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ACTION PAPER ON JUDICIARY IN KOSOVO

Improving the public satisfaction with the work of the judiciary

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Introduction

After the publication of the first UNDP's Kosovo Public Pulse Report, whose aim is to analyze one thematic area related to governmental or public institutions which has been identified based on the analysis of the survey data, the Kosovo Judicial Council (KJC), as the body that administers justice system in Kosovo¹, was selected as the first institution to receive the Action Paper, primarily due to the fact that the satisfaction of the public with the work of the judiciary is on its lowest ebb.² As data provided by the opinion poll indicates, the satisfaction level with the work of Kosovo courts has dropped by about 9 percentage points since April 2010. A drop of about 12 percentage points marked the level of satisfaction with the work of the Prosecutor's Office, bringing it down to only 15% compared to 27% in April 2010.³

This Action Paper is limited in scope – its intention is not to be an overarching document that would encompass all issues presently faced by the judiciary – but aims to analyze the issues that influence the mostly negative public perception with the overall work of all the stakeholders in the judiciary, and offer some recommendations and remedies that both in the short and the long term may contribute to positively shift the satisfaction of the general public with the performance of the judiciary as a whole.

¹ Since the publication of the Public Pulse Report, Kosovo Prosecutorial Council was formed, thus the Kosovo Judicial Council is not responsible any more for administration of Prosecutorial Service.

² Kosovo Public Pulse Report, page 13.

³ Ibid.

Background and the rationale

UNDP's Public Pulse Report is the continuation of the Early Warning Report (EWR), a series of the reports that analyzed the major trends in the satisfaction of the general public with the work of the public institutions since August 2002. The report provides valuable analysis of public perceptions while Kosovo consolidates its democracy and makes progress towards strengthening of its institutions and prudent governing. The Report lifts the analysis from early warning and conflict prevention, to democratic dialogue and monitoring of institutional stability. Through this biannual analysis and related debates the Report aims to increase the communication between public and democratic institutions.⁴

Action Paper, as a follow up to the findings of the Public Pulse Report, aims to address the issues highlighted in the report, and it is envisaged as a product of cooperation with identified governmental or public institution. The Action Paper shall contain follow-up actions for addressing the specific issues. Through the discussion of data from the research with the officials from Kosovo institutions, the Action Paper will aim to develop confidence and communication between public and Kosovo institutions. Moreover, follow-up discussions shall be organized in order to review progress of actions identified in the action paper by the selected institution.

Selection of the KJC as the first public institution for producing of the Action Paper is by no means inadvertent. It was not only the low level of public confidence that influenced this decision; the role of the KJC in building of the sustainable Rule of Law environment in Kosovo, as a prerequisite of a democratic society, was often overlooked and minimized, thus this Action Paper shall also aim to contribute to a higher degree of public exposure of the main body of administration of the judiciary.

⁴ Kosovo Public Pulse Report, page 9.

Findings of the Public Pulse Report

In presenting the data on the public satisfaction with the work of the judiciary and the prosecutors' office, the Public Pulse Report draws upon the legacy of the EWR and presents a table that shows the amplitudes of that satisfaction since 2007 until present for all three main branches of power:

Table 1: Satisfaction with Kosovo's Key Institutions (in percent)

		Mar-07	Jun-07	Oct-07	Dec-07	May-08	Jul-08	Oct-08	Apr-09	Junw-09	Sep-09	Jan-10	Apr-10	Nov-10
Satisfaction with executive government	Government	30.50%	35.99%	28.12%		46.85%	49.85%	55.71%	38.00%	53.13%	55.83%	36.72%	29.21%	25.06%
	Prime minister	54.00%	66.00%	61.00%		72.00%	63.23%	63.12%	39.81%	53.84%	51.98%	41.50%	36.36%	30.65%
Satisfaction with legislative	Parliament	31.00%	31.96%	36.19%	36.76%	51.36%	46.00%	49.03%	33.63%	53.18%	46.37%	33.34%	34.05%	32.10%
	Speaker of parliament	35.43%	33.23%	37.14%	35.10%	56.48%	43.55%	46.97%	32.77%	51.59%	49.45%	40.30%	36.03%	33.25%
	President	52.00%	64.00%	59.00%	61.00%	74.00%	68.09%	69.93%	45.66%	61.72%	60.75%	56.63%	54.88%	30.84%
Satisfaction with judiciary	Court	20.00%	20.00%	18.00%	18.00%	21.00%	19.52%	19.71%	20.04%	32.65%	25.60%	14.73%	27.21%	18.50%
	Prosecutor's office	22.70%	19.79%	17.70%	18.27%	22.66%	22.79%	21.05%	20.46%	31.74%	25.74%	14.81%	26.85%	15.06%

As it can be seen, the judiciary is least trusted from the general public where from 2007 to present the decline in satisfaction with work of the courts has dropped for 1.5 % whereas for the prosecutors' office the decline is more significant and represents 7.6%. Overall, figures of 18.5% and 15.1% of satisfaction with the work of courts and prosecution offices, respectively, are by all means concerning. .

During the research carried out for the needs of the Report, other data was obtained that depicts trends in how the general public perceives the work of the judiciary.

In total, 57.5 % of the respondents are very dissatisfied or dissatisfied with the work of the courts, whereas, for the prosecutors' offices the level of dissatisfaction is capped at 44.3 %. Furthermore, cumulatively, 83.8% of the respondents believe that Kosovo judiciary is not independent in reaching its decisions.

As for the perceptions of the presence of corruption in judiciary, 76.5% of the respondents believe that corruption is present on a large scale. However when asked how did they form this

opinion, only 15.5 % base this statement on their personal experience whereas 52.3 % of the respondents base this perception on the information received through the media.

Moreover, 75 % of the respondents stated that they did not come across a situation where a bribe/gift/favour was requested from them by a public official as a condition for performance of the service and only 6.6 % of the respondents stated that they gave bribe to an official in the judiciary.

The above presented data leads us to believe that the public perception, particularly of presence of corruption in judiciary, may be considered as somewhat distorted, as it is not based on firsthand experience, but mainly on what was served to the public through the media and other sources (also 21 % of the respondents based their answer on what they heard from relatives or friends), which might be debatable, to say the least.

Also, the somewhat strained relationship of the Kosovo Anti – Corruption Agency (KAA) and the judiciary may also have influenced the negative perception about the judicial authorities that the general public forms through the media. The head of the KAA has publicly declared that the agency has difficulties in cooperation with the prosecution as the reports that KAA submits are not followed upon.⁵ Such portrayal of the judicial authorities, by another governmental agency, as not being willing to investigate cases of corruption surely contributed to the negative perception amongst general public, despite the possibly valid explanation because, according to the officials of the prosecution office, the reports of the KAA are in most of the cases incomplete and do not contain facts upon which the judicial authorities can proceed further⁶.

As for the overall dissatisfaction with the work of judiciary, that is at rate of 57.5 %, this can mainly be contributed to the inability of the general public, according to their opinion, to realize their rights before the courts, for various reasons, which we shall try to analyze in the following section of the Paper.

⁵ During the debate on corruption in judiciary in TV show “Jeta ne Kosove” the head of KAA stated that cases which KAA reports to the prosecution are not processed and that out of 21 reported cases the prosecution responded in only 4 where 2 cases were dropped and two resulted in arrest. <http://kosovo.birn.eu.com/al/1/31/11491/?tpl=30>

⁶ As above.

Factors contributing to dissatisfaction

"Justice delayed is justice denied" with its full meaning,⁷ is ever - present in Kosovo, representing what may be rightfully considered as the central issue in the lack of public confidence in the work of the judiciary. As presented above, the figure of 57.5 % of respondents that find work of the Kosovo judiciary as dissatisfying is mainly attributed to the existing backlog of cases, where people wait years⁸ for their case to be heard before the courts, and to the length of the proceedings once the case is up for adjudication.

Despite the laudable efforts of both local institutions and the international community working in Kosovo, the backlog remains high. According to the KJC Strategic Plan of the Kosovo Judiciary 2007-2012, National Backlog Reduction Strategy was adopted by KJC.⁹ Under the strategy, in the first quarter of implementation in 2011, 14,295 cases were resolved however the number of cases in backlog remains at staggering 119,181.¹⁰ The vetting and reappointment process also contributed to the both reduction and increase of the backlog of cases. In courts where all positions were filled, the number of cases in backlog is progressively lowered. However the number of vacant positions presently is around 150 that also hinders the ability of the certain courts and prosecution offices to perform in their full capacity. This situation is expected to be significantly improved as two new generations of judges and prosecutors are currently being trained at the Kosovo Judicial Institute and are expected to complete their training and be appointed until January 2012.¹¹ As another step in this direction, the KJC also hired around 60 new enforcement clerks to deal with the backlog of cases.

⁷ "Justice delayed is justice denied" is a legal maxim meaning that if legal redress is available for a party that has suffered some injury, but is not forthcoming in a timely fashion, it is effectively the same as having no redress at all. This principle is the basis for the right to a speedy trial and similar rights which are meant to expedite the legal system, because it is unfair for the injured party to have to sustain the injury with little hope for resolution. The phrase has become a rallying cry for legal reformers who view courts or governments as acting too slowly in resolving legal issues either because the existing system is too complex or overburdened, or because the issue or party in question lacks political favor. See more at http://en.wikipedia.org/wiki/Justice_delayed_is_justice_denied.

⁸ International monitoring bodies in Kosovo have continuously reported about delays in judicial proceedings in Kosovo. See for instance the report of the OSCE on civil cases in Kosovo at <http://www.osce.org/kosovo/19401>.

⁹ Strategy was adopted under the KJC Decision No. 22/2010, dated November 18, 2010.

¹⁰ See, <http://www.dreitesia-ks.org/?cid=2,15,171>.

¹¹ Third and fourth generation of the Initial Legal Education Program (ILEP) consist of around 90 candidates.

Furthermore, several undertakings are in place aiming to assist the judiciary in reducing the backlog. Most notably, the Ministry of Justice, with help of donors¹² is currently undergoing the process of establishment of notary service. Also, with assistance by the UNDP and USAID the Ministry of Justice has established the Mediation Commission and its Secretariat and is currently undergoing through the process of selection and training of mediators. It is envisaged that these two efforts will greatly contribute to the reduction of backlog of cases in Kosovo as around 70 % of the cases that form the backlog are considered to be of non –contentious nature and would have never reached the court if these two institutions were functionalized.

Secondly, another factor that is often overlooked, but that should be considered as very important in shaping of the public opinion, is media reporting on judiciary conjoined with the inability of the courts to more aggressively “market” its success stories. As presented in the statistical data above, 52% of the respondents base their perception on corruption in judiciary on information received through the media, whereas 21 % of the respondents base their perception on what they heard from relatives or friends. Therefore, it might be argued that the public opinion on the corruption in the judiciary is largely based on the information that is “second – hand”.

Thirdly, the number of individuals that criticize the work of the judiciary due to their personal and family or friendly related dissatisfaction with a court decision is also to be considered.

¹² The project is financed by the Swiss Agency for Development and Cooperation (SDC) and implemented by the ‘Institut international des Hautes etudes Notariales’ in close coordination and support by the USAID/NCSC Justice Support Project.

Recommendations and follow up – actions

As stated in the introduction, the scope of this action paper analyzes only a handful of issues that are linked with the relation of the judiciary and the public, thus the recommendations and the follow up actions implementation shall be confined to such issues only.

In terms of the reducing of the backlog, the KCJ needs to continue with its efforts in implementing the National Backlog Reduction Strategy, also imposing and closely monitoring the performance of judges through stricter norms and monitoring mechanisms for number of cases completed monthly/quarterly.

KCJ also needs to more proactively advocate with the Ministry of Justice to speed up and finalize the process of establishment of services of notary and mediation, which would relieve the court system of a significant number of cases. In this regard, USAID and UNDP should provide the KJC with all the necessary assistance.

The existing Public Information Strategy (PIS) of the KJC needs to be enhanced in order to more effectively respond to the negative publicity surrounding the work of courts. Initially, KJC might look into appointing a Public Information Officer (PIO), based within the Supreme Court of Kosovo, with a view to have one such PIO in each of the current District Courts in the region. PIO would be responsible on daily liaison with the media representatives and the public, providing frequent updates on the work of courts, particularly emphasizing issues like the cases completed, number of retrials, providing more publicity on more important/serious cases, which may contribute to a more positive picture of the judiciary being portrayed in the media, ultimately leading to increase of satisfaction and public confidence in the judiciary.

Donors like USAID and the UNDP should assist the KJC, or lead the efforts in organizing trainings for media representatives, that will contribute to their education on the division of competences within the judiciary, leading to more objective reporting on the issues related to judiciary.

KJC should strive to improve communication among the courts so that the justice pillar maintains cohesion and independence and all courts are aware of upcoming organizations changes required by the Law on Courts.

Finally, KJC needs to strengthen its disciplinary bodies and publicize the outcomes of any disciplinary proceeding in order for the general public to be aware of the efforts of the judicial authorities to maintain highest professional standards within its ranks.