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Information and Perception of Citizens Regarding the Submission of Disciplinary Complaints Against Judges and Prosecutors





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Introduction and key findings

Independent and impartial judicial institutions free from any form of undue influence is an imperative for every democratic society. These features, particularly in relation to judges and prosecutors, presents a fundamental premise for a functional justice system and serve as the cornerstone for fostering trust among citizens towards the judiciary.

Unfortunately, there are instances where judges and prosecutors may compromise the integrity of the system through inappropriate actions. As such, establishing a systematic approach to address citizen complaints related to the inappropriate conduct of judicial officials becomes crucial. This approach includes investigating and addressing disciplinary infringements.

It is widely recognized that the objective of disciplinary measures in cases of judicial misconduct is not strictly punitive towards the individual judge or prosecutor. Rather, it serves the broader goal of upholding the integrity of the judicial system, fostering public confidence, and, when necessary, safeguarding both the judiciary and the public from inadequate individuals. Consequently, filing complaints against actions or lack of actions of judges and prosecutors should be seen as a way to increase accountability and integrity of the judiciary system.

In pursuit of a more thorough understanding of citizens' awareness and to identify specific areas requiring attention, Lëvizja FOL conducted a survey aimed to evaluate citizens' understanding and awareness levels regarding disciplinary mechanisms within the judicial and prosecutorial system of Kosovo. The ultimate aim of this survey is to utilize the findings from this survey to refine and direct targeted awareness and education initiatives more effectively.

The survey was administered through face-to-face interviews conducted in key locations, including Prishtina/Pristina, Pejë/Peć, Mitrovicë/Mitrovica, Prizren/Prizren, Gjilan/Gnjilane, Gjakovë/Djakovica, and Ferizaj/Uroševac, during the period from June 21 to July 13, 2023. A total of 408 individuals participated, comprising 210 men and 198 women.

Additionally, respondents were categorized by age, with 167 respondents falling between 18 to 30 years old, 125 between 31 to 45, 94 between 46 to 60, and 22 aged 61 and above.

The key findings are as follows:

- The survey indicates a moderate level of awareness regarding the option to submit disciplinary complaints, with 53% of respondents acknowledging their right to lodge complaints.
- Conversely, only 28% of surveyed citizens demonstrated knowledge about the appropriate institutions for submitting disciplinary complaints. A significant 72% stated either a lack of information on the matter or mistakenly believed that other unrelated institutions were responsible.
- A considerable majority of respondents (91%) reported no dissatisfaction when interacting with judges or prosecutors, resulting in a mere 7% out of 9% of those dissatisfied actually lodging complaints against judges or prosecutors.

Prior to delving deeper into the survey's findings, this report will examine the legal structure of Kosovo, particularly concerning the disciplinary procedures applicable to judges and prosecutors within the Kosovo constitutional framework.

1. Legal Framework on the Disciplinary Process for Judges and Prosecutors

The issue of disciplinary liability of judges and prosecutors is based on the Constitution of Kosovo,¹ and further regulated in the Law Nr.06/L-055 on the Kosovo Judicial Council,² Law Nr. 06/L - 054 on Courts,³ Law Nr. 06/L-056 on the Kosovo Prosecutorial Council,⁴ Law Nr. 08/L-167 on the State Prosecutor⁵, and Law Nr. 06/L - 057 on the Disciplinary Liability of Judges and Prosecutors,⁶ approved by the Assembly of the Republic of Kosovo in November 2018, as well as with the amendment of this law approved in 2021.

Constitution of Kosovo: Judicial System

The Constitution of Kosovo establishes the framework for the Kosovo's judicial system. It outlines the principles of judicial independence, impartiality, and accountability. The Constitution enshrines the structure of the judiciary, including the Supreme Court, the Constitutional Court, and other judicial bodies. It defines the appointment, mandate, and responsibilities of judges, ensuring their professionalism and integrity. Additionally, the Constitution guarantees access to justice, due process, and the protection of fundamental rights for all citizens.

In terms of disciplinary instruments related to judges, the Constitution of Kosovo provides the foundation for the disciplinary framework for judges. As happens typically, the Constitution includes provisions outlining the grounds

for the dismissal of judges, serving as a last resort measure. These grounds include serious criminal offenses or severe neglect of duties (serious misconduct).

More concretely, Article 104(4) specifies that "[j]udges may be removed from office upon conviction of a serious criminal offense or for serious neglect of duties", outlining the ultimate sanctions applicable to judges under such circumstances.

This Article has set a high standard when referring to criminal offences as basis for dismissal, since according to the Article 22 of the Criminal Procedure Code (CPC), serious crime include i) all crimes punishable with 10 or more years or ii) other crimes enlisted explicitly in the Criminal Procedure Code. This Article sets a high standard by identifying serious criminal offenses as grounds for dismissal. It's important to note that the definition of "serious crimes" under Article 22 of the Criminal Procedure Code (CPC) focuses on offenses punishable by 10 or more years of imprisonment or explicitly listed crimes. This definition may overlook numerous criminal offenses that, while not meeting the 10-year threshold, still significantly undermine the integrity of the judiciary

The downside of the definition of the Serious Crimes is the fact that outside the boundaries of Article 22 of the CPC are many other criminal offences that are below 10 years sentence threshold but yet serious enough to diminish harshly the integrity of the judiciary.

1 Constitution of Kosovo, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

2 Law on the Kosovo Judicial Council, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18335>

3 Law Nr. 06/L - 054 on Courts, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18302>

4 Law on the Kosovo Prosecutorial Council, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18920>

5 Law on the State Prosecutor, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18920>

6 Law No. 06/L - 057 on the Disciplinary Liability of Judges and Prosecutors, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18336>

Therefore, it is imperative to look into this aspect with more scrutiny in the future with an aim to reduce or minimize the constitutional guarantee that prohibits the dismissal of judges on grounds of a serious criminal offenses and potentially adjust the criteria to allow for the dismissal of judges for offenses that, while not meeting the serious crime threshold, still pose a severe threat to judicial integrity. This adjustment could be made for justified reasons without compromising the constitutional guarantee against arbitrary dismissal solely for serious criminal offenses.

*Article 104 (5) sets that "[a] judge has the right to directly appeal **a decision of dismissal** to the Kosovo Supreme Court."* This legal arrangement will be further analyzed in the part of the report dedicated to analyzing the Law on on the Disciplinary Liability of Judges and Prosecutors.

Additionally, Article 104(6) of the Constitution of Kosovo establishes specific conditions regarding the transfer of judges. It stipulates that judges may not be transferred against their will unless provided by law and for specific purposes. The two (2) constitutive elements for proper implementation of this provision are:

- legal authorization - which means that any transfer of judges against their will must be explicitly mandated by law, and
- purposes for transfer - which means that transfers must serve only to the benefit of the following purposes of:
 - a) ensuring efficient functioning of the judiciary, that could imply administrative reasons aimed at optimizing the performance of the judicial system, and
 - b) imposing disciplinary measures, which implies that a transfer may be imposed as a disciplinary measure as a response to misconduct or violations of judicial ethics.

These conditions establish clear parameters for the transfer of judges, emphasizing the importance of legal compliance and the necessity of valid justifications for such actions.

Furthermore, the Constitution mandates the Kosovo Judicial Council (KJC) as a constitutional body to conduct disciplinary proceedings against judges (Art. 108(3))⁷ and to carry out judicial inspections (Art. 108(5))⁸. To enact these provisions, the Assembly of Kosovo have enacted three key legislative acts regulating judicial misconduct and its punitive measures: the Law on the Kosovo Judicial Council, the Law on Courts, and the Law on Disciplinary Liability of Judges and Prosecutors, which serves as an all-encompassing legislation covering both judges and prosecutors.

Constitution of Kosovo: Prosecutorial System

Similar to the justice system, the Constitution delineates the principles of prosecutorial independence, impartiality, and accountability. According to Article 109(6) of the Constitution, "[p]rosecutors can be dismissed from their positions upon conviction of a serious criminal offense or for significant neglect of their duties." This provision mirrors the same requirement imposed on judges.

Additionally, Article 110(2) of the Constitution establishes that the Kosovo Prosecutorial Council is responsible for recruiting, proposing, promoting, transferring, reappointing, and disciplining prosecutors in accordance with the procedures specified by law.

⁷ Constitution of Kosovo, Art. 108 (3) "[...]The Kosovo Judicial Council is also responsible for transfer and disciplinary proceedings of judges.]

⁸ Constitution of Kosovo, Art. 108 (5) "The Kosovo Judicial Council is responsible for conducting judicial inspections, [...].]"

Law No.06/L-055 on the Kosovo Judicial Council

The Law on the Kosovo Judicial Council (LKJC) regulates the organization and functioning of the council, which is responsible for ensuring the independence, impartiality, integrity, and accountability of the judiciary in Kosovo. It outlines the composition of the council, including the appointment and tenure of its members, as well as their duties and responsibilities. The law also addresses procedures for the selection, evaluation, and discipline of judges, aiming to uphold the highest standards of professionalism and ethics within the judicial system of Kosovo.

In this regard, the LKJC enshrines that the KJC is authorized to decide on the discipline of judges (Art. 7(1.14)) and that it is mandated to adopt the Code of Ethics for Professional Conduct for judges (Art. 7(1.19)). In addition to disciplining judges, the LKJC also addresses the disciplining of KJC members. However, this aspect will not be covered in this analysis as it falls outside the scope of the report.

It's important to note that the LKJC (Article 39), directs all matters concerning the disciplinary liability of judges to be handled in accordance with the disciplinary framework outlined in the Law on Disciplinary Liability and relevant regulations issued by the Council, which this report will delve into in the subsequent parts of this report.

When it comes to legal defence⁹ for judges facing disciplinary sanctions, according to Article 32 of the LKJC, which is linked to Article 104 (5) of the Constitution, judges are empowered with the right to file a formal complaint directly with the Supreme Court of Kosovo regarding decisions made by the KJC. These decisions include disciplinary measures, which may result **in demotion of a judge and in these cases** - where disciplinary decisions result in demotion for judges - they have the recourse to directly lodge a complaint with the Supreme Court for review.

However, this legal requirement has not been properly transferred to the Law on Disciplinary Liability, namely Article 15 which sets that *'[p]arties shall have the right to appeal against the disciplinary decisions of the Council, directly to the Supreme Court of Kosovo, within fifteen (15) days from the day of receipt of the decision.'*, which will be looked into more detail in the part below pertinent to the Law on Disciplinary Liability.

Law Nr. 06/L - 054 on Courts

The Law on Courts regulates the organization, jurisdiction, and functioning of the court system in Kosovo. It establishes the various levels of courts, including basic courts, with its branches, Court of Appeals, and the Supreme Court. Additionally, it outlines the procedures for appointing judges and other court personnel, as well as their rights, duties, and responsibilities. The law also addresses matters such as court administration, judicial ethics, and the protection of judicial independence.

The Law on Courts establishes guidelines for the professionalism and duties of judges, primarily outlined in Articles 40 and 41.

Article 40 of the Law sets various duties expected of judges within the Kosovo judicial system. It emphasizes that judges must conduct themselves with objectivity, impartiality, and independence, in accordance with the principles laid out in the Code of Professional Ethics of Judges. This requires judges to ensure fairness and integrity in their decisions and actions. Additionally, judges are expected to demonstrate availability, respect for parties and witnesses, and vigilance in maintaining the highest level of competence during the execution of their duties. They are also required to protect the confidentiality of non-public information encountered in the course of their judicial functions and refrain from making comments to the media about case details or engaging in ex-parte communications. Furthermore, judges are encouraged to engage in continuing legal education programs to enhance their professional competence and effectiveness.

⁹ The English translation of this article is "Legal Defense" instead of "Judicial Protection" as implied by the original Albanian version of the Law.

Article 41, on the other hand, sets forth the prohibitions on the conduct of judges. It mandates that judges must refrain from performing any duty or service that may compromise their independence, impartiality, or otherwise conflict with their judicial duties or the provisions of the Code of Professional Ethics for Judges in Kosovo. This ensures that judges maintain their integrity and impartiality in all aspects of their professional conduct. Moreover, judges are prohibited from being members of political entities or participating in any political activities, including running for, holding, or exercising any political office. This prohibition safeguards the neutrality and independence of the judiciary, preserving public trust and confidence in the judicial system.

One noteworthy aspect pertains to the criteria for the appointment of judges. While the initiation of disciplinary proceedings against a judge may be triggered by **any** criminal offense, the criteria regarding criminal offenses for judge appointments are more stringent. Specifically, Article 30(1.5) specifies that any candidate who has not been convicted of a criminal offense, with **the exception of offenses committed through negligence**, meets the criteria for candidacy as a judge.

Indeed, the adjustment of thresholds presents an intriguing point that may require additional analysis in the future. It's possible that the model used was based in Article 105(2) of the Constitution, which stipulates that "[t]he criteria and procedures to **reappoint** a judge shall be determined by the Kosovo Judicial Council and they **may be different in degree** from the criteria used for **the removal of judges**." This provision allows for flexibility in setting criteria for judge reappointment, which may differ from those applied in disciplinary proceedings.

The Assembly of Kosovo have enacted three key legislative acts regulating judicial misconduct and its punitive measures:

- 1 The Law on the Kosovo Judicial Council;
- 2 The Law on Courts
- 3 The Law on Disciplinary Liability of Judges and Prosecutors

Law No. 06/L –056 on Kosovo Prosecutorial Council

Law on Kosovo Prosecutorial Council (LKPC), outlines the composition, powers, and responsibilities of the KPC, which include the recruitment, proposal, promotion, transfer, reappointment, and disciplinary actions concerning prosecutors. It provides procedures for the selection of KPC members, their terms of office, and mechanisms for ensuring transparency, accountability, and impartiality in the council's decision-making processes.

As for the disciplining of prosecutors, the LKPC enshrines that the KPC is authorized to decide on the discipline of judges (Art. 7(1.11)) and that it is mandated to adopt the Code of Ethics for Professional Conduct for judges (Art. 7(1.15)) and determines procedures for hearings and the conduct of disciplinary hearings (Art. 7(1.22)).

Similar to the LKJC, also LKPC (Article 34), directs all matters concerning the disciplinary liability of judges to be handled in accordance with the disciplinary framework outlined in the Law on Disciplinary Liability and relevant regulations issued by the Council, which this report will delve into in the subsequent parts of this report.

Law Nr. 08/L-167 on the State Prosecutor

Law on State Prosecutor outlines the role, responsibilities, and powers of the State Prosecutor within the legal framework of Kosovo. This law establishes the State Prosecutor's Office as an independent institution responsible for prosecuting criminal offenses on behalf of the state. It delineates the appointment process and tenure of the State Prosecutor, as well as the organizational structure of the State Prosecutor's Office.

The Law on State Prosecutor differs from the Law on Courts in that it prohibits promotions for prosecutors who have been subjected to disciplinary measures, except for cases of reproach or non-public reprimand within the last five years. This is a commendable and positive measure that merits recognition that should be followed with amendments to the Law on Courts to mirror same arrangements.

Article 38 of the Law on the State Prosecutor focuses on the conduct of prosecutors. It prohibits prosecutors from using their position or the reputation of the prosecution office for personal gain. They are also barred from performing any duties that could compromise their independence or impartiality. Additionally, prosecutors are prohibited from affiliating with political entities or engaging in political activities, ensuring their neutrality and integrity in carrying out their duties.

Similar to the Law on Courts, this law also establishes different criteria for the appointment of prosecutors compared to the initiation of disciplinary proceedings against them, particularly concerning the commission of criminal offenses. When appointing prosecutors, Article 24(1.5) stipulates that candidates must not have been convicted of a criminal offense, with the exception of offenses committed through negligence.

However, the initiation of disciplinary proceedings against prosecutors related to the commission of criminal offenses would involve a distinct set of criteria. This means that disciplinary action may be triggered by any criminal offense, regardless of whether it was committed through negligence or not.

Law No. 06/L - 057 on the Disciplinary Liability Of Judges and Prosecutors

The Law No. 06/L-057 on the Disciplinary Liability of Judges and Prosecutors (LDJLP) it details further the disciplinary matters within the judiciary of Kosovo. It outlines procedures for investigating allegations of misconduct or breaches of professional ethics by judges and prosecutors. The law delineates the disciplinary process, including the rights of the accused and the responsibilities of the disciplinary bodies involved. Its provisions are constructed to uphold the integrity, independence, and accountability of judges and prosecutors while ensuring fair and transparent disciplinary proceedings.

Article 5 of the LDLJP sets the contours of the disciplinary offenses applicable to judges that include:

- a) conviction of a criminal offense, which means that if a judge is found guilty and convicted of a criminal offense by a court of law, it constitutes a disciplinary offense.
- b) violation of the law, which means any breach of laws that includes not only violations directly related to their judicial duties but also any breaches of laws in their personal capacity, and
- c) violation of official duties, which means that if a judge fails to fulfil their official responsibilities or acts in a manner inconsistent with their duties as a judge, it constitutes a disciplinary offense. This provision is broad and encompasses any misconduct or negligence that undermines the integrity and impartiality of the judiciary, however the LJDLP tents to exemplify this through an explanatory provision (Art. 5 (2)).

Article 7 of the LDLJP determines the disciplinary sanctions that may be imposed by the KJC outlining a range of disciplinary sanctions that can be applied to judges if found liable of disciplinary offenses.

The disciplinary include the non-public written reprimand, communicated privately to the judges concerned, indicating their wrongdoing and the need for corrective action and the public written reprimand, which entails publicly acknowledging the disciplinary offense and the need for corrective action to be taken by the judge in question.

In cases where the offense warrants more severe action, a temporary wage reduction of up to fifty percent for a period of up to one year may be imposed as a disciplinary sanction. This financial penalty serves as a deterrent and reflects the gravity of the offense.

Additionally, the Councils have the authority to order a temporary or permanent transfer of the individual to a lower-level court. This measure can act as a disciplinary measure while also ensuring that the individual's conduct is monitored closely in a different professional setting.

Finally, in the most serious cases of misconduct, the Councils may propose dismissal of the individual from their position as a judge. This represents the ultimate disciplinary action and is reserved for offenses that significantly undermine the integrity and credibility of the judiciary.

Article 8 of the LDLJP sets the grounds for dismissal of judges. It stipulates that the President of the Republic of Kosovo **holds the authority to dismiss a judge**. However, this decision is made based **on a proposal put forward by the KJC**, implying that the President does not unilaterally dismiss judges but acts upon the recommendation of the KJC.

In terms of grounds for dismissal, the KJC can propose the dismissal of a judge only if a judge is convicted of a serious criminal offense, or if a judge is found to have seriously neglected their duties.

The discussion surrounding Article 7 and 8 of the LDLJP in relation to Article 104(5) of the Constitution is indeed a matter of professional debate and indeed complex.

Article 104(5) of the Constitution of Kosovo establishes the right of a judge to directly appeal a **decision of dismissal** to the Kosovo Supreme Court. This provision emphasizes the importance of ensuring judicial independence and providing judges with a recourse mechanism to challenge decisions that may affect their mandate and professional status.

On the other hand, Article 7 of the LDLJP grants the KJC the authority to **propose the dismissal** of a judge, while Article 8 outlines that the **decision to dismiss** is made by the President of Kosovo upon the proposal of the respective Council. This creates ambiguity regarding the point at which a judge can invoke their right to appeal a dismissal decision, as guaranteed by Article 104(5) of the Constitution.

One interpretation suggests that the right to appeal is triggered when the KJC proposes a dismissal. According to this view, the decision-making process outlined in Article 8, where the President acts on the Council's proposal, may be seen as limiting the direct appeal right granted by the Constitution.

However, another perspective suggests that there could be compatibility between the two provisions if the direct appeal right to the Supreme Court is broadly interpreted. In this interpretation, challenges to dismissal decisions made by the President under Article 8 of the LDLJP could be encompassed within the scope of the direct appeal mechanism to the Supreme Court. This would mean that the Presidential decrees enacting dismissal of judges are directly challengeable and fall under the jurisdiction of the Supreme Court.

Ultimately, resolving this debate may require careful legal analysis, interpretation of constitutional principles, and consideration of international standards regarding judicial independence and due process. It may also necessitate legislative or procedural adjustments to ensure harmonization between the LDLJP and the Constitution, thereby safeguarding the rights of judges and maintaining the integrity of the judiciary in Kosovo.

Articles 9 through 14 of the LDLJP outline the procedures for initiating disciplinary proceedings against judges, it details the investigative process in disciplinary proceedings by authorizing the KJC to appoint an investigative body to conduct a thorough investigation into the allegations of misconduct. Further on, it addresses procedural safeguards to ensure the right of a judge to be informed of the allegations, and then also it specifies the powers and responsibilities of the disciplinary bodies overseeing the proceedings and setting that disciplinary decisions shall be published in accordance with the law, ensuring transparency and accountability in the disciplinary process.

The disciplinary procedure will be further explored in detail in the upcoming section of this report, where the focus will be on elucidating the KJC's Regulation on Disciplinary Proceedings.

Article 15 of the LDLJP, as mentioned above, will be looked into more detail in this part of the Report. The LDLJP, namely Article 15 sets that **'[p]arties** [emphasis added] shall have the right to appeal against the **disciplinary decisions** of the Council, directly to the Supreme Court of Kosovo, within fifteen (15) days from the day of receipt of the decision.", which will be looked into more detail in the part pertinent to the Law on Disciplinary Liability.

In relation to the Constitution, this Article appears to conflict, albeit, to some extent, with Article 104(5) of the Constitution, which states that "[a] judge has the right to directly appeal **a decision of dismissal** to the Kosovo Supreme Court." However, when interpreted alongside Article 102(5) of the Constitution, which allows for the possibility of referring a case directly to the Supreme Court, it may be inferred that judges retain the ability to refer their own case directly to the Supreme Court, as permitted by law.

In this instance, the LDLJP appears to have exceeded the confines outlined in Article 104(5) of the Constitution by permitting direct referral of cases to the Supreme Court, not only to decisions regarding dismissals, but also **any** disciplinary decisions or sanctions imposed by the KJC.

Furthermore, this provision (Art. 15 of the LDLJP) acknowledges the right not only of the judge who is the subject of the disciplinary decision but also of the other party initiating the disciplinary proceedings, as it explicitly refers to "parties."

KJC/KPC Regulation on the Disciplinary Procedure Against Judges

After the entry into force of the Law on Disciplinary Responsibility of Judges and Prosecutors, the KJC issued the Regulation on the Disciplinary Procedure against Judges,¹⁰ which began to be implemented from July 1, 2019. The same as the KJC, the Kosovo Prosecutorial Council (KPC) has approved the Regulation on the Disciplinary Procedure against Prosecutors, which has been implemented since June 2019.

The disciplinary process for judges and typically follows a specific set of steps, as detailed below:

<p>Complaint or Allegation</p>	<p>The disciplinary procedure can be initiated in two ways: I) ex officio and II) when public complaints to the "Competent Authority", which by the Law is a Court President or the Chief Prosecutor.</p> <p>The disciplinary process usually begins with a written complaint or allegation made against a judge or prosecutor. This complaint can come from various sources, including citizens, parties, or superiors, and it may relate to professional misconduct, ethical violations, or other forms of wrongdoing and is submitted to the respective court president or chief prosecutor of the specific prosecution office (Competent Authority).</p> <p>Any individual or an entity may also submit complaints against a judge or prosecutor to the Ombudsperson.</p>
<p>Statutory limitation</p>	<p>The Competent Authority shall refrain from seeking the commencement of investigations, and the KJC shall abstain from initiating investigations against a judge or prosecutor for disciplinary infractions if a period of five (5) years has elapsed since the alleged disciplinary violation occurred, unless the disciplinary offense also constitutes a criminal offense. In such instances, the provisions of the Criminal Code pertaining to statutory limitations shall apply.</p>
<p>Preliminary Review</p>	<p>After receiving a complaint, the Competent Authority may conduct a preliminary review to determine whether there is a prima facie case for disciplinary proceedings. If the complaint is deemed credible and there is evidence to support it, the report is referred to the KJC / KPC to initiate the disciplinary process procedure. The report of the Competent Authority also recommends the disciplinary measure to be imposed.</p> <p>The Competent Authority shall review the complaint within thirty (30) days from the day it has received the complaint. If the Competent Authority fails to review and decide on the complaint or to inform the person who has submitted a complaint of the reasons for the dismissal of the complaint shall be considered a disciplinary offense.</p> <p>At this stage the Competent Authority may also interview the prosecutor in question. The Competent Authority can initiate the disciplinary case all ex officio.</p>

¹⁰ https://www.gjyqesori-rks.org/wp-content/uploads/lgs/6651_Rregullorja%2005-2019.pdf

Investigation Procedure	<p>The KJC / KPC initiates investigation procedure either by the request submitted by a Competent Authority or ex officio. Following the receipt of the request, within fifteen (15) working days the Councils are to establish Disciplinary Panel to conduct a formal investigation into the allegation against the judge / prosecutor.</p> <p>The KJC / KPC may dismiss the request without forming the investigating panel, if it is considered with no value prima facie or not of a serious importance it is not substantial and it does not have any kind of relation with the disciplinary offence or falls under the status of limitations.</p> <p>If the request is approved, the KJC / KPC forms the investigation panel composed of three (3) judges / prosecutors coming from a different court / prosecution office from the one where the judge / prosecutor under being disciplinary procedure is coming from. The Disciplinary Panel is composed of members selected randomly, have no prior disciplinary records and are with permanent mandate. This means that the composition of disciplinary panel changes from case to case.</p> <p>The Council shall determine the chairperson of the investigation panel from among the members of the investigation panel.</p> <p>This investigation typically includes gathering evidence, interviewing witnesses, and collecting relevant documents.</p> <p>The investigation panel shall complete the investigation within three (3) months from the day it was established by the Council. In exceptional circumstances, the Council may extend the investigation for an additional period of up to two (2) months.</p> <p>Upon completion of the investigation, the investigation panel shall submit to the Council, judge / prosecutor under investigation and the Competent Authority which has requested the initiation of disciplinary investigations, a written report on all collected facts and evidence.</p>
Suspension	<p>The KJC / KPC may also suspend the judge / prosecutor in question while the disciplinary process is ongoing.</p> <p>A judge / prosecutor can also be suspended, through an extraordinary meeting of the KJC / KPC, due to very gross misconduct and by the fact that if not suspended it may jeopardize the regular conduct of the disciplinary procedure.</p>
Right to Defense	<p>The judge/ prosecutor facing disciplinary action has the right to be informed about the allegations against them and the evidence gathered during the investigation. They also have the right to present a defense, including providing their version of events, witnesses, and evidence in their favor.</p> <p>The judge / prosecutor under investigation and the authority which has requested the initiation of investigation procedures may suggest witnesses, submit evidence, as well as request the submission of documents and the evidence held by other persons or institutions.</p>
Voluntary settlement	<p>During the investigation procedure, the investigation panel and the judge / prosecutor under investigation may agree on a voluntary settlement of the alleged disciplinary offense.</p> <p>The agreement approved by the investigation panel shall have the same legal effect as a decision of the Council on disciplinary offense.</p>

Disciplinary Hearing at the Investigation Panel	<p>Formal Disciplinary Procedure is conducted at the KJC / KPC within 30 days. Upon receiving of the written report on the investigation on the prosecutor, or upon receiving of the voluntary settlement.</p> <p>A disciplinary hearing may be conducted, where the judge / prosecutor present their respective cases. Witnesses may be called to testify, and evidence is examined.</p> <p>The judge/ prosecutor against whom the disciplinary procedure has been initiated, has a right of defending him/herself or hire a defense lawyer. The Council shall be obliged to provide access to all the evidence collected as well as in all the dossiers of the case. Also, the Head of the Investigation Panel presents its findings before the Council</p> <p>The decision of the Council shall be in written and shall contain the reasons for the decision and legal advice, meaning the right to appeal.</p>
Decision	<p>The Disciplinary Panel reviews the evidence and arguments presented during the hearing and makes a decision regarding whether the judge / prosecutor is guilty of misconduct or ethical violations.</p> <p>Upon the submission of the report, the investigation panel shall cease its function at the moment when the case becomes final.</p> <p>If found liable, the panel may recommend disciplinary sanctions.</p>
Disciplinary Sanctions	<p>If the Disciplinary Panel finds the judge / prosecutor liable, they may recommend disciplinary sanctions. These sanctions can vary in severity and may include warnings, fines, suspensions, or even removal from office. The severity of the sanctions depends on the nature and seriousness of the misconduct.</p> <p>The sanctions are:</p> <ol style="list-style-type: none">1. non-public written reprimand;2. public written reprimand;3. temporary wage reduction up to fifty percent (50%) for a period of up to one (1) year;4. temporary or permanent transfer to a lower level court or prosecution office;5. proposal for dismissal.
Appeal	<p>Parties shall have the right to appeal against the disciplinary decisions of the Councils, directly to the Supreme Court of Kosovo, within fifteen (15) days from the day of receipt of the decision. Other courts in Kosovo shall not have competence to review and decide on the disciplinary procedure against judges and prosecutors</p> <p>The complaint against the decision of the Council shall have a suspension effect and shall prohibit the implementation of such decision, until the complaint is reviewed.</p>

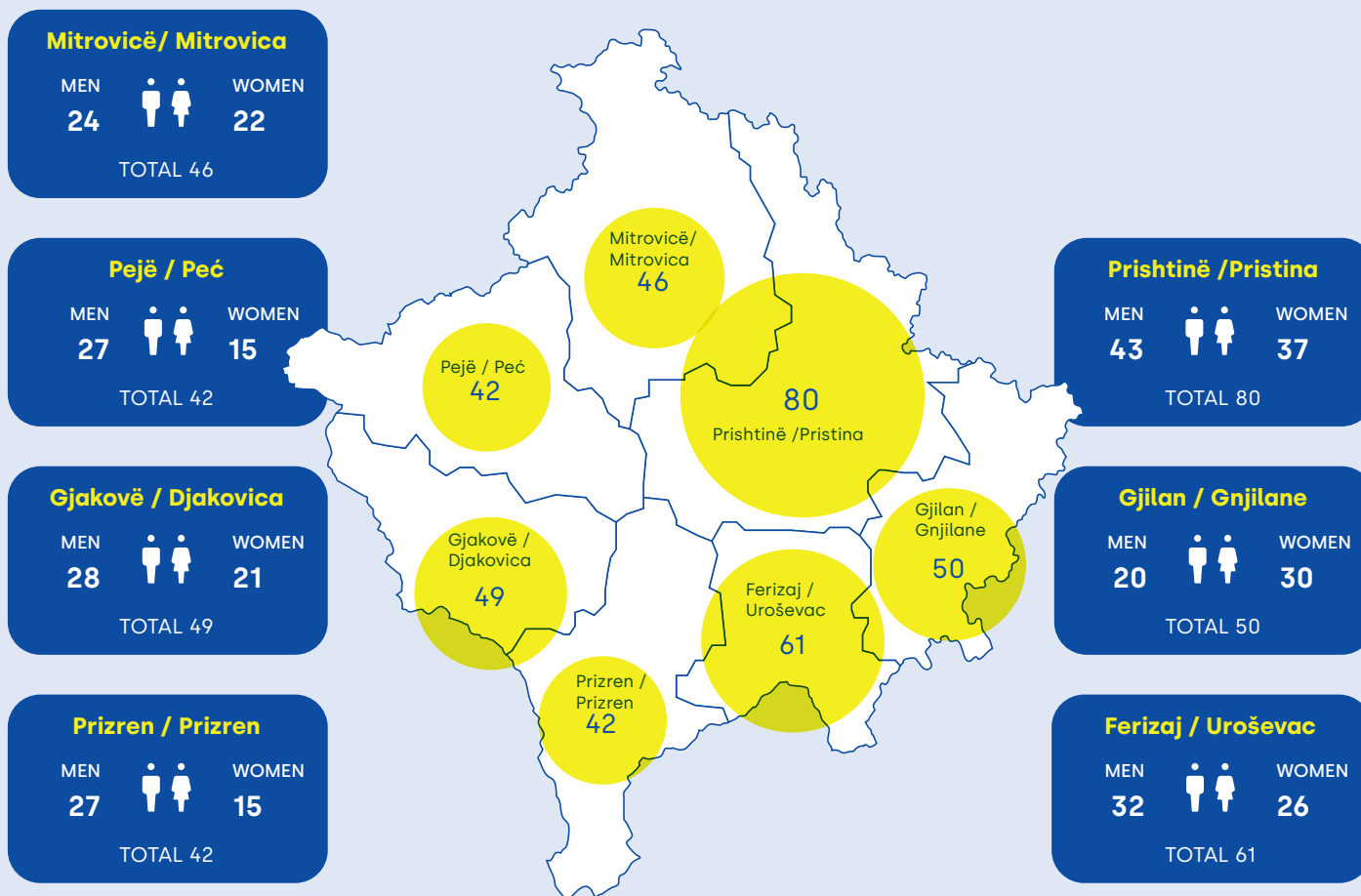
2. The Importance of Measuring Citizens's General Perception on Disciplinary Procedures against Judges and Prosecutors

The possibility for instigating disciplinary proceedings against judges and prosecutors constitutes a significant aspect in enhancing the integrity of judicial processes. However, assessing citizens' understanding of this aspect is essential to design potential interventions and develop tools that may be of assistance to citizens in addressing instances of judicial misconduct.

FOL Movement has conducted a survey, which will be elaborated upon below, delving into each aspect of measuring citizens' knowledge regarding disciplinary mechanisms for judges and prosecutors. The survey was administered through face-to-face interviews conducted in key locations, including Prishtina/Pristina, Pejë/Peć, Mitrovicë/Mitrovica, Prizren/Prizren, Gjilan/Gnjilane, Gjakovë/Djakovica, and Ferizaj/Uroševac, during the period from June 21 to July 13, 2023.

A total of 408 individuals participated, comprising 210 men and 198 women. Additionally, respondents were categorized by age, with 167 respondents falling between 18 to 30 years old, 125 between 31 to 45, 94 between 46 to 60, and 22 aged 51 and above.

In terms of regions, the distribution of respondents is as follows:



The objective of this survey was to provide a comprehensive and accurate understanding of the extent to which citizens are informed about their rights

to lodge complaints against judges and prosecutors for potential judicial misconduct, whether through actions taken or omissions.

The following sections will provide a detailed description of each aspect covered in the survey.

1. Citizens' Level of Information on the Possibility of Submitting Disciplinary Complaints

According to the Law on the Disciplinary Responsibility of Judges and Prosecutors, any individual, whether a court user, party, victim, court appointed expert, attorney, or legal entity such as businesses, companies, public enterprises, public institutions, or NGOs, has the right to lodge complaints against allegations of potential judicial misconduct by a judge or prosecutor to their respective superior.

Through this survey, our aim was to assess the level of awareness among citizens regarding their right to lodge complaints against judges and prosecutors for alleged misconduct.

The survey's primary intention was to gauge citizens' awareness regarding the option to file disciplinary complaints against judges and prosecutors. The results revealed that 53% of the respondents are informed about this legally guaranteed right indicating that a substantial proportion of the population is aware of this crucial aspect of their rights. However, 47% of the participants indicated that they lack knowledge about this opportunity.

Out of the total respondents, 29% of men and 21% of women stated that they are aware of the option to file complaints against allegations of potential judicial misconduct by a judge or prosecutor to their respective superior. Conversely, 23% men and 28% women expressed that they lack knowledge about this opportunity.

While a significant portion of the population is informed about their right to lodge complaints against judges and prosecutors for potential misconduct, these findings emphasize the potential need for improving public awareness, particularly among women.

While the survey indicates a moderate level of knowledge regarding the process of filing complaints against judges and prosecutors, the substantial gap between this perception and the actual number of cases filed raises questions about the efficacy of the reporting mechanisms or the willingness of individuals to engage with them. With only 126 complaints against judges and 71 against prosecutors in 2023, it's evident that there exists either a lack of trust in the system or a need for greater awareness and accessibility to reporting avenues.

Addressing this disconnection is essential for fostering accountability and transparency within Kosovo's judicial and prosecutorial systems.

2. Citizens' Knowledge on the Grounds for Filing Disciplinary Complaints

An important finding from the survey results is the widespread lack of knowledge regarding the criteria for filing disciplinary complaints.

A majority of surveyed citizens were unaware of the potential grounds for such complaints, with 46% indicating knowledge of these grounds and 54% lacking awareness. Specifically, 25% of men and 21% of women claimed awareness of the grounds for filing complaints against allegations of judicial misconduct, while 26% of men and 28% of women admitted to a lack of knowledge in this regard.

The substantial portion of citizens expressing their lack of information underscores the need to assess various essential factors, including the absence of awareness campaigns, deficient institutional communication, and insufficient development of informational materials aimed at enhancing citizen awareness.

3. Citizens' Knowledge about the Competent Authorities for the Submission of Disciplinary Complaints

Only 28% of the surveyed citizens had knowledge about competent institutions for submitting disciplinary complaints. Meanwhile, 72% of citizens said that they have no information about this issue, or have thought that other incompetent institutions are competent for this matter.

These figures indicate a significant lack of this information among citizens, emphasizing the immanent need to increase efforts to inform and raise awareness among citizens. This, of course, implies the need for joint efforts to improve citizens' access to information, in order to address their complaints and remarks.

4. Citizens' Experiences with Judges and Prosecutors

The survey findings indicate a substantial majority of 91% of citizens reported never experiencing any dissatisfaction with judges or prosecutors, leading to the conclusion that they have never found cause to file complaints against them. This suggests a generally positive perception towards the justice system, providing for a positive relationship between citizens and justice institutions, and suggesting a relatively high level of trust in the judiciary. This overall positive perception is crucial for fostering and upholding public confidence in the judicial system.

Conversely, a mere 9% of respondents have encountered dissatisfactory experiences with judges or prosecutors during court proceedings, prompting them to file complaints against them.

5. How Many Citizens Have Filed Disciplinary Complaints?

The survey findings indicate a substantial majority of 91% of citizens reported never experiencing any dissatisfaction with judges or prosecutors, leading to the conclusion that they have never found cause to file complaints against them.

42% of the surveyed citizens

out of which 22% women, assessed that the procedure for submitting a complaint is very difficult. This high figure shows the citizens' perception of this mechanism as a complicated procedure.

On the other hand, only 7% of respondents, out of overall 9% of respondents who have encountered dissatisfactory experiences with judges or prosecutors during court proceedings, prompting them to file complaints against them, have filed complaints.

More precisely, 5% of men and 2% of women have filed complaints, whereas an equal proportion of 46% of both men and women have not filed any complaints.

Of the citizens who had the opportunity to submit disciplinary complaints, the results show that:

- 42% of the surveyed citizens, out of which 22% women, assessed that the procedure for submitting a complaint is very difficult. This high figure shows the citizens' perception of this mechanism as a complicated procedure.
- The other part, 33% of the surveyed citizens, out of which 22% women, assessed that the procedure can be completed easily, which suggests a positive assessment by the citizens for the process of submitting complaints.
- While 25% of the surveyed citizens answered that they submitted their complaints through a lawyer.

These results provide a detailed overview of citizens' experience with the process for filing a disciplinary complaint and indicate a broad spectrum of their assessments and experiences in this important justice area.

3. Recommendations

Publish the forms for submitting disciplinary complaints against prosecutors on the official website of the Kosovo Prosecutorial Council, as these forms are currently not available on the site.

The Judicial Council of Kosovo should publish the manual and instructions for filing complaints in a section of the website that allows citizens easier and more understandable access, and includes clear instructions on the Competent Authorities for submitting complaints.

Publish all decisions made regarding disciplinary complaints, making them accessible and available to the public. This will help raise public awareness and increase citizens' confidence in the justice system.

Inform citizens about the right to file complaints against judges and prosecutors through the media on a monthly basis.

Increase internal human capacity to prioritize and quickly handle cases involving complaints against judges and prosecutors.

Analyze the most frequent causes of complaints against prosecutors and judges and address these issues in the councils of prosecutors and judges.

Annex I – Methodological Report

Between June 21 and July 13, 2023, Lëvizja FOL conducted a survey in Kosovo to gather data on public perceptions of the justice system, with a specific focus on the disciplinary mechanisms for judges and prosecutors. The survey employed face-to-face interviews, with a total of 167 interviews conducted across different age groups: 125 individuals aged 18 to 30, 94 aged 31 to 45, 94 aged 46 to 60, and 22 individuals aged 61 and above.

This Methodological Report provides insights into the sampling methodology and procedures utilized.

Summary of Procedures

Face-to-face interviews were conducted following specific guidelines. Interviewers questioned randomly selected respondents for interviews. Questions and response options were read aloud. Interviewers marked respondent answers on the questionnaire during the interview.

Sampling Methodology and Procedures

A random stratified sample was designed for the survey, targeting citizens, court users respectively.

Target Population

The target population included citizens/court users over the age of 18.

Random Walk Technique

The Random Walk technique was used to select respondents in the vicinity of basic courts in seven main regional centers in Kosovo.

Interviewers

Seven interviewers and one controller formed the field team. All interviewers underwent a full-day training session in Pristina. Prior to the main survey, each interviewer successfully completed at least one interview as part of a pilot study to ensure their qualifications. Quality control was ensured through back-checks conducted by the controller at Lëvizja FOL's office.

Problems during Fieldwork

No significant problems were encountered during fieldwork. Interviewers did not face any particular issues with survey administration.

Length of Interview

The average duration of the survey questionnaire administration was 8 minutes, with the shortest interview taking 5 minutes and the longest 12 minutes.

Annex II - Questionnaire

QUESTIONNAIRE ON THE DISCIPLINARY RESPONSIBILITY OF JUDGES AND PROSECUTORS

This questionnaire was prepared by Lëvizja FOL for research purposes. Completing the questionnaire would help us understand the level of information among citizens regarding the process of submitting complaints for disciplinary responsibility of judges and prosecutors. Your answers will be anonymous and will be used solely for the purpose of conducting the research.

1. Region: _____

2. Gender:

- Man
- Woman

3. Age _____

4. Are you part of the personnel of the court/prosecution office?

- Yes
- No

5. Are you aware that you can file complaints for disciplinary violations against judges and prosecutors?

- Yes
- No

6. Are you informed about the grounds for which a complaint can be filed?

- Yes
- No

7. Are you informed where you can file a complaint about disciplinary violations for any judge of the Basic Court of Pristina?

- The Judicial Council of Kosovo
- The President of the Basic Court of Pristina
- The President of the Supreme Court

8. Have you ever filed such a complaint?

- Yes
- No

If YES, how difficult do you consider the procedure for submitting complaints for disciplinary violations of judges and prosecutors?

- Very difficult (1)
- Quite difficult (2)
- It can be done easily (3)
- I don't know (4)

9. Have you ever had any personal unpleasant experiences with judges or prosecutors during court proceedings?

- Yes
- No

10. Do you think that filing disciplinary complaints is effective in applying discipline to judges and prosecutors?

- Yes, it is very effective (1)
- Yes, it is a bit effective (2)
- No, it is not effective at all (3)
- I do not know (4)

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