOVO COURTS**

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<tr>
<th></th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
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<tbody>
<tr>
<td>Number of judges</td>
<td>296</td>
<td>282</td>
<td>246</td>
</tr>
<tr>
<td>Number of support staff (incl. secretaries)</td>
<td>1,383</td>
<td>1,292</td>
<td>1,313</td>
</tr>
<tr>
<td>Staff/judge ratio</td>
<td>4.67</td>
<td>4.58</td>
<td>5.34</td>
</tr>
<tr>
<td>Number of secretaries</td>
<td>285</td>
<td>289</td>
<td>288</td>
</tr>
</tbody>
</table>

Source: KJC Secretariat, Statistics Department.

Generally, each judge has an assistant who manages the case filings and court calendar for the judge, takes minutes of official judicial proceedings, and handles all logistics attendant to managing the caseload. Most of these staff persons have received no special training for their positions and, for some, the only training they have received is related to the Case Management Information System [hereinafter CMIS]. The staff also report that the judges for whom they work are generally overworked, and that their staff are forced to work overtime to handle the press of court business.

Other administrative positions are also understaffed, such as the intake office in the Pristina District Court, which has only one clerk. Likewise, at the Pristina Municipal Court, the public reportedly must stand in line for hours beginning very early in the morning, just to verify documents due to the shortage of staff.

There is also a dearth of professional collaborators or research attorneys to support the judges. Indeed, few of the judges interviewed for this assessment worked at all with research attorneys, although two or three such lawyers were reportedly on the staff of the Pristina Municipal Court. The Supreme Court has three research attorneys for 13 judges, who are paid EUR 200 (USD
By contrast, one court administrator stated that in Ljubljana, Slovenia, 84 judges are supported by 48 professional collaborators who are able to prepare up to 70% of a case. The lack of research support was cited as particularly problematic for the judges handling civil cases, which are more diverse and often more complex than routine criminal matters, and consequently require more research that the judges must largely conduct on their own.

Similarly to judges, court staff are poorly paid and work under the same substandard conditions as have already been described in Factor 12 above. In fact, it was reported that court personnel formed a national union that called a strike in November 2008, which led to a modest salary increase. Nevertheless, a judge’s assistant reportedly earns about EUR 150 (USD 195) per month, with an additional allowance for food. The low salaries result in a widespread perception of endemic corruption, with support staff engaged in corrupt acts with the filing of cases, scheduling of proceedings, assignment of cases, and the like. It was widely recognized that, while the new Law on Courts will substantially raise judicial salaries as of January 2011, the administrative staff salaries are governed by a separate civil service law, and while new law has also been adopted in 2010 providing for increase in some salaries, the anticipated increases will only be modest. See generally LAW OF THE REPUBLIC OF KOSOVO ON SALARIES OF CIVIL SERVANTS (Law No. 03/L-147, adopted May 13, 2010); see also generally LAW OF THE REPUBLIC OF KOSOVO ON THE CIVIL SERVICE OF THE REPUBLIC OF KOSOVO (Law No. 03/L-149, adopted May 13, 2010). Some interviewees noted that this will create potential future tensions within the courts. Many of the senior administrative staff are law graduates who have not obtained a license to practice law, and who earn only EUR 300 (USD 390) per month, a figure that will seem even more inadequate when compared to new judicial salaries in the range of EUR 800-1,443 (USD 1,039-1,874) per month.17

There is considerable frustration among court presidents and administrators with the centralization of authority over personnel matters in the KJC Secretariat, with the local court administrators insisting it would be helpful if they could make their own hiring and firing decisions with respect to their own support staff. They also complain that it takes the KJC too long to fill vacated staff positions. To help address these concerns, court presidents will now be empowered to employ, discipline, and terminate non-judicial personnel in their courts in accordance with regulations to be developed by the KJC. KJC LAW art. 24.2.

In an unprecedented program, during 2010, the KJI, in cooperation with NCSC as supported by USAID, held a pilot program of staff trainings for professional court associates and enforcement clerks. These events followed on two three-day training courses held during 2009 for court presidents and administrators on Management Skills of the Court Presidents and Administrators, which focused on clarifying and developing objectives for the improvement, and reviewing and implementing the concrete duties and responsibilities of these managers. 2008 KJI ANNUAL REPORT at 13. It was reported during the interviews that, prior to this program, many court presidents had never met the chief administrative officers serving in their courts. The KJI is now adding this court executive program to its curriculum along with trainings for court staff and clerks. The training for court staff includes communicating and interfacing with the public. Prior to this program, the court staff had no training opportunities except those related to the CMIS.

16 After the interviews for this assessment were completed, the assessment team learned that the KJC has created 51 new positions for judges’ professional associates to provide judges with legal research support, and it has filled approximately 30 of these positions thus far.
17 The problem of disparate salaries also exists within the KJC Secretariat. The staff of the former JIU under UNMIK was transferred to the KJC Secretariat, with result that these officials are more highly paid than other similarly situated employees of the Secretariat.
Factor 27: Judicial Positions

A system exists so that new judicial positions are created as needed.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
<th>Trend: ↔</th>
</tr>
</thead>
<tbody>
<tr>
<td>No apparent system, guidelines, or procedures exist for creating new judicial positions. The number of judicial positions has not kept up with population growth and caseload increases in those districts that have experienced growth, whereas it has stayed relatively constant in some districts with shrinking caseloads. Regardless of the number of seats authorized in the budget, the actual number of judges decreased between 2007 and 2010, with little or no attempt to fill vacancies during the Special Appointment Process. A significant number of vacancies also remained after the Special Appointment Process was concluded. A new Law on Courts that reorganizes the Kosovo judiciary will take effect in 2013 and may result in the creation of additional judicial positions.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

The KJC is responsible for determining the number of judges in each court. CONST. art. 108(5); KJC LAW art. 4.1.13. No legislative enactment or regulation sets standards or procedures for the creation of new judicial positions, and both the new Law on Courts and the KJC Law are silent on this subject. Nevertheless, a number of international and domestic legal standards necessarily require sufficient judicial positions to meet demands. International human rights standards applicable in Kosovo require fair trials within reasonable timeframes and guarantee a tribunal established by law. See, e.g., ECHR art. 6(1). Understaffed courts may have trouble forming panels sufficient to hear matters in a timely manner. See, e.g., CRIM. PROC. CODE arts. 306(4), 285(3) (requiring three-judge panels for rulings on detention on remand filed with indictment and extension of initial detention on remand). It would also be a burdensome requirement for over-tasked judges to prepare well-drafted decisions that outline their reasons. A shortage of judges that causes delays in court proceedings can result in prolonged detentions, in clear violation of legal standards. See, e.g., id. art. 5; see also LAW ON CONTESTED PROC. art. 10. Delays in the enforcement of judgments, as outlined in Factor 9 above, preclude an effective remedy, which is part and parcel of the right to a fair trial and presents another violation of the ECHR. ECHR art. 13. Moreover, rules pertaining to the disqualification of judges can only be enforced in some marginally staffed courts by transferring cases. LAW ON REGULAR COURTS art. 28 (allowing transfer from municipal court due to insufficient number of judges). With the promulgation of the new KJC Law, the KJC will be given the authority to provisionally transfer judges into other courts that are short on judges, for periods not exceeding six months, subject to the approval of respective courts’ presidents. KJC LAW art. 20.1–2. In extraordinary circumstances, the KJC President will also be empowered to transfer judges for up to 30 days. Id. art. 20.3. A judge’s consent is required for any transfers, except those necessary to address extraordinary circumstances or ensure effective functioning of the courts. Id. art. 20.4.

Many in the Kosovo judicial system contend that Kosovo has an inadequate number of judges, and this number has been steadily decreasing in recent years. In 2007, Kosovo’s 322 available judicial seats were occupied by 301 judges. 2007 KOSOVO JRI at 54. As reflected in the Table below, by 2009 the number of sitting judges had dropped to 282 and, mid-way through the Special Appointment Process, had reportedly further declined to 269, with little to no likelihood that vacancies would be filled prior to the conclusion of the Special Appointment Process projected for the end of 2010. See Factor 2 above.
Kosovo’s approximate complement of 280 judges for a population of 2.2 million yields an average of 12.73 judges per 100,000 citizens. EULEX assesses that number to be low in comparison to neighboring European countries, such as Slovenia (39.41 judges per 100,000 citizens), Croatia (40.99 judges per 100,000 citizens), and Montenegro (51.07 judges per 100,000 citizens). EULEX REPORT at 88. Other observers reach a different conclusion, noting that Albania has 6 judges for every 100,000 population, but cases still move through its system more quickly. Likewise, the more developed judicial systems in the United States and France have fewer judges per capita (9.8 and 11.1, respectively), but more efficient procedures that appear to permit for efficient processing of their caseloads. See CORRUPTION INDICATORS REPORT at 29-30. Reportedly, the KCB could readily support 392 judges, or a ratio of 18.66 judges per 100,000 citizens. EULEX REPORT at 88.

The majority of judges interviewed for this assessment believe that the courts are significantly understaffed, and many point to the larger numbers of judges in the same courts under the Yugoslavian system. For example, in the Pristina District Court, there were 22 judges before the war, 16 as of April 2008, and 12 at the time of the interviews in October 2009, one of whom was a transfer from Lipjan. At least one interviewee opined that the court actually needed 30 judges to function efficiently.

The rise in unfilled judicial vacancies was exacerbated during the Special Appointment Process described in Factor 2 above, leading to the observation that the system was so severely impaired by the process that it neared the verge of paralysis or collapse. Judges who anticipated not being reappointed have resigned their positions, which then remained vacant pending completion of the appropriate stage of the Special Appointment Process. This resulted in increased workloads for the remaining judges and, reportedly, led to a severe slowdown in the processing of cases. For example, when a judge recently left his office, his complement of 200 cases had to be redistributed among the remaining judges. This slowdown effect was most pronounced in the lower courts, as judges serving on those courts were appointed to positions with higher courts during the earlier phases of the process, thus vacating their positions on already understaffed courts.

As projected, a significant number of vacancies remained at the conclusion of the Special Appointment Process. A total of 91 judicial positions are currently vacant (including four positions on the Supreme Court’s Special Chamber on KTA Matters). IJPC FINAL REPORT at 17-19. The vacancies were attributed to a lack of qualified applicants. The IJPC received 898 Preliminary

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18 In order to maintain consistency in year-to-year comparisons, the number of positions on the Supreme Court for 2010 excludes seven authorized judicial positions on the Court’s Special Chamber for KTA Matters and one authorized judicial position on the specialized panel for appeals of KPA cases. The Special Appointment Process filled, respectively, three and one of these positions. See IJPC FINAL REPORT at 17.
Applications for 461 judicial and prosecutorial positions; however, as a result of eliminations due to failing the ethics exam and Judicial Entry Exam, the number of eligible candidates decreased to 418. *Id.* art 2. Large numbers of judges failing the ethics examination, low salaries, and the two-year failure to administer the Bar Examination were most often cited by interviewees as the reasons for the dearth of applicants. Consequently, the KJC and the IJPC held the second ethics examination in October 2010, and the KJC also intends to offer a second entrance examination, to give otherwise qualified candidates another opportunity to apply for appointment. Other reasons cited for a lack of qualified candidates, however, will take longer to address. For example, as discussed in Factor 1 above, the small numbers of *praktikants* in the justice system means that only those few individuals will be qualified to later apply for judgeships. Because the IJPC’s mandate concluded on October 31, 2010, the second set of reappointments will be conducted by KJC, which had agreed to take on some of the IJPC’s local staff. It was also reported that the KJC intended to employ the IJPC’s procedures in conducting its appointment process.

Reportedly, the KJC was lax in filling judicial vacancies even before the hiatus in the its functioning occasioned by the Special Appointment Process. Emphasizing that the situation has been like this for more than seven years despite repeated requests for more judges, a number of interviewees stated that they simply were “giving up.” Moreover, an administrator in one overburdened court noted that even if the judicial vacancies in his court were filled, there would be insufficient offices to house new judges. With respect to comparative European figures that show the Kosovo judicial staffing levels to be low in proportion to the population, some judges also stressed that it is more difficult to quickly resolve cases in Kosovo due to problems outside of the judiciary’s control, such as ineffective mail delivery.

This understaffing affects many fundamental functions of all of Kosovo’s courts. During 2009, the Supreme Court had 13 judges, which means that it had difficulty forming sufficient five-judge panels to adequately handle its caseload. *OSCE Mission in Kosovo, Monitoring Department, Legal System Monitoring Section Monthly Report – June 2009* at 4 (Sep. 1, 2009). After the Special Appointment Process, the Supreme Court has only 10 regular judges, three of whom are completely, or at least substantially, involved in other official activities, including presiding over the Elections Commission, the KJC, and, for the Supreme Court President, the oversight of the courts. Some of Kosovo’s courts have fewer than the three judges required to form some panels, resulting in transfers and delays. The quality of judicial decisions in Kosovo is widely criticized, a fact attributable at least in part to the need to issue decisions and orders within legally proscribed time constraints while managing overly burdensome caseloads under poor working conditions. *Id.* One judge characterized the current role of the judges as that of a firefighter – able only to put out fires that have already started before moving on to the next, but unable to fully study and analyze the cases. Despite this, one judge noted that the increase in the caseload is a positive sign that the public, largely unaware of their legal rights and consumed with more urgent matters at the conclusion of the war, is becoming progressively more savvy about their rights and inclined to resolve disputes through the courts.

Interviewees were generally unaware of any set criteria or guidelines for determining appropriate levels of judicial staffing. Although a weighted caseload formula has reportedly been applied since 2002 to determine staffing needs, none of the respondents were able to provide the assessment team with information on how that formula works in practice. One interviewee stated that the KJC proceeds according to no discernible procedures or guidelines in determining the need for additional judges, either through transfer from one district to another or by adding permanent positions. A number criticized as inaccurate and unfair some of the statistical bases upon which the judges’ efficiencies and caseloads are assessed. One example given was that because the Dragash Municipal Court receives 100 new cases per year and closes 100 cases, it is deemed more efficient than a judge in Pristina, who may receive 400 new cases in a year and resolve 300. These comparisons do not take into consideration the fact that the Pristina judge may be handling more high profile criminal cases or more civil appeals in complex matters, all of which take more time than routine criminal matters.
Some international and local interviewees, however, indicated that the problem is not the total number of judges but the failure to allocate sufficient judges where they are needed, with a concomitant over-commitment in other courts. OSCE has specifically recommended that a careful review of the courts’ caseloads be undertaken to equalize working conditions and caseloads among the judges. *Id.* at 2, 6. At least one project monitoring the courts states that the courts do not work up to their full capacity and documents considerable discrepancies in the processing of cases among various judges. MONITORING THE COURTS at 14. It is further noted that the IJPC made its appointments on the basis of the old SFRY Law on Regular Courts rather than on true current workload needs. KJSP ANNUAL REPORT at 13. Reportedly, the KJC, with international support, will undertake an analysis of the need for more judges during the planning phase of the judicial system reorganization in accordance with the new Law on Courts, which is scheduled to begin in January 2011.

The decrease in the number of judges has been accompanied by a concomitant increase in the caseload in many courts. Between 2001 and 2008, the number of cases filed in the Supreme Court increased by 136.6%, 368.14% in the Commercial Court, 33.63% in the district courts, 179.6% in the municipal courts, and 82.12% in the minor offenses courts. EULEX REPORT at 101. However, those working in the Commercial Court indicated that, more recently, the economic slowdown resulted in a decrease in their workload. An almost complete failure of municipal inspection agencies to issue notices of delinquencies, which are within the jurisdiction of the Court, has also contributed to the decrease in the Court’s caseload. See Factor 6 above.

Cases are not heard in a reasonably efficient manner in Kosovo courts, and the inefficiency is increasing. Over 51,500 cases were pending in Kosovo’s regular and minor offenses courts in 2001. By the end of 2008, that number had increased to 266,428, over a five-fold increase. *Id.* at 100. There were 233,904 unresolved cases in the regular and minor offenses courts at the end of 2007. At the end of 2008, the number of unresolved cases rose to at least 266,428, representing at least a 14% increase in the backlog of unresolved cases over one year. *Id.* at 99-100; KJC SECRETARIAT, STATISTICS DEPARTMENT, REPORT FOR 2008 STATISTICS ON REGULAR COURTS; KJC SECRETARIAT, STATISTICS DEPARTMENT, STATISTICS REPORT ON THE WORK OF THE MINOR OFFENSES COURTS FOR 2008 [hereinafter, collectively, KJC 2008 STATISTICS]. In fact, the KJC has calculated the backlog at the end of 2008 at a higher figure of 280,638 cases, a number which itself understates the problem because the statistics do not account for those cases in the Mitrovica region which are filed but in limbo and those which have simply gone unfilled due the closure of the courts there. EULEX REPORT at 99-101. Only the Supreme Court and the minor offenses courts managed to reduce the backlog of cases or to process all incoming cases for 2008. At the same time, the number of unresolved cases increased by 102% in the Commercial Court, 15% in the district courts, and 21% in the municipal courts. *Id.* at 99; KJC 2008 STATISTICS. One respondent cautioned that statistics showing the total numbers of cases are somewhat distorted by the fact that a single lawsuit frequently has several case numbers assigned to it as it goes through various procedural stages, and all of those numbers are counted in the totals.

The statistics for 2009 likewise indicated a continuing increase in the number of pending cases, although the courts’ efficiency rates of resolving cases appeared to be improving. The number of unresolved pending cases in the regular and minor offenses courts increased from 266,428 at the end of 2008 to 287,907 by the end of 2009, and to 302,063 by the end of June 2010. KJC SECRETARIAT, STATISTICS DEPARTMENT, REPORT FOR 2009 STATISTICS ON REGULAR COURTS; KJC SECRETARIAT, STATISTICS DEPARTMENT, STATISTICS REPORT ON THE WORK OF THE MINOR OFFENSES COURTS FOR 2009 [hereinafter, collectively, KJC 2009 STATISTICS]; KJC SECRETARIAT, STATISTICS DEPARTMENT, MID-YEAR 2010 STATISTICS ON REGULAR COURTS; KJC SECRETARIAT, STATISTICS DEPARTMENT, STATISTICS REPORT ON THE WORK OF THE MINOR OFFENSES COURTS MID-YEAR 2010 [hereinafter, collectively, KJC MID-YEAR 2010 STATISTICS]; EULEX REPORT at 99-101. All courts demonstrated over 90% efficiency rate in 2009 when comparing the number of newly filed cases with cases resolved, and municipal, district, and minor offenses courts demonstrated comparable
case clearance rates during the first half of 2010. KJC 2009 STATISTICS; KJC MID-YEAR 2010 STATISTICS.

The complete caseloads and backlogs for Kosovo’s regular courts are reflected in the following Table.

### CASELOADS AND BACKLOGS IN KOSOVO’S COURTS, 2007-2010

<table>
<thead>
<tr>
<th></th>
<th>Pending as of Jan. 1</th>
<th>Received cases</th>
<th>Total in process</th>
<th>Resolved cases</th>
<th>Pending as of Dec. 31</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2007 total</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Municipal courts</td>
<td>151,148</td>
<td>202,636</td>
<td>353,784</td>
<td>185,562</td>
<td>166,619</td>
</tr>
<tr>
<td>District courts</td>
<td>12,343</td>
<td>12,568</td>
<td>24,911</td>
<td>12,327</td>
<td>12,584</td>
</tr>
<tr>
<td>Commercial Court</td>
<td>653</td>
<td>n/a</td>
<td>653</td>
<td>n/a</td>
<td>588</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>2,907</td>
<td>n/a</td>
<td>2,907</td>
<td>n/a</td>
<td>2,889</td>
</tr>
<tr>
<td><strong>2008 total</strong></td>
<td>233,904</td>
<td>512,128</td>
<td>746,032</td>
<td>479,604</td>
<td>266,428</td>
</tr>
<tr>
<td>Municipal courts</td>
<td>150,595</td>
<td>309,838</td>
<td>460,433</td>
<td>278,546</td>
<td>181,887</td>
</tr>
<tr>
<td>District courts</td>
<td>8,993</td>
<td>11,363</td>
<td>20,356</td>
<td>10,003</td>
<td>10,353</td>
</tr>
<tr>
<td>Commercial Court</td>
<td>588</td>
<td>1,484</td>
<td>2,072</td>
<td>743</td>
<td>1,329</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>2,889</td>
<td>3,706</td>
<td>6,595</td>
<td>4,196</td>
<td>2,399</td>
</tr>
<tr>
<td>Municipal minor offenses courts</td>
<td>70,839</td>
<td>183,861</td>
<td>254,700</td>
<td>184,240</td>
<td>70,460</td>
</tr>
<tr>
<td>High Court of Minor Offenses</td>
<td>0</td>
<td>1,876</td>
<td>1,876</td>
<td>1,876</td>
<td>0</td>
</tr>
<tr>
<td><strong>2009 total</strong></td>
<td>248,628</td>
<td>620,675</td>
<td>868,943</td>
<td>581,036</td>
<td>287,907</td>
</tr>
<tr>
<td>Municipal courts</td>
<td>173,280</td>
<td>392,281</td>
<td>565,561</td>
<td>364,813</td>
<td>200,748</td>
</tr>
<tr>
<td>District courts</td>
<td>8,754</td>
<td>10,889</td>
<td>19,643</td>
<td>10,456</td>
<td>9,187</td>
</tr>
<tr>
<td>Commercial Court</td>
<td>1,329</td>
<td>1,063</td>
<td>2,392</td>
<td>851</td>
<td>1,541</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>2,399</td>
<td>3,294</td>
<td>5,693</td>
<td>3,202</td>
<td>2,491</td>
</tr>
<tr>
<td>Municipal minor offenses courts</td>
<td>62,506</td>
<td>211,081</td>
<td>273,587</td>
<td>199,647</td>
<td>73,940</td>
</tr>
<tr>
<td>High Court of Minor Offenses</td>
<td>0</td>
<td>2,067</td>
<td>2,067</td>
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</tr>
<tr>
<td><strong>2010 (Jan.-Jun.)</strong></td>
<td>287,907</td>
<td>272,358</td>
<td>560,265</td>
<td>258,202</td>
<td>302,063</td>
</tr>
<tr>
<td>Municipal courts</td>
<td>200,748</td>
<td>152,663</td>
<td>353,411</td>
<td>143,631</td>
<td>209,780</td>
</tr>
<tr>
<td>District courts</td>
<td>9,187</td>
<td>4,851</td>
<td>14,038</td>
<td>4,453</td>
<td>9,585</td>
</tr>
<tr>
<td>Commercial Court</td>
<td>1,541</td>
<td>677</td>
<td>2,218</td>
<td>467</td>
<td>1,751</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>2,491</td>
<td>1,690</td>
<td>4,181</td>
<td>1,406</td>
<td>2,775</td>
</tr>
<tr>
<td>Municipal minor offenses courts</td>
<td>73,940</td>
<td>111,535</td>
<td>185,475</td>
<td>107,321</td>
<td>78,154</td>
</tr>
<tr>
<td>High Court of Minor Offenses</td>
<td>0</td>
<td>942</td>
<td>942</td>
<td>924</td>
<td>18</td>
</tr>
</tbody>
</table>

Source: KJC Secretariat, Statistics Department.

One significant problem with judicial caseloads is a massive influx of collection cases filed by Kosovo’s utility companies in an attempt to collect overdue bills. It is estimated that these cases made up 64% of the courts’ civil execution caseload in 2008, which, in turn, constituted 36% of the total number of pending cases. The courts are reportedly overwhelmed by the volume of the cases and have responded by doing nothing. Two-thirds of those cases then end up with the execution clerks, who have problems not only with the sheer number of cases, but even with finding correct addresses for the debtors. Trainings have taken place to put the utilities’ personnel, who have addresses for the debtors, together with the courts’ staff to solve the address dilemma. The utilities have also offered to provide vehicles to go into the field and help with the location of addressees. The KJC has recently established a working group to adopt a detailed and specific plan to address backlog reduction. See also Factor 9 above. A number of
interviewees noted, however, that the KJC has had EUR 200,000 (USD 259,740) in its budget for a number of years, but that money has not been used for this purpose.

It was generally acknowledged that the backlog will increase further as newly appointed judges and KJC members turn their attention to the massive reorganization of the court system mandated to occur by 2013 by the new Law on Courts. That law will require the transfer of many of the judges between courts, as the current minor offenses courts are eliminated, all trial courts are consolidated into the new basic courts, and all intermediate appellate jurisdiction is consolidated in the unified Court of Appeals.

**Factor 28: Case Filing and Tracking Systems**

*The judicial system maintains a case filing and tracking system that ensures cases are heard in a reasonably efficient manner.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
<th>Trend: ↔</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court cases are not heard in a reasonably efficient manner, and, until recently, only isolated attempts have been made to track and encourage their progress using an effective case management program. While new computers, compatible software, and some training have been provided for the implementation of a system-wide CMIS, the system is not yet routinely or widely used. By some reports, CMIS will prove inadequate once the renumbering and transfer of cases begins to implement the new Law on Courts. The KJC, with support of the USAID’s KJSP Model Courts Program, has recently approved and distributed to all courts a Court Management Manual, setting out guidelines for uniform and effective case management system within the courts.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Analysis/Background:**

Court presidents, in coordination with the judges in their courts, are required to develop an annual case management plan and to regularly report on their courts’ adherence to the plans. KJC Law art. 24.3. The court administrators also have responsibility to carry out the court presidents’ directions and the KJC’s policies with respect to case management. Id. art. 31.3.

At present, court cases are generally manually tracked at each court, through the registration of all submissions in a registry. Submissions either come in by mail or are filed in person at the courts’ intake offices, which are typically located on the first floor of the courthouses. Each submission is stamped by the intake clerk with the time, matter number, date, and signature of the clerk, and that information is entered in the registry. Typically, the case is then directed to a specialized clerk, for example, a civil or criminal intake clerk, pretrial clerk, or appeals clerk.

The implementation of a comprehensive and integrated CMIS that will track case information for all of Kosovo’s court cases and make it accessible system-wide through a central database has been fraught with difficulties, including outdated computers and incompatible software applications that initially made the system non-functional. By some accounts, the CMIS that is currently being implemented is inadequate for the task at hand for a number of reasons, including its inability to generate the types of statistical reports necessary to track case processing. Since April 2009, the EC Liaison Office has installed 616 new computers with appropriate software in all courts. But other technical problems remain. Even though there are now more computers, some courts lack sufficient backup battery or generator power to run the full complement of computers during Kosovo’s frequent power outages. Some of the prospective users of the system are yet so unaccustomed to using computers that they are unable to resolve even a small glitch in using the CMIS without the help of IT support staff, which can take days.
Training on the CMIS has posed another challenge. A week-long training course was provided during July-August 2009 for court staff, but staff in at least one court has not yet fully attended the program, and a number of interviewees noted that the trainings were held when much of the staff schedules vacations. A number of court staff interviewees indicated that the judges, in particular, are difficult to train and to convince to rely on the system. Further trainings have reportedly been announced, but have not yet taken place. Interviewees emphasized the need for on-site, continuous training.

Some court administrators have begun using the system in their individual courts, but they continue using the manual registration system as well. Some administrators reported significant difficulties in using the CMIS, particularly in accessing it. Few, if any, judges appear to be using the CMIS, and it appears some do not yet have access to it or, at least, are uninformed about it. One estimate is that only 30% of the judges are currently prepared to use the CMIS. See MONITORING THE COURTS at 26.

The lack of a computerized system-wide database hampers court administrators in tracking and reporting on caseloads and backlogs and contributes to the problem of duplicate filings of cases in different jurisdictions. Even without the fully functioning computerized records, however, interviewees reported that the case files are generally accurately and timely updated and kept. One judge interviewed by the assessment team reported that, in the absence of an effective system, she has designed her own database for registering information pertaining to her cases, which prompts her assistant to call parties and witnesses to remind them of scheduled hearings and assure their attendance.

Additional case management problems contribute to an inefficient processing of caseloads. One challenge is posed by the lack of a uniform and secure case intake and allocation system in the courts. See EULEX REPORT at 98. For example, it is typical for the registrar or intake clerk alone to determine whether a claim will be accepted for filing, and no record is kept of those attempts that are rejected. This poses obvious opportunities for abuse. Furthermore, it was reported that a single lawsuit can acquire several case numbers as it goes through various procedural stages and court levels, and that this method of numbering cases artificially inflates the statistics used to determine court efficiency.

In April 2010, the KJC, with support of the USAID’s KJSP Model Courts Program, approved a Court Management Manual that details and outlines comprehensive, uniform procedures governing all aspects of court operations, including procedures for the intake, tracking, and managing of cases and case files. See generally COURT MANAGEMENT MANUAL at 65-90. The Manual has since been distributed to all courts. Among a host of detailed procedures and suggestions, the Manual promotes moving the shelving to maintain the court files to one central office, taking them out of the individual judges’ offices. This also includes the development and application of a uniform system for indexing, tabbing, and purging the case files. COURT MANAGEMENT MANUAL at 65; see also KJSP ANNUAL REPORT at 18. While those interviewed by the assessment team were all aware of the Manual and generally familiar with its contents, compliance with the Manual is varied. Those courts that have been a part of the Model Courts Program and have renovated spaces that include central filing rooms and transparent intake facilities are able to comply with a significant majority of the Manual’s procedures. Other courts, which are lacking updated facilities, are unable to comply. The KJI, with support from USAID (through NCSC), is developing a training-of-trainers program to spearhead trainings of court administrative personnel on the implementation of the Manual during 2011. The newly appointed President of the Supreme Court has also instructed the lower courts that cases are to be processed according to the date of filing and not based on any other preference system. He has asked to see written quarterly reports, to be prepared by the court administrators, on each judge’s performance in this regard.

Furthermore, until the fall of 2008, the courts had no transparent, uniform fee structure, with the result that members of the public filing cases with the courts lacked the assurance they were
being treated fairly and equally to other participants. In 2008, however, the KJC issued a directive setting a uniform schedule of fees and uniform procedures for collecting fees and for obtaining exemptions. See generally KJC ADMINISTRATIVE DIRECTION NO. 2008/2 ON UNIFICATION OF COURT FEES (adopted Nov. 27, 2008). With the support of USAID (through NCSC), large posters depicting the new fee schedules were published and prominently posted throughout the court system.

The closure of the court complex in the Mitrovica district has created unique challenges with respect to tracking cases. When the courthouse was forcibly occupied by protestors on March 14, 2008, the contents of court files were reportedly strewn about, and some documentation and files may be missing altogether. Since then, a multiethnic group of court staff has entered the courthouse and completed the task of reconstructing and organizing the files. While detentions are reviewed and other urgent matters are handled by Mitrovica judges sitting, in limited capacity, in a nearby Vushtri courthouse, civil matters, in particular, simply languish, as there has been no reassignment of the pending cases nor any indication that a wholesale solution to the problem will be forthcoming. In the meantime, it is not clear whether deadlines and statutes of limitations continue to run in those cases. MAR. 2008 MONITORING REPORT at 3.

Factor 29: Computers and Office Equipment

The judicial system operates with a sufficient number of computers and other equipment to enable it to handle its caseload in a reasonably efficient manner.

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<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
<th>Trend: ↔</th>
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Recent progress has been made in supplying much of the judges and court personnel with modern computers and software appropriate to the tasks required. All courts and most judges now have Internet access. Nevertheless, some judges’ offices reportedly still rely on outdated and slow computers. Significant problems persist in most courts with respect to requisitioning sufficient basic supplies, such as paper and toner for copiers, resulting in frequent delays in court proceedings and routine infringement of litigants’ rights to obtain timely copies of case documents, evidence, and transcripts.

Analysis/Background:

Since April 2009, the EC Liaison Office has installed 616 new computers with appropriate software in all of the courts. EULEX REPORT at 98. Additionally, all courts are now wired for Internet access. A few judges, however, still complain that they have computers with outdated processing systems that slow down their Internet connections. It was noted that although the judges and court staff have been trained on using the computers, if they are expected to become comfortable enough to use them on a daily basis, more onsite support is required. For example, the small IT staff for the courts cover an entire court district and are not readily available for immediate help. The result is that, if a user has difficulty with a computer or software, he/she may need to wait a day or two for an IT person to resolve the issue, even if it is a very basic problem that a user with more training could solve without IT help. It was also reported that some judges’ offices lack telephones, which means that judges must use their personal mobile phones for court business.

The distribution of supplies for Kosovo’s court system is highly centralized in the KJC Secretariat. The local court administrators complain of having no individual budget, with which to purchase supplies. This means that office supplies, such as paper and toner cartridges for the copiers and basic cleaning and hygienic supplies, must be requisitioned from the KJC. The responsiveness of the KJC central staff to requests for supplies was highly criticized by interviewees. These
issues result in frequent shortages of these supplies in the courts. One court president complained that after being without toner for two months, he finally purchased it on his own – only to receive a cautionary reprimand from the KJC Secretariat. Another court administrator reported the court being without paper for two weeks. Most often, the complaint was made that the KJC central staff do not appreciate that a lack of supplies can seriously disrupt court proceedings and negatively impact large numbers of the public by causing delays in proceedings, depriving criminal defendants of copies of evidence and other documentation to which they are legally entitled to prepare their defenses, and otherwise violating civil rights of litigants. At least one interviewee noted that delays cause the public to register complaints with the ODC, which then investigates judges for delays – while ignoring the fact that one source of the problem is the KJC.

The NCSC, with USAID support, has instituted regional meetings of the relevant court personnel with the KJC to discuss the judicial budget and supplies distribution system, with an aim to increase the transparency of the entire process. However, it is generally acknowledged that the overall budget for daily operations is either insufficient or has not been properly prioritized for cases to be processed efficiently.

Through the Model Courts Program, a limited number of Kosovo’s courtrooms have the technology to allow for the audio- and video-recording of full proceedings for subsequent appellate review. In those cases where an appeal is filed, the recordings are copied for the litigants and the appellate court. Reportedly, the mere act of recording enhances the quality of proceedings.

**Factor 30: Distribution and Indexing of Current Law**

A system exists whereby all judges receive current domestic laws and jurisprudence in a timely manner, and there is a nationally recognized system for identifying and organizing changes in the law.

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<th>Conclusion</th>
<th>Correlation: Positive</th>
<th>Trend: ↑</th>
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<tr>
<td>Kosovo’s laws are published in a timely manner in the OG. The OG is distributed to Kosovo’s judges, and the laws are also posted on both the OG’s and the Assembly’s websites, which are accessible in all courts.</td>
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**Analysis/Background:**

In 2006, the Kosovo Government created an Office for Management and Administration of the OG. See law on the official gazette art. 5.1 (Law No. 2004/47, adopted Sep. 27, 2004, promulgated by UNMIK regulation No. 2005/25). The Law requires monthly publication of the OG in Albanian, Serbian, English, Turkish, and Bosnian languages. Id. arts. 4.1, 3.1. The OG is to be distributed to all judges free of charge and is available for purchase by the general public. One month after the hard-copy publication, the OG’s contents must also be made available to the public in electronic form, free of charge; this is accomplished via the OG’s website, http://www.ks-gov.net/GazetaZyrtare. See id. art. 2.3. The OG contains texts of laws and resolutions adopted by the Assembly, secondary legislation issued by the Government and other executive branch agencies, and international agreements. Id. art. 2.1. The OG does not publish UNMIK regulations or administrative directions; however, a separate UNMIK OG can be accessed through UNMIK’s website, http://www.unmikonline.org/regulations/unmikgazette/index.htm, where UNMIK’s acts are listed chronologically. The Kosovo Assembly also has a website, http://www.assembly-kosova.org, which contains a database of new laws.
No interviewees reported a difficulty in obtaining current and updated versions of the applicable laws and regulations. The KJC and EULEX are currently distributing copies of the OG, with updates on newly enacted laws, to all judges. All judges interviewed by the assessment team reported that the laws in printed form or accessible via the Internet were sufficient for their legal research. As discussed in Factor 29 above, it was reported that all courts are now connected to the Internet.

What is universally stated, though, is that the lack of commentary on the new laws is debilitating, and this is exacerbated by the fact that some of the new laws are contradictory. More commentary sorting out which law is applicable in a given case was also called for, given the complicated mix of UNMIK regulations, Kosovo Assembly laws, and SFRY laws that are applicable Kosovo. Currently, some of the judges are relying on online decisions and commentaries from other countries in the region in their interpretation and implementation of Kosovo’s laws. It was suggested that the expertise represented in the Law Faculty could be better utilized in a systematic fashion, both to contribute to the drafting of new laws and to provide written commentary on the existing laws. It was also reported that the KJI-sponsored roundtables on the new laws are very helpful to the judges in implementing these laws.
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<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tr>
<td>ABA/CEELI</td>
<td>American Bar Association Central European and Eurasian Law Initiative</td>
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<td>ABA ROLI</td>
<td>American Bar Association's Rule of Law Initiative</td>
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<tr>
<td>CLE</td>
<td>continuing legal education</td>
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<td>CLEP</td>
<td>Continuing Legal Education Program</td>
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<td>CMIS</td>
<td>Case Management Information System</td>
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<td>DJA</td>
<td>Department of Judicial Administration</td>
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<tr>
<td>DOJ</td>
<td>UNMIK Department of Justice</td>
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<tr>
<td>EC</td>
<td>European Commission</td>
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<tr>
<td>ECHR</td>
<td>European Convention for the Protection of Human Rights and Fundamental Freedoms</td>
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<tr>
<td>ECTS</td>
<td>European Credit Transfer and Accumulation System</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>EULEX</td>
<td>European Union Rule of Law Mission in Kosovo</td>
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<tr>
<td>EUR</td>
<td>Euros</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICJ</td>
<td>International Court of Justice</td>
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<td>ICO</td>
<td>International Civilian Office</td>
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<td>ICR</td>
<td>International Civilian Representative</td>
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<tr>
<td>IJPC</td>
<td>Independent Judicial and Prosecutorial Commission</td>
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<td>ILEP</td>
<td>Initial Legal Education Program</td>
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<td>JDC</td>
<td>Judicial Disciplinary Committee</td>
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<td>JIU</td>
<td>Judicial Inspection Unit</td>
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<td>JRI</td>
<td>Judicial Reform Index</td>
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<tr>
<td>KCA</td>
<td>Kosovo Chamber of Advocates</td>
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<td>KCB</td>
<td>Kosovo Consolidated Budget</td>
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<td>KFOR</td>
<td>NATO Kosovo Force</td>
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<td>KJA</td>
<td>Kosovo Judges Association</td>
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<td>Kosovo Judicial Council</td>
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<td>KJI</td>
<td>Kosovo Judicial Institute</td>
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<td>KJPC</td>
<td>Kosovo Judicial and Prosecutorial Council</td>
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<td>Kosovo Justice Support Program</td>
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<td>KPA</td>
<td>Kosovo Property Agency</td>
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<td>KPC</td>
<td>Kosovo Prosecutorial Council</td>
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<td>KTA</td>
<td>Kosovo Trust Agency</td>
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<tr>
<td>LPRI</td>
<td>Legal Profession Reform Index</td>
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<tr>
<td>MEST</td>
<td>Ministry of Education, Science, and Technology</td>
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<tr>
<td>MOJ</td>
<td>Ministry of Justice</td>
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<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
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<td>NCSC</td>
<td>National Center for State Courts</td>
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<td>ODC</td>
<td>Office of Disciplinary Counsel</td>
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<td>OG</td>
<td>Official Gazette</td>
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<tr>
<td>OSCE</td>
<td>Organization for Security and Cooperation in Europe</td>
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<tr>
<td>SEAD</td>
<td>Systems for Enforcing Agreements and Decisions</td>
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<tr>
<td>SFRY</td>
<td>Socialist Federal Republic of Yugoslavia</td>
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<tr>
<td>SRSG</td>
<td>Special Representative of the UN Secretary-General</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Program</td>
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<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<td>UNIFEM</td>
<td>United Nations Development Fund for Women</td>
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<td>UNMIK</td>
<td>United Nations Mission in Kosovo</td>
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<tr>
<td>USAID</td>
<td>U.S. Agency for International Development</td>
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<tr>
<td>USD</td>
<td>United States dollars</td>
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