

Annex 6 to
Transmission of Expert Reports

Public

Public Redacted Version of
Report submitted by [REDACTED]

KSC case: *Prosecutor v. Salih Mustafa* (KSC-BC-2020-05)

**Do national courts in Kosovo offer a realistic avenue
for victims to claim reparations?**

**If reparations were granted by judgments issued by national courts,
would such judgments be enforced?**

(Expert Report)

[REDACTED]

[REDACTED], December 2021

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Abbreviations used in the text:

AFLA – Agency for Free Legal Aid;

AJK – Academy of Justice of Kosovo;

BC – Basic Court;

BIRN – Balkan Investigative Reporting Network;

SAPK CC – Criminal Code of the Socialist Autonomous Province of Kosovo;

SFRY CC – SFRY Criminal Code, which was applied in Kosovo after the armed conflict, pursuant to UNMIK regulation 24/1999 of 12 December 1999;

CCRK – in practice, this abbreviation is used for the Criminal Code of the Republic of Kosovo which came into force on 1 January 2013, and the Criminal Code of Kosovo which was published in the *Official Gazette* of Kosovo on 14 January 2019 and came into force three (3) months after its publication;

CE – Council of Europe;

CEPEJ – European Commission for the Efficiency of Justice;

CLA KLI – Center for Legal Aid of the Kosovo Law Institute;

CPL – Civil Procedure Law;

ECtHR – European Court of Human Rights, based in Strasbourg;

EULEX – European Union Rule of Law Mission in Kosovo;

FRY – Federal Republic of Yugoslavia, officially established on 27 April 1992, the joint state of Serbia and Montenegro;

GCHR – Geneva Conventions on human rights;

HLCK – Humanitarian Law Center Kosovo;

ICJ – International Court of Justice;

ICTY – International Criminal Tribunal for the former Yugoslavia;

KBA – Kosovo Bar Association;

KJC – Kosovo Judicial Council;

KLA – Kosovo Liberation Army;

KLI – Kosovo Law Institute;

KP – Kosovo Police;

KPC – Kosovo Prosecutorial Council;

KSC – Kosovo Specialist Chambers;

SFRY LCP – SFRY Law on Criminal Procedure, which was applied in Kosovo after the armed conflict, pursuant to UNMIK regulation 24/1999 of 12 December 1999;

LCVC – Law on Crime Victim Compensation;

LFLA – Law on Free Legal Aid;

LKJC – Law on the Kosovo Judicial Council;

NGO GLPS – Non-Governmental Organisation Group for Legal and Political Studies;

NGO KLI – Non-Governmental Organisation Kosovo Law Institute;

OSCE – Organization for Security and Co-operation in Europe;

PCCK – Provisional Criminal Code of Kosovo, which came into force on 6 April 2004;

PCPCK – Provisional Criminal Procedure Code of Kosovo, which came into force on 6 April 2004;

SFRY – Socialist Federal Republic of Yugoslavia;

SPO – Special Prosecutor’s Office;

SPRK – Special Prosecution of the Republic of Kosovo;

UCCK – University Clinical Center of Kosovo;

UN – United Nations;

UNMIK – UN Mission in Kosovo;

VPO – Victims’ Participation Office.

S U M M A R Y

By its Decision of 20 May 2021, Trial Panel I (Panel) of the Kosovo Specialist Chambers' (KSC) Basic Court (BC), sitting in the case of *Prosecutor v. Salih Mustafa – KSC-BC-2020-05*, ordered the Victims' Participation Office (VPO) to propose to the Panel by Friday, 4 June 2021, three relevant experts who are available on short notice in order to prepare a report and provide answers to questions referred to in paragraphs 20 and 22 of the Decision, i.e. whether the national courts in Kosovo offer a realistic avenue for the victims of the crimes in this case, or their families, referred to in paragraph 2 of the Decision, to claim reparations and, if it were established in the judgments that crimes were committed and if reparations would be granted by judgments issued by national courts, to have such judgments enforced. Depending on the conclusions of the experts, the Panel would decide on the reparations procedure in this case.

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1. Overview of the development of the judicial system in Kosovo

The signing of the Kumanovo Agreement on 9 June 1999 marked the end of the armed conflict in Kosovo. The United Nations Security Council (UNSC) Resolution 1244/99 regulated, *inter alia*, the issue of withdrawal of the armed forces of the Federal Republic of Yugoslavia (FRY) and the Republic of Serbia (RS). The withdrawal of the armed forces was followed by the withdrawal of representatives of the former authorities from the province, including officials from judicial institutions, which had been dominated by Kosovo Serbs since the province's autonomy was revoked in 1989. Their withdrawal created a legal vacuum in war-torn Kosovo. For these reasons, UNMIK initiated the establishment of provisional government bodies, including provisional judicial institutions, through the Special Representative of the UN Secretary-General (SRSG) for Kosovo. The newly-formed institutions were dominated by ethnic Albanians¹. There were very few members of minority communities, Serbs in particular. Very soon, the few Serbs in newly-formed judicial institutions, due to various pressures, especially from Belgrade, declined to work for them.

The failure to employ members of minority communities resulted in the establishment of monoethnic judicial institutions, which had a negative impact on trials. This was especially reflected in the first indictments for war crimes, which were brought against suspects or accused who were mostly Serbs who had not left Kosovo, and tried before trial chambers composed mostly of ethnic Albanians. The trials, organised in an atmosphere where the memory of the recently concluded armed conflict was still fresh, were burdened by vengefulness. During their testimony before the trial chambers, witnesses tried to heap blame on the accused. In order to avoid the partiality of ethnic Albanian judges, UNSG Special Representative's issued decrees opening up the way for the appointment of international prosecutors and judges, initially only for cases within the jurisdiction of the then District Court of Mitrovica/Mitrovicë², though later on they were assigned to courts throughout the territory of Kosovo. During the year 2001 international prosecutors took over the responsibility for investigating and prosecuting war crimes. At first, trial and appeal chambers were mixed, with ethnic Albanian judges constituting a majority and presiding over the trial chambers, but their composition soon

¹ Those engaged to work in the newly-established institutions were mostly ethnic Albanian prosecutors and judges who had been dismissed from the judiciary in 1992, following the revocation of SAPK's autonomy in 1989.

² [UNITED NATIONS - UNMIK \(unmissions.org\)](https://unmissions.org/), accessed on 8 December 2021.

changed to one dominated by international judges. In the course of 2001 international judges took over the management of mixed trial chambers in all of Kosovo. UNMIK's policy towards the judiciary remained unchanged until mid-2008, particularly in cases based on *war crimes* charges, as well as in some cases of *corruption* and *terrorism*.

In late 2008, prosecutors and judges of the European Union Rule of Law Mission (EULEX) took over the prosecution of war crimes, as well as the monitoring of the customs service, police, judiciary and correctional facilities. War crimes cases were tried mostly before mixed trial chambers, with the exception of trials that were within the territorial jurisdiction of the District, i.e Basic Court of Mitrovica/Mitrovicë, (as of January 2013) where cases on war crimes charges were tried exclusively before international trial chambers.

European judges and prosecutors had exclusive jurisdiction for prosecuting war crimes until 14 June 2014, when the gradual transfer of jurisdiction to domestic judges and prosecutors began, which lasted until mid-June 2018. During this period, international prosecutors continued to conduct investigations which had already been ordered, and judges continued to work in ongoing trials until final decisions were rendered. In some court cases, competence could be transferred to international prosecutors and judges by a decision of the Kosovo Judicial Council (KJC). By the end of 2018, all cases that were in the jurisdiction of the EULEX Mission's judicial office holders were transferred to the jurisdiction of the domestic judicial office holders.

2. Legislation in force regulating the issue of compensation³ for victims⁴

This chapter provides an analysis of the legal framework in which war crimes cases have been prosecuted since 1999 and tries to establish whether the right to reparations was exercised in cases where final judgments were rendered.

³ In legislation which is in force in Kosovo the term "reparations" is not in use. The following terms or expressions are used instead: property claim, compensation, repayment, restitution.

⁴ The term *victim* is used for persons who have sustained injuries, mental or physical suffering or damage (material or non-material) caused by commission of a criminal offence, and also for persons who have lost a family member caused by commission of a criminal offence. The term is recognised by the KCPC from 2013 and the Law on Crime Victim Compensation from 2015. Pursuant to earlier laws, such persons had the status of injured party and could

2.1. The Constitution of Kosovo

The Constitution of Kosovo⁵, as the supreme legal document, regulates the protection of basic human rights and freedoms and ensures compliance with international agreements which are applied in Kosovo. Each international agreement ratified by the Republic of Kosovo becomes an integral part of its internal legal system. Article 24 of the Constitution provides that all citizens are equal before the law, irrespective of their race, colour, gender, language, religion or ethnic origin.

2.2. Criminal laws and codes that have been in force in Kosovo

The following laws have been in legal force since 1999 and have been applied in the prosecution of war crimes: the Criminal Code of the Socialist Federal Republic of Yugoslavia (CC SFRY)⁶; the Criminal Code of the Socialist Autonomous Province of Kosovo (CC SAPK)⁷; Provisional Criminal Code of Kosovo (PCKK)⁸; the Criminal Codes of the Republic of Kosovo (CCRK) which came into force on 1 January 2013 and 15 April 2019; the SFRY Law on Criminal Procedure (SFRY LCP)⁹; Provisional Criminal Procedure Code of Kosovo (PCPCK)¹⁰; the Kosovo Criminal Procedure Code (KCPC)¹¹; the Law on Crime Victim Compensation, and the Civil Procedure Law.

These criminal laws and codes, together with the laws regulating the rights of victims, define the conditions under which an injured party or a victim may be granted damages or the right to compensation in criminal proceedings as follows:

claim compensation for the damage sustained caused by commission of a criminal offence by filing a claim before the end of the trial conducted before the court of first instance.

⁵ Published on 9 April 2008, it came into force on 15 June of the same year, with amendments adopted in 2012, 2013, 2015, 2016 and 2020: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

⁶ The Code came into force on 1 July 1977. It was applied in Kosovo pursuant to UNMIK Regulation 1999/24 of 12 December 1999:

https://unmik.unmissions.org/sites/default/files/regulations/02english/E1999regs/RE1999_25.htm, accessed on 23 October 2021.

⁷ SAPK CC came into force on 1 July 1977. It was mostly applied in cases based on war crimes charges in which the prosecutors, during the trial or at its end, but mostly after the presentation of evidence, revised the initial charges, charging the accused with the commission of less serious criminal offences that were provided, defined and punishable by this law at the time of commission (such as murder, attempted murder and minor or serious bodily harm).

⁸ Came into force on 6 April 2004.

⁹ Came into force on 1 July 1977. The Law was applied in Kosovo pursuant to the UNMIK Regulation 1999/24 of 12 December 1999, until the adoption of the Provisional Criminal Procedure Code of Kosovo.

¹⁰ Came into force on 6 April 2004.

¹¹ Came into force on 1 January 2013. Criminal proceedings initiated on the basis of an indictment are conducted pursuant to the law or code that was in force at the time when the indictment was issued, and the same law or code is applied until the termination of the proceedings, i.e. until a final judgment is rendered or a final decision made.

- a) when they or their counsel¹² file such a claim for damages during the criminal proceedings, i.e. before the end of the trial conducted before the court of first instance, and the court rules on it in the judgment, or
- b) based on a civil lawsuit.

2.3. Criminal procedure laws and codes

The SFRY LCP¹³ and the PCPCK clearly specified the status of the injured party in criminal proceedings and the rights granted to persons who have sustained material or non-material damage caused by commission of a criminal offence, the treatment of such persons in all stages of the criminal proceedings¹⁴, the right to file a claim for damages and the procedure for addressing it, as well as the options for representing their interests during the proceedings¹⁵.

¹² In criminal proceedings on war crimes charges conducted in Kosovo.

¹³ Which was in force until the provisional PCPCK came into force on 6 April 2014, in cases in which criminal proceedings had already been initiated, until the proceedings were completed by the rendering of the final judgment.

¹⁴ Which consists in informing the victims about their right to receive compensation for damage caused by commission of a criminal offence and the right to file a claim so that their request for compensation could be granted. Pursuant to the legislation that has been in force (including both substantive and procedural laws), the courts before which criminal proceedings are conducted, and in particular the courts of first instance, are bound to inform the witnesses and the injured party during the criminal proceedings about their right to file a claim for damages before the end of the trial, and the requirement to support it by corroborating evidence (Chapter VII of the Law). The injured party is entitled to propose evidence, examine the defendant, the witnesses and the experts, and make objections and clarifications in all stages of the proceedings. The injured party is also entitled to review the case file. The injured party may present and explain his or her claim for damages before the court, and in case of his or her absence the claim may be read out by the presiding judge.

¹⁵ The practice of the Kosovo judiciary in *war crimes* cases shows that in spite of the existence of a Legal Aid Service whose lawyers could represent the injured parties as their authorised legal representatives, very few injured parties have actually used this opportunity. In a very small number of cases the trial chambers engaged counsel who represented the interests of the injured party during the criminal proceedings. The injured parties were examined in the capacity of witnesses, informed about their rights, the court checked whether they joined the criminal prosecution and whether they wanted to file a claim for damages. The injured party was entitled to file a claim before the end of the trial conducted before the court of first instance. In some cases, the court did not decide on such claims. There were also some cases in which the trial chamber, i.e. the presiding judge, did not inform the injured party about the right to submit a claim for damages and the right to have a legal representative who could be engaged by the court *ex officio*, especially in cases involving vulnerable victim, nor did they rule on this in the judgment, as it happened in the case that can be found via the following link:

https://www.hlc-kosovo.org/storage/app/media/DejanovicBojkovic-Judgment-17.04.2013_Redacted-1.pdf. A trial chamber may opt not to rule on a claim for damages filed by the injured party only when ruling on it would cause a procedural delay, in which case it refers the injured party to civil litigation for the settlement of the claim. In the cited case, the accused were tried on charges of *war crime against the civilian population* for the rape of a minor girl committed during the armed conflict. In the first-instance judgment the accused were acquitted due to lack of evidence. The Appeals Court, as the court of second instance deciding on the prosecution appeal, found the accused guilty and sentenced them to terms in prison: [https://www.eulex-kosovo.eu/eul/repository/docs/\(2014.05.27\)_JUD_-_J.D._&_Dj.B._\(CoA\)_Eng.pdf](https://www.eulex-kosovo.eu/eul/repository/docs/(2014.05.27)_JUD_-_J.D._&_Dj.B._(CoA)_Eng.pdf)

The Supreme Court of Kosovo, as the court of third instance deciding on the appeals of the accused and their defence counsel against the second-instance judgment, upheld their appeals and acquitted the accused of all charges. https://www.eulex-kosovo.eu/eul/repository/docs/37855-PA_II_KZ_II_5_2014_Eng.pdf The courts deciding on appeal also failed to rule on claims for damages.

Pursuant to these laws, the interests of the injured party were represented by the public prosecutor. If the prosecutor abandoned the prosecution case or dropped the charges, the injured party could continue the prosecution in the capacity of a subsidiary prosecutor, in accordance with the procedure provided by law and within the prescribed time, i.e. within eight (8) days of receiving the decision that the prosecutor was abandoning the prosecution case¹⁶.

When the KCPC came into force, pursuant to Article 62, paragraph 1, item 1.3 of this Code the status of the injured party changed to that of a party in criminal proceedings. The injured party may now directly participate in the proceedings and has the right to present an opening statement, propose and examine witnesses, propose evidence, access the case file throughout the proceedings, file a claim for damages and have a legal representative who provides professional legal assistance during the proceedings¹⁷. Item 1.5 of Article 62 also provides for something new. Pursuant to this item, if the court cannot order the defendant(s) to pay restitution due to their indigence or death, or lack of jurisdiction of the court, the injured party is still entitled to restitution, and the court may refer this issue to the Victim Compensation Fund.

With the help of the US embassy in Priština/Prishtinë, an office called the Victims Assistance and Advocacy Office was established as part of the State Prosecutor's Office that mostly represented victims of human trafficking and domestic violence in various criminal cases. It is noticeable that since 2016 lawyers and jurists from this Office have also represented victims in some cases in which the accused were tried on charges of *war crimes against civilians*, and in some cases of ethnically motivated *aggravated murder*, that were mostly tried before the Basic Court in Mitrovica/Mitrovicë¹⁸. In order to protect their interests before the court, some of the victims personally hired lawyers from the Kosovo Bar Association (KBA) to represent them in trial as authorised counsel.

¹⁶ In criminal proceedings for crimes committed during the armed conflict in Kosovo, there was only one case in which the injured party continued prosecution within the time prescribed by law, after the international prosecutor abandoned the prosecution on charges of *genocide* (on 9 April 2001, in the case of *Prosecutor v. Igor Simić*). This case has not been completed yet. Since his release from custody after the then District Court in Mitrovica/Mitrovicë passed a verdict of dismissal, the accused has been beyond the reach of the Kosovo judicial organs.

¹⁷ In the criminal proceedings for war crimes that have been conducted in Kosovo in the last twenty (20) years, very few of the injured parties exercised the rights they were entitled to pursuant to the laws that were in force at the relevant time, including the right to legal assistance during criminal proceedings.

¹⁸ Criminal proceedings in the following cases: *Prosecutor v. Oliver Ivanović*, *Prosecutor v. Radovan Radić*, *Milovan Vlašković*.

The big problem that victims had to face during criminal proceedings, especially if they appeared in public session, was that they had to describe before official bodies the circumstances under which certain events during the armed conflict in Kosovo had occurred, including what the witnesses or the injured party had experienced or had been subjected to. This was also a great challenge for the Kosovo judicial institutions, from the moment when they were established (including both the provisional institutions and the regular ones that were established after the declaration of independence). These factors had a direct impact on the work and organisation of these institutions and the organisation of the work of courts in Kosovo. The problem was especially acute if the defendants were members of the same ethnic group or high-ranking members of the Kosovo Liberation Army (KLA).

These problems, together with the fact that many perpetrators of war crimes remain beyond the reach of state organs, are among the main reasons why, to date, few *war crimes* cases in Kosovo have been completed, with final judgments rendered and having come into effect.

In the *war crimes* cases that have been conducted in Kosovo to date, many witnesses and victims who had given statements to the police and the prosecutor, based on which investigations were initiated and indictments issued, later changed their testimonies when they appeared before trial chambers, mostly claiming that in the earlier stages of the criminal proceedings they had given their statements under duress, that the allegations in the statements which they had signed were incorrect and that their translations were inadequate, or they simply refused to testify. Such circumstances had a direct impact on the progress of criminal proceedings.

An attempt has been made to overcome such problems by the adoption of new statutory instruments and sub-laws¹⁹. When examined in trial, witnesses were granted protected witness status (so that their identity was not known to the public) or anonymous status

¹⁹ Inter alia, the Regulation on the Protection of Injured Parties and Witnesses no. 2001/20 of 20 September 2001, which was amended by Regulation no. 2002/1 of 24 January 2002. There are also administrative instructions (such as no. 2002/25 of 13 November 2002) that provide for the use of certain protective measures, such as testimony without disclosure of personal data and anonymous witnesses. New measures for the protection of witnesses were incorporated into the provisional PCPCK, which came into force on 6 April 2004.

(so that their identity was not known to the accused and his defence). These measures were not very successful when applied in practice, primarily due to the small size of Kosovo, the prevailing form of family relationships, and the likelihood that the defendants, their defence counsel or the public would recognise the witnesses and the injured parties on the basis of their testimony.

International missions involved in the work of judicial institutions in Kosovo (UNMIK, EULEX) had their own witness protection programmes. The UNMIK mission implemented the witness protection programme until the end of 2008. By taking over the mandate for law administration in Kosovo, the EULEX mission also became responsible for implementing the witness protection programme and remains tasked with providing support to the KSC and protecting witnesses.

The Kosovo Law on Witness Protection was promulgated on 29 July 2011 and came into force one year after its publication in the Kosovo *Official Gazette*. This law defined the witness protection programme, and established the Witness Protection Directorate the Witness Protection Committee as the bodies that decide on the conditions and procedures for the implementation of the witness protection programme.

The Law regulates the procedure for protecting witnesses and cooperating witnesses who are entitled to protection by the programme in case of criminal offences as provided by law.

2.4. Law on Crime Victim Compensation

Acting in accordance with the Directive of the Council of the European Union 2004/80/EC of 29 April 2004, the Assembly of Kosovo adopted the Law on Crime Victim Compensation (LCVC) on 28 May 2015²⁰. The law came into force fifteen (15) days after publication, though some of its provisions (specified in the final provisions) could only be implemented one year later. The Kosovo Government was obliged to adopt within six (6) months the sub-laws that would make it possible to implement the provisions defined in this law.

²⁰ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10936>.

In 2016, the Kosovo Government adopted a decision establishing the Crime Victim Compensation Committee, which is composed of one (1) judge of the Supreme Court of Kosovo nominated by the Kosovo Judicial Council (KJC), who also acts as the Committee's chair; one (1) prosecutor; one (1) representative of the Assembly of Kosovo (who is also a member of the Committee on Legislation); one (1) representative of the Ministry of Justice; two (2) medical doctors (holding licences in traumatology and psychiatry); and one (1) representative of the civil society. The Committee was established as part of the Department for Transitional Justice and Support to Crime Victims, pursuant to Regulation no. 12/2018 on the internal organisation of the Ministry of Justice²¹. The composition of the Committee had to reflect the gender and ethnic quotas.

The Law became operational during 2017, when its application in practice began. Inter alia, when entering convictions, regardless of the type of crime, the courts are bound to obligate the accused to pay damages to crime victims. The compensation rate depends on the seriousness of the crime of which the accused was found guilty. The judgment obligates the accused to pay the amount of thirty (30)²² or fifty (50)²³ Euros to the Crime Victim Compensation Programme, depending on the seriousness of the crime of which s/he was found guilty. This is one of the ways of providing funds for the Victims' Compensation Programme. The first decisions that obligated the accused to pay damages were taken in 2018²⁴.

This Law specifies the criminal offences for which a victim may request compensation (murder, rape, human trafficking, sexual abuse of children, domestic violence) – and war crimes are not included in the list. However, paragraph 2 of Article 6 provides that the Committee may also examine and rule on victims' claims relating to other serious criminal offences which, due to their nature and the consequences caused, may justify compensation in accordance with this Law, if the specified formal conditions are

²¹ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=17792>, accessed on 10 December 2021.

²² In case of criminal offences for which a maximum prison sentence of up to ten (10) years is prescribed by law, tried by the general departments of the basic courts.

²³ In case of serious crimes for which a maximum prison sentence of ten (10) years is prescribed by law, tried by the serious crime departments of the basic courts or the Special Department of the Basic Court in Priština/Prishtinë.

²⁴ [Raporti-Deshtimi-i-gjykatave-ne-mbushjen-e-Programit-per-Kompensimin-e-Viktimave-te-Krimit-FINAL.pdf](#), accessed on 10 December 2021. The document is only available in the Albanian language.

fulfilled (that the victim is a citizen of Kosovo, a citizen of any country with which Kosovo has a reciprocity agreement, or a citizen of an EU member state), and if the relevant material conditions are also fulfilled (that the criminal offence is punishable by a minimum prison sentence of one year, that it was committed within the territory of the Republic of Kosovo, that it has the elements of crime, that it resulted in the victim's death, serious bodily injury, serious impairment of physical or mental health that is not temporary in nature, and that the victim of the crime is unable to obtain compensation from any other sources).

The Law provides that before filing a compensation request with the Committee, the victim has an obligation to first request compensation from the accused, in accordance with the provisions of the CPCRK (in particular the provisions of Articles 62 and 218).

The Law specifies that the right to compensation can only be transferred to the victim's family members under certain conditions. In case of the victim's death, the family is entitled to compensation on the following grounds: if a final decision to grant the compensation request was made before the victim's death but the awarded compensation has not yet been transferred to the victim's account, and if the victim's family member was financially dependent on the victim and has no other source of income.

The Committee decides on the amount of compensation that will be awarded for injuries sustained. A compensation request must be accompanied by evidence showing the grounds on which the compensation is requested (medical documents on injuries sustained, proof of medical expenses, loss of capacity to work, any need for medical aids, other consequences that the victim may have suffered due to the commission of the criminal offence, and evidence that the victim was unable to obtain compensation from an insurance company). Depending on the consequences, the compensation may be calculated as a lump sum amount (e.g. in case of loss of a family member, funeral costs, serious bodily or mental harm with permanent or long-term consequences, or need for medical aids), or a monthly payment (in case of loss of capacity to work or entitlement to financial support when the victim who was granted the right to compensation was the main provider for the family).

The deadline for submitting the request is six (6) months from the day on which the criminal offence which caused the request was reported (and the applicant is a child or a foreign citizen), or six (6) months from the receipt of the final judgment (in cases when the accused provides only partial restitution to the victim).

In case when no indictment has been issued within two (2) years from the reporting of the criminal offence which caused injury to the victim, the victim gains the right to file a request for compensation with the Committee within the following six (6) months. These deadlines do not refer to children, who, after turning eighteen (18), may file a request with the Committee within the next six (6) months. Other victims who have valid and documented reasons may also file their requests after the expiry of the prescribed deadline, within six (6) months after the objective reasons ceased to exist. Victims' representatives from the Victims Assistance and Advocacy Office, attached to the State Prosecutor's Office, can help the victims with addressing the Crime Victim Compensation Committee and filing requests, and give them instructions on how best to prepare the relevant documents. They can also submit a request to the Committee on the victims' behalf, make the necessary preparations for its filing and represent the victims during the procedure²⁵.

The Law provides that a victim may exercise the right to compensation on several grounds (serious injuries and impairment of health, loss of capacity to work, expenses incurred by filing the request). The Law provides the minimum and maximum amounts that may be granted to a victim on any single grounds, and these amounts depend on the seriousness of injuries and of the case itself. For the remaining part of the compensation, the victim may file a civil suit.

The Crime Victim Compensation Committee, which is appointed by the Government, decides on the victims' requests. The compensation request is filed with the Kosovo Ministry of Justice which is funding the Programme. The grounds for addressing the Committee are the following: the criminal proceedings have been completed and a final judgment has been rendered; the judgment does not include any ruling on the claim for

²⁵ <https://www.youtube.com/watch?v=sKEkBBkS-oE>, an interview with the chair of the Crime Victim Compensation Committee, conducted on 23 May 2020 by investigative journalists from the "Betimi per drejtesi" programme. Accessed on 11 December 2021.

damages; the judgment does not grant the victim any compensation; the victim was unable to obtain compensation from the accused. The request must be filed during the criminal proceedings and before the end of the trial.

The official web page of the Ministry of Justice of Kosovo includes a form with relevant instructions and a brochure explaining the compensation programme in three (3) languages²⁶. These documents clarify the procedure for filing compensation requests.

2.5. Draft Law on Crime Victim Compensation

During the preparation of this report, the project for a new Draft Law on Crime Victim Compensation was included in the agenda of the Ministry of Justice of Kosovo for 2021. During the summer months, the draft law was forwarded to the relevant institutions, political organisations, the civil sector and the public at large for their comments, suggestions and criticism, with the goal of improving its quality.

The draft law, *inter alia*, includes an extension of the time limits within which the victims or their families have to file their compensation requests, especially if the victim was unable to meet the previously prescribed conditions for filing a request due to objective and justified reasons. The law defines provisions that facilitate the exercising of this right in special circumstances (in particular for vulnerable victims, child victims, victims of rape and indigent victims). The maximum amount has been increased for all types of compensation, the categories of victims who may request compensation before the completion of the proceedings have been expanded, and the composition of the Committee has been reviewed, especially in view of the establishment of a department that will support the Committee and perform its administrative duties.

During the Crime Victims' Week, which has been regularly observed in the month of October since 2010, the Minister of Justice of Kosovo said on 25 October 2021 that her Ministry is currently working on devising a strategy and an action plan for the 2022-2026 period, in which "support for the victims should be the focus of our goals"²⁷.

²⁶ <https://md.rks-gov.net/page.aspx?id=2,103>

²⁷ <https://md.rks-gov.net/page.aspx?id=1,15,2589>, accessed on 9 December 2021.

Based on a search of the KJC's official web page and an analysis of judgments rendered in criminal cases, we note that it is still the case that some judges, when entering a conviction, fail to obligate the accused who were found guilty to pay the fees due to the crime victims²⁸. Also, the competent institutions (police, prosecutor's offices, and even courts) do not adequately inform the victims about their right to receive compensation through the Crime Victims Compensation Programme.

2.6. Civil Procedure Law

Provisions of the Civil Procedure Law²⁹ regulate the procedure that courts follow when examining and adjudicating civil actions between natural persons and legal entities. The court shall rule within the scope of the litigant's filed claims. The court shall not decline to rule on a claim within its jurisdiction. The parties may freely dispose of claims in the course of the proceedings. The court shall rule on the basis of evidence presented, after careful and conscientious analysis. The court is bound to conduct the proceedings without undue delay and with minimum expenses. With respect to the existence of crime and criminal responsibility, the court is bound by the final judgment declaring the accused guilty.

3. Victims' right to compensation in actual court practice

The first indictments relating to crimes committed during the armed conflict in Kosovo were issued in late 1999 by domestic prosecutors, mostly ethnic Albanians, who were appointed by the SRSG. The defendants were mostly members of the Serbian community who, according to allegations of the prosecution, had served as members of the Yugoslav Army (VJ) or the armed forces of Serbia in general (including military, police and paramilitary forces).

The trial chambers adjudicating in war crimes cases most often alerted the injured party at the opening of the trial or when beginning the examination of the injured party in the

²⁸ https://prishtine.gjyqesori-rks.org/wp-content/uploads/verdicts/PR_P_5465_2018_SQ.pdf, only available in the Albanian language. By this judgment of the Basic Court in Priština/ Prishtinë, the accused is sentenced to eight (8) months in prison which shall not be executed if he does not commit another criminal offence within the period of one (1) year. The judgment obligates him to pay a flat-rate amount covering the cost of the proceedings, the hiring of an expert witness and a road transportation fee, but he is not obliged to make any payment to the Victims' Compensation Fund. The injured party is referred to civil litigation for the settlement of his property claim.

²⁹ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2583>, accessed on 11 December 2021.

capacity of a witness of their right to file a claim for damages before the completion of the trial.

However, when rendering judgments, regardless of whether it was a conviction or an acquittal, trial chambers have not always ruled on the relevant claim for damages. The judgments contain no information indicating whether the injured parties formally waived their requests.

Based on the available information, some injured parties were referred to civil litigation for the settlement of their claims. In a very small number of instances, they had legal representatives in cases in which they appeared as victims of the criminal offence for which the criminal proceedings were initiated. Even when legal representatives were involved, they were rarely engaged by the injured party. The situation was hardly any better as regards legal representatives engaged *ex officio* by the court (as discussed above). There were also very few instances in which the injured party followed the trial. They were present at trial only when the court summonsed them to testify.

In the war crimes trials conducted to date, there has not been a single confirmed case of a victim or an injured party initiating proceedings for the compensation of damages after the completion of the court case and the rendering of a final judgment. There is also no official information indicating that the victims of these crimes contacted the Victim Compensation Fund attached to the Ministry of Justice. It is hard to explain why this is so. One reason could be that the priority of the new judicial system was to punish the perpetrators of criminal offences. Other reasons could be that the victims and injured parties had poor knowledge of legal matters and were not aware that they could exercise this right, or that the courts did not properly advise the parties which were entitled to this right that they should strive to receive compensation for damages from the perpetrators.

One of the main reasons why the victims or injured parties did not exercise their right to claim damages is that in most cases they and their families were the principal and only witnesses in trial proceedings against former KLA members, and the fact that there were practically no other witnesses only confirms the widespread public disapproval of these trials. In most cases, the victims or the injured parties agreed to testify under the

condition that they would appear as anonymous or protected witnesses. It could therefore hardly be expected that after traumatic experiences and arduous and complex trials, during which they somehow managed to take care of themselves and avoid public exposure, the victims or the injured parties would appear as private and publicly known plaintiffs requesting compensation from convicted KLA members.

4. Observations of the expert

a) Pursuant to the legislation in force in Kosovo, the right to compensation³⁰ is an inalienable right of the victims or their families. It is guaranteed by legal instruments.

b) As regards the implementation of the right to compensation, the existing judicial practice in Kosovo and the lack of positive attitude to the KSC hardly give cause for much optimism and do not suggest that it will be possible to achieve quick progress in this area, i.e. that the judicial or administrative authorities will be willing to compensate the victims or their families who may be granted such status in judgments rendered by the KSC. For this reason, the KSC should seriously consider an alternative legal possibility, namely that its own trial panels should rule on the claims for damages submitted by injured parties, after having advised and instructed the victims and the injured parties about this right in a timely manner. The reasons for this proposal are the following:

- Poor performance of the judicial authorities with regard to the exercise of the right to compensation for war crimes, in spite of the relatively well-developed laws pertaining to this issue;

- [REDACTED]. [REDACTED]. [REDACTED];

- Inability of Kosovo courts to place these cases high on their agendas, burdened as they are with a backlog of tens of thousands of civil suits, some of them more than a decade old, which may cause such long delays in their adjudication as to render them meaningless.

c) In the Kosovo judicial system, mostly young and inexperienced personnel are engaged in the area of civil law, which could result in further delays or other

³⁰ For the needs of this report, I have decided to use the term “compensation.”

In Kosovo, the term “reparations” has been used only by the civil sector. The legislation that has been in force or is currently applied uses the terms “compensation,” “repayment” or, occasionally, “restitution.”

complications when settling claims in which compensation is requested for damage sustained as a result of war crimes.

d) In particular, the KSC should analyse whether it is possible to preserve the anonymity of witnesses (if they are the victims or the witnesses come from their families), and how to preserve it if, after the final judgment is rendered, they are referred to file a claim for damages in civil proceedings in Kosovo.

e) [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
[REDACTED].

f) [REDACTED]; [REDACTED].

g) If the victims' rights are compromised in the course of the implementation of court decisions, they may appeal not only to judicial institutions, but also to the Kosovo Ombudsman. Perhaps the KSC should consider the possibility of providing support to the institution of the Kosovo Ombudsman, so that it would be capable of handling a possible increase in the number of requests.

h) From now on, ensuring that the victims can exercise their rights, especially as regards the right to compensation, should be an issue examined by international institutions, at conferences and in debates on the Kosovo judicial system, and even in parliamentary discussions. Sensitizing the public to this issue is a very important factor in ensuring that this right is actually exercised and that the victims' rights are better protected and guaranteed on a long-term basis, especially if sensitive topics or circumstances are involved. [REDACTED]. [REDACTED].

ANNEX I

Questions of Trial Panel I

specified in the Decision of 3 September 2021

(including questions of the Victims' Counsel from the Submission of 14 June 2021)

Trial Panel I (the Panel) would like the appointed experts to provide a report clarifying for the Panel whether the national courts in Kosovo offer a realistic avenue for the victims of the alleged crimes charged in this case to claim reparations and, if reparations would be granted by those courts, to have such judgments enforced.

1. The Panel would be interested in knowing whether:

- (i) victims in similar cases, if any, effectively received compensation after proceedings before national courts in Kosovo;
- (ii) such victims have ever benefitted from restitution from the Victim Compensation Fund referred to in Articles 19(1), section 1.26, and 62(1), section 1.5, of the Kosovo Criminal Procedure Code (KCPC) or from any other relevant compensation programme, including the one established under Law No. 05/L-036 on Crime Victim Compensation (LCVC).

Answer: There is no official information or confirmation indicating that, to date, any of the victims in war crimes cases have received compensation after criminal proceedings before national courts in Kosovo, or that such victims have ever benefitted from restitution from the Crime Victim Compensation Fund.

2. In this context, the appointed experts shall, to the extent possible, answer the questions referred to in:

- (i) paragraphs 24-26 and 30-36 of the Victims First Submission;

Answers to questions specified in the Victims First Submission on the Decision on the appointment of expert(s) of 14 June 2021 are given next:

Paragraph 24

Question: Does any reliable data and statistics exist that would allow an assessment of the length of potential civil law proceedings in Kosovo's court system?

Answer: It is not possible to give an answer to the question on the length of potential civil law proceedings relating to compensation claims because the courts in Kosovo are inundated with such cases. A more detailed answer to a similar question is given below, in ANNEX I.

Question: How prevalent is corruption and political interference?

Answer: A more detailed answer concerning the prevalence of corruption and political interference in the work of the Kosovo courts is also given in ANNEX I.

Question: If the expert concludes that issues such as political interference are not prevalent, on what basis can such claim be made given the documented situation over the last decade?

Answer: There is no publicly available information or data on the basis of which it could be assessed whether political influence on the judicial system exists, or what its scope might be. A more detailed answer is given in ANNEX I.

Paragraph 25

Question: Access to justice is costly and legal aid critical. Would legal aid be available for the participating victims in private lawsuits before other courts in Kosovo? Does the law provide legal aid to claimants regardless of their nationality or residency, may that be in Kosovo, in Serbia, or in third states?

Answer: Pursuant to the legal regulations in force, legal aid is available for participating victims before courts in Kosovo regardless of their ethnicity, if they meet the specified formal and material conditions (Articles 7 and 8 of the LCVC). A necessary formal condition is that they are citizens or permanent residents of Kosovo. [REDACTED]. [REDACTED].

Paragraph 26

Question: If legal aid frameworks exist, is legal aid accessible in practice? Are sufficient funds available to ensure that legal aid is continuously provided?

Answer: The legal aid framework exists. Legal aid is accessible in practice, but the existing funds (the Crime Victims' Compensation Programme attached to the Ministry of Justice of Kosovo, the Agency for Free legal Aid, the Center for Legal Aid attached to the Kosovo Law Institute) do not have sufficient resources to ensure that legal aid is continuously

provided. For the time being, legal aid is mostly provided to individuals on welfare and those with below-average income.

Paragraph 30

Question: Would the Kosovo civil law system allow the submission of anonymous claims? Would this be a procedure in accordance with article 6 of the European Convention on Human Rights (ECHR)?

Answer: **In view of the legislation that is currently in force, submission of claims by anonymous claimants is not possible for the time being. Article 99 of the Civil Procedure Law (CPL)³¹ expressly defines the written form of an application which shall be submitted to the court (it must contain the name of the court, the first and last name of the claimant or the name of the legal entity, the name of the injured party's legal or authorised representatives, if any, the subject of dispute, the contents of the claimant's statement, the evidence that supports the allegations, and the claimant's signature). Article 6 of the ECHR provides: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." It also provides that if there is good cause, the public may be excluded from all or part of the trial and that the judgment shall be pronounced publicly. The ECHR is directly applied in Kosovo, as it is incorporated into the legislation in force, and in the event of conflict it takes precedence over all national legal provisions.**

Paragraph 31

Question: What are the evidentiary requirements for victims to submit claims in Kosovo's civil courts? It is submitted that hurdles might *de facto* be so high that it would make it very difficult to submit a claim with a realistic chance of success. E.g., could a victim of torture serve as a witness to his or her own suffering? Would corroborating evidence be required?

Answer: **Together with the claim, a victim should submit evidence corroborating the allegations, i.e. evidence on material and non-material damage or injuries sustained, permanent consequences, death of a family member and suffering caused. Victims may propose witnesses who could confirm the allegations by their evidence. [REDACTED]. According to the decisions of the trial chambers, deciding on claims for damages would cause undue delay in the criminal proceedings.**

³¹ <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2583>, accessed on 15 December 2021.

Paragraph 32

Question: Would a criminal judgement by the Kosovo Specialist Chambers suffice to substantiate reparations claims? If so, under what conditions? Could a claim already be brought while appeals proceedings might be ongoing before the KSC?

Answer: A reparations claim may be filed after the criminal proceedings have been completed by the rendering of a final judgment. If the judgment only contains findings on criminal responsibility, the claim must be supplemented by evidence confirming the grounds for claiming material and non-material damage (such as medical documents on possible injuries or permanent consequences, evidence of death of a close family member or the consequences that it produced for dependants, including anguish caused).

In practice, particularly in cases involving less serious criminal offences, there were instances in which compensation claims were brought while first-instance or appeals proceedings were ongoing, to avoid the expiry of the statute of limitations. In such cases the proceedings based on the claim would be suspended until the completion of the criminal proceedings, which would be adjudicated as a preceding issue.

Paragraph 33

Question: As to recognised modes of liability: Are modes of criminal liability such as JCEs or command responsibility recognised to trigger private law liability?

Answer: Established participation or involvement in a JCE or command responsibility cannot be the only grounds for initiating a civil claim. In addition to the judgment in which the above modes of liability are established, the claim should be supported by evidence that the victim was subjected to actions which resulted from the commission of the said crimes, that he or she suffered from the consequences or sustained injuries (with evidence demonstrating the type of injuries), and that this happened in an area in which the convicted persons were active.

Paragraph 34

Question: Which statutes of limitations do apply? Article 125.1 of the Kosovo Law on Contested Procedure states that if 'the periods of time are not determined by law, they are prescribed by the court by taking into account the circumstances of the concrete case.' Thus can it be concluded that any claim would depend on the discretion of the deciding judge, which time limit s/he sets for the prescription of the civil claim? Would it be correct to conclude that it is not foreseeable for the claimant, whether a statute of limitation would apply?

Answer: The statute of limitations hinges on the criminal offence for which the accused is charged. For criminal offences for which a longer sentence is prescribed, the statute of limitations is also longer.

The time limits provided by Article 125.1 of the CPL concern the deadlines for organizing civil procedure and procedural steps taken by litigants during the trial. The first-instance civil procedure consists of two stages: a preliminary hearing and a trial hearing for examining the claim, i.e. the trial. During the civil procedure, there are certain binding deadlines provided by law, and failure to meet them entails the loss of certain rights in the course of the proceedings (if the court obligates a party to submit requested evidence to the court by a certain deadline and the party fails to comply, the claim shall be dismissed).

Paragraph 35

Question: What is the length of private lawsuits on average in Kosovo civil courts? Does the length differ depending on the type of lawsuit, e.g., a notably longer duration of proceedings based on a criminal law claim than other forms of civil proceedings?

Answer: In the present conditions it is not possible to obtain information on the average length of private lawsuits. Nor is any research on this issue available. The factors that certainly have an impact on the length of proceedings are the complexity of the case and the specific court that adjudicates it.

Some courts in Kosovo which have a large territory under their jurisdiction, such as the Basic Court in Priština/Prishtinë, also have a great influx of all types of cases, and as a consequence, civil lawsuits conducted before this court tend to last longer, whereas they last a shorter time when conducted before smaller or local courts.

Question: Does the length differ depending on the type of lawsuit, e.g., a notably longer duration of proceedings based on a criminal law claim than other forms of civil proceedings?

Answer: As noted above, it is primarily the complexity of the case that has an impact on the length of civil proceedings, while additional factors include the court's commitment to expeditious adjudication of claims and the parties' efforts to support their claims and counterclaims with valid evidence that may serve as the basis for a judgement.

Paragraph 36

Question: Does any data exist that identifies the statistical chances of specific groups within the population, such as ethnic minorities, to successfully pursue lawsuits in Kosovo? In other words, does any research or data exist that captures biases against specific groups and the impact of these biases on the chances to succeed in private litigation?

Answer: There is no official statistical data indicating whether specific groups, and especially ethnic minorities, are in any way privileged or discriminated against in civil lawsuits. Even though some analysts of trials conducted in Kosovo claim that courts are much stricter when adjudicating cases which involve, for example, the Roma community,

if the courts were to admit that this happens, it would be tantamount to admitting that they did not treat all ethnic communities in Kosovo equally. Consequently, no official information on this issue is available.

- (ii) *Annex 1 to the Victims Second Submission on the Decision on the appointment of expert(s):*

Answer: Detailed answers to questions specified in ANNEX 1 are provided below.

3. In addition, in the event that the Panel would decide not to refer the victims to civil litigation in Kosovo, but the Accused, if convicted, would be unable to pay any reparations ordered by the Panel, the appointed experts shall, to the extent possible, answer the following questions:

Question: Whether, under the relevant legal framework, victims of crimes under the jurisdiction of the KSC could benefit from restitution from the Victim Compensation Fund referred to in Articles 19(1), section 1.26, and 62(1), section 1.5, of the KCPC, or from any other relevant compensation programme, including the one established under Law No. 05/L-036 on Crime Victim Compensation.

Answer: **The KSC is a Kosovo court established by the same procedure as all other courts in Kosovo. The victims of crimes under its jurisdiction enjoy the same rights as all victims of crimes under the jurisdiction of other Kosovo courts. Therefore, victims could benefit from restitution from the Victim Compensation Fund or other compensation programmes if they cannot be paid by the accused. Needless to say, they would have to fulfil the formal and material conditions provided in the LCVC. The Law does not presently refer to victims of crimes under the jurisdiction of the KSC when listing various categories of compensable crimes. Paragraph 2, Article 6 of LCVC provides that due to their nature and consequences other violent crimes may also justify compensation pursuant to this Law. Perhaps it should be noted that LCVC was published in the *Official Gazette of Kosovo* on 30 June 2015, i.e. before the KSC was established. The draft LCVC does not include the category of war crimes victims either, but it is indisputable that these crimes were committed in the territory of Kosovo, that they have been uncovered, reported to the relevant bodies, and treated as criminal offences (paragraphs 1.1 and 1.3 of Article 7 of the LCVC).**

The KSC is a Kosovo court, an injured party appearing before it has the status of a party to the proceedings, and the court may refer the restitution order to the coordinator of the Victim Compensation Fund (Article 62, paragraph 1, items 1.3 and 1.5 of the KCPC).

Question: Whether victims of crimes under the jurisdiction of the Specialist Chambers could benefit from restitution from the aforementioned Victim Compensation Fund or from any other relevant compensation programme whilst remaining anonymous?

Answer: The legislation in force in Kosovo does not provide for the possibility that victims of crimes could benefit from restitution from the compensation programme whilst remaining anonymous. Even if the KSC were to adjudicate a victims' compensation claim in a case under its jurisdiction, it should be noted that its decisions would need to be enforced in Kosovo, in an enforcement procedure in which it is difficult to preserve the anonymity of victims. It is even difficult to imagine that the system for enforcing court decisions which is currently in use would accept to process cases in which restitution is sought by anonymous persons. And even if the anonymity of victims were preserved, the amount that the court may award for compensation would eventually need to be transferred to a specific giro account registered under the first and last name of its owner.

Question: Whether, in order to preserve the victims' anonymity, the Registrar could apply for restitution from the aforementioned Victim Compensation Fund or from any other relevant compensation programme on the victims' behalf.

Answer: The Registrar is not a legal representative of any of the parties, but a part of the court mechanism which is impartial and treats all parties equally.

ANNEX II

Answers to questions from the Victims' Counsel Submission on the Second Decision on the appointment of expert(s)

(i) Socio-legal questions:

a. How prevalent is corruption and political interference among the legal staff of courts in Kosovo?

The question is very complex and it is difficult to give a precise answer that would be based on tangible evidence. However, it is a fact that corruption in judicial institutions and political interference with their work, including even serious crimes cases (the so-called high-profile cases) are widely discussed in public.

What are the causes that have led to this situation? There is no doubt that the Kosovo judicial system has been facing numerous problems for over two decades, practically since the end of the armed conflict, when the process of establishing provisional, ad hoc judicial institutions began. The problems have been diverse. They primarily involve the slow adjudication of cases and a build-up of pending cases, as newly received cases are added to the increasing backlog. The number of pending cases has been increasing from year to year.

The poor efficiency of courts is also caused by lengthy procedural steps during court proceedings (both criminal and civil)³². Some procedural steps are delayed for reasons that are not always justified. This creates the impression that the courts tend to adjudicate cases with undue delay, thus violating the mandatory time limits, provided by law, within which such procedural steps must be taken. This constitutes a violation

³² [REDACTED]. [REDACTED].

[REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
[REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
[REDACTED]. [REDACTED]. [REDACTED].

of the fundamental rights of the accused as provided by the European Convention on Human Rights and Fundamental Freedoms (ECHR) and specified under Article 6 (the right to be prosecuted within a reasonable time)³³. It is no secret that court proceedings are sometimes protracted even in cases that need to be processed urgently pursuant to the relevant legal provisions, as, for example, when the accused are in custody and when the complexity of the case does not justify undue delay or length of the proceedings³⁴.

Based on an analysis of available judgments which are posted on the official web page of the Kosovo Judicial Council (KJC), it can be noted that for unclear reasons certain civil cases were given priority, as the judgments were rendered a short time after the lawsuits had been filed, whereas some other cases have not been adjudicated for years, sometimes for more than a decade³⁵.

There is no official record of the number of criminal cases (let alone misdemeanour cases) in which the statute of limitations expired before the opening of the trial. This even happens in cases involving criminal offences for which long prison sentences are prescribed and in which criminal proceedings were previously conducted for a number of years, and it also includes some corruption cases.

What is also noticeable is the courts' different treatment of cases involving the same or similar charges. Different judgments are rendered for the same criminal offence

³³ [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

³⁴ [REDACTED] [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

³⁵ The examination of a judgment rendered by the civil law department of the Vuçitër/Vushtrri branch of the Basic Court in Mitrovica/Mitrovicë on 8 November 2021 shows the length of a first-instance civil suit relating to compensation for real estate expropriation that was carried out in 2014. The procedure was initiated by the filing of a complaint against the expropriation decision in January 2015, and the judgment was rendered on 8 November 2021: https://www.gjyqesori-rks.org/wp-content/uploads/verdicts/MIT_V_C_189_20_SQ.pdf, the judgment is available on the official web page of the KJC, only in the Albanian language. Accessed on 17 November 2021. - [PR_PD_C_2019_271973_SQ.pdf-aksidenti 2002.pdf](#), is a judgment rendered with regard to a traffic accident which occurred in December 2002. Granting the specific circumstances of the case, the fact that some of the procedural steps were taken earlier (criminal proceedings were conducted in connection with this incident), and the fact that the prosecutor and the defendant are relatives, it is also a fact that the judgment was only rendered on 5 October 2021. This is a first-instance judgment, which is only available in the Albanian language, accessed on 10 November 2021. - Judgment of the Basic Court in Prishtinë/Prishtinë of 6 October 2021, on the compensation claim submitted on 12 May 2020: https://prishtine.gjyqesori-rks.org/wp-content/uploads/verdicts/PR_C_1903_20_SQ.pdf, judgment only available in the Albanian language. Accessed on 3 November 2021.

committed in the same or similar circumstances, the only difference being that the trials were conducted in different periods³⁶.

These observations about the work of the Kosovo judicial system mostly concern criminal cases. Judging by some indicators, the situation is even more serious with regard to civil cases, as in this area proceedings in private lawsuits sometimes last as long as several decades. According to a report of the Kosovo Law Institute (KLI) published in November 2019, a civil lawsuit brought in 1997 was not yet completed at the time of the report's publication.³⁷

In the last few years, the KJC has taken a number of measures aimed at adjudicating old cases as quickly and as efficiently as possible, achieving the best possible results, improving the efficiency of proceedings and building an impartial and independent judicial system³⁸. Laws have been adopted that allow for disputes to be settled in a different way, out of court, by mediation (the Law on Mediation³⁹). Commentaries of the most important procedural laws have also been prepared. In the period between 2018 and the third quarter of 2021, the Supreme Court of Kosovo prepared a number of instructions for a more efficient prosecution of the most serious crimes and for sentencing. Several legal opinions have also been prepared with the aim of clarifying numerous unclear matters in the process of prosecuting certain criminal offences and taking certain procedural steps, which is of great assistance for the professional training of judges.

³⁶ Let me use as an example the incident in which Self-Determination (Vetëvendosje) deputies brought tear gas and used it on the premises of the Assembly of Kosovo (in the plenary hall and in the lobbies) in August 2016. In case of some of the participants in the incident, criminal proceedings, brought against them on charges of using tear gas as a weapon that they possessed without authorisation of the competent organs, and of obstruction of authorised officials, have been completed. The defendants were found guilty and given suspended prison sentences. These sentences were passed a few years ago, when Vetëvendosje was still in opposition. In May 2021, after a trial was held and evidence presented, some deputies from Vetëvendosje (including the current Minister of Justice, Albulena Haxhiu, who won the majority of votes in the early elections held in February 2021) were acquitted of the charges of illegally possessing tear gas and bringing it into the Kosovo Assembly building. The explanation that the court provided for the acquittal was that the prosecution had not submitted any evidence confirming its allegations that on the critical day the defendants were in possession of tear gas as a weapon.

³⁷ [IKD-Drejtësia-Civile-2019-2.pdf](#), report published in November 2019, only available in the Albanian language, accessed on 5 December 2021.

³⁸ <https://www.gjyqesori-rks.org/planet-strategjike/?lang=en>

³⁹ <https://md.rks-gov.net/desk/inc/media/078A2A69-F572-4826-AC20-61937AADD2FA.pdf>

In order to restore the citizens' trust, in recent years the KJC has been working in an increasingly transparent manner, holding public sessions and publishing statistical data about the activities and (in)efficiency of courts of all instances in Kosovo. For this purpose, the KJC posts on its web page, on a daily basis, judgments of all courts, from all areas of jurisdiction, once their written form has been finalized. This certainly contributes to a more professional drafting of judgments, both in the formal and in the material sense of the word.

In February 2018, in order to monitor the trends in the penal policy, the Supreme Court of Kosovo set up a Sentencing Advisory Commission, whose purpose is to follow and analyse the sentencing policy applied in corruption cases. In 2019, after holding several round tables with judges, prosecutors at all levels, presidents of courts, chief prosecutors, lawyers and victims' counsel, the Committee prepared a report entitled "Analysis of the Sentencing Policy in Corruption Cases."⁴⁰

The analysis presents statistical data on the handling and sentencing in corruption cases during the year 2018. It includes an overview of the sentences and additional punishments rendered and provides an assessment of the application of mitigating and aggravating factors that had an impact on the length of sentences and its comparison with similar cases and respective sentences. There is also an analysis of the reasoning provided for the application of mitigating factors, particularly in cases in which the imposed sentences were below the minimum prescribed by law. In the conclusion of the analysis it is stated that in most of the monitored cases no adequate explanation was given as to the factors which influenced the sentencing (particularly the aggravating factors, but also the mitigating ones) which is mandatory, pursuant to the Supreme Court's sentencing guidelines, for all cases. Inadequate and incomplete reasoning has a direct impact on the defendant's elementary rights, but also on the public trust in courts and the general opinion about their professionalism.

The main recommendation given at the end of the report was that in future the courts need to provide a detailed reasoning of their findings, the mitigating and aggravating

⁴⁰ [7539 ANALYSIS OF THE SENTENCING POLICY IN CORRUPTION CASES.PDF \(gjyqesori-rks.org\)](#) accessed on 30 November 2021.

factors that influenced the length of sentence, and how these were weighed when determining the length of sentence. The analysis notes many examples of illogical reasoning and unreasonable weight given to certain aggravating or mitigating circumstances which the Committee found in the statement of reasons in some of the judgments.

In June 2021 the Sentencing Advisory Commission adopted specific guidelines on official corruption and criminal offences against official duty⁴¹. The guidelines provide an analysis of all elements of these criminal offences, with a detailed definition that specifies who can be qualified as a perpetrator of the criminal offence defined under the CCRK from 2019, as well as ample commentaries and clarifications. Explications are also given with regard to criminal responsibility, intent, motive, sentencing, in respect of aggravating and mitigating factors, with examples from international judicial practice, which should greatly assist judicial office holders in their work. International organisations such as the United Nations Development Programme (UNDP) and the US Agency for International Development (USAID) have provided significant help in the preparation of commentaries on laws, while the European Commission for the Efficiency of Justice (CEPEJ) contributed to the assessment of the overall situation in the judicial system.

Unfortunately, these measures and instructions have not produced any noticeable results to date; neither has the judges' level of professionalism increased, nor has the backlog of pending cases been reduced, nor has the citizens' trust in the judicial system been restored.

Useful information on the work of the Kosovo judicial system can also be found in the report of the Kosovo Law Institute non-governmental organisation (NGO KLI), which regularly observes trials conducted before courts of all levels in Kosovo and publishes reports about numerous topics, with a very critical examination of the work of judicial institutions. These include reports on monitored trials of cases in which the charges included elements of corruption, such as, for example, "**Punishing Corruption as a**

⁴¹ [Official Corruption and criminal offences against official duty \(gjyqesori-rks.org\)](https://www.gjyqesori-rks.org), accessed on 30 November 2021.

Misdemeanour,” published in April 2021 about the monitored trials held during 2020⁴². According to the report’s findings, persons who have been accused of corruption mostly perpetrated minor or moderately serious offences, while the number of high-profile defendants in corruption cases is very small.

According to the report, judicial institutions are insufficiently transparent as regards corruption cases. The prosecutor’s offices do not inform the public about all indictments that have been issued, and the courts do not post all judgments rendered in these cases on their official web portals.

As the report notes, there have been many delays in hearings in the trials involving corruption cases, mainly due to the absence of judges and prosecutors. The report also notes that the sentencing policy in these cases is very lenient, as there are very few cases in which the defendants were given effective prison sentences, and even when given, the sentences tend to be excessively light. The report also finds that in most cases courts imposed fines or suspended prison sentences and that very few additional punishments were imposed in the reporting period. Criminal proceedings in these cases tend to last a long time, the average time from the issuing of the indictment to the rendering of the final judgment being around four (4) years.

Based on the above, it can be noted that the findings of the Supreme Court of Kosovo’s Sentencing Advisory Commission and the NGO KLI are for the most part mutually consistent as regards corruption cases, i.e. the inadequate sentencing policy and evaluation of evidence, as well as other factors that influence the sentencing. The guidelines provided by the Advisory Commission have not been adopted in practice as yet, comprehensive though they may be. In corruption cases the sentencing policy remains lenient and inadequate, while the statements of reasons provided in the judgments are too general, too short, inadequately reasoned and characterised by an inadequate application of aggravating and mitigating factors.

⁴² [*IKD-Dënimi-i-korrupsionit-si-kundërvajtje.pdf](#), only available in the Albanian language, accessed on 30 November 2021.

b. If the expert concludes that issues such as political interference are not prevalent, on what basis can such claims be made given the documented situation over the last decade?

No one can deny that there is political interference with the work of the Kosovo judicial system. This issue has been analysed in many international reports. However, it is not only difficult, but almost impossible to prove it or determine its prevalence, even though we have witnessed cases of corruption in government institutions, or those involving judicial office holders. After several years of trial, all such cases ended with acquittals or the passing of very lenient sentences.

c. What mechanisms exist for the accountability of judges? How efficient are these disciplinary measures?

The judicial system of Kosovo has mechanisms for assessing the accountability of judges. They are aimed at increasing the judges' professionalism and efficiency. The issue of accountability of judges is to a large degree defined in the Law on the Kosovo Judicial Council (LKJC)⁴³, the Law on the Disciplinary Liability of Judges and Prosecutors⁴⁴, which was amended on 4 October 2021,⁴⁵ and the Rules on Evaluating the Performance of Judges⁴⁶.

Chapter III of the LKJC provides the criteria for the recruitment, appointment and dismissal of judges. This law also specifies the circumstances under which judges may be removed from their post, including cases in which they may come into conflict with the law, be punished or commit a serious violation of their judicial duties.

The Strategic Plan for the Kosovo judiciary⁴⁷ for the period 2020 – 2022 sets out how to improve the judicial system, restore the citizens' trust, secure efficient and effective

⁴³ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18335>, published in the *Official Gazette* of Kosovo on 26 December 2018, it came into force fifteen (15) days after publication.

⁴⁴ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18336>, also published in the *Official Gazette* of Kosovo on 26 December 2018.

⁴⁵ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=49994>, the amendments were published in the *Official Gazette* of Kosovo on 21 October 2021.

⁴⁶ https://www.gjyqesori-rks.org/wp-content/uploads/lgs/89895/Rregullore_Nr_01_2021_per_vleresimin_performances_se_Gjyqtareve.pdf

⁴⁷ <https://www.gjyqesori-rks.org/planet-strategjike/?lang=en>
https://www.gjyqesori-rks.org/wp-content/uploads/2021/08/KGJK_Plani_Strategjik_2020_2022_ENG.pdf;

administration of justice, reduce the number of pending cases, improve the judges' professionalism, ensure that adequate decisions are taken in a timely manner, and increase the competence and professionalism of administrative staff. One of the outlined strategic goals is that all citizens should have equal access to justice regardless of their economic status, ethnicity, gender or other personal characteristics.

Chapter IV of the LKJC provides the criteria for evaluating the judges' performance, their professional preparation, experience and efficiency, as well as their familiarity with and observation of human rights. Additional factors to be taken into account when appointing judges are their impartiality, honesty, consideration and responsibility, communication skills, appropriate behaviour outside the workplace and personal integrity. A judge's work is evaluated, inter alia, based on the number of cases sent back for a retrial, i.e. the number of judgments annulled by a court of higher instance. Such evaluations are performed every three (3) years for judges whose term of office is permanent and they provide a basis for professional advancement. An evaluation of the judges' commitment to their work is performed by the competent committee established within the KJC.

The Law on the Disciplinary Liability of Judges and Prosecutors, which came into force in early 2019, provides that judicial office holders shall be subject to disciplinary liability if they are convicted of a criminal offence, break the law or violate their official duties as a judge or prosecutor. Judges and prosecutors commit a disciplinary offence if, in the course of their official duty, they violate the principle of independence or impartiality by acting with prejudice or bias based on race, religion, colour, gender, political or other opinion, economic condition and sexual orientation of a party to the proceedings. They shall also be subject to disciplinary liability if they do not accord equal treatment required by law to the parties to the proceedings or their representatives, communicate to unauthorised persons information obtained in the course of their official duty, or accept any kind of gifts or remuneration which may lead to improper influence on their official decisions and actions.

Judges and prosecutors shall be subject to disciplinary liability if they fail to report any potential conflict of interest in the proceedings, including any *ex parte* communication

concerning the cases they are working on, or if they make public statements during ongoing proceedings which may adversely affect fair trial.

This Law provides a number of measures that may be taken against judicial office holders, beginning with a written reprimand. Reprimands can be public or internal. The sanctions that may be imposed when evaluating the disciplinary liability of judicial office holders include a temporary or permanent transfer to a lower level court or prosecution office, a temporary wage reduction by a certain percentage and for a specified period of time, and a proposal for dismissal, and their application depends on the seriousness of the disciplinary offence and the consequences caused by such behaviour. The Law also provides the steps to be taken in disciplinary procedure⁴⁸. On its web page, the KJC publishes the results of disciplinary procedure cases⁴⁹ at the national level of Kosovo, and results from the last three years are available. The web page shows statistical data on the number of complaints received, cases examined and final decisions made. Based on the available information, we note that several sentencing decisions were made in the first three quarters of 2021⁵⁰, and that in one case an investigation against a judicial office holder was initiated.

During 2021, seven (7) disciplinary procedures were initiated against prosecutors from the Office of the State Prosecutor of Kosovo who violated legal provisions while performing their official duties.

Some of the non-governmental organisations which regularly observe trials and follow the work of judicial organs examined the disciplinary procedures initiated and conducted in 2020 against judges and prosecutors who broke the law and violated their

⁴⁸ A case in which charges were brought for the rape of a minor girl, and in which criminal proceedings were recently conducted before the Basic Court in Peć/Pejë, can serve as the latest example of abuse of authority by judges and prosecutors. In the closing arguments before the court, the prosecutor only referred to mitigating circumstances. The court found this sufficient to pronounce the defendant guilty and pass a prison sentence of eight (8) months and eight (8) days for a criminal offence for which the CCRK provides a prison sentence of two (2) to ten (10) years for the basic offence, i.e. for its least serious form. The Chief State Prosecutor requested that the competent regional prosecutor initiate a disciplinary procedure against the prosecutor assigned to the case, while in the media the president of the Supreme Court of Kosovo called for disciplinary procedure to be initiated against the competent judge. By a decision of the president of the Basic Court in Peć/Pejë of 4 November 2021, a disciplinary procedure was initiated against the judge and she was suspended by a decision of the KJC.

⁴⁹ <https://www.gjyqesori-rks.org/vendimet-e-komisionit-disiplinor/>

⁵⁰ <https://www.gjyqesori-rks.org/decisions-of-the-disciplinary-commission/?lang=en>

official duties in the course of their work. For instance, in October 2020 the NGO KLI published a report entitled “Liability of Judges and Prosecutors”⁵¹. This report presents disciplinary procedures initiated against judges and prosecutors on the complaints filed by this organisation for breaches of law committed by judges and prosecutors in the course of their official duties, which the organisation noticed while observing trials.

The non-governmental organisation Group for Legal and Political Studies (NGO GLPS) also monitors the work of judicial office holders through its initiative called “Drejtesia Sot/Justice Today/Pravda danas”⁵². On its web page, this NGO regularly publishes daily reports on observed trials conducted before the courts in Kosovo. The NGO also provides analyses and commentaries on KJC’s work and its decisions taken at the end of disciplinary procedures conducted against judges from courts of various instances.

Based on the above, the following conclusion can be reached: disciplinary measures have been taken against a very small number of judicial office holders, and disciplinary committees are benevolent towards judicial office holders, which certainly cannot have a positive impact on the latter’s work.

(ii) Access to justice:

a. Does any reliable data and statistics exist that would allow an assessment on the length of potential civil law proceedings in Kosovo’s court system?

No official information on the average length of civil law proceedings in Kosovo is available. The courts regularly prepare periodic and annual statistical data indicating the number of completed and pending cases, but not the length of civil lawsuits. Therefore, the length of civil law proceedings can only be established indirectly, i.e. by regularly following the civil law proceedings and examining the case files or the redacted judgments⁵³ that are posted on the courts’ official web pages on a daily basis.

⁵¹ [file:///C:/IKD-Llogaridh%C3%ABnia-e-gjykat%C3%ABsve-dhe-prokuror%C3%ABve-14.10.2020-1%20\(1\).pdf](file:///C:/IKD-Llogaridh%C3%ABnia-e-gjykat%C3%ABsve-dhe-prokuror%C3%ABve-14.10.2020-1%20(1).pdf), only available in the Albanian language, accessed on 10 and 11 November 2021.

⁵² <https://www.rolpik.org/publikohen-vendimet-per-procedurat-disiplinore-te-zhvilluara-ndaj-nente-gjyqtareve/>, accessed on 3 November 2021.

⁵³ Judgements posted on the official web page of the KJC do not contain the personal details of the accused, witnesses, injured parties, victims, victims’ representatives, prosecutors in civil lawsuits, defendants (first and last name, father’s name, year of birth, gender, place and municipality of residence or personal identification number), or the names of expert witnesses and interpreters. <https://www.gjyqesori-rks.org/administrative-instructions/?lang=en>

More than 12,965⁵⁴ judgments handed down in criminal, civil, extrajudicial and administrative proceedings are posted on the official web page of the Basic Court in Priština/Prishtinë. The official web page of the KJC provides access to 59,999 court decisions⁵⁵. The posted decisions have been redacted pursuant to administrative instruction SSK 02/2016 of 2 February 2016⁵⁶. This instruction provides that final judgments shall be posted on the courts' official web pages. It also specifies the anonymisation procedure, i.e. the elements which a publicly posted judgment must not contain. In order to increase the transparency of the courts' work, this instruction was superseded by instruction 4/2019 of 27 December 2019⁵⁷. The new instruction provides that in order to improve the transparency of the courts' work all published judgements available in their final written form shall be posted on the KJC's official web page, with the exception of judgments in criminal cases involving minors in any capacity, marital disputes, paternity cases, misdemeanour cases and any other cases prescribed by law. This instruction also contains a manual on redacting court decisions. It, too, has been amended by administrative instruction 1/2021 of 18 October 2021.

Judging by the published statistical data which the KJC posts on its web page, in spite of numerous measures and strategies for reducing the backlog of pending cases, their number has not decreased; instead, they are carried over from one year to the next, and show an upward trend. There is even a noticeable backlog of unadjudicated cases received in one year, i.e. in a given calendar year, the influx of new cases is still greater than the number of adjudicated cases. Examination of judgments posted on KJC's official web page also shows that no cases are given priority, which means that there is either no obligation to first adjudicate pending cases, i.e. cases that were received earlier or have been pending for a long time, or that this obligation is not fulfilled.

⁵⁴ Accessed on 5 December 2021.

⁵⁵ <https://www.gjyqesori-rks.org/?lang=en>, accessed on 5 December 2021.

⁵⁶ <https://www.gjyqesori-rks.org/wp-content/uploads/lgs/ADM.%20UPUTSTVO%20SSK%20br.02-2016.pdf>
<https://www.gjyqesori-rks.org/wp-content/uploads/lgs/Administrative%20Instruction%2002-2016%20on%20Anonymization%20Publication%20of%20Final%20Judgments.pdf>,

⁵⁷ https://www.gjyqesori-rks.org/wp-content/uploads/lgs/79875_Udhezim_Administrativ_Nr_04_2019_per_Publikimin_Aktgjytimeve_te_Perpunuara_dhe_Manual_per_Publikimin_dhe_Perpunimin_Aktgjytimeve.pdf, only available in the Albanian language, accessed on 11 November 2021.

Based on the research of data stored on the portals of the KJC and the basic courts it can also be noted that in some basic courts the judicial staff assigned to adjudicate civil cases are relatively young and do not have sufficient experience to handle complex civil lawsuits. This is also indicated in the report of the European Commission for the Efficiency of Justice (CEPEJ), entitled “In-depth assessment report of the judicial system in Kosovo,” published in January 2018⁵⁸. According to this report, the LKJC sets out the minimum qualifications, rights and duties of judges adjudicating in courts of first instance, and only judges engaged in specific departments (i.e. serious crimes, administrative affairs and economic affairs departments of the basic courts and the Appeals Court) have to meet the requirement of additional qualifications and relevant professional experience. According to the report, measured by European standards, in 2014 Kosovo was among the countries that had the lowest number of professional judges per 100,000 inhabitants.

b. Would legal aid be available for the participating victims in private lawsuits before the courts located in Kosovo?

The question probably refers to free legal aid.

Crime victims in Kosovo can receive free legal aid through the Agency for Free Legal Aid (AFLA), which cooperates with several other non-governmental organisations, and the Free Legal Aid Center attached to the NGO KLI. The provision of free legal aid by the Agency is regulated by the Law on Free Legal Aid (LFLA)⁵⁹. The Law regulates the work of the Agency, the types of aid it provides, and who can use this aid, under which conditions and in what manner. The AFLA provides free legal aid in the whole territory of Kosovo and in all areas of law (civil, criminal, administrative, misdemeanour). The aid mostly consists in informing the parties about the rights they are legally entitled to, giving them legal advice and instructions on the available avenues for achieving the rights they are entitled to, obtaining the documents they need in order to exercise their rights, drafting written motions, and explaining how they can be represented before

⁵⁸ Chapter 7: Judges and non-judicial staff, 7.1. Types and number of judges, pp. 50 and 51 of the report, English language version: [IN-DEPTH ASSESSMENT REPORT OF THE JUDICIAL SYSTEM.pdf](#), accessed on 6 December 2021.

⁵⁹ <https://anjf.rks-gov.net/desk/inč/media/2E863E34-6579-4986-AB93-5D279A98FAČ0.pdf>

courts. Representation of parties before competent courts is performed by professional lawyers engaged by the Agency or the Center for Free Legal Aid (CPP) attached to the NGO KLI, while the other types of aid listed above are provided by the Agency's employees or the staff of NGOs with which the Agency has a partnership.

The Agency provides free legal aid to all persons who meet the criteria prescribed by law, i.e. persons who are citizens of the Republic of Kosovo or have permanent or temporary residence in Kosovo, other persons defined by law or international rules which are binding in Kosovo, and persons to whom free legal aid is provided on the basis of reciprocity.

The Law provides that in addition to the above criteria, a person is entitled to free legal aid if s/he is receiving welfare benefits or has below-average family income. The decision on whether a request for free legal aid meets the relevant criteria is made after an evaluation of the grounds for the request and the supporting evidence submitted with it. This evaluation is made by the Council for Free Legal Aid.

In its work, the AFLA is independent and autonomous from other public institutions. The Agency is supervised by the Council, which comprises representatives from the Ministry of Justice, the Ministry of Labour and Social Welfare, the Ministry for Returns and Communities, the Ministry of Finance, the Kosovo Bar Association, the Supreme Court of Kosovo, and one representative of the NGO sector. Members of the Council are elected by the Assembly of Kosovo. The Agency has seven (7) regional offices and mobile offices in municipalities in which regional offices have not been established. The seat of the Agency is in Priština/Prishtinë. The Agency's executive organ is the executive director, who coordinates its work.

Article 25 of the LFLA provides that no beneficiaries of free legal aid shall be discriminated against. All persons who fulfil the above criteria, i.e. who are receiving welfare benefits or have below-average family income, are entitled to free legal aid regardless of their national origin, ethnicity, race, colour, language, religious or political affiliation, gender identity, sexual orientation or health condition.

The procedure for receiving free legal aid is initiated by submitting an application to the nearest AFLA office. The application must be supported by the required documents or a statement of the victim or his/her representative. A decision to grant or deny the application is taken within five (5) days from the day of its receipt. A recipient of aid is obligated to inform the Agency of any change of his/her status. In case a recipient of aid has illegally benefitted from it, s/he shall reimburse the Agency.

With the support of the UNMIK Mission, the Center for Legal Aid (CLA KLI), attached to the NGO KLI, began its work in March 2019, as part of the Access to Justice Programme⁶⁰. The CLA⁶¹ was founded in order to offer all citizens equal opportunities in terms of access to justice and the respect of their human rights and freedoms in accordance with the principles set out in the Constitution of the Republic of Kosovo and the international protocols applied in Kosovo.

The CLA provides free legal aid to vulnerable groups in Kosovo in criminal, civil and administrative proceedings. It provides aid to women, assisting them to exercise their property rights. It also provides aid with regard to labour law issues and claiming the right to pension before the authorities of Serbia and legal support in protecting and providing rights for minorities, internally displaced persons, refugees and asylum seekers. The CLA KLI also provides legal aid to convicts, victims of domestic violence and victims of sexual violence committed during the armed conflict in Kosovo.

The objective of the CLA KLI is to provide access to justice to all, without discrimination based on race, colour, political opinions, national or social origin, community of origin, economic or social status or sexual orientation.

The criteria for receiving free legal aid are set out in the LFLA and are evaluated in each individual case. In emergency cases, the CLA KLI also provides free legal aid to other persons if it finds that their human rights or freedoms have been violated.

⁶⁰ <https://unmik.unmissions.org/work-justice-section>

⁶¹ <https://ndihmajuridikekd.org/en/who-benefits-from-cla-kli/>

c. What is the legal aid framework in Kosovo, how accessible and efficient it is? Are there sufficient funds available to ensure that legal aid is continuously provided?

The legal aid framework in Kosovo is provided in the Constitution, as its provisions protect and improve elementary human rights and freedoms. The laws that regulate this area are also a result of the implementation of international standards.

Pursuant to the legislation in force, legal aid may be provided in criminal proceedings if, at any stage of the proceedings, a defendant does not have sufficient funds to secure a defence counsel of his or her own choice, and defence is mandatory for the criminal offence in question (the possibility is provided in the KCPC)⁶². In such cases, the court is bound to assign to the defendant a defence counsel who will represent his or her interests before the court, and the expenses relating to this shall be borne by the court. The Criminal Procedure Code also sets out that defence shall be provided at public expense in certain other cases, even in proceedings for criminal offences for which defence is not mandatory⁶³.

Pursuant to the KCPC which came into force on 1 January 2013, the injured party or a person who sustained any kind of damage caused by commission of a criminal offence has the status of a party to the proceedings⁶⁴, and may be compensated by proceeds from the sale of the defendant's temporarily confiscated items, which may be permanently confiscated at the end of the criminal proceedings⁶⁵. The KCPC also provides that in the circumstances in which, for various reasons, the injured party cannot be compensated by the defendant, as prescribed by the relevant provisions of the KCPC, once the criminal proceedings are completed by the rendering of the final judgment, the court may refer the restitution order to the Victim Compensation Fund programme⁶⁶. In case the defendant pays only one part of the compensation due, it is possible to claim the remaining compensation from the programme.

⁶² <http://dpnsee.org/wp-content/uploads/2019/07/Zakonik-o-krivicnom-postupku.pdf>, Article 57 of the Code.

⁶³ Article 58 of the KCPC.

⁶⁴ Article 62, paragraph 1, item 1.3 of the KCPC.

⁶⁵ Article 62, paragraph 1, item 1.4 of the KCPC.

⁶⁶ Article 62, paragraph 1, item 1.5 of the KCPC.

Based on the available information about the Agency's activities and the results it has achieved, it can be concluded that through its regional and mobile offices it is present in all parts of Kosovo, including municipalities in which ethnic minorities constitute the majority of the population (Gračanica⁶⁷, Severna Mitrovica). These offices are achieving good results in providing legal aid, but their activities depend on the funds that the Agency has at its disposal. Members of ethnic minority communities are represented in the Agency's administrative structures.

d. To what extent is the ECtHR jurisprudence integrated in Kosovo case law in private lawsuits?

Article 19 of the Constitution of Kosovo provides that all international agreements ratified by the Republic of Kosovo become part of the internal legal system after their publication in the *Official Gazette* of the Republic of Kosovo. Moreover, Article 22 of the Constitution of Kosovo provides a direct application of international agreements and instruments guaranteeing human rights and freedoms. Pursuant to Article 53 of the Constitution, human rights and fundamental freedoms guaranteed by the Constitution shall be interpreted in accordance with the decisions of the European Court of Human Rights (ECtHR). Nevertheless, in judgments posted on the KJC web page (selected by random sampling), one cannot find examples of a frequent application of the ECtHR jurisprudence.

The issue of the application of the Geneva Conventions on human rights (GCHR) and the jurisprudence of the European Court of Human Rights (ECtHR) by courts in Kosovo is examined in more detail in KLI's report "ECtHR jurisprudence, an obligation on paper"⁶⁸, which was published in September 2020. According to KLI's report, which is based on an analysis of judgments rendered by Kosovo courts, selected by random sampling, application of GCHR provisions was only identified in approximately 10% of cases, while the situation is even more unsatisfactory as regards the application of the ECtHR jurisprudence. The GCHR and the jurisprudence of the International Court of Justice (ICJ) have most often been applied by the judges of the Basic Court in

⁶⁷ https://www.youtube.com/watch?v=RZ-ma_IFh-s

⁶⁸ *Praktika-e-GjEDNj-se-obligim-ne-leter.pdf, only available in the Albanian language. Accessed on 28 November 2021.

Priština/Prishtinë (in administrative and civil cases, and somewhat less often in criminal cases) and in some decisions of the Supreme Court of Kosovo.

The Academy of Justice of Kosovo (AJK) should play an important role with regard to the application of the GCHR, the ECtHR jurisprudence and the above articles of the Constitution of Kosovo, as it is responsible for the professional training of judges and prosecutors. In 2021, as part of its continuous training project, the Academy organised a number of training sessions on the application of the ECHR, the EU jurisprudence and international cooperation in criminal and civil law⁶⁹. In 2018 the Academy also prepared a manual entitled “Human rights in the jurisprudence of the European Court of Human Rights”.⁷⁰ Practically all international instruments regulating human rights can be found on the Academy’s official web page (e-library).

(iii) Issues of anonymity, intimidation, and protection:

a. How will the protective measures for victims be maintained if they pursue civil litigation in courts located in Kosovo?

This is one of the most challenging questions, to which it is extremely hard to give a reliable or final answer that would be in the interest of victims, simultaneously protecting their identity and allowing them to receive compensation.

In Kosovo, protective measures have so far mainly been applied in criminal cases based on charges of serious criminal offences, mostly *war crimes against the civilian population*. At the request of the prosecution, investigating judges or pre-trial judges decided if the application of protective measures was justified and whether they would be granted in order to protect witnesses or an injured party during criminal proceedings. On the other hand, protective measures have not been applied in civil litigation initiated by private claims in Kosovo (at least judging by the court practice to date, and the research conducted for the purpose of this report). However, analysis of the relevant constitutional and legal provisions suggests that a person who submits a claim or his/her legal representative may request the application of certain protective measures if they

⁶⁹ [Training Calendar - Academy of Justice \(rks-gov.net\)](https://ad.rks-gov.net/sq/doracak-dhe-udhezues/?year=2018).

⁷⁰ <https://ad.rks-gov.net/sq/doracak-dhe-udhezues/?year=2018>, accessed on 19 November 2021.

can show good cause. The court to which the claim is submitted, once it has evaluated the claim request and the proposed measures, may decide to grant or deny the proposal for the application of protective measures, including whether the hearings would be closed for the public and the media.

b. Would the Kosovo civil law system allow submissions of anonymous claims?

Pursuant to legal provisions which regulate civil litigation, anonymous persons cannot submit civil claims to judicial organs. Article 99 of the Civil Procedure Law clearly specifies what an application submitted to the court must contain.

c. Are courts well-equipped to ensure full anonymisation of plaintiffs (video link, voice and face distortion, entrance to the building and physical protection)?

As noted above, the practice of anonymisation of plaintiffs in civil law cases has not been applied in Kosovo to date, nor is it provided in the relevant legislation. In the proceedings conducted before the Kosovo courts, hearings in civil lawsuits are mostly held in courtrooms or in judges' offices, depending on the number of parties.

Some basic courts in Kosovo (e.g. in Priština/Prishtinë, Gnjilane/Gjilan and Prizren) are equipped with courtrooms from which a video link can be established with witnesses whose identity is to be protected, and who can be seen only by the chamber or the single judge managing the proceedings. Some courts (e.g. the Basic Court in Priština/Prishtinë and the Basic Court in Gnjilane/Gjilan) have separate entrances which are used to bring in suspects or defendants who are remanded in custody, as well as protected and anonymous witnesses. In court buildings in which such conditions are not available, the practice has been to use physical screens to shield defendants or anonymous witnesses from view, or else the hearings were closed for public. In such cases even the professional public was not allowed to attend the hearings, though its attendance is normally allowed in accordance with Article 295 of the KCPC⁷¹.

⁷¹ https://www.oak-ks.org/repository/docs/CRIMINAL_PROCEDURE_CODE_502172.pdf

d. What is the process of case file redaction? Who is responsible for anonymisation and redaction of case files?

The process of case file redaction and anonymisation is carried out in accordance with the KJC's administrative instructions, which define the relevant procedure. Anonymisation is performed by an expert appointed by the president of the court before which the case is heard. The KJC posts redacted versions of judgments on its official web page. The names of plaintiffs and defendants are redacted (if they are natural persons), as well as personal details such as the place of birth and residence⁷².

(iv) Questions on the operation of the private law system (such as evidence, statutes of limitation, appeals, length of proceedings, legal representation);

a. What are the evidentiary requirements for victims to submit claims in Kosovo civil courts?

In order to receive compensation for material and non-material damage, a victim should supplement the claim with material evidence, such as a report drawn up by a medical doctor or by expert witnesses of various specialisations (depending on the type of injuries sustained and consequences suffered) providing evidence of the degree of permanent consequences caused by inhumane treatment, or propose witnesses who can confirm the grounds for the claim and the allegations made in it. Evidence of death of close family members or the consequences that this produced for the surviving family members can also be proposed. The evidence submitted must be relevant to the case.

b. Would a criminal judgement by KSC suffice to substantive reparations claims? If so, under what conditions?

A final judgment rendered after the completion of regular criminal proceedings, in which the injured party is referred to civil litigation for the settlement of his/her property claim, may be used as the basis for submitting a claim for damages, which must be supplemented by material evidence confirming the allegations made in the claim, i.e. evidence of injuries that the victim claims s/he sustained in the relevant period (the period covered by the charges), evidence of consequences (temporary or permanent) of

⁷² [Udhezim Administrativ per anonimizimin dhe publikimin e aktgjytimeve te plotfuqishme.pdf](#), supplemented by administrative instructions from 2019 and 2021.

inhumane treatment which the victim was subjected to, or evidence of other health impairments or damage caused by commission of the crime.

A final judgment can also serve as the basis for filing a request with the Crime Victim Compensation Programme attached to the Ministry of Justice of Kosovo, or the CLA attached to the KLI, or for seeking professional aid from the AFLA (concerning the preparation of claims for damages or representation in court by lawyers engaged by the Agency).

The LCVC (Article 6, paragraph 1) specifies which crime victims may submit a compensation request to the Crime Victim Compensation Fund⁷³. This Article does not expressly include, as a category, the victims of crimes committed during the armed conflict in Kosovo, which would be similar to the category of victims that is used before the KSC. However, paragraph 2 of the same Article allows the possibility of considering such requests: “the Committee may review and decide on other applications received by individuals who claim to have been victims of other violent crimes, which due to their nature and the consequences caused may justify compensation in accordance with this Law [...]” The Crime Victim Compensation Fund Committee decides on the victims’ claims. There is no information indicating that any victim of crimes committed during the armed conflict in Kosovo has applied to the Compensation Fund to date.

Victims can also apply to the CLA KLI, which was established with the support of the UNMIK Mission, as noted above. This project provides support to specific categories of victims, but not expressly to victims of crimes committed during the armed conflict, except for the victims of sexual violence committed in this period.

The conditions for applying to the Victim Compensation Fund are presented in the first part of the present report. The conditions for applying to the CLA KLI for free legal aid are set out on their official web page⁷⁴, in the Albanian and Serbian languages.

⁷³ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10936>

⁷⁴ <https://ndihmajuridikeikd.org/>

c. Could a claim already be brought while appeals proceedings might be ongoing before the KSC?

Claims for damages may only be brought after criminal proceedings have been completed by the rendering of a final judgment. The KSC has a mandate to prosecute criminal offences for which long prison sentences are prescribed, which determines the statutes of limitations.

d. Which statutes of limitations do apply to cases covered in KSC's mandate in general, and the indictment in particular?

No statute of limitations applies to prosecution of *war crimes against the civilian population*, for which the KSC is mandated, pursuant to the law which was in force at the time of its commission (the Criminal Code of the Socialist Federal Republic of Yugoslavia –SFRY CC ⁷⁵).

In this Criminal Code *crimes against humanity* were not described as a distinct criminal offence, but they appeared in the title of a chapter (Chapter XVI – Criminal Offences against Humanity and International Law) which covered the following criminal offences: *genocide, war crimes against the civilian population, war crimes against prisoners of war, war crimes against the wounded and sick*⁷⁶, *organising and inciting a group to genocide and war crimes, unlawful killing and wounding of the enemy*, as well as some other criminal offences relating to war. The minimum penalty prescribed for these offences was five years in prison, or the death penalty which, in some cases, could be commuted to a sentence of twenty (20) years' imprisonment. In Kosovo, the death penalty has been abolished. A term of imprisonment of twenty (20) years could also be prescribed for grave forms of some criminal offences if the prescribed term for the offence is a prison term of up to fifteen (15) years, or in cases of repeat offences. There is no statute of limitations for the criminal prosecution of these offences, their investigation or the issuing of an indictment. Article 100 of the SFRY CC provides that

⁷⁵ <https://www.refworld.org/docid/3ae6b5fe0.html>

⁷⁶ For these offences the Code prescribed a penalty of no less than five years in prison, or the death penalty.

Article 38, paragraph 2 of the SFRY CC provides that a sentence of twenty years' imprisonment may alternatively be imposed for criminal offences for which the death penalty is prescribed.

Paragraph 3 of the same Article provides that if a term of imprisonment of up to fifteen years is prescribed for a criminal offence committed with intent, a term of imprisonment of twenty years may be prescribed for grave forms of the offence.

there shall be no statute of limitations on criminal offences of genocide and war crimes. Article 111 of the CCRK⁷⁷ also provides that no statute of limitations shall be applied to these criminal offences. Article 104 of the CCRK from 2019 also provides that there shall be no statute of limitations on criminal offences against international law and the offence of aggravated murder. Additionally, for these offences (which are also under the jurisdiction of the KSC) no statute of limitations applies to their investigation, the issuing of an indictment, or criminal prosecution.

However, a statute of limitations is applied to criminal offences specified in paragraph 2, Article 15 of the Law on the KSC, which refers to criminal offences against the administration of justice and public administration (Chapter XXXI, Articles 384-386, 388 and 390-407 of the CCRK) and criminal offences against public order (Chapter XXXII, Articles 409-411, 415, 417, 419, 421 and 423-424 of the CCRK from 2012).

Statutes of limitation are provided under Article 106 of the same CCRK. For the criminal offences listed above, the running of the statute of limitations is interrupted by any procedural act performed for the purpose of criminal prosecution, or due to circumstances provided under Article 107 of the CCRK.

Criminal prosecution cannot be initiated when twice as much time as set forth by the statute of limitations has elapsed. Criminal prosecution shall be absolutely barred when twice as much time as the length of the sentence prescribed for criminal offences from this chapter of the Code has elapsed.

e. What is the length of private lawsuits on average in Kosovo?

Based on the analysis of statistical data posted on the KJC's official web page, the average length of private lawsuits, from the moment when a claim is filed with the court to the rendering of the final decision, is longer than seven (7) years. Civil lawsuits tend to last longer if they are conducted before courts which have large municipalities under their jurisdiction and thus usually have to deal with more cases. What causes concern is that, judging by the KJC's statistical data, the backlog of pending cases continues to

⁷⁷ Which came into force on 1 January 2013.

grow in all courts of first instance, even though measures for speeding up the adjudication of pending cases have been applied for years⁷⁸.

There are no rules on determining priorities when adjudicating private lawsuits in Kosovo. It remains unclear why certain civil cases are adjudicated in a very short time after the lawsuits are filed, whereas some other cases remain pending for years, sometimes even for over a decade⁷⁹. What can be noted by analysing the judgments posted on the official web pages of courts and the KJC (selected by random sampling), is that many of the adjudicated cases are either relatively simple, or based on identical standard-form damage compensation claims (filed, for example, against expropriation, for compensation of unpaid salaries or for damages for injuries sustained in traffic accidents). This gives the judges an opportunity to complete cases in a fast, simple and easy way and simultaneously fulfil their mandatory monthly quotas.

In order to increase the efficiency of adjudication of pending cases, at the sessions of the conference of court presidents and supervising judges of regional courts held on 17 September and 1 November 2021⁸⁰, the KJC adopted a mandatory decision on adjudicating civil cases in chronological order, by the date of their filing.

f. What are the elements that impact the length of civil law proceedings?

In publicly available decisions from civil lawsuits⁸¹, which we selected by random sampling, no reasons are given for delayed proceedings or their length. However, there is no dispute that the backlog of pending cases affects the length of proceedings. Indeed, the number of such cases has grown over time, as they are carried over from one year to the next, particularly in lower courts. The judges' insufficient professional preparation for adjudicating civil lawsuits certainly also has an impact on the length of these proceedings. Another factor that greatly affected the length of civil lawsuits was the long-time use of a manual court records management system. An electronic court

⁷⁸ [Statistics from general annual reports – Këshilli Gjyqësor i Kosovës \(gjyqesori-rks.org\)](#), accessed on 3 December 2021.

⁷⁹ Earlier in the text I cited the example of a civil suit that remains unadjudicated after two decades.

⁸⁰ [92952 Vendimi KGJK se Nr 318 2021 Hartohet Strategjia per zvogelimin perkatesisht reduktimin lendeve e te vjetra.pdf](#)

⁸¹ Those posted on the KJC's official web page.

records management system was finally introduced in the majority of courts (lower instance courts, basic courts and the Appeals Court) in 2020.

g. How much access to justice do specific groups within the population have?

Constitutional provisions⁸² and the legislation in force prescribe the right to equal legal protection, without any discrimination⁸³. Human rights and fundamental freedoms are guaranteed to all communities and citizens of Kosovo. These regulations are harmonized with international agreements and conventions which are directly applied in Kosovo and take precedence over all national legal provisions. The courts are obliged to treat equally all parties to the proceedings and ensure that all citizens of Kosovo are equal before the law and have equal rights in court. Failure to observe these provisions is a violation of the law. In the event that there is any difference in the treatment of the parties by the court, the parties are entitled to initiate disciplinary procedure that may even result in judicial office holders being relieved of their duties or prevented from receiving any further promotions. They are also entitled to file submissions with complaints about the work of judicial office holders to the Ombudsman of Kosovo.

After a research that was mostly conducted in 2009, in February 2010 the NGO Humanitarian Law Center Kosovo (HLCK) published a report on the access of members of minority communities to judicial organs⁸⁴. Based on the results of the research it was noted that the legal framework relating to minority communities' participation in judicial institutions has not been fully implemented and that the law on the use of languages is not applied in all courts. The courts do not prepare official records in all official languages, i.e. Albanian and Serbian, as well as Turkish (at the court in Prizren, where this language is also official). It was also noted that judicial institutions tend to be inefficient when adjudicating cases filed by members of minority communities. Based on the results of the research it was also noted that some courts acted with undue delay when adjudicating civil cases, especially when parties to the proceedings were

⁸² Article 24, paragraph 1 of the Constitution of Kosovo: "All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination."

⁸³ Article 7, paragraph 1 of the Law on Courts of Kosovo: "The courts shall treat all persons in an equal manner, without any discrimination based on race, colour, gender, language, religion, political or other opinion, national or social origin, community of origin, property, economic or social status, sexual orientation, birth, disability or other personal status."

⁸⁴ [Vleresimi%20i%20qasjes%20se%20komuniteteve%20pakice%20ne%20sistemin%20e%20drejtesise%20ne%20Kosove%20AL.pdf](#),

members of minority communities, whose applications to the Kosovo courts were on the rise.

In June 2021 the Organization for Security and Co-operation in Europe (OSCE), which regularly and continuously monitors the rights of members of non-majority communities, published its latest, fifth “Community Rights Assessment Report”⁸⁵.

According to the findings contained in this report, the inter-ethnic relations improved since the previous report on communities’ rights in Kosovo which the OSCE had published in November 2015, even though significant divisions continue to exist between the Kosovo Albanians and Kosovo Serbs. Social and institutional interaction has been enhanced and no cases of major inter-ethnic violence occurred.

The report noted the positive changes regarding access to justice and the improved ethnic composition of the judiciary staff . In October 2017, the President appointed by a decree forty (40) Serb prosecutors and thirteen (13) Serb judges who were to be integrated into the Kosovo judicial system. Most of the judges were assigned to the Basic Court in Mitrovica/Mitrovicë, five (5) were assigned to the Basic Court in Gnjilane/Gjilan (and delegated to the branches of this court in Vitina/Viti and Kamenica/Kamenicë), while one judge was assigned to Uroševac/Ferizaj (the branch in Štrpce/Shtërpçë). Simultaneously, Kosovo Serb judicial support staff signed their contracts at the Basic Court in Mitrovica/Mitrovicë and a Serb judge was appointed as its president. The integration of these judges has been unhindered.

According to the findings of a KBA report, in the period between 2018 and 2020 twenty-one (21) Kosovo Serb law graduates completed their internships, thirteen of them passed their bar exam as of October 2020, and there are no obstructions to their integration into the judicial system.

As of the end of 2019, a total of 422 judges were elected in Kosovo, of which 369 Albanians, 43 Kosovo Serbs, eight (8) Kosovo Bosniaks, one (1) Kosovo Roma and one

⁸⁵<https://www.osce.org/files/f/documents/6/f/493675.pdf>, accessed on 5 December 2021.

(1) Kosovo Gorani. The changed ethnic composition of the judges greatly facilitates access to justice for members of minority communities.

According to the report, even though progress has been made with regard to the use of languages, there are still difficulties with providing competent and professional interpretation services in the judicial system.

Even though reports from different periods note that progress has been achieved in almost all areas of the judicial system, there are still great problems with regard to undue delays and lack of professionalism in court proceedings. In cases involving members of minority communities as parties to the proceedings, there are significant problems with interpretation of court hearings and translation of court documents. Translations often remain inadequate and imprecise, especially as regards specialised legal terminology. Such issues with interpretation of trials and translation of court documents lead to delays in court proceedings and thus to a violation of the defendants' right to be tried within a reasonable time, especially in criminal cases in which suspects or defendants are in custody.

As an addition to the above report, it should be noted that two Kosovo Serb judges have been appointed to the Appeals Court seated in Priština/Prishtinë. In cases in which defendants are members of minority communities, this court mostly has ethnically mixed appeal chambers. The Appeals Court also has a department attached to the Basic Court in Mitrovica/Mitrovicë, which decides as a court of second instance on judgments rendered by the Basic Court in Mitrovica/Mitrovicë or any of its branches in cases in which parties to the proceedings come from different ethnic communities. It is also at the disposal of the Appeals Court when necessary to set up ethnically mixed chambers.

h. Is there any existing data or research that captures any level of bias against specific groups?

It is difficult to confirm whether courts have any bias against specific groups; even though such bias can occasionally be observed, it is not possible to assert how widespread it is. One might say that it is a common denominator in community rights analyses prepared by many relevant organisations (OSCE, HRW, HLCK).

In their report which covers the period from January 2016 to December 2019 (and which was published in March 2021), the Organization for Security and Co-operation in Europe (OSCE) notes that there has been an improvement in the protection of community rights⁸⁶ by the Kosovo institutions. The legal framework guarantees the right to freedom, security, fair trial and equal access to justice regardless of national origin and religious affiliation. If judicial office holders displayed bias against anyone, this would constitute a violation of the Constitution and the legislation in force. Anyone who notices any such behaviour of judicial office holders may report this to the relevant organs, including the Ombudsman of Kosovo, so that adequate disciplinary measures may be taken. Such a report should be supported by evidence confirming that unlawful acts have been committed.

According to the report, the main problems that members of minority communities face in courts are the backlog of pending cases, the lack of adequate professional skills among judicial staff, protracted proceedings, political interference and translation and interpretation issues.

(v) International enforcement of judicial decisions, as Kosovo lacks judicial cooperation agreements or diplomatic ties in numerous jurisdictions, and relevant assets could still be held in those jurisdictions.

a. How will judicial decisions of private proceedings be enforced in cases where a defendant's assets are kept in a foreign country that lacks judicial cooperation agreements or diplomatic ties with Kosovo?

In such cases it will not be possible to enforce a decision against the defendant or convict and compensate the victims from their assets kept in a country that lacks judicial cooperation or reciprocity agreements with Kosovo.

⁸⁶ [5th SR Kosovo EN.docx.pdf-2021.pdf](#), *ibid*.

The issue of international judicial cooperation and legal assistance is regulated by the Law on International Legal Assistance in Criminal Matters⁸⁷. Pursuant to the provisions of this Law, Kosovo's international cooperation is regulated by international agreements. In the absence of international agreements, international legal cooperation shall be administered on the basis of the principle of reciprocity. Judicial procedures for providing international legal assistance are regulated by the provisions of the KCPC. Pursuant to the provisions of this Code, cooperation is administered through the Ministry of Justice.

It can also be noted that according to the current mandate of the EULEX Mission, launched by the Council Decision CFSP 2021/904 and extended until 14 June 2023, the EULEX Mission performs monitoring activities, provides support to relevant judicial institutions and has limited executive powers, which consists in performing operational duties.

EULEX also continues to provide support to the KSC and the SPO, which is regulated by separate laws. Pursuant to the relevant legal provisions, the Kosovo Police (KP) provides support to EULEX in performing its duties vis-à-vis the KSC and the SPO.

It is an undisputed fact that Kosovo is not a member of Interpol, Europol, or other organisations facilitating international police cooperation. However, pursuant to the legislation regulating the mandates of the UNMIK and EULEX missions in Kosovo, the Kosovo Police can carry out its international duties through the UNMIK Interpol Liaison Office. The KP can also discharge its international duties through the EULEX International Police Cooperation Unit (IPCU) or the European Union Office of Criminal Intelligence (EUOCIU)⁸⁸.

The Kosovo Academy for Public Safety is a member of various European and international associations for training and education in public security and law

⁸⁷<http://old.kuvendikosoves.org/common/docs/ligjet/Zakon%20o%20medunarodnoj%20pravnoj%20saradnji%20u%20krivicnim%20pitanjim.pdf>

⁸⁸ <https://www.eulex-kosovo.eu/?page=2.59>, <https://www.eulex-kosovo.eu/?page=2.11.527>; <http://aksp-ks.net/?page=2.247>, accessed on 13 November 2021.

enforcement⁸⁹. It follows from this that the KP, in cooperation with these organisations, or through their mediation, can significantly contribute to the investigation and verification of issues referred to in the above question, i.e. establish whether any assets of potential suspects are kept in foreign countries, and if so, in which countries.

b. How many countries do have judicial cooperation agreements with Kosovo?

According to information provided by the Ministry of Justice, Kosovo has signed twenty-seven (27) agreements on various forms of judicial cooperation to date. These agreements are implemented as needed. [REDACTED]. [REDACTED]. [REDACTED]⁹⁰.

⁸⁹48 <https://md.rks-gov.net/page.aspx?id=1.16>, accessed on 13 November 2021.

⁹⁰ In the case of *Prosecutor v. Shemsi Garaj*, who was arrested in 2019 on suspicion that he had committed a *war crime against the civilian* population. After evidence was obtained through international judicial cooperation, proceedings against him were terminated.