

***Contract Enforcement and Judicial Systems
in Central and Eastern Europe***
Warsaw, Poland, June 2005

Kosovo

1. What have been your country's (or territories) 2-4 most successful achievements in the area of judicial reform in the recent years, and what were the main factors contributing to that success?

The organisation of the current justice system in Kosovo remains, essentially, unchanged from the old system which was in operation prior to the break-up of the Yugoslav Federation. However, since 2001 new institutional and legislative arrangements to secure the independence and professionalism of the judiciary and prosecution service, in the on-going process of building the constitutional framework of Kosovo, have been made.

a) The Kosovo Judicial and Prosecutorial Council (KJPC) has been established in April 2001 to protect the judiciary from the undue influences of the other branches of government, particularly in areas such as selection, removal and discipline of judges and prosecutors.

As a result of it:

- Judges and prosecutors have been selected in the past four years by the KJPC in a transparent way.
- Complaints against judges and prosecutors have been investigated promptly and appropriate action has been taken.
- Codes of conduct for judges and prosecutors have been promulgated.

b) Part of the institution building mandate consisted also in assisting the development of the judicial system based on democratic principles and international human rights and rule of law standards.

In this context a training institute has been established - the Kosovo Judicial Institute - to train judges and prosecutors, thus contributing to the development of a professional and impartial judiciary and prosecution service in Kosovo.

c) New Provisional Criminal Code and Provisional Criminal Procedure Code of Kosovo have been promulgated in April 2004 and an important number of substantive and procedural changes have been introduced to improve the quality of such legislations.

2. What major problems do you currently face with regard to:

JUDICIAL INDEPENDENCE

Lack of Security of tenure

Due to the peculiar nature of the United Nations Mission in Kosovo (UNMIK) judges and prosecutors are currently only appointed until the completion of the UNMIK Mission, the impossibility to know what will happen later affects their morale.

Inadequate Salaries of judges and prosecutors

This condition creates a fertile breeding ground for corruption

Not Independent Resources

The judiciary's financial dependence on the executive is another factor that impairs judicial independence. When the judiciary has no power of the purse it is forced to act within the funds allocated to it in the annual budget. Nothing more can be spent even if it is necessary for streamlining the machinery of justice and improving its performance.

JUDICIAL EFFICIENCY

The Kosovo judicial system is – from a structural point of view – unnecessarily complicated by too many jurisdictional levels, and by the assignment to individual judges of an excessive number of judicial responsibilities at pre-trial, first instance and appellate level.

The effectiveness of the system is also undermined by jurisdictional rules which burden the higher courts, especially the Supreme Court, with cases which are of insufficient seriousness or importance to merit their disposal by such tribunals.

Many managerial and administrative functions currently handled by judges, court presidents in particular, could better be handled by administrative staff. The internal rules of court administration are antiquated and inflexible, and require revision if they are to fulfil the demands of a modern and effective court administration.

JUDICIAL ACCOUNTABILITY

The development of judicial accountability has been hampered by the structure of government which places responsibility for court administration in the hands of the Ministry of Public Services, an executive body. This has limited the ability of the KJPC, and the judiciary it oversees, to manage delivery of judicial services through court presidents. Legislative changes that would place responsibility for court administration directly in the hands of court presidents are currently under consideration. Such a move will increase both judicial independence and raise the level of judicial accountability. However, this change will present an awesome challenge requiring the KJPC to identify the most qualified and respected judicial leaders for court president positions.

Since 2001, the Judicial Inspection Unit (JIU) has investigated individual complaints and sent final reports recommending disciplinary action to the KJPC. Though it has performed this function admirably, it has done so with limited international resources (investigators) and a limited number of local judicial inspectors. Development of a sustainable JIU continues to be hampered by a difficult recruiting and training environment. Specifically, JIU has found it

difficult to attract highly qualified local lawyers as Judicial Inspectors due to low salaries which simply do not compare with those offered by international organizations. Further, local lawyers are reluctant to instigate a process (judicial discipline) which has no tradition in Kosovo, and may well leave them ostracized from the legal community upon the departure of the international community.

Perhaps for similar reasons, current court presidents and chief prosecutors themselves have failed to provide a meaningful critical assessment of the judges and prosecutors under their leadership, as demonstrated by the recently completed 2004 judicial self-assessment process. Not infrequently, this judicial reluctance to self-assess has cropped up in KJPC proceedings where it has been clear that proposed punishments have been less severe than circumstances required. For this reason, it will be crucial to the development of the judicial accountability to keep the investigative body (JIU) as functionally independent of the disciplinary body (KJPC) as possible.

3. What is your top priority in the coming year for improving the judicial system? How do you plan to address this priority?

These are very exciting times for the leaders of Kosovo's government and judicial institutions, as they are now asked and given the opportunity to actually design their court system. How well they respond to that challenge will determine in a substantial way how strong and responsive their judicial system will be in serving the people of Kosovo. How well they respond to that challenge will determine how strong and independent that system will be in implementing a Rule of Law in Kosovo. How well they respond to that system will determine how accountable the system and the judges and prosecutors in the system will be in treating all people of Kosovo in a just and fair manner.

Top priorities:

1. Several changes must be introduced to the legislation that would permit a reform of the current justice system.
2. The role of the KJPC shall be expanded.
3. Attention will be given in respect to the productivity of the courts based on relative court caseloads for determining how many judges and prosecutors are needed in each court.
4. A reorganization of the current judicial system governance and administrative structure which is largely under UNMIK's Department of Justice and Ministry of Public Services will be needed.
5. The prosecutorial function of government will be separated from the judicial function and the role of the KJPC will be redefined as the Kosovo Judicial Council with broadly expanded judicial branch management and oversight responsibility.

Some statistics:

<i>Judge/Prosecutor</i>	TOTAL COMPLAINTS ¹ - RECEIVED	Grounds of complaint							
		Commission of criminal offence	Neglect of judicial functions		Independence & impartiality problems		Being placed in position incompatible with due execution of office	Breach of Code of Ethics and Conduct	Other
			Delay	Other	Other	Other			
Supreme Court									
Commercial Court									
High Court for Minor Offences									
Minor Offences Courts									
District Court Judge									
District Public Prosecutor									
Municipal Court Judge	1								1
Municipal Public Prosecutor									
This week	1								1
This month	6			3				2	1
This quarter	45	2	13	21		1		6(1)*	1
This year	111	3	36	35	1	7	5(1)*	16(7)*	14
Total – 2004	236	1	127	40	3	12	12	25	32

Total complaints	783
Total rejected	248
Total investigations opened	517
Total no misconduct found	358
Total referred to KJPC	43
Total pending	101

¹ When the JIU receives a complaint, it either opens an investigation or rejects the complaint. In some cases it is not possible to make such decision in the same reporting period, and these cases are pending relevant decision for a short period of time.

Numbers of Judges (as of 13 June 2005)

Courts	Current Budgeted Number	Currently serving	Resigned Retired Removed*	Appointed in 2005	Temporary or permanent transfer	Promoted amongst appointed in 2005	Female	Male	Alba	Serb	Other
SC *)	14 + 2 ²	14 + 2 ³	-	-	-	-	3	11	13+2	-	1
DC	49	45	-	-	1 ⁴ (02.5.05)	2 ⁵ (30.5.05)	10	36	38	4	4
CC	11	9	-	-	-	-	4	5	7	-	2
MC	165	136	-	-	1 ⁶ (02.5.05)	2 ⁷ (30.5.05)	34	101	123	8	4
HMO C	5	5	-	-	-	-	2	3	5	-	-
MOC	118	98	-	-	-	6 ⁸ (30.5.05)	28	71	90	2	6
Total	362	309	-	-	-	-	81	227	278	14	17

*Column shows number of Resigned/Retired/Removed judges during the year 2005
Numbers in brackets “()” show the date of the decision on transfers

¹ Two positions for the Special Chamber of the SC for KTA related Matters.

² Judge the Special Chamber of the SC for KTA related Matters.

³ Temporary transfer from M.C of Pejë/Pec to D.C of Pejë/Pec

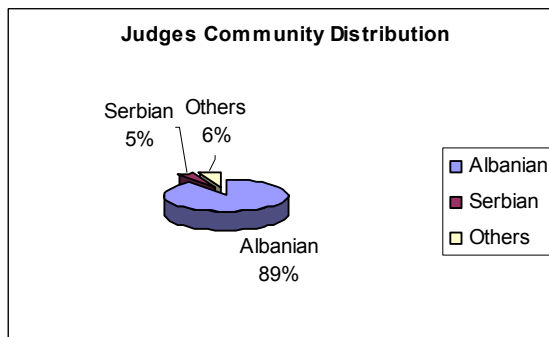
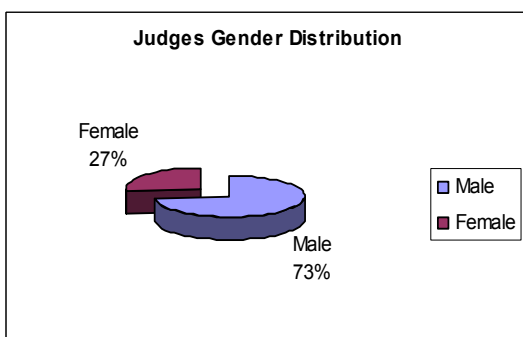
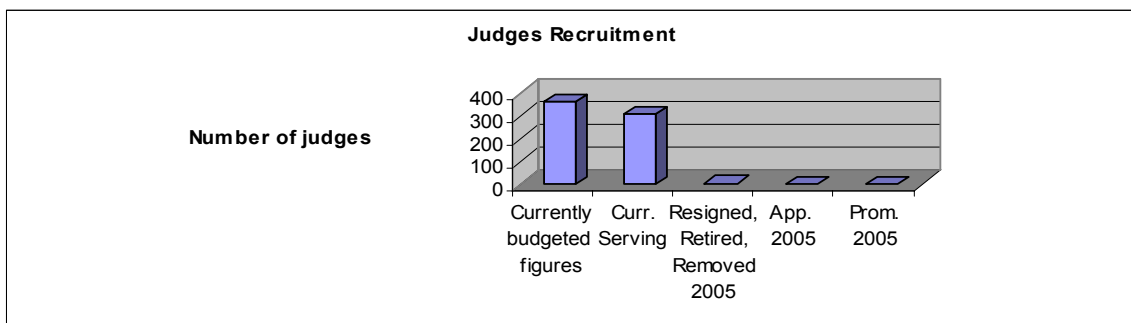
⁴ Assumption of permanent position from being an acting position

⁵ Temporary transfer from the MC of Istog/Istok to the MC of Pejë/Pec

^{6,7,8} Assumption of permanent position from being an acting position

⁹ Promoted: One from the MPPO of Peje/Pec to the DPPO of Pejë/Pec and one from the MPPO of Prishtinë/Pristina to the DPPO of Prishtinë/Pristina

¹⁰ Assumption of permanent position from being an acting position

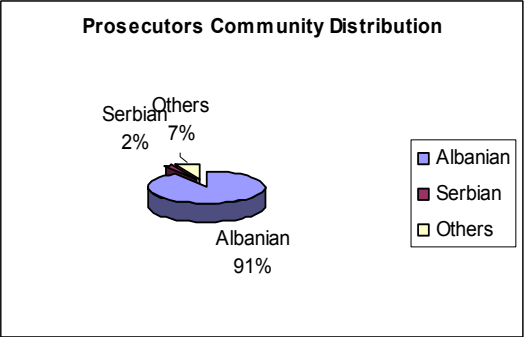
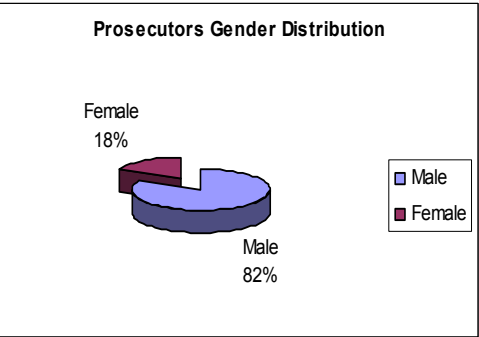
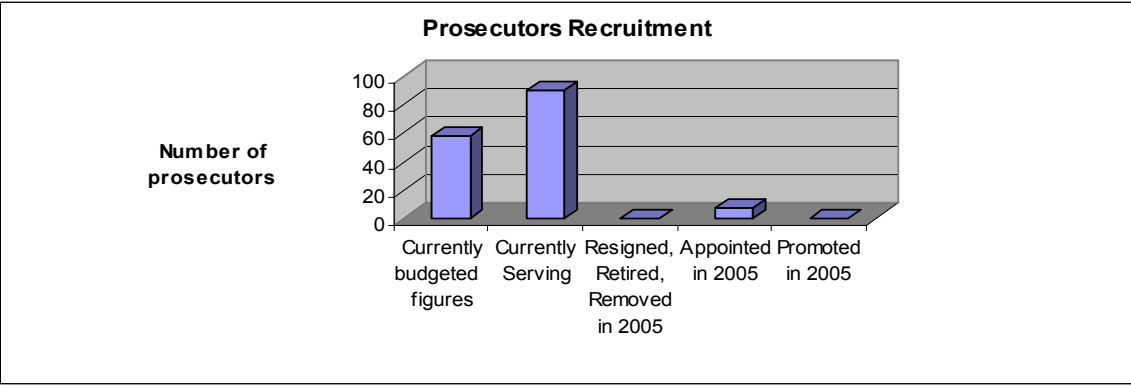


Women serving in the judiciary hold 82 (27 %) of the judicial posts. Ethnic minorities serving in the judiciary hold 31 (11 %) of the judicial posts.

Numbers of Prosecutors (as of 13 June 2005)

Courts	Current Budgeted Number	Currently serving	Resigned Retired Removed*	Appointed in 2005	Temporary or permanent transfer	Promoted amongst appointed in 2005	Female	Male	Alban	Serb	Other
PPK	4	7	-	-		1 ⁹ (30.5.05)	1	6	7	-	-
DPPO	21	32	-	-		2 ¹⁰ (30.5.05)	4	30	30	1	3
MPPO	33	51	-	-		1 ¹¹ (30.5.05)	11	38	45	1	3
Total	58	90	-	-		-	16	74	82	2	6

*Column shows number of Resigned/Retired
Numbers in brackets “()” show the date of the decision on transfers



Women hold 16 (18 %) of the positions as prosecutors. Ethnic minorities serving in the prosecutorial service hold 8 (9 %) of the positions as prosecutors.