



**JUDICIAL INTEGRITY  
IN KOSOVO**



**UNITED NATIONS DEVELOPMENT PROGRAMME**  
**Pristina**

**UNITED NATIONS OFFICE ON DRUGS AND CRIME**  
**Vienna**

**JUDICIAL INTEGRITY IN KOSOVO<sup>1</sup>**  
**ASSESSMENT REPORT**

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<sup>1</sup> All references to Kosovo are in line with UN Security Council Resolution 1244 (1999)

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<b>LIST OF INSTITUTIONS INTERVIEWED</b>	<b>Page 6</b>
<b>INTRODUCTION</b>	<b>Page 7</b>
<b>ANALYSIS AND RECOMMENDED ACTIVITIES</b>	
<b>Output 1.2:</b> Enhanced capacities of the judiciary to address internal disciplinary matters and undertake corruption investigations	<b>Page 9</b>
<b>Output 1.3:</b> Improved level of personal and institutional integrity for judges, prosecutors and lay judges as well as best practices in the area of prevention of corruption within the judiciary	<b>Page 18</b>
<b>Output 1.4:</b> Enhanced capacity of the Office of the Disciplinary Prosecutor to process cases	<b>Page 23</b>
<b>Output 1.5:</b> Judicial institutions supported in public visibility and awareness raising	<b>Page 28</b>
<b>Output 2.1:</b> Improved skills of the judiciary to investigate and develop cases for prosecution dealing with corruption	<b>Page 35</b>
<b>CONSOLIDATED TABLE OF RECOMMENDED ACTIVITIES</b>	<b>Page 44</b>

## **LIST OF INSTITUTIONS INTERVIEWED**

- Agency for Free Legal Aid
- Appeal Court on Criminal Matters
- Council for the Protection of Human Rights and Freedoms
- Council of Europe Office in Pristina
- Court of Appeals
- District Prosecution Office, Prishtina
- Embassy of Sweden
- European Union Office in Kosovo
- European Union Rule of Law Mission in Kosovo
- GIZ
- Internews Kosova
- Kosovo Anti-Corruption Agency
- Kosovo Chamber of Advocates
- Kosovo Democratic Institute/Transparency International
- Kosovo Judges Association
- Kosovo Judicial Council
- Kosovo Judicial Institute
- Kosovo Police
- Kosovo Prosecutorial Council
- Ministry of Internal Affairs
- Ministry of Justice
- National Council on Anti – Corruption
- Office of Overseas Prosecutorial Development Assistance and Training, US Embassy
- Office of the Disciplinary Prosecutor
- Office of the Prime Minister, Legal Office
- Ombudsperson Institution
- OSCE Legal System Monitoring Section
- Royal Norwegian Embassy
- SIDA
- Supreme Court of Kosovo
- Swiss Agency for Development and Cooperation
- The British Embassy in Pristina
- UNMIK Rule of Law Liaison Office
- USAID Democracy and Governance Office

## I

## INTRODUCTION

1. Article 11, paragraph 1 of the UN Convention against Corruption (UNCAC) requires signatory parties to the Convention to “take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary”. In support of the implementation of Article 11 and as part of the UNDP project, *Support to Anti-Corruption Efforts in Kosovo* (SAEK), supported generously by the Swiss Agency for Development and Cooperation, UNODC jointly with UNDP is to support the delivery of a series of training activities in Kosovo <sup>2</sup>which seek to:
  - Enhance the internal capacities and mechanisms of the judiciary in Kosovo for investigating internal cases of corruption and disciplining of judges and prosecutors with regard to corruption offences; and
  - Increase the ability of the judiciary to investigate and prosecute cases of corruption externally (i.e. outside the judiciary).
2. To set a strong foundation for the implementation of this project, UNODC and UNDP conducted an on-site assessment mission to assist the Kosovar authorities in conducting an internal needs assessment. It aimed at determining the legal, organizational and capacity development needs to of the judiciary and prosecution services to effectively investigate, prosecute and adjudicate cases of corruption both internally within the judiciary and externally.
3. Prior to the mission, UNODC and UNDP conducted a desk review based on existing resources and information prepared by national counterparts in Kosovo<sup>3</sup>. UNODC then conducted a visit to Kosovo from 17 to 21 March 2014. This included meetings with a broad range of stakeholders including judges, prosecutors, government officials, civil society groups, and regional and international agencies. The purpose of this mission was to identify the core capacity building and training needs of the judiciary, prosecution services and other bodies, including, in particular, the Office of the Disciplinary Prosecutor (ODP).
4. Specifically, UNODC and UNDP officials met with national counterparts to identify key challenges and potential activities that could be addressed under the following five key outputs of the UNODC/UNDP SAEK Component on Judicial Integrity in Kosovo:
  - Output 1.2: Enhanced capacities of the judiciary to address internal disciplinary matters and undertake corruption investigations

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<sup>3</sup> A list of the publications and resources drawn upon in conducting this needs assessment is provided in Annex A.

- Output 1.3: Improved level of personal and institutional integrity for judges, prosecutors and lay judges as well as best practices in the area of prevention of corruption within the judiciary
  - Output 1.4: Enhanced capacity of the Office of the Disciplinary Prosecutor to process cases
  - Output 1.5: Judicial institutions supported in public visibility and awareness raising
  - Output 2.1: Improved skills of the judiciary to investigate and develop cases for prosecution dealing with corruption
5. This report is structured in line with the above outputs. On the basis of this initial assessment, this document proposes a series of activities aimed at supporting the judiciary and prosecution authorities in combating corruption internally and externally. UNODC and UNDP will work with the relevant institutions to develop and finalize a tailored programme of activities meeting the needs identified.
6. UNODC would like to thank all of the national stakeholders that took the time to meet with them during the visit of UNODC expert officials to Kosovo. Special thanks in particular go to our colleagues from UNDP, Rrezearta Reka and Shqipe Neziri, who facilitated our visit.

## II ANALYSIS AND RECOMMENDED ACTIVITIES

### Output 1.2

#### Enhanced capacities of the judiciary to address internal disciplinary matters and undertake corruption investigations

##### Background: Summary of key laws, policies and practices

7. As of 1 January 2013, judicial power has been exercised by seven Basic Courts in Kosovo (courts of first instance) with branches in twenty municipalities, the Court of Appeals (with competence, inter alia, to hear and determine appeals from decisions of Basic Courts) and the Supreme Court, which represents the highest judicial authority in Kosovo. In each Basic Court, a President Judge is responsible for the “management and operations” of the Court, while in each branch of the Basic Courts, a Supervising Judge is responsible to the relevant President Judge for the “operations” of that branch. The President Judge of the Court of Appeals is responsible for the “operations” of that court, while the President of the Supreme Court is responsible for the “management and operations” of that court. The expression “management and operations” usually means the assignment of judges to the different departments or panels of the relevant court.<sup>4</sup>
8. All judges are appointed and dismissed by the President of Kosovo on the proposal of the Kosovo Judicial Council (KJC). In addition to recruiting and proposing candidates for appointment to judicial office, the KJC is also responsible for the transfer and disciplinary proceedings of judges. The KJC is responsible for “conducting judicial inspections, judicial administration, developing court rules, hiring and supervising court administrators, developing and overseeing the budget of the judiciary, determining the number of judges in each jurisdiction, and making recommendations for the establishment of new courts”.<sup>5</sup> The Law on the Kosovo Judicial Council requires the KJC to promulgate the code of professional ethics for judges, “the violation of which provides grounds for sanctions, including dismissal from office”. Similarly, it requires the KJC to promulgate the code of ethics for “court support employees”. The current Code of Ethics and Professional Conduct for Judges was adopted by the KJC in 2006. Several of its provisions have now been incorporated as “Duties of Judges” in the new Law on Courts.
9. The KJC consists of 13 members, of whom five are judges (two judges of the Supreme Court, one judge of the Court of Appeals, and two judges of the Basic Courts) elected by the members of the respective courts by secret ballot; and eight are elected by the deputies of the Assembly, of whom at least four are judges and one is an advocate. Regarding those elected by the Assembly, candidates are nominated by members of the Assembly and then elected via secret ballot. The Organization for

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<sup>4</sup> Law on Courts, No.03/L-199 adopted by the Assembly of Kosovo on 22 July 2010 and implemented from 1 January 2013.

<sup>5</sup> Constitution of the of Kosovo, Article 108.

Security and Cooperation in Europe (OSCE) has previously played a role in facilitating the nomination and voting process for elections from the Basic Courts by collecting candidatures and assisting in organizing the secret ballot process.

10. The KJC elects from among its members a Chair and Vice Chair for a term of three years. The term of office of the KJC is five years.<sup>6</sup> The President of the Supreme Court was originally an ex officio member and President of the KJC,<sup>7</sup> but may not serve in either capacity today unless he/she is duly elected.<sup>8</sup> The position is the same for the President Judge of the Court of Appeals and, indeed, the President Judge of every Basic Court, neither of whom may serve on the KJC except through election. At present, there are in fact only 11 members of the KJC in place, as two spaces allocated for election by the Assembly have not been filled. During the project assessment mission by UNODC experts, it was indicated by national officials that there were currently no plans for these spaces to be filled in the immediate future.
11. The KJC exercises disciplinary control over judges through its permanent Disciplinary Committee, which, in turn, relies on the Office of Disciplinary Prosecutor to investigate and report on alleged misconduct of judges. The Disciplinary Committee is made up of three members of the KJC and includes one representative from EULEX. Members of the Committee are able to recuse themselves from specific cases where they believe there may be a conflict of interest. Committee members are elected by proclamation for a period of three years.
12. The Office of the Disciplinary Prosecutor (ODP) is responsible for investigating potential disciplinary breaches, presenting the case before the Committee and recommending a specific sanction. The Director of the ODP is appointed by the members of the KJC and the Kosovo Prosecutorial Council (KPC), with a 2/3 majority required across both bodies in order to confirm his/her appointment.
13. Both the ODP and the individual judge subject to disciplinary proceedings may appeal the decision of the KJC Disciplinary Committee to the full KJC. Where the sanction proposed is removal, the case will automatically be heard by the full KJC and the judge in question has the ability to appeal the decision to the Supreme Court. During these proceedings a judge is entitled to be legally represented. The rules of procedure of the Disciplinary Committee have recently been updated and are available on the KJC website. During the visit to Kosovo, the Director of the Office of the Disciplinary Prosecutor indicated that the Disciplinary Committee has, in a number of cases, imposed lighter sanctions than the ODP recommended. Where this is the case, the ODP has appealed to the full KJC.

A similar process applies to the discipline of prosecutors for misconduct, with the Kosovo Prosecutorial Council (KPC) Disciplinary Committee responsible for hearing cases brought forward by the Office of the Disciplinary Prosecutor. There are currently nine members of the KPC: five

<sup>6</sup> The Constitution of Kosovo, Article 108.

<sup>7</sup> Regulation No.2005/52 on the Establishment of the Kosovo Judicial Council promulgated by the Special Representative of the Secretary-General, 20 December 2005.

<sup>8</sup> Law No.03/L-223 on the Kosovo Judicial Council, 30 September 2010.

prosecutors, three non-prosecutor members (one from the Chamber of Advocates, one professor of law, and one representative of civil society); and the Minister of Justice.

14. "Misconduct" is defined as (a) conviction for a criminal offence; (b) negligence in performing, a failure to perform, or abuse of judicial functions; (c) failure to perform judicial functions independently and impartially; or (d) a violation of the applicable code of ethics.<sup>9</sup> In cases where misconduct is found to have occurred, the Disciplinary Committee may impose sanctions that include a warning, a fine (up to 50%) of the judge's salary for a maximum period of six months, the transfer or suspension of the judge and, in particularly serious cases, the removal of the judge from their position.
15. The detection and investigation of corruption in the judiciary is also the responsibility of two other agencies: (i) the Police, for offences under the Criminal Code of Kosovo, such as abusing official position or authority, misusing official information, conflicts of interest, accepting undue gift or advantage, trading in influence, and issuing unlawful judicial decisions; and (ii) the Anti-Corruption Agency, for conflicts of interest, declarations of property, and the acceptance of gifts. Both of these agencies are subject to direction by the Prosecution Service.
16. Criminal investigations by the Police in relation to the judiciary and members of the prosecution services are conducted by the Economic Crimes Unit at the Ministry of the Interior. In their meeting with UNODC the Economic Crimes Unit noted that they had investigated a number of corruption cases in recent years in the judiciary and in doing so have used special investigative techniques such as controlled delivery and undercover operations. The criminal investigation of corruption offences is addressed in more detail under Output 2.1 below.
17. With regard to the interaction between criminal and disciplinary proceedings, where criminal proceedings are brought against a judge in relation to a corruption offence such as bribery or abuse of functions, the judge will be automatically suspended from his position from the moment the indictment is issued. The KJC will consider the matter only when criminal proceedings have reached a conclusion. If a judge is found guilty of such an offence they will be removed in accordance with the procedures above. If the investigation and prosecution process do not end with a conviction, disciplinary proceedings may begin in order to ascertain whether a disciplinary violation has occurred.

### Key Challenges

18. A number of reports produced by international organizations and non-governmental bodies in recent years have highlighted significant corruption risks within the judiciary in Kosovo<sup>10</sup>. In particular, UNDP's Public Pulse survey, published in August 2013, showed that only between 16.7% and 17.7% of respondents were satisfied with the work of the courts and prosecution services<sup>11</sup>. A

<sup>9</sup> Law on the Kosovo Judicial Council, Article 34.

<sup>10</sup> Reports outlining corruption risks in Kosovo Judiciary.

<sup>11</sup> *Public Pulse 6* (Prishtina: UNDP Kosovo, August 2013), p. 10.

study conducted by Transparency International also showed that respondents believed the judiciary to be significantly affected by corruption, with the judiciary receiving a score of 4.1 (where 5 is considered to be the highest level of perceived corruption)<sup>12</sup>.

19. The general conclusions from these studies are further supported by a number of specific cases of corruption in the judiciary and prosecution services in the last two years, with a number of these having come before the KJC Disciplinary Committee resulting in disciplinary action.
20. During the visit by UNODC, many stakeholders confirmed the public perception of a judicial system with significant corruption problems and inefficiencies, demonstrated in part by the large case backlog that has developed in the court system. Political influence over members of the judiciary and prosecution services was highlighted by many stakeholders as a key problem and one which was perceived as being directly related to the issue of corruption. Reflecting this, in January 2014, a letter signed by 17 of the 27 EULEX judges was published which raised their concerns about the ability of national judges to assume their responsibility for certain types of cases due to the level of political interference to which they are subject at present. One stakeholder highlighted to UNODC how local prosecutors are often fearful of receiving high-profile cases as they know they will be subject to pressure from other branches of government. Members of the Ministry of Justice however denied there is any influence by government over members of the judiciary.
21. In spite of the significant concerns raised, it was also a commonly-held view among stakeholders that, following the introduction of a number of recent reforms in recent years, including changes to court structure and disciplinary procedures, the situation was gradually improving both in terms of efficiency of work and with regard to the promotion of integrity and the reduction of opportunities for corruption within the judiciary and prosecution services. Below are the key challenges highlighted by national and international stakeholders with regard to administration of the disciplinary process for judges and prosecutors in Kosovo.

*The Institutional Disciplinary Structure: The KJC, KPC and the ODP*

22. Many stakeholders that UNODC met during the assessment mission stated that reforms were required to improve the institutional structure for disciplinary procedures in the judiciary, in particular by enhancing the autonomy and independence of the ODP. The representative of the Association of Judges, reflecting the views of many participants, believed that the ODP should be entirely separate from the KJC.
23. A key inhibitor to the independence of the ODP is its reliance at present for its annual budget on the KJC. A number of participants noted that as the ODP was effectively financially reliant on the KJC, it was legitimate to ask how independent the ODP could actually be when carrying out its work. The Director of the ODP noted that while his budget is technically separate, the final approval comes from the KJC due to the fact that the budget of the ODP appears as a line item in the budget of the KJC. It is noted by UNODC that presently there also appears to be conflicting legislative provisions

<sup>12</sup> Transparency International, see [http://www.transparency.org/country#KOS\\_PublicOpinion](http://www.transparency.org/country#KOS_PublicOpinion).

governing the financing of the ODP. Some provisions provide that the Director of the ODP should send his budget directly to the Assembly while other legislation provides that it should be sent to the Assembly through the KPC/KJC.

24. Furthermore, it is the KJC and KPC that are responsible jointly for appointing the head of the ODP, again creating a perception of a lack of independence and of an environment in which the integrity of the ODP could be called into question. In discussions with the Director of the ODP during the assessment mission, UNODC asked whether he agreed that the perception might exist that he is not entirely independent from the KJC. The Director agreed and noted in this regard that he felt there is a pure conflict of interest deriving from the fact that the KJC and KPC vote for his appointment. The result is that the Director of the ODP may have cases involving those persons that have elected him and it was further noted that this had actually occurred in practice as he had previously initiated a case against a member of the KJC.
25. A potential alternative approach was suggested in this regard by the Minister of Justice who proposed the establishment of an independent committee that would make a recommendation to Parliament regarding who should be appointed to the position of Director of the ODP. Parliament could then approve that recommendation by a 2/3 majority.
26. The Director noted that there had been discussions in the past regarding the establishment of a separate law to support the independence of the office. While the introduction of new legislation to address this issue remains outside of the scope of this project, UNODC experts nevertheless recommend that this be reconsidered as a matter of priority and note that UNODC would be available to assist in the development and drafting of such a law should such assistance be required.
27. The close relationship between the KJC and the ODP has, in the view of a number of those UNODC spoke to, led to a significant degree of informality between the Director of the ODP and the members of the KJC. It was thought by some that this, combined with the significant supervision provided by the Director over each individual investigation due to capacity challenges amongst ODP staff members<sup>13</sup>, in turn increased the perception that the Director of the ODP could be influenced by the KJC and others in carrying out his duties. A lack of formal distinction between these bodies appears to have led to a negative perception of the overall integrity and effectiveness of the disciplinary process.
28. It was further noted by a number of stakeholders that the fact that the Disciplinary Committee of the KJC was composed of sitting judges created a potential conflict of interest as members of the KJC could, and in fact have been, subject to disciplinary proceedings themselves. A similar concern was raised by prosecutors with whom UNODC spoke in regard to the work of the KPC Disciplinary Committee, with a number noting that when conducting their hearings, prosecutors were effectively sanctioning themselves and that this created a peer-to-peer conflict of interest. It was thought by a number of prosecutors that this potential conflict manifested itself regularly in the

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<sup>13</sup> For more on the capacity challenges of ODP staff please see Output 1.4 below.

work of the KPC Disciplinary Committee and had impacted on its decision-making in a number of cases.

29. In this regard, it was suggested that a body staffed by prosecutors from the Chief Prosecutors Office, and separate from the KPC and KJC, could be established to hear disciplinary proceedings in order to remove this perceived conflict. It was the view of one stakeholder that this change would help deal with the perception of the lack of independence in the disciplinary process. Furthermore, as a tool of increasing trust and understanding of the work of the KPC and KJC, some stakeholders suggested a strengthened role for civil society organizations in overseeing the work of the KJC, KPC and ODP.
30. In contrast, some stakeholders, including the Judges Association, suggested that the proportion of judges sitting on the KJC should in fact be increased and that members of other professions from outside the judiciary, such as academics, should not be permitted on the KJC. It was also suggested that it should only be for judges themselves to decide on the membership of the KJC and its Disciplinary Committee.
31. The Director of the ODP noted that the Disciplinary Committee hearings have two levels (first instance and appeal) and proposed that the appellate body should be composed of judges and prosecutors who are not members of the KJC or KPC so as to provide an appeal to a different body. The Director further noted that additional places for civil society members should be introduced in the Disciplinary Committees.
32. A general perception amongst the public and national stakeholders has also developed whereby the independence of the KJC itself has been compromised due to a significant number of its members being elected directly by the National Assembly. This process of election, according to many stakeholders, has increased the likelihood of members of the KJC being subject to political influence. A number of participants also noted that the Kosovo National Assembly currently has seats reserved for individual ethnic minorities and this had a knock-on effect to those nominated for positions in the KJC.
33. In its recent 2013 Progress Report, EULEX recommended that changes be introduced to ensure that at least half of the KJC members be appointed by the judiciary. Constitutional changes to give effect to this type of change have been proposed but as yet agreement has not been reached on their adoption and implementation.
34. UNODC experts noted that the practice whereby members of the Legislature or Executive select members of the Judicial Council, or equivalent body, is in fact common amongst signatory parties to the UN Convention against Corruption and would not, of itself, indicate that the integrity of individual members of the judiciary should be brought into question. During the assessment mission UNODC spoke with a member of the KJC who noted that he had been elected to the Assembly but in fact was not aware who had nominated him for the position and insisted that he had never been pressured or influenced by members of the Assembly with regard to the conduct of

his work. He considered that this was also the case for other members of the KJC. While recognizing the concerns of many stakeholders with regard to the election of members of the KJC, it is noted that any change to this system would require an amendment to the Constitution, which UNODC considers outside of the scope of this project.

35. Finally, many stakeholders questioned whether the strong centralization of all court-related administrative responsibilities in the KJC was an appropriate approach. At present, all vetting, disciplinary, appointment and other related powers are vested in the KJC. It was noted by a number of participants that there are very few examples in other jurisdictions where so many functions are allocated uniquely to the Judicial Council or equivalent body. Many also suggested that a more appropriate and transparent approach would be for disciplinary procedures to be performed by the court itself and that communication between the KJC and the Supreme Court has been poor with regard to disciplinary procedures. At present, the Chief Justice is informed of the outcome of disciplinary proceedings as a courtesy by the KJC but has no insight or input into the decision-making process. Recent legislative reforms have gone some way to address this perceived imbalance by providing that the Supreme Court representatives on the KJC must be appointed by the Supreme Court itself.
36. At present however, the Presidents of the Supreme Court and of the Court of Appeals, and the President Judges of the Basic Courts do not have any role in relation to complaints made with respect to the professional conduct of judges of their respective courts. As many of the complaints received relate to alleged delays in judicial proceedings, with a number of allegations suggesting that such delays have been deliberately caused, the head of the court concerned may in many cases be the best person to investigate such complaints and take remedial action.

*A Lack of Transparency in the Disciplinary Process*

37. At present, there is a significant lack of transparency in the disciplinary process applicable to members of the judiciary and prosecution services. This in turn has meant that it is difficult for the public, the media or even other members of the judiciary, to accurately judge the effectiveness and fairness of the work of the ODP, KJC and its Disciplinary Committee. This has led to a perception amongst many that judges with close personal association with the KJC and Disciplinary Committee receive more lenient treatment. A direct connection can be drawn between a lack of transparency and a perception of bias and unfairness on the part of the ODP and KJC.
38. Many stakeholders, including the representative of Transparency International Kosovo, believe that an increase in the transparency of the judicial disciplinary process would be the most effective measure in increasing public trust and increasing efficiency of the judiciary as a whole. It was noted by a number of participants that such an increase in transparency would, in particular, serve to reduce the opportunity for undue political influence to be applied to members of the judiciary, the ODP and the KJC when conducting their work.

39. While the decisions of the KJC Disciplinary Committee are, in principle, made publicly available on their website, many stakeholders that UNODC and UNDP spoke to were unaware of this or refuted that this was in fact carried out in practice. There were also common complaints that the website used to promulgate these decisions had proven difficult to navigate. KJC members that UNODC spoke with recognized that this was an area in which further work was required to effectively disseminate records of disciplinary proceedings. There was also a willingness on the part of KJC members to look at good practices from other countries with regard to the publication and dissemination of disciplinary decisions.
40. Furthermore, there was criticism from some participants that the decisions of the Disciplinary Committee are only published in anonymized form. There was not however a common agreed position approach to this issue amongst national stakeholders. It is noted by UNODC in this regard that a number of national jurisdictions also anonymize disciplinary hearing records and decisions. In discussions with UNODC and UNDP officials, KJC members agreed that further consideration should be given as to whether some forms of decisions should be made available to the public in non-anonymized form. There remain serious concerns however amongst members of the KJC that by publishing the names of judges subject to disciplinary proceedings, members of the judiciary may have their legitimacy and authority undermined both with respect to their peers and the public more broadly. This impact on reputation of members and the standing of the judiciary must be balanced against the increased trust that could be brought about through the introduction of greater transparency.
41. The Director of the ODP noted that the ODP is in favour of making the disciplinary decisions more readily available to the public and in introducing greater transparency more generally in the disciplinary process.
42. Exacerbating this lack of transparency is a poor level of implementation of the Law on Access to Public Documents by the courts, KJC and KPC in Kosovo. It was a commonly held view amongst stakeholders that requests for information were being processed unnecessarily slowly and contrary to the spirit of the law. Significant delays are common before a response is provided by the KJC to a request for information. The media organization Internews Kosova is in fact currently appealing the decision of the KJC not to release the names of judges subject to disciplinary procedures following a request made under the Law on Access to Public Documents.
43. UNODC experts noted that irrespective of whether the decisions being taken by the courts and the KJC with regard to the release of information under the Law on Access to Public Documents are correct, significant improvements could be made to the handling of such requests in terms of speed and communication with requestors. From the information obtained by UNODC and UNDP, key challenges in this regard relate to delineation of responsibility for receiving and responding to requests and the delivery of appropriate training to those officials. This issue, and associated proposed activities, is addressed in more detail under Output 1.4.

44. With regard to the work of the KPC Disciplinary Committee it was also noted by many of those with whom UNODC spoke that a lack of transparency was exacerbating concerns regarding potential conflicts of interest amongst members of the Committee. It was felt by many that a significant increase in the transparency of the work of the Committee would serve to allay many of the concerns both of prosecutors in Kosovo and the public more generally regarding the objectivity and consistency of decision-making.
45. There was a lack of clarity as to whether disciplinary proceedings were held in open or closed proceedings, with the Director of the ODP noting that in practice the majority of hearings are closed while it was reported to UNODC by a number of stakeholders that in principle all of the hearings of the Disciplinary Committee should be open to the public. It was further noted by KJC representatives that where personal issues are discussed such as personal integrity matters and cases touching on the personal property of judges, a decision has been taken by the KJC to hold these hearings in closed session. In addition, cases addressing serious violations of the Code of Ethics are also closed. UNODC officials noted that further clarification was required in this regard.
46. Questions were raised by a number of stakeholders as to why such sessions should be closed and views were expressed that in fact a reverse presumption should be introduced whereby the more serious the allegation, the more open and transparent the process should be. During the visit to Kosovo, UNODC officials asked KJC members how many of the disciplinary proceedings taken forward in the last year had been made open to the public but KJC members indicated they would not be able to provide an accurate figure or estimate.
47. As regards specific reforms that could bring greater transparency to the disciplinary process, examples given by stakeholders included: enhancing the role of civil society in the disciplinary process; the introduction of a programme to raise awareness amongst the public of the mechanisms available to them to hold the judiciary and prosecution services to account; the introduction of training and support to increase the capacity of court administrators to respond to requests for access to information; and the development of new platforms for the exchange of information and concerns between the media and judiciary.
48. The KJC explicitly recognized in their meeting with UNODC that more could be done to make its work transparent. As an example, they indicated that it would be a good first step to produce a brochure or short guide outlining the role and responsibilities of the KJC and that all decisions should be made public and actively distributed to court officials in order to promote awareness of their work.
49. The above concerns regarding transparency in the disciplinary process were widely held amongst all national stakeholders, including members of the judiciary and prosecution services themselves, and point to significant challenges faced on the part of the KJC and ODP to effectively publish and raise awareness of their work. To address this challenge, UNODC and UNDP recommend below that a series of activities be undertaken under this project to support these institutions in more

effectively engaging with the public with regard to the work conducted under the judicial and prosecutorial disciplinary process.

## Proposed activities to be delivered under Output 1.2

**Workshop 1:** International Best Practices in the Disciplinary Functions of Judicial Bodies: Increasing Independence and Efficiency in the Disciplinary Process.

This Workshop, in response to a request received from the KJC during the visit by UNODC officials, will seek to explore different approaches by national judicial authorities worldwide with regard to the disciplinary processes applicable to members of the judiciary. Drawing on the key good practices identified in the UNCAC Working Group on Prevention, and including the participation of representatives of Judicial Councils and equivalent bodies from other States, participants will explore and reflect on the effective approaches adopted by other countries in order to increase public confidence in the disciplinary process.

Following completion of the workshop UNODC officials will support KJC and other relevant officials in the development of further measures in Kosovo to increase the efficiency, effectiveness of disciplinary mechanisms.

**Workshop 2:** Enhancing Reporting Mechanisms in relation to Judicial Misconduct

With the aim of increasing the number and quality of reports received by the Office of the Disciplinary Prosecutor, this workshop will bring together ODP officials and other stakeholders including civil society organizations, court user groups and representatives of the media to identify how public awareness of the mechanisms available to report alleged acts of misconduct and corruption in the judiciary to ODP could be enhanced. Specific measures to be considered will include the on-line platform available to make reports in-court reporting mechanisms and potential awareness-raising campaigns via traditional and social media.

**Workshop 3:** Enhancing Communication and Information-sharing between the KJC and External Stakeholders.

This workshop will address one of the key concerns outlined by a wide range of stakeholders with regard to the work of the KJC. Specifically, UNODC and selected international experts will work with the KJC Secretariat to consider, based on existing practices in other States, how best the KJC can effectively communicate with the public and increase transparency with regard to the judicial disciplinary process. Key areas to be addressed will include the production, format and content of annual or monthly reports, increasing public awareness and usability of the on-line KJC forum, and consideration of how civil society oversight can be enhanced with regard to the disciplinary process.

### Output 1.3

#### **Improved level of personal and institutional integrity for judges, prosecutors and lay judges as well as best practices in the area of prevention of corruption within the judiciary**

##### **Background: Summary of key laws, policies and practices**

50. This output focuses on the integrity measures put in place for the personal conduct of members of the judiciary, reflected primarily in codes of judicial conduct, judicial training and measures aimed at preventing and addressing conflicts of interest.
51. The KJC is responsible for promulgating the code of professional ethics for judges, lay judges and judicial administration. The Code of Ethics and Professional Conduct for Judges applies to all professional judges in Kosovo. It generally adheres to internationally recognized basic principles that require judges to perform their judicial and extra-judicial activities in a manner that promotes public confidence in the dignity, integrity and independence of the judiciary. The Code is organized in three chapters (concerning general principles, specific rules of ethics and specific rules of professional conduct) and 31 sections and covers, inter alia, the following principles/aspects: independence, impartiality in general, impartiality and conduct of judges in the exercise of judicial functions, impartiality and extra-judicial conduct, other professional activities of a judge.
52. The Code provides that a judge shall: observe high standards of professional and personal conduct; respect and comply with the law; perform the duties of office impartially and diligently; avoid any conduct and situation that could lead to a judge's integrity, impartiality or independence being questioned; perform his/her duties in conformity with internationally recognized human rights standards. Judges must also apply the law without discrimination. Judges are required to act impartially and independently in all cases, to be free from any outside influence, and to perform judicial duties based on the facts and the law applicable in each case, without any restriction, improper influence, inducements, pressures, threats of interference, direct or indirect, from any quarter.
53. The Code's provisions apply not only to the judge's professional activity but also to a judge's private life, when a judge's actions may impair the judge's image in the public, thus affecting the judiciary as a whole. Judges shall maintain and improve the highest standards of professionalism and legal expertise and for that purpose shall engage in continuing legal education and training as determined by the KJC, and when not incompatible with other judicial duties.
54. In the performance of judicial duties a judge shall not use words or conduct manifesting bias or prejudice and shall not allow staff, court officials and others subject to the judge's direction and control to do so. Judges shall show availability and respect for individuals, be patient, dignified and courteous to litigants, defendants, witnesses, lawyers, prosecutors other judges and lay-judges and any third party with whom they deal in their official capacity, and should require reciprocity from

lawyers, staff and court officials, and others with whom they may come in contact during the court proceedings or who are subject to their direction and control<sup>14</sup>.

55. The Kosovo Judicial Institute (KJI) is the key body responsible for developing and delivering education to members of the judiciary. UNODC and UNDP met with the Acting Director of Training at the Kosovo Judicial Institute who noted that there were currently four key programmes in place at the KJI: initial training which is mandatory for all individuals entering the judiciary; continuous learning programmes for members of the judiciary which also address issues of ethics and integrity; training programmes for those seeking promotion within judicial institutions; and training programmes for related bodies such as members of the ODP, the Kosovo Anti-Corruption Agency (KAA) and others.
56. The KJI noted that while judicial ethics is included in the initial and continuous training programmes for members of the judiciary, this topic used to be a greater focus in the past. In the recent past there has also been a three-day training relating to judicial and prosecutorial ethics organized by KJI in cooperation with USAID.
57. In the initial training programme there is a module of 10 hours, covering judicial ethics and the importance of the independence of judges and prosecutors. In the continuing training, there are modules of one or two hours covering the issue of judicial ethics. Regarding the manner of delivery of these sessions, the KJI noted that ethics teaching and training is conducted in an interactive manner, also using a “train the trainers” approach. The KJI also provides training to court staff too where specific training sessions are requested.

### Key Challenges

*A need to enhance awareness of the relevance of international standards in the field of judicial integrity*

58. During its discussions with the Supreme Court, it was reported that there had recently been discussions within the KJC and the judicial community for a possible updating of the code of conduct. In this regard it was noted that in conducting such an exercise, account should be taken of key international standards, and in particular the Bangalore Principles of Judicial Conduct.
59. The Supreme Court was of the view that there was presently a very low level of awareness amongst the judiciary regarding such international standards and that they would welcome a training workshop in which the relevance of the Bangalore Principles and other key international instruments to the work of the judiciary in Kosovo could be explored. It was also noted that such a workshop could provide a forum for consultation and discussion between the KJC, Supreme Court

<sup>14</sup> This analysis can be found in further detail in the 2013 Council of Europe Report “Assessment report on compliance with international standards in the anti-corruption (AC) area” produced under the CoE Project against Economic Crime in Kosovo (PECK). The report can be found on the CoE website here: [www.coe.int/t\\_DGHL\\_cooperation\\_economiccrime\\_corruption\\_Projects\\_PECK-Kos\\_Assessments\\_2590\\_PECK\\_AC\\_Assessment\\_Report\\_FINAL.pdf](http://www.coe.int/t_DGHL_cooperation_economiccrime_corruption_Projects_PECK-Kos_Assessments_2590_PECK_AC_Assessment_Report_FINAL.pdf)

and representatives of other parts of the judiciary with regard to possible amendments and improvements to the existing Code.

60. Under this project, UNODC had recently, and for the first time, translated the Bangalore Principles on Judicial Conduct and associated Commentary into Albanian and Serbian and it was observed that this therefore provided an opportune moment to hold a training workshop aimed at raising awareness of this instrument among members of the Kosovo judiciary.

*A need to enhance the practical application of the Code of Judicial Conduct in Kosovo*

61. A significant challenge was noted by UNODC experts with regard to the implementation of the code of conduct amongst members of the judiciary in Kosovo and in particular amongst judges in regions outside of Prishtinë/Priština. This was highlighted by a broad range of stakeholders including both national and international actors, with many emphasizing that as the Code had been rapidly developed and adopted by the KJC in 2006 with little consultation within or outside the judiciary, in many Courts it had yet to be fully incorporated into the day-to-day practices and work of judges.
62. An additional challenge was that many of the principles and concepts outlined in the Code stem from common law legal traditions and therefore efforts were required to communicate how these principles should be applied by judges in practice in Kosovo. The Judges Association noted that there remained some ill feeling among some members of the judiciary to the Code due in part to the way in which it was introduced. It was highlighted in particular that the Judges Association had not been consulted in advance of its adoption.
63. There were also concerns amongst some members of the judiciary that the Code was overly strict as it did not, for example, allow judges to frequent socially with other members of the legal profession. UNODC noted that such concerns may stem in large part from a lack of clear training and communication as to the practical application of the Code to the judiciary and that this again highlighted the need for additional efforts to engage with judges in this regard.
64. Connected to a lack of awareness amongst some members of the judiciary as to how the Code applies to the practical day-to-day work of the Courts, is the absence in Kosovo of any independent advisory service for judges to be provided guidance on specific situations in which they are concerned they could breach the Code. As highlighted in the recent report of the Kosovo Legal Institute, owing to the absence of such advisory mechanisms, the importance of the Code has not been fully communicated and judges and prosecutors have interpreted the application of the Code in different ways, leading to a lack of uniformity in its use. UNODC experts echo the recommendation provided by the Kosovo Legal Institute that the Kosovo authorities should consider the establishment an independent advisory mechanism separate from the Disciplinary Committee in order to provide advice as to whether potential or actual activities would result in a breach of the code of conduct.<sup>15</sup>

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<sup>15</sup> See page 14 the 2014 Kosovo Law Institute Report, Accountability of the Justice System: A report on the regulation of accountability of Judicial and prosecutorial system in Kosovo.

*A need to reflect on adequacy of the existing Code of Conduct*

65. As recognized in the 2013 Council of Europe report on compliance with international standards in the anti-corruption area, it is further noted that while the existing Code of Conduct broadly reflects internationally recognized standards, it is in fact based on the legal framework that was in place prior to the introduction of the new Law on Courts in Kosovo. Furthermore, and as also stated in the Council of Europe report, the meaningful impact of the Code for the prevention of corruption in the judiciary appears to be limited.
66. UNODC experts would reiterate the recommendations of Council of Europe experts in noting that “in order to provide for a comprehensive and up to date regulatory framework on ethical issues and to raise judges’ awareness, it is therefore recommended to update rules of ethics and professional conduct for judges by including proper guidance specifically with regard to conflicts of interest and related areas (notably the acceptance of gifts and other advantages, incompatibilities and additional activities)”.
67. In addition, and as noted above, UNODC experts would highlight that in light of the recent translation by UNODC of the Bangalore Principles on Judicial Conduct, the KJC when reflecting on a potential update to the existing Code, may wish to ensure that these internationally recognized principles be reflected to the greatest extent possible in the Code of Conduct applicable to members of the judiciary in Kosovo.

**Proposed activities under Output 1.3****Workshop 1:** The Bangalore Principles on Judicial Conduct as applied in Kosovo

This workshop will provide members of the judiciary in Kosovo with a detailed understanding of the Bangalore Principles on Judicial Conduct and will explore how best these principles can be addressed in the work of the KJC. Participants will reflect in particular on the extent to which the present Code of Ethics and Conduct in place in Kosovo, and its practical application, incorporates these internationally recognized principles.

This workshop, led by UNODC experts, will benefit from the fact that, for the first time, the Bangalore Principles on Judicial Conduct and its associated Commentary have been translated into both Serbian and Albanian.

On the basis of this workshop UNODC will work with the Kosovo Judicial Institute to amend the initial and continuing programmes presently delivered to members of the judiciary in relation to judicial ethics and conduct.

**Workshop 2:** Regional Workshop Series on the Application of the Kosovo Judicial Code of Ethics and Conduct: From Theory to Practice

Building on the work conducted in Workshop 1, this activity will seek to address the perceived gap in understanding amongst some members of the judiciary as to how the existing Code of Conduct and Ethics for the judiciary in Kosovo should be applied in practice. Specifically, UNODC experts, in cooperation with members of the Kosovo Judicial Institute and the KJC, will conduct a set of four one-day workshops with members of the Kosovo Basic Courts in regions across Kosovo to raise awareness regarding how the Code of Ethics and Conduct and relevant international standards such as the Bangalore Principles on Judicial Conduct can be applied to the practical day-to-day work of the Courts.

**Workshop 3: Innovative Approaches to Corruption Prevention in the Judiciary: International Best Practices**

This workshop will provide an opportunity for relevant actors to meet and consider some of the international best practices presently in place worldwide for the prevention of corruption in the judiciary. Drawn from the global work conducted by UNODC in this field, participants will use this workshop as a method of formulating potential new policies and procedures aimed at the prevention of corruption in the judiciary in Kosovo.

To facilitate an active and inclusive discussion a broad range of stakeholders will be invited to participate in this workshop including the KJC, Judicial Institute, civil society organizations and representatives of the media.

## Output 1.4

### Enhanced capacity of the Office of Disciplinary Prosecutor to process cases

#### Background: Summary of key laws, policies and practices

68. The Office of Disciplinary Prosecutor (ODP) was established in 2001 as an independent body that serves both the KJC and the KPC. It is responsible for investigating alleged misconduct of judges and prosecutors and presenting the evidence supporting disciplinary action for misconduct to the relevant Disciplinary Committee. As noted, the head of the ODP is the Director who is elected by two-thirds of the total joint membership of the KJC and the KPC.
69. At present the ODP has a total staff of 20 officials, comprised of the Director, five Judicial Inspectors, the Chief of Administration, five Legal Advisors, three Translators and three Assistants. These officials are charged with investigating alleged disciplinary breaches of the 350 judges and 125 prosecutors in Kosovo.
70. The Director of the ODP is required to possess a university degree in law, criminal justice or police administration, and five years of experience as a lawyer, judge, police officer, prosecutor or in a related field of law enforcement or criminal justice administration. A university degree is not required of Inspectors, but only three years of experience in law enforcement, police work, criminal justice administration or related field. No formal division of responsibility is made between staff members as regards the investigation of allegations of misconduct against prosecutors and judges. At the discretion of the Director, cases are allocated depending on the respective experience of individual Inspectors depending on the nature of the case.
71. The ODP initiates an investigation upon receiving a complaint from any person, or on its own initiative “when there is a reasonable basis to believe that a judge may have engaged in misconduct”. The investigations are conducted by Inspectors, with Legal Officers conducting primarily administrative work in collecting initial reports and conducting initial fact-finding work. Based on a preliminary report produced by the Legal Officers, the Director of the ODP will take a decision as to whether the Inspectors should take forward an investigation.
72. The responsibility of the Inspectors is “to collect, organize and analyze the evidence dealing with issues under investigation, prepare reports on findings of judicial/prosecutorial misconducts, and make recommendations for action”. As part of their investigations, Inspectors can interview judges and prosecutors and “seek their explanations regarding the disciplinary breaches”. Investigators are also able to interview witnesses and access any document except confidential information subject to criminal proceedings. During discussions with UNODC, the Director noted that he takes particular caution to ensure that staff members do not seize or confiscate information that is relevant to a criminal investigation.

73. Subjects under investigation have the right to remain silent, as they would in a criminal investigation. The ODP also has the ability to access bank records, but in practice rarely exercises such powers as their investigations do not often touch on financial matters. On the basis of the information obtained during the investigation process the Inspector drafts the initial report, which is then reviewed and approved by the Director and sent to the Disciplinary Committee.
74. In hearings, the ODP is usually represented by an Inspector who has dealt with the file or by the Director, depending on the individual case. As noted above in relation to Output 1.2, the inspector will present the case to the respective Disciplinary Committees of the KJC and KPC and will recommend a sanction. The judge or prosecutor subject to disciplinary proceedings is present at the hearing and has the right to legal counsel.
75. There is no requirement on the part of ODP to communicate with the KJC until an investigation is completed and the ODP believes that some disciplinary action is required. Where the ODP finds insufficient evidence to establish that an allegation of misconduct actually occurred, the KJC will not even hear about the case.
76. Where the ODP believes that a case is both misconduct and criminal in nature, it will wait until the criminal case is decided before taking forward the disciplinary process. In the interim, the ODP is able to request measures such as suspension and non-payment of salary while the criminal proceedings are taken forward. Where the criminal investigation does not result in conviction, the disciplinary process can then be restarted by the ODP.
77. The ODP reported that it receives reports of alleged misconduct on a daily basis. At the time of the UNODC assessment mission, there were thirty cases under assessment by ODP Legal Officers, thirty cases under investigation by Inspectors and a small number of cases under consideration by the Director pending a decision as to which Inspector the case should be assigned.
78. The most significant number of cases received by the ODP relate to delays in the court process, with allegations made that there has been an intentional delay imposed by the judge in order to favour one of the parties to the proceedings. The Director of the ODP indicated during discussions with UNODC that in many cases judges will explain that the caseload faced by the courts has meant that time had simply not yet been found for a hearing. The Director noted that this is usually an accurate assessment and that rarely have allegations of intentional delays on the part of the judiciary been substantiated.
79. A database has been maintained over the last ten years detailing the number of allegations of misconduct received by the ODP and outlining how each individual case resulted. The ODP produces a written report every two years summarizing its work and at the time of writing the report for 2012 / 2013 was being finalized. Since 2001, there have been 4,100 cases dealt with by the ODP.

## Key Challenges

80. It was clear from the information obtained in relation to the work of ODP that the Director and staff of this organization are under significant pressure due to the number of reports of alleged violations received from the public and the relatively small number of staff in the office. In discussions with UNODC, the Director of the ODP noted that UNDP will support the office with additional staff and they are currently looking to add two more Judicial Inspectors. Nevertheless, the Director noted that even when these new inspectors are in place, there will still not be enough staff to meet the needs of the organization. This also reflects the conclusions of the report recently concluded by the Kosovo Legal Institute.<sup>16</sup>
81. While outside the scope of this project, the UNODC expert team recommends that consideration be given by the Kosovo authorities to the provision of further financial and technical resources to the ODP in order to support it in carrying out its functions effectively.
82. There are also significant concerns regarding the operational independence of the ODP in light of institutional relationships between the ODP and the KJC. These challenges are addressed in detail under Output 1.2 above and are not addressed further in this section.
83. A number of specific challenges that could potentially be effectively addressed under this project did however come from the discussions of UNODC officials with national stakeholders. These primarily related to the capacity of ODP officials to conduct investigations into the work of the judiciary and prosecution services and to the amount and quality of training they receive in this regard.

### *Challenges in Professional Capacity and Training of ODP Staff*

84. The key focus of discussions in relation to the challenges of ODP centred on the capacity of the Legal Officers and Inspectors to carry out their responsibilities effectively in light of their relative lack of experience compared with those they are charged with investigating. In the eyes of many stakeholders this has created a credibility problem for the ODP with members of the judiciary and prosecution services in addition to impacting on the quality and speed of the investigations conducted.
85. A particular challenge faced by ODP staff members, highlighted by a number of stakeholders, is the absence of any current or former judge responsible for conducting the investigations carried out by the ODP. There were concerns also that a number of these staff members had not received any formal legal training. There were also related concerns expressed by a number of members of the judiciary that, at present, the individuals responsible for conducting disciplinary investigations were not sufficiently experienced in the work of the courts. It was further noted that if the

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<sup>16</sup> See page 18 of the Kosovo Legal Institute Report which provides: ODC lacks human and financial capacities. Chairperson of KJC declares that "I am not satisfied with the composition of this office as they lack adequate and professional capacities but also logistical capacities in order to investigate appropriately a case of breach of conduct by judges."

experience and skills of investigating officials were to be enhanced, judges would feel more confident in what they can expect and would also potentially be more proactive in engaging in the disciplinary process.

86. The capacity limitations amongst ODP staff also exacerbates the workload of the organization, as inexperienced officials were reported by some stakeholders as being less willing to turn down cases, which clearly do not provide a prima facie case for a disciplinary case. It was felt that the ability to identify unmeritorious cases at an early stage was particularly important for staff at ODP given the number of allegations brought by frustrated litigants, which appear to have little basis as regards misconduct. This would also serve to alleviate concerns that judges or prosecutors are needlessly placed under investigation in unmeritorious cases.
87. In discussions with UNODC, the ODP Director indicated that training was needed for staff members in relation to a wide range of areas, including legal drafting, investigation techniques, disciplinary processes and the use of modern technological tools in the conduct of investigations. The Director placed emphasis in particular on the need for additional legal drafting training to improve the reports and recommendations that are made by ODP staff to the KJC Disciplinary Committee. As noted in the recent report by the Kosovo Legal Institute, this lack of training may stem from the fact that at present it does not appear that ODP staff are invited to participate in training programmes run by the Kosovo Judicial Institute.<sup>17</sup>
88. The Supreme Court noted that a powerful training programme for ODP staff could address the current challenges that existed in their investigation capacities. It was emphasized however that such training must be self-sustaining and not merely represent a one-off for current staff members. What is required in the view of many stakeholders is the development of a more comprehensive and training programme for ODP officials focusing on initial formation but also extending to longer-term continuing education.
89. The enhancement of investigation capacity of ODP staff would also be supportive of efforts by the institution to press for institutional reforms aimed at increasing its independence from the KJC. A number of stakeholders noted that the lack of experience of investigators in the work of the judiciary had undermined their efforts to seek greater autonomy in conducting their work in the past.

*Absence of clear and effective guidelines in relation to the work of the ODP*

90. It was also recognized by the ODP Director that the rules applicable to the functions of the ODP required further development. As an example, it was noted that there is presently no time limit applicable to when an initial investigation should be completed by ODP following the receipt of an initial report. Furthermore, there is no statute of limitations applicable to when an allegation may be brought.

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<sup>17</sup> See Page 18, Accountability of the Justice System: A report on the regulation of accountability of Judicial and prosecutorial system in Kosovo

91. In the view of the Director an updated set of regulations governing the work of the ODP is required and a new set of procedures for the work of Inspectors have recently been drafted to address this gap. This draft is presently with the KJC for its consideration and approval.
92. In the view of the UNODC experts, such a set of guidelines, if well drafted, could provide increased certainty for Legal Officers and Inspectors at the ODP in the conduct of their work and could go some way to addressing the concerns of members of the judiciary services as regards the ability of these officials to effectively investigate judicial conduct.

#### Proposed activities under Output 1.4

93. The recommended activities by UNODC officials under this output represent a three-stage train-the-trainers programme for ODP officials. Addressing each of the key areas identified by the Director of the ODP as requiring particular attention, the three workshops to be delivered under this output, and the materials provided as a part of the training programme, will be designed to allow ODP officials to deliver the same sessions to incoming staff members. In so doing, UNODC hopes to provide the basis for the establishment of a strong and sustainable induction programme for ODP staff.

##### **Workshop 1: The Role of Disciplinary Investigators: Core Skills and Competencies**

This workshop will provide an introduction for ODP investigators both to the work of the judiciary in Kosovo and the basic skills required in order to conduct a successful investigation. Key investigation skills addressed will include interview techniques, documentation analysis and evidence-gathering. A specific session will be provided on methods of information security and confidentiality measures.

##### **Workshop 2: The Role of Disciplinary Investigators: Advanced Skills and Competencies**

Building on the learning outcomes of workshop 1, this training workshop will deliver a set of advanced classes for ODP investigators with regard to the key skills required in order to conduct a successful disciplinary investigation. Key investigation skills addressed will include advanced interview techniques, documentation analysis and evidence-gathering.

##### **Workshop 3: Investigation Report Production and Court Advocacy in the Context of Disciplinary Proceedings**

In response to the specific need identified by the Director of ODP during his discussions with UNODC, this workshop will provide detailed training to ODP officials on report drafting and court advocacy skills required to present cases before the KJC Disciplinary Committee.

On the conclusion of this training programme UNODC will work with the ODP to collate a set of materials produced during the above workshops, which can then be used by the ODP going forward as a basis of a formal initial training programme for all new members of the ODP.

## Output 1.5

### Judicial institutions supported in public visibility and awareness raising

#### Background: Summary of key laws, policies and practices

94. The International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) are directly applicable in Kosovo and have priority over national law and acts of public institutions. Article 14(1) of ICCPR recognizes the right to a public trial in the determination of any criminal charge or of rights and obligations in a suit at law.<sup>18</sup> Article 6(1) of ECHR is expressed in similar terms.
95. Article 7 of the Law on Courts states that all court hearings shall be open to the public unless otherwise provided by law. Article 24 states that decisions of the Supreme Court are public documents, and that the KJC shall ensure their publication, at a minimum on the website of the KJC. Article 14 of the Law on the Kosovo Judicial Council states that all meetings of the KJC are open to the public, and that the agenda for a KJC meeting shall be publicly disclosed at least 24 hours in advance.<sup>19</sup> It specifically requires that a meeting at which a final disciplinary action is taken against a judge shall be open.
96. The Law on Access to Public Documents guarantees access by every person, without discrimination on any grounds, following a prior application, to official documents maintained, drawn or received by public institutions. "Public institutions" is defined as including judicial institutions.
97. Information Offices have now been established in all the courts, and Press Officers have been appointed. OSCE has prepared a handbook on media handling for the courts in Kosovo.
98. Regarding the work of the media in relation to judicial integrity matters, Internews Kosova, a non-governmental organization that works in media development and journalism training, in addition to producing media output itself, has conducted a number of innovative projects that have involved direct engagement with the judicial authorities and the KJC in particular. Specifically, having begun to receive many allegations of corrupt activities in the judiciary and other public institutions over four years ago, Internews developed a programme entitled "Justice in Kosovo" in which they produced stories in relation to allegations of corruption in public administration.

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<sup>18</sup> The Press and public may only be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interests of the private lives of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes of the guardianship of children.

<sup>19</sup> However, the KJC may, upon a majority vote decide to discuss certain matters in a closed session.

99. Following the establishment of this programme, Internews Kosova has established a Memorandum of Understanding (MoU) with the KJC which includes a court monitoring project in which Internews representatives sit in court sessions and monitor the performance of members of the judiciary. Work by Internews in this field has also involved investigating of alleged cases of misconduct by judges such as incorrect recording of cases and the hearing of cases in chambers rather than in court as required by law.
100. A similar MoU has also been established between Internews Kosova and the police, allowing Internews to follow police officials when carrying out their work. Internews officials noted that a series of television programmes had been produced under this MoU in which Internews camera units followed police units. This programme, in the view of Internews, has supported police officers in performing their functions properly and also set example for other police officers in how they should conduct their work.
101. An MoU has also been established with the KPC. The focus of this cooperation has been the monitoring by Internews as to whether specific cases were being intentionally delayed by prosecutors or the judiciary. To date there had been no findings of fault on the part of judicial or prosecutorial bodies. UNODC officials noted that the establishment of such formal arrangements for cooperation represented a good practice with regard to cooperation between national authorities and the media.
102. Internews is also responsible for administering the on-line corruption-reporting forum “Zapiko” and has partnered with the Anti-Corruption Agency in relation to this site. To date, Internews indicated that they had received 3000 reports through this forum, 200 of which were factually verified by Internews investigators. Internews representatives raised some concerns as to whether appropriate follow-up action was being taken by the Anti-Corruption Agency on the basis of the reports that have been published.
103. Finally, the Kosovo Legal Institute (KLI), an NGO specialized in criminal justice oversight work, has recently agreed an MoU with the KPC to conduct an assessment of some of the work of prosecutors specialized in taking forward corruption offences. The KLI has recently completed an assessment of the judicial accountability measures in place in Kosovo which has been drawn on considerably by UNODC experts in conducting this assessment.

### Key Challenges

104. As noted above in relation to Output 1.2, there appears to be a serious lack of transparency in the work of judicial bodies in Kosovo and an unwillingness to proactively engage with the media. Indeed, it has been reported that the lack of transparency of the judiciary is one of the factors that influence the negative perception of citizens and lack of trust in the judicial system. For example, according to an OSCE report, judges, particularly those hearing civil cases, hold hearings in their offices, even when courtrooms are available<sup>20</sup> which necessarily limits public access to the

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<sup>20</sup> OSCE Mission in Kosovo, *Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions*, January 2012.

proceedings. It has already been noted that there is a significant lack of transparency with respect to the work of the KJC and its Disciplinary Committee. UNODC was informed during the assessment mission that there is no institutional structure in place for the implementation of the Law on Access to Public Documents, and that while public officials often do not know how to deal with requests for information, journalists often required further guidance as to how best to formulate such requests.

105. There appears to be a general mistrust of the media amongst judges and prosecutors, resulting in a reluctance to provide information. This, in turn, has contributed to the development of a negative image of the judiciary and the prosecution services within the media, especially with respect to corruption.

*Lack of proactive public of information and engagement with the media*

106. It is clear from the information provided by all stakeholders during the visit and from the documentation reviewed by UNODC that a poor and antagonistic relationship has developed between the media and judicial institutions, including the Courts themselves, the KJC and the ODP. A lack of trust was clearly manifested by the media organizations with which UNODC engaged in conducting this assessment. While the relationship between key public institutions such as the judiciary and the media can never be expected to be entirely harmonious, and indeed may require a degree of skepticism on the part of the media in order to conduct their work effectively, the degree of mistrust demonstrated in Kosovo appears to undermine the potential for basic information-sharing and outreach work that could significantly enhance transparency in the work of the Courts and in turn potentially improve the public's perception of the anti-corruption efforts of the judiciary.
107. A specific challenge identified by a number of stakeholders was the failure of the Courts to publish annual reports of their work promptly. Furthermore, media organizations and other national and international actors underlined that the Courts had struggled to date to respond swiftly and effectively to requests for information from the media.
108. The failure to effectively and proactively publish information regarding the work of the Courts and to respond appropriately to requests for information from the media has prevented the judiciary and prosecution services from getting on the front foot in promoting and raising awareness of the work they are conducting with regard to combatting corruption. Consequently, a defensive mentality appears to have developed in which all requests for information are addressed with suspicion, thereby further entrenching the challenges identified above.
109. An international partner with which UNODC spoke in relation to this issue described this relationship as a vicious spiral in which the opaque nature of court administration and work has led to an aggressive pursuit of information by the media which in turn has led to a further shutting down of transparency by the court system, and the KJC and ODP in particular. This skepticism towards the media on the part of the courts was reflected in the views of one senior official with

whom UNODC spoke who believed that it was the media that was uniquely responsible for the perception amongst the public that the judiciary suffered from corruption challenges.

110. There was, however, recognition by many senior members of the Courts that bad practice had been in place in the past with regard to engaging with the media, with judges failing to report regularly or accurately on the number of cases that had been taken forward and their outcome.
111. Specific measures have been adopted in an attempt to address this information and engagement gap with regard to the media. In particular, a number of Press Officers have recently been hired by the Basic Courts in an attempt to overcome some of the communication problems highlighted above. Both national and international stakeholders with whom UNODC spoke noted that these officials could provide an excellent new framework in which to develop stronger and more cooperative relations between the Courts and the media.
112. UNODC also notes that as responsibility has not yet been clearly allocated for implementation of the Kosovo Law on Access to Public Documents, these newly appointed Press Officers could potentially be in an excellent position to implement this legislation. In order to do so, correct training would need to be provided and clear guidelines produced for the implementation of the law.
113. However, serious concerns were raised by a number of actors with regard to whether such officials are currently being provided with sufficient training in order to carry out their role effectively. Suggestions were received from many that as part of this project UNODC could support the development of a training programme for Basic Court Press Officers and other relevant officials in order to support them in proactively publishing information on the work of the courts, such as through annual reports and other mechanisms such as social media. A number of stakeholders suggested that this training programme could also cover the effective implementation of access to information laws, subject to a decision being taken by the Court authorities as to the specific officials responsible for responding to requests.
114. As part of future efforts of the Courts to proactively provide information to the media and the public on their work, support could also be provided to media organizations to develop better understanding of the relevant procedures and laws applicable to court administration, disciplinary processes and access to information. A clearer understanding by the media of the role of relevant institutions and how they conduct their day-to-day work would also support the building of trust and empathy between these actors.
115. Any work to be conducted in this field under this project would be closely coordinated with OSCE who have previously drafted a handbook on media handling of the courts. In addition, OSCE has previously held workshops which have sought to bring judges and the media together to discuss the sharing of information on the work of the judicial system. In OSCE's view, these sessions have been constructive and have provided an environment in which stronger relationships could be built between members of the media and judiciary.

116. EULEX also indicated its support for such a training programme and suggested it could also involve members of the KJC visiting local courts to meet with local media organizations and explain their role.

*Poor implementation of the Law on Access to Public Documents*

117. As noted above in relation to Output 1.2, an additional key obstacle to effective cooperation and mutual understanding between the judiciary and the media has been the poor level of implementation to date of the Law on Access to Public Documents. Media organizations with which UNODC spoke strongly emphasized the delays in responses received from judicial bodies when a request is made, despite the existence of clear deadlines under the law. There was a view that while the actual legislation in place was of sufficient quality, a failure to implement meant that in practice it was of little assistance to media organizations or the public in developing a better understanding the work conducted by the judiciary. Internews Kosova noted that they were presently appealing the decision of the KJC to withhold the names of individual judges subject to disciplinary proceedings under this legislation.
118. Following discussions with the KJC, ODP and the Supreme Court it appears that a key obstacle to effective implementation of this law has been the failure to clearly delineate responsibility to officials within the court system to receive, consider and respond to requests. Allied to the need for clear allocation of this task is the need for effective training programmes for selected officials outlining the procedural and substantive requirements of the law. Such training would address the timetable for responding, the general requirement to disclose information, the existence and interpretation of relevant exemptions (with emphasis on those exemptions most relevant to the work of the judiciary) and the format that responses should be provided.
119. Central to such training should be the message that the presumption under such legislation should be for the disclosure of documents, with the exception being the withholding of clearly identified information where a specific exemption applies. Furthermore, such a training programme may also involve members of media organizations in order to provide them with the knowledge and skills in order to formulate a clear and effective request under the Law on Access to Public Documents.

*Failure to accurately record the work of the Courts*

120. A number of international and national stakeholders indicated that central to the problem of communication and outreach by the Courts was a failure by many members of the judiciary to accurately record their work, either through electronic devices or simply by taking accurate or verbatim notes in the courtroom. Written recording is presently conducted in summary format. There is however a provision in the civil law that provides that either of the parties has the right to request testimony to be written verbatim and that this is respected by the Courts when requested.
121. OSCE noted that as part of its work with the Basic Courts in Kosovo, USAID had provided and installed audio recording equipment in all courts in Kosovo but only a small number had used these

in practice. Requests have been received from the Courts for training on how to use these devices but there were concerns that in fact the decision not to use these recording mechanisms was voluntary. Internews indicated that as part of their court monitoring work they believed that of those courts with access to audio recording equipment, less than 50% of those courts used them in practice.

122. A number of stakeholders noted that where it is not possible to use audio recorders, a sonographer should be available to record proceedings but that in the majority of cases that this does not occur. A practice highlighted by a number of stakeholders was for the judge to instruct the sonographer what to write as a method of summarizing the case but there were concerns that this has led in some cases to inaccurate reporting. It was the view of many that there had been significant pushback by some judges against audio recording as they did not believe that they should be supervised in this way.
123. A further concern, outlined by representatives of Internews who have conducted a number of investigations in this field and as noted in an OSCE report<sup>21</sup>, is the tendency of some judges to conduct hearings in their chambers rather than in open court as required by law. Clearly, such actions significantly undermine the ability of civil society and the public to oversee and understand the work being conducted by the Court and increase the possibility for perceived or actual corrupt practices on the part of the judiciary and prosecution services to take place.

### Proposed activities to be delivered under Output 1.5

**Workshop 1:** A three-day training workshop for Information Offices and Media Officers of Basic Courts on Communication Outreach and the Law on Access to Public Documents

This workshop will seek to capitalize on the recent appointment of a number of Media Officers in Basic Courts across Kosovo by providing them with a comprehensive initial training programme aimed at supporting them in highlighting and communicating the work of the judiciary in addressing corruption cases.

The workshop will address the key proactive tools that can be used by the courts to increase understanding amongst the public of the work of the judiciary including through the development of and dissemination of regular court reports, the collection and publication of court statistics and the development of easy-to-use guidance materials for court users. Additionally, members of the media and other civil society organizations will be invited to participate in specific sessions of the workshop with a view to communicating their information needs and discussing how the above forms of measures can assist media bodies in their work.

As a second point of emphasis, this training programme will provide Media Officers with the substantive knowledge needed in order to be able to effectively provide responses to requests for information received under the Law on Access to Public Documents. Participants will understand

<sup>21</sup> OSCE Mission in Kosovo, *Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions*, January 2012.

the core requirements of this law, including the fundamental principle of the presumption of the release of information and will learn how to apply relevant exemptions within the spirit of the legislation. This aspect of the training will also address procedural elements such as the development of templates for response and the timetable applicable when a request for information is received.

## Output 2.1

### Improved skills of the judiciary/prosecution service to investigate, develop and deal with cases relating to corruption

#### Background: Summary of key laws, policies and practices

124. A number of institutions in Kosovo are responsible for the investigation and prosecution of corruption offences. Key bodies charged with conducting activities in this area are: the Kosovo Anti-Corruption Agency (KAA), the Police and the Prosecutors Office.
125. The KAA is an independent institution established in July 2006. Under the Law on Anti-Corruption Agency (no. 03/L-159, 12/2009), KAA has jurisdiction to initiate and undertake the detection and preliminary investigation of corruption, in addition to corruption prevention and education. It is also the implementing agency for legislation on asset declarations and conflict of interest. The KAA is headed by a Director who is elected by the Assembly for a five-year term with the right to be re-elected once. The Agency has a staff of about 40 persons and in 2013 had an annual budget of 483,565.23. It does not have the power to interrogate suspects or to detain them.
126. The KAA submits an annual report to the Assembly and the Agency Oversight Committee of the Assembly. To date, the KAA has signed an MoU with the following counterparts: EULEX Chief Prosecutor's Office, Independent Judicial and Prosecutorial Commission, Financial Intelligence Centre/Unit (FIU), Ombudsperson Institution, Kosovo Customs, Public Procurement Regulatory Commission, Kosovo Police, State Prosecutor's Office, Tax Administration of Kosovo and Office of Disciplinary Prosecutor.
127. As noted, KAA also has specific competencies under the Law on the Declaration, Origin and Control of Property of Senior Public Officials, and the Law on Prevention of Conflict of Interest in Discharge of Public Functions. ; According to KAA data, 292 criminal reports against around 800 public officials have been forwarded to law enforcement authorities since its establishment (for the period of 2007 to 2012)..
128. Based on the Law 03/L-159 on Anti-Corruption Agency, the KAA initiates and undertakes the detection and preliminary investigation procedure of corruption.
129. During 2013, the KAA conducted preliminary investigation procedures in a total of 319 cases, of which 72 were carried over from the previous year. In 2013, 247 reported cases of corruption were received by the KAA. Of those investigated, 128 cases were forwarded to law enforcement authorities for further action: 107 of these cases were sent directly to the State Prosecution Office with seven sent to the Chief Prosecutor of EULEX and 17 to the Kosovo Police. In addition, eight cases were forwarded to administrative authorities with a request for initiation of disciplinary proceedings, 30 cases were forwarded for further processing to the Tax Administration of Kosovo

and 97 cases were closed without further action. As of the finalization of the 2013 Annual Report, 56 cases were still being processed the KAA .

130. The KAA also refers cases to the Kosovo Customs Investigation Unit, in order that they can make use of their greater investigative powers, and any potential criminal acts would be reported to the relevant Prosecutor. The Kosovo Tax Administration also has an Investigation Unit to which the KAA may refer cases of alleged corruption for appropriate action/reporting.
131. The Kosovo Police, independently of the KAA, are also responsible for gathering information on alleged or suspected corruption offences from various sources, which is then reported to the State Prosecutor for approval to open a case<sup>22</sup>. If such approval is granted, a formal criminal investigation commences. Within the Kosovo Police, there are several specialized departments and divisions dealing with, among others, organized crime, anti-terrorism, money-laundering, human trafficking and corruption.
132. Within the police there are two units responsible specifically for the investigation of corruption offences. The first of these units, the Anti-Corruption Task Force, works directly with the Special Prosecution Office of Kosovo (SPRK) and has 30 police officers. Steps have been taken to strengthen the Anti-Corruption Task Force and to ensure that seconded police officers and appointed experts will be able to contribute effectively.
133. The second, the Unit for Economic Crime, established by decree of the Prime Minister three years ago, is responsible for the investigation of corruption offences. The Unit works directly with staff at the Kosovo Prosecutors Office responsible for the prosecution of corruption offences who will refer cases for investigation to the Unit. There are presently 127 police officers in the Unit for Economic Crime, including two financial experts. This body is responsible primarily for dealing with high-level corruption crimes and has jurisdiction over the entire territory of Kosovo. The police authorities indicated that an additional 20 officers had recently been recruited to this Unit. Investigation and criminal procedures are regulated by the Criminal Procedure Code of Kosovo, 04/L-123, which entered into force on 1 January 2013.
134. In relation to how reports of alleged corruption offences are received by the Police, the Unit for Economic Crime indicated that various sources of information were used to identify potential investigations including direct reports from citizens and reports from the media, civil society bodies and other institutions. An initial fact-finding exercise is then conducted and a case-file compiled and sent to the Prosecutors Office with a request for approval to open a formal criminal investigation.

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<sup>22</sup> As soon as the police obtain a reasonable suspicion that a criminal offence prosecuted ex officio has been committed, the police have a duty to provide a police report within twenty four (24) hours to the competent state prosecutor, who shall decide whether to initiate a criminal proceeding (Kosovo Code of Criminal Procedure, section 70).

135. Other bodies with investigation capacity include the Kosovo Customs Authority, which has the power of a law enforcement body in the area of customs criminal offences and other cases specified under the law, and the Kosovo Tax Administration, which has powers to investigate into tax criminal offences.
136. In accordance with the Kosovo Code of Criminal Procedure, the State Prosecutor is the highest body for investigating criminal offences. The State Prosecutor leads the investigation of cases during all investigation stages. The State Prosecutor may initiate an investigation on the basis of a police report or other sources, if there is a reasonable suspicion that a criminal offence has been committed, is being committed or is likely to be committed in the near future. The investigation is then formally initiated by a decision of the State Prosecutor. The State Prosecutor may also gather such information on his or her own, or from other public entities, including by speaking to witnesses and injured parties, and their legal counsel.
137. A Special Prosecution Office of Kosovo (SPRK) within the Office of State Prosecutor was established by the Law on the SPRK (No. 2008/03-L052) which governs its territorial jurisdiction, scope, powers, composition and appointment of its Chief Prosecutor. The SPRK has exclusive competence to investigate and prosecute money laundering, terrorism offences, and organized crime as well as a subsidiary competence for offences defined in Article 9 of the law (trafficking offences, counterfeiting money, corruption and fraud offences and other serious offences).
138. The SPRK has an Anti-Corruption Department composed of 5 special prosecutors and 5 anti-corruption experts. As noted above, this Department is assisted by the Anti-Corruption Task Force of the Kosovo Police.
139. Furthermore, three prosecutors of the Office of Basic Prosecution of Prishtinë/Priština are assigned to deal exclusively with corruption-related cases.
140. Statistics reveal that 103 persons were convicted of corruption offences in 2009; 78 in 2010; 80 in 2011; and 52 in 2012. Moreover, there were 219 persons prosecuted in organized crime cases in 2009; 268 in 2010; 426 in 2011; and 290 in 2012<sup>23</sup>. The statistics of municipal and district courts for the period 2008-2011 reveal 48 convicted persons for passive bribery and 58 for active bribery, but no one for trading in influence. For organized crime, 29 persons were convicted for the period 2009-2011.
141. Figures from the KPC for the first half of 2012 show that the overwhelming number of "corruption prosecutions" (approximately 83%) were for abuse of official duty. Around 36% of all corruption prosecutions were conducted by the District Prosecution Office of Prishtinë/Priština, while about 10% of corruption offences were dealt with by the SPRK.

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<sup>23</sup> See page 24, footnote 135 in [http://www.kipred.org/advCms/documents/56243\\_A\\_Comprehensive\\_Analysis\\_of\\_EULEX.pdf](http://www.kipred.org/advCms/documents/56243_A_Comprehensive_Analysis_of_EULEX.pdf)

142. On 16 November 2012, the Kosovo Prosecutorial Council adopted a Strategic Plan on Inter-Institutional Cooperation in the Fight against Organized Crime and Corruption, 2013-2015. On 1 November 2013 an Action Plan for the implementation of this Strategic Plan was issued by the Kosovo Prosecutorial Council which provided in Article 4 that all Chief Prosecutors of Basic Prosecution Offices and the Special Prosecution of Kosovo shall give absolute priority to corruption cases, although this was qualified by providing that this prioritization does not apply where there are "other urgent cases".
143. Chief Prosecutors of Basic Prosecution Offices are also required to engage all prosecutors of General Departments and Serious Crimes Prosecution Departments, in order to achieve a significant reduction of the number of cases of corruption that are at the investigation stage (e.g. unsolved cases). Article 7, paragraph 1 provides that the Chief Prosecutor of the respective Prosecution Offices must organize regular meetings with Kosovo Police, KAA and other law enforcement institutions, in order to increase coordination and cooperation. Chief Prosecutors are also required to report on a monthly basis to the KPC as regard implementation of the Action Plan.
144. Furthermore, the Action Plan places a number of obligations on the KPC to more proactively engage with the public regarding the actions it is taking in relation to corruption offences. Article 13 of the Plan provides that the KPC shall inform the public every two weeks regarding the progress of prosecution of corruption cases, including the number of reports made, the number of arrested persons, number of persons against whom indictments were filed and the number of cases in which the reports were dismissed.
145. The Plan also provides that the KPC shall sign an MoU with interested civil society organizations, which have expertise concerning the external assessment of the implementation of this Action Plan. This has now been completed with the signing of an MoU between the Kosovo Legal Institute, a civil society organization specializing in external oversight of the criminal justice sector and the KPC.
146. A number of national stakeholders with whom UNODC held meetings during the assessment mission indicated that they felt the Strategic Plan and associated Action Plan had indeed had an impact on the seriousness with which corruption cases were now being dealt with by the prosecution authorities.
147. The Ministry of Justice represents a further source for the receipt of corruption offences. In discussions with UNODC during the assessment mission, the Minister of Justice noted that the Ministry will often receive complaints from individuals regarding alleged acts of corruption and that these will sometimes involve members of the judiciary or court staff. In the event that such a report is received, the Ministry will respond by stating that it is not within its powers to investigate such matters and will then pass the report to the Prosecutors Office for appropriate action.
148. With regard to the hearing of corruption offences in the court system, the new Law on Courts has established a Serious Crimes Department in each Basic Court for the trial of serious crimes that include terrorism and related offences, trafficking in persons, organized crime, abuse of official

position or authority, misappropriation in office, fraud, accepting bribes, trading influence, and related offences. A panel of three judges hears all such offences.

149. Finally, the Inspectorate of Police Officers is responsible for conducting internal investigations regarding alleged acts of corruption, in addition to other allegations of misconduct by members of the Kosovo Police. As with the Police and the KAA, a case can then be passed to the State Prosecutors Office for further action if conduct is deemed to potentially reach the criminal threshold. The Inspectorate of Police Officers reported that to date it has initiated 35 cases against police officers which have ultimately been sent to the Special Prosecutors Office for prosecution.

### Key Challenges

#### *Coordination between national agencies*

150. It was reported that there is a lack of cooperation and coordination between the KAA, the prosecutors and the police. However, it appears that there has been an improvement in the interaction between these institutions, although the relationship still remains somewhat problematic.
151. As regards the applicable legislative provisions in relation to the investigation of corruption offences, the delineation of responsibility between the KAA, the Kosovo Police and the Prosecutors Office is relatively clear, subject to some concerns regarding overlapping legislation governing the mandate of the KAA. Under the relevant legislation, the KAA is responsible for preliminary investigation and submit it to the Prosecutors Office for further action. On receiving the file, the State Prosecutors Office will consider the evidence collected and where it considers further investigation is required and merits the opening of a formal criminal investigation they will refer the file to the Economic Crime Unit of the Kosovo Police.
152. The Kosovo Police are also able to conduct an initial investigation upon receipt of a report of alleged corruption or where they become aware of suspected corrupt activities through other means and will then submit file to the Prosecutors Office requesting approval for the opening of a formal criminal investigation.
153. However, while the legislative division of responsibilities between the KAA, the Kosovo Police and State Prosecutors Office is relatively clear, the effectiveness of the coordination between these different entities was a key challenge highlighted by all relevant stakeholders. While the sharing of information on cases seems to have improved, the provision of feedback between the KAA and the Prosecutors Office was highlighted in particular as requiring further attention in order to develop effective working practices.
154. In this regard, the KAA noted in its 2013 annual report that the refusal of the State Prosecutors Office to take forward cases referred to them by the KAA was a growing trend. Furthermore, the KAA noted that its officials were not invited by the competent Prosecution Office to offer their

views as to why criminal charges should be filed when that Prosecution Office was considering dropping the case. According to the KAA, this was in contrast to the approach of the EULEX Prosecutors who, during the first phase of the investigation, would invite the KAA officials to provide additional information and explanation as to why they felt criminal charges should be filed. The KAA also noted in its annual report that due to a delay in action by the State Prosecutors Office in a number of cases, the statute of limitations expired resulting in no further action that could be taken.

155. While steps have been taken in recent years to improve coordination in this field, such as the adoption of an MoU between the Prosecutors Office and the KAA, this relationship clearly remains problematic, with challenges in particular in instilling cooperation on a systematic basis. In its 2013 Annual Report, the KAA noted that despite on-going efforts and some recent results achieved in improving inter-institutional cooperation in preventing and fighting corruption, cooperation remains a challenge. According to the KAA, the lack of inter-institutional cooperation is one of the main obstacles to the achievement of results in the anti-corruption field.
156. In that regard, the KAA has recommended the creation of a joint coordinating body of all anti-corruption institutions operating in Kosovo with high-level representation from institutional members. The Agency recognized in its report, however, that cooperation with prosecution authorities following the submission of a case by the KAA has improved, with the KAA now receiving written notification in most cases as regards what action has taken place as a result.
157. Some concerns were also raised by the State Prosecutors Office as to the effectiveness of the MoU currently in place with the KAA. Under the terms of the MoU, the Agency is required to be submitted its reports to the Central Office of the State Prosecutor, which then assesses the report and allocates the case to the relevant District Prosecutor or other body. A break in communication can often occur at this stage as the District Prosecutor is not informed that they should, or on occasion simply fails to, keep the KAA abreast of the action taken in relation to the case. From the information received by UNODC, it appears that it may be this process of allocation and distribution of cases that has been the primary cause of the challenges in communication once a case is passed to the State Prosecutors Office by the KAA.
158. Once cases are allocated to District Prosecutors they are not tracked by the Office of the State Prosecutor, who under previous practice had not even recorded where the cases were allocated, although this has now been improved. While the Code of Criminal Procedure does not oblige the State Prosecutors Office to keep the KAA informed of progress made in the cases referred to them, the MoU signed between these bodies does contain such an obligation.
159. The State Prosecutors Office suggested that a potential solution to this communication breakdown may be to require the KAA, who has trained legal professionals, to directly send the case to the relevant and competent District Prosecutor, rather than going through the State Prosecutors Office. These District Prosecutors would then be required to report back to the Agency as to the actions they have taken in relation to those cases.

160. As regards cooperation between the KAA and the Kosovo Police, it was noted that this working relationship had in fact been functioning reasonably well in recent times with police and KAA investigators often holding meetings in relation to specific cases. The police reported to UNODC officials that such cooperation has ultimately led to a number of recent successful convictions for corruption offences.
161. Finally, the KAA should be further encouraged to contact and work with staff from other Executive Agencies from whom they will often wish to obtain information as part of the preliminary administrative investigations the conduct in relation to alleged corrupt activities. At present, there are no guidelines or guidance that could be used by other government officials when working with the Agency. Particular challenges were noted with regard to cooperation between the KAA and the tax authorities and the FIU.

*Investigation Capacity of the KAA*

162. There also remain concerns among the Prosecutors Office that the information provided by the KAA will often be of insufficient quality in order to provide a basis for authorization of a criminal investigation. It was noted that in some cases, information received by the Prosecutors Office from the KAA is so inadequate that the Prosecutors Office cannot take any further steps, even to request further documentation or information. As a result, the State Prosecutors Office noted that the majority of reports received from the Agency are immediately closed by the on the grounds of insufficient evidence. It was noted by the State Prosecutors Office that this did not necessarily reflect on the capacity or work of KAA staff but rather also reflected the limited administrative powers held by the Agency. It was also highlighted that the State Prosecutors Office have also received some very well grounded cases from the Agency which have led to successful prosecutions for corruption offences.
163. In order to address this issue, both the KAA and the State Prosecutors Office emphasized the need for enhanced communication so as to ensure that KAA Investigators are clear on the standards of evidence required in order for the Prosecutors Office to be able to take further action and Prosecutors are aware of the limitations applicable to the work of KAA Investigators. One proposal in this regard made by the State Prosecutors Office was to hold joint training sessions for Prosecutors, KAA staff and Police Investigators to outline the responsibilities of each actor and the evidence requirements of the Prosecution services.
164. The KAA is also the body responsible for administering the asset declaration regime in Kosovo. Under recent legislative reforms in Kosovo, the failure to declare assets or the false declaration of assets has been made a criminal offence. It was noted by a number of institutions, including the KAA itself, that in order to effectively carry out its functions with regard to the administration of the asset declaration regime in Kosovo, additional resources and enhanced training with regard to financial investigation may be required.

165. In practice, it was noted that the Kosovo Police will often play a strong role in monitoring the validity of a declaration provided by a public official due to their ability to cooperate more effectively with the Kosovo FIU, which holds relevant information for the purpose of checking the validity of the information provided including bank account details, financial statements and other documentation. Further support and training needs to be provided to the KAA to support it in engaging with national institutions such as the FIU.
166. Many stakeholders, including the KAA itself, noted that increased training and capacity building was required for members of the KAA Secretariat responsible for conducting preliminary investigations into alleged corruption offences.

### **Proposed activities to be delivered under Output 2.1**

167. The activities under this Output are intended to address two of the key challenges identified with regard to the investigation and prosecution of corruption offences in Kosovo under this initial needs assessment. While significant challenges remain with regard to the investigation and prosecution of cases by the State Prosecutors Office and the Police, UNODC experts were of the view that the limited resources available under this Output would be best focused on enhancing the capacity of investigators at the KAA to conduct effective and comprehensive investigations.
168. A key reason for our proposed focus on the KAA is the already significant reforms that have been introduced recently by the KPC in an effort to prioritize the prosecution of corruption offences. Given the number of changes introduced in relation to the work of the State Prosecutors Office in the last two years, UNODC concluded that a focus on assisting the KAA in enhancing their investigation capacities would be the most effective use of the resources available under this project.
169. An increase in the efficiency and quality of these initial investigations will also have a significant positive knock-on effect with regard to the ability of Prosecutors and Police to take forward the files passed to them by the KAA. Emphasis is also placed on proposed activities to bring together the above actors to enhance communication and clearly identify the information needs of each institution.

**Workshop 1: Enhancing Cooperation and Communication between Anti-Corruption Investigation and Prosecution bodies in Kosovo**

A two-day workshop for prosecutors, anti-corruption agency officials and the police to discuss how communication and working practices can be improved in relation to the investigation and prosecution of corruption offences.

**Workshop 2: Enhancing the Investigation Capacity of the KAA: Core Skills and Competencies**

A three-day workshop aimed at improving the investigation skills and competencies of KAA officials with regard to alleged or suspected acts of corruption. Specific areas to be addressed will include case allocation and prioritization procedures, sources of evidence, cooperation with executive agencies, interview techniques and investigation report writing.

This session will also seek to address some of the key challenges identified by partner organizations including the State Prosecutors Office with regard to the evidence required in order to have a sufficient basis for referral for criminal investigation.

**Workshop 3: Enhancing the Investigation and Capacity of the KAA: Advanced Skills and Competencies**

A three-day workshop aimed at improving the investigation skills and competencies of KAA officials with regard to alleged or suspected acts of corruption. Specific areas to be addressed will include financial investigation techniques, the analysis and use of asset declarations and the drafting of reports for consideration by the State Prosecutors Office.

On the conclusion of this training programme UNODC will work with the KAA to collate a set of materials produced during the above workshops, which can then be used by the KAA going forward as a basis for an initial training programme for all new members of the Agency.

## III

## CONSOLIDATED TABLE OF PROPOSED ACTIVITIES

## Proposed activities to be delivered under Output 1.2

**Workshop 1:** International Best Practices in the Disciplinary Functions of Judicial Bodies: Increasing Independence and Efficiency in the Disciplinary Process.

This Workshop, in response to a request received from the KJC during the visit by UNODC officials, will seek to explore different approaches by national judicial authorities worldwide with regard to the disciplinary processes applicable to members of the judiciary. Drawing on the key good practices identified in the UNCAC Working Group on Prevention, and including the participation of representatives of Judicial Councils and equivalent bodies from other States, participants will explore and reflect on the effective approaches adopted by other countries in order to increase public confidence in the disciplinary process.

Following completion of the workshop UNODC officials will support KJC and other relevant officials in the development of further measures in Kosovo to increase the efficiency, effectiveness of disciplinary mechanisms.

**Workshop 2:** Regional Workshop Series on Enhancing Reporting Mechanisms in relation to Judicial Misconduct

With the aim of increasing the number and quality of reports received by the Office of the Disciplinary Prosecutor, this workshop will bring together ODP officials and other stakeholders including civil society organizations, court user groups and representatives of the media to identify how public awareness of the mechanisms available to report alleged acts of misconduct and corruption in the judiciary to ODP could be enhanced. Specific measures to be considered will include the on-line platform available to make reports in-court reporting mechanisms and potential awareness-raising campaigns via traditional and social media.

**Workshop 3:** Enhancing Communication and Information-sharing between the KJC and External Stakeholders.

This workshop will address one of the key concerns outlined by a wide range of stakeholders with regard to the work of the KJC. Specifically, UNODC and selected international experts will work with the KJC Secretariat to consider, based on existing practices in other States, how best the KJC can effectively communicate with the public and increase transparency with regard to the judicial disciplinary process. Key areas to be addressed will include the production, format and content of annual or monthly reports, increasing public awareness and usability of the on-line KJC forum, and consideration of how civil society oversight can be enhanced with regard to the disciplinary process.

### Proposed activities to be delivered under Output 1.3

**Workshop 1: The Bangalore Principles on Judicial Conduct as applied in Kosovo**

This workshop will provide members of the judiciary in Kosovo with a detailed understanding of the Bangalore Principles on Judicial Conduct and will explore how best these principles can be addressed in the work of the KJC. Participants will reflect in particular on the extent to which the present Code of Ethics and Conduct in place in Kosovo, and its practical application, reflects these internationally recognized principles.

This workshop, led by UNODC experts, will benefit from the fact that, for the first time, the Bangalore Principles on Judicial Conduct and its associated Commentary have been translated into both Serbian and Albanian.

On the basis of this workshop UNODC will work with the Kosovo Judicial Institute to amend the initial and continuing programmes presently delivered to members of the judiciary in relation to judicial ethics and conduct.

**Workshop 2: Regional Workshop Series on the Application of the Kosovo Judicial Code of Ethics and Conduct: From Theory to Practice**

Building on the work conducted in Workshop 1, this activity will seek to address the perceived gap in understanding amongst some members of the judiciary as to how the existing Code of Conduct and Ethics for the judiciary in Kosovo should be applied in practice. Specifically, UNODC experts, in cooperation with members of the Kosovo Judicial Institute and the KJC, will conduct a set of four one-day workshops with members of the Kosovo Basic Courts in regions across Kosovo to raise awareness regarding how the Code of Ethics and Conduct and relevant international standards such as the Bangalore Principles on Judicial Conduct can be applied to the practical day-to-day work of the Courts.

**Workshop 3: Innovative Approaches to Corruption Prevention in the Judiciary: International Best Practices**

This workshop will provide an opportunity for relevant actors to meet and consider some of the international best practices presently in place worldwide with regard to prevention of corruption in the judiciary. Drawn from the global work conducted by UNODC with regard to the prevention of corruption in the judiciary, participants will use this workshop as a method of formulating potential new policies and procedures aimed at the prevention of corruption in the judiciary in Kosovo.

To facilitate an active and inclusive discussion a broad range of stakeholders will be invited to participate in this workshop including the KJC, Judicial Institute, civil society organizations and representatives of the media.

### Proposed activities to be delivered under Output 1.4

#### **Workshop 1:** The Role of Disciplinary Investigators: Core Skills and Competencies

This workshop will provide an introduction for ODP investigators both to the work of the judiciary in Kosovo and the basic skills required in order to conduct a successful investigation. Key investigation skills addressed will include interview techniques, documentation analysis and evidence-gathering. A specific session will be provided on methods of information security and confidentiality measures.

#### **Workshop 2:** The Role of Disciplinary Investigators: Advanced Skills and Competencies

Building on the learning outcomes of workshop 1, this training workshop will deliver a set of advanced classes for ODP investigators with regard to the key skills required in order to conduct a successful disciplinary investigation. Key investigation skills addressed will include advanced interview techniques, documentation analysis and evidence-gathering.

#### **Workshop 3:** Investigation Report Production and Court Advocacy in the Context of Disciplinary Proceedings

In response to the specific need identified by the Director of ODP during his discussions with UNODC, this workshop will provide detailed training to ODP officials on report drafting and court advocacy skills required to present cases before the KJC Disciplinary Committee.

On the conclusion of this training programme UNODC will work with the ODP to collate a set of materials produced during the above workshops, which can then be used by the ODP going forward as a basis of a formal initial training programme for all new officials at the ODP.

### Proposed activities to be delivered under Output 1.5

#### **Workshop 1:** A three-day training workshop for Information Offices and Media Officers of Basic Courts on Communication Outreach and the Law on Access to Public Documents

This workshop will seek to capitalize on the recent appointment of a number of Media Officers in Basic Courts across Kosovo by providing them with a comprehensive initial training programme aimed at supporting them in highlighting and communicating the work of the judiciary in addressing corruption cases.

The workshop will address the key proactive tools that can be used by the courts to increase understanding amongst the public of the work of the judiciary including through the development of and dissemination of regular court reports, the collection and publication of court statistics and the development of easy-to-use guidance materials for court users. Additionally, members of the media and other civil society organizations will be invited to participate in specific sessions of the

workshop with a view to communicating their information needs and discussing how the above forms of measures can assist media bodies in their work.

As a second point of emphasis, this training programme will provide Media Officers with the substantive knowledge needed in order to be able to effectively provide responses to requests for information received under the Law on Access to Public Documents. Participants will understand the core requirements of this law, including the fundamental principle of the presumption of the release of information and will learn how to apply relevant exemptions within the spirit of the legislation. This aspect of the training will also address procedural elements such as the development of templates for response and the timetable applicable when a request for information is received.

### Proposed activities to be delivered under Output 2.1

170. The activities under this Output are intended to address two of the key challenges identified with regard to the investigation and prosecution of corruption offences in Kosovo under this initial needs assessment. While significant challenges remain with regard to the investigation and prosecution of cases by the State Prosecutors Office and the Police, UNODC experts felt that the limited resources available under this Output would be best focused on enhancing the capacity of investigators at the KAA to conduct effective and comprehensive investigations.
171. A key reason for our proposed focus on the KAA is the already significant reforms that have been introduced recently by the KPC in an effort to prioritize the prosecution of corruption offences. Given the number of changes introduced in relation to the work of the State Prosecutor's Office in the last two years UNODC concluded that a focus on assisting the KAA in enhancing their investigation capacities would be the most effective use of resources under this project.
172. An increase in the efficiency and quality of these initial investigations will also have a significant positive knock-on effect with regard to the ability of Prosecutors and Police to take forward the files passed to them by the KAA. Emphasis is also placed on proposed activities to bring together the above actors to enhance communication and clearly identify the information needs of each institution.

#### **Workshop 1:** Enhancing Cooperation and Communication between Anti-Corruption Investigation and Prosecution bodies in Kosovo

A two-day workshop for prosecutors, anti-corruption agency officials and the police to discuss how communication and working practices can be improved in relation to the investigation and prosecution of corruption offences.

#### **Workshop 2:** Enhancing the Investigation Capacity of the KAA: Core Skills and Competencies

A three-day workshop aimed at improving the investigation skills and competencies of KAA officials with regard to alleged or suspected acts of corruption. Specific areas to be addressed will include case allocation and prioritization procedures, sources of evidence, cooperation with executive agencies, interview techniques and investigation report writing.

This session will also seek to address some of the key challenges identified by partner organizations including the State Prosecutors Office with regard to the evidence required in order to have a sufficient basis for referral for criminal investigation.

**Workshop 3:** Enhancing the Investigation and Capacity of the KAA: Advanced Skills and Competencies

A three-day workshop aimed at improving the investigation skills and competencies of KAA officials with regard to alleged or suspected acts of corruption. Specific areas to be addressed will include financial investigation techniques, the analysis and use of asset declarations and the drafting of reports for consideration by the State Prosecutors Office.

On the conclusion of this training programme UNODC will work with the KAA to collate a set of materials produced during the above workshops, which can then be used by the KAA going forward as a basis for an initial training programme for all new members of the Agency.

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