

Annex 2 to
Transmission of Expert Reports

Public

Public Redacted Version of
Report submitted by [REDACTED]

INTRODUCTION

Taking into consideration the request for a report has been comprehensive it has mainly focused on some questions from the document Annex to *Victims' Counsel Submission on the Second Decision on the appointment of expert(s)* List of questions for the consideration of expert(s), and [REDACTED]
[REDACTED]
[REDACTED], and even present the answers in the form as if I were the lawyer of these victims in order to make these questions clearer to their submitter.

The history of the victims in the Republic of Kosovo is sad, both for those who are not among living today and also for the survivors of the armed conflict of 1998-1999, as well as for those victims who are under the jurisdiction of specialized chambers. [REDACTED]
[REDACTED] several war crimes trials held in the Republic of Serbia,
[REDACTED]
[REDACTED]
[REDACTED] first there were hesitations, and still there are, to seek material and non-material reparations for deaths and damages to the living and this has come as a result of the complicated legal basis, the sabotage that the civil courts in Serbia have constantly made on these cases as well as the reluctance of the victims themselves, because in the perception of the Albanian victims caused by Serbia, receiving financial compensation is perceived as a sale of the lives of the victims and also the wider circle of families has dealt them with criticism.

In the case for which I have been contracted to answer some of the questions, I must emphasize the fact that also the victims who are the result of the cases handled by the Specialist Prosecutor's Office have the same fate and will go through the same vicissitudes as the other victims of the conflict in Yugoslavia.

In the Republic of Kosovo, in the public perception, Specialized Chambers do not have positive authority over cases in which these chambers have jurisdiction. The citizen of Kosovo has thought and believed that in these chambers people shall be tried for organized crime and corruption, even the expectations have been very high, however, for the citizen of Kosovo the cases these chambers are dealing with are sensitive, because they never want to believe that Kosovo or certain people on behalf of Kosovo have committed war crimes. Also, there is a conviction that some of the victims have taken advantage of this situation for personal purposes in order to achieve their personal goals by seeking the status of protected witnesses. [REDACTED] war crimes trials held by **UNMIK** or **EULEX**, some persons who presented themselves as protected witnesses, even if they changed their voices or covered their faces, almost all of them, or the region where the event had taken place, were known to the public. Then their labeling was inevitable, accusing them as collaborators of Serbia, or persons with personal interests.

(I) SOCIO-LEGAL QUESTIONS

Corruption in the Republic of Kosovo is a perception and reality at the same time, to say that there is no corruption would be utopia, many international reports and especially the progress report and that of the US State Department¹ for years have reported corruption in the legal and political system of Kosovo.

¹ Corruption and its impunity by Kosovo institutions is the headline of reports on Human Rights in the World, published by the US Department of State, in the last three years. In addition to endemic corruption in decision-making institutions, these reports cite other significant problems in the country, such as threats and violence against journalists, attacks on minorities, and political interference in the judiciary. In the latest DASH report on world human rights in 2020, it was said that many corrupt officials continue to hold positions in the public sector, VOA reported.

1. <https://www.state.gov/reports/2020-investment-climate-statements/kosovo/>

Even the EU progress report over the years has reported that the legal system of Kosovo suffers more from incompetence than from corruption, and I personally share this opinion [REDACTED]. Regarding corruption, there have been well-known corruption scandals involving high profile Kosovo politicians.² These affairs, although not at a satisfactory level, have received some punishments, but regarding the consequences caused by the lack of professional ability of the legal staff, the punishment is at a lower level or simply it does not exist.

However, these reports, such as progress report and that of the state department, when referring to corruption, in essence, aim at the politics or punishment of politicians and somewhat ignore the citizens who suffer from everyday corruption of low level of the judicial system which directly reflects on their lives. This mostly concerns some civil cases of ownership, compensation of damages, status issues, or criminal matters of the first level of importance of the general department such as minor bodily injuries, theft, etc.

If we refer to question (a) there are two elements, corruption and interference and these two elements are present in the legal system of Kosovo. We have had some judges and prosecutors of Kosovo who have been arrested for corruption. International prosecutors and judges who have served in Kosovo have are not an exception from this phenomenon and their affairs are known to the Kosovar and international public³. In the footnotes below I provided some credible and serious media sources on some corrupt topics which now have a final epilogue and have

² https://www.europarl.europa.eu/doceo/document/A-9-2021-0031_EN.html

³ <https://telegrafi.com/prokurori-mustafi-denoht-me-pese-vjet-burgim-per-korrupsion/>- The head of the Anti-Corruption Task Force, Nazmi Mustafi, and his suspected accomplice, Reshat Zherka, were arrested on Monday on suspicion of involvement in corruption, on suspicion of abuse of office or influence. <https://www.rolpik.org/gjyqtari-sali-berisha-mbetet-ne-paraburgim-edhe-per-dy-muaj-nen-dyshim-per-korrupsion/> Judge of the Department for Serious Crimes in the Basic Court in Peja, Sali Berisha, was arrested on 19.09.2019 after an operation of the Directorate for Investigation of Economic Crimes and Corruption, the secret measure "simulation of a criminal offense" was used, in which case the judge received from the victim the amount of two thousand (2,000.0) euros to influence the criminal case/case concluded with a judgment some time ago, before which after the arrest were found in his pocket. <https://www.zeriamerikes.com/a/kosove-tete-gjyqtare-te-akuzuar-per-korrupsion/1450112.html> <https://top-channel.tv/2014/11/03/rrefehet-ish-prokurorja-e-eulex/>

often been used by Kosovo politics as cases in which they have sought to present success in the fight against corruption within institutions of justice.

████████████████████, the system has often tried to present some criminal cases in Kosovo as a fight against corruption, but which in reality have never been serious cases of fighting this phenomenon, many times perception and reality have not matched in terms of the legal system in Kosovo.

From my experience i can give a personal assessment that the perception is higher on corruption in the courts or in the prosecution and the police than in the reality, but I can also give a personal opinion that this practice is often more harmful than the perception. In Kosovo, in some occasions, the case files had an inscription LV (Visa Liberalization) which meant that it is about the cases that have been targeted either by the progress report or the Government or someone else as cases which we have to present as evidence on the fight against corruption. Unfortunately, most of them were cases involving not very important people of low political level or low level of justice system, e.g., court clerks, court postmen or archivists.

The other question about the interference among the legal staff is a fact but not evidence. There are three types of judges or prosecutors in Kosovo which I have personally categorized. I have made this conclusion on the basis of ██████████, my experience in civil society as well as personal discussions with different people who are familiar with the political and social circumstances.

First when UNMIK had jurisdiction over one of the four pillars of international administration, one of them was justice. UNMIK preferred two categories of judges and prosecutors and the police. Former members of these institutions who had worked in the Yugoslav legal system until the abolition of autonomy. This category of judges, prosecutors and police was suitable to be influenced by UNMIK but also by Kosovo politics since they were easily vulnerable because of their past. While UNMIK preferred this category because of their the past, Kosovar politics preferred

this category to use or perhaps even to blackmail them, because some of these judges and prosecutors or police officers have been perceived as former Titoists ⁴ by a part of Kosovo politics, who at certain periods during the constitutional changes of Yugoslavia 1988-89 have maintained a pro-system stance, therefore a considerably good part of the legal and police staff have not been credible.

Second UNMIK - has preferred some of the former judges and prosecutors of the former apartheid system of Slobodan Milosevic who, unlike the first category, continued to work in the system of the Federal Republic of Yugoslavia, respectively Serbia, until 1999. Most of this category of judges, prosecutors or police officers belonged to minorities but there were also Albanians, in this category of legal staff there were potential opportunities for interferences by many parties, by UNMIK itself, Kosovo and even Serbia.

There are a number of known corruption scandals involving some civil cases of land acquisition that were once public property until 1989, and after that period through a law passed by the Serbian parliament in 1994 on property restitution. transferred to private ownership, mainly of Kosovo Serbs, and also of Serb refugees from Bosnia and Croatia, where these properties were later bought mainly by Albanians, One of the largest cases of this affair that are the case TOKA⁵ involving politicians, members of parliament, judges and lawyers.

Third are the legal staff, a category of lawyers who, almost depending on the political power of the political parties, have been selected as part of the legal system. This category differs from the first two and the influence or interference in them is mainly from Kosovo politics.

We must conclude that in all three of these aforementioned categories the number of this staff is small compared to the other number of professional judges with moral

⁴ Titist means supporter of the policy of the former communist president of Yugoslavia Tito.

⁵ <https://www.rolpik.org/rasti-toka-del-para-gjykates/>

and professional integrity. But, often, the interferences have been sophisticated and impossible to be investigated from an administrative point of view. This has been noticed in the allocations of cases. The Chief Prosecutor or the President of the Basic Court has had the opportunity to assign the court cases to any of his staff and has also had the opportunity to withdraw and transfer them from one staff to another. This has often been criticized by civil society or court monitors. Even the priority of civil cases and the statute of limitations of criminal cases has been considered as a kind of interference, because there have been very substantial analyzes and reports on this topic⁶.

It should be noted that the past 5 years, the legal system in Kosovo has went through substantive reforms, mainly in the organizational aspect, in case management, but also with appointment of a new caste of judges and prosecutors which have brought a great freshness and professionalism in comparison with previous years. This caste of new judges and prosecutors fortunately belong to a new generation and do not have any background related to the three categories mentioned above, also case management program has also been introduced where cases are now assigned electronically and it is impossible to interfere or transfer cases from one judge to another, and in case any transfer or change is made then this interference may leave traces in the system and then it is identifiable by whom the alterations were made. This approach has significantly eliminated the corruption of some administrative officials who were mainly corrupted by the parties, lawyers and other persons in order to assign cases to the preferred judges of the parties.

Undoubtedly the question is, how this interference or corruption is manifested, what are the interferences, in which cases and for what benefits. The international community has mostly been focused on cases with political elements and has sometimes sidelined interference or corruption in non-political spheres.

⁶ <http://preportr.cohu.org/sq/hulumtime/Qindra-lende-mund-te-parashkruhen-deri-ne-fund-te-vitit-322>

The Kosovo Assembly had opened a parliamentary debate on a known case tried and retried several times, known as the KICINA case⁷, which was considered by independent monitors as a direct interference in the competence of the judiciary.

In another case, in which a former mayor of a municipality in Kosovo was involved, the case was on trial and a day before the court hearing, the former Prime Minister of Kosovo visited that city to see and inspect some government-funded works. The media had covered the event and all questions were about the court hearing to be held the next day and no one asked about those financial investments. This story, this visit, was a kind of interference or even a sophisticated pressure that you can hardly qualify as an interference.

In these two examples described above it must be tried to find the purpose and benefit of this interference. I think that interferences of this nature are credited to the so-called patriotic issue for it is claimed that one or several people have been unjustly convicted of war crimes and the politics claims that it can establish justice but has no material or corruptive interests, while the other part attributed to the mayor can be perceived as interference for political purposes with benefits for a wider political group.

But another aspect of corruption or interference in Kosovo for years has been issues related to the Privatization Agency of Kosovo and cases that have since been referred to the Special Chamber of the Supreme Court. This is a topic that has unfortunately been overshadowed by criticism or monitoring, and even very few donors have supported projects related to monitoring these procedures.

Given that the legal system in Kosovo and its shortcomings are not always related to judges, prosecutors or police officers, since the establishment of the legal system in Kosovo has never managed to have an entirely comprehensive staff. What I mean by

⁷ <https://kallxo.com/gjate/kqjk-ja-kunder-kuvendit-per-rastin-kiqina/>

this is that, to date, the legal system of Kosovo, the judiciary, the prosecution, and no Judicial District has the necessary number of judges, and the support staff does not even closely meet the needs that a Basic Court or Prosecutor should have.

For instance, in [REDACTED] Ferizaj, which comprises municipalities such as Kacanik and the minority municipality of Sterpce, there are a total of 29 judges for approximately 200,000 inhabitants.

These judges do not have any assistants or permanent legal advisers to help them, which means that a judge himself must take care of the writing part of the documents. According to independent analysis, this court needs at least 80 judges in order for all cases to be able to be processed within the legal deadlines. What this means within the legal deadlines - a civil lawsuit after submission to the court within 30 days must be sent to the opposing party for a response, although in practice this is done, but the average in the city of Ferizaj is 2 years to start work or hearings. This delay is due to the large number of cases and the small number of judges.

What this means within the legal deadlines - a civil lawsuit, after submission to the court, must be delivered to the opposing party for a response within 30 days, although in practice this is done, but the average to start the procedure or hearings in the city of Ferizaj is 2 years. This delay is due to the large number of cases and the small number of judges.

There is no legal or administrative mechanism for accountability for case delays, because the reasoning will always be that objectively this is impossible due to the large number of cases.

Kosovo's judicial and prosecutorial system is regulated by the Law on Courts⁸

The court system of the Republic of Kosovo consists of the Basic Courts, the Court of Appeals and the Supreme Court. With the technical agreement of Brussels between

⁸ <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18302>
<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18302>

Kosovo and Serbia, a special department of the Court of Appeals has been established that deals with some issues related to the Serb minority.

The State Prosecutor in the Republic of Kosovo is organized in the following Prosecutor's Offices: Basic Prosecution Office consisting of the General Department, the Department for Juveniles and the Department for Serious Crimes. Appellate Prosecution consisting of the General Department and the Serious Crimes Department of the Prosecution, Special Prosecution Office; and the Office of the Chief State Prosecutor. Cases that fall within the competence of the Department of Economic Affairs or the Department of Administrative Affairs before the Basic Court will be assigned to prosecutors at the General Department of the Basic Prosecution Office.

The Republic of Kosovo has recently adopted a law on disciplinary liability of judges and prosecutors ⁹ which is quite advanced and provides very clear mechanisms for mutual responsibilities. This case has been resolved significantly better than it once was through the special Office of the Disciplinary Counsel as this mechanism has not shown any practical success due to the ambiguities it had.

However, the current law has not accomplished any satisfactory implementation, because there has been an internal amnesty regarding alleged violations. Although the law has clearly defined the procedures, they have often not been transparent in relation to the complainant and the alleged perpetrator.

For some cases related to corruption, violation of the rights of the parties, or obstruction of access to justice, the main responsibility is not always the judge. In many cases the violation of a right of a certain party comes from the administration or other people working for the judge, and this then complicates the disciplinary procedure, due to the fact that a judge does not have the authority to punish an official

⁹ <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18336>

or court clerk for the fact that the latter does not answer to the judge but to the court administrator and there is a separate procedure against them.

And in those cases where the violation of a right has been committed against a certain party by a staff member of the court or the prosecution and not directly by the judge, it results with inefficiency of these mechanisms, because a judge can be cleared from a complaint, and the the party may be advised to address the complaint against the staff, whcih then thrashes confidence or sometimes even the purpose of the complaint. Often the punishments that the judiciary imposes on the parties are not acted upon simultaneously with the judiciary itself.

If we refer to Article 5 of this law from point 2.1 to point 2.16, a complainant finds it difficult to prove some of these violations, due to the fact that in the judicial system, although they are provided by law, there is no audio-visual recording of court hearings, and the minutes are dictated by the judge. Therefore, in the current situation, it is difficult to prove whether a judge expresses racial or religious intolerance towards a certain party, he may say a great number of words indicating he does such an action, but until they are not written in the minutes it would be difficult to prove therefore these measures may be ineffective

Although we have made progress in this regard, because the judicial and prosecutorial councils have decided that all hearings should be audio and video recorded starting from 2022, this in my opinion will significantly improve transparency and will provide great opportunities to challenge decisions on other issues as well.

If you refer to item 2.7 of Article 5 "in continuity fails to timely perform official duties required by Law;" this is such a comprehensive wording which allows it to be misinterpreted by both parties, judges and parties - the complainants. I responsibly say that as I have elaborated above, due to the large number of cases and the

insufficient number of judges, almost no case may be performed on time, except for criminal cases which are explicitly related to legal deadlines

Recently, the Judicial Council has decided that the complaints against the judges shall be published on the official website of the KJC. I also consider that in civil cases that are of more interest in this report, civil parties can also use the law on civil procedure to request the disqualification of a judge if there are other circumstances that call into question his impartiality.¹⁰ This procedure is considered effective if the party proves it clearly and fairly.

(II) ACCESS TO JUSTICE

Undoubtedly, it is indisputable that the judicial system of Kosovo offers a real and fair access to justice, this is also regulated by the law on courts ¹¹ The courts shall treat all persons in an equal manner, without any discrimination based on race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.

With the start of use of the CMIS case management system, unlike previous years, now the judicial system of Kosovo has a good and credible database, the official website of the Kosovo Judicial Council¹² and that of the Prosecutorial Council ¹³ is quite extensive with credible statistics related to the cases management, also, through

¹⁰ CHAPTER III EXCLUSION OF THE JUDGE FROM THE CASE Article 67 67.1 A judge may be excluded from the legal matter: g) if there are other circumstances that challenge his or her impartiality. Article 68 68.1 A party shall be bound to request disqualification of a judge as soon as he or she learns of the existence of grounds for disqualification and no later than before the conclusion of the main procedure and if there is no procedure until the moment the appropriate decision is made. 68.2 The party in the appeal procedure may determine the judge that can not take part in the decision due to circumstances of the article 67 of this law.

¹¹ [LAW NO. 06/L-054 ON COURTS](#)

¹² <https://www.gjyqesori-rks.org/?lang=en>

¹³ <https://prokuroria-rks.org/en/>

this site it is possible to make links with other courts of the justice system, i.e., all basic courts and its branches

What is evident and which has been clarified in relation to other questions, the duration of civil cases is still concerning, but it depends on many factors, elaborated so far. We should also note that no format or methodology has yet been found on how cases could be processed more quickly, even though there have been numerous attempts. It is worth taking as a reference, the National Audit Office has published the performance audit report "Efficiency of Civil Case Management in Basic Courts", although this is from 2017 some of such problems still exist today.

The courts continue to deal with a significant number of old cases that remain unresolved, and the total number of civil cases, in addition to not being reduced, is constantly increasing. As a result of the large number of civil cases in the Basic Courts, citizens are forced to wait for long periods of time for the case to be reviewed and finalized. At the same time, the fact that the trend of cases that remain unresolved from year to year is constantly increasing is worrying, and if measures are not taken to improve this situation, then the judiciary may collapse.¹⁴

Although since 2017 when this report was published the situation has improved significantly many similar problems have remained. In 2021 the Auditor had drafted a report on case management which had concluded that despite continual progress in CMIS in the KJC and KPC, the results of the audit have shown that the full extension of the implementation of this system in all instances in the courts and prosecutor's offices has not been yet realized. The automatic allocation of cases in the court and the prosecutor's office, the interaction of the CMIS of the prosecutor's office and the court for all files and statistical reports with advanced indicators are some of the developments that need to be fully finalized. Moreover, the information technology

¹⁴ https://www.zka-rks.org/ep-content/uploads/2017/11/Raport-Auditimi-Gjykatat_eng.pdf

strategy in the KJC has not yet been drafted and standard operating procedures have not been fully implemented in the KPC.¹⁵

The impact of COVID-19 (with judicial disruptions to access to justice, significant delays and increases in the number of unresolved cases) cannot and should not be ignored. These challenges are expected to have consequences in the coming years which will affect the overall efficiency of the judicial system. Therefore, it is essential that all institutions of the justice sector, including the MoJ, make the reduction of backlogs, and support for accurate data collection as an objective for their annual and/or multi-year work strategies. As long as the transition to e-Justice will be part of such strategies, then this should be done while guaranteeing the protective elements of the Rule of Law that ensures effective access to justice for all.

In October 2020 *the report supported by the Joint Project of the European Union and the Council of Europe "KoSEJ II* was published regarding the comparative assessment of the judicial system in Kosovo 2014, 2017 and 2018 concerning the efficiency of civil cases.¹⁶ This report, in my opinion, has a very realistic and fair estimate and the same can serve as a very important resource for analyzing statistical data.

The question posed is too narrow to give a brief answer, citing the law on courts that Every person has the right to address the courts to protect and enforce his or her legal rights. Every person has the right to pursue legal remedies against judicial or administrative decisions that infringe on his or her rights or interests, in the manner provided by Law.

Why I think it is a too narrow question for a short answer. The victims that will emerge from the trial led by the specialized chambers is a matter in itself, because they have come as a result of suspicions of criminal offenses, war crimes, criminal offenses

¹⁵ https://www.zka-rks.org/ep-content/uploads/2021/06/SMIL_2021_Shqip.pdf

¹⁶ <https://md.rks-gov.net/desk/inc/media/77344FC5-D450-4BF3-954D-D20E1F0C3E14.pdf>

against humanity. In Kosovo there is a law for compensation of victims of crime¹⁷ that regulates the right to financial compensation for victims of violent crimes and their dependents, the decision-making authorities and the procedures on the right to compensation in national and cross-border situations. According to this law there are also these definitions which may be used as comparative possibilities such as **Crime Victim** - the victim as defined by the Criminal Procedure Code. For the purpose of compensation this term may include family members or the dependents of the direct victim as appropriate. **Dependents** - the persons maintained by the deceased and were entitled or required by law to be maintained by the deceased. **Violent compensable crime** - a violent criminal act, determined by this Law as compensable, which results in the death, serious bodily injury or serious damage to physical or mental health of the victim; **Damage** - impairment resulting directly or indirectly from an action, including loss of property, loss of profit, deprivation of liberty, physical injuries and damages of mental health or loss of life of a spouse or member of a close family; **Applicant** - an individual who submits an application for compensation with the allegation that he is a victim of crime. This term includes other persons who may file an application on behalf of the victim; **Beneficiary** - the person who with the decision of the Committee benefits from the right to compensation according to this Law.

I consider that this law, the Law no. 05/L-036 ON COMPENSATION OF CRIME VICTIMS, cannot be applied to cases handled by specialized chambers used as a legal basis for civil compensation. This is due to the fact that this law refers to criminal offenses from Chapter XVI¹⁸ of the Criminal Code of Kosovo for criminal offenses against life and body as well as criminal offenses regulated by the Law on Protection from Domestic Violence.

¹⁷ <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=10936>

¹⁸ <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18413>

I consider that any private lawsuit that would take this law as a basis, it could not be processed in the courts due to the legal basis and due to the procedural deadline. It should be borne in mind that specialized chambers deal with crimes against humanity and values protected by international law¹⁹. In this case it is known that this category of criminal offenses has no statute of limitation²⁰ given the fact that according to the criminal code of Kosovo article 104 paragraph 2 no statutory limitation shall apply to aggravated murder, and it may be possible to find a small space for the law on compensation of victims of crime to be applied for compensation, but this issue can be discretionary because it can be challenged by the opposing party in terms of filing a claim under the law on victim compensation. In the continuation of this report, we will give some examples which the victims could apply for filing private lawsuits.

The Criminal Code of the Republic of Kosovo does not provide the definition of the notion victim. However, the CCRK contains some provisions which express the protection of victims of criminal offenses. Starting from the purpose of the sentence, Article 38, paragraph 3, as the purpose of the sentence also mentions the compensation of victims, "to provide compensation to victims or the community for losses or damages caused by the criminal conduct" (CCRK, Article 38, paragraph 3, 2019). Further, when imposing a suspended sentence, the court may impose a suspended sentence on the accused "to compensate or retribute the victim of the criminal offense" (CCRK, Article 56, par. 12). Also in supplementary sentences, more precisely in Article 61 "The court, when sentencing a person who has been convicted of any offense involving the theft, loss, damage or destruction of property, shall order that the perpetrator make restitution to the victim of the offense" (KPRK, Article 61). In case the victim of the criminal offense is a sensitive victim, the criminal legislation takes

¹⁹ CHAPTER XV CRIMINAL OFFENSES AGAINST HUMANITY AND VALUES PROTECTED BY INTERNATIONAL LAË

²⁰ Article 104 Non-applicability of statutory limitation for crimes against international law and aggravated murder 1. No statutory limitation shall apply to the offenses of genocide, war crimes, crimes against humanity, or other criminal offenses to which the statutory limitation cannot be applied under international law. 2. No statutory limitation shall apply to the offense of aggravated murder.

this circumstance as an aggravating circumstance in the case of sentencing. The CCRK also defines who is considered a vulnerable victim “Vulnerable victim - is a victim of a crime who is a child, a physically or mentally handicapped person, a person suffering from diminished capacity, a pregnant woman, the elderly or a person whose relationship to and dependence on the offender make them particularly vulnerable to repeat victimization, intimidation or retaliation” (CCRK, Article 61).

An important body for legal and procedural assistance to victims of crime in Kosovo is the Office for Protection and Assistance to Victims, which is part of the Prosecutor’s Office. This office represents their interests in the criminal justice system in Kosovo. The Office for Protection and Assistance to Victims is independent within the Office of the Chief State Prosecutor (obtained from <https://prokuroria-rks.org/> on 01.01.2021).

Also, within the Ministry of Justice there is a department of Transitional Justice and Support to Victims of Crime²¹. Analysing which of the duties of this department I think that in future this department may, with legal supplements or other acts, address or even offer support to victims arising from court decisions of specialized chambers.

In the Republic of Kosovo there are also several institutions that provide institutional and private legal aid and pro bono. The judicial system provides legal aid mainly in the criminal aspect. The Criminal Procedure Code of Kosovo has regulated the legal component for assigning ex officio protection at public expense, which is realized through the Kosovo Chamber of Advocates²². The Kosovo Judicial System in the civil

²¹ <https://md.rks-gov.net/page.aspx?id=1,162>

²² CRIMINAL No. 04/L-123 PROCEDURE CODE- Article 11 Adequacy of Defence 1. The defendant shall have the right to have adequate time and facilities for the preparation of his or her defence. 4 2. The defendant shall have the right to defend himself or herself in person or through legal assistance by a member of the Kosovo Chamber of Advocates of his or her own choice. 3. Subject to the provisions of the present Code, if the defendant does not engage a defence counsel in order to provide for his or her defence and if defence is mandatory, an independent defence counsel having the experience and competence commensurate with the nature of the offence shall be appointed for the defendant. 4. Under the conditions provided by the present Code, if the defendant has insufficient means to pay for legal assistance and for this reason cannot engage a defence counsel, an independent defence counsel having the experience and competence commensurate with the nature of the offence shall be appointed for the defendant on his or her request and paid from budgetary resources if required by the interests of justice.

aspect does not provide free legal aid for matters related to "interpartes" between natural persons.

There is the Free Legal Aid Agency²³, an independent state agency, established by law²⁴ which provides free legal aid in civil proceedings before courts and other institutions in the Republic of Kosovo. In order to benefit from this agency, certain legal conditions must be met in order for a natural person to be able to get a free representation in court or a legal service. There is also a manual to processing cases for free legal aid²⁵.

The Kosovo Chamber of Advocates²⁶, as an independent institution, conducts its activity through the Advocacy as a free and independent profession that deals with providing legal aid to natural and legal persons for the protection of their freedoms, rights and interests in accordance with the legal order.

The Chamber of Advocates can be the main gateway for victims arising from the decisions of specialized chambers. It may sound inhumane, but I consider that the two parties, the victims or their legal representatives and lawyers, may share a material interest in filing private lawsuits regarding the compensation of material and non-material damage.

Although with the law on internal regulations, the KCA has a duty to provide free legal aid, I consider that in this case the victims arising from the decisions of the specialized chambers may not enjoy this right, but what matters to these persons, the victims and their representatives, the KCA is obliged to provide them with legal representation if they request it individually from each lawyer, and in case they are

²³ <https://anjf.rks-gov.net/page.aspx?id=2,1,1,1>

²⁴ <https://anjf.rks-gov.net/desk/inc/media/8FC9CCF5-ED63-476B-8F0B-28E730FB2A8F.pdf>

²⁵ <https://anjf.rks-gov.net/desk/inc/media/AD8DE4B6-6041-4398-89F4-D358B0378373.pdf>

²⁶ <https://www.oak-ks.org/>

refused by the lawyers, the KCA may take action against lawyers who do not provide this assistance.

There are also a large number of non-governmental organizations that provide legal aid; however, they offer it depending on the projects they have and often the duration of these projects is limited.

It is worth mentioning the Humanitarian Law Center²⁷, which is one of the most credible organizations that has contributed to the victims of the war in the former Yugoslavia. This organization has represented the victims of crimes against international law throughout the territory of the former Yugoslavia and is also the founder of the RECOM-RECOM reconciliation commission. I think that this organization can be one of the institutions that can provide support to victims or represent them.

Regarding the fund or the way of financing the victims of crime this is regulated by the law on victims of crime²⁸. However, the above stated fact should be noted, in terms of coverage of this law, in terms of victims arising as a result of court decisions of specialized chambers. This fund or this law to date has not been applied in terms of victims that have come as a result of several war crimes trials in Kosovo announced by local courts and those of EULEX. The possibility is not ruled out that this law will be specifically amended and that all victims of crimes against international law will be included in it, but for now it is not applied.

²⁷ <https://www.hlc-kosovo.org/sq>

²⁸ Law no. 05 / L-036 ON COMPENSATION OF CRIME VICTIMS Article 39 Financing of Compensation of Crime Victims- 1. The program for compensation of victims of crime will be financed from the Budget of the Republic of Kosovo for the Ministry of Justice as part of the annual budget law. 2. The victim compensation program may also be funded through voluntary contributions and private donations in accordance with the Financial Control and Management Rules. 3. Judges in the case of imposing criminal sanctions for criminal offenses defined in sub-paragraphs 3.1 and 3.2 of this paragraph, as well as taxes for compensation of victims as follows: 3.1. for criminal offenses adjudicated by the General Department of the Basic Court the amount of thirty (30) Euros; 3.2. for criminal offenses tried by the Serious Crimes Department of the Basic Court in the amount of fifty (50) Euros.

Although Kosovo is not a member of the Council of Europe and is also not part of the ECHR, this logical gap in Kosovo has so far been filled by the Kosovo Constitutional Court²⁹, which states that every individual is entitled to request legal protection from the Constitutional Court when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority after he has exhausted all legal remedies provided by law.³⁰

The Constitution of Kosovo³¹ regulates the Direct Implementation of International Agreements and Instruments³². Human rights and freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and have priority, in case of conflict, over the provisions of laws and other acts of public institutions. Therefore, Kosovo has unilaterally ratified the agreements of international character, even though it is not an integral part of the institutions.

The practice of courts in Kosovo is still far from implementing the practices of the ECHR, and even a large number of judges or prosecutors have an aversion whenever they mention these practices. This objection is mainly based on some arguments of different natures such as the fact that Kosovo legislation does not recognize the

²⁹ <https://gjk-ks.org/en/>

³⁰ Law no. 03 / L-121 ON THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO-Article 47 Individual request 1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority. 2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law. Article 49 Deadlines The referral should be submitted within a period of four (4) months. The deadline shall be counted the day upon which the claimant has been served with a court decision.

³¹ <https://gjk-ks.org/en/the-constitutional-court/legal-base/constitution/>

³² THE CONSTITUTION OF THE REPUBLIC OF KOSOVO - Article 22 (1) (1) Universal Declaration of Human Rights; (2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; (3) International Covenant on Civil and Political Rights and its Protocols; (4) Council of Europe Framework Convention for the Protection of National Minorities; (5) Convention on the Elimination of All Forms of Racial Discrimination; (6) Convention on the Elimination of All Forms of Discrimination Against Women; (7) Convention on the Rights of the Child; (8) Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment;

institute of judicial precedent, or that Kosovo is not part of the ECHR and therefore has no obligation to apply the practices of this court.

But there is also a caste of young judges who uphold their judgments by citing legal provisions from the European Convention on Human Rights, especially in some property matters, insults and defamation targeting journalists and non-governmental organizations. Also, a large number of lawyers in their submissions have started to cite ECHR practices, but this is not enough if there is no policy of their implementation by the judiciary.

(III) ISSUES OF ANONYMITY, INTIMIDATION, AND PROTECTION;

The issue of anonymity has been one of the most unknown things in the Kosovo justice system. Moreover, when this issue started to be practiced in the agricultural system, respectively in the UNMIK trials, it raised an uncertainty, complete lack of credibility and numerous doubts. While UNMIK had provided the technological infrastructure, this procedure was sometimes carried out by mechanical methods. This procedure was used only for criminal cases, there is no example that there were anonymity procedures in civil cases. Over time it has been widely understood that we are dealing with normal rules practiced by international justice and that this issue should be an integral part of any country's justice system.

Many international reports have criticized Kosovo for treating witnesses and failing to provide protection. Some witnesses who have been reported dead have been commented on as witnesses in cases of the International Criminal Tribunal for the former Yugoslavia.

However, I consider that in Kosovo or in the trials that have taken place in Kosovo, there has been a noticeable non-transparency about witnesses and often the same have been betrayed by the system that has engaged these witnesses.

[REDACTED] war crimes trials, [REDACTED]
[REDACTED] two categories of
protected witnesses.

In trials conducted in Serbia, protected witnesses or accomplices were mainly persons or officials of the system who had accurate information about the crime that took place, and in some cases they themselves were participants in the crime but who won the status of protected witnesses.

In the trials that took place in Kosovo, in my opinion, we did not have such a category of witnesses who were part of the system and who had the information, they were mainly witnesses and at the same time injured, some of whom were described as collaborators of the regime which for the Kosovar public has been an occupier regime that has committed crimes against Albanians

Currently there is Law no. 04/-I-015³³ on Witness Protection which was adopted on 29 July 2011 although this law is designed for witnesses who are being prosecuted in criminal cases. And it may not apply for civil matters.

Currently, there is no legal basis regarding the protection of victims who are involved in civil disputes for damage compensations, where the legal basis of their request is a decision from criminal judgments.

The contested procedure which is regulated by the Law on Contested Procedure³⁴ does not have explicit provisions that regulate issues related to the protection of victims. The only legal provision that this law can apply is the closure of hearings for the public regulated by Articles **445**,³⁵ **446**, **447 and 448**. Although these provisions

³³ [LAW NO. 04/L-015 ON WITNESS PROTECTION](https://gzk.rks-gov.net/ActDetail.aspx?ActID=2758)
- <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2758>

³⁴ [LAW No. 03/L-006 ON CONTESTED PROCEDURE](https://gzk.rks-gov.net/ActDetail.aspx?ActID=2583)
<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2583>

³⁵ Article 445 The court allows based on justifiable excuse, that the trial is partly or entirely closed to the public only when: a) an official secret should be kept or when it comes to the public order; b) if there are mentioned trade secrets, inventions, whose publications will cause interference in the interests

refer to other similar issues, as an analogy they could be used in cases of eventual civil lawsuits, from the victims or their families who as a legal basis may have a decision of the court of specialized chambers.

However, this analysis is recent and should take into account the fact that in the near future some amendments may be made to this law or to the civil code which is the process of drafting and which may include the cases of victims.

The Law on Contested Procedure with the provision of Article 99³⁶ has provided the form and manner of communication. This issue is currently unregulated, so this may change in the future as the law refers to civil cases related to other topics, this practice of victims is still unexplored in the Republic of Kosovo.

Unfortunately, Kosovo courts, in this respect, are not in an admirable position, in terms of information technology assets. In the Code of Criminal Procedure, the provisions of Article 208-2011 provide an explanation of the forms and manner of registration. [REDACTED] I do not have any examples that I can single out regarding the existence of such equipment.

Regarding criminal matters, I consider the courts in Kosovo may provide some hearings related to witnesses or protected victims, mainly through the video link, but I cannot say that the courts in Kosovo could provide infrastructure as we see in the

protected by law; c) private details from the parties, or other people involved in the process, life are mentioned

³⁶ SUBMISSIONS Article 99 99.1 The claim, reply to the claim, appeals and other statements, proposals and notices that are made out of court are submitted in written (submissions). The condition of the written form is also met by the submissions sent through telegraph, fax or electronic mail. Such submissions are considered as signed if the sender is indicated. 99.2 Submission must be comprehensible and must contain everything necessary for it to be acted upon. In particular, it should contain the following: the name of the court, the first name and the family name (the name of the legal person), the permanent or temporary residence (headquarters of the legal person) of the parties, their legal representatives and authorized representatives, if the parties have them, the disputed facility, the content of the statement and the signature of the claimant. 99.3 If the statement contains a request, the party shall include in the submission the facts on which the request is grounded as well as the evidence, if needed. 99.4 Submissions sent by electronic mail shall be confirmed by the qualified electronic signature

trials that are taking place in specialized chambers.

The year 2022, according to the KJC, will be the year the audio and video recordings will be applied, which will be transcribed. Currently, only written minutes serve as a means of communication, which are mainly dictated by the parties in the proceedings and the courts.

The Law on Contested Procedure does not have provisions which regulate the aspect of anonymity in the editing of case files. Requests that are submitted by the **document Annex to Victims' Counsel Submission on the Second Decision on the appointment of expert(s) List of questions for the consideration of expert(s) in the item (iii) Issues of anonymity, intimidation, and protection are current assessments of the existing legal basis, but until another moment of filing possible private lawsuits for reparations these issues may be regulated by special legal provisions or by amending the existing legal basis.**

(IV) ISSUES OF FUNCTIONING OF THE PRIVATE LAW SYSTEM (SUCH AS EVIDENCE, STATUTE OF LIMITATIONS, APPEALS, DURATION OF PROCEEDINGS, LEGAL REPRESENTATION);

Kosovo's judicial system is a mixed format of legal inheritance from the former Yugoslavia and a mixed European-American practice. An organizational structure of Kosovo's legal system was well organized before UNMIK started establishing a new legal system in Kosovo. The Yugoslav system of jurisprudence that Kosovo had was much more developed than some legal systems which some UNMIK representatives have represented their countries with or have been heads of relevant departments in the judicial system established by them.

Although it has been said above that the law on compensation of victims of crime³⁷,

³⁷ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10936>

may not be applied in civil cases, this does not mean that the definitions of this law referring to victims would be exclusive. As it has been analyzed above that this law refers to cases arising from criminal proceedings, but certain provisions of this law could serve as means of evidence. The legal definitions of this law from article 3 are means of evidence for a civil claim, but the deficiencies this law has regarding the issues that are addressed by the specialized chambers of Kosovo remain to be regulated by the civil procedure, and the possibility is not ruled out that this law will be amended and that victims arising from trials against international law will be included as a separate category. The jurists in Kosovo expect the future civil code to be much more advanced than the law on civil procedure.

The means of evidence are regulated mainly by the law on contentious procedure³⁸ and Kosovo, in terms of civil law, also has the means of evidence regulated by the law school known as continental. Therefore, bearing in mind that civil cases have a personal character, the litigants have the duty to prove the facts on which they base their research and claims, which include all the facts that are important for rendering the decision.

Despite this, the court has the obligation, according to the law, to prove other means and evidence that have not been proposed by the parties, whereas the facts and evidence that have been verified or known worldwide do not need to be proven.

As stated in some cases, the applicable law in Kosovo does not recognize any special status for victims arising from the decisions of specialized chambers other than the cases that have been explained, so in the absence of a clear legal definition we should refer then as the injured party.

The law on contentious proceedings in CHAPTER XXII recognizes the probative power of the injured party in this case based on the assertion, world-known facts that in the future may be recognized as victims of war, through witnesses, crime scene

³⁸ CHAPTER XXII MEANS OF EVIDENCE AND EVIDENCE COLLECTION General provisions

inspection experts, etc. with which means a person who has the status of an injured party can realize a civil-legal property claim.

The main key remains the legal basis, on which the injured party or otherwise the victims from the specialized chambers should list in their civil claims. This legal ground can be achieved based on a court decision - judgment or ruling by which a certain person has been instructed to realize the property-legal claim in a civil dispute.

Once the victim-party has secured the legal grounds, other means of evidence will come into play, on the basis of which the caused non-material damage will be proven, which shall normally be converted into monetary means.

However, in order to determine the degree of damage, only the decision by which the injured party has provided the legal basis is not sufficient, but at the same time the other aspect, such as argumentation and proving the case, must be upheld through material evidence. Depending on how the request is directed, whether it is individual or group request, which would mean family request, in this respect, material evidence will also be important in the means of proving the case.

If a victim - injured party would sue in a civil contest a person who has been convicted by a court - specialized chambers for the murder of one of his or her family members, with which he/she would seek material compensation for the suffering caused as a result of this murder, in addition to the final decision, the requesting party also needs evidence on the death of the person as well as other material evidence related to the claimant or other family members who are seeking an alleged compensation.

In case we have a personal request from a person who by a decision of the court - specialized chambers has been considered as an injured party, where it has been established that the same has suffered material and non-material damage, physical or other damage, by the convicted person with the same decision, this person as a claimant will have to prove in the civil procedure the damages claimed on the basis of

which the certain person has a property claim.

Despite the existence of a criminal decision-judgment in civil proceedings, especially matters referring to material damage require an appropriate expertise³⁹ on the basis of which the court could determine the degree of compensation. In such cases each party has the right to propose an expert or group of experts with whom it will try to make its claim credible before the court.

If we refer to issues from (iii) Issues of anonymity intimidation and protection, above in this document it is argued and clarified that the civil law in Kosovo does not recognize the procedure of anonymity, and this can best be illustrated from the aspect of proof by expertise, the opposing party in any variant would request that the other party's claim be substantiated through counter expertise, this would necessarily oblige the court for the expert to examine the victim because otherwise it would be a legal violation or infringement of the rights of the other party. Given that most victims have the status of protected or anonymous witness, through the application of the provisions of Articles 355, 356 and 357 of the LCP, the victim or protected witness has the obligation to appear before the court or the expert doctor, this may reveal his \her identity.

It is known that from the case law on compensation of non-material damages converted into cash there is no specific document or law that would determine the degree of monetary compensation for victims of war crimes. There is also no list of people who enjoy this right at least for now. It has been mentioned above that the law on victims of crime can not be applied as a legal basis for civil compensation of victims from specialized chambers but can serve to establish judicial practice.

³⁹ EXPERTS Article 356 The court can do an expertise if interested parties propose so. This will be done any time if there is a need to specify facts or circumstances that the judge does not have sufficient knowledge for. Article 357 357.1 the party that proposes an expertise has to state why that expertise is needed for as well as its goal. The person for an expertise should also be proposed. 357.2 The opponent party should be given a chance to say its opinion regarding proposed expertise. 357.3 If the involved parties can not bring a decision regarding th

Another element to consider is the fact that in Kosovo's judicial system there is no practice of compensation for cases involving victims who have been part of war crimes trials. There is not even a practice against some cases that have been conducted in the courts of Kosovo by UNMIK-EULEX where the injured parties have filed a civil lawsuit against individuals who have been found guilty.

It would be a challenge for the judiciary, regarding the way of proving, if there is no relevant document or law that would determine the minimum and maximum amounts of compensation.

If we start from the normative aspect, the specialized chambers are courts of Kosovo and operate according to the laws of Kosovo and this court is formed by the parliament of Kosovo. The law on specialized chambers itself, has defined in its principles that Specialized Chambers are an integral part of every level of the court system in Kosovo: the Basic Court, the Court of Appeals, the Supreme Court and the Constitutional Court.

Therefore, a final decision-judgment issued by the specialized chambers of the Court can serve as a legal basis for a legal property claim in a civil dispute.

Depending on the verdict of the specialized chambers of the court, the injured party, in the sense of Article 463 of the Code of Criminal Procedure, shall be referred to a civil contest for the realization of the legal property claim.⁴⁰

The convicting judgment of the specialized chamber will be a sufficient legal basis for an injured party to have the right to seek material compensation in civil proceedings,

⁴⁰ Article 463 Decision on Motion to Realize Property Claims 1. The court shall decide on property claims. 2. In a judgment pronouncing the accused guilty the court may award the injured party the entire property claim or may award him or her part of the property claim and refer him or her to civil litigation for the remainder. If the data collected in the criminal proceedings do not provide a reliable basis for either a complete or a partial award, the court shall instruct the injured party that he or she may pursue the entire property claim in civil litigation. 3. If the court renders a judgment acquitting the accused of the charge or rejecting the charge or if it renders a ruling to dismiss criminal proceedings, it shall instruct the injured party that he or she may pursue the property claim in civil litigation. When a court is declared not competent for the criminal proceedings, it shall instruct the injured party that he or she may present his or her property claim in the criminal proceedings commenced or continued by the competent court.

as regards the aspect of guilt, Article 14 of the Law on Contested Procedure has excluded the possibility of contesting legal basis when we have a criminal verdict proving culpability.

In cases when we have a convicting verdict, the injured party has to prove only the degree of damage caused to him or his family members by the person to whom the conviction verdict refers.

However, if we have a judgment of acquittal, also in this case, in the sense of Article 463, the injured party must seek its own right in a civil dispute, but in cases of judgments of acquittal the culpability of the accused must be proven in the civil dispute first, in order to have the legal basis, and then the case to be proceeded in determining the aspect of damages.

There is a possibility that specialized chambers, in the sense of Article 463 of the Code of Criminal Procedure, reach a verdict by which the accused is found guilty, the court may decide on the legal property claim of the injured party, entirely or partially, if the injured party together with the prosecution manages to prove with material evidence the alleged material and non-material damage.

In concrete cases, from the case law in Kosovo, cases in which the injured parties gain the right to compensation by a criminal judgment are mainly criminal offenses where the material damage is uncontested or when the accused pleads guilty, these cases are mainly with monetary theft, monetary fraud, theft of public services, etc., whereas those which are completed through the admission of guilt are mainly acts of individual monetary fraud, bodily injury, etc. These decisions then go directly to execution in the enforcement proceedings and there is no need to proceed with the contentious procedure.

Therefore, if there were a decision from the court of specialized chambers where, in addition to the main trial, the judgment would also have a clause for compensation of

non-material damage, this decision after becoming final would have the character of an executive document according to law for enforcement procedure.⁴¹ Given that there is no case law in the region of the former Yugoslavia when the victims have been compensated for offenses against international law by individuals or perpetrators, therefore, this element will be presented as a very fundamental problem in the processing of these cases.

In cases of war crimes trials held in Serbia, in which I was personally involved, the compensation of the victims was requested by the state but not by individuals.⁴²

In the case of specialized chamber trials, it is difficult to say that the persons who will be victims based on the judgments could sue the Republic of Kosovo, and the possibilities and difficulties for civil lawsuits against perpetrators have already been clarified.

It should always be borne in mind that this court, through specialized chambers, deals with criminal offenses against international law which are not statute-barred in terms of criminal prosecution. However, in the case of civil proceedings, the rules of civil procedure must be followed. Whereas for eventual civil lawsuits the claimants must act according to the Law on Obligations article 358⁴³.

In terms of the case law of the advocacy, the parties are always instructed to file civil claims even when a criminal case is pending and despite the final epilogue in the criminal proceedings until it becomes final, the party is suggested to file a civil legal

⁴¹ LAW NO. 04/L-139 ON ENFORCEMENT PROCEDURE- Article 22 Enforcement Document 1. Enforcement documents are: 1.1. enforcement decision of the court and enforcement court settlement (reconciliation);

⁴² Here I am presenting only one decision which has passed all judicial filters to the Court in Strasbourg only to illustrate the argument ECHR-LSer 11.000R VN / ARI / by Adnan Hadxibeqiri VS-Republic of Serbia

⁴³ Law on Obligations-Article 358 Request for compensation of damage caused by a criminal offense 1. When the damage is caused by a criminal offense and a longer statute of limitations is provided for criminal prosecution, the request for compensation of damage to the responsible person is statute barred when the time allotted for the statute of limitations for criminal prosecution expires. 2. Termination of the statute of limitations for criminal prosecution also leads to termination of the statute of limitations for the request for compensation of damage. 3. The same applies to the suspension of the statute of limitations.

claim to reach the deadline. Because even if the civil process started before the end of the criminal process, the Civil Court would ex officio terminate the civil procedure on the grounds that there is a preliminary issue. This action will preserve the right of the claimant and it will not be endangered by the statute of limitations, the same would apply in those cases if the criminal case was in the appeal procedure, because the conclusion of a criminal case is related to civil legal basis.

Regarding the statute of limitations where it is difficult to determine which legal provisions would apply because, I think there can be no unique opinion on this issue, because the pro at contra opinion will be presented in court by the parties and it is difficult to give an explicit and correct opinion. Given the main element that specialized chambers deal with offenses against international law and that these offenses are not statute-barred in criminal terms, [REDACTED], the principle of Article 358 of the Law on Obligations would apply. Since this provision has explicitly defined when the compensation of a certain claim is the result of a criminal offense, then the statute of limitations is related to the time when the statute of limitations for the criminal offense expires. Since we are dealing with criminal offenses that are not statute-barred, then I consider that the injured party should precisely refer to the mentioned provision of the Law on Obligations.

Although the law on contentious procedure has set deadlines for the processing of civil cases, the practical reality is extremely bitter. Depending on in which courts these cases are handled, their duration varies from one district to another. As it is known, the Courts in Kosovo consist of 7 Basic Courts in the main centers, and some branches of these courts that cover some municipalities which adjudicate in the first instance. In the second instance, Kosovo has an appellate court and a division of this court in Mitrovica which deals with cases related to the Serb minority, as well as the Supreme Court which handles these cases through revision.

In these 7 centers mentioned above, the average time of starting a civil case is 2-3 years,

Prishtina makes an except which is beyond any logic, where these cases stay up to 7-8 years. This issue has plagued the courts for a very long time. These issues have been reported by the Auditor General on a continuous basis over the past years.

In October 2020, a report was drafted based on the methodology of the European Commission for the Efficiency of Justice (CEPEJ) for the evaluation of judicial systems, including the comparative evaluation of the judicial system in Kosovo 2014, 2017 and 2018, the data of this report can serve as credible evidence to assess the duration of civil cases

Between 2014 and 2018 the evolutionary trends of civil and economic case resolution (CR) rates change at each instance.

In the first instance there was a progressive deterioration of the case resolution rate for this category of cases (from 112% in 2014 to 86% in 2018). This can be attributed to the combined effect of increasing the number of cases received during the assessment period (by 21%), and decreasing the number of solved cases (-6.4%). • **As a result, the number of unresolved cases at the end of 2018 increased to 45,299.**

At the Court of Appeals level, the CR of civil and economic cases decreased between 2014 and 2017 (from 81% to 75%) but increased again beyond the 2014 threshold in 2018 (95%). During the estimated period there was an overall improvement of CR by 6.9%. However, despite an increasing number of pending cases each year (35.1%), negative CR and increasing number of cases received (15.6% between 2014 and 2018) have worsened the situation regarding the number of unresolved cases (an increase of 71.8%, or 5,012 more cases). **There were 11,994 civil cases pending on 31 December 2018**, which is significantly higher than in 2014.

In the third instance, the case resolution rate improved between 2014 and 2017 (from 101% to 127%, with a 48% decrease in the number of unresolved cases), but there was a decline in negative values in 2018 (92%). During the five-year period, the number of

unresolved cases has remained at the same level (85 cases in 2014, 86 cases in 2018).

The above data coming from the report have included the period until 2018, there has been an improvement trend, but the year 2020 as a result of the Covid 19 pandemic has restored the procedures almost as in the report.

There are many different reasons which have been different over the years. The main cause of the large number of unresolved cases is the number of judges. This number is very small compared to the needs and demands of the citizens of Kosovo. The civil case management process in the Basic Courts is not efficient. Courts continue to face a significant number of outdated cases that remain unresolved, and the total number of civil cases, in addition to not being reduced, is constantly increasing.

As a result of the large number of civil cases in the Basic Courts, citizens are forced to wait long periods for the case to be reviewed and finalized. At the same time, the fact the trend of cases that remain unresolved from year to year is constantly increasing is worrying. The civil case management process has been characterized by numerous irregularities in all its stages. The current procedures established in the Basic Courts to distribute civil cases to judges are not uniform, an audit report in 2018 among others had concluded that in all audited Courts, each of the applied procedures is characterized by its own irregularities. These irregularities are evident from the initial stage of distribution of civil cases to judges, completion and specification of claims, inadequate management of the case by legal officers, continuous postponement of court hearings, delays in hearing cases in the Court of Appeals as well as the high rate of cases being returned for retrial in the Basic Courts. There were also shortcomings in the practices that judges themselves apply to balance the different types of civil cases they take for review.

The Kosovo Judicial Council has not been effective in properly monitoring the progress made in the Courts. The Kosovo Judicial Council has established generalized mechanisms which do not provide sufficient support to the Basic Courts

in managing cases. This means that the generalized mechanisms established by the Council make it difficult to monitor the progress made in the Courts to reduce the number of court cases, and are not appropriate tools for the Courts to address irregularities encountered during the management of court cases.

The above statements of the auditor are issues that [REDACTED]

[REDACTED]. There is a marked unprofessionalism of the secondary staff of the courts, the judges face basic problems of the accompanying staff and that they should also take care of the administrative work of the civil process and its management.

The Kosovo Judicial Council practices a methodology in relation to judges where each of the judges has to work at least 23 cases per month this makes the processes inefficient because we have quantity and not quality. To meet the norms of 23 cases, judges often determine lower-level cases and this then makes the most difficult cases remain unresolved, when we add to this some other problems such as non-unification of addresses, lack of sufficient administrative staff, problems with the post office and many other factors, all of these make the number of civil cases still large.

It is worth noting that with the start of the implementation of the CMIS program, the significant improvement of case management has begun, now the CMIS system determines cases, or matters, electronically and the same are assigned to judges, and their transfer can be done by decision of the president of the court, therefore this method in the coming years will significantly improve the reduction of the number of cases, and if the number of judges and support staff increases, I consider that a significant progress can be seen in the future.

The issue of access to justice, I think requires an academic level and a specific analysis of researchers. As it is stated several times in this report, the justice system in Kosovo

suffers more from unprofessionalism, nepotism and untimeliness, than from corruption, therefore, [REDACTED], in cases which represent lawyers, it is difficult to say that there is no access to justice, much less to any specific group. Personally, I think that in Kosovo two ethnic groups are important and have access in all spheres of life, namely Albanians and Serbs, the former as they constitute the majority and the latter because of the strong political support they enjoy from the state of Serbia and the support of the international community. On the other hand, there is no real regard for other minority groups such as Turks, Bosnians, Roma, Egyptians, Ashkali, Goran, etc.

With the Brussels agreement Serbs have secured a very important representation in the judicial system of Kosovo, they have even secured a special division of the Court of Appeals based in Mitrovica, where the composition of the trial panel is always with a majority of the Serb community.

I have not been able to provide any credible statistics on the number of judges or prosecutors belonging to other communities that are part of the justice system, but there is a significant number of them, the least represented remain the **RAE community - Roma, Ashkali and Egyptians.**

Also, a major problem with the RAE community - has to do with marriages under the legal age, which at the same time constitutes criminal offenses punishable under the Criminal Code of Kosovo, and sometimes accusing this community may seem a kind of collective punishment, although in reality it is not.

There are media reports of discrimination or denial of access to the LGBT community, but these are largely isolated and do not differ much from some other countries in the region and some other countries, and can mainly appear if the claims are individual and the parties are not represented by lawyers.

I also think that this question is of the academic level. Prejudices exist but at what level they are, it is difficult for me to give a fair or real assessment [REDACTED].

(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.

The issues raised under question (V), regarding the recognition and enforcement of foreign judicial decisions, shall be discussed below in terms of civil court decisions - from the perspective of international legal cooperation in civil matters (I), as well as criminal court decisions -g from the aspect of international legal cooperation in criminal matters (II).

I. International judicial cooperation in civil matters

A. Internal legal framework

The applicable legal framework in the Republic of Kosovo regarding international judicial cooperation in civil matters, including the recognition and enforcement of foreign judicial decisions, consists of Administrative Instruction no. 01-1265 on the Procedure for the Provision of International Legal Aid in Criminal and Civil Matters and the Law of the Former SFRY on the Resolution of the Collision of Laws with the Provisions of Other States in Certain Relations (hereinafter the “Law on the Collision of Laws”), of 1982. It is worth mentioning that the Draft Law on International Legal Cooperation in Civil Matters and the Draft Law on Private International Law are in the parliamentary procedure, acts which shall replace the relevant acts as above.

In the hypothetical case, when the court in the Republic of Kosovo decides in a civil dispute regarding the assets of one of the parties located outside the territory of the Republic of Kosovo, in order to produce legal effect based on that court decision, the interested party should seek recognition and enforcement of that decision in the State in which the assets in question are located. The Law on Collision of Laws in force, as

well as the Draft Law on Private International Law, regulate only the issue of recognition and execution of foreign judicial decisions in the Republic of Kosovo, when the Republic of Kosovo is the requested state.

Considering the request for recognition and execution of a foreign judicial decision is in the private interest of the party, the interested party must submit a request for recognition and execution of the foreign judicial decision to the competent court of the requested state. All matters concerning the recognition and enforcement of a foreign judicial decision are governed by the law of the State where recognition and enforcement are sought.

Until recently, the dominant trend in private international law has been for recognition and enforcement to be conditioned on whether there is reciprocity in the matter between the two states in question. Therefore, state X will recognize and execute the judicial decisions of state Y, if state Y would also recognize and execute the decisions of state X. Reciprocity is also provided in Article 92 of the Law on Collision of Laws. This rule is now considered obsolete and the new trend, developed on the basis of the European Union Regulation Brussels I and the Hague Convention on the Recognition and Enforcement of Foreign Judicial Decisions of 2019, is that the recognition and enforcement shall be conditioned by stipulated legal criteria that set the standard, which relate mainly to the jurisdiction of the court that issued the decision .

In conclusion, the question of whether a civil judicial decision will be recognized in the requested State, and if so, how it will be recognized, depends entirely on the provisions of the law of the requested State.

B. Bilateral agreements

In addition to domestic acts, the first two bilateral agreements in the field of international legal cooperation in civil matters were signed in 2021 with Northern

Macedonia, as well as with Albania. These agreements are expected to enter into force in the near future, after each having undergone ratification procedure in the respective assemblies of the contracting states.

In regard to the Agreement on Mutual Legal Assistance in Civil Matters between the Republic of Kosovo and the Republic of Northern Macedonia, signed in July 2021, according to Article 18 of this Agreement, the procedure for recognition and enforcement of foreign judicial decisions is conducted under the domestic law of the requested State.

The Agreement on Mutual Legal Assistance in Civil and Commercial Matters between the Republic of Kosovo and the Republic of Albania, signed in November 2021, regulates the recognition and enforcement of judicial decisions in civil and commercial matters, whereas it is not applicable to bankruptcy matters or liquidation of companies, social security issues or decisions on payment of customs duties, taxes and penalties for related administrative offenses.

The judicial decision of one of the Parties is recognized and executed on the other Party if it has been announced by the court, which according to its domestic legislation has jurisdiction and competence to decide and if it is no longer subject to appeal and is enforceable in the country of origin. This agreement also provides for the circumstances of the rejection of recognition and execution, determining that the recognition and execution of the judicial decision is rejected:

- if the recognition and enforcement of the judgment is manifestly contrary to the public order of the Requested Party or;
- if the decision was rendered in the absence of one of the parties to the proceedings, which has not been notified of the court proceedings, or has not been able to exercise the right of defense in accordance with domestic law. This

rule does not apply if the Party has not appealed the decision for this reason even though it has had the opportunity to do so or;

- if procedures have started between the same parties in the procedure with the same object, that:
 - are in process before a court of the Requested Party, and this procedure has started first, or
 - have finished with a decision of a court of the Requested Party, or
 - have ended with a decision of a court of a third State, which has the right to recognize and enforce the decision under the legislation of the Requested Party.

The procedure for the recognition and enforcement of foreign judicial decisions is regulated by the domestic law of the requested party, whereas the requested court does not examine the case on the merits. Recognition and partial execution is allowed. In terms of multilateral international instruments in the field, Kosovo has not acceded to any of the Hague Conference Conventions governing matters of international legal cooperation in civil matters.

I. International judicial cooperation in criminal matters

A. Internal legal framework

The Code of Criminal Procedure, Article 219, lays the foundations regarding international legal cooperation in criminal matters, while Law no. 04 / L-213 on International Legal Cooperation in Criminal Matters, serves as a special law. Chapter V of this law regulates in detail the recognition and execution of foreign judicial decisions in criminal matters when the Republic of Kosovo is the requested state, while also lays the groundwork for outgoing requests for recognition and execution of judicial decisions of the courts of the Republic of Kosovo addressed to foreign states. It is worth mentioning that this law is in the process of amendment in the Assembly,

but no changes are provided, nor substantial amendments regarding the issue of recognition and execution of foreign judicial decisions.

Recognition and execution of a foreign criminal decision according to the provisions of Chapter V of the mentioned law, may have property as an object, in the sense of a final criminal judgment according to which the property of the guilty party is confiscated, the person has been sentenced with a fine, or has been ordered to pay procedural costs. Therefore, in the context of the question raised, in order to produce legal effect, such a criminal decision must be executed against the property located outside the territory of the Republic of Kosovo, i.e. it must be recognized and executed by the state where the property is located and vice versa, in case the property against which the judicial decision is to be executed is located in the Republic of Kosovo, the decision must be recognized and executed by the Republic of Kosovo.

Concerning the cases when the Republic of Kosovo is the requested state, Article 71 of the Law on International Legal Cooperation in Criminal Matters stipulates that final judgments issued by foreign courts against citizens or permanent residents of the Republic of Kosovo may be recognized and executed in the Republic of Kosovo, if the judgment contains the types of punishments provided by local law. Further details regarding the conditions for recognition and execution, court proceedings, execution of the fine and confiscation of money, collection of the fine and confiscation and execution of the additional sentence, are defined in Articles 72-76 of the mentioned law.

Regarding the cases when the Republic of Kosovo is the requesting state, Article 77 of the Law on International Legal Cooperation in Criminal Matters stipulates that the recognition and execution of a final judgment rendered by a court in the Republic of Kosovo may be requested by a foreign state in one of the following cases:

- if the convicted person is a national or permanent resident of the requested State;
- if the convicted person is already serving a prison sentence for another offense in the requested State;
- when enforcement of the sentence in the requested State is likely to improve the prospect of social rehabilitation of the convicted person;
- in accordance with the law of the requested State, extradition of a person to the Republic of Kosovo is not permissible.

Therefore, the location of the convicted person rather than the location of the property is a connecting point. Requests are submitted in writing, through the Ministry of Justice in the capacity of the Central Authority. If the requested State agrees to execute the judgment in its territory, the authorities of the Republic of Kosovo no longer have the right to execute that judgment. The right to execute the judgment is returned to the authorities of the Republic of Kosovo, in case the person evades the execution of the sentence.

B. Bilateral agreements

The issue of recognition and mutual execution of foreign judicial decisions concerning the property of the guilty party is regulated by 6 states on the basis of agreements in the field of international legal cooperation in criminal matters.

In the Republic of Kosovo, a total of 27 bilateral agreements in the field of international legal cooperation in criminal matters with 13 countries are in force (see Annex 1). Out of these agreements, 19 are the so-called “new” agreements, which entered into force after the declaration of independence of the Republic of Kosovo, while 8 of them are in force as a result of the process of succession of agreements.

The issue of recognition and regulation of foreign criminal judicial decisions is regulated on a bilateral basis with the 6 states as follows:

- With Albania and Macedonia, this issue is regulated in the relevant Agreements on Mutual Legal Assistance in Criminal Matters. In both cases, this issue is regulated by a general provision, which leads to the application of the law of the requested state. Hence, in cases where the Republic of Kosovo is the requesting state, these two agreements refer to the implementation of the Law on International Legal Cooperation in Criminal Matters.
- With Switzerland, Belgium and Italy, the issue of recognition and enforcement of judgments rendered against convicted persons from one state, but located in the territory of another state, is regulated through the relevant Transfer Agreements of Convicted Persons. It should be noted, however, that the relevant provisions in each of the agreements serve as the basis for the recognition and enforcement of judgments against persons and not expressly against their property. The procedure for the recognition and execution of sentences in this case is regulated by the domestic law of the requested State.
- The Agreement on Recognition and Mutual Execution of Judicial Decisions, dated 01.02.1982, is in force with Austria.

C. Cooperation with other states

With regard to Article 1, paragraph 3 of the Law on International Legal Cooperation in Criminal Matters, in the absence of bilateral agreements, international legal cooperation may be provided on the basis of the principle of reciprocity. Thus, the Republic of Kosovo shall recognize and execute foreign judicial decisions of those states, which also recognize foreign judicial decisions of the Republic of Kosovo. Reciprocity in these cases is not presumed. In each individual case, a request on reciprocity is required from the requesting state, with effect for the specific case, or with general effect for the issue of recognition and execution of foreign judicial decisions in the criminal field.

Regarding the cooperation with these states, the provisions from Chapter V of the Law on International Legal Cooperation in Criminal Matters shall apply, whereas the Ministry of Justice serves as the Central Authority. It must be noted that the EU Office in Kosovo serves as a communication channel, in regard to the non-recognizing states of the Republic of Kosovo,.

ANNEX 1 – Agreements in force in the field of international legal cooperation

New agreements (concluded after Kosovo's independence in 2008)	
<i>Country</i>	<i>Agreement</i>
1 Albania	Agreement on Mutual Legal Assistance in Criminal Matters (06.11.2012)
2 Albania	Agreement on Transfer of Sentenced Persons (06.11.2012)
3 Albania	Agreement on Extradition (06.11.2012)
4 Belgium	Agreement on Transfer of Sentenced Persons (18.06.2010)
5 Croatia	Agreement on Mutual Legal Assistance in Criminal Matters (11.05.2012)
6 Germany	Agreement on Judicial Cooperation in Criminal Matters (29.06.2015)
7 Hungary	Agreement on Mutual Legal Assistance in Criminal Matters (24.11.2017)
8 Hungary	Agreement on Transfer of Sentenced Persons (24.11.2017)
9 Hungary	Agreement on Extradition (24.11.2017)
10 Italy	Agreement on Mutual Legal Assistance in Criminal Matters (19.06.2013)
11 Italy	Agreement on Transfer of Sentenced Persons (11.04.2018)
12 Italy	Agreement on Extradition (19.06.2013)
13 North Macedonia	Agreement on Mutual Legal Assistance in Criminal Matters (08.04.2011)
14 North Macedonia	Agreement on Transfer of Sentenced Persons (08.04.2011)
15 North Macedonia	Agreement on Extradition (08.04.2011)
16 Turkey	Agreement on Mutual Legal Assistance in Criminal Matters (31.05.2011)
17 Turkey	Agreement on Extradition (31.05.2011)

18	Switzerland	Agreement on Transfer of Sentenced Persons (14.05.2012)
19	USA	Agreement on Extradition (29.03.2016)
Agreements in force following treaty succession (concluded by former SFRY)		
20	Austria	Agreement on Extradition (01.02.1982)
21	Austria	Agreement on Mutual Legal Assistance in Criminal Matters (01.02.1982)
22	Austria	Agreement on Recognition and Enforcement of Foreign Judgments in Criminal Matters (01.02.1982)
23	Belgium	Agreement on Extradition and Mutual Legal Assistance in Criminal Matters (04.06.1971)
24	Czech Republic	Agreement on Civil, Family and Criminal Matters (20.01.1964)
25	Czech Republic	Agreement in transfer of Sentenced Persons (23.05.1989)
26	France	Agreement on Judicial Cooperation in Criminal Matters (29.10.1969)
27	France	Agreement on Extradition (23.09.1970)

CONCLUSIONS

To compile a report, although I personally think it is more a document that contains some clarifications based on some questions, and I cannot refer to it as a report, it requires the commitment of more experts in the relevant field of each legal field.

From the information given to me, respectively from the documentation KSC-BC-2020-05, 14.06-2021, 19/08/2021, 03/09/2021 as well as Annex to Victims' List of questions for the consideration of experts, it can be understood that the purpose of this report is related to the right to civil compensation of victims, therefore, based on the analysis of these documents and walking through the Kosovo legislation we have encountered many difficulties that will arise for the compensation of victims based on the issues that have been raised.

Although the specialized chambers are constituted by the Assembly of Kosovo and are part of the judicial system of Kosovo, they actually act as a kind of international tribunal, these chambers have a well-defined jurisdiction over criminal prosecution, but I consider the legal basis for compensation of the victims, based on the questions that have been posed, is difficult to achieve according to the practices that this court has used for these cases. Thus criminal trial practices could not be used for civil trials,

However the decision of the courts of specialized chambers as to the legal basis for compensation for non-pecuniary damage will be important, sentencing decisions will serve as a sufficient basis for proceeding with private civil lawsuits.

Specialized Chambers in their decisions, whether of a punitive or acquittal nature, must instruct the victims-parties to realize the legal property claim in the civil dispute, because without this recommendation the victims may risk losing the legal basis.

In the practical aspect, I consider that the victims will face serious problems in realizing the right to civil compensation by the person who was found guilty for different legal, real, practical reasons.

I. the accused who may be convicted according to the applicable legislation related to the sentence finds it difficult to compensate someone, while in prison he has no income and as such has no possibilities.

II. if there are assets, the probability that they are legally in his name and administration is almost inexistent.

III. Even if they are owned and administered, they may be of little value with the potential number of victims


IV. Regarding the assets and property of the accused, his/her family members cannot be excluded and from the legal point of view they can be the first beneficiaries and, in any case, if the property of the accused would be the object of civil law, this object will be legally challenged by family beneficiaries.

V. The law on compensation of victims of crime at the moment cannot be applied to these cases that specialized chambers deal with because it does not enter the scope of their activity.

VI. The Republic of Kosovo may not be a litigant of victims arising from decisions of specialized chambers for reasons of jurisdiction.

VII. The Kosovo Liberation Army in the legal sense has no legal successor in terms of documentation to create a legal basis for the state of Kosovo to be presented as a litigant for the compensation of victims.

Therefore, at the end of the process, the fate of the victims will be as bitter as all the other victims of the wars of the former Yugoslavia, where moral-material and financial compensation still continues even today.


17.12.2021

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