

# Beyond numbers



Performance of Judiciary  
in the Fight Against Corruption

March 2017

# **Beyond Numbers**

## Performance of Judiciary in the Fight Against Corruption\*

**March 2017**

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\* The report is statistical. The statistics are checked and confirmed. The statistics in this reports are official and obtained from Kosovo Judicial Council (KJC).

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# Executive Summary

Corruption in Kosovo has been classified as endemic by the European Commission in its Country Report. The fight against corruption is the key request of the international community in Kosovo in order to open way towards social progress. This report reflects the commitment of justice institutions in the fight against corruption, by analysing anti-corruption statistics published by Kosovo Judicial Council (KJC). This report measures the performance of judiciary in the fight against corruption during 2016. KJC continuously published statistics on courts, by contributing in this way to the transparency of judiciary.

In this report Lëvizja FOL carries out an analysis of these figures by making them more comprehensible. The European Commission Methodology for the Efficiency of Justice has been used partially to analyse the figures. The findings show that the judiciary has a good performance in its fight against corruption in general, but the high number of backlogged cases continues to produce delays in reaching justice in some courts. The Court of Pristina, for instance, has the poorest performance compared to the number of cases, while Gjakova has the best performance. On the one hand, the report aims to help the judiciary improve the performance in its fight against corruption, while on the other hand it aims to help citizens to better understand the work of the courts and their efforts to fight corruption.

# Introduction

Fight and prevention of corruption are amongst the main challenges of Kosovo society. The establishment and development of democratic institutions is hindered by the high presence of corruption in public institutions.

Abuse of power or official duty is the most frequent type of corruption according to the findings of this report. The conditioning of provision of public services by state officials for personal benefits, abuse of official position for personal benefits, exercise of pressure or influence from official duty position and illegal acquisition of property are all criminal offences of corruption which hinder the rule of law and undermine the trust in public institutions.

The high perception of the presence of corruption in public institutions and among public officials makes the citizens turn their hope to prosecution and courts as the last institutions to provide justice and punish the corrupt. Before all, it is the independent prosecutors who have the courage to investigate corruption at all levels, and then judges who bring justice and decide whether the law is equal for all.

Judiciary\* is among the institutions enjoying the lowest level of trust of citizens, according to a public pulse published by UNDP. In 2016, around 20% of citizens expressed their satisfaction regarding the work of the judiciary, and around 20% considered that the judiciary is independent in its decisions (UNDP - Kosovo 2016, 4,6).

The high presence of corruption in the society makes the trust towards all state institutions diminish, especially justice institutions, which are the last hope of citizens to get justice.

The European Commission in its Country Reports continuously gave the alarm about the high presence of corruption in Kosovo, emphasizing that the corruption is turning into a disease (COMMISSION 2015, 6).

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\* In many other documents judiciary comprises both courts and prosecutions, but in this report judiciary comprises only courts. For example, "Public Pulse" published by UNDP - Kosovo comprises both courts and prosecutions using the notion of judiciary. [http://www.ks.undp.org/content/kosovo/en/home/library/democratic\\_governance/public-pulse-11.html](http://www.ks.undp.org/content/kosovo/en/home/library/democratic_governance/public-pulse-11.html)

Having the power to condition the integration process, EU set clear criteria regarding the visa liberalization process for Kosovo, and among the key criteria was to provide proof with figures (European Commission 2016) regarding the punishment of high level corruption by the judiciary.

This produces results, since the efforts of the judiciary to show good performance are also reflected in this report. Furthermore, a special list of senior public officials accused of corruption was compiled\*.

However, the justice systems suffers from the same syndrome, i.e. corruption. This was confirmed by European Commission which found that the justice system is affected by corruption and political influence and that it lacks the citizens' trust (European Commission 2016). The same concerns are also shared by US Department of State and other international as well as local organizations (Department of State 2015).

Independence and impartiality of judiciary is fundamental for the functioning of a democratic society. The citizens' trust, i. e. that they will have a fair and impartial process run by professional judges with no political or corruptive influence is vital for the development of a democratic society.

The growth of citizens' trust in justice institutions is a process that should be continuously built and improved.

The first step is definitely the increase of excellence criteria which enable judges to be professional and with integrity\*\*

The second step is the opening of the judiciary. By allowing citizens to take part and see the work of the judiciary, the citizens will contribute not only in the growth of trust in justice institutions, but also in the improvement of quality of court decisions\*\*\*.

This step requires institutional commitment by regulatory institutions of justice such as Kosovo Judicial Council (KJC) and Kosovo Prosecution Council

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\* During the meeting with Mr. Agim Maliki, judge of the Basic Court of Ferizaj, it was said that a list made of 50 high officials accused for corruption was a requirement made by EU, in order to meet the criteria in the field of anti-corruption.

\*\* Lëvizja FOL is scanning different sectors in order to assess the level of integrity in the last two years. In 2017 this scanning will be carried out involving judges and prosecutors.

\*\*\* Lëvizja FOL is making efforts to open the decisions of the judiciary in 2017. Laws that hinder the transparency and undermine citizens' trust should be changed, and citizens will be able to see all court decisions.

(KPC), Ministry of Justice and the Assembly of Kosovo, and, of course, the civil society pressure.

Transparency implies that decisions of the judges are open to wider public, law experts and lawyers, to media and civil society.

Judiciary is still considered among the most undisclosed sectors of the society. The statistics are not processed and are unintelligible, while the judicial process is almost entirely closed and disappointing for those who monitor this sector (European Commission 2016).

Lëvizja FOL continuously works to increase the transparency of public institutions, including the judiciary. The publication of this report with statistics on the work and performance of courts is another step in this direction.

The report sheds light not only on the work of courts in the field of anti-corruption, hoping to help courts improve their performance, but also inviting citizens to get acquainted with the work of the judiciary in order to improve their trust and create a more accurate perception.

The judiciary itself did not do much to improve its image. Even those few achievements were not presented adequately and did not reach the citizens.

We believe that this report will help reach the truth.

This report is evidence that judiciary is striving to contribute to the fight against corruption despite the lack of trust in this institution.

Lëvizja FOL is ready to resonate the success of the judiciary, just as it is committed to criticize this institutions for its failures. We are allies of all institutions which are committed for a good and a transparent governance in order to increase the freedom of citizens, develop economy, strengthen democracy and improve the well-being.

But in order to help the judiciary and every other Kosovo institution, it is necessary for them to open to the public, since we are convinced that the transparency is the most important step towards establishing truth and reducing wrong perceptions.

Of course, transparency is not a panacea for all problems of the institutions, but it would contribute so that their work or the lack of it is perceived by citizens, it would enable the involvement of citizens and increase the level of accountability.

This report is an attempt to increase the transparency in justice sector, and strengthen the impact for the improvement of performance of judiciary in its fight against corruption.

We strongly believe that this report will help the very courts to address the problems of efficiency in their work, by contributing to the overall improvement of performance.

We all benefit from an independent, professional and efficient judiciary.

# About the Project

In September 2016, Lëvizja FOL received support in the form of an institutional grant as part of Democratic Society Promotion (DSP) project - financed by Swiss Cooperation Office Kosovo (SCO-K) and managed by Kosovar Civil Society Foundation (KCSF).

Through this institutional grant, during 20 months Lëvizja FOL will monitor the work of the prosecution and courts and will measure their performance in the work against corruption\*.

The expected results of this project are: a) increased impact on the performance of law implementation institutions in prosecution and courts to prevent, investigate and judge corruption cases, and b) increased impact on the improvement of legislation in the field of public procurement towards higher effectiveness and efficiency, as well as impact on the reduction of corruption in public procurement.

As part of the project, Lëvizja FOL, among others, will carry out the following activities: **a)** Monitoring of basic courts and prosecutions regarding high-level corruption cases, measurement of performance and efficiency of basic courts and prosecutions regarding corruption cases, organization of roundtables on the work of courts and prosecutions regarding corruption cases; **b)** Monitoring of the Law on Public Procurement and periodic trimester reports regarding the process of implementation of electronic procurement, regular six-month roundtables on the implementation of electronic procurement at the Ministry of Infrastructure, the Ministry of Economic Development, and the Ministry of Agriculture, publication of final reports on the monitoring of the Strategy and relevant legislation in the field of prosecution, courts and public procurement.

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\* Judiciary is only part of the monitoring. Using this grant, Lëvizja FOL will also monitor public procurement in three ministries during a 20-month period. [http://www.kcsfoundation.org/dsp/repository/docs/Grant\\_institucional\\_DSP\\_II\\_GI\\_-\\_10\\_zbatuar\\_nga\\_Levizja\\_FOL-ENG.pdf](http://www.kcsfoundation.org/dsp/repository/docs/Grant_institucional_DSP_II_GI_-_10_zbatuar_nga_Levizja_FOL-ENG.pdf)

## Courts

The project is focused on basic courts and prosecutions. The courts that were part of monitoring of this project are basic courts of Pristina, Prizren, Peja, Gjakova, Ferizaj, Mitrovica and Gjilan. The project will measure courts' performance in the field of anti-corruption through a methodology of European Commission for the Efficiency of Judiciary. The performance will be measured by using statistics deriving from the very courts but also from other documents, such as the Anti-corruption Strategy 2013 – 2017\*. This strategy has four objectives within the implementation of law. The two objectives, i.e. 1) Growth of level of efficiency of law implementation institutions in prosecution and courts to prevent, investigate and judge corruption cases, and 2) Growth of professionalism, independence and integrity of law implementation institutions in prosecution and courts, will be part of monitoring of Lëvizja FOL. The monitoring will be carried out for the part of activities and time frames extending to 2017. An assessment of the strategy for all objectives and activities in the field of corruption will be carried out in the first half of 2017, the period when the strategy will come to an end. Kosovo Judicial Council also drafted a strategic plan in 2013 called: "National Strategy for the Reduction of Old Cases (KJC 2013)." \*\*

By using this strategy, Lëvizja FOL in its future reports will measure the part of courts' commitment in the reduction of corruption cases.

## Prosecution

As per prosecution, the project will monitor and measure the performance based on the statistics of the very prosecutions. The basic prosecutions of Pristina, Prizren, Peja, Gjakova, Ferizaj, Mitrovica and Gjilan will be part of the measurement of performance and monitoring. In addition to its Anti-corruption Strategy 2013-2017, State Prosecution drafted a strategy called:

"Priorities of Basic Prosecutions in Kosovo in the Prosecution of Perpetrators of Criminal Acts and Investigation of Criminal Acts in General and the

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\* In February a new working group was form to draft the new anti-corruption strategy. This report will not measure the meeting of objectives of the 2013-2017 anti-corruption strategy.

\*\* This report did not include the measurement of meeting of objectives deriving from the strategy for the reduction of cases.

Reduction of the Number of Cases continue” \* which will be part of the monitoring.

The first priority of this strategy is: “Criminal acts related to corruption and all other criminal offences where confiscation can be applied” (State Prosecutor 2015).

## **Visits in Courts and Prosecutions - Memoranda**

As part of the project, regular visits will be carried out in basic courts and prosecutions. In November, as part of the increase of cooperation between civil society and justice institutions, a meeting was held with the head of Kosovo Judicial Council, Mr. Nehat Idrizi, and he was informed about the project and its activities. As a result of this meeting, on January 30, 2017 a Memorandum of Understanding was signed with Kosovo Judicial Council. The aim of this memorandum is to establish mutual cooperation between Lëvizja FOL and Kosovo Judicial Council for the monitoring of the implementation of law in the judgement of anti-corruption cases, implementation of Anti-corruption Strategy, and monitoring of abuse of public money. Lëvizja FOL will offer professional cooperation to KJC in order to achieve the common objectives which are in the interest of both the judiciary and the general public.

In December 2016, a meeting was held with the Coordinator of Tracking Mechanisms for the Targeting of Anti-Corruption Cases, Mr. Agim Maliqi. This meeting helped in the improvement of statistics of anti-corruption related to courts. During the meeting, Mr. Maliqi informed us about the strategy which they implement together with KJC, which has to do with the reduction of anti-corruption cases in courts. As part of this activity, the project visited the Basic Court of Ferizaj, while during February it paid a visit to the Basic Court of Gjilan. The Memorandum with KJC deepened the cooperation with basic courts, by contributing in the reduction of communication barriers and an easier exchange of information.

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\* This report did not include the measurement of meeting of objectives of this strategy.

FOL will also measure the performance of prosecutors and judges in seven basic courts and basic prosecutions.

The measurement is mainly of statistical character and it implies the number of prosecutors/judges in basic prosecutions/courts during 2016-2018.

# Methodology

It should be noted at the very beginning that the measurement of performance of judiciary is not an easy task. The methods for the measurement of performance are many and those are continuously updated. Judiciary is a broad and a complex field. Decisions in court depend on many factors. One case can be simple; yet, another can be quite complex; also, cases differ depending on the number of the accused, the type of criminal offence, etc. All these and many other factors have an impact on the duration of a trial.

According to European Commission for the Efficiency of Justice (CEPEJ) (CEPEJ 2015), in general, the work of the judiciary is measured on two levels: a) efficiency of the judiciary, which includes judicial procedure, clearance rate, influx of cases, efficiency regarding specific cases, etc., and b) quality of the judiciary, which includes monitoring and assessment of courts, communication and information strategies which helps in the shortening of duration of proceeding of cases and in the improvement of services, training of judges, etc.

In this report, Lëvizja FOL will measure only the part of the efficiency of courts. In light of this, Lëvizja FOL takes into consideration and follows CEPEJ formulae for the measurement of efficiency, but also adapts new formulae based on statistics that have been prepared for publication by courts and prosecutions\*.

The measurement does not include the entire judiciary system and does not include all cases and types of criminal offences. The measurement is carried out only for a special group of criminal offences, precisely for those stipulated in Chapter XXXIV of the Criminal Code of Kosovo - Official Corruption, as well as criminal offences against official duty, Articles 422 - 437\*\*.

The measurement is not statistical and does not aim to measure the quality of cases, the service of judicial administration or the quality of cases of judges and prosecutors.

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\* In the next report, FOL will add some additional formulae.

\*\* See Table 1: Criminal Code of Kosovo. Chapter XXXIV - Criminal Offences Against Official Duty;

## The fields covered by Lëvizja FOL for the measurement of performance of judiciary and prosecution are as follows: **Influx of Cases**

The influx of cases is an important indicator which shows the influx of cases and the way courts manage this influx. This comprises new cases, resolved cases and those waiting to be resolved. The number of new cases is the number of cases entering the system and requesting justice; the number of resolved cases is the answer given by justice system, i.e. the number of cases that are resolved. The cases waiting to be resolved is the number of cases which are still unresolved by a court or a judge at a certain time, and as such those are cases that are transferred.

<i>Measurement unit:</i>	Abuse of power or official duty
Unresolved cases as of January 1, 2016 (PS = cases at the beginning of the reporting period*)	195
New cases opened during the calendar year (I)	106
Cases in progress (LP)	301
Resolved cases during the calendar year (R)	123
Unresolved cases on 31.12.2016 (PE unresolved cases at the end of the reporting period)	178

$$\text{LP} = \text{PS} + \text{I} : \text{PE} = \text{LP} - \text{R}$$

\* Henceforth, the reporting period implies the period during one calendar year.

## Clearance Rate (CR)\*

It is a highly important indicator because it measures the report between resolved cases (R) and the number of new cases (I) As such, this indicator shows the performance of a court expressed in percentage, by helping us understand the level of commitment.

$$\text{case resolution norm \%} = \frac{\text{cases resolved by the end of the reporting period}}{\text{new cases during the reporting period}} \times 100$$

### Example:

Cases resolved by the end of the reporting period (R) (31.12.2016)	New cases during the reporting period (I) (01.01.2016 – 31.12.2016)	Clearance Rate (CR)
123	106	116%

Example: In this case, if the number of cases in the system remains the same, then with this Clearance Rate the levelling of cases will be reached by 2027.

## Report of Circulation of Cases

It measures the report between the number of resolved cases and the number of unresolved cases. This report measures the frequency with which a judicial system or a court substitutes the number of received cases.

$$\text{case circulation norm} = \frac{\text{number of resolved cases by the end of the reporting period}}{\text{number of unresolved cases by the end of the reporting period}}$$

\* Clearance rate

## Example:

Number of resolved cases during the reporting period (01.01.2016 – 31.12.2016)



Number of unresolved cases by the end of the reporting period (31.12.2016)



Case circulation norm



In this case, it shows that in 2016 the report of case circulation is at the frequency of 0,69. As we will see further, such a norm is low and as such it delays the justice and decelerates the reduction of backlogged cases.

## Trend

It measures the report between the cases in process and the number of resolved cases minus new cases.

The trend is not part of CEPEJ formula; this formula is derived using other formula. The trend in this report implies the performance of courts in terms of the reduction of backlogged cases. In order to simplify the measurement of the trend in this report, it is calculated taking the performance of judiciary in 2016 as static.

$$\text{trend} = \frac{\text{Number of cases in process (LP)}}{\text{Number of resolved cases (R) - Number of new cases (I)}}$$

## Disposition time

It is an indicator that measures the time of the completion of total number of cases. The formula considers the total number of cases for a certain period of time, and based on the performance in the report of case circulation it gives the performance on the completion of cases in days. This indicator is important to see the time taken by each court to give justice. Of course, the measurement does not present specific cases since, in fact, one case can take much more time than another, but the formula considers the entrance and the exit of cases from the system based on the exercised performance. When a court has transferred cases, it deals with them in the shortest time possible in order not to delay the justice.

$$\text{Disposition time} = \frac{365}{\text{Report of circulation of cases}}$$

## Index of Backlogged Cases

It is an indicator which shows the performance of judiciary in terms of completion of backlogged cases. The high number of backlogged cases is one of the main concerns which directly impact the delay of justice as well as the growth of mistrust in courts. A high value of the index of backlogged cases shows that a longer time is needed to resolve cases.

$$\text{backlog index} = \frac{\text{Numri i lëndëve të bartura në fillim të periudhës raportuese}}{\text{Numri i lëndëve të zgjidhura gjatë periudhës raportuese}}$$

These are the formulae and this is the assessment system that will be used to measure the performance of courts and prosecutions in this report.

This is the first report published by Lëvizja FOL in measuring this level of performance and, as such, it is open to critics and suggestions. These findings will be discussed and analysed in detail by judges during joint roundtables.

## Data Collection

Lëvizja FOL continuously collects data\* in the field of corruption by courts and prosecution on three-month basis. As part of this project, the collection of data continued for the group of data on anti-corruption, but on a selected basis.

In 2016, the following data on three-months and annual basis were obtained from courts and prosecutions:

TABLE 1: Criminal Code of Kosovo. Chapter XXXIV - Criminal Offences Against Official Duty;

Neni	Kategoria	Neni	Kategoria
422	Abuse of power or official duty	430	Giving bribe to a foreign public official
423	Abuse of official information	431	Trading in influence
424	Conflict of interest	432	Issuing unlawful judicial decisions
425	Unauthorised acquisition	433	Disclosing official secrets
426	Fraud	434	Falsifying official document
427	Unauthorised use of assets	435	Unlawful collection and disbursement
428	Receiving bribe	436	Unlawful appropriation of property in case of raid or execution of court decision.
429	Giving bribe	437	Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations

\* The data were obtained by e-mail from the KJC's Statistics Office.

# Presentation of Findings

## Basic Courts - data on all courts

During the collection of information and statistical data, Lëvizja FOL looked for general and specific information on the fight against corruption. The general information is that which provides a general picture on the work of the courts which are opened to the public, while specific information is that which court uses for certain priorities. For example, in fighting high level corruption the priority of the courts was to perform better and meet the visa liberalization condition (Maliqi 2016). These statistics are specific and we did not obtain them, despite our request for access to information.

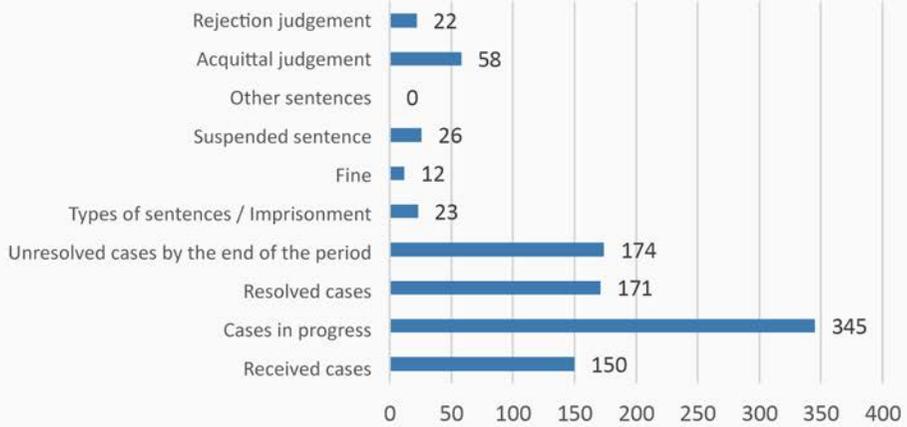
In general, the KJC Statistics Office was cooperative and we had no problems in terms of access to information.

Further, we will present graphs for all categories of criminal offences pertaining to “Criminal Offenses Against Official Duty, Articles 422 – 437; Chapter XXXIV of Criminal Code of Kosovo”;

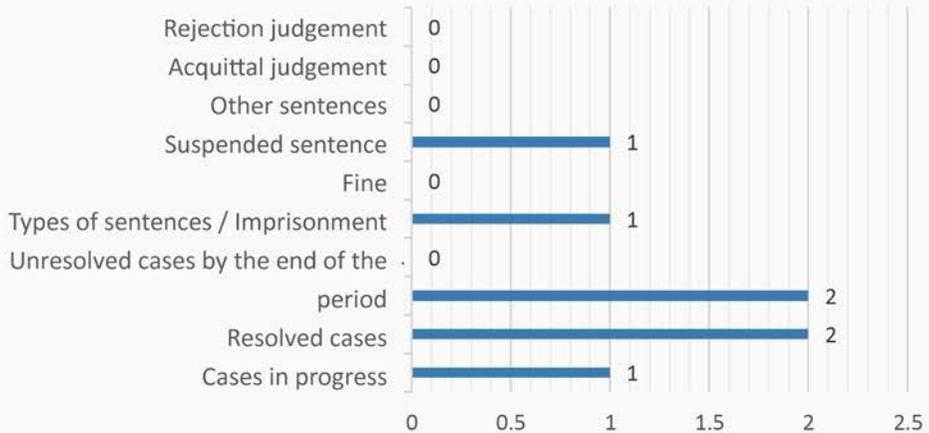
Table 1. shows the categories of criminal offences pertaining to Chapter XXXIV.

Further are the graphs with data on each category. The graphs will be then followed by data analysis.

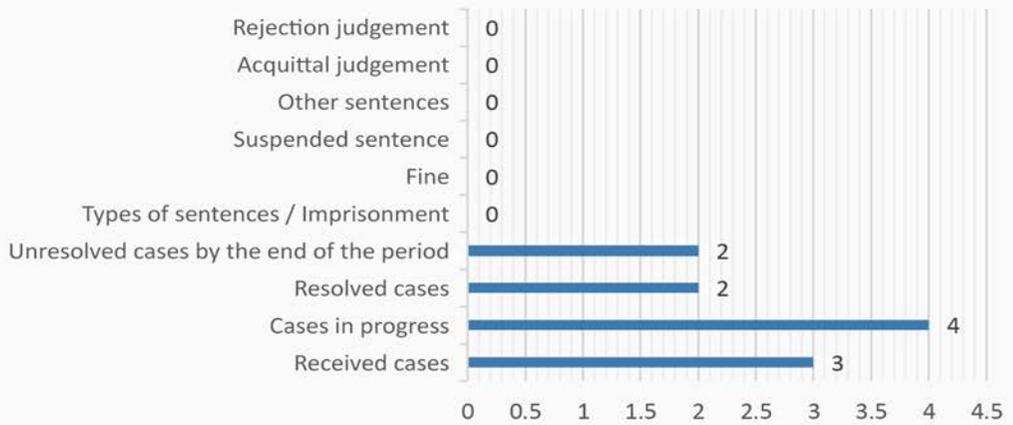
## Abusing official position or authority



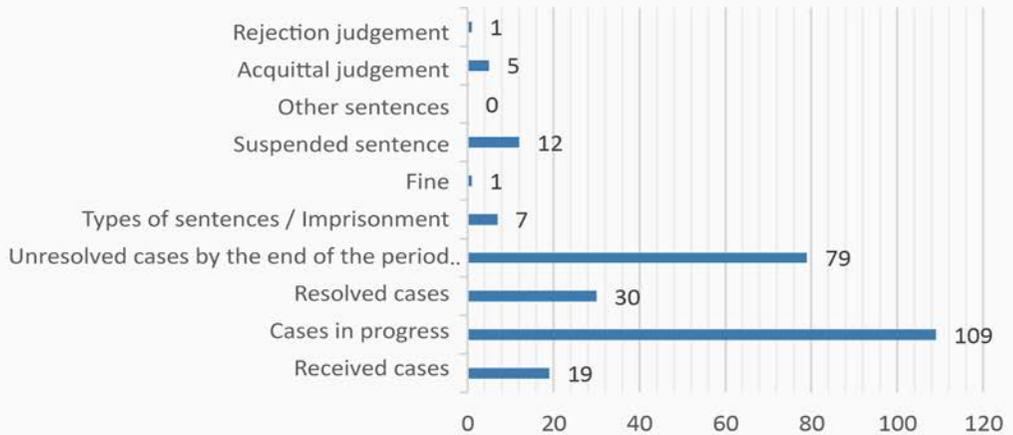
## Misusing official information



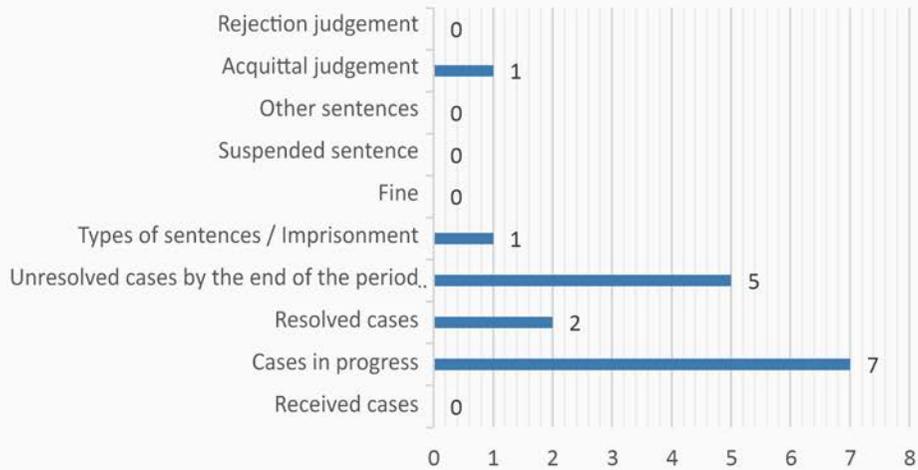
## Conflict of interest



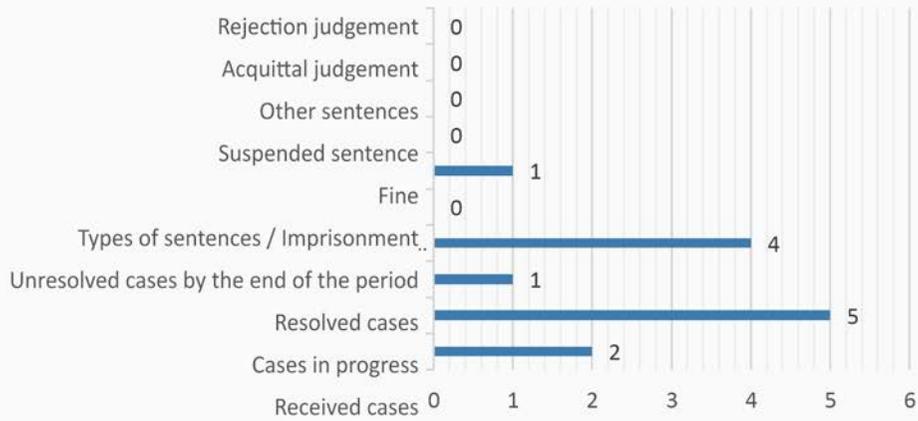
## Misappropriation in office



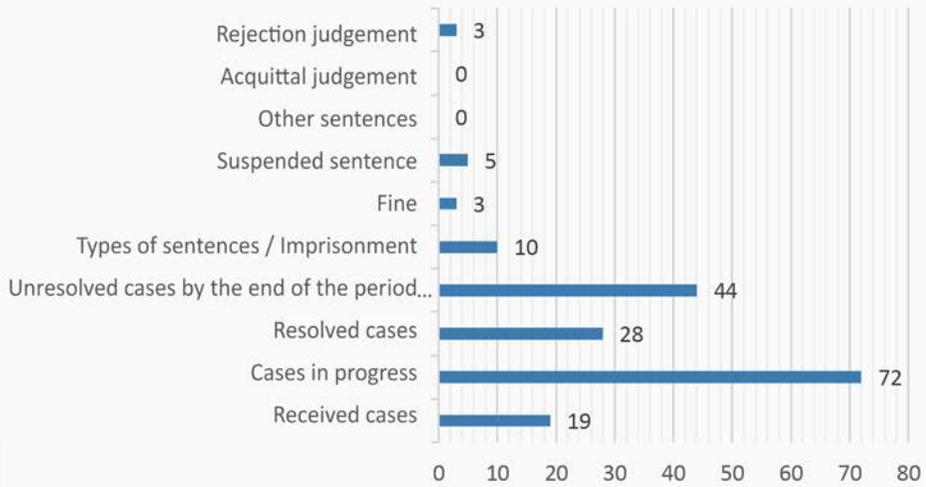
## Fraud in office



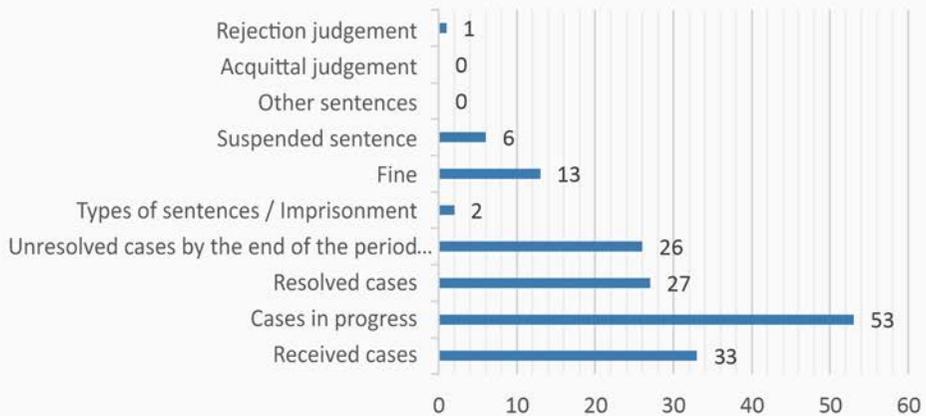
## Unauthorised use of property



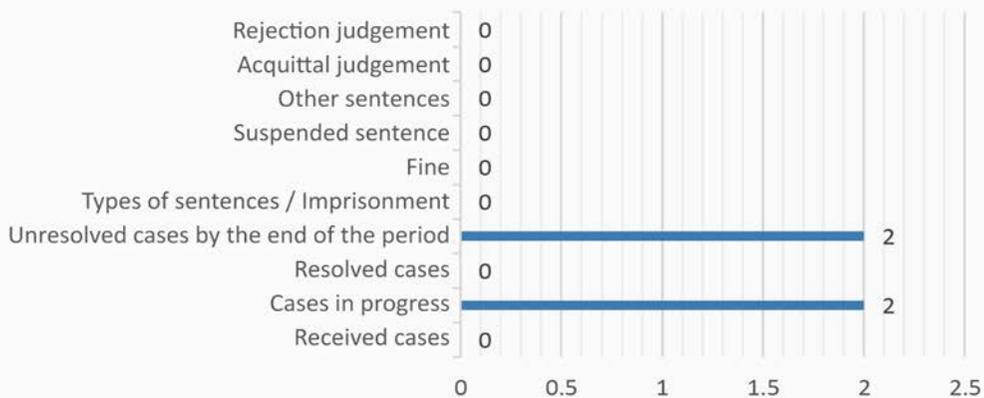
## Accepting bribes



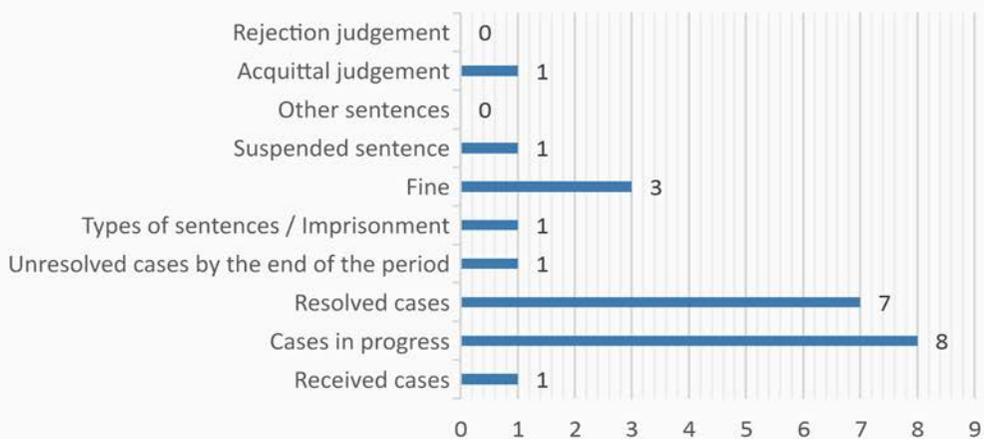
## Giving bribes



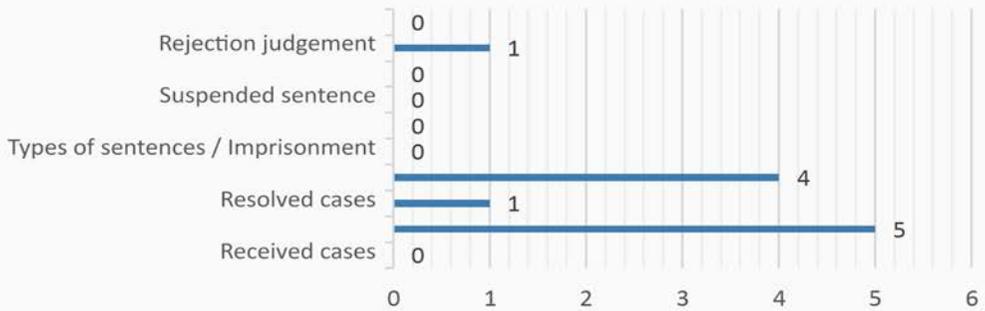
## Giving bribes to foreign public official



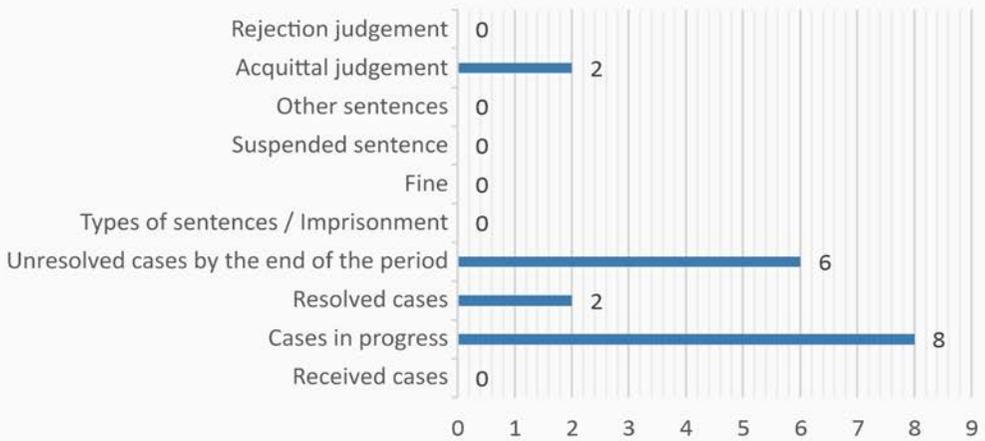
## Trading in influence



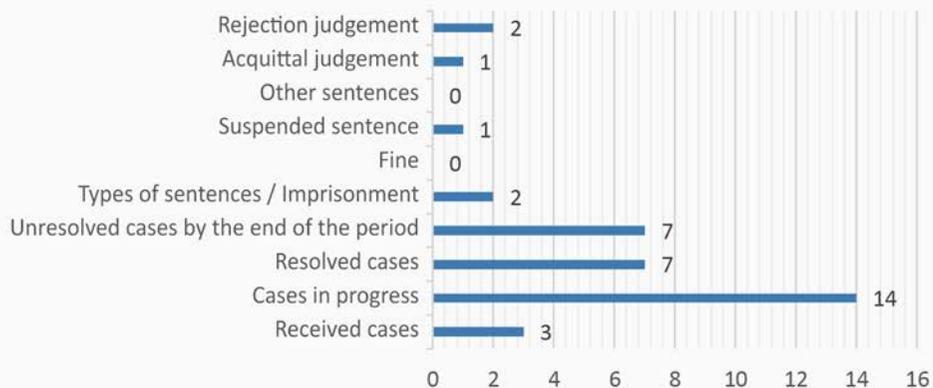
## Issuing unlawful judicial decisions



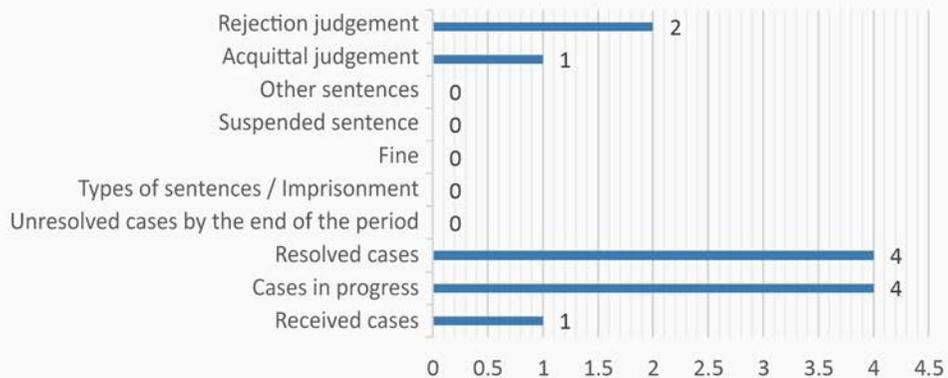
## Disclosing official secrets



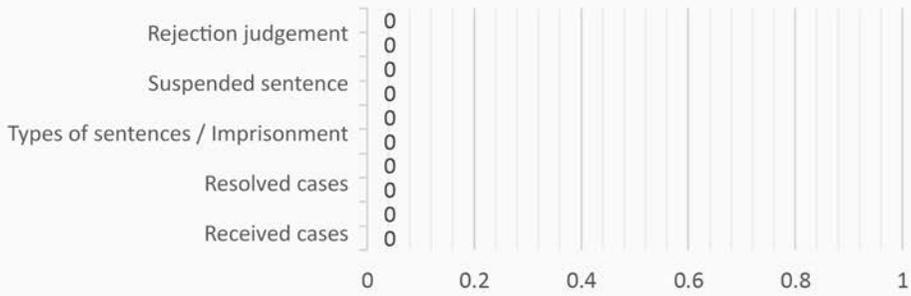
## Falsifying official document



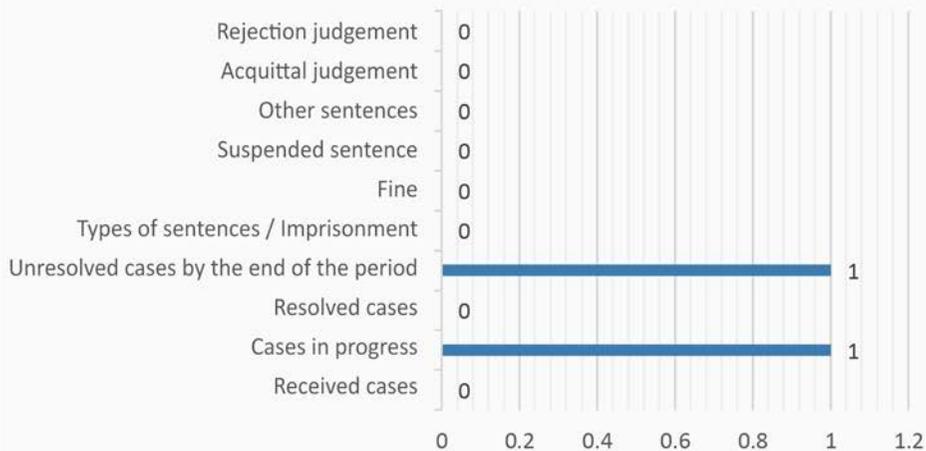
## Unlawful collection or disbursement



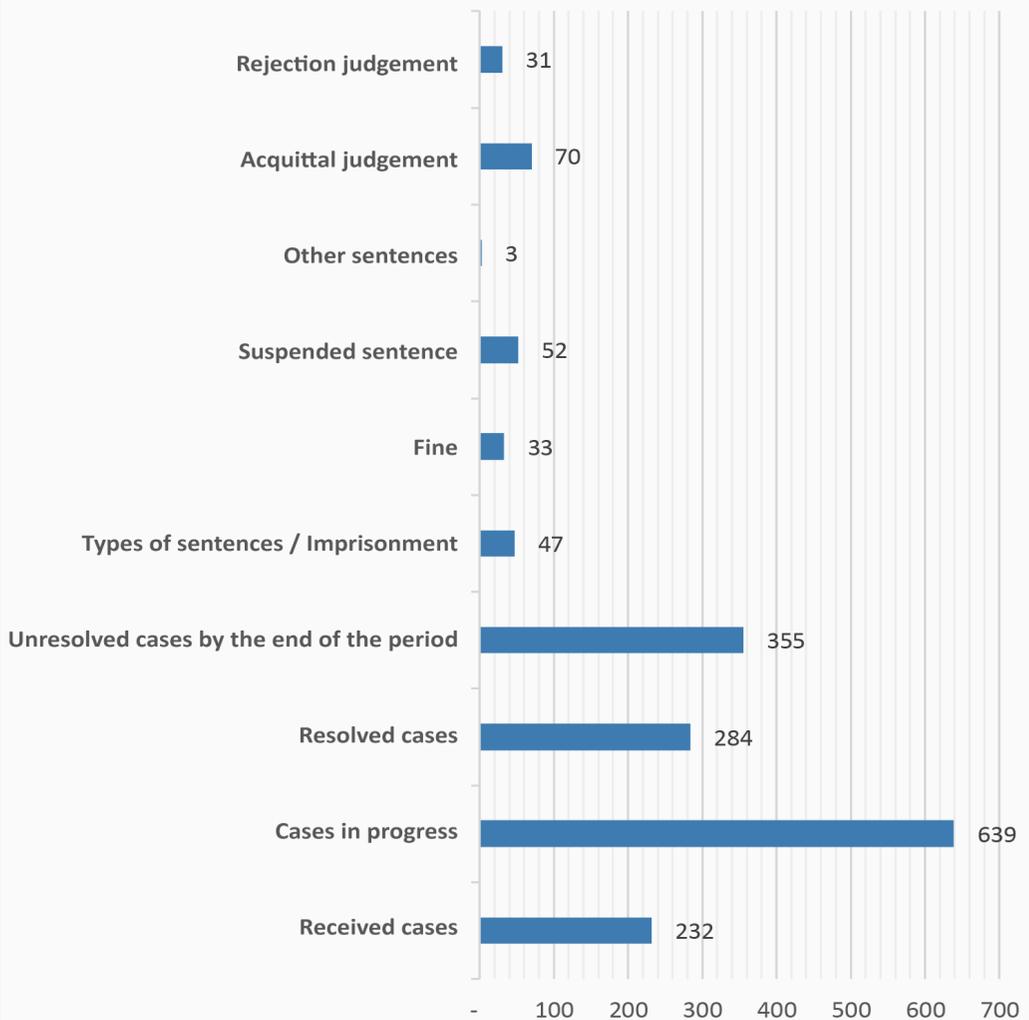
## Unlawful appropriation of property during a search or execution of a court decision



## Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations



## Basic Courts anti-corruption statistics, January - December 2016



# Figure Analysis

It is easy to lose interest in figures if we do not break down their meaning.

What do the above graphs say regarding the performance of judiciary in the field of corruption? Did courts do well? Did they fight corruption?

What we can see from the above graphs is that courts in the entire territory of Kosovo had a good performance in the fight against corruption, in the sense that they managed to resolve most cases in relation to the number of received cases.

Out of the entire group of corruption cases, abusing official position or authority is the offence which is most frequently repeated, which also indicates the type and the level of corruption.

Official corruption is the corruption carried out by an authorized person, who is a state official and part of public administration (Criminal Code 2012). In 2016, courts had 345 cases only related to abusing official position or authority, with a total of 981 persons in court waiting for justice. Out of these 981 persons, courts reached decisions for 402 persons, by imposing imprisonment sentence for 31 of them.

Despite the high number of resolved cases of abusing official position or authority (171 cases), and the number of people decided upon by courts (402), the number of those sentenced remains low (31).

If we consider corruption based on court decisions, we could easily argue that the highest number of the corrupt in Kosovo are state officials and not ordinary citizens - a fact that determines the type and the level of corruption in the country.

Further we will carry out an analysis of these figures using formulae which show the capacity of basic courts for the resolution of corruption cases, as well as their performance during 2016.

## Influx of Cases

Based on CEPEJ method, the influx of cases will show us the report between new cases, resolved cases and those waiting to be resolved. As it was said above, the number of new cases is the number of cases entering the system and requesting justice; the number of resolved cases is the answer given by justice system, i.e. the number of cases that are resolved. Cases waiting to be resolved or unresolved cases is the number of cases which are still unresolved by a court or a judge at a certain time, and as such those are cases that are transferred.

$$LP=PS+I : PE=LP-R$$

(LP = Cases in Process. PS = Unresolved cases at the beginning of the reporting period. I = New cases opened during the reporting period. PE = Unresolved cases at the end of the reporting period. R = Resolved cases during the calendar year).

Measurement unit:	Unresolved cases as of January 1, 2016 (PS = cases at the beginning of the period, transferred)	New cases opened during the calendar year (I)	Cases in progress (LP)	Resolved cases during the calendar year (R)	Unresolved cases on 31.12.2016 (PE unresolved cases at the end of the reporting period)
<i>Seven Basic Courts National Level</i> Type of criminal offence  Official Corruption and Criminal Offences against Official Duty, Articles 422 – 437	407	232	639	284	355

TABLE 2 ANNUAL STATISTICS FOR SEVEN BASIC COURTS FOR 2016 FOR CRIMINAL OFFENCE AGAINST CORRUPTION AND OFFICIAL DUTY.

$$(LP) 639 = PS 407 + (I) 232$$

ose

$$(PE) 355 = (LP) 639 - (R) 284$$

As we can see from the above table, for all categories pertaining to Chapter XXXIV of Criminal Code of Kosovo, during 2016 a total of 407 cases were transferred from the previous year (2015). A total of 232 new cases arrived during 2016, reaching a total of 639 cases in all basic courts during 2016.

The number of cases in process (LP) is the result between the unresolved cases from the previous year (PS) plus the number of new cases received during the calendar year (I). The unresolved cases (PE) is the difference between the cases in process during the calendar year (LP) and the resolved cases during the calendar year (R).

## Clearance Rate (CR)

### Formula (CEPEJ):

$$\text{case resolution norm \%} = \frac{\text{cases resolved by the end of the reporting period}}{\text{new cases during the reporting period}} \times 100$$

*Hence*

$$\text{case resolution norm \%} = \frac{284}{232} \times 100 = 122$$

In 2016, seven basic courts as per Chapter XXXIV of Criminal Code of Kosovo, - Official Corruption and Criminal Offences against Official Duty, Articles 422 – 437, received 232 cases, and managed to resolve 284 cases.

According to calculations, and based on CEPEJ formula, the Clearance Rate is **122%** for 2016 on national level in the field of anti-corruption.

**Case  
resolution  
norm for  
2016  
122%**

Clearance rate is a highly important indicator of performance of courts because it shows the capacity of work of courts. Based on the calculated norm for 2016, the judiciary work efficiently reaching the level beyond 100%.

**Out of a total of 639 cases, courts managed to resolve 284 cases, while a total of 355 cases were transferred in 2017**

The norm reaching 100% would be desirable if courts did not have backlogged cases. Such a performance shows that courts resolved more cases than those received during 2016, which is an indicator that courts managed to resolve transferred cases.

But, as we will see further, it is the particular courts those that improve or worsen the performance of judiciary as a whole. We hope that this report will help the justice sector intervene in those courts which featured problems in order to find the necessary solutions, especially in the Basic Court of Pristina, which has a rather poor performance compared to other courts.

## **Trend of Leveling of Cases Based on 2016 Performance**

A high number of cases is still being transferred from the previous year, making the system feature delays in giving justice. The number of transferred cases directly affects the performance of judiciary, even though the level of performance is above 100%.

If we take into consideration the clearance rate for 2016, the calculation shows that the courts will manage to complete the transferred cases in 2029.

$$trend = \frac{\text{Number of cases in process (LP)}}{\text{Number of resolved cases (R) - Number of new cases (I)}}$$

Hence

$$trend = \frac{639}{284 - 232} = 12 \text{ (years)}$$

The above formula considers the performance of judiciary in 2016, and is formulated on the assumption that in 12 years, the judiciary will continue to have the same clearance rate - 122%.\*

**The leveling of cases with case resolution norm of 122% will be reached in 2029.**

If the judiciary commits to resolve the number of cases backlogged during the five upcoming years, it would have to show a much better performance. Assuming that the number of new cases would be the same during the five upcoming years, in order to resolve the transferred cases in five years the courts would have to increase the clearance rate to 150%.

If 150% is the desired clearance rate, the courts would then reach the leveling in 2022.

The more cases the courts transfer during the upcoming years, the case resolution would be lower and the system would feature more delays in giving justice.\*\*

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\* What this report cannot do due to lack of data is calculate the case resolution trend in years, a shortcoming which will hopefully be addressed in future report.

\*\* [http://www.coe.int/t/dghl/cooperation/cepej/thematiques/Au\\_dela\\_rapport/Stawa\\_Adiz\\_general\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/thematiques/Au_dela_rapport/Stawa_Adiz_general_en.pdf)

## Disposition Time (DT)

The European Commission for the Efficiency of Justice (CEPEJ) requires the justice system to report an indicator of disposition time which is calculated in two steps. First, the number of resolved cases during the reporting period\* is divided with the number of unresolved cases by the end of the reporting period, known as “case circulation report”. Secondly, this case circulation report is divided by 365\*\*, so that the disposition time can be expressed in the number of days, for which CEPEJ suggest that it simplifies the comprehension of the report between the number of the resolved cases during the reporting period and the number of cases waiting to be resolved (transferred cases). DT in this way measures the speed by which the justice system resolves the cases in process - which translates into the time needed to resolve cases (Hall and Keilitz 2012).

### First step

#### Formula

$$\text{case circulation norm} = \frac{\text{number of resolved cases by the end of the reporting period}}{\text{Number of unresolved cases by the end of the reporting period}}$$

Hence

$$\text{case circulation norm} = \frac{284}{355} = 0,8$$

Case circulation norm in 2016 is at 0,8. According to Dakolia, the normal case circulation norm is 1.0. The 1.0 norm means that the number of cases entering the system during one year equals the number of cases exiting the system. Fir example: If 50 cases enter the system during 2016 and 50 cases are resolved, the case circulation norm is 1.0.

As we will see further in this report in terms of disposition time for specific courts, except for the Basic Court of Mitrovica, all other courts have a higher case circulation norm and, as such, it shows a poor level of performance.

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\* Reporting period refers to the period in which statistics are reported. In our case, statistics are annual, and reporting period is the entire calendar year.

\*\* 365 is the number of days of a calendar year.

## Disposition Time (DT)

Disposition time is an important indicator for the measurement of performance of judicial system. DT compares the number of resolved cases during the reporting period with the number of unresolved cases by the end of the reporting period. 365\* is divided with the case circulation norm, established in the first step, in order to translate time into the number of days. This indicator (DT) shows the way in which courts manage the influx of cases and the speed of giving justice.

**The report of case circulation during 2016 is at 0,8.**

### Second Step

**Formula (CEPJ).**

$$\text{Disposition time} = \frac{365}{\text{Report of circulation of cases}}$$

Hence

$$\text{Disposition time} = \frac{365}{0.8} = 456,25 \text{ ditë}$$

365 is the number of days of the year which is divided with the case circulation norm from the seven basic courts in Kosovo which, for 2016, resulted in 0,8.

456,25 is the time taken to give justice. I.e. the time expressed in the number of days needed by the system to give justice or complete a case. The higher the clearance rate, the shorter the time needed to give justice, or complete a case.\*\*

\* Number of days in one year.

\*\* [http://www.coe.int/t/dghl/cooperation/cepej/thematiques/Au\\_dela\\_rapport/Staëa\\_Adiz\\_general\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/thematiques/Au_dela_rapport/Staëa_Adiz_general_en.pdf)

## Index of Backlogged Cases

**According to official statistics, Kosovo is estimated to have over 400,000**

One of the main problems reported in the justice system in Kosovo is the high number of backlogged cases in years. According to official statistics, Kosovo is estimated to have more than 400,000 backlogged cases (European Commission 2016). This high number of cases produces growth of mistrust of citizens in justice institutions, since they have to wait long for justice.

A key indicator of the performance of judiciary is the number of backlogged cases. Many courts around the world use this backlog index “to show the level of performance of courts.” This indicator is determined by the number of unresolved cases at the beginning of the reporting period, divided by the number of resolved cases during the reporting period. A high value of this number tells us that longer time is needed to resolve a case. For example, if this number is higher than 1.0, the court did not resolve as many cases as it had at the beginning of the reporting period. (Hall and Keilitz 2012, 27)

As we can see from the Table 14 the backlog index for Mitrovica is 1.02. At the beginning of the reporting period Mitrovica had 37 transferred cases and managed to resolve 46 cases during the reporting period. On the other hand, a rather high value of this index is reported in Prishtina, with 2.53.

In 1999, in order to project in perspective the meaning of numbers, Maria Dakolias\* reported a value of 0.04 for Singapore and 0.25 for France. These values implied the short time needed to resolve cases compared to other countries such as Chile with 1.7 or Ecuador with a very high value of this index, as much as 7.87. (Hall and Keilitz 2012)

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\* See also Maria Dakolias (1999). Court Performance around the World. World Bank Technical Paper No. 430 Washington, DC: World Bank <http://documents.worldbank.org/curated/en/1999/07/440392/court-performance-around-world-comparative-perspective>;

## Formula (CEPJ).

$$\text{backlog index} = \frac{\text{number of transferred cases at the beginning of the reporting period}}{\text{Number of resolved cases during the reporting period.}}$$

Hence

$$\text{backlog index} = \frac{407}{284} = 1.43$$

Based on 2016 statistics, Kosovo has a high value of backlog index. What should be emphasized is that this index is derived only from cases pertaining to Chapter XXXIV of the Criminal Code of Kosovo - Official Corruption, and as such it does not comprise the entire justice system.

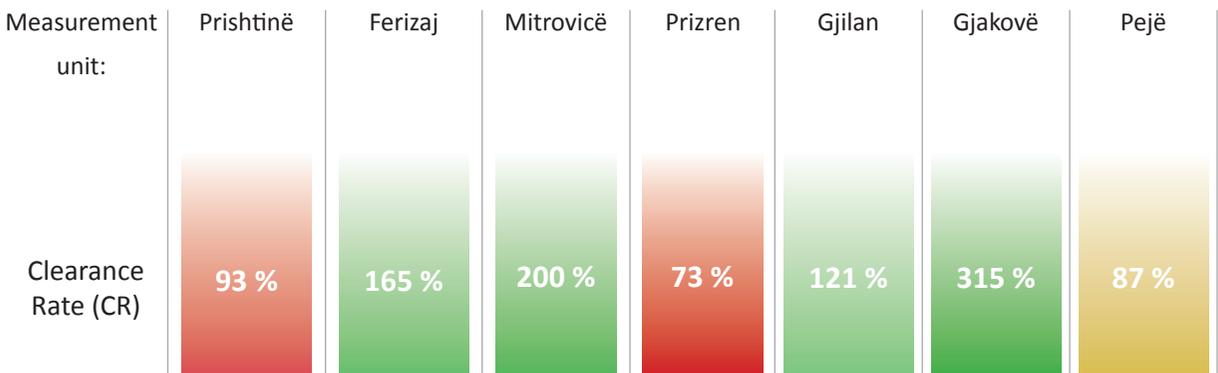
Also, it should be point out that none of the above indicators shows the real duration of specific cases within the system until they are dealt with.

So far, we presented the performance of courts on national level. But how did certain basic court stand out individually? We can see the performance of individual basic courts from the following statistics.

## Influx of cases in basic courts - Chapter XXXIV of the Criminal Code of Kosovo

Basic courts	(PS = cases at the beginning of the period, transferred)	New cases opened during the calendar year (I)	Cases in progress (LP)	Resolved cases during the calendar year (R)	(PE unsolved cases in ending period)
Prishtinë	193	81	274	76	198
Ferizaj	31	20	51	33	18
Mitrovica	37	18	55	36	19
Prizren	31	26	57	19	38
Gjilan	57	41	98	50	48
Gjakove	40	13	53	41	12
Pejë	13	33	51	29	22

## Clearance Rate in Seven Basic Courts



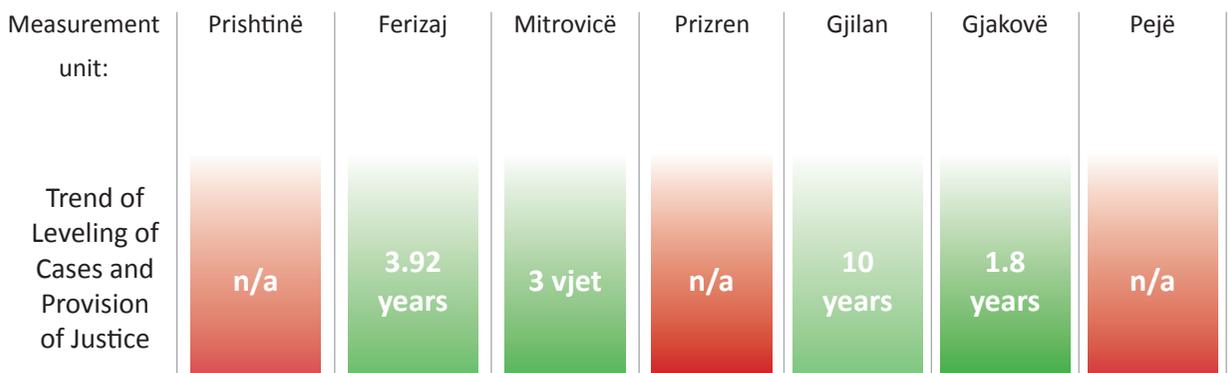
Based on case resolution formula, a good performance of a court is when that court resolves as many cases as it receives during the reporting period. The table above shows that the Basic Court of Prizren, followed by Peja and Prishtina, showed the poorest performance in terms of resolved cases divided by new cases. Gjakova, on the other hand, had the best performance. One of the main reasons behind the improvement of performance of Gjakova and Mitrovica is the influx of cases - Gjakova received only 13 cases, while Mitrovica received only 18 cases.

**Gjakova and Mitrovica had the best performance for 2016. Prizren, Peja and Prishtina had the poorest performance.**

In this report, Lëvizja FOL did not compare the Clearance Rate in years in order to see whether the influx of cases was the same during previous period\*, but if such an influx continues during 2017 as well Kosovo Judicial Council may and should use these statistics in order to manage the process of reduction of backlogged cases in courts with higher influx of cases and with a high backlog index.

\* Such a measurement will be carried out in future reports.

## Trend of Case Resolution Based on 2016 Statistics in Seven Basic Courts



Based on statistics obtained from Kosovo Judicial Council for 2016 the trend of case resolution on central level is positive in the sense that the judiciary on central level resolves more cases than it receives during one year. As mentioned above, with a norm reaching 122% on national level, the judiciary would achieve the leveling in 2029, but this resolution trend differs quite a lot among basic courts.

Expressed in years, the Basic Court of Gjakova is the quickest in terms of the leveling of cases, followed by Mitrovica and Ferizaj. The reason behind this lies in the fact that Gjakova resolved the highest number of cases in progress during 2016. Gjakova had the lowest influx of cases in 2016, followed by Mitrovica and Ferizaj, although Gjakova received the highest number of cases compared to these two courts. If the influx of cases remains the same in 2017, with the trend showed in 2016 Gjakova would be the first one to complete the transferred cases in the field of corruption and would be able to provide justice in the shortest time in the field of anti-corruption.

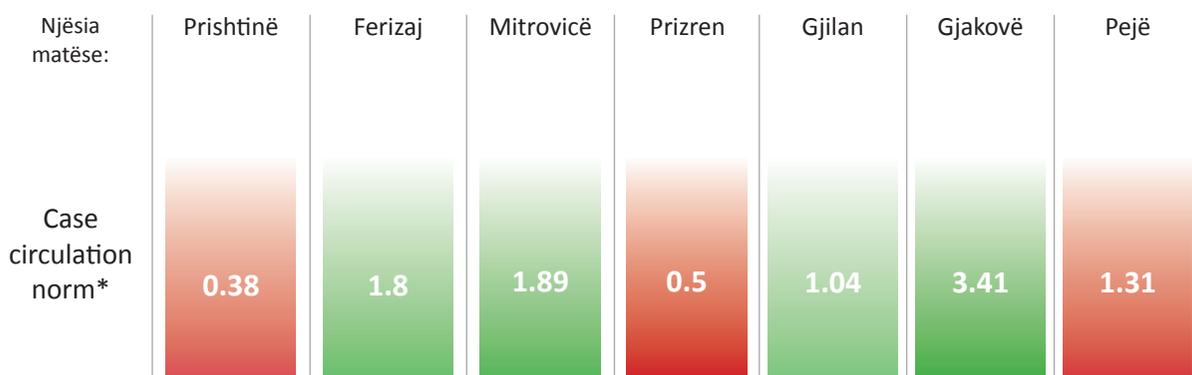
Basic Court of Pristina in terms of this indicator had poorer performance. Despite its good performance in the relation between new cases and resolved cases compared to Prizren and Peja, the Basic Court of Pristina has the highest number of cases in progress compared to other basic courts. Pristina also has the highest number of backlogged cases nationally.

What is of concern is the negative trend of the resolution of cases. The

negative trend of case resolution means that courts resolved fewer cases than they receive during one year. The highest negative trend had Prizren, since it transferred 7 cases, followed by Pristina with 5 transferred cases, and Peja with 4 transferred cases.

If we consider the influx of cases (new cases) and the Clearance Rate for 2016, Pristina, Prizren and Peja would never achieve the leveling of their cases, i.e. resolve backlogged cases. This is because, in order to resolve backlogged cases in these three courts, they should have a positive trend with a case resolution exceeding 100%. Consequently, for all basic courts with a negative case resolution trend, the formula will not be applicable in this report.

## Case Circulation Norm in Seven Basic Courts



Case circulation norm on national level for 2016 is at 0,8. Case circulation norm is 1.0. The 1.0 norm means that the number of cases entering the system during one year equals the number of cases exiting the system. Courts that have a high number of backlogged cases are required to have a case circulation norm higher than 1.0, but as we can see from the following table, some of the courts with the highest number of cases have poor performance with a very low case circulation norm .

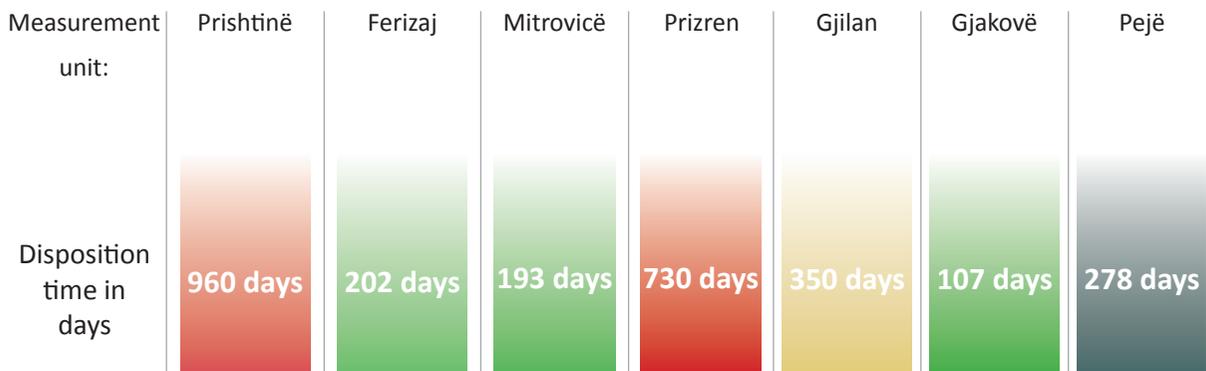
The Basic Court of Pristina, which has the highest level of backlogged cases,

\* The higher the case resolution norm, the shorter the time needed to give justice, or complete a case.

is below the performance level with a case circulation norm of 0,38. This case circulation norm is the result of poor performance of resolution of transferred cases. As we could see from the influx of cases, the Basic Court of Pristina received a total of 81 cases and resolved a total of 76 cases in 2016, transferring only 5 cases in the following year, while the Basic Court of Prizren received a total of 26 cases and resolved 19, transferring 7 cases in the following year.

However, Pristina has a lower norm than Prizren, because the total number of transferred cases in years is higher in Pristina, which prolongs the time taken to resolve the total number of cases. On the other hand, Gjakova shows a very high case circulation norm. This can be for various reasons; firstly, the influx of cases is low in Gjakova than in Prishtina and Prizren, or its capacity for the resolution of cases could be higher than than the influx this court faces. Gjakova received only 13 cases in 2016, and it resolved a total of 41 cases. By circulating three times the number of received cases, Gjakova managed to reduce the number of transferred cases and in this way shorten the waiting time for the provision of justice.

## Disposition Time (DT) in Seven Basic Courts Basic



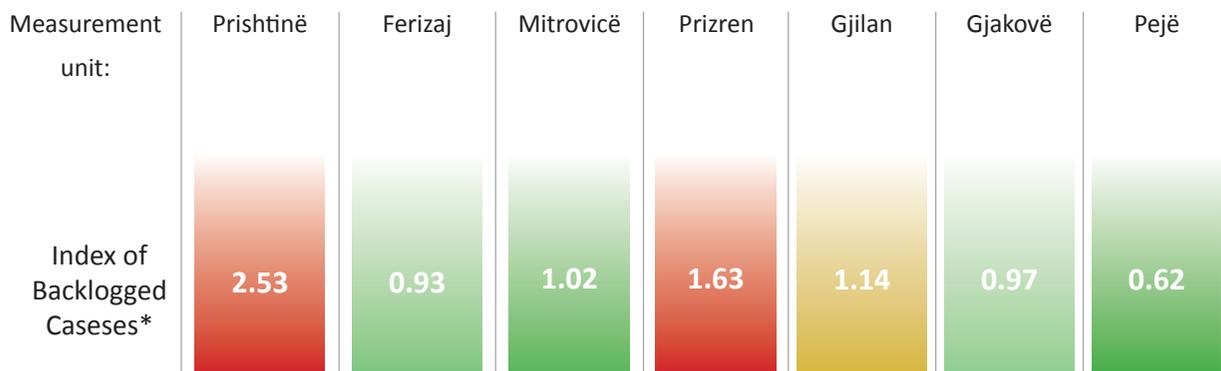
Another indicator of the performance of judiciary is the disposition time (DT) This is an important indicator since it translates the time needed for the resolution of cases in days, by simplifying further the comprehending of the performance of judiciary.

In line with the formula recommended by CEPEJ and in line with the results of the Clearance Rate, we can see that the Basic Court of Pristina has the poorest performance, with a three times longer period needed for the resolution of cases compared to other basic courts. The disposition time considers the total number of cases waiting to receive justice. By the end of 2016 the Basic Court of Gjakova had a very low number of cases waiting for justice compared to any other court.

The Basic Court of Gjakova with its case circulation norm in 2016 featured the shortest time for the provision of justice for citizens, and, consequently, the best time for the resolution of cases.

For comparison purposes, based on case circulation norm for 2016, Gjakova citizens can expect justice within 107 days, while those of Pristina should wait for a 960 days period.

## Index of Backlogged Cases in Seven Basic Courts



Considering the high number of backlogged cases in the justice system in general, one indicator is of particular importance which shows the performance of courts in this direction. What we notice on national level is that the backlog index is rather high, reaching 1.43. But, why this high number of backlog index?

By analysing data from basic courts individually, we can see that the Basic Court of Pristina contributes to this high number because it has the highest number of backlogged cases, followed by Prizren. As we mentioned before,

\* The higher the case resolution norm, the shorter the time needed to give justice, or complete a case.

a high value of this number tells us that longer time is needed to resolve a case. When the number is higher than 1.0 it means that a court has resolved as many cases as it had at the beginning of the reporting period, making new cases enter and continue to be transferred and wait for justice for a certain period of time.

## **Basic Courts 2016 / Anti-corruption Statistics**

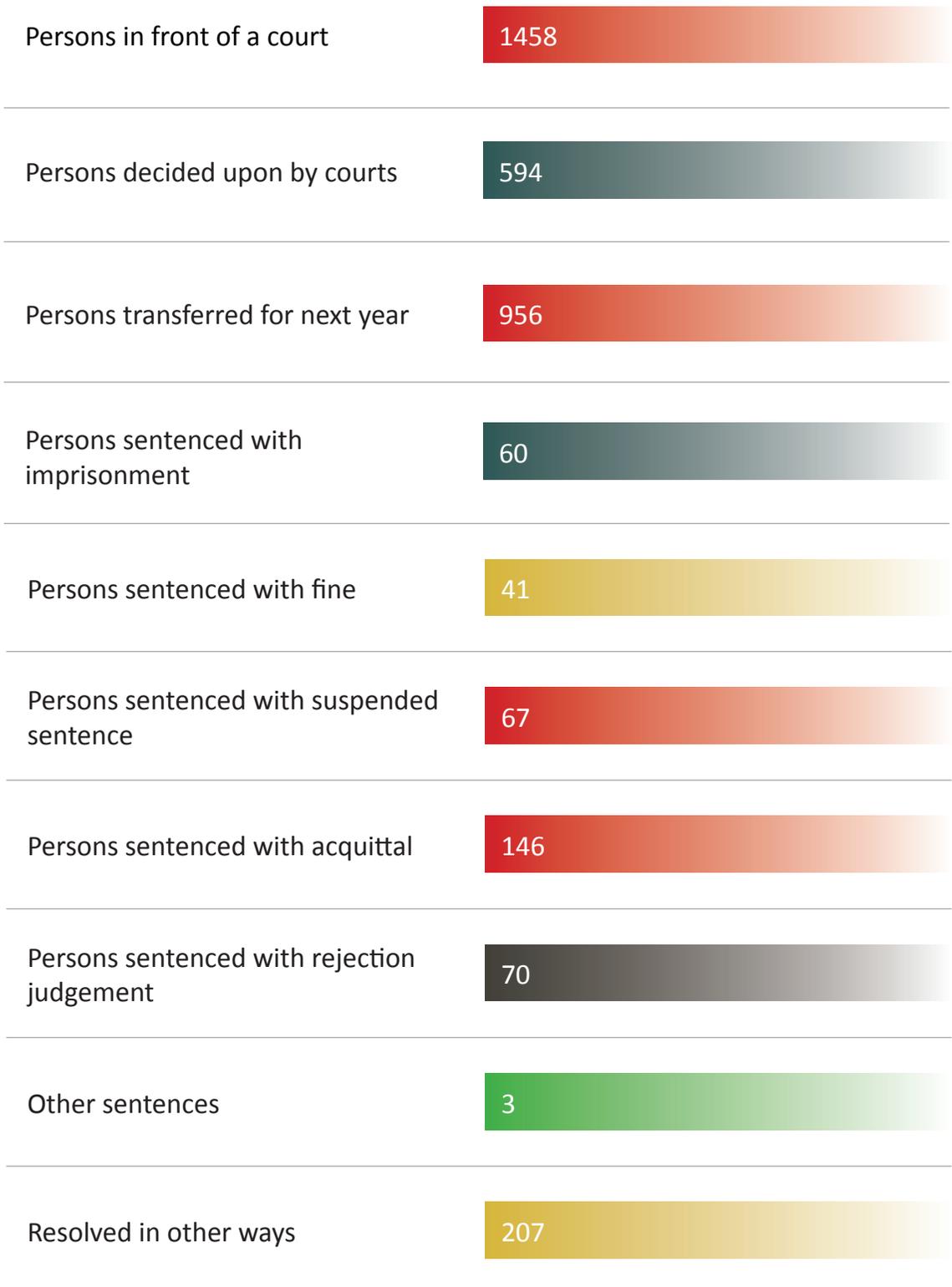
Lëvizja FOL hopes that the above statistics would help the very courts to see their work and increase the level of their performance.

Out of 639 cases in progress during 2016, 1458 persons waited for justice.

The following graphs show the anti-corruption statistics, expressed in persons, not in cases.

The reason why we chose to represent persons instead of cases is to simplify the comprehension of the work of courts in their fight against corruption.

## ANTI-CORRUPTION STATISTICS 2016



## BASIC COURT PRISHTINA

Persons in front of a court	687
Persons decided upon by courts	153
Persons transferred for next year	534
Persons sentenced with imprisonment	21
Persons sentenced with fine	10
Persons sentenced with suspended sentence	27
Persons sentenced with acquittal	1
Persons sentenced with rejection judgement	22
Other sentences	35
Resolved in other ways	37

COURT OF PRISTINA HAS BOTH THE HIGHEST NUMBER OF CASES IN PROGRESS AND THE HIGHEST NUMBER OF PERSONS WAITING FOR JUSTICE. HOWEVER, IF WE COMPARE THE NUMBER OF CASES IN PROCESS AND THE NUMBER OF PERSONS WAITING FOR JUSTICE BETWEEN PRISTINA AND FERIZAJ, WE CAN SEE THAT FERIZAJ HAS THE HIGHEST NUMBER OF PERSONS VERSUS THE NUMBER OF CASES.

## BASIC COURT FERIZAJ



## BASIC COURT MITROVICE



## BASIC COURT PRIZREN



## BASIC COURT GJILAN



## BASIC COURT GJAKOVË

Persons in front of a court	166
Persons decided upon by courts	150
Persons transferred for next year	16
Persons sentenced with imprisonment	2
Persons sentenced with fine	7
Persons sentenced with suspended sentence	5
Persons sentenced with acquittal	0
Persons sentenced with rejection judgement	27
Other sentences	8
Resolved in other ways	101

## BASIC COURT PEJĚ

Persons in front of a court	125
Persons decided upon by courts	38
Persons transferred for next year	87
Persons sentenced with imprisonment	7
Persons sentenced with fine	9
Persons sentenced with suspended sentence	4
Persons sentenced with acquittal	0
Persons sentenced with rejection judgement	11
Other sentences	1
Resolved in other ways	6

## ABUSING OFFICIAL POSITION OR AUTHORITY



# Conclusion

This is the first report of its kind by Lëvizja FOL which measures with numbers and accurate formulae the performance of judiciary in its fight against corruption.

Being an organization with a long experience in the fight against corruption, Lëvizja FOL shares the concern regarding the high level of government corruption and the poor performance of judiciary in the fight and prevention of corruption.

Beyond Numbers is a call to look at the work of the judiciary beyond unintelligible statistics. If the work of the judiciary is only seen through numbers, we will never manage to truly understand the work of the judiciary and the prosecution. The report clearly shows that the judiciary, in general, showed good performance in its fight against corruption in 2016.

But numbers fail to tell us whether the court decisions were meriting, whether justice was fair, whether decisions were influenced by politics, or even by an act of corruption within the judiciary.

What this report shows is that the judiciary was successful in dealing with anti-corruption cases, by reviewing a high number of those cases and by not prolonging justice.

This report simplifies the meaning of the performance of judiciary, by translating and analysing the figures that carry meanings.

But the judiciary should not be left alone in its fight against corruption. The entire society should contribute to the fight and prevention of this phenomenon because we all lose from the consequences of corruption.

In this report, Lëvizja FOL made efforts to provide an overview so that the judiciary could see itself, measure itself and judge itself.

Pristina can learn a lot from Gjakova in terms of management of backlogged cases. Prizren, on the other hand, should learn a lot from Gjakova, Ferizaj and Mitrovica when it comes to prompt provision of justice.

The citizens' trust in justice institutions cannot be reached overnight. For almost two decades, citizens were disappointed with the work of the courts, waiting for years for the justice to come. Therefore, much work is needed in order to gain this trust.

This report is only one of the many efforts in order to bring citizens closer to justice by explaining the work of the courts to them.

The perception can be tackled only using arguments based on facts.

This report does precisely this; on the one hand it helps citizens understand the work of the judiciary, while on the other hand it helps the judiciary increase its performance.

Lëvizja FOL will publish periodic reports on the work of the courts and prosecutions in the months to come.

Future reports will also include the three-month performance and a broader analysis with additional indicators.

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## ENDNOTES

- **Number of persons waiting for justice** – this number is subject to change. In the absence of a unique system of cases, cases take a new number each time they are returned for retrial. Example: When Court of Appeal returns a case for retrial in a Basic Court this case is registered as a new case, which doubles the number of persons for the same case. The same happens when the Supreme Courts returns a case to Basic Court. As a result, the number of persons waiting for justice may not be the same with the numbers of persons accused by Prosecution.
- **Furthermore**, number of indicted persons is also subject to change by prosecution itself as they remove or add people based on lack or new evidence.
- **With regard to the number of convicted persons** – it happens that the same person to receive more than one conviction, as a result the number of convictions can be higher than the actual number of convicted persons.
- **The same happens with the cases** – cases are also subject to change since any time a case is returned for retrial is considered as a new case.
- **With regard to the column “resolved with other means”** – in this column are presented a series of convictions. What is important here is that a majority of convictions are considered as solved due to statute of limitations, reclassification of a case or due case dismissal.

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the first two years of life. The first year of life is the most critical period for the development of the brain.

The second year of life is the most critical period for the development of the brain.

The third year of life is the most critical period for the development of the brain.

The fourth year of life is the most critical period for the development of the brain.

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The ninth year of life is the most critical period for the development of the brain.

The tenth year of life is the most critical period for the development of the brain.

The eleventh year of life is the most critical period for the development of the brain.

The twelfth year of life is the most critical period for the development of the brain.

The thirteenth year of life is the most critical period for the development of the brain.

The fourteenth year of life is the most critical period for the development of the brain.

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The eighteenth year of life is the most critical period for the development of the brain.

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The twentieth year of life is the most critical period for the development of the brain.

The twenty-first year of life is the most critical period for the development of the brain.

The twenty-second year of life is the most critical period for the development of the brain.

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The twenty-fourth year of life is the most critical period for the development of the brain.

The twenty-fifth year of life is the most critical period for the development of the brain.

The twenty-sixth year of life is the most critical period for the development of the brain.

The twenty-seventh year of life is the most critical period for the development of the brain.