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BEYOND NUMBERS

The performance of
Prosecutions and Courts
in fight against corruption
for 2017

May 2018

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Acronyms

CEPEJ	European Commission for the Efficiency of Justice
KJC	Kosovo Judicial Council
KPC	Kosovo Prosecutorial Council
UNDP	United Nations Development Programme
EU	European Commission

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Executive Summary

In a democratic state under the rule of law, such as Kosovo, there must be an independent and functional legal system. It goes without saying that the judiciary (courts and prosecution) are the main pillar in a democratic society.

To achieve a democratic and functional state it requires an independent, professional, incorruptible and effective judiciary.

The prosecution has the main burden of initiating corruption investigations at every level, especially the top level, which remains the main concern of civil society and the international community. More than two-thirds of citizens do not trust the prosecution and the courts, which should be an alarm for the Kosovo Judicial and Prosecutorial Councils.

In 2017, the prosecutions treated 1799 persons for corruption, while 1204 persons waited for justice on the courts during the same period on corruption. In a country with 1.8 million people, these digits are alarming and should be read not only by the courts and prosecutions but by the government and the entire society. Over 90% of people charged with corruption are public officials, a digit that speaks for the nature of corruption and shows how corrupted is the entire state administration.

In this report, FOL has tried to show the performance of the courts and the prosecution in the fight against corruption. Although the report indicates a good performance in numbers in both prosecution and court for 2017, the situation nevertheless continues to be severe. The number of transferred corruption cases continues to be high and the flow of new corruption cases continues to be the same, showing that corruption, especially misuse of official position and authority, continues to be present at the same level. It is up to the Judicial and Prosecutorial Councils to restore confidence in citizens by enhancing the performance, integrity and effectiveness of courts and prosecutions.

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), Ministry of Foreign Affairs of Denmark (DANIDA) and managed by Kosovar Civil Society Foundation (KCSF). The DSP grant has aimed to support Lëvizjen FOL to increase sustainability through ongoing monitoring of the work of the judiciary in the fight against corruption and to improve legislation in public procurement.

Through this institutional grant, during 21 months Lëvizja FOL has monitored the work of the prosecution and courts and has measured their performance in the work against corruption.

Courts

The project is focused on basic courts and prosecutions. The courts that were part of the monitoring of this project are basic courts of Pristina, Prizren, Peja, Gjakova, Ferizaj, Mitrovica and Gjilan and other. The project will measure courts' performance in the field of anti-corruption through a methodology of European Commission for the Efficiency of Judiciary (CEPEJ) and some OTHER formulas developed by Lëvizja FOL.

Prosecution

Regarding prosecution, the project will monitor and measure the performance based on the statistics provided by basic prosecutions. The basic prosecutions of Pristina, Prizren, Peja, Gjakova, Ferizaj, Mitrovica and Gjilan will be part of the monitoring and measurement of their and monitoring.

Visits in Courts and Prosecution

For 21 months, have been visited six basic courts and six basic prosecutors. Visites are conducted with President Judges from basic courts and Chief Prosecutors from basic prosecutors. It was impossible to be in contact with Chief Prosecutor from Basic Prosecution of Prishtina, as a result, we did not organize any visits there in order to have a meeting with Chief Prosecutor. As well, the visit at Basic Court in Mitrovica has not been realized.

Almost all basic courts have good working environments. The Basic Courts in Gjilan, Pristina and Ferizaj have moved to the new buildings, which meet all the conditions for the judges' work to hold regular hearings. Tthe Basic Prosecution of Ferizaj, Gjilan and Peja were transferred to the new buildings as well. It is worth mentioning that the Basic Prosecution buildings in Gjakova and Mitrovica do not provide adequate working conditions as these two institutions in order to exercise their functions, are adapted houses.

Lectures

Six lectures are held with 10 prosecutors and judges as well as with persons working in the field of justice. The lectures were held at the Anti-Corruption Education Center at Lëvizja FOL, as well as in public and private universities with the law. Around 250 students attended lectures with judges and prosecutors who shared not only their knowledge but also their experience in fighting corruption, thus contributing to increase transparency regarding the work of the judiciary and the prosecution.

Anti - Corruption Strategy

Under this project was monitored the implementation of the Anti-Corruption Strategy 2013-2017 in the law enforcement, Prosecution and Judiciary sector. More specifically, two objectives of this strategy are monitored: 1) *Increasing the level of efficiency of law enforcement, prosecutors and judiciary to prevent, detect and combat corruption* and 2) *Enhancing professionalism, independence and integrity of law enforcement, prosecution and judicial institutions.*

In relation to these objectives, we have sent some questions to the Judicial Council to get information on how much the Action Plan is accomplished on implementing the Anti - Corruption Strategy 013-2017. From the response we received from the KJC it emerges that the Council has formed a Commission that permanently, from the beginning of 2016, conducts monitoring of corruption cases and prepares monthly reports to show the progress and challenges of courts in dealing with these cases. During the period 2013-2017, courts have solved a total of 1076 corruption cases. The KJC has failed to specialize the judges to deal exclusively with corruption cases as it was foreseen at the Anti-Corruption Strategy while making these cases still to be solved by the judges of the Serious Crimes Department of the Basic Courts and the Court of Appeal.

Regarding the performance evaluation of judges, the performance evaluation committee has evaluated 1/3 of judges with a permanent mandate selected by lot, and none of them was suspended from this assessment.

The performance of **Prosecution**
in fight against corruption for 2017

Introduction

In 2016, the Prosecution had a positive case resolution performance at a rate of 130%. Such a rate came as a result of solving more cases than accepting in the system.

In 2017, the Prosecution has again shown a positive performance in coping with the influx of cases by solving more cases than it has received.

Unlike the courts, where the measure is done with cases, in the prosecution we complete the measure with persons. This difference is important as the prosecution invests more time in persons during the investigation phase since receiving criminal charges.

As in 2016, the misuse of official position or authority remains the most widespread type of corruption for 2017 according to the findings of this report. Conditioning public services for personal gains by state, abuse of official position for personal gain, exertion of pressure and influence from official position, illicit enrichment are all corrupt acts that are hampering the rule of law and ruining the trust in public institutions.

The high perception of the presence of corruption in public institutions and government officials has led citizens to put their hopes on the prosecution and courts as their last addresses to find justice and to punish the corrupt. Initially, there are independent and professional prosecutors who have the courage to investigate corruption at any level and then judges who share justice and decide whether the law is equal to everyone.

Despite the positive performance in addressing the influx of corruption cases, prosecution continues to be among the institutions in which citizens believe the least according to the public pulse published by UNDP. In October 2016, around 16% of citizens expressed satisfaction with the work of the prosecution (UNDP - Kosovo, 2016, pp. 4.8), while in October 2017, the satisfaction increased by 17%, reaching 33%.¹

¹ http://www.ks.undp.org/content/kosovo/en/home/library/democratic_governance/public-pulse-xiii/

The great presence of corruption in society causes trust to fall toward all state institutions, especially toward the justice sector.

The European Commission in its 2018 Country Report for Kosovo reported that "corruption remains widespread throughout the country and remains a concern and joint efforts are needed to tackle this problem in a comprehensive and strategic way (EU Commission, 2018)".

Citizens' trust in prosecution according to "Public Pulse from UNDP - Kosovo"

2016	2017
16%	33%

By having the power of conditionality in the integration process, the EU established clear criteria for the visa liberalization process for Kosovo, where among the main criteria was the evidence with numbers (European Commission, 2016) by the prosecution in investigating high-level corruption.

This had an impact, as the prosecution's efforts to perform appear in this report as well.

However, the justice system suffers from the same syndrome that is corruption. This is confirmed by the European Commission, which notes that the justice system is affected by corruption and political influence, and there is a lack of citizens' trust (European Commission, 2016). The same concerns are expressed by the US State Department and other international and local organizations (Department of State, 2015).

Independence and impartiality of the prosecution is essential to the functioning of a democratic state. Citizens' trust that they will not be subject to persecution by prosecutors affected by politics and corruption or prosecutors that pursue certain interests; businesses confidence that they are not prosecuted by prosecutors without evidence based solely on eliminating the competition of prosecutor's related groups; the confidence of activists and politicians that they will not be persecuted if they speak openly against power is vital to the development of a democratic society.

The integrity scan carried out by Lëvizja FOL in December 2017, shows that prosecutors, although to a small extent, are influenced by external factors in initiating investigations, among them financial interests and the media.

Increasing trust in justice institutions is a process that constantly must be built and improved. The first step is undoubtedly the increase of the criteria of excellence that enables prosecutors to be professional and with integrity².

The second step is to increase accountability and transparency. A large number of indictments are annually annulled as non-based by the courts, mainly due to the lack of

² Lëvizja FOL in cooperation with the Center for International Legal Cooperation (CILC) in the Netherlands and the Kosovo Democratic Institute (KDI) during 2017 conducted the integrity scan for judges and prosecutors which was published in December 2017. The report shows that prosecutors are affected by external factors during their decision-making which then damages prosecutors' credibility and the trust of citizens in justice.

professionalism but also due to the influence of interest groups. The KPC is tasked with removing the links of prosecutors with interest groups by monitoring the work of prosecutors and by strengthening integrity standards for prosecutors.

Transparency means prosecutors' indictments are open to the general public, law scholars, lawyers, media and civil society.

The prosecution service is still considered one of the most secret sectors of society. The statistics are unprocessed, incomprehensible and decoupling for those who monitor this sector (European Commission, 2016).

Lëvizja FOL is constantly working to increase the transparency of public institutions, including the prosecution. The publication of this report with statistics on the work and performance of the prosecution is a step in this direction.

This report sheds light not only on the work of the prosecution in the field of anti-corruption, which we believe will serve the prosecution itself to improve, but it invites citizens to get familiar with the work of the prosecutorial service, thus affecting the increase of trust and creating a more realistic perception.

The report shows that the prosecution is struggling to make its contribution to the fight against corruption despite the lack of trust in it.

As in the courts report, the report on prosecutions is also statistical, based on the official KPC statistics.

The report is based only on numbers and as such it cannot tell about the quality of the work of prosecutors and prosecutions; is unable to show whether prosecutors have been independent, professional and unaffected during their work. To make such an analysis there should be concrete analysis of cases.

This report is an attempt to increase transparency in the justice sector and to increase the impact on improving the performance of the prosecution in fighting corruption.

The first part of the report gives a long introduction in which important details are given about the meaning of the prosecution's work in the area of anticorruption and it also discusses the importance of the report.

Further, the methodology used to compile the report is presented and it continues with the presentation of the findings by bringing comparative statistics at the end of the report that allows to compare the performance between 2016 and 2017.

Methodology

Initially we must point out that measuring the performance of the prosecution is not easy. Unlike the judiciary, whose work is measured by cases, the work of the prosecution is measured by persons. This is because the prosecution invests a long time in the preparation of a case which might involve one or more persons.

It is obvious that the investigation is not the same and it varies depending on the offense for which it is being investigated and how complex the case is. All of these and many others affect the handling of a case as well as its duration until the indictment.

As stated in the court's report on measuring the performance of the judiciary, Lëvizja FOL has used the European Commission's Efficiency of Justice formulas ((CEPEJ) (CEPEJ, 2015). CEPEJ itself did not make the measurement of the efficiency of the prosecutorial service³.

However, after the analysis, FOL has come to the conclusion that the CEPEJ formulas for courts are also useful for measuring the efficiency of prosecutions on the basis of official statistics.

Measurement does not include not all cases and types of offences. Measurement is done only for a specific set of criminal offenses, specifically for Chapter XXXIV of the Criminal Code of Kosovo - Official Corruption and Offences against official duty, Articles 422 - 437⁴.

The measurement does not indicate the quality of cases and the quality of the work of prosecutors, the administration service or the integrity and professionalism of prosecutors.

3 Lëvizja FOL has contacted Adis Hodzic- high official for statistics, high secretariat of Courts and Prosecutions, Council of Bosnia and Herzegovina, EU Expert. The answer from Hodzic is that the case was asked to be put for discussion in the agenda of GT-EVAL but it did not pass and is left to be discussed in the next meeting of CEPEJ. FOL did not find any publication from CEPEJ in measuring the prosecutions.

4 See Table 1: Criminal Code of Kosovo. Chapter XXXIV- Official Corruption and Offences against official duty.

Fields in which FOL will measure the prosecution's performance are as follows: 1) case flow, 2) clearance rate, 3) case turnover ratio, 4) case resolution trend, 5) disposition time and 6) backlog index.

Case flow

Case flow is an important indicator which shows the way prosecutions manage pending and incoming cases. This involves new cases, resolved cases and those waiting to be resolved. The number of new cases is the number of cases entering the system and requiring prosecutors' action; the number of resolved cases is the answer given by prosecutorial system, i.e. the number of cases that are handled. The cases waiting to be resolved⁵ is the number of cases which are still unresolved by a prosecution or a prosecutor at a certain time, and as such those cases are transferred.

FORMULA. $LP=PS+I$; $PE=LP-R$

Example:

Measurement unit:	Pending cases on 1 January of the 2017	Incoming cases during 1 January – 31 December 2017	Cases in Total during 2017	Resolved cases during the calendar year	Pending cases on 31.12.2017 = PE
	(PS = cases at the beginning of the reporting period) ⁶	(I)	(LP)	(R)	(PE Unresolved cases at the end of the reporting period)
Abussing official position or authority	1424	826	2250	1073	1177

Clearance rate

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

FORMULA. $clearance\ rate\ \% = \frac{\text{cases resolved by the end of the reporting period}}{\text{new cases during the reporting period}} \times 100$

⁵ Handling and resolution can be used as words that complement one another. Courts use the word "resolve" while prosecutions use the term "handle". This is because a case in prosecution is not considered as resolved without a court's decision.

⁶ Hereinafter, the reporting period is the period of one calendar year.

Example:

Cases resolved by the end of the reporting period (R)	1073
New cases during the reporting period (I)	826
Clearance rate	130%

Case turnover ratio

Case turnover ratio measures the relationship 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. The formula uses the number of resolved cases by the end of the reporting period and divides it with the number of unresolved cases, resulting to a case turnover ratio. The ideal case turnover ratio must be 1⁷, which means the system solves as many cases as it receives during the year.

FORMULA. $case\ turnover\ ratio = \frac{\text{number of resolved cases by the end of the reporting period}}{\text{number of unresolved cases by the end of the reporting period}}$

Example:

Number of resolved cases by the end of the reporting period	1073
Number of unresolved cases by the end of the reporting period	1177
Case turnover ratio	0.91

Trend of leveling of cases

It measures the relationship between the transferred cases and the number of resolved cases minus new cases. Trend is not part of CEPEJ formula; this formula is derived using other formulae. Trend in this report implies the performance of prosecutions in terms of clearance of backlogged cases. In order to simplify the measurement of trend in this report, it is calculated taking the performance of prosecution in 2017 as static.

FORMULA. $trend = \frac{\text{Number of transferred cases in the beginning of reporting period (PS)}}{\text{Number of resolved cases (R) - Number of new cases (I)}} - 1$ ⁸

⁷ 1 (or 100%). Example: 100% is an ideal case turnover ratio that means the system has resolved as many cases as it has received during the year as has not transferred any case for the upcoming year.

⁸ The formula is minus 1 in order not to count the current year because the trend makes sense if the current state is taken as static.

Disposition time

Disposition time is an indicator that measures the time for 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 relation of case turnover it gives the performance of the completion of cases in days. This indicator is important to see the time taken by each prosecution to handle the cases (per persons). 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 entry and the exit of cases from the system based on the exercised performance. When a prosecution does not have transferred cases, it deals with them in the shortest time possible making it more efficient.

FORMULA. $Disposition\ time = \frac{365}{Case\ turnover\ ratio}$

Backlog index

Backlog index is an indicator that shows the performance of prosecutions in terms of the clearance of backlogged cases. The high number of backlogged cases has direct impact on the performance of prosecution. A high value of backlog index shows that a longer time is needed to resolve cases. The more cases are transferred in the following year the more delays will incur in filing indictments.

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

In this report, the performance of courts and prosecutions will be measured with these formulas and this evaluation system.

Data gathering

Lëvizja FOL on three-month basis, continuously collects data⁹ from courts and prosecutions pertaining to the field of corruption. In 2017 has continued the collection of data for the group of cases on anti-corruption for basic courts and prosecutions in three-month and annual basis.

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.”

⁹ The data were obtained by e-mail from the KJC’s Statistics Office

ARTICLE	CATHEGORY	ARTICLE	CATHEGORY
422	Abusing official position or authority	432	Issuing unlawful judicial decisions
423	Misusing official information	433	Disclosing official secrets
424	Conflict of interest	434	Falsifying official document
425	Misappropriation in office	435	Unlawful collection and disbursement
426	Fraud in office	436	Unlawful appropriation of property during a search or execution of court decision
427	Unauthorized use of property	437	Failure to report or falsely reporting property, revenue/income, gift, other material benefits or financial obligations
428	Accepting bribes		
429	Giving bribes		
430	Giving bribe to a foreign public official		
431	Trading in influence		

Table 1: Criminal Code of Kosovo. Chapter XXXIV-Official corruption and Criminal offences against official duty

Basic prosecutions- Data about all Prosecutions

During the collection of information and statistical data, Levizja FOL looked for general and specific information regarding the fight against corruption. General information is that which provides a general insight on the work of prosecution which are open to the public, while specific information is that which prosecution uses for certain priorities.

In general, the office for statistics in the KPC was very collaborative and we did not encounter any obstacle in access to information.

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.

Number analysis

It is easy to lose interest in number if we do not break down their meaning. FOL has tried to break down the number by using a methodology that makes it easier and more comprehensible for the reader to see the progress in the fight against corruption.

The aim of this report is not to substitute the official statistics published by KPC, but rather we aim to make these numbers more comprehensible for the citizens. Through each table and formula we present, we try to answer questions such as: What does the above table tell about the performance of the prosecutions in the field of corruption? Did the prosecutions have a better performance? How long does it take to handle a case? Which prosecution performed better?

What we observe from the above charts is that prosecutions throughout the territory of Kosovo have had a good performance in the fight against corruption in the sense that they have managed to handle most of the cases, in proportion 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 official person, who, by taking advantage of his office or official authority, exceeds the limits of his or her authorizations or does not abide to his or her official duties with the intent to acquire any benefit for himself or another person (Criminal Code 2012).

In 2017, prosecutions had 1799 cases (persons) in process related to corruption. Out of these 1799 persons, prosecutions handled 843 persons and transferred a total of 956 criminal charges or persons.

Despite this high number of cases handled for 2017 (843) and the number of persons with the regard to whom the prosecutor has undertaken actions where: has thrown criminal

charges (334), investigations were suspended (189); the number of indictments (273) remains low compared to the total number of persons under investigation (1799).

We are not able to tell the reasons why prosecutions rejected criminal charges for 334 persons since this requires an access to files and information of prosecutions and prosecutors; but these figures definitely comprise the prescription of criminal offences, which remains a concerning issue.

Prosecutions hide some ways of solving some cases. Prosecution, in its official statistics, did not send the number of the prescript cases.

Central level

In this part we will carry out an analysis of these figures using formula which show the performance of basic prosecutions to handle corruption cases during 2017.

Case flow

Based on CEPEJ method, the case flow will show us the relationship 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 not handled by prosecution at a certain time, and as such those are cases that are transferred.

Despite the large number of cases dealt with for 2017 (843) and the number of persons for whom the prosecution has taken certain actions: has dismissed criminal charges (334); has terminated the investigation (189), however the number of indictments (273) remains small compared to the total number of people under investigation (1799)

FORMULA. Formula: $LP=PS+I$; $PE=LP-R$

(**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).

All basic prosecutions and special prosecution	Measurement unit: category of Criminal offense	Pending cases on 1 January of the 2017 = PS	Incoming cases during 1 January - 31 December 2017 = I	Cases in Total during 2017 = LP	Resolved cases during the calendar year= R	Pending cases on 31.12.2017 = PE
	Official corruption and criminal offenses against official duty articles 422 - 437	1177 ¹⁰	622 ¹¹	1799 ¹²	843	956

Table 2 Annual statistics for the Basic and Special Prosecution for the year 2016 on Offenses of Official Corruption and Offenses against Officials.

$$(LP) 2250 = PS 1424 + (I) 826 \quad \text{or} \quad (PE) 1177 = (LP) 2250 - (R) 1073$$

As we can see from the above table, for all categories pertaining to Chapter XXXIV of Criminal Code of Kosovo, during 2017 a total of 1177 cases (per persons) were transferred from previous year (2016). A total of 622 new cases (per persons) arrived during 2017, reaching a total of 2799 cases (per persons) in all prosecutions during 2017.

At the central level, compared with 2016, there is a fall in new cases (per persons) of corruption cases for 204 persons less, which has also resulted in a decrease in the number of cases at work. In 2016 the prosecutions had 2250 cases (persons) in work, whereas in 2017 this number decreased to 1799 persons, a difference of 451 persons. This change has been due to the decrease in the number of new cases of corruption compared to the number of transferred cases.

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

Clearance rate (CR)

$$\text{FORMULA (CEPEJ): } \textit{clearance rate \%} = \frac{\text{cases resolved by the end of the reporting period}}{\text{new cases during the reporting period}} \times 100$$

$$\text{THEREFORE: } \textit{clearance rate \%} = \frac{843}{622} \times 100 = 135\%$$

¹⁰ EXPLANATION: As of December 31st 2016, the Prosecutorial Council reports that at the central level 1248 persons were transferred to be treated for 2017. Since there were criminal offenses that did not fall under Chapter 34 of the Criminal Code, the total number of persons fell from 1248 to 1177. On January 1st 2017, KPC reports that by 2016, 1097 persons were transferred. KPC did not report what happened with 151 cases transferred from 2016. FOL, in the absence of an official explanation, will use for the transferred cases the figures reported on 31 December 2016 in its report.

¹¹ EXPLANATION: This number reflects the number of offenses from Chapter 34 of the Criminal Code. The number differs from the official number reported by the KPC after removing the offenses that do not fall under Chapter 34 of the Criminal Code.

¹² EXPLANATION: The official number of cases at work in the report sent by KPC differs from the number of cases at work in our report. The reason lies in the explanation given above that the KPC did not report where the remaining 151 cases were left.

During 2017, seven Basic Prosecutions and Special Prosecution within Chapter XXXIV of Criminal Code of Kosovo - Official Corruption and Criminal Offences against Official Duty, Articles 422 - 437, received 622 cases (per persons) and managed to resolve a total of 843 cases (per persons).

According to calculations, and based on CEPEJ formula, clearance rate (per persons) is 135% for 2017 on national level in the field of anticorruption.

Clearance rate of cases (per persons) for 2017 = **135%**

Clearance rate is a highly important indicator of performance of prosecutions because it shows the capacity of their work. Based on the calculated rate for 2017 prosecution worked efficiently reaching the level beyond 100%.

A 100% clearance rate would be desirable if prosecutions did not have backlogged cases. Such a performance shows that prosecutions resolved more cases (per persons) than they received during 2017, which is an indicator that prosecutions managed to resolve transferred cases.

But, as we will see further, it is the particular prosecutions which improve or worsen the performance of prosecution as a whole. We hope that this report will help the justice sector intervene in those prosecutions which featured problems in order to find the necessary solutions, especially in Basic Prosecution of Ferizaj and Prizren, which have a rather poor performance compared to other prosecutions.

Disposition time

CEPEJ requires the judiciary system to report an indicator of the needed time on solving the cases, 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, which is known as the “case turnover ratio”. Secondly, 365* is divided with the clearance rate, so the indicator of the disposition time can be translated into number of days, for which CEPEJ suggests that it simplifies the relation between the number of resolved cases during the reporting period and the number of cases waiting to be resolved (transferred cases). DT in this was measures how fast it takes for the justice system to resolve the cases, which is then translated with the time they need to be resolved. (Hall & Keilitz,2012).

First step

FORMULA. $case\ turnover\ ratio = \frac{\text{number of resolved cases in the end of the reporting period}}{\text{number of unresolved cases in the end of the reporting period}}$

THEREFORE: $case\ turnover\ ratio = \frac{843}{956} = 0,88$

Case turnover ratio per persons in **2017** is 0,88

Case turnover ratio in national level for the prosecutions in 2017, is 0.88. Case turnover ratio enables us to understand the flow of cases from prosecutions. In general, the case turnover ratio and disposition time compare the number of cases solved during the reporting period with the number of cases not resolved at the end of the reporting period. The case turnover ratio measures how quickly the system (in this case the prosecutions) treats the cases it receives -how much time the system takes to solve a case. Indirectly this indicator gives an answer to one of the most frequent and most important questions in the justice system, that is - how long the court procedure lasts, in this case the procedure lasts until the accusation (Hodzic&Georg).

Trend of leveling of cases based on the performance of 2017

A large number of cases continue to be transferred from the previous year, causing the system to delay the delivery of justice. The number of transferred cases directly affects the performance of the prosecution although the level of performance is over 100%.

Of **1799 cases** (per person) Prosecution have managed to resolve **843** of them, while cases transferred over for **2017** in total are **956**.

FORMULA.
$$trend = \frac{\text{Number of transfered cases (PS)}}{\text{Number of solved cases (R) - Number of new cases (I)}} - 1^{13}$$

THEREFORE:
$$trend = \frac{1177}{843 - 622} = 5 \text{ (years)}$$

The above formula takes into account the prosecution's performance for 2017 and is formulated on the assumption that for the next five years, the prosecution will continue to have the same clearance rate of 135%.

The more cases prosecutions bring for subsequent years, the lower the rate of case resolution, and the more the system will delay the delivery of justice.¹⁴

13 Number 1 is subtracted from the formula in order not to count the current year, because the trend makes sense if the current state is taken as static.

14 http://www.coe.int/t/dghl/cooperation/cepej/thematiques/Au_dela_rapport/Staëa_Adiz_general_en.pdf

Disposition time - DT

Leveling of cases with the clearance rate of cases for person 135% will be reached **in year 2022**

The duration of the case completion is an important indicator for measuring the performance of the prosecutorial system. DT compares the number of cases resolved during the reporting period to the number of unsolved cases at the end of the reporting period. 365 is divided by the turnover ratio of the cases found in the first step so that time is translated into the number of days. As we have explained above, this indicator (DT) along with the turnover rate shows how prosecution manages the flow of cases and how quickly they give justice.

Second step

FORMULA (CEPJ). $Disposition\ time = \frac{365}{Case\ turnover\ ratio}$

THEREFORE: $Disposition\ time = \frac{365}{0.88} = 414\ days$

365 is the number of days within a year which is divided by the case turnover ratio from seven basic prosecutions and special prosecution in Kosovo, which for 2017 resulted at 0.88.

415 days is the number of days or the time the system needed to give justice for a case.¹⁵

Backlog Index

One of the main problems reported in the justice system in Kosovo is the large number of cases accumulated over the years. The prosecution, just like the courts, continue to suffer in this regard, however, for the year 2017 the prosecution has a better trend of leveling the cases.

The high number of transferred cases makes citizens' mistrust in justice institutions grow as they have to wait a long time for the system to deal with their cases and to give justice.

A key indicator of prosecution performance is also the index number of cases collected. This indicator is determined by the number of unsolved cases at the beginning of the reporting period divided by the number of cases resolved during the reporting period. A high value in this number tells us that it takes longer to resolve a case. For example, if the number is higher than 1.0, the prosecution did not complete as many cases as it had at the beginning of the reporting period. (Hall & Keilitz, 2012, p. 27)

¹⁵ Usually with case competition in prosecution it is commonly understood: the conclusion of investigations which may result in dismissal of criminal report, termination of investigations and indictments at the court. In practice, the prosecutor's work does not end even after the indictment has been filed since the criminal proceedings continue to be conducted at the court until the decision is taken.

The prosecution service at the national level for 2016 has a backlog index of 1.39. This value is high as the prosecution continues to transfer unsolved cases.

In 1999, the author, Maria Dakolias, in order to put in perspective the meaning of the backlog index reported a value of 0.04 for Singapore and 0.25 for France, values which indicated a very fast completion time of cases compared to other countries like Chile which had a value of 1.7 or Ecuador with a very high value of 7.87. (Hall & Keilitz, 2012)

FORMULA. $backlog\ index = \frac{\text{number of transfered cases in the begining of reporting period}}{\text{number of resolved cases during the reporting period}}$

THEREFORE: $backlog\ index = \frac{1177}{843} = 1.39$

Based on the statistics of 2017, the prosecution has a high value of backlog index. What is to be reemphasized is that this index is derived only from the cases for Chapter XXXIV of the Criminal Code of Kosovo - Official Corruption and criminal offenses against Official duty, Articles 422 - 437, based on official statistics from Kosovo Prosecutorial Council and as such it does not represent all criminal offenses.

It should also be reemphasized that none of the above indicators show the real time that specific cases stay in the system until they get justice because in practice cases differ greatly from one another.

Regional Level

Më lartë prezantuar performancën e prokurorive në nivel kombëtar. Por si kanë qëndruar prokurorite themelore ndaras? Cila prokurori ka përformuar më mirë dhe cila më dobët? Këto krahasime do të mund të i shohim në statistikat në vazhdim duke përdorur formulat e njëjta që përdorëm për nivel qendror.

Case flow for Basic and Special Prosecutions (per persons) - Chapter XXXIV of the Criminal Code of Kosovo

Basic and Special Prosecutions	Pending cases on 1 January of the 2017 = PS	Incoming cases during 1 January - 31 December 2017 = I	Cases in Total during 2017 = LP	Resolved cases during the calendar year = R	Pending cases on 31.12.2017 = PE
Special	140	17	157	55	102
Pristina	610	301	911	426	485
Ferizaj	45	74	119	56	63
Mitrovica	190	51	241	80	161
Prizren	69	25	94	21	73
Gjilan	48	80	128	81	47
Gjakova	35	44	79	56	23
Peja	40	56	96	68	28

NOTE: Head Prosecutor from Prizren Basic Prosecution, Admir Shala during presentation of the statistics form FOL, has presented different numbers for Prizren Basic Prosecution compared to official numbers from KPC. Lëvizja FOL will update the report, once KPC updates the official statistics.

Trend of leveling of cases (per Person) Based on 2017 statistics for Basic prosecutions and the Special prosecution

Prosecutions	Years	Measuring unit
		Trend of leveling cases and the offer of justice.
Special	3	
Pristina	4	
Ferizaj	n/a	
Mitrovica	6	
Prizren	n/a	
Gjilan	47	
Gjakova	2	
Peja	3	

■ n/a

Based on the statistics received from Kosovo Prosecutorial Council for the year 2017, the case clearance trend in the central level is positive in meaning that prosecutorial service in the national level solves more cases than it receives over a year. As noted above, in national level with the resolved case rate of 135%, the prosecution will reach the leveling in 2022, but this trend differs greatly in basic prosecution level.

Measured in years, Gjakova Basic Prosecution has the most rapid time of leveling cases followed by Peja and Pristina and Special Prosecution. Gjakova Basic Prosecution Office has resolved the highest number of cases that it had in work during the year 2017. If the case flow in 2018 continues to be the same, with the clearance trend demonstrated in 2017, the Gjakova and Peja will be the first ones to level¹⁶ the cases in the field of corruption.

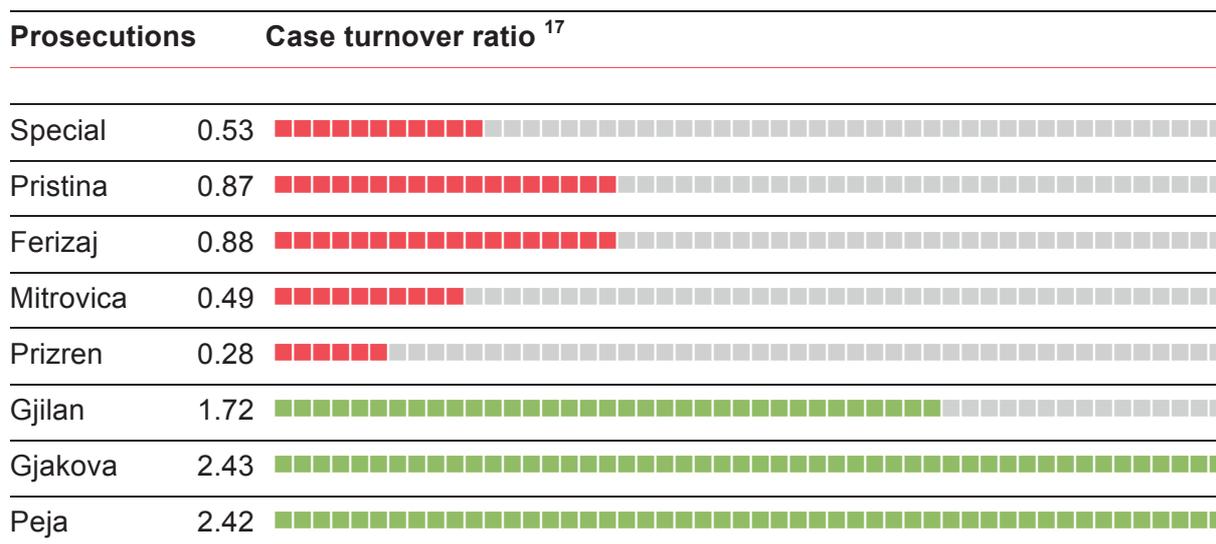
Basic prosecution of Ferizaj and Prizren have negative trend for year 2017

The poorest performance in this indicator belongs to Basic Prosecution in Ferizaj followed by that of Prizren and Gjilan. This is because Ferizaj, Prizren and Gjilan have failed to cope with new cases and the ones transferred. Gjilan has had a high case turnover ratio (1.72) but has faced a large case flow which has not been able to withstand by resolving just one case more than it has received. Ferizaj on the other side, together with Prizren have a negative trend. Both of these prosecutions failed to cope with the case flow by resolving less cases

¹⁶ Level = new cases are treated in time and are not transferred for the next year.

than received in 2017. For prosecutions with a negative trend in resolving cases, the formula of case clearance trend will not be applicable in this report.

Case Turnover Ratio (per person) based in 2017 statistics for Basic prosecution and Special prosecution



■ Progress ■ Regress

With the exception of the Basic Prosecutions of Gjakova, Peja and Gjilan which have a good case turnover ratio, all the other prosecutions have a negative ratio.

Basic and Special prosecution	Resolved cases during the calendar year (R)	Unresolved cases at the end of the period (PE)
Special	55	102
Mitrovica	80	161
Prizren	21	73

In the worst positions remain the Basic Prosecution of Prizren followed by the Special Prosecution and the one in Mitrovica. The low case turnover ratio comes from poor performance in resolving transferred cases. As we observed from the case flow, Prizren has received 25 new cases and has resolved 21 cases for 2017, transferring 4 cases for the upcoming year. Gjakova on the other side has received 44 new cases during 2017 and has resolved 56 cases, resolving 12 cases more than has received and reducing this way the backlog.

¹⁷ The higher the case turnover ratio, the shorter the time needed to give justice or complete a case.

Basic and Special prosecution	New cases opened during the calendar year (I)	Resolved cases during the calendar year (R)	Unresolved cases at the end of the period (PE)
Special	17	55	102
Gjakova	301	426	485
Prizren	74	56	63

Special Prosecution in comparison with the prosecution Gjakova has resolved more transferred cases. The Special prosecution has resolved 38 cases more than it has received, whereas Gjakova 12, however Special prosecution has a case turnover ratio of 0.53 whereas Gjakova 2.43 because the Special Prosecution has a higher backlog index (2.54) compared with Gjakova (0.62).

Disposition time - DT for the seven Basic Prosecutions and for the Special Prosecution

Prosecutions	Days	Measuring unit Disposition time
Special	688	
Pristin	419	
Ferizaj	414	
Mitrovica	744	
Prizren	1303	
Gjilan	212	
Gjakova	150	
Peja	150	

Another indicator of the prosecution's performance is the disposition time (DT). This is an important indicator because it translates the time of case resolution into days, further simplifying the understanding of the prosecution's performance in dealing with cases.

In accordance with the formula recommended by CEPEJ and in consistent with the results of the case turnover ratio we see that the Prizren Prosecution has the poorest performance with a very high disposition time compared to Gjakova and Peja. Disposition time takes into account the total number of cases awaiting treatment by prosecutions. Because of the high case turnover ratio in 2016, Gjakova and Peja Prosecution have the shortest time compared to other prosecutions for handling a case.

The citizens of Gjakova and Peja region, based on the case turnover ratio for 2017 can expect handling of cases in the field of corruption within 150 days while in the region of Prizren and Mitrovica citizens have to wait for a period of 1303 and 744 days respectively.

Prosecutions	Years	Days	Measuring unit	Disposition time
Prizren	2017	1303		
	2016	354		

Backlog Index for Seven Basic prosecutions and Special Prosecution (per persons)

Prosecutions	index of aggregated cases ¹⁸	
Special	2.54	
Pristina	1.43	
Ferizaj	0.80	
Mitrovica	2.37	
Prizren	3.28	
Gjilan	0.59	
Gjakova	0.62	
Peja	0.58	

Progress Regress

Knowing the high number of backlog cases in general in the prosecutorial system, it is important to have an indicator which shows the prosecution performance in this regard. What we see in national level is that the backlog index is quite high with 1.39. But where does this high backlog index come from?

Analyzing data on basic prosecutions separately, we note that in this high number, the basic prosecutions separately play a crucial role. For the 2017 the prosecution of Prizren, Special prosecution and Mitrovica have the highest backlog index thus contributing to a high backlog index at the central level. As we have highlighted above, a high value in this number indicates that it takes longer to resolve a case. When the number of backlog index is high, the case clearance rate should be higher than 100% for it to withstand the cas flow.

¹⁸ The higher the turnover rate of cases, the more it shortens the time within which the system provides justice is the time for completion of the cases.

When the number is higher than 1.0, the prosecution has not completed as many cases as it had at the beginning of the reporting period by enabling new cases that enters the system to continue to be transferred and wait for treatment in the future. The Special Prosecution has had 140 cases in the beginning of the reporting period (01 January 2017) and has resolved 55 cases during the reportin period (01 January – 31 December, 2017), and Prizren has had 69 transfered cases and has resolved during the reporting period 21 cases. Gjilan, on the other hand has had 48 transfered cases and has resolved 81 cases, demonstrating a very high case turnover ratio and managing veer well the case flow.

The performance of **Basic Courts**
in fight against corruption for 2017

Introduction

In 2016, FOL reported that basic courts in Kosovo, in general, have had a positive performance in the fight against corruption. Positive performance meant that the courts had managed to resolve more cases than they had received in 2016.

Despite this, the trend of case resolving remained negative, as the number of transferred cases remained high, especially in the Basic Court in Pristina.

The 2016 report was welcomed by all basic courts and by Kosovo Judicial Council (KJC) as it reflects a realistic situation of courts work in Kosovo.

The report uses the statistics provided by the Kosovo Judicial Council which have been analyzed by the European Commission for the Efficiency of Justice (CEPEJ) official formulas.

For 2017, we notice that the courts still have a positive case resolution norm, in the sense that they have managed to cope with the influx of anti-corruption cases. But the high influx of corruption cases is a disturbing indication of the level of corruption in Kosovo.

Fighting and preventing corruption remains the main challenge for Kosovo. Building and developing democratic institutions is inhibited by the large presence of corruption in public institutions.

The European Commission in the Country Report for Kosovo for 2018 reported that *"Corruption is widespread and remains an issue of concern. Concerted efforts are needed to tackle this problem in a comprehensive and strategic manner (EU Commission, 2018)"*.

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 the way towards social progress. Insufficient evidence, ill-prepared files, case withdrawal in courts, lack of courage to investigate high ranked officials,

must open the way to courage, professionalism, and to the integrity work for prosecutors. The same goes for judges, whose moral compass often appear to be narrow and vulnerable to external factors.

Abusing official position or authority is the most frequent type of corruption for 2018 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, the 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, are the independent and professional 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.

The judiciary ¹⁹ continues to be among the institutions in which citizens believe the least according to the public pulse published by UNDP in 2017. In 2016, the trust of citizens in the judiciary was 20%, while in 2017 the trust increased to 31 % (UNDP - Kosove, 2017). Yet, 2/3 of citizens do not believe in justice. This is an alarming number, so the courts together with the prosecution have to address this concern seriously.

Trust of citizens on the judiciary
according to "Public Pulse from UNDP
- Kosovo"

2016	2017
20%	31%

As in 2016, even in 2017, there have been increased efforts to tackle down corruption cases as a priority of the visa liberalization regime by the European Union. It is important that the performance of the judiciary is not influenced by any external process that could affect the quality of justice. The judiciary should consistently have a positive performance in order to shorten the waiting for justice for citizens, which directly affects on increasing citizens' trust in the courts.

According to 'Country Report'²⁰ from European Commission, the judiciary is still affected by unnecessary political influences and the institutions on rule of law need greater attention to build their capacities.

Despite the positive performance in managing the influx of corruption cases, according to EC justice administration as a whole remains slow and inefficient (EU Commission, 2018).

Independence and impartiality of the judiciary are fundamental for the functioning of a democratic society. The citizens' trust, i. e. that they will have a fair and impartial process run

19 In many documents, the judiciary also means courts and prosecution. For example. The "Public Pulse" document published by UNDP Kosovo with the courts means both the courts and the prosecutors.

http://www.ks.undp.org/content/kosovo/en/home/library/democratic_governance/public-pulse-11.html

20 Country Report is new given name by European Commission for the progress report.

by professional judges with no political or corruptive influence is crucial for the development of a democratic society.

Increasing the citizens' trust in justice institutions is a process that should be continuously built and improved.

The first step is definitely the increasement of excellence and integrity criteria.

Integrity is as important criteria as the professional one for a judge. In 2016 Justice System Strengthening Program (JSSP) in cooperation with the Kosovo Judicial Council (KJC), has changed Code of Conduct for judges and has made it mandatory through a regulation to attend 4 hours training on ethics during a year²¹.

Lëvizja FOL in cooperation with the Center for International Legal Cooperation (CILC) in the Netherlands and the Kosovo Democratic Institute (KDI) during the 2017 conducted integrity scan for judges and prosecutors, which is published in December 2017²². The report²³ has shown that judges are influenced to some extent by external factors in their decisions making which undermines the credibility of judges and the citizens' trust in justice.

The JSSP has a training program for judges and FOL together with partners are assisting to train some judges in the field of integrity, by providing training materials and trainers²⁴.

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 the quality of court decisions²⁵. Transparency implies that decisions of the judges are open to the public in general, law experts, lawyers, to media and civil society.

Lëvizja FOL continuously works to increase the transparency of public institutions, including the judiciary, as the first step in fighting corruption, bad governance and misuse of public money.

The publication of this report with statistics on the work and the performance of the courts is a step further in this direction.

232 new corruption cases in 2016

223 new corruption cases in 2017

The report sheds light not only on the work of courts in the field of anti-corruption, by hoping to help courts on improving their performance, but also by inviting citizens to get information with the work of the judiciary in order to improve their trust on it.

21 <https://www.usaid.gov/kosovo/fact-sheets/justice-system-strengthening-program>

22 <http://levizjafol.org/skanimi-i-integritetit-ne-sektorin-e-drejtjesise/>

23 <http://levizjafol.org/wp-content/uploads/2018/01/Skanimi-i-integritetit-n%C3%AB-Sektorin-e-Drejt%C3%ABsis%C3%AB.pdf>

24 <http://www.cilc.nl/kosovo-launch-of-justice-system-integrity-project/>

25 Lëvizja FOL has developed egjkata.org platform, which contains considerable court decisions. The platform does not contain all the decisions and is not automatically updated with new decisions. automatically.

The report in numbers shows a positive performance of the judiciary dealing with corruption cases. The influx of corruption cases is almost the same compared with the year 2016 with a decreasing rate of only 10 cases, indicating that the level of corruption remains almost at the same level.

The new thing in this report is the number of judges for each basic court. We have added a column to the right of the table with general statistics on the number of annual cases to show how many judges work on solving the cases.

Also in this report, we have also brought the number of statutory limited cases, including relative and absolute statutory limitations.

Newness in this report:

- Number of judges dealing with corruption cases in each basic court
- Number of statutory limited cases
- Comparison Report of 2016

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

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

The first part of the report gives important details regarding the meaning of courts and the prosecution work in the anti-corruption field as well as the significance of the report and its reading.

Then, are presented the used methodology for drafting this report and continues with the findings presentation, by bringing comparative statistics at the end of the report in order to be possible the comparison of performances between 2016-2017.

EXPLANATION: This report cannot be read as a substitute of the official reports of the Judicial and Prosecutorial Councils. The report has its limitations as it does not in any way indicate the quality of investigations by prosecutors and the separation of justice from judges. The report measures the performance only in numbers.

Methodology

Measuring the performance of the judiciary is not an easy task. Decisions in court depend on many factors and one case can be simple; yet, another case can be quite complex. Besides this, cases differ depending on the number of suspects and the type of criminal offences. All these and many other factors have an impact on the duration of a trial and on the court performance. European Commission on the Country Report, has demanded to strengthen the capacity for court administration in particular through case management system which should be in line European Commission for the Efficiency of Justice (CEPEJ) methodology.

In January 2018, the Council of Europe published the Kosovo Judicial System Assessment Report²⁶. This report provides inter alia data on criminal, civil and administrative cases for courts and prosecutions. However, this report does not use all the CEPEJ formulas, but only the formula of the case resolution norm and the formula of the disposition time (The Council of Europe, 2018).

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, case flow, 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 the 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 courts²⁷. In this regard, Lëvizja FOL takes into consideration and follows CEPEJ formulas for the measurement of efficiency, but also adapts new formulas based on statistics that have been prepared for publication by courts and prosecutions.

²⁶ This report is financed from European Commission and The Council of Europe.

²⁷ We have to mention that this report is not authorized from The Council of Europe and from European Commission for the Efficiency of Justice (CEPEJ), even the formulas are identical, are not official.

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, measurement is done for the Chapter XXXIV of the Criminal Code of Kosovo - Official Corruption, as well as criminal offences against official duty, Articles 422 - 437²⁸.

The measurement is 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.

The formulas that FOL has used to measure the performance of the judiciary and prosecution are as follows:

Case Flow

The case flow shows the total number of cases with which the court deals during a calendar year. This comprises new cases, resolved cases and those waiting to be resolved. The number of new cases is the number of cases entering the system²⁹ 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 at a certain time, and as such, those are cases that are transferred.

FORMULA. $LP=PS+I$; $PE=LP-R$

Example:

Measurement unit:	Unresolved cases January 1, 2017 <small>(PS = cases at the beginning of the reporting period³⁰)</small>	New Cases <small>(I)</small>	Cases in Process <small>(LP)</small>	Resolved cases during the calendar year <small>(R)</small>	Unresolved cases on 31 December 2017 <small>(PE Unresolved cases at the end of the reporting period)</small>
Abusing official position or authority	195	106	301	123	178

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 court commitment in solving the cases.

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

29 System = in courts

30 Hereinafter, the reporting period is the period of one calendar year.

FORMULA. $clearance\ rate\ \% = \frac{case\ resolved\ by\ the\ end\ of\ the\ reporting\ period}{new\ cases\ during\ the\ reporting\ period} \times 100$

Example:

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

Case Turnover Ratio

Case Turnover Ratio 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. The formula uses the number of resolved cases at the end of the reporting period and divides them with the number of unsolved cases, by giving us case turnover ratio. Case turnover ratio shows us the frequency with which the system replaces new cases. Ideal case turnover ratio has to be 100³¹, which means that the system solves as many cases as it accepts during the year.

FORMULA. $case\ turnover\ ratio = \frac{number\ of\ resolved\ cases\ by\ the\ end\ of\ the\ reporting\ period}{number\ of\ unresolved\ cases\ by\ the\ end\ of\ the\ reporting\ period}$

Example:

Number of resolved cases during the reporting period	123
Number of unresolved cases by the end of the reporting period	178
Case turnover ratio	0,69

Trend of leveling of cases

It measures the report between cases at the beginning of the reporting period and the number of resolved cases minus new cases. The trend is not part of CEPEJ formula; this formula is derived using another formula. As the courts face a large number of unresolved cases we have derived this formula to show the trend of the reduction of cases. The trend in this report means 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

³¹ 100 can also be used as a percentage. Example 100% is the ideal case turnover ratio that implies that the system has solved the same amount of cases it has received during the year and has not carried any case for next year. 069 in our case is the turnover rate of 0.69%.

performance of judiciary in 2017 as static.

FORMULA.
$$trend = \frac{\text{Cases at the beginning of the reporting period (PS)}}{\text{Number of resolved cases (R) - Number of new cases (I)}} - 1^{32}$$

Example:

Cases at the beginning of the reporting period	301
Resolved cases	123
Minus Number of new cases	106
Trend	17 Vjet

Disposition time

Disposition time is an indicator that measures the time of the completion of a 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 turnover ratio 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.

1st Step Disposition time = $\frac{365}{\text{Case turnover ratio}}$

2nd Step Disposition time = $\frac{365}{0.69} = 528 \text{ days}$

Backlog index

Backlog index 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 increase the mistrust in courts. A high value of the backlog index shows that a longer time is needed to resolve cases.

³² The formula is minus 1 in order not to count the current year because the trend makes sense if the current state is taken as static.

FORMULA. *Backlog cases index* = $\frac{\text{Number of unresolved cases at the beginning of the reporting period}}{\text{Number of resolved cases}}$

Example:

Number of unresolved cases at the beginning of the reporting period	195
Number of resolved cases	123
Index	1.58 vjet

The performance of courts and prosecutors in this report will be measured by these formulas and with this evaluation system.

Data gathering

Lëvizja FOL continuously gathers³³ data in the field of corruption from courts and prosecution on a three-month basis. In 2017, data gathering for the anti-corruption offences group from basic courts and the basic prosecution has continued on a quarterly and annual basis.

Basic Courts – data for all basic courts

ARTICLE	CATHEGORY	ARTICLE	CATHEGORY
422	Abusing official position or authority	432	Issuing unlawful judicial decisions
423	Misusing official information	433	Disclosing official secrets
424	Conflict of interest	434	Falsifying official document
425	Misappropriation in office	435	Unlawful collection and disbursement
426	Fraud in office	436	Unlawful appropriation of property during a search or execution of court decision
427	Unauthorized use of property	437	Failure to report or falsely reporting property, revenue/income, gift, other material benefits or financial obligations
428	Accepting bribes		
429	Giving bribes		
430	Giving bribe to a foreign public official		
431	Trading in influence		

Table 1: Criminal Code of Kosovo. Chapter XXXIV-Official corruption and Criminal offences against official duty

During the gathering of information and statistics, Lëvizja FOL looked for general and specific information on the fight against corruption. General data are the information that gives a general overview of the work of the courts that are open to the public, whereas specific information is the information that the court uses for certain priorities

³³ The data were obtained by e-mail from KJC Statistics Office.

In general, the Kosovo Judicial Council 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. Next, we will give a general overview of all statistics from all basic courts with data for each category and then we will analyze the numbers.

	Abusing official position or authority	Misusing official information	Conflict of interests	Misappropriation in office	Fraud in office	Unauthorized 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 documents	Unlawful collection and 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 obligation	Total
Transferred cases(herited)	186	1	2	67	5	1	38	22	2	1	1	3	6	1	0	0	336
New cases received	135	1	3	11	1	0	25	28	0	6	0	2	11	0	0	0	223
Cases in process	321	2	5	78	6	1	63	50	2	7	1	5	17	1	0	0	559
Resolved cases	153	2	3	23	1	1	21	37	0	4	0	1	8	0	0	0	254
Imprisonment sentences	19	0	0	3	0	0	8	0	0	2	0	0	0	0	0	0	32
Fine sentences	18	0	3	4	0	0	6	26	0	1	0	0	0	0	0	0	58
Suspended sentences	33	1	0	7	1	1	4	7	0	1	0	0	1	0	0	0	56
Other sentences	2	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	3
Acquittal judgment	34	1	0	3	0	0	0	1	0	0	0	0	1	0	0	0	40
Rejection judgment	15	0	0	2	0	0	0	2	0	0	0	0	2	0	0	0	21
Resolved in other way	32	0	0	3	0	0	3	1	0	0	0	1	4	0	0	0	44
Relative statutory limitation	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Absolute statutory limitation	6	0	0	0	0	0	1	0	0	0	0	0	1	0	0	0	8

Table 2: General statistics from all basic courts for all criminal offences pertinent to chapter xxxiv of the criminal code of Kosovo for period 01.01.2017-31.12.2017

Figure Analysis

FOL has tried to break down the above numbers by using a methodology that makes it more understandable and accessible to the reader. The purpose of this report is not to replace the official statistics published by the KJC, but we intend to make these numbers more understandable to citizens only in the field of anti-corruption. In each of the tables and formulas we present, we try to answer questions such as: What does the above table shows for judiciary performance? Did courts have a good performance? Did they manage to resolve all cases in time? For how long the accused persons have waited for a final decision. How long does it take for a court to resolve a case? Which court has performed better?

What we see from the table above is that the courts throughout the territory of Kosovo have had a good performance in the fight against corruption in the sense that they have managed to solve most of the cases, in relation to the number of received cases for the same period of time.

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 in a State body, a person elected or appointed to a State body or a person who exercises specific official duties based on authorization provided for by law. (Kodi Penal, 2012).

In 2017 courts had in process 578 cases in the field of corruption. From 578 cases, courts resolved 254 cases, transferring thus 305 for following year. If we look at persons that have been involved in these cases, we conclude that 1204 persons were in front of a court in 2017. For 386 persons the courts have taken a decision, while for other 818 people the procedure has not finished yet.

The high number of criminal offences carried by officials is much higher than the number of criminal offences carried by non-officials, showing thus the nature of corruption in Kosovo.

Central Level

Further, we will carry out an analysis of these numbers using formulas which show the capacity of basic courts for the resolution of corruption cases, as well as their performance during 2017.

Case Flow

Based on CEPEJ method, the case flow will show us the report between new cases, resolved cases and those waiting to be resolved. As we 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 are the numbers of cases which are still unresolved by the court at a certain time and such those are cases that are transferred. The number of cases in the process (LP) is the result of unresolved cases from the previous year (PS) plus the number of new cases opened during the calendar year (I). Meanwhile, unresolved cases (PE) are the difference between cases in process during the calendar year (LP) and cases resolved during this period(R).

FORMULA. $LP=PS+I$; $PE=LP-R$

(**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)

All Basic Courts	Measurement unit: Type of criminal offence	Unresolved cases as of January 1st, 2017(PS)	New cases opened during the calendar year (I)	Cases in Progress (LP)	Resolved cases during the calendar year (R)	Unresolved cases on 31.12.2017 (PE)
	Official corruption and criminal offences against official duty	355	223	578	254	324

Table 3 Annual statistics for seven Basic Courts for 2017 for Criminal Offence Against Corruption and Official Duty.

$$(LP) 578 = PS 355 + (I) 223 \quad \text{or} \quad (PE) 355 = (LP) 578 - (R) 254$$

As we can see from the above table, for all categories pertaining to Chapter XXXIV of Criminal Code of Kosovo, during 2017 a total of 355 cases were transferred from the previous year (2016). A total of 223 new cases opened during 2017, to reach a total of 578 cases in all basic courts during 2017.

In the central level, compared with 2016 it is a decreasing rate in new cases of corruption for 9 cases less that resulted in a decreasing rate of cases in progress as well.

In 2016 courts had 639 cases in progress, while in 2017 this number reduced in 578 cases, with a difference of 61 cases. This change has occurred for two reasons: firstly because there was a decrease in new corruption cases from 232 that were in 2016, to 223 cases in 2017, with a difference of 9 cases, and secondly the number of transferred cases decreased from 407 in 2016, to 355 in 2017, with a difference of 52 cases.

Clearance Rate (CR)

$$\text{FORMULA (CEPEJ):} \quad \text{clearance rate \%} = \frac{\text{cases resolved by the end of the reporting period}}{\text{new cases opened during the reporting period}} \times 100$$

$$\text{THEREFORE:} \quad \text{clearance rate \%} = \frac{254}{223} \times 100 = 114\%$$

In 2017 seven basic courts as per Chapter XXXIV of Criminal Code of Kosovo, - Official Corruption and Criminal offence against Official Duty, Articles 422-437, received 223 cases and managed to resolve 254 cases.

According to calculations based on CEPEJ formula, the Clearance Rate in central level in the field of anti-corruption for 2017 is 114%.

Clearance rate is a highly important indicator of the performance of courts because it shows the capacity of work of courts. Based on the calculated norm for 2017, the judiciary works efficiently reaching the level beyond 100%.

Clearance rate for 2017
= **114%**

The norm reaching 100% would be desirable if courts did not have backlogged cases. The performance of 114% shows that courts resolved more cases than those received during 2017, which is an indicator that courts managed to resolve transferred cases as well.

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 Prishtina, which has a rather poor performance compared to other courts.

Case Turnover Ratio

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 period³⁴ is divided with the number of unresolved cases by the end of the reporting period, known as “case turnover ratio”

Out of **578** in **2017**, courts managed to resolve **254** cases, while a total of 324 cases were transferred in 2018.

Secondly, this disposition time is divided by 365³⁵, 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 the process - which translates into the time needed to resolve cases (Hall & Keilitz, 2012).

First step

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

THEREFORE: $case\ turnover\ ratio = \frac{254}{324} = 0,78$

Case turnover ratio in 2017 is 0.8. According to Dakolia, the normal case turnover ratio 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. For example: If 50 cases enter the system during 2017 and 50 cases are resolved, the case turnover ratio is 1.0.

³⁴ 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.

³⁵ 365 is the number of days of a calendar year

The trend of levelling of cases based on 2017 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 2017, the calculation shows that the courts will manage to complete the transferred cases in 2028.

FORMULA.
$$trend = \frac{\text{number of cases transferred from the previous year (PS)}}{\text{Number of cases resolved (R) - number of new cases (I)}} - 1$$

THEREFORE:
$$trend = \frac{355}{254 - 223} = 11 \text{ (years)}$$

The levelling of cases with case resolution norm of **114%** will be reached in **2028**.

The above formula considers the performance of judiciary in 2017 and is formulated on the assumption that in next 11 years, the judiciary will continue to have the same clearance rate- 114%.³⁶

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 justice³⁷.

Disposition Time (DT)

The case turnover report for **2017 stands at 0.78**

Disposition time is an important indicator for the measurement of performance of the 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. 365³⁸ are divided with the case turnover ratio, 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.

36 Ajo që nuk mund të bëhet në këtë raport në mungesë të të dhënave është përlogaritja e trendit të zgjidhjes së lëndëve ndër vite, defekt ky që shprejsojmë të përmirësohet në raportet e ardhshme.

37 http://www.coe.int/t/dghl/cooperation/cepej/thematiques/Au_dela_rapport/Staëa_Adiz_general_en.pdf

38 Number of days in one year.

Second step

FORMULA (CEPJ). Disposition time = $\frac{365}{\text{case turnover ratio}}$

THEREFORE: $\text{Disposition time} = \frac{365}{0.78} = 467,95 \text{ Days}$

365 is the number of days of the year which is divided with the case turnover ratio from the seven basic courts in Kosovo which, for 2017 resulted in 0,78.

486 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 case³⁹

Backlog Index

Backlog Index 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.

According to official statistics, it is estimated that there are **over 400,000** in Kosovo (European Commission , 2016)

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 & Keilitz, 2012, p. 27)

In 1999, in order to project in perspective the meaning of numbers, Maria Dakolias⁴⁰ 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 & Keilitz, 2012)

39 http://www.coe.int/t/dghl/cooperation/cepej/thematiques/Au_dela_rapport/Stawa_Adiz_general_en.pdf

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

THEREFORE: $backlog\ index = \frac{355}{254} = 1.40$

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.

Backlog Index for 2017
is **1.40**

Also, it should be pointed out that none of the above indicators shows the real duration of specific cases within the system until they are dealt with. In some occasion (see Table 1.0), some cases are prescribed, thus being reflected as resolved cases in the system.

Regional Level

So far, we presented the performance of courts on a national level. But how did certain basic court stand out individually? Which court had the best performance? These comparisons could be seen in statistics below, using the same formulas as those used for the central level.

Case Flow in basic courts – Chapter XXXIV of the Criminal Code of Kosovo

Basic Courts	Pending cases on 1 January of the 2017 = PS	Incoming cases during 1 January- 31 December 2017 = I	Cases in Total during 2017 = LP	Resolved cases during the calendar year (R)	Pending cases on 31.12.2017 = PE	Number of judges in Serious Crime Department
Pristina	198	73	271	88	183	13+1
Ferizaj	18	19	37	27	10	4+1
Mitrovica	19	20	39	12	27	4+1
Prizren	38	27	65	36	29	6
Gjilan	48	37	85	38	47	4
Gjakova	12	17	29	16	13	3+1
Peja	22	30	52	37	15	4+1

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 Mestrovic, followed by Gjakova, had the poorest performance in terms of resolved cases divided by new cases. On the other hand, Ferizaj and Prizren had the best performance.

Basic Court of Prishtina	Pending cases on 1 January of the 2017 = PS	Incoming cases during 1 January- 31 December 2017 = I	Cases in Total during 2017 = LP	Resolved cases during the calendar year (R)	Pending cases on 31.12.2017 = PE	Number of judges in Serious Crime Department
2017	198	73	271	88	183	13+1
2016	193	81	274	76	198	

Basic Court of Prishtina had a poor performance in 2016 in comparison with other basic courts, even why had the same flux that had in 2017. In 2016 Basic Court of Prishtina had 193 cases transferred from 2015, received 81 new cases and resolved 76 of them, performing with a clearance rate of 93 %. In 2017 Prishtina had 198 cases transferred from 2016, received 73 new cases and resolved 88 of them, showing a performance of 120 %, increasing thus its performance for 27% from previous year.

This performance in Basic Court of Prishtina came as it resolved 13 cases more than received in 2017, meanwhile in 2016 resolved 5 cases less than received (Look charts with comparisons at the end of the report).

On the other hand, Gjakova had the best clearance rate from all basic courts. In 2017, the clearance rate of Gjakova from 315 % decreased in 94% rate, a decreasing rate of 221%.

What affected the decreased performance in Basic Court of Prishtina?

Because this report is mainly statistical, we compare below the case flow of Basic Court of Gjakova in 2016 and 2017.

Basic Court of Gjakova	Pending cases on 1 January of the 2017 = PS	Incoming cases during 1 January- 31 December 2017 = I	Cases in Total during 2017 = LP	Resolved cases during the calendar year (R)	Pending cases on 31.12.2017 = PE	Number of judges in Serious Crime Department
2017	12	17	29	16	13	3+1
2016	40	13	53	41	12	

From the table above, we can see that Gjakova, as a result of performance showed in 2016, managed to reduce the number of transferred cases from 40 that had in 2016, in just 12 in starting of 2017. Despite that, the performance in the resolution of cases decreased from 41 cases that were in 2016, at 16 cases resolved in 2017⁴¹.

Ferizaj and **Prizren** had the best performance for 2017

Mitrovica and **Gjakova** 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 period⁴², but if such an influx continues during 2018 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.

41 See at the end of the report for the whole comparison for all basic courts

42 Such a measurement will be carried out in future reports

Trend of Leveling of Cases based on 2017 statistics in Basic Courts

Basic Courts	Years	Measurement unit:
		Trend of cases levelling and provision of justice
Prishtinë	13	
Ferizaj	2	
Mitrovicë	n/a	
Prizren	4	
Gjilan	47	
Gjakovë	n/a	
Pejë	3	

■ n/a

Based on statistics obtained from Kosovo Judicial Council for 2017 the trend of case resolution on the 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 114% on a national level, the judiciary would achieve the levelling in 2028, but this resolution trend differs quite a lot among basic courts.

Basic Court of Mitrovica, from 20 new cases resolved only 12 cases, thus transferring 8 cases for following year. In general, Basic Courts have managed well the influx in 2017, even though the influx did not show a large decrease.

The number of corruption cases has **declined** in **Pristina** and **Gjilan**.

The number of corruption cases has **increased** in **Gjakovë** and **Pejë**.

Basic Courts that had the highest decrease of new cases are Gjilan, with a difference of 4 cases, and Peja with 3 cases less than in 2016.

Gjakova showed an increased rate for new cases of corruption from 13 that had in 2016, at 17 cases in 2017.

When we compare the statistics of 2016 with those from 2017 we can see that corruption rate didn't decrease in 2017, as the number of new cases is at the same level.

Prishtina has had 81 new cases in 2016, while in 2017 it has dropped for 8 cases, receiving only 73 new cases. However, Pristina has solved 15 more cases than it did in 2017, showing

a good performance.

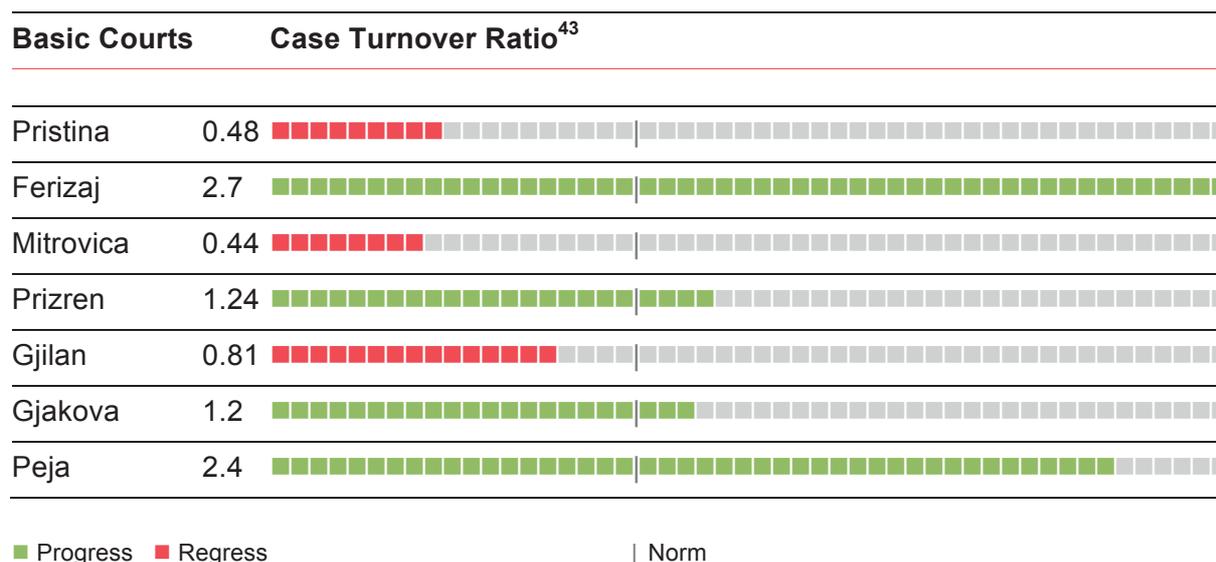
Nevertheless, the number of transferred cases continues to be high in Prishtina, delaying justice in Basic Court of Prishtina more than in other Courts.

Basic Courts with **the highest number of cases at work and new corruption cases** are **Pristina** and **Gjilan**

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 Mitrovica, since it resolved 8 cases less than received, adding those cases to transferred cases for following year. , then Gjakova, which resolved one case less that had received in 2017.

If we consider the influx of cases (new cases) and the Clearance Rate for 2017, Mitrovica and Gjakova would never achieve the levelling of their cases. This is because, in order to resolve backlogged cases, courts should have a positive trend with a case clearance exceeding 100%. Consequently, for all basic courts with a negative case resolution trend, the formula will not be applicable in this report.

Case Turnover Ratio in seven Basic Courts



Case turnover ratio on the central level for 2017 is at 0,83. Normal case turnover ratio 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 turnover ratio higher than 1.0, but as we can see from the

⁴³ The higher the case resolution norm, the shorter the time needed to give justice, or complete a case

following table, some of the courts despite good clearance rate have a negative number of case turnover ratio, because of the high number of backlogged cases.

The Basic Court of Pristina, which has the highest level of backlogged cases, which has the highest level of backlogged case, has a low case turnover ratio of 0.48, meanwhile Basic Court of Mitrovica which does not have a high number of transferred cases but has a low clearance norm, has a low case turnover ratio as well.

This is the reason why Prishtina despite having a high case clearance norm for 2017, has a low case turnover ratio, meanwhile, Mitrovica with a really low case clearance norm has a low caseturnover ratio as well. Case turnover ratio depends on two factors. Firstly, case clearance norm must be 100%, then the number of backlogged cases must be low because if the number of backlogged cases is high, like Prishtina case, cases resolved norm of 100% is not sufficient because cannot manage to reduce the backlogged cases.

Secondly, even if there is a low number of backlogged cases (like Mitrovica case), low case resolved norm (under 100%), makes cases to be transferred, so the court cannot resolve all new cases, and as a result case turnover ratio result low.

Disposition Time (DT) in seven Basic Court

Basic Court	Days	Measurement unit: Disposition time in days
Pristina	760	
Ferizaj	135	
Mitrovica	829	
Prizren	294	
Gjilan	450	
Gjakova	304	
Peja	152	

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.

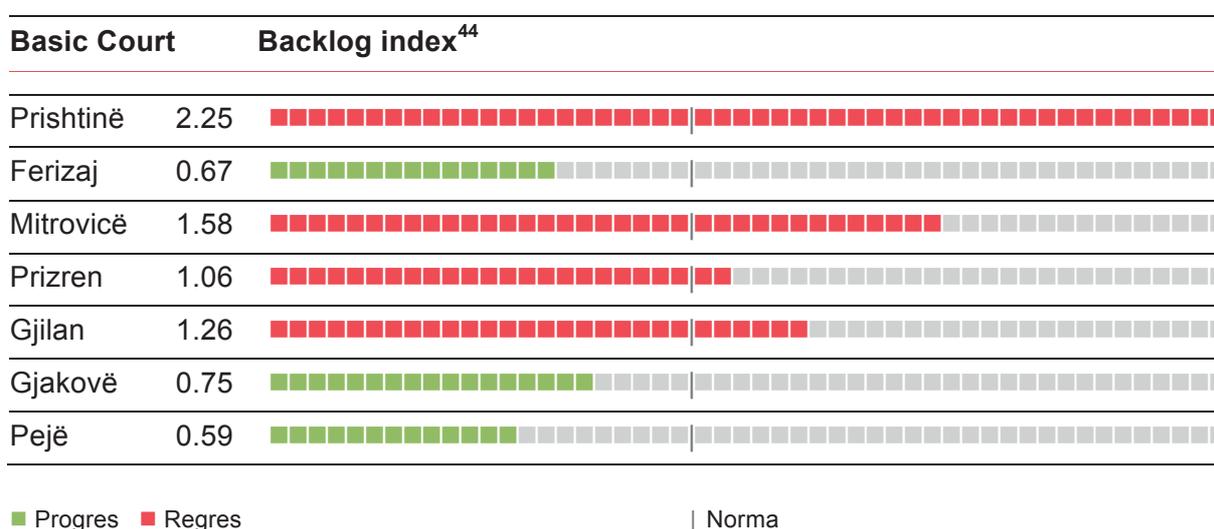
In line with the formula recommended by CEPEJ and in line with the results of the Clearance Rate, we can see that the Basic Court of Mitrovica has the poorest performance, with a much longer period needed for the resolution of cases compared to other basic courts. The disposition time considers the total number of cases waiting to receive justice.

The Basic Court of Mitrovica and Prishtina have the longest time of waiting for justice

compared with other courts, but which are reasons for this long time.

Mitrovica had a low case clearance norm in 2017, at 60%. Low case clearance norm causes cases to be transferred in following year and as a result, the time of giving justice is extended. Prishtina, on the other hand, has the second longest time for resolving a case because has a high number of transferred cases from the previous year. So, despite the case resolution norm exceed 100% in 2017, a high number of transferred cases requires a higher resolution norm than 100%, in order to reduce the number of the backlogged cases.

Backlog Index 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 a national level is that the backlog index is rather high, reaching 1.4.

But, why this high number of backlog index?

By analyzing data from basic courts individually, we can see that the Basic Court of Prishtina contributes to this high number because it has the highest number of backlogged cases, followed by Gjilan. On the other hand, Mitrovica has not a high number of transferred cases in comparison with Prishtina and Gjilan but has a low case clearance norm, what results in a high index norm.

Performance that a court show in the resolution of cases during the year affects all other indicators. A high norm of backlog index shows that it is required a longer time for a case to be resolved, affecting thus system to delay justice. When the number is higher than 1.0, the court has not resolved more cases than it has at the beginning of the reporting period, causing that new cases that are involved in the system, to continue transferring and waiting for justice in future.

⁴⁴ The higher the case resolution norm, the shorter the time needed to give justice, or complete a case

For instance, we can see from the table 5 that the backlog index in Mitrovica is 1.58. Mitrovica at the beginning of the reporting period had 19 transferred cases and managed to resolve 12 of them. On the other hand, the number of index in Prishtina is 2.25. Prishtina had 198 cases transferred at the beginning of the reporting period, while resolved only 88 of them. Prishtina has a positive case resolution trend, because has 120% case resolution norm what affects in the reduction of transferred cases, but as we give in the table 4, this trend means that case levelling would be achieved in next 13 years.

Basic Courts / Anti-corruption Statistics per Person - 2017

Basic Courts and Kosovo Judicial Council must carefully read these statistics and play their role in increasing performance in courts that have stagnated, like Basic Court of Mitrovica.

Out of 578 cases in progress during 2017, 1204 persons waited for justice.

The following table shows 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.

Cases for Persons

Basic Courts	Pristina	Gjilan	Prizren	Mitrovica	Gjakova	Peja	Ferizaj	Total
Persons in front of a court	662	185	108	43	35	108	63	1204
Persons for whom the court has decided	149	38	79	13	18	47	42	386
Persons for whom the procedure has not finished	513	147	29	30	17	61	21	818
Persons sentenced with imprisonment	21	1	9	1	0	2	9	43
Persons sentenced with fine	17	10	8	6	5	14	7	67
Persons sentenced with suspended sentence	31	4	26	1	4	12	6	84
Other sentences	0	1	0	0	0	4	0	5
Acquittal judgment	26	11	20	1	3	6	3	70
Rejection judgment	16	3	2	2	0	2	7	32
Resolved in other ways	38	8	14	2	6	7	10	85

Conclusion

The flow of new corruption cases continues to be high. The number of transferred cases remains also high which are the main factors affecting the quality and delays of investigations and causing delays in the delivery of justice overall.

As in 2016, court and prosecutorial performance remain high and positive at the central level, while at the local level some courts and prosecutions have better performances and some others poor one. Pristina's Basic Court has increased its performance from 93% in 2016 to 120% in 2017, while Gjakova has lowered its performance from 315% in 2016 to 94% in 2017.

The Basic Prosecution in Mitrovica has increased its performance from 66% in 2016 to 156% in 2017, while Ferizaj has maintained its negative performance in 2017 (75%) as in 2016 (87%).

FOL through this report is trying to give the sense of the official numbers published by the KJC and KPC in the fight against corruption and providing a performance overview to the courts and prosecutions to see themselves and measure themselves.

FOL shares the concern for the high level of corruption as seen in the case flow. In 2017, the prosecutions treated 1799 persons for corruption, while 1204 persons waited for justice on the courts during the same period on corruption.

In a country with 1.8 million people, these digits are alarming and should be read with caution not only by the courts and prosecutions but by the government and the entire society. Over 90% of people charged with corruption are public officials, a digit that speaks for the nature of corruption and shows how corrupted is the entire state administration.

In this report, FOL has tried to provide an insight into the judiciary for it to see itself, measure and judge itself.

Citizens' confidence in justice institutions cannot be achieved in one day. For nearly two decades, the citizens have been disappointed with the work of the courts and the prosecutions on delivering the needed justice, so a lot of work is needed to restore the trust and to build confidence.

This report is just one of the efforts to bring citizens closer to justice through explaining the work of the courts and prosecutions. Perception can only be fought through evidence-based arguments.

This report does exactly that, in one hand helps citizens to understand the work of the judiciary and prosecutions while on the other hand, it helps the judiciary and prosecution to boost performance.

FOL will continue to publish periodic and annual reports on the performance of the courts and prosecutions.

Bibliography

European Commission . (2016, May 4). <http://europa.eu/rapid/search.htm>. Retrieved March 02, 2017, from <http://europa.eu>: http://europa.eu/rapid/press-release_IP-16-1626_en.htm

CEPEJ. (2015). *CEPEJ Guidelines*.

COMMISSION, E. (2015). *COMMISSION STAFF WORKING DOCUMENT. KOSOVO* 2015 REPORT*. EUROPEAN COMMISSION. Brussels: EUROPEAN COMMISSION.

Dakolias, M. (2014). Court Performance Around the World: A Comparative Perspective. *Yale Human Rights and Development Journal*, Volume 2 (Issue 1 Yale Human Rights and Development Journal), 57.

Dakolias, M. (1999). *Court Performance Around the World: A Comparative Perspective. Volumes 23-430*.

Department of State, U. (2015). *Kosovo Human Rights Report*.

EU Commission. (2018). *Country Report*. Strasbourg: European Commission.

Hall, D. H., & Keilitz, I. (2012). *Global Measures of Court Performance*. Discussion Draft Version 3. International Framework for Court Excellence.

Hall, D. H., & Keilitz, I. (2012). *Global Measures of Court Performance*. Discussion Draft Version 3 .

Hodzic, A., & Georg, S. *What can be said on clearance rate and disposition time (and some more)?*

Keshilli i Evropes. (2018). *Vleresimi i sistemit gjyqesor ne Kosove*. Strasbourg: Keshilli i Evropes.

KGJK. (2016). *Raporti vjetor per Grupin e veprave penale qe lidhen me korrupsion*.

KGJK. (2013). *Strategjia Kombëtare për Reduktimin e Lëndëve të Vjetra*.

Kodi Penal, i. R. (2012). *Korrupsioni Zyrtar dhe Veprat Penale kundër Detyrës Zyrtare*.

KPK. (2016). *Raporti Vjetor per Grupin e Veprave Penale qe lidhen me Korrupsion*.

Maliqi, A. (2016). Intervistë rreth strategjisë për reduktimin e lëndëve antikorrupsion në gjykata.

Prokurori i Shtetit, Z. (2015). *Strategjia - Prioritetet e Prokurorive Themelore në Kosovë në ndjekjen e kryesve të veprave penale dhe hetimin e veprave penale në përgjithësi dhe reduktimin e numrit të lëndëve.*

The Council of Europe. (2018). *Assesment Report of Judicial Sysem.* Strasburg: The Council of Europe.

UNDP - Kosove. (2017). *Pulsi Publik XIII.* Ankete, UNDP - Kosove, Prishtine.

Annex I. Comparative Statistics for basic prosecution and special prosecution for 2016 - 2017

Central Level / Case Flow

All Basic Prosecutions and Special Prosecution

Type of Criminal Offence: **Official Corruption
and criminal offenses against Official duty**

	Year	Cases	
Pending cases on 1 January of the 2017 (PS)	2017	1177	
	2016	1424	
Incoming cases during 1 Jan - 31 Dec 2017 (I)	2017	622	
	2016	826	
Cases in Total during 2017	2017	1799	
	2016	2250	
Resolved cases during the calendar year (R)	2017	843	
	2016	1073	
Pending cases on 31 December 2017 (PE)	2017	956	
	2016	1177	

Clearance Rate (CR)



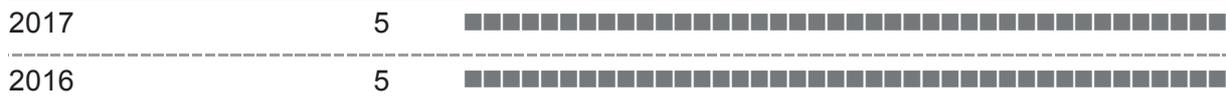
■ Regress ■ Progress

Case Turnover Ratio

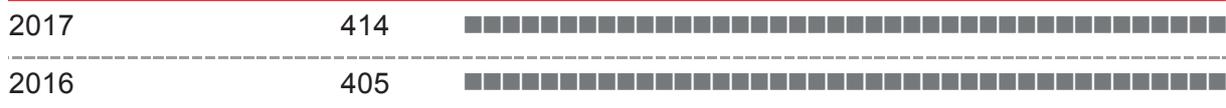


■ Regress ■ Progress

Trend of Leveling of Cases



Disposition Time (DT)



Backlog Index

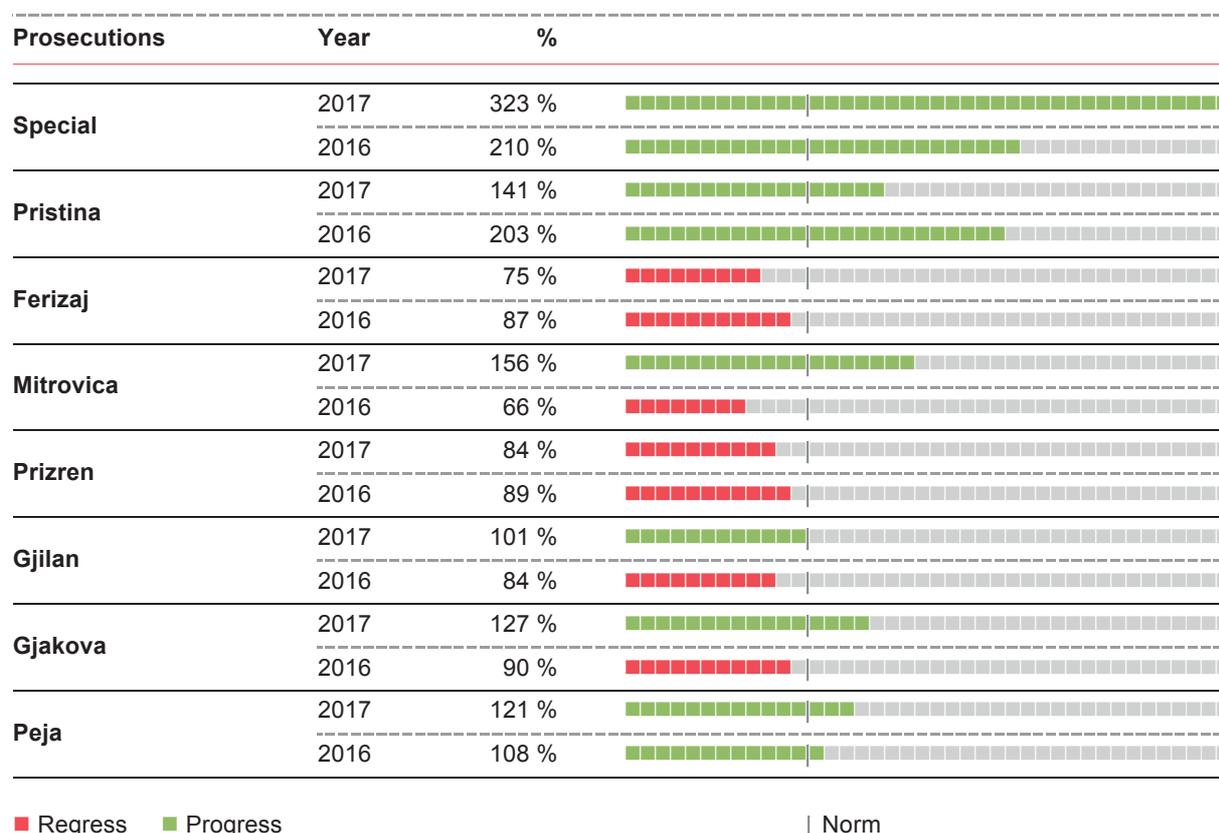


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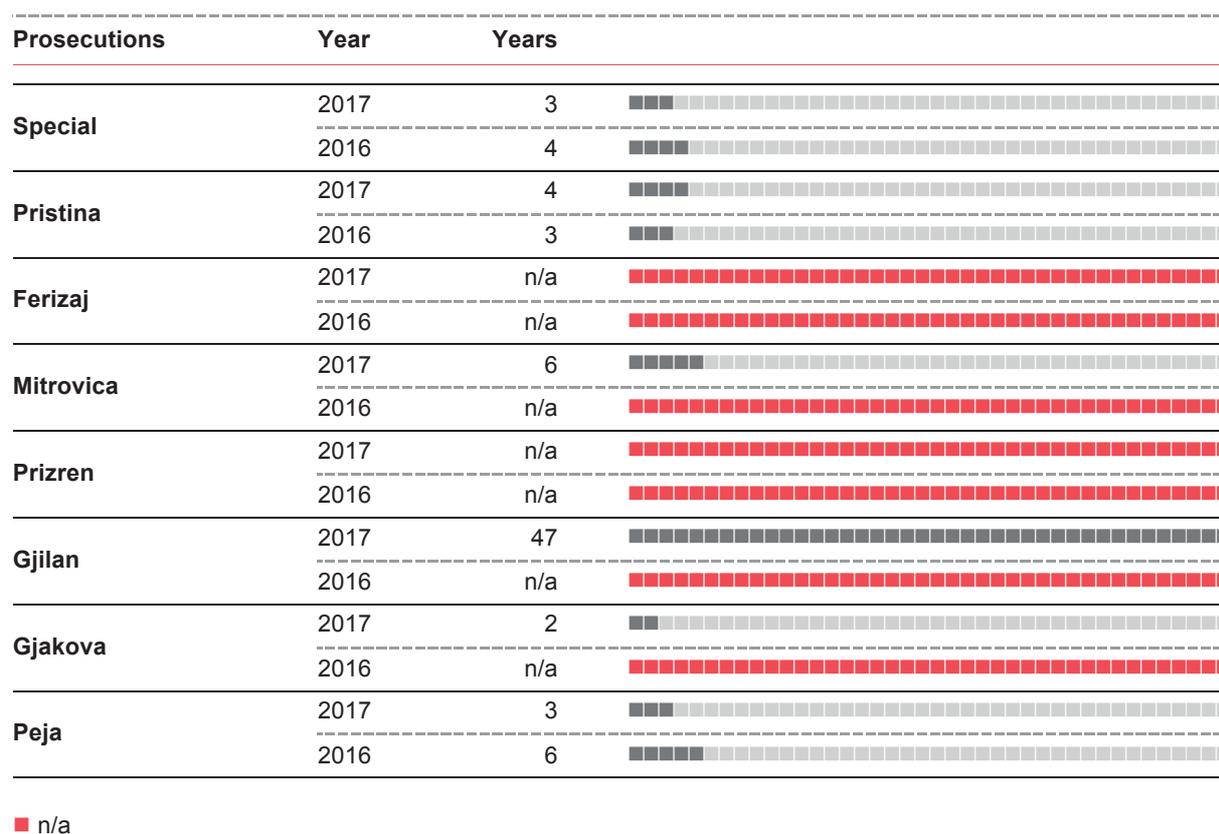
Case flow for the period 2016-2017 in all Basic and Special Prosecutions

PS	I	LP	R	PE	YEAR	
140	17	157	55	102	Special	2017
184	40	224	84	140		2016
610	301	911	426	485	Pristina	2017
884	265	1149	539	610		2016
45	74	119	56	63	Ferizaj	2017
41	32	73	28	45		2016
190	51	241	80	161	Mitrovica	2017
159	90	249	59	190		2016
69	25	94	21	73	Prizren	2017
60	80	140	71	69		2016
48	80	128	81	47	Gjilan	2017
17	198	215	167	48		2016
35	44	79	56	23	Gjakova	2017
32	31	63	28	35		2016
40	56	96	68	28	Peja	2017
47	90	137	97	40		2016

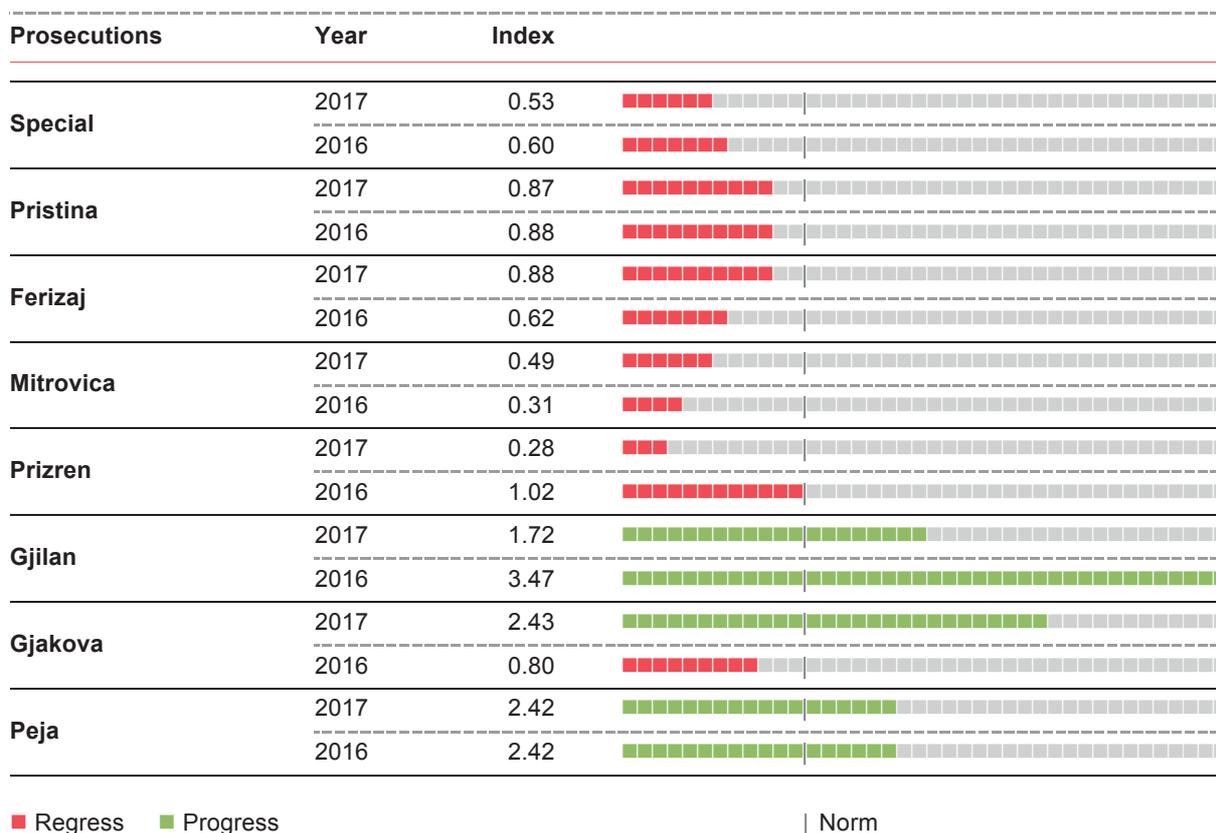
Clearance Rate



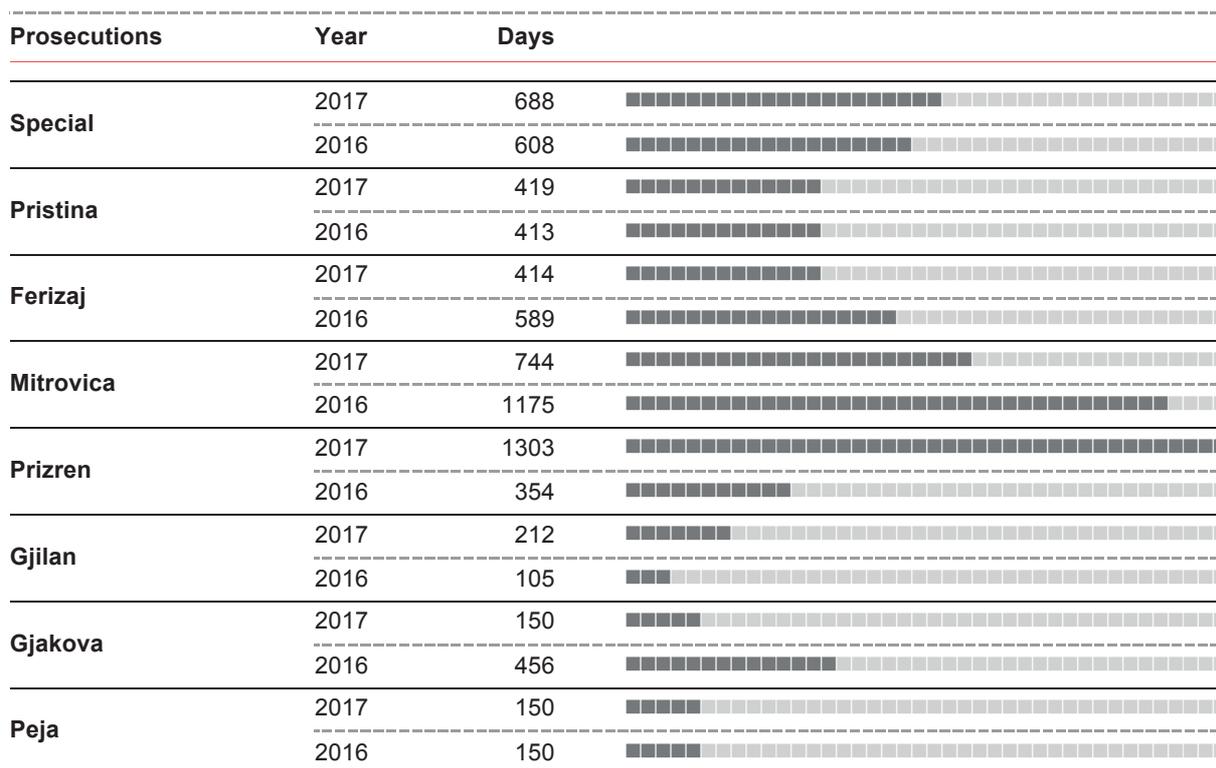
Trend on leveling the cases



Case Turnover Ratio



Disposition Time (DT)



Annex II. Comparative Statistics for Basic Courts for 2016 -2017

Central Level / Case Flow

All Basic Courts

Type of Criminal Offence: **Official Corruption and criminal offenses against Official duty**

	Year	Cases	
Pending cases on 1 January of the 2017 (PS)	2017	355	
	2016	407	
Incoming cases during 1 Jan - 31 Dec 2017 (I)	2017	223	
	2016	232	
Cases in Total during 2017	2017	578	
	2016	639	
Resolved cases during the calendar year (R)	2017	254	
	2016	284	
Pending cases on 31 December 2017 (PE)	2017	324	
	2016	355	

Clearance Rate (CR)



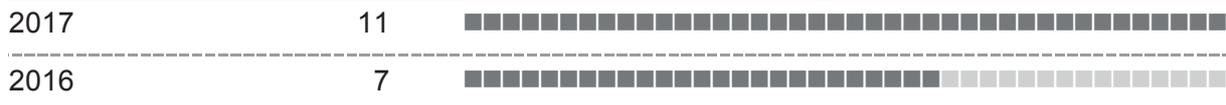
■ Regress ■ Progress

Care Turnover Ratio

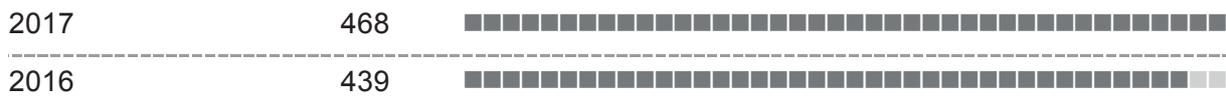


■ Regress ■ Progress

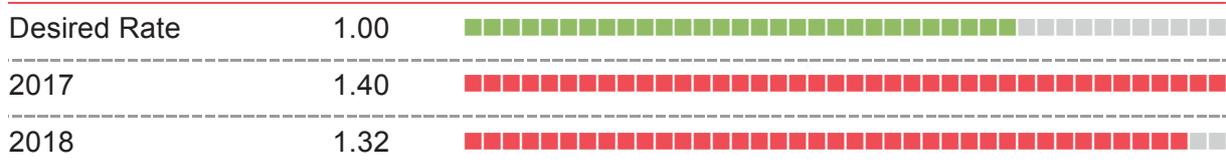
Trend on leveling the cases



Disposition Time (DT)



Backlog Index

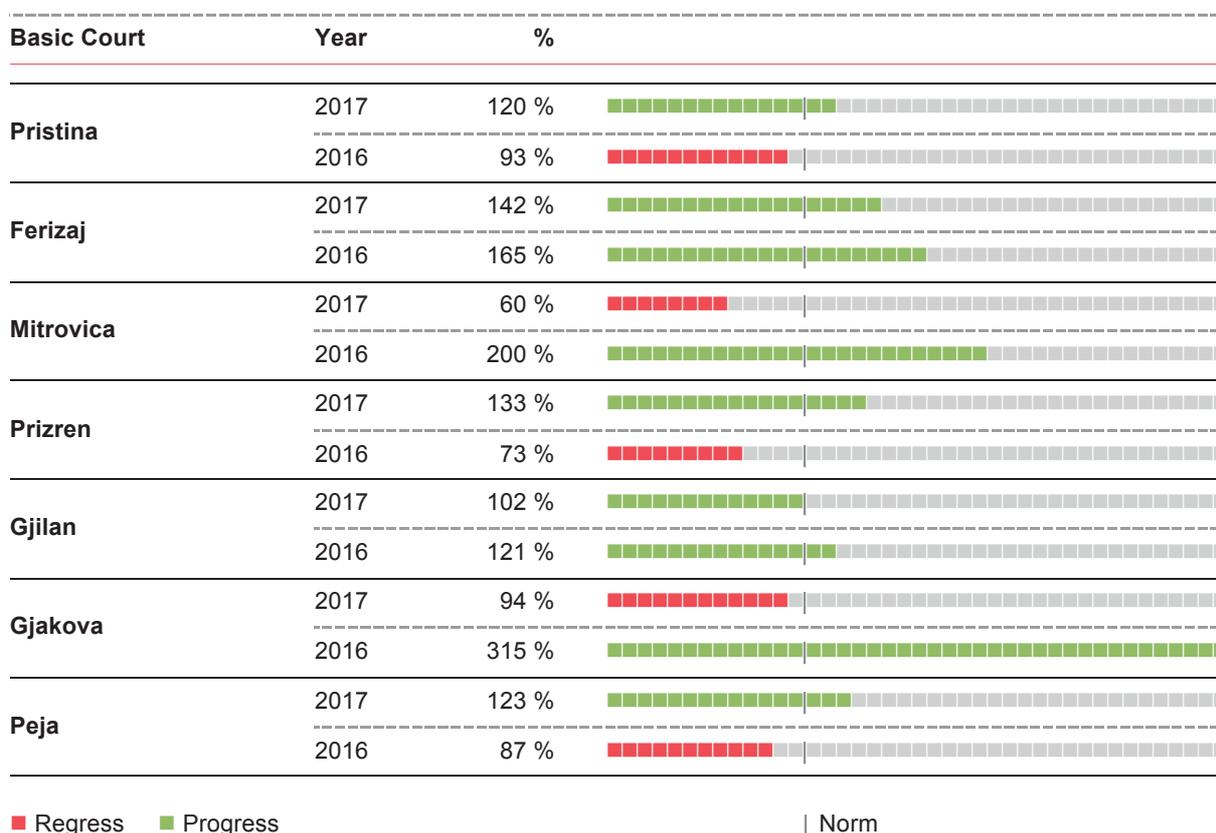


■ Regress ■ Progress

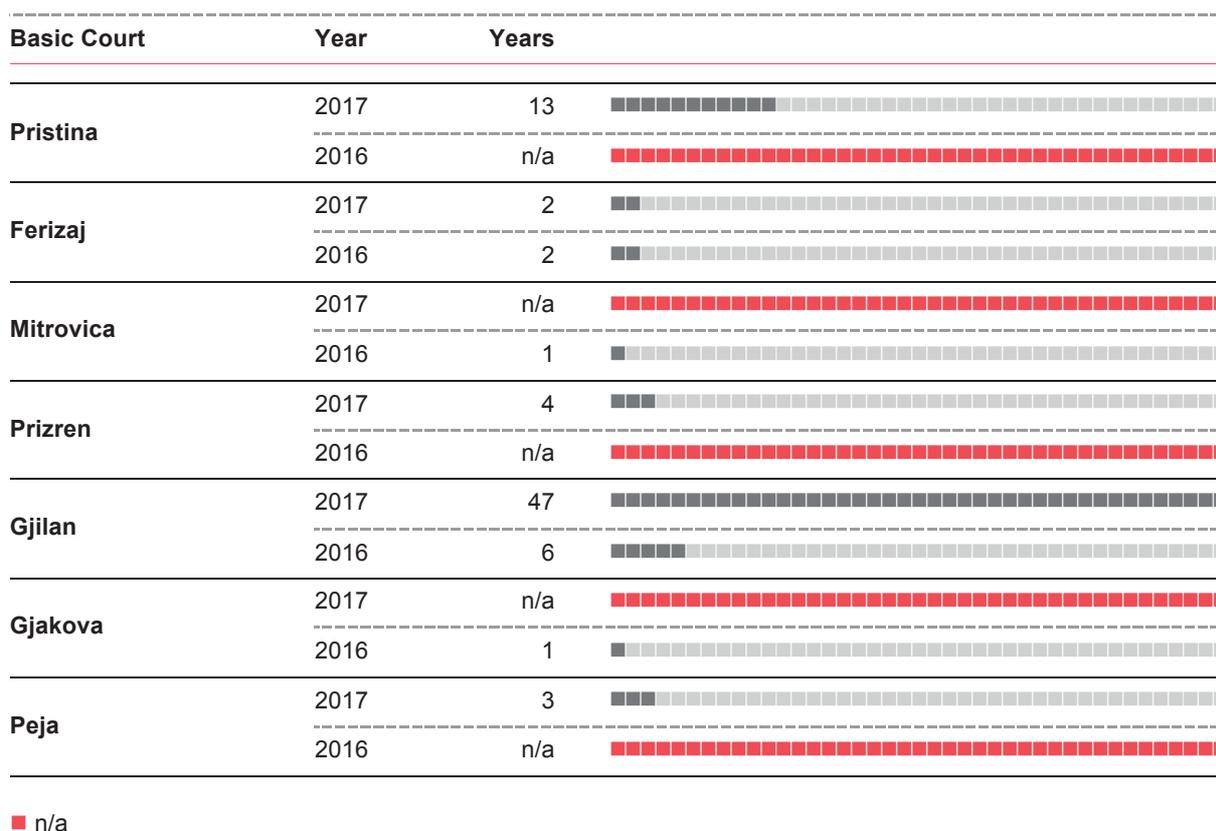
Case flow for the period 2016-2017 in all basic court

PS	I	LP	R	PE		YEAR	
198	73	271	88	183	Pristina	2017	
193	81	274	76	198		2016	
18	19	37	27	10	Ferizaj	2017	
31	20	51	33	18		2016	
19	20	39	12	27	Mitrovica	2017	
37	18	55	36	19		2016	
38	27	65	36	29	Prizren	2017	
31	26	57	19	38		2016	
48	37	85	38	44	Gjilan	2017	
57	41	98	50	48		2016	
12	17	29	16	13	Gjakova	2017	
40	13	53	41	12		2016	
22	30	52	37	15	Peja	2017	
18	33	51	29	22		2016	

Clearance Rate



Trend on leveling the cases



Case Turnover Ratio

Basic Court	Year	Index	
Pristina	2017	0.48	
	2016	0.38	
Ferizaj	2017	2.70	
	2016	1.80	
Mitrovica	2017	0.44	
	2016	1.89	
Prizren	2017	2.24	
	2016	0.50	
Gjilan	2017	0.81	
	2016	1.04	
Gjakova	2017	1.20	
	2016	3.41	
Peja	2017	2.40	
	2016	1.31	

■ Regress ■ Progress

| Norm

Disposition Time (DT)

Basic Court	Year	Days	
Pristina	2017	760	
	2016	860	
Ferizaj	2017	135	
	2016	202	
Mitrovica	2017	829	
	2016	193	
Prizren	2017	294	
	2016	730	
Gjilan	2017	450	
	2016	350	
Gjakova	2017	304	
	2016	107	
Peja	2017	152	
	2016	278	

Backlog Index

Basic Court	Year	Index	
Pristina	2017	2.25	
	2016	2.53	
Ferizaj	2017	0.67	
	2016	0.93	
Mitrovica	2017	1.58	
	2016	1.02	
Prizren	2017	1.26	
	2016	1.63	
Gjilan	2017	0.75	
	2016	1.14	
Gjakova	2017	0.75	
	2016	0.97	
Peja	2017	0.59	
	2016	0.62	

■ Regress ■ Progress

| Norm



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