



USAID | **KOSOVO**
FROM THE AMERICAN PEOPLE

JUSTICE SYSTEM REFORM ACTIVITY

QUARTERLY REPORT, APRIL – JUNE 2006

JULY 2006

This publication was produced for review by the United States Agency for International Development. It was prepared by the National Center for State Courts.

JUSTICE SYSTEM REFORM ACTIVITY

QUARTERLY REPORT, APRIL – JUNE 2006

DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

I. Executive Summary

During this reporting period, the Justice Sector Reform Activity in Kosovo reached some significant milestones in several of its components. These milestones are impressive as they are varied.

Most notably, NCSC technical assistance in Component I culminated with the inauguration of the Kosovo Judicial Council (“KJC”) on April 3rd. NCSC played a critical role in supporting the KJC as the new government body worked throughout the reporting period to address a plethora of operational issues in the judiciary.

Although gains in Component II were not as high-profile as the strides taken in Component I, they were equally substantial. NCSC’s backlog reduction program registered verifiable gains in reducing backlog in the municipal court of Gjilan, and, after much planning, the NCSC-designed interim case tracking system (“ICTS”) project made its start as counterparts worked diligently to load the ICTS or Excel spreadsheet databases with data from pending civil execution cases.

Under the rubric of Component III, the Judicial Audit Section (“JAS”) released its much-anticipated pilot audit report which was approved by UNMIK/Department of Justice (“DOJ”) towards the end of the reporting period. The JAS, fully immersed in operational and development activities throughout the quarter, made noticeable progress on its road to sustainability.

Within Component IV, NCSC, in tandem with another USAID project, carried out training for journalists designed to improve their knowledge of both the Kosovo justice system and specific laws. Evaluation of this activity highlighted the surprisingly immediate impact of the training.

II. Quarterly Progress

A. Component I – Transition to an Effective and Impartial Justice System¹

¹ NCSC completed, as forecasted, the following deliverables for Component I in this reporting period: 1) the draft agreement between Ministry of Public Services (“MPS”), MOJ, KJC, and UNMIK/DOJ on the division of Department of Administration assets; 2) a document outlining proposed organizational structure for KJC and its subordinate units; 3) a policy paper by KJC on adoption and implementation of ethics codes; 4) a document outlining the vision and terms of reference for Public Information Officer (“PIO”) for presentation to the KJC; 5) a document presenting comparative research into freedom of information laws throughout European judiciaries; 6) draft appointment procedures for judges; and 7) a short-term action plan for making KJC and subordinate units operational with regards to information technology.

Throughout the reporting period, NCSC engaged in all activities in the deliverable tracker under Component I identified as ongoing with three exceptions. As mentioned in the last quarterly report, the technical assistance that NCSC provides with regard to establishing a unified legislative process in the MOJ has been quite limited because of the indifference of the Acting Head, Department of Legal Affairs, MOJ in establishing policies and procedures within his office. With regards to the second exception, there was a one-month break in the month of June regarding technical assistance being provided to the Committee on Judicial, Legislative, and Constitutional Framework Matters. The third exception – which deals with an information technology strategic plan – has been delayed because the day-to-day work of the KJC and its committees has consumed more time than originally anticipated thus leaving less time for addressing issues of planning.

Of all the activities and deliverables forecasted to be finished this reporting period for Component I, there was only one that remains pending – the beginning of the establishment of protocols between KJC and Secretariat regarding its relationship. The specific deliverable from this activity is a set of rules. NCSC did not begin on this activity because the hiring of the KJC Secretariat Director, whose input is essential to the drafting of these rules, was not completed this quarter. NCSC thought this position would be filled in June. It now looks likely that the Director will be hired in July.

1. Contributing to the Development of a Justice Sector Strategy – Coordinate with Other Entities

NCSC's coordination with other entities – namely, UNMIK/Department of Justice (“DOJ”), the KJC, and the Ministry of Justice (“MOJ”) – is mentioned throughout section II.A of this report.

2. Support the Establishment of the Kosovo Judicial Council and Subordinate Entities

a. Kosovo Judicial Council

As the culmination of significant project efforts, the KJC was sworn into office on April 3rd by the Special Representative of the Secretary-General (“SRSG”). The USAID Mission Director offered remarks at the ceremony, one that was attended as well by the heads of missions from the Council of Europe and the British Office, the UNMIK/DOJ Director, and representatives from OSCE.

During this reporting period the KJC conducted six meetings. Initially, NCSC's Court Administration Consultant (“CAC”) prepared most meeting materials for the KJC. This included the briefing memoranda for substantive decisions to be made, recommendations on membership for the judicial and prosecutorial disciplinary committees, the presentation made by the DOJ Director briefing the council on the minority recruitment initiative, rules of procedure (recruitment, committees, and meetings, agendas, and voting), terms of reference for the Director of the KJC Secretariat, and a memorandum of understanding with Pillar I on the transfer of budget authority to KJC. While this level of drafting is probably more than envisioned for USAID consultants, given the lack of experience among Secretariat staff and the need to prepare materials quickly, it was necessary for the CAC to take on these responsibilities. However, as the KJC Secretariat staff developed throughout the quarter, the CAC took on more of an advisory role, reviewing and providing recommendations on documents drafted by the staff.

NCSC's CAC and its Chief of Party attended all KJC meetings and, given the assistance that was needed, remained active participants. In addition to preparing meeting materials and participating in KJC meetings, the CAC made recommendations to the KJC Chair on preparation of the meeting agendas.

The KJC showed itself to be a very engaged and eager organization during this reporting period. Meetings were scheduled at a more rapid pace than expected. In March 2005, the CAC – working with NCSC's KJC consultant and DOJ – developed a list of priorities affecting the KJC that UNMIK wanted to see completed before the end of 2006. These priorities, the most significant of which are mentioned below, were all achieved in this reporting period:

- Ø Appointment of a Vice Chair, Jelena Krivokapic, Mitrovica District Court;
- Ø Adoption of rules of procedure on recruitment, meetings, agendas and voting, and committees;
- Ø On the recommendations of the CAC, establishment of and membership appointment to the following seven committees; Judicial Discipline, Prosecutorial Discipline, Judicial Appointment and Development, Prosecutorial Appointment and Development, Court Administration, Budget and Human Resources, and Internal Rules and Legislative Matters;
- Ø Approval of Terms of Reference for Secretariat Director and approval to begin recruitment for this position;

- Ø Recommendation of twelve candidates from under-represented communities and ten candidates from the majority community to the SRSG for judge and prosecutor positions;
- Ø Approval of a Memorandum of Understanding between the KJC and Pillar I to transfer budget authority for KJC and Department of Judicial Administration (since renamed the Office of Judicial Administration, "OJA") to the KJC;
- Ø Adoption of time standards to govern case management in the district and municipal courts;
- Ø Adoption of Codes of Ethics for Judges, Lay Judges, and Prosecutors; and
- Ø Adoption of a system to collect statistical information on judicial performance.

NCSC technical assistance not only extended to specific operational issues for the KJC; it also included training for the KJC members on the basics of court administration. On April 19th, NCSC carried out training for the KJC members touching upon such issues as key ideas relevant to court system modernization, values and characteristics of a well-functioning judicial system, common obstacles to court improvement, court system development, key areas for training and education, and court performance standards.

Although it is important that all KJC members have a good grasp of these concepts, it will ultimately be the Court Administration Committee that will deal with the minutiae of court administration issues. Likewise, the other six KJC committees will delve into the details in their respective subject matter areas. Recognizing the need to make these committees viable organs within the KJC, NCSC made a concerted effort this reporting period at building capacity in several of these committees. Towards this end, the KJC consultant provided technical assistance to the KJC Secretariat in establishing staffing commitments for committees, a protocol for development of agendas, agenda materials, and production of minutes in an abbreviated format.

In addition, NCSC worked directly with the committees. On May 3rd, NCSC's KJC consultant assisted Secretariat staff in providing the Committee on Budget and Human Resources an overview of OJA staffing and organization, the current Secretariat staff and organization, and the current budget status, including status of capital outlay projects. The committee decided to carry out a Kosovo-wide inventory of facility needs and transfer capital funds to cover operational shortfalls for the current year.

The Court Administration Committee was very active during its two meetings. This committee considered the KJC Secretariat's proposal for implementing time standards for cases and approved NCSC's backlog reduction plan, along with the interim case tracking system necessary to support it. In addition the committee approved the KJC/OJA staff reorganization plan drafted by the NCSC's CAC and KJC consultant.

The committees that had the most significant amount of work in this reporting period were the Judicial Appointment and Development Committee and the Prosecutorial Development and Appointment Committee. Both the NCSC's CAC and the KJC Consultant provided a significant amount of technical assistance to these committees as they identified twelve candidates from under-represented communities to present to the KJC for recommendation to the SRSG. Through this process, NCSC ultimately trained the committees and local staff on how to proactively identify candidates from under-represented communities and prepare for potential questioning of these candidates by the Assembly. Additionally, NCSC provided assistance to these committees on

identifying candidates for the remaining sixteen vacancies and developing a plan for short-listing and presenting these candidates to the KJC.

b. Subordinate Entities

Fundamental to the success of the KJC is the development of its subordinate entities, the KJC Secretariat and the OJA. As part of this development, the CAC provided technical assistance to the KJC Secretariat as it prepared a 2007 – 2009 budget for the judiciary in coordination with OJA and UNMIK/DOJ. The final draft of this budget was submitted to the Administrative Division of UNMIK on June 23rd. In addition, the CAC joined forces with the KJC Secretariat and OJA to finalize interim procedures governing requests and correspondence between the KJC, the KJC Secretariat, and OJA. It is envisioned that these procedures will remain in place until a Director for the Secretariat is recruited at which time the issue will be revisited. These procedures will ensure smooth communication between the three bodies, a necessary step for proper coordination. Finally, the CAC drafted the terms of reference for the Director of Court Administration, a key element in the future OJA. It is likely that this position will be filled in July.

NCSC consultants engaged in significant capacity building with Secretariat staff not only in preparation for the committee meetings mentioned above, but also on a variety of other issues. For instance, the KJC Consultant worked with staff in preparing comments on the reappointment process proposed by UNMIK's Pillar I, drafting circulars announcing the adoption of time standards, preparing an implementation plan for these time standards, reviewing a travel approval policy, and reviewing a draft law on court fees for submission to the KJC.

In addition to capacity building, NCSC focused on organizational issues as well. One of NCSC's Senior Information Technology Advisors ("SITA") assisted an OJA counterpart in the development of an organizational chart for the information technology department in the OJA. Given the reality of budget limitations, the SITA and the OJA counterpart assessed and determined staff hiring priorities. Finally, they drafted qualifications and training requirements for each position in the organizational chart.

Technical assistance in the information technology realm also extended to the drafting of basic policies. The SITA drafted basic information technology policies covering, in 29 chapters, the entire realm of information security. At the end of the reporting period, these policies were under review by judicial counterparts.

3. Support the Establishment of the Ministry of Justice

The process of strategic planning dominated NCSC's technical assistance to the MOJ in this reporting period. NCSC's MOJ consultant and one of its staff attorneys assisted the MOJ and the Department for International Development ("DFID"), another implementing partner, in carrying out the beginning of the strategic planning process within the ministry. NCSC, DFID, and key MOJ personnel arrived at a common understanding of the process, the methodology to be used, and the strategic plan itself in a meeting held on May 8th. Following this, the MOJ consultant and the NCSC staff attorney participated in DFID-led planning meetings with five department heads, the purpose of which was to identify the department's strengths, weaknesses, opportunities, and threats with a core group within each department. These department-level meetings culminated in the second MOJ-wide workshop on strategic planning on June 13th, the purpose of which was to aggregate the information gleaned in the department-level meetings, discuss it, and ultimately feed it into the ministry plan.

Closely related to the strategic plan was the NCSC staff attorney's technical assistance in efforts to establish an Experts Advisory Group and a policy paper governing the work of the MOJ. The Experts Advisory Group will help to establish a policy paper which will be an elemental part of any strategic plan developed. During this reporting period, the staff attorney defined the functions of an Experts Advisory Group and the scope of a policy paper in a document she provided to the Acting Permanent Secretary.

In the last month of the quarter, a new NCSC MOJ consultant began working directly in the MOJ. After a week of orientation, the MOJ consultant assumed leadership of NCSC's technical assistance concerning the strategic planning process and became immersed in the day-to-day issues of the MOJ. Some of these issues, such as procurement questions and personnel procedures, seem mundane to an outside observer. However, for a new ministry staffed by individuals under a new civil service law with little institutional experience in good governance and merit-based decision-making, the proper application of procurement and personnel regulations is critical. As a result of the new MOJ consultant's technical assistance, the Acting Permanent Secretary annulled a personal action that did not follow the proper procedures and, in another case, he ratified a personnel action that followed the proper procedures despite considerable pressure to annul it. Seen in this context, the MOJ consultant's technical assistance contributed to the development of an organizational culture respectful of the rule of law.

NCSC's focus on the importance of existing rules and regulations in the daily activities of the MOJ included the field of information technology as well. Upon beginning work at the MOJ at the beginning of the quarter, one of NCSC's SITAs became aware of an UNMIK/DOJ plan to establish new infrastructures in MOJ for data and telephone networks, independent of the networks of the Provisional Institutions of Self-Government ("PISG") at a cost of 258,000€, or nearly 65% of the entire annual information technology budget at MOJ. Recognizing that the MPS has responsibility under existing Kosovo law for establishing such networks for all PISG institutions, NCSC's SITA informed the Acting Permanent Secretary who subsequently cancelled the purchases at a significant savings to the MOJ. Instead of developing new infrastructures, the MPS, with a significant push from the SITA, connected 102 new MOJ users to the PISG information technology network and 51 new MOJ users to the telephone network at minimal cost during this quarter.

Also significant was the SITA's role in working with his counterpart, the Information Technology Head at the MOJ. Prior to the SITA's arrival, the SITA's counterpart focused on technical level assistance. However, under the tutelage of the SITA, the Information Technology Head has begun to focus more on management issues such as planning, stakeholder coordination, and analysis of development issues.

4. Develop Judicial Reform Strategy

The CAC completed the first draft of a planning document to guide the KJC as it develops its strategic plan for the next twelve months. The document will be discussed in greater detail with the KJC Chair and Vice Chair and will likely serve as the basis for a one-year strategic plan. NCSC will recommend that the KJC appoint an *ad hoc* strategic planning committee with the goal of identifying strategic priorities by the end of the next reporting period.

5. Assist in Drafting Regulations and Legislation Pertaining to the Justice System

Of the three principal draft laws on which NCSC has provided technical assistance – the Laws on Notaries, Courts, and Public Prosecution – only the Law on Notary saw advances in this reporting period. The other two draft laws remained under MOJ and Prime Minister's Office ("PMO") internal review during the quarter.

NCSC played an active role on two separate aspects of the Law on Notaries. First, its Deputy Chief of Party (“DCOP”) participated in three sessions of the PMO working group reviewing the draft law. The written comments he provided to the working group on the draft law were buttressed by information gleaned from a one-day trip he and an NCSC staff attorney took to Macedonia to interview notaries and representatives from the Macedonian MOJ and the Chamber of Notaries concerning the functioning of the notary system in Macedonia. In its haste to finish the review of the draft law, however, the PMO legal officer took very few of these comments into consideration. (See Section III, Obstacles Encountered).

Complementing this work on the draft law was an effort led by NCSC to design an implementation plan for the law. The DCOP, aided by the NCSC law school intern, worked closely throughout the later part of the reporting period with two MOJ legal officers in producing a draft of an implementation plan. Once approved by the Minister of Justice, MOJ, assisted by NCSC, will begin implementing the plan, most likely in August.

In addition to providing technical assistance on the draft Law on Notaries, NCSC’s DCOP, seconded part-time to the Legal Policy Division (“LPD”) of UNMIK/DOJ, drafted regulations on collusion and the establishment of criminal liability for a legal person under the Provisional Criminal Code of Kosovo. Both were under review by LPD at the end of the reporting period.

6. Harmonize Investigative Procedure

Section II.A.4, above, “Assist in Drafting Regulations and Legislation Pertaining to the Justice System” subsumes this activity.

B. Component II – Improve Effectiveness of Court Operations²

1. Access to texts of laws, regulations, and decisions

² There are eight deliverables forecasted for completion this quarter under Component II. NCSC completed four of these deliverables: one dealing with defining ICTS, the second with the development of a short-term information technology action plan, another with core competencies training for judges and administrators, and the last with the implementation of time standards. Additionally, NCSC engaged in all activities in the deliverable tracker under Component II identified as ongoing with one exception. The deliverable tracker has NCSC providing training to PIOs throughout 2006. However, the KJC has not yet filled the first PIO position to date.

There are four pending deliverables from Component II. Two of these deal with print publication: 1) the development of a marketing strategy; and 2) development of a distribution strategy and the beginning of distribution. NCSC must meet both of these deliverables through its subcontractor, the Kosovo Law Center (“KLC”), which has informed NCSC that it will have these deliverables completed in the upcoming reporting period.

The third pending deliverable in this component deals with the administration of the notary examination, along with the selection of the first notaries. These deliverables can only be met once the Law on Notaries is adopted as a resolution by the Assembly and promulgated by the Special Representative of the Secretary-General. The Prime Minister’s Office has completed review of this draft law, but the executive branch has not yet delivered it to the Assembly.

The last pending deliverable similarly addresses a draft law. The deliverable tracker has NCSC establishing a working group to revise the Law on Executions provided that there is guidance from the Office of The Legal Advisor (“OLA”). There was no guidance from the OLA this quarter, and thus, NCSC did not establish the working group.

The KLC, contracted by NCSC, continued to work during this reporting period in compiling the content of the title in the subject matter area of criminal law. Publication will likely happen in the next quarter.

2. Enforcement of Civil Judgments/Caseflow Management/Backlog Reduction³

During this reporting period, NCSC built on previous work with the municipal courts of Pristina, Prizren, and Gjilan and began to show definite results. In the first notable activity of the quarter, NCSC organized a workshop for municipal court officials from these pilot sites on April 18th. The workshop provided an opportunity for the three courts to share information about best practices, discuss challenges, and update their original action plans.

All of the three courts' action plans involve approaching the utility companies given that a significant amount of the backlog in the realm of the enforcement of civil judgments deals with authenticated documents sent to the courts by utility companies. To assist the courts in addressing issues with utility companies, NCSC focused its efforts in April on promoting dialogue between the municipal courts of Pristina, Gjilan, and Prizren and Post Telecommunication of Kosovo (PTK), the telephone company.⁴

Throughout April, NCSC facilitated discussions of the problems in the enforcement of civil judgments between court officials in the pilot courts and PTK officials. As a result of these discussions, the Legal Department at PTK provided the municipal court in Prizren with a list of 242 debtors who had already reprogrammed their debts with PTK. PTK sent a list of 25 debtors with reprogrammed debts to the municipal court in Gjilan and a list of 166 to the municipal court in Pristina.⁵

The significance of these discussions though cannot simply be measured by these lists. More importantly, these discussions marked the beginning of dialogue between the two institutions in attempting to jointly resolve a common problem. Though the need for this dialogue has been evident for the last few years, it took NCSC acting as a catalyst to make it a reality.

In addition to the milestones surrounding PTK-filed cases, one of NCSC's pilot courts showed statistical gains in addressing their civil execution backlog. In the municipal court of Gjilan, the clearance rate for civil execution cases in this reporting period was .73 (compared with a 2005 clearance rate of .69). Moreover, the court disposed of 36 cases in this quarter greater than 24 months old, an increase of nearly 300% in the number of cases greater than 24 months disposed of on a quarterly basis from the previous year.⁶ The municipal court in Prizren had a clearance rate of .17 (a decline in its 2005 clearance rate of .58).⁷ In addition, it disposed of four cases older than 24

³ "Enforcement of Civil Judgments," "Caseflow Management," and "Backlog Reduction" are three separate activities in the NCSC work plan. However, to eliminate repetitiveness in this report, they are combined in this section.

⁴ The importance of this dialogue cannot be overstated. Of the 15,000 civil execution cases in the municipal courts of Pristina, Prizren, and Gjilan, approximately 39% were filed by PTK.

⁵ Despite the lists of identified debtors with reprogrammed debts that PTK presented to the courts, there is no corresponding decline in backlog. Even though the debtors have reprogrammed their debt with PTK, PTK does not withdraw these cases from the court before the debt is eliminated. Refusal to withdraw these cases provides the PTK with leverage should the debtors renege on their promises to pay the debt. To reflect the fact that PTK is not actively pursuing payment through the judicial process, the municipal court re-characterize these cases as "inactive."

⁶ For the entire calendar year of 2005, the municipal court in Gjilan disposed of 49 cases older than twenty-four months.

⁷ This drastic decline in the clearance rate can be explained by the abnormally high number of cases filed during this reporting period. Specifically, 580 PTK cases were filed, a number that far exceeds the number of

months, a decline of one case in the number of cases greater than 24 months disposed of on a quarterly basis from the previous year.⁸

3. Court Automation

a. Interim Case Tracking System

During this reporting period, NCSC generated a significant amount of momentum in developing the ICTS database in the municipal courts of Pristina, Prizren, and Gjilan. NCSC established the information technology infrastructure, providing training on data entry, and supervised the first phase of data entry in the three courts (inputting ten of the 50 data elements).

In the first part of the quarter, NCSC focused on setting up the necessary infrastructure. Specifically, this entailed the installation of the computers, small local area networks ("LAN") in the offices of the execution clerks, internet connections, and LAN firewalls. The setup designed and implemented by the SITA enables secure access and communication to the ICTS server, including voice communication with the clerks for the purpose of remote training.

With the entire infrastructure ready, NCSC provided intensive training for court staff in the municipal courts in Prizren and Gjilan which required almost a continuous NCSC presence in these courts in the initial weeks. This training started in the municipal court in Pristina at the close of the reporting period. In addition to training, NCSC engaged in constant troubleshooting of recurring problems and bugs in the ICTS software.

The results of NCSC efforts were immediately visible. In the municipal court in Gjilan, court staff inputted into the ICTS ten basic data elements on 600 of the 2100 civil execution cases currently pending.⁹ Court staff in Prizren was even more impressive. Instead of entering the ten data elements of all civil execution cases into the ICTS database, staff there designed a separate Excel spreadsheet. They then entered 16 data elements for all open and closed civil execution cases from 2000 onward, a total of 4,500 cases, 1,700 of which are open cases. NCSC will migrate this data to the ICTS in the first part of the upcoming reporting period. Court staff in both courts has been enthusiastic throughout the process. In both locations, they provided comments on data elements which helped refine the database and make it more relevant to the specificities of civil execution cases.

NCSC technical assistance to the municipal court of Pristina lags behind those of the two other courts. NCSC became bogged down in negotiating the nature of the data entry process, although

PTK cases normally filed per quarter in the municipal court in Prizren. As a general rule, one-third to two-thirds of all civil execution cases filed in Kosovo courts are PTK cases. If there are, on average, about 250 cases filed per quarter in the municipal court in Prizren, that means normally, the court registers approximately 125 new PTK cases per quarter. Similarly, an extraordinarily high amount of civil execution cases involving the collection of expenses for criminal procedures were filed this quarter in the municipal court of Prizren. If approximately five to ten percent of all civil execution cases Kosovo-wide are those involving the collection of expenses for criminal procedures, that means that normally, the court registers approximately 19 new cases per quarter of this type. Had the municipal court in Prizren received in this quarter the amount of PTK and criminal procedure expenses collection cases that it normally receives in a typical quarter, instead of registering 1122 cases, it would only have registered 366 cases. Given that it disposed of 196 civil execution cases in this reporting period, its clearance rate, if only 366 cases had been registered, would have been .54, a figure considerably higher than the .17 it reported for the quarter.

⁸ NCSC's efforts with the municipal court in Pristina are not as advanced. See Section III, Obstacles Encountered.

⁹ It is important to remember that data input is an additional assignment for court staff beyond their normal responsibilities.

the process finally began on the last day of the reporting period. (See Section III, Obstacles Encountered).

NCSC provided a significant boost to the input process by negotiating the direct migration of ten data elements directly from the PTK database of open bills to the ICTS database for the three courts. As a result of this migration, data elements from 5,800 were captured by the ICTS database. Given that there are approximately 15,000 pending civil execution cases in those three municipal courts, this figure is significant.¹⁰

The chart below succinctly summarizes the status of data input in each of the three pilot courts at the end of the reporting period:

Municipal Court	Approximate total # of civil execution cases	Approximate total # of PTK cases	Approximate total # of non-PTK civil execution cases entered into ICTS database or Excel spreadsheet	% of total civil execution cases inputted into ICTS database or Excel spreadsheet
Pristina	11,000	3,800	0	35%
Prizren	1,700	1,000	700	100% ¹¹
Gjilan	2,100	1,000	600	76%

Once the first phase of data entry is complete, the ICTS will be able to generate reports identifying the specific nature of the backlog problem, thereby enabling court management to develop tailored action plans geared towards attacking the problem. This will mark a significant step forward as currently, there is a dearth of information about the nature of the caseload which hampers the ability of court management to make informed decisions concerning backlog reduction efforts.

b. Case Management Information System

The CAC provided technical assistance for the development of the Case Management Information System (“CMIS”) through recommendations on Phases II and III of CMIS. These included a recommendation for an independent analysis of Phase II, including analysis of technical and training aspects of this project, and recommendations on the oversight of Phase III implementation.

4. Records Management

As the result of the implementation of a file purging project in the municipal court in Suhareka with NCSC technical assistance, court staff carried out purging procedures which resulted in the identification and destruction of 13,362 cases in June. A similar project is underway in the municipal court in Lipjan.

5. Court Recording

Midway through this reporting period, NCSC carried out a comprehensive round of technical assistance in nine of the ten pilot project sites. The purpose of the technical assistance was to monitor and evaluate usage, distribute a statistical reporting format, address any technical issues,

¹⁰ It should be noted, however, that the migrated information from the PTK database requires thorough double-checking by the courts.

¹¹ This figure includes the soon-to-be migrated cases in the Excel spreadsheet.

and provide recommendations for increased usage. NCSC staff visited two sites in Pristina, two in Gjilan, and two in Mitrovica, district courts in Peja and Prizren, and the Pristina District Public Prosecutor's Office. Counterparts in six of these nine pilot project sites regularly use the court recording equipment. In the remaining three sites where use is more sporadic or non-existent, NCSC lobbied court staff and judges for increasing use and returned later to ensure scheduled recordings of trials.

By the end of the reporting period, not only had usage increased in the three weaker pilot project sites, but nine of the ten sites submitted a statistical report on audio recording use for the last month of the quarter. The very fact that these sites voluntarily submitted these reports thereby exposing themselves to scrutiny bodes well for the institutionalization of usage of the audio recording equipment. Specifics about usage are contained in the following chart:¹²

	Audio Recording Pilot Court Sites	Potential users (judges)	Number of trials recorded May	Total number of trials	Number of trials recorded June
1.	DC Prishtina	9	none		none
2.	DC Gjilan (2)	6	12	16	9
3.	DC Prizren	5	11	29	12
4.	DC Mitrovica	6	8	14	4
5.	DC Peja	5	5	17	9
6.	MC Pristina	12	9	11	9
7.	MC Pristina (judge's chamber)	1	15	9	9
8.	MC Mitrovica (judge's chamber)	1	4	17	4
9.	DC Pristina Prosecutor's Office	1	6	7	4

Statistical reports, however, do little to convey the impact of the audio recording project. The significance of the project is perhaps better captured in the following success stories:

- Ø In a recent investigation for sexual assault of a minor, Pristina District Court prosecutor Mr. Osman Mehmeti carried out a successful 150-question direct examination of the accused. Prior to installation of the audio recording equipment, Mr. Mehmeti would have had to have asked the accused the same question twice and the accused would have had to have responded twice. This is because it was standard practice to ask the direct examination question, wait for a response, and then repeat the question so that the court reporter could write down. Once the prosecutor repeated the question, the accused had to respond again for the sake of the court reporter.

Needless to say, this logically made the proceeding twice as long as it currently is with the audio recording equipment. More importantly, such a tedious and cumbersome direct examination process effectively limited the flow of the prosecutor's questioning and hampered his ability to successfully extract information from the accused.

¹² There are three observations that must be made regarding this chart: 1) Usage of the audio recording equipment in June in the District Court and Municipal Court of Mitrovica declined from the previous month due to technical problems with the equipment in the first two weeks of the month; 2) NCSC and OJA will focus on providing additional training, technical assistance, and motivation to the District Court in Pristina in the upcoming reporting period; and 3) finally, the statistics from the Prosecutor's Office in the District Court of Pristina show how many times the audio recording equipment was used in sessions during which witnesses were examined prior to the trial.

Mr. Mehmeti noted that with use of the audio recording equipment, he can more effectively carry out cross-examinations as he is in a better position to provide immediate follow-up to the direct examination responses by the witness. This allows him to do his job more effectively. In addition, it also allows him to perform his tasks in the courtroom twice as fast.

- Ø Municipal Court Judge Raima Elezi from Prizren typically conducts her trials in the Bosniak language. Before having the audio recording equipment, she would question an Albanian-speaking witness in Bosniak, the court translator translated her questions into Albanian, the witness responded in Albanian, and the translator translated into Albanian for the judge. After every question, the judge had to summarize her question and the witness's response, in much the same way as the Pristina District Court prosecutor in the above success story.

With the introduction of the audio recording system, it now takes the judge half the time to accomplish what she had done before since she does not have to summarize her questions and the witness's response. Since she spends, on average 56 hours of a 160-hour work month in trial, she has effectively increased the time which she can use to work on other issues by 28 hours a month or 17.5%.

6. Public Information Officer

During this reporting period, NCSC's Public Outreach Advisor ("POA") and an UNMIK/DOJ advisor assigned to the KJC began to collectively function as the *de facto* Public Information Officer ("PIO") for the KJC. At the suggestion of the POA, the KJC Chair agreed to hold a press conference on June 2nd, and the POA worked in the latter part of May with the UNMIK/DOJ advisor in preparing briefing documents for the KJC Chair.

The June 2nd press conference – the inaugural press conference by the KJC Chair – received extensive and positive coverage. Both Kosovo-wide television channels – KTV and RTV21 – reported accurately on comments made by the KJC Chair.

7. Notary Service

Information regarding NCSC's work with the draft Law on Notaries is contained in section II.A.5., above, "Assist in Drafting Regulations and Legislation Pertaining to the Justice System."

8. Alternative Dispute Resolution

Since the impact of NCSC's work with Partners-Kosovo ("P-K") will increase exponentially once a normative framework is adopted for referring cases to mediation, NCSC temporarily suspended its work with P-K pending the promulgation of the necessary secondary legislation.

During May, NCSC worked on modifying an Administrative Direction previously drafted by OSCE providing for the referral of cases to mediation. NCSC presented this draft Administrative Direction to UNMIK/DOJ's LPD in June.

9. Development of Core Competencies

In this reporting period, NCSC carried out the third and fourth seminars in its four-seminar series on core competencies. NCSC presented the third seminar – on caseload management – on April 20-21st. The 38 participants, consisting of presiding judges and court administrators from all over Kosovo – became familiar with the most recent research into court delay, case processing time

standards, possible indicators of caseload management, and proactive management of newly-filed cases. In addition, NCSC reviewed current case management practices in Kosovo courts.

NCSC followed the caseload management seminar on June 16th by a one-day information technology seminar for 38 participants, among them 14 municipal court judges, 15 administrators, and nine officials from either the OJA or KJC.

As a likely result of NCSC's constant attempts to place caseload management on the agenda of the judiciary through such mechanisms as core competencies training, the KJC Chair has elevated this subject matter by requiring all district and municipal court presidents to develop action plans to reduce backlog. NCSC will be assisting in the process in the upcoming quarters.

C. Component III – Enhance Respect for Ethics and Delivery of Quality Services¹³

1. Audit Section

In the previous reporting period, NCSC's Audit Section Advisor ("ASA") focused on training activities as auditors received nearly 160 hours of classroom and "on-the-job" training. In this reporting period, the JAS, led by the ASA, carried out additional training, but also expanded this focus by engaging in a wide array of activities ranging from political support development to carrying out operational activities to defining audit standard operating procedures.

a. Training

The JAS classroom training this quarter consisted of a 32-hour module on risk assessment¹⁴ and strategic audit planning for the seven JAS staff. Three days of classroom training on the theory of risk assessment and long-term audit planning were followed by a one-day mock risk assessment and audit plan exercise. In the following week, the JAS auditors – guided by ASA and an NCSC consultant – applied the concepts learned the previous week by carrying out a risk assessment of the Kosovo justice sector. They incorporated into their risk assessment audit topics provided to them in April by 72 justice sector managers (see below), and then met individually with eight key justice sector stakeholders to validate the risk assessment and otherwise collect their opinions regarding risk. The JAS incorporated these opinions into the draft risk assessment.

This very practical training had a two-prong goal. First, the ASA sought to introduce the JAS auditors to the process of carrying out a risk assessment, particularly its participatory nature. Second, this exercise was meant to maximize buy-in from key stakeholders for a final proposed risk assessment that will be used to form the basis of a strategic audit plan which the JAS will present to the KJC in July.

¹³ NCSC carried out training in annual audit planning and risk assessment, two deliverables required of it in this reporting period. In addition, NCSC engaged in the one activity in the deliverable tracker under Component III identified as ongoing. It provided technical assistance in establishing the process of vetting newly-appointed and sitting judges by commenting on UNMIK's draft vetting proposal, but UNMIK has assumed responsibility for establishing this function.

¹⁴ A risk assessment is a process by which internal auditors and managers use their collective experience to review all key processes of a system according to two main criteria: 1) the likelihood of occurrence of a certain risk in a certain process (of the system), and 2) the impact on the system as a whole if that same risk were to occur. Risk assessments are used to help internal auditors make informed recommendations about the priority given to audit topics within a long-term audit plan.

b. Development of Political Support

Equally important as the technical competence of the JAS is the political support it receives from the judicial leadership. To try and cement that support in this reporting period, the JAS first hosted a one-day seminar for all justice sector managers on April 5th. The seminar introduced all managers to the internal audit process and how the JAS has been trained to use this methodology to improve the functioning of the justice sector. In addition, the JAS presented their findings and recommendations set out in the audit report on statute of limitations expirations in the municipal courts of Vushtrri, Podujeve, and Gjilane. Finally, JAS staff led seven group sessions during which all justice sector managers shared their views regarding which subjects and/or issues concerning court practices and judicial services warranted JAS attention. One of the highlights of the seminar was KJC Chair's emphasis on the JAS as a tool for improving court management.

The JAS augmented this with a presentation to the KJC on May 16th. During this presentation, the JAS Audit Coordinator, the ASA, an NCSC consultant explained the purpose of the JAS, its function with respect to the courts, its relationship to the KJC, the internal audit process, and results from the first audit (see below).

c. Operational Activities

This quarter marked the highest level of operational activities to date by the JAS. JAS worked on four different audit reports which were at different stages of development.

JAS completed the pilot audit, entitled "Identification and assessment of points in the system of criminal procedure that cause the Statute of Limitations to run in criminal case," on April 28th. Apart from involving extensive field work described in the previous quarterly report, this draft was also the culmination of several training sessions during the month of April where the ASA provided training to JAS on writing and legal analysis. The DOJ Director approved the report on June 20th.¹⁵

At the same time that the UNMIK chain-of-command was reviewing the pilot audit, JAS initiated its second audit. This audit, initiated on the order of the DOJ Director, was entitled "Review of the court practices related to the verification of signatures and certification of contracts for the sale of real estate." After significant background research into the matter, the JAS completed audit preparations¹⁶ and finalized the *Internal Audit Mission Order and Opening Statement*. After six opening meetings (at six municipal courts) in early June, ten days of field work (June 5th – 15th) was spent interviewing key court staff, adjusting JAS's testing plan, and conducting testing which consisted of the careful review of over 1400 land transaction cases in the audited courts. Based on their field work and individual reports from each of the six auditors, the JAS completed a draft audit report on June 26th.

The second audit, ordered by the DOJ Director, displaced what were going to be the second and third audits but which ultimately became the third and fourth. These two audits focused on the drafting and delivery of criminal and civil decisions by municipal and/or district courts.¹⁷ In this reporting period, JAS completed proposed *Internal Audit Mission Orders and Opening Statements* for both audits as well as proposed testing processes.

¹⁵ The delay in final approval can be attributed to the bureaucracy built into government authorities still reserved to UNMIK. After completion on April 28th, the Judicial Inspection Unit Head approved it on May 10th, the Judicial Development Department Head on May 26th, and the DOJ Director on June 20th.

¹⁶ In addition to background research, preparations included deciding upon the courts to be audited, identifying team members of the audit, and arriving at a provisional timeline, budget, and testing plan for the individual audit.

¹⁷ Each of the two case types is a separate audit.

d. Standard Operating Procedures

The ASA took a significant step in institutionalizing the JAS by completing the JAS's Audit Manual. This manual of 70 pages memorializes the procedures which the JAS has followed in carrying out its two audits and incorporates European best-practices.¹⁸

2. Judge Reappointment Process

In the first part of this reporting period, the ASA briefed UNMIK's Pillar I advisor responsible for drafting a reappointment proposal and offered specific recommendations regarding the administering of the judicial examination and the proper role for the JIU during the reappointment process. The advisor incorporated suggestions on the latter in his proposal.

3. Judicial Appointment Process (Judicial Vetting Coordination)

NCSC's Judicial Vetting Coordinator ("JVC") continued to march methodically through the process of carrying out background checks during this quarter. During this reporting period, she and her team completed 74 background checks. The background checks were for Initial Legal Education Program ("ILEP") candidates (59), and applicants from under-represented communities (15). Two of the ILEP candidates failed the background check due to criminal history, untruthfulness, false statements, or the submission of false documents. One of the cases was delivered to the Judicial Inspection Unit and the other to the Department of Judicial Administration for further investigation and proper action. In addition, two of the candidates from under-represented communities (a Serbian Kosovar and a Turkish Kosovar) also failed the professional interview. Two Serbian Kosovars voluntarily withdrew their applications.

The JVC and her team nearly completed eight additional background checks for judges under consideration for promotion to court presidents. These checks will be completed in the first part of the upcoming reporting period.

D. Component IV – Public Awareness and Education¹⁹

1. Increasing Public Awareness through the Media

In an effort to increase the level of knowledge of those who report on the justice sector and judicial affairs, NCSC coupled with IREX, a USAID media project, to present a five-seminar series for journalists on court reporting. On April 8th, a local law school professor initiated the training for 21 journalists with a four-hour seminar on such overarching themes as the Kosovo legal context, the Constitutional Framework, judicial independence, and court structures. Training continued two weeks later on April 22nd with the first of two sessions on criminal procedure taught by a member of the team that drafted the Provisional Criminal Procedure Code of Kosovo (PCPCK). This lecturer finished the second four-hour block on the PCPCK on April 29th. Fifteen attended the April 22nd training and 14 the training on April 29th. On May 13th and 27th, 15 journalists received seven hours

¹⁸ It is important to note that this is a living document which will have to be adjusted as the JAS develops and as UNMIK transition questions are answered.

¹⁹ NCSC completed training of journalists in this reporting period and designed a strategy for monitoring and evaluating PIOs, deliverables required under Component IV of the deliverable tracker. In addition, it was in final negotiations with a production company to develop a video; this video, however, was not completed by the June date prescribed in the tracker. It will be completed by the end of August and will be aired in September. NCSC has opted to air it in September to ensure a greater impact. Most likely, the video's impact would have been reduced if it had been aired during the summer vacation period.

of training on the accusatory system and corruption, respectively. These two trainings were the fourth and fifth seminars which concluded the series.

NCSC/IREX's efforts to transmit substantive content through a participatory methodology in these seminars immediately showed signs of success. At the end of May, IREX carried out a comprehensive analysis of the impact of the training and found that stories on the justice sector by participants in the workshop after one month more than doubled when compared with the one month period before the training; that overall story quality on a scale of 1 – 10 improved from 5.36 before the seminars to 6.0 at the end of May; that the percentage reporting facts and not opinions rose from 60% before the seminars to 82% at the end of May; that the citing of multiple sources increased from 53% before the training to 65% at the end of May; and that the percentage showing an understanding of the basic legal process and terminology improved from 77% before the training to 90% at the end of May.

2. Public Outreach

NCSC's POA finished developing the terms of reference for a 15-20 minute video that will form the basis for an outreach program that will outline the development of the judiciary since 1999 and highlight its independence. Production will begin in July.

III. Obstacles Encountered

Statement of obstacle (Obstacles previously identified are highlighted with an asterisk.)	Action taken or recommended	Status
<p>Component I – Bureaucratic obstacles in UNMIK’s Administrative Division, which mistakenly thought that the MOJ needed to approve recruitment of the KJC Secretariat Director despite repeated arguments to the contrary, slowed down the recruitment process for the KJC Secretariat Director. Since this individual will participate in the recruitment of the Court Administration Director in the KJC Secretariat, this delay extends to that position as well.</p>	<p>NCSC, through its CAC, repeatedly tried to eliminate this delay.</p>	<p>Resolved.</p>
<p>Component I – Although it is not recommendable from a technical perspective to draft a complete set of rules of procedures for the KJC at this point in time, the KJC Chair insists on a complete set.</p>	<p>NCSC repeatedly requested a meeting with the Chair of the Committee on Internal Rules and Legislative Matters to develop a rule drafting strategy. The Chair of this committee was unable to commit to a specific date. NCSC has prepared a rule drafting strategy and outline for a full set of rules for presentation to this committee.</p>	<p>Pending.</p>
<p>Component I - The counterpart who was responsible for the Policy and Legislation Division in the MOJ (Acting Head, Department of Legal Affairs) showed himself to be disinterested in strategic planning and establishment of legislative drafting processes within the Policy and Legislation Division.*</p>	<p>The MOJ terminated his employment following his probationary period.</p>	<p>Resolved.</p>

Statement of obstacle (Obstacles previously identified are highlighted with an asterisk.)	Action taken or recommended	Status
Component II – NCSC prepared a document for the PMO outlining nineteen recommendations for modifications to the Law on Notaries. The PMO legal officer partially incorporated only one recommendation into the final PMO draft of the law.	NCSC will engage the Committee on Judicial Legislative, and Constitutional Framework Matters in reviewing the draft Law on Notaries when it is presented to the committee by the executive branch.	Pending.
Component II – There exists questionable political will in the municipal court of Pristina to actively participate in the backlog reduction program.	NCSC devoted a significant amount of time and attention to the municipal court of Pristina in the last part of the reporting period in an attempt to develop political will. As a result of its efforts, a formal agreement was reached on June 30 th to start data input with a team composed of execution courts, court interns, and temporary NCSC staff.	Resolution in progress.
Component III – Other donor groups working with the KLC finance the free distribution of legal materials by the KJC thus hindering NCSC’s efforts to establish a sustainable print publication market.	NCSC recommends that USAID discuss with other donors working with the KLC the possibility of a common strategy geared towards sustainability.	Pending.
Component III – To be effective, the JAS must involve the KJC in its work as soon as practicable, but the JAS remains a reserved power.*	The JAS, with the technical support of NCSC, carried out a presentation for the KJC on May 16 th .	Resolution in progress.
Component III – Given a scarcity of resources, the KJC Secretariat does not have the capacity to provide follow-up for the recommendations made in its pilot audit.	NCSC is exploring the possibility of augmenting the KJC Secretariat’s capacity to provide follow-up by facilitating the temporary involvement of court staff outside of Pristina in the KJC Secretariat.	Resolution in progress.

Statement of obstacle (Obstacles previously identified are highlighted with an asterisk.)	Action taken or recommended	Status
<p>Project Administration - The Memorandum of Understanding (MOU) between USAID and UNMIK that provided the basis for having NCSC staff seconded to UNMIK expired on the last day of the previous quarter, March 30. The lack of an MOU limits NCSC seconded staff's access to the UNMIK email system and UNMIK databases.*</p>	<p>NCSC recommends immediate extension of the MOU by USAID and UNMIK.</p>	<p>Pending.</p>

Quarterly Report Attachments

Component I

1. Component I (Briefing Memorandum, Budget, KJC)
2. Component I (Briefing Memorandum, Disciplinary Committee, KJC)
3. Component I (Briefing Memorandum, Interim Rules of Procedure, KJC)
4. Component I (Briefing Memorandum, Logistics, KJC)
5. Component I (Briefing Memorandum, Time Standards, KJC)
6. Component I (Briefing Memorandum, TOR for Director of KJC Secretariat)
7. Component I (Briefing Memorandum, Vice Chair Election, KJC)
8. Component I (Comment on Draft Law on Notaries)
9. Component I (Draft Law Establishing Liability of Legal Person)
10. Component I (Draft Law on Collusion)
11. Component I (Experts Advisory Group and Policy Paper, MOJ)
12. Component I (KJC IT Organizational Chart)
13. Component I (KJC IT Qualifications and Training)
14. Component I (KJC Secretariat Organizational Chart)
15. Component I (KJC Secretariat Organizational Chart Addendum)
16. Component I (Draft Law on Notaries – trip report to Macedonia)
17. Component I (Memorandum of Understanding)
18. Component I (OJA Organizational Chart)
19. Component I (Rules of Procedure – Committees, KJC)
20. Component I (Rules of Procedure – Meetings and Voting, KJC)
21. Component I (Rules of Procedure – Recruitment, KJC)
22. Component I (TOR – Director of Secretariat)
23. Component I (Time Standards presentation to KJC)

Component II

1. Component II (Briefing Materials for Press Conference, KJC)
2. Component II (Caseflow Management Seminar Materials)
3. Component II (IT Seminar Materials, Part I)
4. Component II (IT Seminar Materials, Part II)
5. Component II (Materials for April Workshop on Backlog Reduction)

Component III

1. Component III (Draft Audit Manual)
2. Component III (Draft Strategic Audit Plan)
3. Component III (Final Audit Report – Statute of Limitations)
4. Component III (Materials for April 5th Seminar for Justice Sector Managers)
5. Component III (Risk Assessment and Strategic Planning Training)

Component IV

1. Component IV (Comparative Study on Access to Information Laws in Judiciary)
2. Component IV (IREX Evaluation of Media Training)



Kosovo Judicial Council
Këshilli Gjyqësor i Kosovës
Судски савет Косова



Council Meeting
12 April 2006
Staff Briefing Memorandum

Agenda Item 6 – Budget Transfer to KJC

Issues for Decision

The Council is to consider requesting that the SRSG and Prime Minister establish the KJC as a new budget organization and transfer the applicable budgets to the KJC.

Background

Pursuant to UNMIK Regulation No. 2005/52, the KJC has full administrative authority for the Council and the courts. Part of this administrative oversight includes administration of the budget. The budgets for the Council and court administration are currently under the authority of the UNMIK Department of Justice. With the creation of the KJC it is necessary that the Council be established as a new budget organization and that those portions of the Kosovo Consolidated Budget now under the authority of the KJC are transferred to it.

Creation of a new budget organization and transfer of budgets between institutions require action by both the Prime Minister and SRSG. The request to the Prime Minister and SRSG should be in the form of a joint memorandum from the KJC and Pillar I. Pillar I has been made aware of the KJC's desire to assume budget authority. Attached is a proposed memo that could be provided to Pillar I as a memorandum of understanding that outlines the necessary budget transfers and requests action from the government and SRSG.

Recommendation

Approve the attached memo and authorize the KJC President to pursue budget authority with UNMIK and the Prime Minister.



*Kosovo Judicial Council
Këshilli Gjyqësor i Kosovës
Pravosudno Veçe Kosova*

Council Meeting
5 April 2006
Staff Briefing Memorandum

Agenda Item 4 – Disciplinary Committees

Issues for Decision

The Council must immediately appoint members to the Judicial Disciplinary Committee and the Prosecutorial Disciplinary Committee.

Background

There is a draft UNMIK regulation governing disciplinary matters for judges and prosecutors. It is expected that the substantive parts of that regulation will be passed as they now exist in draft form. The draft regulation requires that the KJC establish two disciplinary committees, one for judges and one for prosecutors. Each committee is to have three members and only Council members may serve on disciplinary committees. The Vice Chairperson of the KJC will serve as the Chairperson of both disciplinary committees. The remaining members of the judicial disciplinary committee must be judges. The prosecutorial disciplinary committee must have at least two members who are prosecutors.



Kosovo Judicial Council
Këshilli Gjyqësor i Kosovës
Судски савет Косова



Council Meeting
12 April 2006
Staff Briefing Memorandum

Agenda Item 3 – Interim Rules of Procedure

Issues for Decision

The Council is to consider interim rules of procedure so that the Council may conduct meetings, appoint committees, and conduct recruitment for judges and prosecutors.

Background

Since the Council is a new institution it has no rules of its own by which it operates. Until such time as complete Rules of Procedure are developed and approved by the Council, it is understood that the Council operates under the Rules of Procedure used by its predecessor organization, the Kosovo Judicial and Prosecutorial Council (KJPC). Since the Kosovo Judicial Council has far greater responsibilities than did the KJPC, the KJPC's Rules of Procedure will not provide all operational guidance that is necessary.

The most immediate needs are: (1) rules that govern how meetings are conducted, (2) rules that govern the role of Council committees and appointment of committee members, and (3) rules that govern recruitment of judges and prosecutors.

As noted, one proposed Rule of Procedure governs committees and one committee whose establishment is recommended is an Internal Rules and Legislative Affairs Committee. Part of the mandate for this committee is proposing KJC Rules of Procedure for consideration by the Council. The idea is that this committee will be able to consider all proposed rules of procedure in greater detail. Drafts for the three areas outlined above are attached.

Since the Council has an immediate need for such rules, but has not had the opportunity to fully consider them, the rules presented today are to be considered as interim rules of procedure.

Recommendation

- Adopt the proposed draft Rules of Procedure governing meetings, committees and recruitment.
- Refer all three proposed Rules of Procedure to the Internal Rules and Legislative Affairs Committee for full consideration in the coming weeks.



*Kosovo Judicial Council
Këshilli Gjyqësor i Kosovës
Pravosudno Veçe Kosova*

Council Meeting
5 April 2006
Staff Briefing Memorandum

Agenda Item 5 – Logistics

Issues for Decision

The Council must set an interim meeting schedule, establish procedures for the Secretariat on providing meeting materials to Council members, and adopt a Council stamp and logo.

Recommendations

- Meeting Schedule

It is necessary to establish an interim meeting schedule until the final meeting schedule is authorized by the Council. It is recommended that, until such a final schedule is determined, the Council will meet the second Wednesday of every month at 1000 in the KJC Conference Room, Supreme Court Building, Pristina.

NCSC has organized an introductory court management seminar for Council members. The seminar is scheduled for Wednesday, 19 April, from 930-1500 at the Hotel Afa, Pristina.

- Meeting Materials

Until formal rules of procedure are adopted, it is recommended that all meeting materials be provided to every Council member no later than 48 hours in advance of the relevant Council meeting.

- Council Stamp and Logo

For Court documents it is necessary that the Council adopt an office court stamp. A copy of the recommended court stamp is attached.

For Council documents and correspondence it is necessary for the Council to adopt an official KJC logo. A copy of the recommended court logo is attached.



Kosovo Judicial Council
Këshilli Gjyqësor i Kosovës
Pravosudno savet Kosova

Council Meeting
25 April 2006
Staff Briefing Memorandum

Agenda Item 3 – Time Standards

Issues for Decision

The Council is to consider adopting time standards by which to assess the effectiveness of case management throughout the Kosovo courts.

Background

Part of the authority for court administration granted by UNMIK Regulation No. 2005/52 must include case management. In those judicial systems where case management systems are most successful, time standards are adopted by the judiciary's governing organization and used as a measure of the judicial system's performance and progress with the goal of disposing of cases within a reasonable amount of time. They can be used to motivate the courts and serve as a tool for identifying problems in the courts' processes. Time standards can also be used as a tool to measure or justify resource needs such as for new court staff or judges, and can help instill discipline and accountability in the judicial system.

It does not appear that any systematic method of measuring case processing time standards has been used in the Kosovo courts, except perhaps on a random court by court basis. This proposal was previously made to the KJPC which did not take action on the proposal when it was first presented.

In addition to the attached proposal you will find letters from the Court Presidents for the District Court in Gjilan, the District Court in Mitrovica, and the District Court in Prizren, offering their comments on the attached time standards proposal.

Recommendation

- Adopt the time standards on an interim basis;
- Request that the Secretariat draft a memo setting forth the approved standards, and then circulate the memo to all Court Presidents asking that they utilize these standards for purposes of case management;
- Refer the interim time standards to the KJC's Court Administration Committee for further consideration and possible amendment.



Kosovo Judicial Council
Këshilli Gjyqësor i Kosovës
Судски савет Косова



Council Meeting 12 April 2006

Staff Briefing Memorandum

Agenda Item 5- Terms of Reference for the Director of KJC Secretariat

Issue for Decision

The Council will be asked to immediately approve the attached Terms of Reference for the position of Director, KJC Secretariat, and initiate the recruitment process for this position.

Background

According to Article 3.1 of the UNMIK Regulation No. 2005/52 on Establishment of the Kosovo Judicial Council, the Council will be assisted in its work by the Secretariat of the Council, headed by a Director selected by the Council.

Article 3.2 of the Regulation provides that the Secretariat shall assist and advise the Council in carrying out its responsibilities for judicial and court management, and shall be responsible for implementing the Council's decisions, and for all administrative and research functions associated with supporting the Council, according to the rules of procedure for the Council.

Proposed Terms of Reference are attached.

Recommendation

Approve the attached Terms of Reference and authorize the Secretariat to immediately begin recruitment for the position.



*Kosovo Judicial Council
Këshilli Gjyqësor i Kosovës
Pravosudno Veće Kosova*

Council Meeting
5 April 2006
Staff Briefing Memorandum

Agenda Item 2 – Election of Vice Chairperson of the KJC

Issue for Decision

The Council must elect a Vice Chairperson of the KJC.

Background

UNMIK Regulation No. 2005/52, Section 2.6, requires the election of a Vice Chairperson of the KJC who will assume all responsibilities of the President of the Council if he/she is unable or unavailable to carry out the functions of the Council Chairperson. The Vice Chairperson will also serve as the Chairperson of the Judicial Disciplinary Committee and the Prosecutorial Disciplinary Committee.

UNITED NATIONS
United Nations Interim
Administration
Mission
in Kosovo



NATIONS UNIES
Mission
d'Administration
Intérimaire des Nations
Unies au Kosovo

FOR: Ardian Kryeziu, Prime Minister's Office

FROM: Donald Chisholm, Department of Justice

DATE: May 3, 2006

This document is divided into two parts: 1) Substantive Comments and 2) Style, Grammar, and Minor Recommendations.

I. Substantive Comments

- 1) Article 4(1) does not require notary candidates to have passed the bar examination. This has been a subject of discussion in the working group. The Law on Notaries in Macedonia has a similar provision. Since there are two different groups vying to become Notaries (those who have passed the bar examination and those who have not), Macedonian Ministry of Justice authorities have established two distinct notary examinations.
- 2) Article 6 states that four notaries will be members of the Notary Examination Commission. Who will occupy these four positions prior to the first notary examination? Perhaps four (or a lesser number of) Ministry of Justice officials could replace the notaries for the first notary examination.
- 3) Article 8 is not specific about the amount of population per notary. The Regulation simply states that every municipality will have a notary and the amount of notaries in a municipality may be increased if the population exceeds 30,000 persons.

The lack of a fixed standard of notary to population could be very damaging to the notary system. In the absence of a standard, authorities have a significant amount of discretion to increase the notary population. As more notaries chase the same amount of notary transactions, notaries could try to maintain their income with increased production which could affect the quality of work. Alternatively, they might lower their fees, in contravention of the fee scheduled to be established by the Ministry of Justice, to attract more business.

We believe that the Regulation should establish a fixed notary to population ratio that would make it difficult for authorities to unilaterally increase the quantity of notaries to

the detriment of the system. A ratio of 1/30,000 seems reasonable. This ratio takes into account European standards and the Kosovo context.

- 4) Article 9(6) – “The Ministry of Justice entrusts with a notary office those candidates selected by the Commission, who achieved the best results at the Notary Examination.”

This paragraph seems to obligate the Commission to select those with the best scores on the examination. However, paragraph 5 of this same article provides flexibility to the Commission: it permits the Commission to take into account professional background and moral qualities of the candidates seemingly after these candidates have passed the examination. We believe that the Commission must have a certain degree of latitude and not be obligated simply to select those who have the best results from the examination. Therefore, we would recommend that this article read:

“The Ministry of Justice entrusts with a notary office those candidates selected by the Commission, ~~who achieved the best results at the Notary Examination.~~”

- 5) Article 10 provides for the establishment of an Internal Review Board (IRB) composed of two judges and one notary designated by the Assembly of the Chamber of Notaries. It is this IRB that will rule on all appeals for non-selection to be a notary, and it must do so within ten days of receiving the appeal.

This does not seem workable, however, for the first selection process of notaries. Presumably, following the first selection of notaries, the Assembly of Notaries will meet for the first time. But in the event that there are appeals from notary candidates challenging non-selection, no notaries will be appointed (Article 10(4)). The IRB – which rules on non-selection appeals – cannot contain a notary if the notaries have not been appointed pending the resolution of the non-selection appeals. Consequently, for the first selection of notaries, the IRB should probably consist of three judges.

- 6) In Articles 10(3), 10(4), and 10(5), reference is made to the possibility of an appeal by a candidate who is not selected to the district court and the delaying effect his or her appeal has on the decision of appointing all of the notaries. The paragraph notes that the district court must rule on this appeal within 30 days. Should we concern ourselves with the possibility that the district court cannot or will not reach a decision within 30 days?
- 7) Article 14 discusses the liability of a notary. However, no mention is made of the involvement of the Disciplinary Council. Should the Disciplinary Council be informed automatically of any finding of liability of a notary? If not, it would be possible for a notary to repeatedly be found liable for his negligence or misdeeds without any consequences to his standing as a notary.
- 8) Article 17(2) states in part that “[n]either shall the Notary take official actions for

which he has no competence, or which are requested in connexion with an obviously dishonorable or illegal transaction.” We recommend removal of the word “obviously.” If we remove this word, we will be raising the standard of performance.

- 9) Article 17(5) states that “[o]fficial actions undertaken contrary to Paragraph 1 of this Article shall be deemed null and void.” We do not understand why there is no reference to Paragraph 2.
- 10) It should be explicitly stated in the last sentence of Article 26(4) that the reference is to the notary replaced and not the acting notary.
- 11) Shouldn’t the reference in Article 26(5) to the deputy be to the acting notary instead?
- 12) In Article 27(2), it states that a notary’s absence from the office for more than ten working days shall be granted in the case of illness or maternity. Does that mean he or she cannot go on vacation for more than ten days? This sounds harsh. If there is a deputy notary appointed, I don’t see the problem with the notary taking a three-week vacation.

Under this article, a deputy notary serves only when the notary is out of the office for a period of more than ten days. Thus, a notary who is out of the office for less than ten days must close his office. The law does not provide for a deputy notary for less than a ten-day absence. This oversight limits the public’s access to notary services. In addition, it seems excessive that a notary must close down his or her office when he or she leaves for several hours to fulfill professional or personal commitments. The law should provide for a deputy notary who can serve alongside the notary and provide services when the notary is not present in the office (for an amount less than ten days).

- 13) In Article 27(9), it states that “[a] suspended Notary shall not undertake any official activities, under threat of absolute nullity.” This paragraph, or another in this Article, should mandate that notice of suspension should be posted somewhere or published so that citizens are informed.
- 14) Article 28(4) notes that “[t]he suspended Notary pays the Deputy Notary an appropriate fee for the services rendered and the work performed by the latter on his or her behalf.” Implicitly, this means that the suspended notary is still involved in revenue collection. Otherwise, how can we expect him to pay the salary of the deputy notary? This seems very problematic. A better arrangement might be for the deputy notary to collect the appropriate fees and pay his or her own salary.
- 15) I do not understand to which paragraph Article 57(3) refers. It states “Paragraph 3 of this Article,” but such reference does not seem to make sense.
- 16) Article 59(1), in its entirety, states: “Except where otherwise provided in the original

document, the dispatches or copies of the original deed containing one's last will, or whose provisions apply in the case of death of the author of the deed, whether prepared by the Notary or submitted to the notary in writing, may only be issued to the author of the deed or to those explicitly authorized by the author of the deed to receive such dispatches or copies. Proof of such authorization shall be adduced in the form of a certified document signed by the author of the will.”

In the beginning of the paragraph, the drafters refer to 1) the original deed containing one's last will, *and* 2) a deed containing provisions that apply in the case of the death of the author of the deed. However, in the last sentence of the above paragraph, they refer to just the will. Should this last sentence also include mention of the deed whose provisions apply in the case of the death of the author of the deed?

17) Article 64(2)(e) should specify what the compulsory contribution of the notaries to the Chamber of Notaries will be. If the amount is subject to debate in the Chamber of Notaries as the Regulation envisions, there is a strong possibility that the notaries will vote in their personal self-interest (instead of in the interest of the organization) for the lowest contribution possible. If there is not sufficient funding for the Chamber of Notaries, the entire notary system will obviously be placed in jeopardy. We recommend that the amount of the compulsory contribution be 3%. This is the same amount that notaries in Macedonia provide to the Chamber of Notaries, and it seems to be adequate for the functioning of the organization and not overly burdensome to the notaries.

18) Article 64(2)(f) must provide for payment of the president of the Chamber of Notaries (in addition to salaried staff). Payment will ensure that there will be sufficient interest from members of the Chamber of Notaries in becoming candidates for the presidency. It is unlikely that there will be much interest if there is no payment, especially if the president has to close his or her notary office to attend to Chamber of Notaries business.

19) Article 64(2)(h) details one of the responsibilities of the Chamber of Notaries: “Allocate subsidies to retired Notaries and their family members, where necessary.” First, we do not think that notaries – who will likely receive excellent salaries over the course of their careers as notaries – need a retirement subsidy. In the event that a retirement subsidy is deemed necessary, we do not think the *ad hoc* subsidizing of retired notaries is advisable. It would open the door to corruption, or, at least, preferential treatment of certain notaries. A better idea is to authorize the Chamber of Notaries to establish procedures for the subsidizing of retired notaries if subsidizing is warranted.

II. Style, Grammar, and Minor Recommendations

(Words in bold should be added, words crossed out should be eliminated)

1) Article 3(4) – “The authenticity and enforceability of notarised deeds **is** ~~are~~ ...”

- 2) Article 4(1) – ~~“A habitual resident of Kosovo who meets the following criteria is eligible to the Notary Service: A resident of Kosovo who satisfied the following conditions is eligible to become a notary:~~
 - a. ~~Persons of good report, enjoying full legal capacity~~ **Has a good reputation and full legal capacity;**
 - b. ~~Who obtained their Bachelors of Art~~ **Possession of Bachelors of Art ...**
 - c. ~~After completion of~~ **Has completed** 3 years ...
 - d. ~~Who~~ **Has** passed ...
 - e. ~~Who prove that they are in a position to~~ **Have the capacity to provide ...”**
- 3) Article 4(2) – ~~“ May not assume a notary office, those who:~~ **Applicants for the position of Notary are disqualified if they:”**
- 4) Article 5(4) – ~~“ ... They shall further follow~~ **participate in** at least three ...”
- 5) Article 6(3) – ~~“ ... and one advocate, a member of the ...”~~
- 6) Article 7(2) – ~~“All those who meet the eligibility requirements to for ...”~~
- 7) Article 9(2)(a) – ~~“ ... and one advocate, a member of the ...”~~
- 8) Article 9(2)(d) – ~~“ ... necessary to for its activities ...”~~
- 9) Article 10 – ~~“Resources against the attribution of notary offices”~~ should read **“Appeal Process for Non-Selection.”**
- 10) Article 15(9) – reference to paragraph 9 should be replaced by paragraph 8.
- 11) Article 16(5) – ~~“... or in the case ...”~~
- 12) Article 16 (6) – ~~“A Notary’s professional income is the amount remaining with the Notary out of the fees he or she receives after payment of the maintenance costs of his or her office, of the taxes provided by law and of other compulsory payments related to the professional activities of the Notary; out of the fees he or she receives.”~~
- 13) Article 19(1) – ~~“or hold public office.”~~
- 14) Article 20(b) – ~~“... and laterally to the fourth degree, or a spouse ...”~~
- 15) Article 22(1)(h) – ~~“Upon failing to assume office within three months following the publication of his or her appointment in the official publication of Kosovo, unless this period is extended under Article 11(4) of this Regulation.”~~
- 16) Article 27(4) – there should be a space between “be” and “appointed.”
- 17) When the Law on Notaries is referenced within the text of the law, it should be referenced as the Regulation. It should not be referenced as the Draft Law. See, for example, Articles 33(h), 45(3), 55(a)(ii), 57(4), 63(1), 64(2)(i), 75(3), and 76(1).
- 18) Article 36(1) should read ~~“... necessary legal assistance~~ **assistance** ...”
- 19) Article 40(4) should be **“The following may not be a witness ...”**
- 20) In Article 41(1)(b), “personnally” should be “personally.”
- 21) In Article 43(3)(ii), “is conform” should be “conforms.”
- 22) Article 51(2) should be: ~~If so, a notarised deed comprising at least the following information shall be prepared~~ **The notarised deed reflecting the deposit shall contain the following information:**
- 23) “notary” in Article 57(3) should be “Notary.” This change needs to be made three times in this subparagraph.
- 24) In Article 60(2), “Notaries” should be “Notary.”

25) I believe that “taken” in Article 67(3) should be “passed.”

26) The title of Article 70 should be “Arbitration and **D**isciplinary Council.”



UNMIK/REG/2006/XXX
XXXX 2006

REGULATION NO. 2006/XXX

AMENDING THE PROVISIONAL CRIMINAL CODE OF KOSOVO

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council Resolution 1244 (1999) of June 1999,

Pursuant to Article 106 of UNMIK Regulation 2003/25 (Provisional Criminal Code of Kosovo), and

For the purpose of establishing the criminal liability of legal persons,

Hereby promulgates the following amendment:

Section 1 **Definitions**

The term "legal person" means a joint stock company, a limited liability company, a limited partnership, a fund, an institution, a political or social organization, an association of persons, as well as some other legal entity which, within the framework of its regular business generates or provides resources or disposes of them.

The term "ratify" means to approve, whether explicitly or implicitly.

Section 2 **Liability of a Legal Person**

A legal person is criminally liable for a criminal offense committed by the perpetrator in the name of, on behalf of, or in favor of the legal person:

- 1) if the perpetrator is acting on guidance provided to him by the management or supervisory body of the legal person; or
- 2) if, in the absence of such guidance, the management or supervisory body of the legal person otherwise influenced the perpetrator or enabled him to commit the criminal offense; or
- 3) if, subsequent to the commission of the criminal offense, the management or supervisory board ratify the actions that constitute the criminal offense.

Section 3
Penalties

The following penalties may be imposed on a legal person for commission of a criminal offense:

- 1) pecuniary sanctions;
- 2) disqualifying sanctions;
- 3) confiscation;
- 4) publication of judgment.

Section 4
Entry into Force

The present regulation shall enter into force on XX XXXX 2006.

Søren Jessen-Petersen
Special Representative of the Secretary-General



UNMIK/REG/2005/xxx
xxxx 2006

REGULATION NO. 2006/xxx

AMENDING THE PROVISIONAL CRIMINAL CODE OF KOSOVO

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution 1244 (1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration of Kosovo and UNMIK Regulation No. 1999/24 of 12 December 1999, as amended, on the Law Applicable in Kosovo,

Considering UNMIK Regulation No. 2003/25 of 6 July 2003 on the Provisional Criminal Code of Kosovo and considering in particular Chapter XXII Criminal Offences against the Economy thereof,

Recognizing the need to prevent and combat crime in Kosovo,

For the purpose of providing for criminal offenses related to the rigging of bids,

Hereby promulgates the following:

Section 1

Criminal Offense Against the Economy

Collusion in Sales of Public Assets and in Public Procurement

Article 232A

(1) Whoever, while bidding for the purchase of any assets being sold through auction or competitive tender, or otherwise disposed of by a public authority, or bidding or tendering for the sale or provision of goods or services to a public authority or any entity under the administration of a public authority, enters into any agreement, arrangement, or understanding with any other person or legal entity to:

- (a) Engage in price fixing by establishing or adhering to price discounts, by holding prices firm, by eliminating or reducing discounts, by adopting a standard formula for computing prices, maintaining certain price differentials

between different types, sizes, or quantity of products, by adhering to a minimum fee or price schedule, by fixing credit terms, or by not advertising prices;

(b) Engage in bid rigging by suppressing the bids of one or more competitors who otherwise would be expected to bid, or who in the case of a competitor or competitors who have previously bid, withdrawing a previously submitted bid so that the designated winning competitor's bid will be accepted, by submitting a complementary bid that contains a price estimate known to be excessive or special terms that will not be acceptable to the buyer in order to give the appearance of genuine competitive bidding, or by rotating bids between competitors whereby all conspirators submit bids but take turns being the low bidder, or by illicit subcontracting whereby competitors agree not to bid or to submit a losing bid in exchange for receiving subcontracts or supply contracts from the successful low bidder;

(c) Engage in market division or allocation schemes in which competitors divide markets among themselves; or

(d) Otherwise prevent, restrict, or distort competition for any public contract.

shall, in the case of a natural person, be punished by a fine or by imprisonment of up to three years, or in the case of a legal person, be punished by a fine, disqualification from participation from bidding for the purchase of assets belonging to public authorities and from bidding or tendering for the sale or provision of goods and services to public authorities for a period of up to five years from the date of conviction, confiscation of property or assets of the legal person, and publication of judgment.

Section 2

Entry into Force

The present Regulation shall enter into force on _____.

Søren Jessen-Petersen
Special Representative of the Secretary-General

MEMORANDUM

To: **Mr. Jonuz Salihaj, Minister,** Ministry of Justice
Mr. Bardhyl Hasanpapaj, Political Advisor , Ministry of Justice
Mr. Azem Hajdari, Acting Permanent Secretary, Ministry of Justice

Date: 14 April 2006

Re: Framework on the White Book and the Functions of the Council of Experts

From: Ardita Metaj, Staff Attorney/USAID/NCSC

INTRODUCTION

The Memorandum below is a draft document intended to initiate the process of the establishment of the Council of Experts, Drafting the Strategic plan and the White Book in accordance with the priorities assigned by the Ministry of Justice.

Drafting the Strategic Plan is a very complicated and very important process for the MOJ. Accomplishment of this task requires full involvement of all key actors in lading positions in the MOJ and technical contribution of the experts in the specific fields of the Council of Experts.

This process also requires a better coordination with all the parties involved in this process. Key MOJ persons for this process will be: Mr. Bardhyl Hasanpapaj, Political Advisor , Ministry of Justice.

The process of drafting the strategy for MOJ will be supported by DFID and USAID/NCSC. These two organizations will cooperate closely with MOJ staff and with each other for accomplishing this task and not duplicating works.

Advisory Council of Experts will be established by Ministry of Justice right after the establishment of this Ministry with the tasks and competencies in drafting general development and strategic policies of the Ministry of Justice.

The functions of the Advisory Council of Experts of the Ministry of Justice

- Sets key principles of MOJ functioning presented in the WHITE BOOK and the implementing policies of these principles;
- Draft key framework of strategic plan and development for MOJ;
- Recommends strategic objectives of MOJ including all the departments and the areas of MOJ competencies;

- Drafts development frameworks for the MOJ in accordance with applicable law;
- Recommends specific development policies for specific areas of MOJ competencies;
- Recommends focus areas of the activities and long term priorities of MOJ;
- Sets and changes strategic priorities every calendar year;
- Sets time limits for the accomplishment of the objectives;
- Develops indicators for assessing the strategic plan progress;
- Offers recommendations and advices for the Minister according to his requests;
- Other
-

Example/Objectives

- Develop policy and the process for the legislation in accordance with recent standards;
- Drafts guidelines for the development and implementation of prosecutorial policies in Prosecutorial Offices;
- Professional empowerment and capacity building for the staff of the Ministry;
- Correctional system in accordance with the highest international standards;
- Develops policies ensuring the fair access in the justice system:
- Appropriate help for crime victims;
- Functioning of the correctional system in accordance with international norms and standards;
- Dignified representation of the government in court procedures and arbitration tribunals;
- Services with experts for the Government in reaching the agreements in international field of cooperation;
- Cooperation with local community;
- Cooperation with international community;
- Other;
-

The Council should work in accordance with the rules set by the MOJ and signed by the Minister of Justice. These rules should set responsibilities, competencies of Council members and the manner of its functioning

Strategic plan will be completed in details with the action plan drafted under the guidance of the directors coming from respective departments or responsible bodies in the specific areas.

ACTION PLAN

Action Plan contains concrete action steps towards the accomplishment of strategic objectives, time limits, responsible authority and other parties involved in the process and also financial costs.

Directors of the Departments are the key persons for the drafting and the implementation of the action plan fro the specific sector.

THE WHITE BOOK

MOJ White book presents the summary of all key principles on which MOJ functions and acts, always in accordance with the Applicable Law, Overall Governmental Program and towards reaching the highest international standards.

The principles in the White Book are set by the Ministry of Justice. These principles are also recommended by the Advisory Council of Experts in MOJ.

Principles in the White Book at the same time are also the strategic objectives of MOJ.

Example/Principles in the White Book

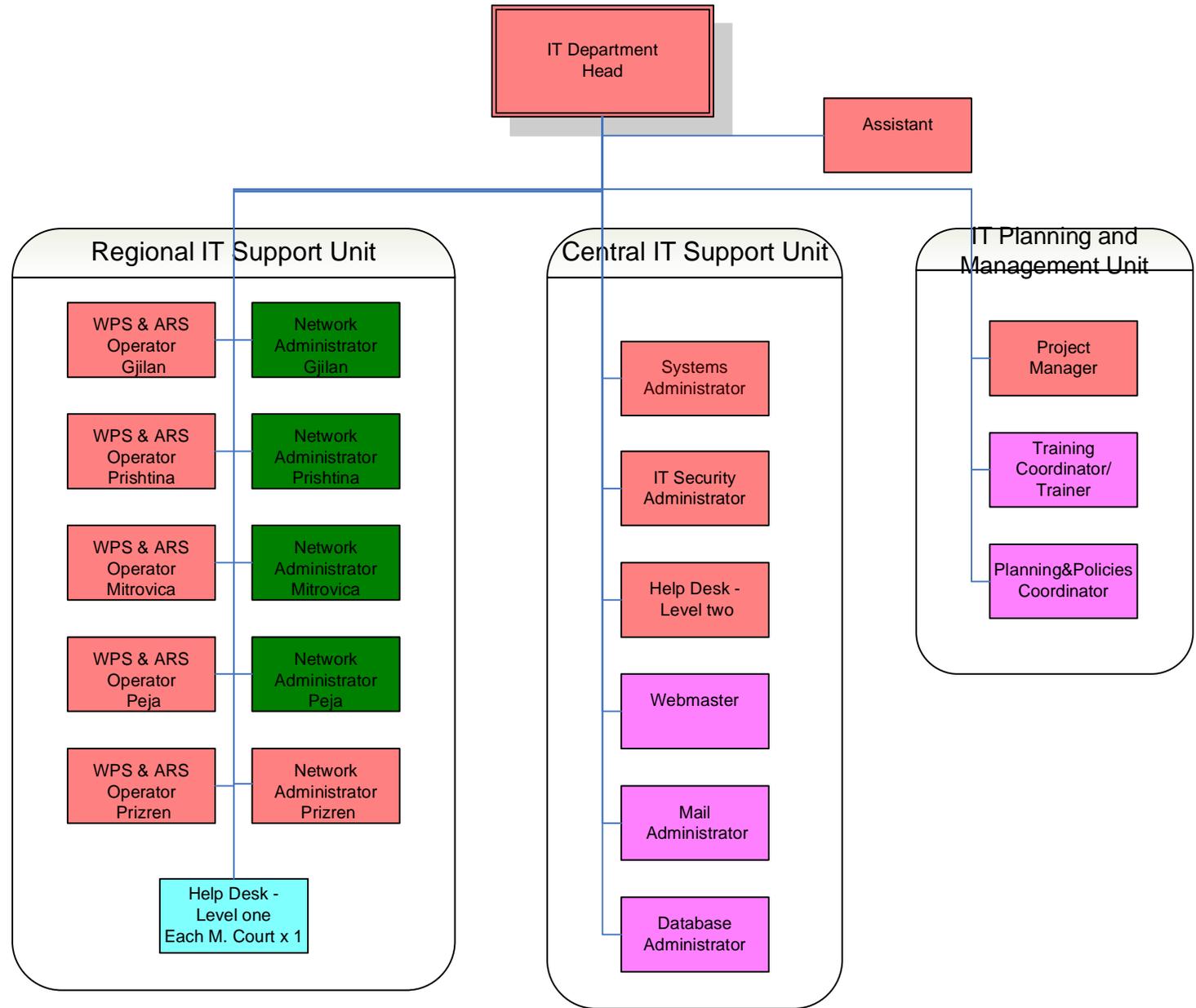
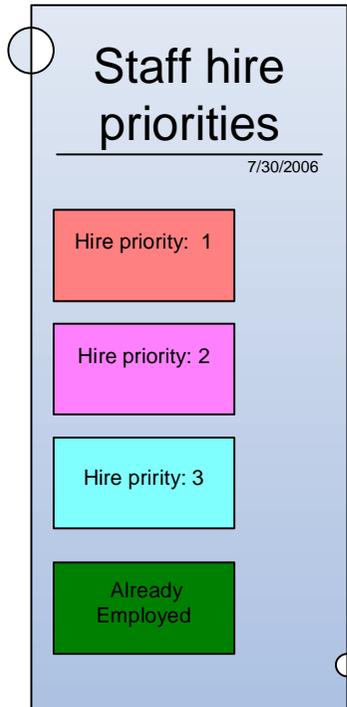
- Full and equal access in the Justice System;
- Setting the standard procedure for drafting the legislation in justice sector including public prosecutor offices, based on general development policies and the objectives of MOJ;
- The development of Justice;
- Professional and fair services in all areas;
- Guaranteed appropriate help for all the victims of crime;
- Full cooperation with all justice sectors;
- Functional Correctional service in accordance with international norms and standards;
- Professional capacities of MOJ;
- The maintenance of professional and functional independence of Public Prosecution of Kosovo and Correctional System of Kosovo;
- Other
-

The White Book will be completed with other documents which present implementing policies of the principles set out in the White Book.

These policies will ensure the full implementation of all principles and strategic objectives of MOJ.

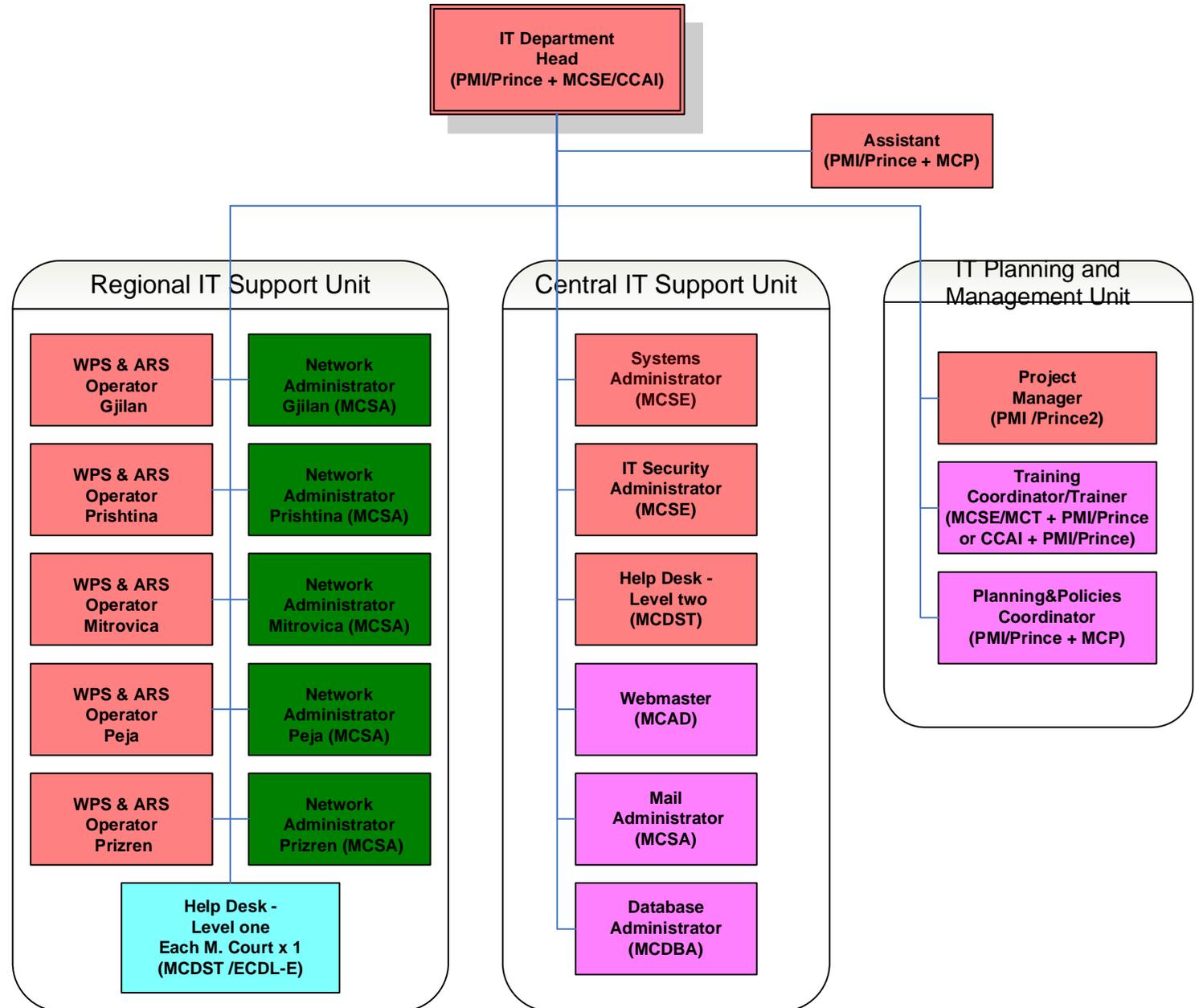
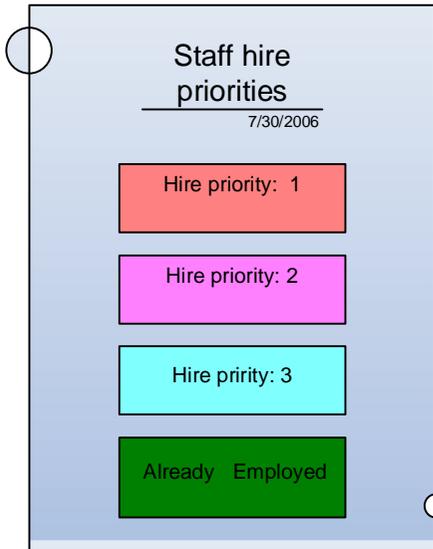
Kosovo Judicial Council IT Department

Date: 7/30/2006

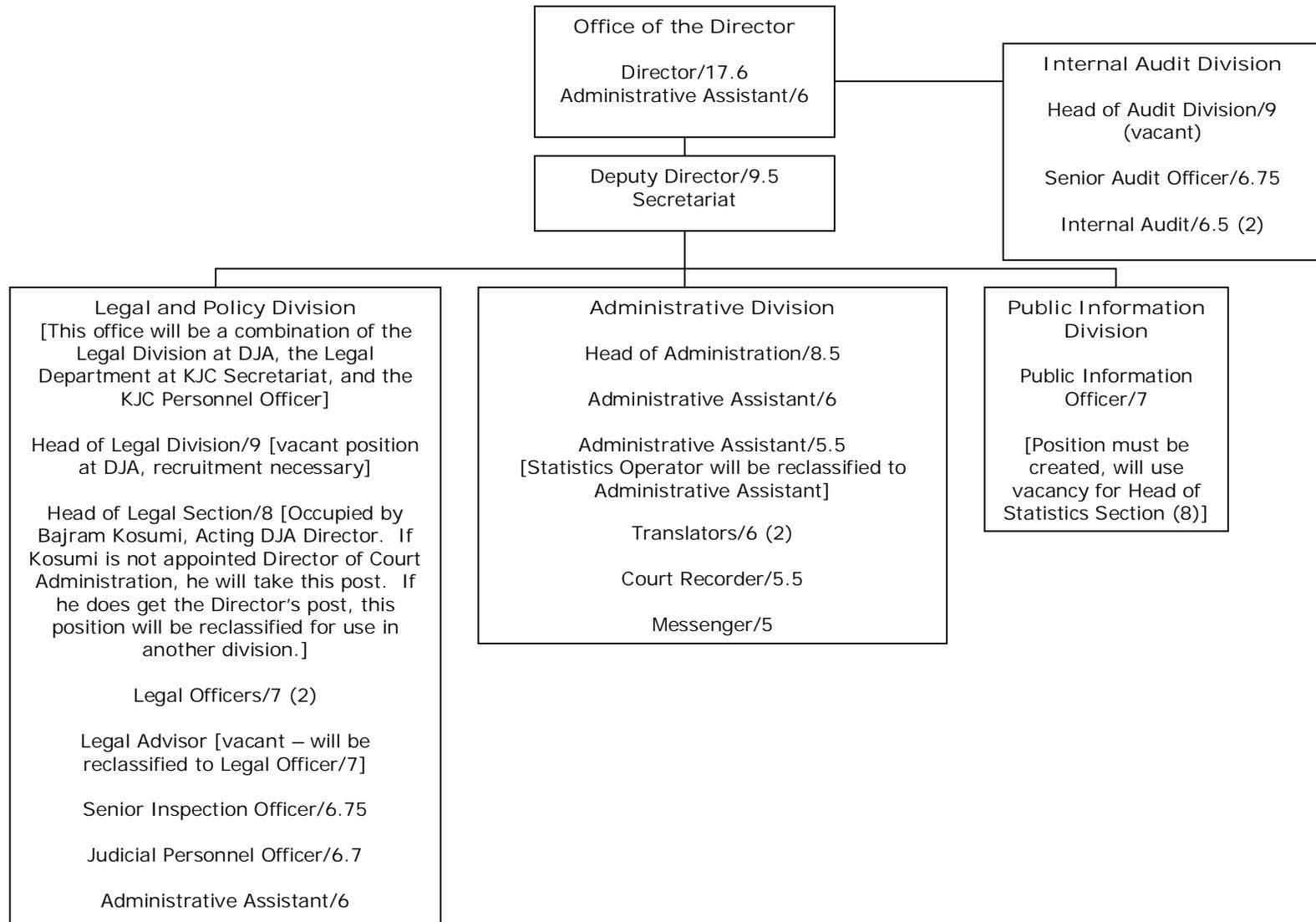


Kosovo Judicial Council IT Department

Date: 7/30/2006



KJC Secretariat
Organizational Chart with Staff



Legend

Title/Multiplier (number of positions if more than one)

Kosovo Judicial Council Secretariat Organization Addendum

Certifying Officer:

Reports directly to the Director of the KJC Secretariat

- Is responsible for all work related to management of expenditures within the Public Finance Management Law.
- Function independent from procurement and/or procurement processes to ensure its independence to prevent misuse and fraud.
- Verifies all relevant expenditure documents conducted or to be conducted from Kosovo Consolidated budget in the budget organization in order to ensure accordance with existing rules and procurement regulations for goods and services.

Internal Audit Division:

Reports directly to the Director of the KJC Secretariat

The Internal Audit Division is responsible for conducting audits of the KJC Secretariat and of Courts, under the direct supervision of the Director. The primary focus of the division is on the integrity and efficiency procedures for the handling of property, assets and finances of the judiciary. Reports are made to the Director for his or her review and action.

Council Support Office:

Legal and Policy Division: The Legal and Policy Division will provide direct policy support for the Kosovo Judicial Council, reviewing and reporting on legal and administrative policy issues coming before the Council. Division staff will make recommendations as directed by the Council and by the Director on matters coming before the Council. The division will draft rules, policy directives and correspondence as needed for Council business (or may review materials submitted by others). The division will provide professional staff support for meetings of the Council and of its standing and ad hoc committees.

Administrative Unit: This unit is responsible for providing administrative and logistical support for the Council and Council committees, and for the Legal and Policy Division. Support will include scheduling and sending notice of meetings; arranging meeting facilities, and transportation; and recording meetings. The unit will also provide interpretation services for Council and Committee meetings, and translation services for minutes, rules and other Council documents.

Public Information Officer: The Public Information Officer is responsible as the principal liaison on behalf of the Council and the Secretariat with the media and the general public. The Public Information Officer will be the point of contact for media inquiries, will keep the media and public informed regarding Council activities through press releases and public information brochures, and will provide assistance to Council members in interacting with the media.

Office of Judicial Administration

Organizational Structure and their Duties

The Department of Judicial Administration was established based on UNMIK Regulation No. 2001/9 set up by Constitution Framework. In May 2002 was attached to Ministry of Public Services to provide support to Judicial Institutions. Pursuant to UNMIK Regulation No. 2005/52, the personnel and assets of the DJA are to be allocated between the KJC and the Ministry of Justice. By order of the KJC, the portion of DJA allocated to the KJC has been re-named the Office of Judicial Administration.

Working Duties

Office of Judicial Administration performs functions in accordance with Chapter 5.3 (b)-(h) of Constitution Framework on Interim Self-government.

- i) Performs duties in relations to organizing and regular functioning of courts, within existing courts structures.
- ii) Ensures, develop and maintain court and prosecutor's services.
- iii) Ensures for technical and financial conditions to support staff and material means for effective functioning of courts and prosecutor's system
- iv) In cooperation with OSCE prepares legal personnel including professional and specialization capacity
- v) Organizes qualification exams fro judges, prosecutors, legal staff and other legal specialists through establishment of an independent professional body.
- vi) Appoint and prepare, takes disciplinary measures and fires members of judicial support staff.
- vii) Ensures cooperation on issues related to judicial system
- viii) Cooperate with relevant organizations in relation to independent oversight of judicial system.
- ix) Ensures information and statistics for judicial system.
- x) Secure personal information in relation to judicial system.
- xi) Ensures cooperation with relevant entities within Kosovo regarding judicial issues.

Organizational Structure and duties Office of Judicial Administration is headed by Director under Supervision of Permanent Secretary of MPS

Officeof Judicial Administration is organized and structured into following divisions:

Kosovo Judicial Council Secretariat Organization

Addendum

13-06-2006

Page 2 of 3

Human Resources Division
Procurement Division
Logistic Division
Finance & Budget Division
IT Division, and
Research and Statistics Division

Human Resources Division

- Is responsible for employment policy in accordance with applicable law;
- Appoint and prepare, takes disciplinary measures and fires members of judicial support staff.
- Ensures fulfillment of posts, selection procedures, recruitment and changes in the payroll of employees managed by the Office in accordance with legal provisions.
- Responsible for capacity building and training policy of civil servants managed by OJA. Identify civil servant's needs for their building professional capacity in accordance with working needs.

This Division is organized and structured into Sections:

Personnel Section
Training Section

Personnel Section

- Conducts actions in accordance with employment policy based on applicable law.
- Ensures for fulfillment of vacant positions, selection procedures, recruitment and changes in the payroll of employees managed by the Office in accordance with legal provisions
- .Collect information for improving working procedure and standards, and creates working methods for efficient functioning and perfection of personnel section.

`TRIP REPORT

From: Agon Vrenezi, Staff Attorney

To: Dan R. Deja, COP

Al Szal, DCOP

Don Chisholm, LDM

Gazmend Mejzini, PM

Subject: Fact finding about the implementation of Notary Services in Macedonia

Date: April 27, 2006

GENERAL INFORMATION

On April, 27 2006 the NCSC LDM and NCSC/IFES Staff Attorney visited Skopje, Macedonia on the fact finding mission related to the implementation of the Notary services in Macedonia.

Our meetings were scheduled by the USAID MACEDONIA Court Modernization Project (DPK) Legal Coordinator Nena Ivanovska.

During our visit we met several key persons that were involved in the implementation of Notary Services in Macedonia. Separate meetings were held with Mr. Zlatko Nikolovski, president of the Notary Chamber of Macedonia, Mrs. Nade Simjanovska, the head of Department for Bar and Public Notaries in the Ministry of Justice of Macedonia, Mr. Nikola Stojmenovic, public notary and Mr. Mihael Cosev, public notary.

In addition to these meetings we met Mr. Joseph J. Traficanti Jr. USAID MACEDONIA Court Modernization Project (DPK) COP.

OVERVIEW OF OUR MEETINGS

I. Meeting at the Macedonian Chamber of Notaries

Meeting with the president of the Chamber of Notaries of Macedonia, Mr. Zlatko Nikolovski was held at the Chamber's offices, and in addition to the NCSC LDM and NCSC/IFES Staff attorney present were USAID Court Modernization Project in Macedonia Legal Coordinator, Ms. Nena Ivanovska and the interpreter Mr. Ognjen Zogravski.

The Assembly of the Republic of Macedonia has approved the Law on Notaries in Macedonia on October 25, 1996 (Official Gazette of RM no.59/96). This law started to apply as of October 1, 1997.

The president gave an overview of the establishment and the functioning of the Macedonian Chamber of Notaries. Macedonia as other European countries has accepted a Latin Notaries system and the Macedonian Chamber of Notaries is a member of the International Union of Latin Notaries (UINL), which is the major international organization of notaries.

According to the Macedonian Law on Notaries, notaries are professional lawyers and public officials appointed by the State to confer authenticity on legal deeds and contracts contained in documents drafted by them and to advise persons who call upon their services.

The Croatian Chamber of Notaries has assisted in course of establishing a notary system in Macedonia, The Notary profession is a *numerus clausus* profession in Macedonia with a ratio of 1 notary per 20.000 inhabitants set by law.

With regard to the Chamber, it has two permanent employees, the president, who works on voluntary bases, a governing board, an assembly, a commissions on various matters.

Up to now, the Chamber has received 50 complaints by the parties, and the president stated that there was a case of dismissal of a notary from the office.

Each notary contributes to the Chamber's budget by giving 3% of its gross revenues.

The president was emphatic on two points: 1) that the legislation establishing the amount of compulsory contributions; otherwise there would be a tendency for the notaries to underfund the Chamber in order to keep more of their revenue; and 2) that the legislation establish clearly a ration of notaries to population. Otherwise, the notary system can be tampered with by the Minister of Justice who would seek to return political favors by creating more notary positions thus diluting the notary corps.

II. Macedonian Ministry of Justice

Meeting with Mrs. Nade Simjanovska, the head of Department for Bar and Public Notaries in the Ministry of Justice of Macedonia, was held at the Ministry of Justice conference room.

Mrs. Simjanovska gave an overview on how the Notary Exam is organized and composition of the Notary Commission, the Rulebook on the Notary Exam. According to Mrs. Simjanovska, there are 127 public notaries in Macedonia, of which 44 are in Skopje. The Notary Exam is composed of written and oral part. The candidates who are successful on the written part have the right to enter the oral part of the exam. The Notary Exam is composed of questions from the Civil Law, Notary Procedures and Commercial Law.

Lawyers who have the Bar Exam will not take the full version of the Notary Exam but only the parts that are not on the Bar Exam.

Mrs. Simjanovska has informed us that first 50 notaries were appointed directly by the Minister of Justice.

III. Meetings with two public notaries

Meetings with Mr. Nikola Stojmenovic and Mr. Mihael Cosev, public notaries were held in their offices. Both notaries were very critical towards the interference of the Ministry of Justice in the competencies of the Chamber of notaries with regard to appointment process. They criticized the MOJ in favoring Bar Association vs. Chamber of Notaries.

As they explained the role of the Chamber is symbolic, and the chamber itself does not have a saying in any important matter related to the notaries work.

Mr. Stojmenovic has addressed the issue of not unified notary fees in Macedonia, and the phenomena that is widespread in Macedonia that notaries charge different fees for same services.

Mr. Stojmenovic criticized also the pure role of the MOJ in inspecting the work of the notaries, and has informed us that his work was inspected only ones in eight years.

Mr. Stojmenovic and Mr. Cosev have suggested that notaries in Kosovo should have their deputies, that would replace them while they are out of the office. In addition they suggested that in Kosovo, the president of the Chamber should receive a salary or honorarium for his work as a Chamber`s president.

Also raised was the necessity of paying the president of the Chamber a salary. In the absence of an financial incentive in Macedonia, there has never been more than one candidate who has sought to become president. This has had a negative impact on the quality of those who seek the presidency.

Both notaries were also emphatic about the substandard job of monitoring the notaries that the Ministry of Justice has done. They stressed the need of having sufficient resources in the Ministry of Justice to monitor and evaluate the notaries.

Finally, Mr. Cosev emphasized the importance of reaching out to the bar during the implementation phase of the notary system. In Macedonia, there was no outreach effort and consequently, there is much friction between the attorneys and the notaries. Much of this friction is based on misperceptions that could have been resolved early in the implementation phase.

MEMORANDUM OF UNDERSTANDING
BETWEEN
MINISTRY OF JUSTICE (PISG),
MINISTRY OF PUBLIC SERVICES (PISG),
DEPARTMENT OF JUSTICE (UNMIK),
AND
KOSOVO JUDICIAL COUNCIL
ON THE DIVISION OF THE
DEPARTMENT OF JUDICIAL ADMINISTRATION

This Memorandum of Understanding outlines the partition of the Department of Judicial Administration. The parties agree as follows:

Article 1
Parties

1.1 The Parties (“Parties”) to this Memorandum of Understanding (Memorandum) are:

Ministry of Public Services (MPS), Government of Kosovo;

Ministry of Justice (MOJ); Government of Kosovo;

Kosovo Judicial Council (KJC); and

UNMIK Department of Justice (DOJ).

Article 2
Purpose of this Memorandum

2.1 UNMIK Regulation Nos. 2005/52 and 2005/53 establish the Kosovo Judicial Council and Ministry of Justice, respectively. Pursuant to UNMIK Regulation No. 2005/52, the Kosovo Judicial Council will have authority for administration of the courts of Kosovo, while UNMIK Regulation No. 2005/53 transfers administration of the offices of the Kosovo public prosecutors to the Ministry of Justice. Both of these administrative functions are currently the responsibility of the Department of Judicial Administration (DJA) and were, prior to promulgation of these regulations, under the authority of the Ministry of Public Services. With the creation of these new organizations it is necessary to reallocate these budgets, staff, assets, contracts and facilities that are associated with judicial and prosecutorial administration.

To this end, UNMIK/Pillar I created a working group with representatives from all parties to make recommendations on this division.

- 2.2 This Memorandum indicates the agreement of the Parties regarding how the approved 2006 DJA budget will be allocated among the Parties effective 1 July 2006. In addition the Memorandum sets forth the division of inventory, assets, long term supply contracts, and archive and personnel files from DJA to MOJ and KJC, respectively.

Article 3 **Inventory**

- 3.1 Any inventory currently in use by the courts will become the property of the KJC. Any inventory currently in use by each prosecutor's office will become the property of MOJ. Should there be any inventory in common use by courts and prosecutor's office, such as that in the shared facilities set forth in Article 4, DJA shall determine, as questions of ownership arise, whether the inventory was purchased on behalf of the courts or prosecutors' offices, and that inventory shall become the property of KJC or MOJ, respectively.
- 3.2 Annex 1 sets forth the division of inventory currently housed in the DJA warehouse in Gracanica.
- 3.3 Annex 2 sets forth those vehicles that will be transferred from DJA to MOJ. It is agreed that the parties will undertake steps necessary to transfer title or any other measures required to effectuate these transfers as soon as possible following the effective date of this Memorandum and not later than 31 December 2006. All vehicles not set forth in Annex 2 and owned by DJA will be transferred to KJC.
- 3.4 DJA, in cooperation with DOJ, is currently in the process of purchasing 21 new vehicles for use by courts and prosecutors' offices. As the purchase of new vehicles is underway, it is not possible to identify these vehicles by make or model. However, it is understood that seven of the purchased vehicles are for use in prosecutors' offices as follows: District Public Prosecutor's Office Prizren, District Public Prosecutor's Office Gjilan/Gnjilane, Municipal Public Prosecutor's Office Prishtinë/Priština, Municipal Public Prosecutor's Office Prizren, Municipal Public Prosecutor's Office Pejë/Peć, Municipal Public Prosecutor's Office Gjilan/Gnjilane, and Municipal Public Prosecutor's Office Gjakovë/Đakovica. DJA will complete the purchase of vehicles for these offices on behalf of MOJ.
- 3.5 There are 19 vehicles that are the property of MPS but are currently being used by DJA. Those vehicles are itemized in Annex 3. MPS agrees to allow MOJ and KJC use of these vehicles and will provide all documents necessary for this use to continue. MOJ and KJC are responsible for proper registration and maintenance of these vehicles so long as they have use of them. However, it is understood that MPS retains legal ownership of the vehicles outlined in Annex 3. Should MPS seek to take possession of any vehicle listed in Annex

3, MPS agrees to give written notice to the entity using the vehicle no later than three months prior to the date MPS seeks to take possession.

Article 4
Building Facilities

- 4.1 Except as otherwise set forth in Annexes 4 and 5, all building facilities currently owned, leased or otherwise occupied by DJA will be transferred to KJC. DJA will transfer any titles or other legal documents necessary for ownership and/or occupancy as soon as practicable following the effective date of this Memorandum but no later than 31 December 2006.
- 4.2 Annex 4 sets forth those building facilities that are occupied solely by prosecutors' offices. Those facilities, along with any titles or other legal documents necessary for ownership and/or occupancy, will be transferred to MOJ as soon as practicable following the effective date of this Memorandum but no later than 31 December 2006. The Parties agree that MOJ is responsible for the maintenance, security and payment of utilities for the prosecutors' offices located in these facilities.
- 4.3 Annex 5 sets forth the five facilities in which courts and prosecutors share premises. The Parties agree that DJA, or its successor organization, will continue to maintain, secure and pay all utilities for these premises through 31 December 2006. During this period, the Parties agree to find a suitable solution for either the relocation of some or all offices in these facilities, or to come to an understanding concerning future shared use.
- 4.4 MPS hereby authorizes KJC and DJA or its successor organization continued use of Container No. 3, Rilindja area. Should MPS require KJC, DJA or its successor organization to vacate Container No. 3 so that MPS may use these premises for their own use, MPS agrees to give KJC written notice of this intention no later than four months prior to the date MPS seeks to take possession of Container No. 3.
- 4.5 Both MOJ and KJC shall continue to share use of the Graçanicë/Gračanica warehouse, until such time as this arrangement is no longer feasible. Costs associated with maintaining this facility, including but not limited to security, administration and payment of utilities, will be shared by MOJ and KJC based on a pro rata use of the warehouse.

Article 5
Contracts

- 5.1 DJA or its successor organization will remain legally bound by any contract in place for the benefit of both the courts and prosecutors. It is understood that DJA is not a party to any goods or services contract that terminates later than 31 December 2006. It is further understood that any contract covered by this Article that is for the benefit of both the courts and prosecutors will not be renewed unless expressly agreed to by both KJC and MOJ.

Article 6
Archive

- 6.1 DJA or its successor organization will retain possession of all documents housed in the DJA archives. DJA or its successor organization will honor in a timely fashion any request by MOJ for copies of any document located in the DJA archives that pertains to prosecutors, or any other matter transferred to MOJ pursuant to UNMIK Regulation Nos. 2005/52 or 2005/53, any other UNMIK Regulation that concerns the authority of MOJ, this Memorandum, or any subsequent agreement made between the Parties. DJA shall retain the original documents unless MOJ requires the original documents and the request for such original documents is made in writing.

Article 7
Kosovo Consolidated Budget Staff

- 7.1 Annex 6 sets forth the Kosovo Consolidated Budget (KCB) staff positions that will be transferred to MOJ. Annex 6 includes positions for public prosecutors (92), positions for prosecutorial support staff (248), and positions for central administrative support from DJA (11). DJA's Human Resources Division will undertake the steps necessary to transfer the 340 positions for prosecutors and prosecutorial support staff to MOJ. All transfers are to become effective on the date set forth in Article 10 of this Memorandum. MOJ agrees that it will take the steps necessary to physically relocate the 11 central administrative support staff transferred to MOJ as soon as possible, and that all relocations will take place no later than 1 October 2006.
- 7.2 Those KCB staff that are classified as security staff and provide security for prosecutors' offices will be transferred to MOJ pursuant to Section 7.1 of this Memorandum. However, the security division at DJA or its successor organization will provide policy, administrative and supervisory oversight of prosecutorial security staff until such time as MOJ requests transfer of supervision, but in no event later than 31 December 2006. During this period MOJ will take the steps necessary to organize an internal security division that will assume supervision of the security staff no later than 1 January 2007.

Article 8
Budget

- 8.1 The Parties will take the steps necessary to create MOJ and KJC as unique budget organizations. Upon creation of these new budget organizations, the DJA budget will be transferred to MOJ and KJC as set forth in Annex 7 and subject to Sections 8.3 and 8.4 of this Memorandum. Budget transfers will become effective as of the date set forth in Article 10 of this Memorandum.
- 8.2 All capital projects for the benefit of the prosecutors and for which funds were allocated in the 2006 budget will be completed under the supervision of KJC and DJA or its successor organization. Said projects are set forth in Annex 7.

- 8.3 KJC agrees to pay all utilities, including electricity, telephone and water charges, for the prosecutors' offices through 31 December 2006. That portion of the budget allocated for utilities will not be transferred in 2006. It is understood that the budget for utilities necessary to support the prosecutors' offices from 1 July through 31 December 2006 is €38,091. MOJ is responsible for the payment of any utility costs for prosecutors' offices that exceeds €38,091 through 31 December 2006.
- 8.4 KJC agrees to pay all maintenance invoices for facilities occupied in whole or in part by prosecutors' offices through 31 December 2006. That portion of the budget allocated for maintenance will not be transferred in 2006. Should the DJA Finance Division determine that this maintenance budget will be significantly insufficient to support the prosecutors' offices, the Parties agree to take the steps necessary for MOJ to reimburse KJC for all reasonable additional expenses.
- 8.5 KJC and MOJ will assume expenses for fuel for heating and generators for the courts and prosecutors' offices, respectively. It is understood by the Parties that fuel suppliers will issue separate invoices for courts and prosecutors' offices, on a pro rata basis, in those shared facilities set forth in Annex 5.

Article 9
Cooperation

- 9.1 KJC and MOJ agree to cooperate to the fullest extent possible to ensure the smooth transition of functions from DJA. To this end MOJ and KJC agree to establish a procedure by which DJA or its successor organization will provide technical advice concerning administration of the prosecutors' offices as long as MOJ and KJC deem necessary.

Article 10
Legal Construction

- 10.1 The Albanian, English and Serbian language versions of this Memorandum are equally authentic. Should there exist a conflict between these versions, the construction set forth in the English language version shall control.
- 10.2 Any inventory, budget provision, facility or other article not specifically referenced in this Memorandum shall be transferred to KJC.
- 10.3 This Memorandum and its Annexes represent the entire Agreement among the Parties. Any modifications to this Memorandum require the written agreement of all Parties.

10.4 All provisions of this Memorandum shall become effective upon execution, unless otherwise stipulated herein.

Signed in three copies in Prishtinë/Priština, this ____ day of July 2006:

On Behalf of the Ministry of Justice

Name:

On Behalf of UNMIK Department of Justice

Name:

On Behalf of the Ministry of Public Services

Name:

On Behalf of the Kosovo Judicial Council

Name:

Annex 1
DJA Warehouse at Gračanice/Gračanica
 Inventory as of 31 May 2006

Item	Inventory	For Use by Prosecutors' Offices	For Use by KJC
Chair with Wheels	18	5	13
Chair with Wheels	7	1	6
Coat Stand	17	7	10
Computer Table	70	10	60
Conference Chairs	79	19	60
Cork Board 120x90	7	2	5
Drawers	45	15	30
Electronic Typewriter	10	3	7
Filing Cabinets	34	10	24
Filing Cabinets 2-Drawer	5	1	4
First Aid Kit	65	15	50
Generator Wilson P30e	1		1
Heaters Gas	10	2	8
Fluorescent Jackets	39		39
Metal Cabinet 8-Locks	28	3	25
Photocopier Xerox Wcm20	1		1
Printer Samsung M12551	1		
Safe Metal	11	3	8
Snow Chains	13	3	10
Stand For Witness	1		1
Table 100x60x60	14	4	10
Table Office 120x70x80	81	21	60
Table Office 140x70x80	1		1
Toner 12a	6	1	5
Toner 15a	30	5	25
Toner 39a	2		2

Annex 2 Vehicles

The vehicles listed below which are currently used by prosecutors' offices will be transferred, together with the necessary documentation, by DJA to MOJ:

No.	License Plates	Vehicle type	Institution name	Location
1	286-KS-047	Hyundai Galloper 2.5	DJA	Prishtinë/Priština
2	668-KS-654	Lada Niva 1.7	MPPO	Prizren
3	668-KS-664	Lada Niva 1.7	DPPO	Prizren
4	668-KS-663	Lada Niva 1.7	MPPO	Mitrovicë/Mitrovica
5	121-KS-231	Lada Niva 1.7	MPPO	Gjakova/Dakovica
6	434-KS-418	Kia Sorento 2.5	DPPO	Pejë/Peć
7	422-KS-776	Lada Niva 1.7	OPPK	Pejë/Peć
8	277-KS-648	Hyundai Terracan 2.5	OPPK	Prishtinë/Priština
9	668-KS-653	Lada Niva 1.7	MPPO	Prishtinë/Priština
10	419-KS-197	Hyundai Santa Fe 2.0	DPPO	Prishtinë/Priština
11	330-KS-239	Lada Niva 1.7	MPPO	Prishtinë/Priština
12	600-KS-613	Lada Niva 1.7	OPPK	Prishtinë/Priština
13	335-KS-121	Lada Niva 1.7	OPPK	Prishtinë/Priština
14	123-KS-241	Lada Niva 1.7	MPPO	Ferizaj/Uroševac
15	668-KS-660	Lada Niva 1.7	OPPK	Gjilan/Gnjilane
16	668-KS-666	Lada Niva 1.7	DPPO	Gjilan/Gnjilane

Annex 3
Vehicle transfer from MPS to KJC

Ministry of Public Services will permit Kosovo Judicial Council use of the vehicles listed below as set forth in Section 3.5 of this Memorandum:

No.	Vehicle Type	License Plate	Location
1	Pajero	493-KS-453(UNR-017)	MC for Minor Offences Ferizaj/Uroševac
2	Pajero	493-KS-454(UNR-034)	MC- Klinë/Klina
3	Pajero	UNR-035	MC-Zubin Potok
4	Pajero	UNR-047	MC-Skënderaj/Srbica
5	Pajero	493-KS-455(UNR-056)	MC-Ferizaj/Uroševac
6	Pajero	493-KS-457(UNR-068)	MC for Minor Offences Istog/Istok
7	Pajero	UNR-072	MC-Mitrovicë/Mitrovica
8	Pajero	UNR-080	DC-Mitrovicë/Mitrovica
9	Nissan	498-KS-314(UNR-102)	DJA
10	Lada Niva	UNR-121	MC for MOK Zubin Potok
11	Lada Niva	UNR-122	MC for MOK Leposaviq/Leposavić
12	Lada Niva	UNR-125	MC Leposaviq/Leposavić
13	Lada Niva	116-KS-601	MC-Podujevë/Podujevo
14	Lada Niva	116-KS-602	MC-Shtërpce/Štrpce
15	Pajero	493-KS-231	MC-Vushtri/Vučitrn

Ministry of Public Services will permit Ministry of Justice use of the vehicles listed below as set forth in Section 3.5 of this Memorandum:

No.	Registration plates	Vehicle type	Location
1	UNR-018	Pajero	MPPO Mitrovicë/Mitrovica
2	493-KS-456 (UNR-066)	Pajero	MPPO Ferizaj/Uroševac
3	493-KS-452 (UNR-025)	Pajero	OPPK
4	UNR-084	Pajero	DPPO Mitrovicë/Mitrovica

Annex 4
Discrete Building Facilities

The buildings listed below are ones that are occupied solely by prosecutors' offices and will be transferred to MOJ pursuant to Section 4.2 of this Memorandum:

Prosecutors' Office(s)	Address	Building Ownership
District Public Prosecutor's Office, Pejë/Peć Municipal Public Prosecutor's Office, Pejë/Peć	Str. Eliot Engel n.n. Pejë/Peć	KTA (no rent presently paid for use of this facility)
District Public Prosecutor's Office, Prizren Municipal Public Prosecutor's Office, Prizren	Str. Remzi Ademi n.n. Prizren	General Hospital Prizren, Ministry of Health – (no rent presently paid for use of this facility)
Municipal Public Prosecutor's Office, Prishtinë/Priština	Str. Nazim Gafurri n.n. Prishtinë/Priština	Rent budgeted on behalf of MPPO – Prishtinë/Priština and paid by MOJ on a lease due to expire 31 December 2006; Lease will be transferred from DJA to MOJ; MOJ will be required to decide use of premises as of 1 January 2007

Annex 5
Shared Building Facilities

The buildings listed below are ones that house both court and prosecutors' offices. These shared arrangements will continue pursuant to Section 4.3 of this Memorandum:

Location	Institutions Located in Facility
Prishtinë/Priština	Kosovo Public Prosecutor's Office District Court District Public Prosecutor's Office High Minor Offences Court of Kosovo
Mitrovicë/Mitrovica	District Court District Public Prosecutor's Office Municipal Court Municipal Public Prosecutor's Office Municipal Minor Offences Court
Gjilan/Gnjilane	District Court District Public Prosecutor's Office Municipal Court Municipal Public Prosecutor's Office Municipal Minor Offences Court
Ferizaj/Uroševac	Municipal Court Municipal Public Prosecutor's Office
Gjakovë/Đakovica	Municipal Court Municipal Public Prosecutor's Office (The 2006 DJA budget includes funds to construct a building annex for MPPO Gjakovë/Đakovica, allowing MPPO Gjakovë/Đakovica to move into a separate location.)

Annex 6
Kosovo Consolidated Budget Staff

DJA will transfer three hundred fifty-one (351) positions to MOJ as follows:

1. Ninety-two positions for prosecutors. Of these eighty-six (86) positions are currently filled, the nominee to fill one position has been submitted to the SRSG for approval, and the KJC is currently conducting a recruitment to fill the remaining five positions;
2. Two hundred and forty-eight positions (248) for prosecutorial support staff;
and
3. Eleven (11) positions from central office of DJA which will be assimilated into the MOJ Administrative Division. Those staff are as follows:

Division	Position	Employee	Multiplier
Internal Audit	Internal Auditor	Vacant	6.5
Human Resources	Personnel Officer	Violeta Gashi-Kelmendi	6.5
	Head of Project Section	Bajram Kolgeci	8.0
Statistics	Head of Division	Sahit Shala	9.0
	Analytic Officer	Ardian Baloku	6.5
Finance	Finance Officer	Rizah Ismaili	6.5
Transport	Driver	Ymer Olluri	4.2
Procurement	Procurement Assistant	Suzana Mustafa	5.5
Legal	Senior Legal Officer	Daluk Haliti	6.75
	Legal Officer	Gonxhe Paqarizi	6.5
	Legal Officer	Nebahate Salihu	6.5

**Annex 7
Budget Proposal**

DELINEATION OF 2006 BUDGET FOR COURTS AND PROSECUTORS (1 July-31 December 2006) **

No. of Employees and Categories	Annual Budget	Allocation until 1 July	Budget July-December	Courts and KJC (July-Dec.)	Prosecutors and Administration (July-Dec.)
No. of Employees**	2212			1861(1803+58)	351 (340+11)
Wages and Salaries	6,467,464	3,233,732	3,233,732	2,659,224.73	574,507.27
Goods and Services***	2,351,000	1,285,917	1,065,083	765,385.88	192,697.12
Utilities****	430,000	250,833	179,167	179,167	0.00
Capital Expenditures*****	1,445,000	1,415,000	30,000	30,000	0.00
Total	10,693,464	6,185,482	4,507,982	3,633,777.61	767,204.39

* The above figures reflect the budget separation as of 1 July 2006.

** These positions represent 1803 posts for courts and 58 posts for court administration. For prosecutors the total of 351 represents 340 posts for prosecutors and prosecutorial support staff, and 11 posts for the prosecutorial administration.

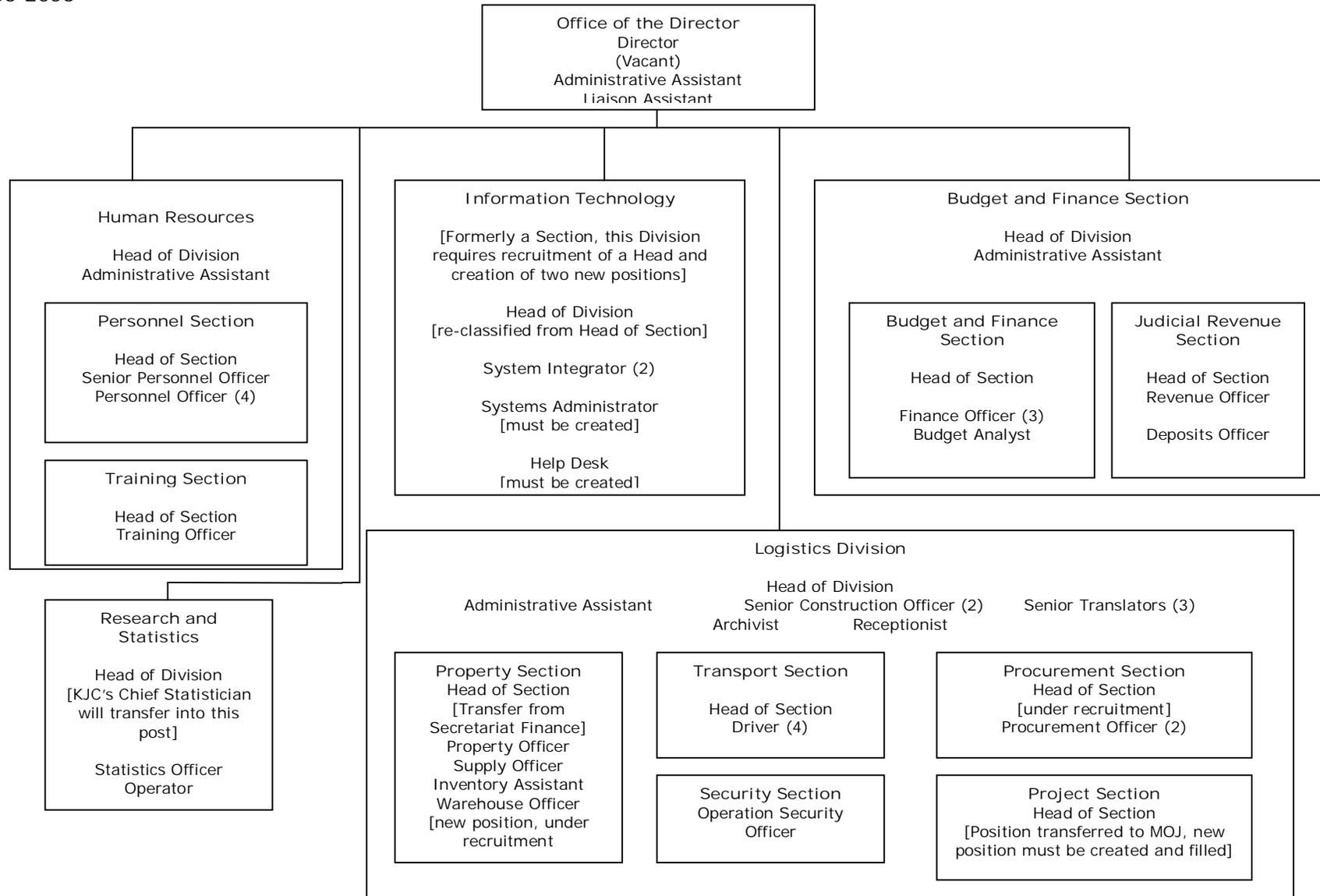
*** The share under Goods and Services category has been calculated taking into account the actual expenditures for prosecutors' offices in 2005, which represented 21% of the entire budget.

**** No transfer of the budget allocated for utilities will take place pursuant to Section 8.3 of this Memorandum.

***** No transfer of the budget allocated for capital projects undertaken on behalf of prosecutors' offices will take place pursuant to Section 8.2 of this Memorandum. Pursuant to Section 8.2, KJC will administer the following capital projects on behalf of MOJ and prosecutors:

Location	Project	Budget Allowance
Gjakovë/Đakovica	Construction of an annex for Municipal Public Prosecutors Office	€130,000
Kosovo	Furniture for Prosecutors' Offices	€5,000
Kosovo	Emergency Repairs	€15,000

KJC Secretariat
 Organizational Chart with Staff
 Office of Judicial Administration
 24-06-2006



Kosovo Judicial Council
Rules of Procedure

Article 9 – Standing and Ad Hoc Committees

9.1 As provided in Section 9.1 of these Rules, standing committees necessary to address ongoing policy and operational issues are hereby established.

9.2 The Council shall form the following standing committees:

(a) Judicial Disciplinary Committee, as required by Section 7 of UNMIK Regulation No. 2005/52, and Section 1.2 of UNMIK Administrative Direction No. 2006/xx; for the purpose of resolving first-instance issues of alleged misconduct of judges and lay-judges and for determining appropriate sanctions when findings of misconduct are made.

(b) Until such time as a regulation is promulgated establishing the entity responsible for advising the SRSG on matters relating to the appointment, disciplining and dismissal of prosecutors, a Prosecutorial Disciplinary Committee, as required by Section 7 of UNMIK Regulation 2005/52 and Sections 1.3, 1.4, 1.5 and 1.6 of UNMIK Administrative Direction NO. 2006/xx.

(c) Judicial Appointment and Development Committee; for the purpose of

1. reviewing applications of candidates for judge and lay-judge, and recommending the appointment of judges and lay-judges, and promotion of judges for Council action,
2. developing procedures for review of applications for appointment of judges and lay judges, and procedures for promotion of judges,
3. reviewing the need for judicial positions within various courts, and recommending objective criteria for the addition and deletion of judicial positions,
4. developing recommended policies regarding judicial training and development, and
5. other matters related to judicial appointment and development referred to the committee by the Council or the President.

(d) Until such time as a Prosecutorial Council of Kosovo is created, a Prosecutorial Appointment and Development Committee; for the purpose of

1. reviewing applications of candidates for prosecutors, and recommending the appointment of prosecutors and promotion of prosecutors for Council action,
2. developing procedures for review of applications for appointment of prosecutors, and procedures for promotion of prosecutors,
3. reviewing the need for prosecutorial positions, and recommending objective criteria for the addition and deletion of prosecutorial positions,
4. developing recommended policies regarding prosecutorial training and development,

5. developing and reviewing codes of conduct governing the conduct of prosecutors, and
6. other matters related to prosecutorial appointment and development referred to the committee by the Council or the President.

(e) Court Administration Committee, for the purpose of

1. developing and reviewing recommended policies related to the administration of courts, including, but not limited to:
 - i. caseflow management,
 - ii. records management,
 - iii. information technology management, and
 - iv. facilities and security management.
2. developing policies relating to the responsibility and authority of presidents of courts,
3. developing recommended criteria for evaluating the performance of courts, and
4. developing and reviewing policies regarding the authority and responsibility of the Secretariat for administration,
5. other matters relating to court administration referred to the committee by the Council or the President.

(f) Internal Rules & Legislative Affairs Committee, for the purpose of

1. developing, reviewing and recommending rules relating to the internal operations of the Kosovo Judicial Council,
2. establishing procedures for public discussion and review, publication and distribution of rules, and other regulations deemed necessary by the Council,
3. developing and reviewing codes of conduct governing the conduct of judges and lay judges,
4. monitoring proposed legislation that affects the judiciary,
5. interacting with counterparts at the Assembly and Ministry of Justice to insure that the interests of the judiciary are addressed in proposed legislation, and
6. other matters relating to internal rules or legislative matters referred to the committee by the Council or the President.

(g) Budget, Finance, and Human Resources Committee, for the purpose of

1. developing and recommending policies for the development, review and management of the budget for the judiciary of Kosovo,
2. reviewing proposed budgets and budget requests and making recommendations to the Council regarding requests relating to budgets,

3. developing and recommending policies regarding human resources to the Council, and
4. other matters relating to internal rules referred to the committee by the Council or the President.

9.3 The Director shall assign staff to assist the Committees in their work.

9.4 Unless as otherwise provided by UNMIK Administrative Direction 2006/xx, the President of the Council shall appoint and, where necessary, remove members to each standing committee. Each standing committee shall have a minimum of three members.

9.5 The term of appointment to a standing committee shall be one year. No member of the Council may serve on any given committee more than three terms.

9.6 Where there is a need for expertise in a given subject area, the President of the Council may appoint non-Council members to standing committees, except as proscribed by UNMIK Administrative Direction 2006/xx. However, Council members must make up the majority of any standing committee. The chairperson of each standing committee must be a member of the Council.

9.7 The President of the Council may establish ad hoc committees to address specific issues on an as-needed basis. Establishment of an ad hoc committee must be reflected in meeting minutes, which shall include:

- (a) the mandate of the ad hoc committee;
- (b) appointment of ad hoc committee members;
- (c) appointment of an ad hoc committee chair; and
- (d) the term of the ad hoc committee.

9.8 Each standing and ad hoc committee shall report its ongoing work to the Council. Any recommendation by a standing or ad hoc committee to the Council that requires a Council vote must first be submitted to the President of the Council and Director of the Secretariat so that it may be placed on the next available meeting agenda. Where a standing or ad hoc committee does not have work on which the full Council must be apprised, the work of that committee will be subject to review and evaluation by the President of the Council and the Director, as the President deems necessary.

Kosovo Judicial Council
Rules of Procedure

Article 8 - Meetings

8.1 Meeting Schedule

The Council President shall set the Council meeting schedule, but in no event shall there be less than four meetings annually. The schedule shall also include public hearings, as set forth in Section 8.12.

8.2 Public Notice

The Council shall give public notice of its meeting schedule at the beginning of each calendar year. Notice of the meeting schedule shall provide the date, time, and place for the scheduled meetings in at least two newspapers of general circulation in the Albanian and the Serbian language.

The requirement for public notice may be suspended and the best possible notice given when the meeting is scheduled as set forth in Section 8.3, or when a meeting is conducted due to unforeseen circumstances.

8.3 Extraordinary Meetings

An extraordinary meeting of the Council will be scheduled upon the request of either:

- a. The Special Representative to the Secretary General (SRSG); or
- b. No fewer than three members of the Council.

8.4 Closed Meetings

Meetings of the Council shall be closed to everyone except Council members, Secretariat staff, and those invited by the Council or Director to attend a Council meeting.

8.5 Agenda

The agenda for each Council meeting shall be established by the President and the Director, who is responsible for receiving requests for agenda items from standing committees, ad hoc committees, Council members, and other interested organizations and individuals. Any request by a standing committee, ad hoc committee, or Council member shall be placed on the agenda as soon as all materials are available and subject to scheduling limitations. The President shall review all other requests received and approve those matters that are appropriate for Council consideration. Upon approval of a requested agenda item, the President will request that the Director obtain all information necessary for consideration of the matter. Matters approved for Council consideration will be placed on the agenda as soon as the Director has assembled the necessary information and subject to scheduling limitations.

8.6 Quorum

A quorum, as set forth in UNMIK Regulation No. 2005/52, is required to conduct any meeting of the Council or for the Council to take any action. These rules are

to be amended as necessary by any regulation or legislation that amends or supersedes UNMIK Regulation No. 2005/52.

8.7 Chairing Meetings

The President of the Council will chair the meetings of the Council. In the absence of the President meetings will be chaired by the Vice Chair of the Council.

8.8 Voting

Decisions will be made by majority of those Council members present and voting. In the event of a tie vote, the decision will be based on the vote cast by the President of the Council. If the President is not present or does not vote on the matter, the decision will be based on the vote cast by the Vice Chair. If neither the President nor Vice Chair vote on a particular agenda item, the item will be tabled and placed on the next available agenda for consideration.

8.9 Minutes

Written minutes shall be kept of all meetings of the Council. Minutes shall include:

- a. the date, time and place of the meeting;
- b. the names of Council members present and absent, and the names of staff and guests present;
- c. the substance of all matters proposed, discussed or decided;
- d. a record of the vote taken on any issue; and
- e. any information that a Council member requests be entered in the minutes.

Minutes shall be approved by the Council President prior to distribution. Upon approval, a copy of the minutes shall be distributed to all Council members, and to any guest invited to participate in the meeting. Within five business days any Council member may request that the Council President make an amendment to the meeting minutes. Meeting minutes will further be distributed as requested by any Council member, but will not be made available to the public except as provided in Section 8.10.

8.10 Minute Summary

Upon approval of the minutes by the Council President, the Secretariat shall prepare a minute summary, which shall include:

- a. the date, time and place of the meeting;
- b. the names of Council members present and absent;
- c. an outline of the items discussed at the meeting; and
- d. a record of the vote taken on any issue.

The minute summary will be made available to the public upon request to the Secretariat.

8.11 Confidentiality

Any person attending a closed Council meeting shall keep confidential, to the extent it does not prevent the Council or Secretariat from implementing Council decisions, all information obtained as a result of the meeting. This obligation continues when professional association with the Council terminates.

8.12 Public Hearings

The Council's meeting schedule, as set forth in Section 8.1, will include public hearings, to be conducted not less than twice a year.

8.13 Public Hearing Agenda

Any habitual resident of Kosovo, as defined by the Civil Registrar, may request that an item be placed on the public hearing agenda. The request must be made in writing to the Director no less than thirty days before the date on which the public hearing is scheduled. The request must include two copies of all documents necessary for the Council's consideration.

8.13 Public Hearing Notice

The agenda for each public hearing will be set by the President and Director. Complaints concerning judges or Council members will not be placed on a public hearing agenda. Public notice of the hearing will be given no less than ten days prior to the public hearing date by providing the date, time, place and agenda of the public hearing in at least two newspapers of general circulation in both the Albanian and Serbian languages.

Kosovo Judicial Council
Rules of Procedure

Article 7 – Recruitment of Judges, Lay Judges and Prosecutors

- 7.1 The Director of the Secretariat will inform the Council of any judicial or prosecutorial vacancy over which the Council has jurisdiction.
- 7.2 By majority vote the Council may authorize the Secretariat to initiate recruitment for the vacant position(s). Upon such approval the Secretariat shall draft vacancy announcements for the authorized position(s) and submit those for approval to the relevant Council appointment and development committee as set forth in Articles 9.2 (c) and (d) of these Rules (hereinafter "committee").
- 7.3 The Secretariat shall conduct the public announcement and collection of applications pursuant to UNMIK Regulation No. 2005/52, Section 5.1 (hereinafter "Regulation").
- 7.4 At the conclusion of the public announcement period, the Secretariat shall provide to each member of the committee a copy of each fully-completed application, and associated background and financial assets report.
- 7.5 The committee shall:
- a. review each application and report according to the criteria set forth in Section 6 of the Regulation;
 - b. Consult, as necessary, with the recruitment advisory committee established pursuant to UNMIK Regulation No. 2006/xx, *Regulatory Framework for the Justice System in Kosovo*;
 - c. Consult, as necessary, with judicial and prosecutorial authorities in Kosovo;
 - d. Prepare a shortlist of no fewer than three candidates; and
 - e. Schedule the date, time and place for the relevant committee to conduct the interviews and ask that the Secretariat contact the short listed candidates and make all necessary arrangements.
- 7.6 During the interview process the committee shall evaluate the professional and personal qualities of each candidate impartially and fairly, respecting their goal of enhancing the development of an independent, multi-ethnic judiciary in Kosovo.
- 7.7 Upon completion of the interview process, the committee shall present to the Council their recommendation(s) together with a written report that outlines the process and reasoning for their recommendation(s).
- 7.8 Council approval of the committee's recommendation(s) shall be by majority vote. If a candidate proposed by the committee is not approved by the Council, the committee shall again conduct those procedures set forth in Sections 7.5 – 7.7 of this Rule. If after three committee proposals the Council has not yet approved a committee's recommendation, the position shall be re-advertised as set forth in Section 7.2 of this Rule and the procedures followed.

- 7.9 Upon approval the Council's recommendation(s) shall be forwarded to the SRSG so that the SRSG may obtain the Assembly's endorsement, pursuant to Article 9.4.8 of the Constitutional Framework, and subsequent appointment pursuant to Section 5.5 of the Regulation.

DRAFT

KOSOVO JUDICIAL SYSTEM

JOB NAME: PERMANENT SECRETARY

JOB DESCRIPTION:

The Permanent Secretary position is the highest non-judicial position in the justice system and is considered to be at the level of a government minister. The Permanent Secretary serves under the direction of the Chairperson of the Judicial Council. The Permanent Secretary is responsible for providing staff support services to the Judicial Council and the Judicial Council's liaison with other governmental and non-governmental entities. As head of the Secretariat the Permanent Secretary will be responsible for implementing the Judicial Council's policies and administering the entire judiciary.

EXAMPLES OF THE PERMANENT SECRETARY'S AREAS OF RESPONSIBILITY:

Supervision of his/her immediate staff which may include a deputy secretary, assistant to the permanent secretary, Archivist/correspondence secretary, personal secretaries;

Supervision of the Secretariat Divisions including Legislative Liaison and the Administrative Office (See below for more detail) and possibly the Kosovo Judicial Institute and the Judicial Inspection Unit;

Supervision of the Administrative Office Division including the Office of Legal Counsel, Judicial Integration Unit, Personnel & Training (Human Resources), Information Technology, Logistics/Facilities/Security, Finance and Procurement (Including budgeting), Caseflow Management/Strategic Planning;

EDUCATION: Law degree required

PREFERABLE SKILLS, KNOWLEDGE AND ABILITIES:

Fluency in English and Serbian;

A lawyer who has passed the bar examination;

Knowledge of the courts;

Knowledge of general business/administrative practices;

An understanding of Information Technology (Automated systems) and how it can be applied to the judiciary;

Strong administrative, leadership, and interpersonal skills;

PREFERABLE EXPERIENCE & PERSONAL CHARACTERISTICS:

Prior experience working in a court system;

Not a member of a political party;

Transparent;

A minimum of five years responsible experience in an administrative, managerial or staff capacity in a public or large private organization preferably in the following areas: budget preparation and control; fiscal management; general administrative systems and procedures; personnel administration; and/or management of functional operations;

Age: 35 - 40 years

Mandate?

OTHER EXPERIENCE:

Other university degrees, training programs, writings and publications will be considered by the interview commission in their discretion.

APPOINTMENT PROCESS:

Interview commission established by the Judicial Council;

Position advertised across Kosovo;

Interview commission conducts interviews and makes recommendations of at least 3 top candidates to the Judicial Council;

Three top candidates required to prepare a plan for performing their role and the functioning of the Secretariat for the Judicial Council prior to their consideration by the Judicial Council;

Judicial Council votes to select the top candidate - a 2/3 majority is required;

Probationary period of one year;

Removal from office requires a 2/3 majority.

Dated: 26 May 2005

DRAFT

Proposal to DOJ/JDD & DOJ Director

I. Subject: Kosovo Time Standards For Disposition Of Cases

II. Request

This is to request that the KJPC review, adopt and promulgate the following set of time standards for disposition of civil and criminal cases in the district and municipal courts. This action will provide a necessary element for Kosovo's caseload management activities including the identification and reduction of backlogged cases.

III. Background

Justice delayed is justice denied.¹ The responsibility of the justice system to adjudicate disputes promptly and fairly is a hallmark of a free society. The failure of government to meet these obligations undermines the public's confidence in the system of justice and respect for the rule of law.

While important for any country, prompt and fair adjudication of disputes by the justice system is a matter of even greater urgency in Kosovo, where establishment of a stable and fair system of justice is a fundamental premise under UN Resolution 1244² and a *sine qua non* for independence of the judiciary under the Kosovo Standards.³

Court systems need to not only do justice but appear to do justice⁴, and the level of public confidence in court systems is directly related to its perception of the court system's ability to process cases expeditiously.⁵ Indeed, numerous surveys of public attitudes about courts⁶ report that the factor most often cited by those who lack confidence in the courts is court delay.^{7 8}

Whether delay is justified or unjustified, the perception that it exists and that it is never justified leads to widespread suspicion that parties are not being treated equally, that the system

¹ Quote most often attributed to Sir William Gladstone, British Prime Minister, in the mid 19th Century.

² S/RES/1244 (1999) 10 June 1999, adopted by the UN Security Council at its 4011th meeting, 10 June 1999

³ Standards for Kosovo, UNMIK/PR/1078, 10 December 2003

⁴ Ernest C. Friesen, "The Delay Problem and the Purposes of Courts" in National Center for State Courts, Institute for Court Management, Caseflow Management Principles and Practices: How to Succeed in Justice (videotape 1991)

⁵ *Standard 5.2, Expeditious, Fair and Reliable Court Functions*, Bureau of Justice Assistance and National Center for State Courts, Trial Court Performance Standards with Commentary (Washington, D.C.: U.S. Department of Justice, 1997)

⁶ Public Confidence in the Courts, National Center for State Courts, www.ncsconline.org

⁷ Yankelovich, et. al., "Public Confidence in the Courts", National Center for State Courts, Williamsburg, VA, 1981

⁸ Introduction, European Commission for the Efficiency of Justice (CEPEJ) Framework Programme, A new objective for judicial systems: the processing of each case within an optimal and foreseeable time frame, Strasbourg, 11 June 2004, CEPEJ (2004) 19 REV 1.

must be corrupt,⁹ that lawyers manipulate the system, and that government has abrogated its responsibility to provide fair and equal treatment of all citizens.

IV. What Has Been Done In Kosovo Until Now

In recognition of the importance of expeditious treatment of civil disputes, UNMIK and Kosovars have identified elimination of court backlogs and effective processing of court cases as priority objectives under the Rule of Law¹⁰ and Property Rights¹¹ components of Kosovo Standards Implementation Plan (KSIP), originally adopted in February 2004 and revised on March 31, 2004. Specifically, the KSIP calls for reducing civil case backlog¹², reducing property rights cases backlog¹³, increased enforcement of civil judgments¹⁴ and development and implementation of court system automation capacity to track progress toward achievement of these goals.

V. Backlog and Pending Cases - Definitions

The terms backlog and pending caseload, though different, are misunderstood by many and are almost always used interchangeably. It is important that the courts and the public in particular, understand the definitions of the two terms and what they mean relative to all cases waiting to be adjudicated by the courts.

The definition of a court's **pending caseload** is the total of all cases that have yet to be addressed or is being processed by the court but do not have a final, written judgment.

The definition of a court's **backlog** is the number of cases pending for more than an acceptable period of time.

Or

The number of cases pending for more than the case processing time standard applicable to that category of cases.

VI. Why Time Standards

An essential aspect of any important management undertaking is that there are reasonable expectations as to its desired outcomes. There must be benchmarks or standards to determine when an activity or initiative has reached, exceeded or not reached its goal. Put another way, how can one determine when the goal of a management process has been achieved?

In successful case flow management systems, time standards are adopted by the judicial system's policy making body to be used as a measure of the judicial system's performance and

⁹ National Center for State Courts, Measuring and Improving Citizens' Understanding of the Justice System: Public Opinion Survey in Kosovo (July, 2004 Public Opinion Survey, p. 8).

¹⁰ Kosovo Standards Implementation Plan (KSIP), Rule of Law (ROL) Standards 12 and 13, Kosovo Standards Implementation Plan, Pristina Kosovo, 31 March 2004.

¹¹ Id., Property Rights (PR) Standards 3 and 5.

¹² KSIP, ROL Standard 12

¹³ KSIP, PR Standard 3

¹⁴ KSIP ROL Standard 13

progress toward the goal of disposing of cases within a reasonable amount of time.¹⁵ They can be used to motivate the courts and serve as a tool for identifying problems in the courts processes. Time standards can also be used as a tool to measure or justify resource needs such as for new court staff or judges, and can help instill discipline and accountability in the judicial system.

Our situation in Kosovo provides even more impetus to establish case processing time standards. This is because once time standards have been set and the above definitions are applied it can readily be established what cases are pending and what cases are truly backlogged. Right now most critics of the court system incorrectly view all cases before the courts as backlog. This view of backlog includes cases that were received by the courts last month, last week and even yesterday.

Judges may initially resist time standards, particularly if the standards are externally imposed. Therefore, it is essential for the KJPC's support and action in establishing time standards for both legitimacy and buy-in by the courts.

VII. Examples Of Time Standards From Other Jurisdictions

AMERICAN BAR ASSOCIATION CASE PROCESSING TIME STANDARDS

General Civil Cases

- **90% concluded within 12 months of filing**
- **98% concluded within 18 months**
- **Remainder concluded within 24 months unless "exceptional circumstances" exist**

Domestic Relations Cases

- **90% concluded within 3 months of filing**
- **98% concluded within 6 months**
- **100% within one year**

Felony Cases

- **90% concluded within 120 days from arrest**
- **98% concluded within 6 months**
- **100% within one year**

Misdemeanor Cases

- **90% concluded within 30 days from arrest**
- **100% concluded within 90 days**

¹⁵ Ibid, European Commission for the Efficiency of Justice (CEPEJ) Framework Programme.

**BOSNIA – HERCEGOVINA
CASE PROCESSING TIME STANDARDS**

CASE TYPE	TIME STANDARD
Criminal, First Instance	1 year from indictment
Criminal, Second Instance	6 months from receipt of appeal
Civil, First Instance	1 year
Civil, Urgent First Instance	6 months
Civil, Second Instance	45 days from receipt of appeal
Administrative*	6 months
Administrative, Second Instance	6 months from receipt of appeal
Enforcement	1 year

* Administrative dispute cases are cases where cantonal and district courts in BiH decide on legality of decisions issued by BiH administrative authorities. These are the cases where someone sues the municipality, canton, entity or state.

VIII. Time Standards Recommended For Kosovo District And Municipal Courts

The following time standards were established mainly on the basis of the average time for Kosovo courts to dispose of cases and partly on recommendations of attendees at the court management conference by the National Center for State Courts at Ohrid, Macedonia last June.

We suggest the recommended time standards are a reasonable point at which to establish the first such standards for Kosovo. After a reasonable period of applying the standards in the courts the standards certainly can be revisited and modified as necessary to meet the expectations of the public and requirements of the judiciary.

Unless otherwise indicated the time standards are for the elapsed time from registration of a case to the time parties receive a written judgment.

**KOSOVO
RECOMMENDED
CASE PROCESSING TIME STANDARDS**

Kosovo District Courts

Civil 1 st instance cases	90 days
Civil 2 nd instance cases	270 days
Criminal 1 st instance cases	180 days
Criminal 2 nd instance cases	270 days

Kosovo Municipal Courts

Civil cases *	180 days
Execution of civil cases *	180 days
Criminal cases	270 days
Execution of criminal cases *	90 days

* Date case received

DRAFT



Kosovo Judicial Council
Këshilli Gjyqësor i Kosovës
Судски савет Косова



Hyrje

Kjo paketë me informacione është për gazetarët që do të marrin pjesë në takimin me Z. Rexhep Haxhimusa, Kryetar i Gjykatës Supreme, Kryetar ex officio i Këshillit Gjyqësor të Kosovës. Ky takim mbahet më 2 qershor 2006 në orën 10:00 në Sallën e Mbledhjeve të Sekretariatit të KGJK-së, ndërtesa e Gjykatës Supreme, kati II, Nr. 219.

Kjo paketë me informacione ka për qëllim t'i informojë paraprakisht gazetarët pjesëmarrës lidhur me:

- Një vështrim të përgjithshëm mbi sistemin e gjykatave dhe prokurorive në Kosovë;
- Rregulloren e UNMIK-ut Nr. 2005/52 të datës 20 dhjetor 2005 në bazë të së cilës është themeluar dhe funksionin Këshilli Gjyqësor i Kosovës;
- Përbërjen e KGJK-së;
- Komisionet që funksionojnë në kuadër të KGJK-së;
- Paraqitjen grafike të sistemit aktual gjyqësor dhe prokurorial.

Kontakt

Gazetarët që kanë pyetje lidhur me punën e KGJK-së duhet të kontaktojnë:

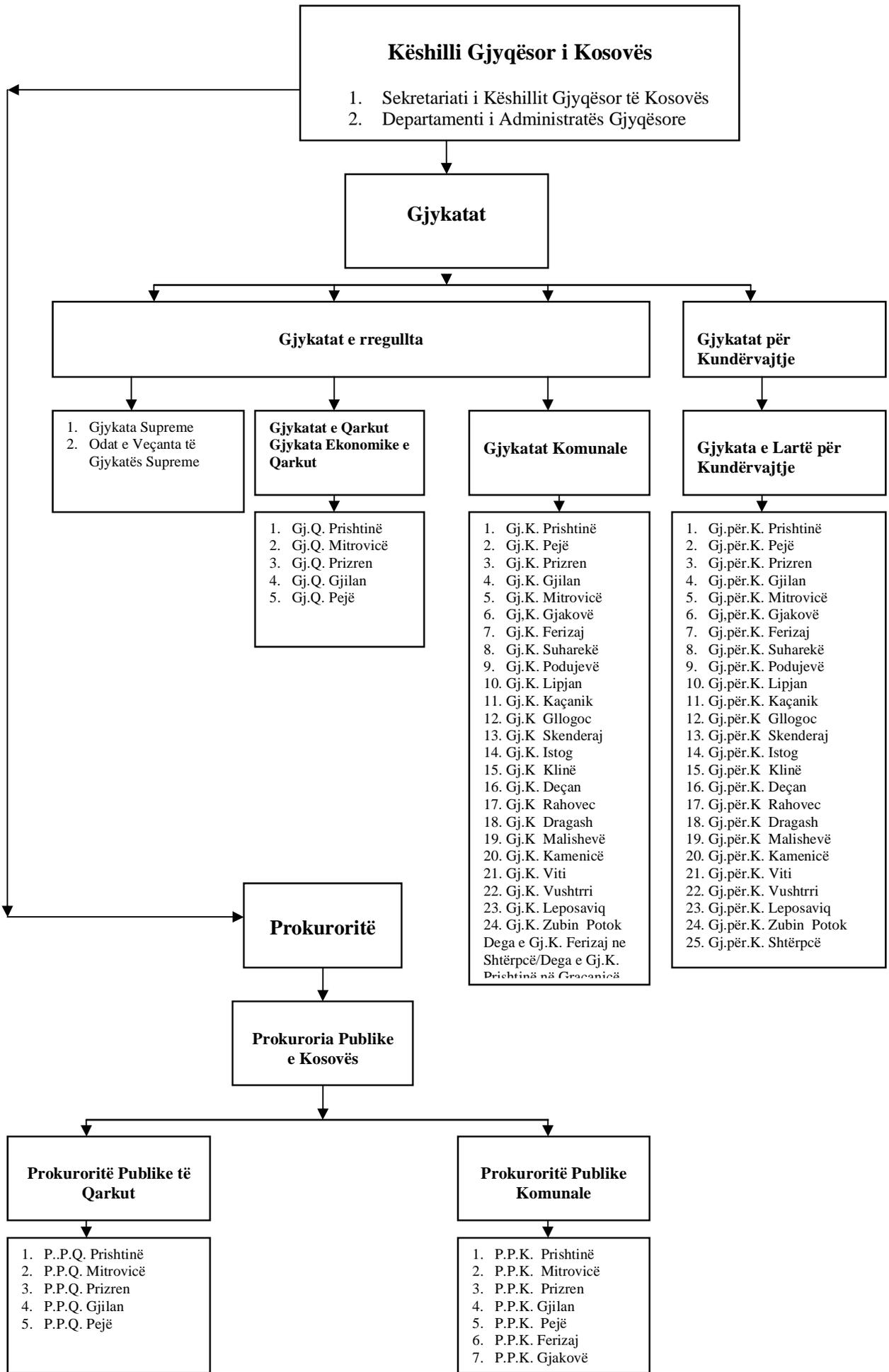
Znj. Lindita Baleta, Zyrtare për shtyp / Përkthye e lartë pranë Sekretariatit të KGJK-së
Tel: 038 – 504 604 lokali 5932 email: baleta@un.org

Znj. Mirlinda Batalli, Ushtruese e Detyrës së Sekretares së KGJK-së
Tel: 038 504 604 lokali 5181

Znj. Fatmire Krasniqi, Drejtuese e Administratës së Sekretariatit të KGJK-së
Tel: 038 504 604 lokali 5676

Z. John D. Ferry, Konsulent i projektit, Qendra Kombëtare e Gjykatave Shtetërore
Tel: 044 650 887 email: john.d.ferry@comcast.net

Znj. Shpresa Kutllovci, sekretare e Kryetarit Haxhimusa,
Tel: 038 243 345 / 038 243 348



Vështrim i Përgjithshëm i Sistemit të Tanishëm Gjyqësor

Vështrim mbi Sistemin Aktual

Sistemi gjyqësor aktual i Kosovës reflekton, në thelb në rregullimin e tij, atë që ka ekzistuar para konfliktit të vitit 1999. Struktura e gjykatave përbëhet nga gjykatat e rregullta dhe gjykatat për kundërvajtje. Gjykatat e rregullta përbëhen nga Gjykata Supreme e vendosur në Prishtinë dhe që ushtron juridiksionin origjinal dhe atë ankimor, pesë gjykatat e qarkut, të vendosura në Prishtinë, Prizren, Gjiilan, Pejë dhe Mitrovicë, që poashtu ushtrojnë juridiksionin në shkallën e parë dhe në ankesa, gjykatat ekonomike të qarkut, një nga të cilat funksionon (ajo që gjendet në Prishtinë)¹ dhe gjykatat komunale prej të cilave 24 funksionojnë², secila e vendosur në një komunë dhe që ka juridiksion vetëm në shkallën e parë. Gjykatat për kundërvajtje përbëhen nga gjykatat komunale për kundërvajtje (“gjykatat për kundërvajtje”), që operojnë në një 25 vende, të vendosura brenda komunave dhe Gjykatës së Lartë për Kundërvajtje, që ka juridiksion ankimor në raport me gjykatat për kundërvajtje.

Baza ligjore për sistemin e tanishëm gjyqësor rrjedh nga dispozitat e Rregullores së UNMIK-ut 1999/24, të ndryshuar me Rregulloren e UNMIK-ut 2000/59. Këtu theksohet se ligji i aplikueshëm në Kosovë do të jetë (a) rregulloret e nxjerra nga Përfaqësuesi Special i Sekretarit të Përgjithshëm dhe instrumentet shtesë të nxjerra nga po aty, dhe (b) ligji në fuqi në Kosovë më 22 mars 1989, në atë masë që nuk bie ndesh me rregulloret e UNMIK-ut dhe instrumentet, të jetë jodiskriminues dhe të jetë në pajtueshmëri me konventat ndërkombëtare për të drejtat e njeriut. Legjislacioni kryesor në fuqi deri në ditën e përmendur si më lartë që rregullonte kompetencat e gjykatës përbëhej nga:

1. *Ligji mbi Gjykatat e Rregullta* i Krahinës Socialiste Autonome të Kosovës (“KSAK”, Nr. 21 i vitit 1978;
2. *Ligji për Kundërvajtje* KSAK, Nr.23 i vitit 1979 – i ndryshuar në pesë raste deri në vitin 1988; dhe
3. *Rregullat për Veprimtarinë e Brendshme të Gjykatave*, Nr.7 i vitit 1981, i nxjerrë në bazë të nenit 62 të Ligjit mbi Gjykatat e Rregullta.

Legjislacioni nën pikat 1 dhe 3 aplikohet për Gjykatën Supreme të Kosovës, Gjykatat të qarkut, gjykatat ekonomike të qarkut dhe ato komunale. Ai nën pikën 2 aplikohet për gjykatat për kundërvajtje dhe Gjykatën e Lartë për Kundërvajtje. Kodi i Përkohshëm i Procedurës Penale ka hyrë në fuqi më 6 prill 2004³.

Korniza Kushtetuese për Vetëqeverisje të Përkohshme në Kosovë, e nxjerrë nga Përfaqësuesi Special i Sekretarit të Përgjithshëm (PSSP) më 15 maj 2001, cakton⁴ gjykatat si një nga Institucionet e Përkohshme të Vetëqeverisjes, së bashku me Kuvendin, Presidentin e Kosovës, Qeverinë dhe organizmat tjerë të saktësuar në të. Korniza Kushtetuese thekson se gjykatat janë përgjegjëse për administrimin e drejtësisë në Kosovë në pajtim me ligjin e aplikueshëm⁵ dhe kujdeset për⁶ Gjykatën Supreme të Kosovës, Gjykatat e Qarkut, Gjykatat Komunale dhe Gjykatat për Kundërvajtje. Poashtu është themeluar edhe një Dhomë e Posaçme e Gjykatës Supreme për Çështje të Kornizës Kushtetuese.⁷

¹ Gjykata Ekonomike e Qarkut në Gjakovë për momentin nuk funksionon.

² Sipas Udhëzimit Administrativ të UNMIK-ut 2002/24, një degë e Gjykatës Komunale të Ferizajit është rithemeluar në Shtërpce.

³ Rregullorja e UNMIK-ut 2003/26.

⁴ Shih kapitullin 1.5 të Kodit të ri

⁵ Në kapitullin 9.4.1.

⁶ Në kapitullin 9.4.4

⁷ Kapitulli 9.4.11.

Korniza Kushtetuese thekson se gjyqësori përbëhet nga “juristët e dalluar me karakter moral më të lartë, me kualifikime adekuate,” dhe pasqyron “diversitetin e popullatës së Kosovës.”⁸. Gjyqtarët dhe prokurorët emërohen nga PSSP-ja nga listat e kandidatëve të propozuar nga Këshilli Gjyqësor i Kosovës (KGJK) dhe miratuar nga Kuvendi. PSSP është poashtu përgjegjës për vendimet për gradim, transferim apo shkarkim të gjyqtarëve pas rekomandimit nga Këshilli Gjyqësor i Kosovës ose, në raste të jashtëzakonshme, me vetë nismën e tij.⁹.

Gjyqtarët porotë janë të vendosur në trupa gjykues së bashku me gjyqtarët profesionale në gjykatat komunale dhe ato më të larta. Gjyqtarët porotë emërohen nga PSSP me rekomandim të KGJK-së. Gjyqtarët dhe prokurorët ndërkombëtarë mund të shërbejnë brenda sistemit gjyqësor në pajtim me rregullat e vendosura nga PSSP. Mekanizmi ekzistues për caktimin e një gjyqtari apo prokurori ndërkombëtar i lejon gjyqtarët dhe prokurorët ndërkombëtarë që të zgjedhin dhe marrin përgjegjësinë për rastet e reja dhe ato në pritje përkatësisht, brenda për brenda juridiksionit të gjykatës apo prokurorisë në të cilën janë emëruar¹⁰.

Sistemi ekzistues gjyqësor

Gjykatat për Kundërvajtje

Juridiksioni material

Gjykatat për kundërvajtje ushtrojnë juridiksion për të gjitha veprat e vlerësuara si kundërvajtje¹¹ viz. “shkelje të rendit publik me pasoja më pak serioze mbi vlerat thelbësore shoqërore, sikurse të caktuara në ligj.”¹². Fusha e kundërvajtjeve përfshin rendin dhe qetësinë publike p.sh. (sulmin, sjelljet kërcënuese), trafikun rrugor p.sh. (tejkalimin e shpejtësisë, vozitjen e rrezikshme), sigurinë publike p.sh. (mosparaqitja e dokumenteve të identifikimit) dhe krimet ekonomike dhe financiare p.sh. (prerja joligjore e drunjve deri në 1 metër kub, tregtia e palicensuar). Veprat e vlerësuara si kundërvajtje që përfshijnë rrezikimin “e jetës dhe shëndetit njerëzor” ngërthejnë në vete dënimin maksimal deri në 60 ditë burg,¹³ kurse veprat e tjera të kundërvajtjes arrijnë dënimin maksimal deri në 30 ditë¹⁴. Në rastet e të miturve, dënimi maksimal është 15 ditë¹⁵. Gjoha maksimale e dhënë në dënim është 2,556 Euro në rastet e individëve kurse 102,258 Euro në rastet e personave juridikë jofizikë¹⁶. Ligji për Kundërvajtje poashtu lejon aplikimin e “masave mbrojtëse”, që përfshijnë: “1. konfiskimin e objekteve; 2. konfiskimin e të mirave materiale; 3. ndalimin e ushtrimit të një veprimtarie të

⁸ Kapitulli 9.4.7.

⁹ *Ibid.*

¹⁰ Rregullorja e UNMIK-ut 2000/6, e ndryshuar.

¹¹ Neni 1 i Ligjit për Kundërvajtje i referohet “shkeljes së rendit publik të përkufizuar me ligj ose rregullore të tjera për të cilat janë parashikuar dënimet dhe masat mbrojtëse”. Ky nen ka qenë i aplikueshëm në Kosovë dhe prandaj është pjesë e Kodit për Kundërvajtje të Kosovës.

¹² Në bazë të udhëzimeve për provimin e jurisprudencës të vitit 1987, Prof.Dr. Borislav Blagojeviq dhe Oliver Antiq, të cituar në *Raportin e Tretë të Sistemit Gjyqësor Penal nga Seksioni për Monitorim të Sistemit Gjyqësor* (OSBE, tetor 2001), Kapitulli 6, faqe 79.

¹³ Neni 2.2 i Ligjit për Kundërvajtje.

¹⁴ Neni 2.1 i Ligjit për Kundërvajtje.

¹⁵ Neni 2.3 i Ligjit për Kundërvajtje.

¹⁶ Me anë të ndryshimit të Kodit për Kundërvajtje në vitin 1998 (Ligji Nr. 9 i vitit 1988), Neni 1. Gjjobat janë shndërruar në DM me Udhëzimin Administrativ Nr. 2000/17 dhe më pas në euro në Udhëzimin Administrativ 2001/24.

pavarur (biznes privat); 4. ndalimin e ngasjes së një makine; 5. deportimin e të huajve; 6. trajtimin e obligueshëm të alkoolikëve dhe të varurve nga droga”¹⁷.

Gjykatat për Kundërvajtje poashtu mund të pranojnë kërkesa për rishqyrtimin e procedurave¹⁸.

Juridiksioni territorial

Gjykata për Kundërvajtje brenda së cilës është kryer një kundërvajtje është kompetente për gjykimin e asaj kundërvajtjeje¹⁹. Në rastet kur vendi i kryerjes së një kundërvajtjeje nuk mund të vërtetohet, kompetente është gjykata ku i akuzuari banon, apo nëse është person juridik, në vendin ku e ka selinë²⁰. Ku dy ose më shumë gjykata për kundërvajtje mund të kenë juridiksion përkitazi me një vepër të kryer, kompetente është ajo gjykatë ku procedurat kanë filluar së pari²¹. Juridiksioni mund të bartet tek ajo gjykatë në të cilën i pandehurit është banor nëse kjo gjykatë mund ta gjykojë rastin më shpejt dhe me më pak shpenzime²².

Rastet gjykohen nga një gjyqtar i vetëm²³. Gjykatat për kundërvajtje veprojnë momentalisht në 25 vendbanime, me një total prej 96 gjyqtarësh.

Gjykata e Lartë për Kundërvajtje

Juridiksioni material dhe territorial

Gjykata e Lartë për Kundërvajtje, e vendosur në Prishtinë, ushtron juridiksion ankimor për të gjitha gjykatat për kundërvajtje në Kosovë. Përpos funksionit të saj ankimor, gjykata zgjidh konfliktet e juridiksionit ndërmjet gjykatave për kundërvajtje dhe ka një rol në përgjithësi udhëheqës dhe mbikëqyrës lidhur me punën e gjykatave për kundërvajtje, duke siguruar ndihmë profesionale e poashtu duke vendosur procedura për punën e seancave të gjyqtarëve²⁴.

Gjykata e Lartë për Kundërvajtje ka një establishment të autorizuar prej 5 gjyqtarësh dhe punon në kolegje të përbërë nga 3 gjyqtarë²⁵.

Gjykatat komunale

Juridiksioni material

Gjykatat komunale kanë juridiksion më të shumëllojshëm dhe më të gjerë brenda për brenda strukturës gjyqësore të Kosovës. Juridiksioni i tyre penal përfshin²⁶:

1. Gjykimin e të gjitha rasteve penale për të cilat është kompetent një gjyqtar individual;

¹⁷ Neni 16 i Ligjit për Kundërvajtje.

¹⁸ Neni 37 i Ligjit për Kundërvajtje

¹⁹ Neni 74 i Ligjit për Kundërvajtje

²⁰ Neni 75 i Ligjit për Kundërvajtje.

²¹ Neni 76 i Ligjit për Kundërvajtje

²² Neni 79 i Ligjit për Kundërvajtje

²³ Neni 31 i Ligjit për Kundërvajtje

²⁴ Nenet 39 dhe 40 të Ligjit për Kundërvajtje

²⁵ Neni 31 i Ligjit për Kundërvajtje

²⁶ Neni 26 i Ligjit për Gjykatat e Rregullta

2. Gjykimin e veprave penale në shkallë të parë për të cilat është paraparë dënim me gjobë ose dënimi me burgim deri në pesë vite po qe se për gjykimin e veprave të tilla nuk është paraparë kompetenca e gjykatës së qarkut²⁷;
3. Fuqinë për të marrë vendime në shkallë të parë për vepra penale për të cilat ka kompetencë të vendos lidhur me veprimet dhe masat në procedurën paraprake të cilat i kufizojnë të drejtat dhe lirit themelore të personit siq është parapar me KPPK ; të mbledh prova sipas mundsisë hetimore të jashtëzakonshme siq është parare me KPPK dhe të zbatoj procedurën mbi konfirmimin e aktakuzës;
4. Fuqinë të kryej punë të tjera të parapara me ligj;
5. Zbatimin e pagesave të gjobës;
6. Ekzekutimin e pagesës së shpenzimeve të procedurave penale;

Juridiksioni civil i gjykatave komunale përshin çështje kontestuese dhe jo kontestuese përfshirë:

1. Kontestet lidhur me çështjet pronësore;
2. Kontestet lidhur me çështjet e punës që bien nën kompetencën e Gjykatave të Rregullta;
3. Kontestet lidhur me mbështetjen ligjore kur këto janë të ndara nga çështjet e ekzistimit apo mosekzistimit të bashkëshortësisë, anulimin e bashkëshortësisë apo shkurorëzimit, apo verifikimin apo refuzimin e prindësisë;
4. Kontestet lidhur me kujdesin dhe kujdestarinë e fëmijëve të lindur pas vendimit për shkurorëzim, anulimin, ose shpalljen e martesës si të pavlefshme;
5. Kontestet lidhur me kompetencat reale dhe personale;
6. Kontestet lidhur me shqetësimin e pronës;
7. Kontestet lidhur me mbështetjen jetësore;
8. Kontestet lidhur me ndërprerjen e qirasë, kontratës apo huazimit të pronës së luajtshme dhe të paluajtshme, dhe poashtu lidhur me marrëdhëniet banesore, kur këto bien nën kompetencën e Gjykatave të Rregullta;
9. Procedurat lidhur me trashëgiminë;
10. Procedurat e ekzekutimit civil;
11. Regjistrimin e të drejtave në lidhje me paluajtshmërinë;
12. Ndarjen e pronës dhe rregullimin e kufijve;
13. Vërtetimin e transkripteve, dorëshkrimeve dhe nënshkrimeve, si dhe “çështjeve jashtëkontestimore” të cilat me ligj i janë caktuar gjykatave komunale;
14. Ekzekutimin e aktgjyqimeve në rastet e kontesteve pronësore;
15. Sigurimin e ndihmës juridike;
16. Procedurat tjera në shkallën e parë, të cilat nuk i janë caktuar me ligj gjykatave të qarkut, gjykatave ekonomike të qarkut.

Rregullorja e UNMIK-ut 1999/23 ka larguar nga juridiksioni i gjykatave dhe ka transferuar në Komisionin për Kërkesa Pronësore dhe Banesore tri kategori të kërkesave pronësore, viz. ato lidhur me të drejtat pronësore të humbura përmes ligjeve diskriminuese pas anulimit të statusit autonom të Kosovës në mars të vitit 1989; ato që janë lajmëruar pas transaksioneve joformale nga ajo kohë; dhe atyre që dalin nga përzierja me të drejtat pronësore përmes uzurpimit joligjor. Sipas Rregullores së UNMIK-ut, kërkesat për urdhërat mbrojtës kundër dhunës familjare i kthehen gjykatave komunale²⁸.

²⁷ Përpos rasteve kur vepra i caktohet me ligj një gjykate tjetër; Neni 26.2 i Ligjit për Gjykata e Rregullta.

²⁸ Me anë të Rregullores së UNMIK-ut Nr.2003/12. Kompetenca territoriale ka ajo gjykatë komunale në të cilën kryerësi ka banim të përkohshëm apo të përhershëm.

Juridiksioni territorial

Gjykatë komunale mund të themelohet që të ushtrojë juridiksion në territorin e një ose më shumë komunave²⁹.

Ligji për Gjykatat e Rregullta thekson se procedura penale për të mitur nga të gjitha gjykatat komunale të ndërlidhura në një qark duhet të dëgjohet nga një gjykatë e caktuar komunale³⁰ brenda atij qarku³¹.

Trupat gjykues /Kolegjet

Në gjykatat komunale, sikurse në të gjitha gjykatat e rregullta, rastet si rregull gjykohen nga një kolegji³².

Në lëndët penale, Kodi i Përkohshëm i Procedurës Penale (KPPK) i cili ka hyrë në fuqi me dt. 6 prill 2004, në nenin 22 parasheh që për vepra penale për të cila është parapara dënimi me gjobë ose me dënimi me burg deri në tri vite të gjykoj gjyqtari individual.

Në shkallën e parë, trupat gjykues të gjykatave komunale përbëhen nga një gjyqtar profesional dhe dy gjyqtarë porot, kjo për veprat për të cilat parashihet dënim deri në 5 vite³³. Në bazë të Kodit të procedurës Penale, një kolegji i përbërë nga tre gjyqtarë profesionalë ishte i autorizuar të rishqyronte vendimet e gjyqtarit të procedurës paraprake dhe vendime të tjera të specifikuar nga ligji apo vendimet tjera të sjella gjatë gjykimit kryesor, gjatë zhvillimi të procedurës, miratimin e efektit të një sanksioni të shpallur nga një gjykatë e huaj dhe përpilimin e propozimeve në rastet e parapara në Kodin e procedurës penale apo ndonjë ligj tjetër³⁴. KPP siguron që një ankesë ndaj një vendimi të caktuar të një gjyqtari të procedurës paraprake, t'i adresohet tre gjyqtarëve profesionalë³⁵.

Në procedurat civile, trupat gjykues përbëhen nga një gjyqtar profesional si kryesues dhe dy porotë³⁶ - janë të nevojshëm në rastet që përfshijnë kërkesa pronësore të vlerësuar në vlerë të50,000 dinarëve e më shumë, si dhe në procedurat lidhur me të drejtat e pronësisë intelektuale dhe të drejtat për përdorimin e emrit të kompanisë apo titullit. Gjyqtarët individualë mund të merren me kërkesa pronësore nën atë shumë, si dhe me të drejtat pronësore dhe ndihmë ligjore³⁷.

Dega e gjykatës komunale mund të ushtrojë juridiksion në të gjitha rastet për të cilat është kompetent një gjyqtar individual dhe juridiksioni mund t'i jepet nga kryetari i gjykatës që të merret me procedurat për të cilat është i nevojshëm kolegji³⁸.

Për kolegjet që kanë të bëjnë me procedura ndaj të miturve vlejné rregulla të posaçme³⁹.

²⁹ Neni 23 i Ligjit për Gjykatat e Rregullta.

³⁰ Viz. Gjykatat Komunale në Gjilan, Mitrovicë, Pejë, Prizren dhe Prishtinë.

³¹ Neni 34 i Ligjit për Gjykatat e Rregullta

³² Neni 8 i Ligjit për Gjykatat e Rregullta. Shih poashtu Nenin 22.1 të Kodit të ri të Procedurës Penale (KPP) – që zëvendëson Nenin 19 të Ligjit të Procedurës Penale të vitit 1986 (Nr. 26 1986) – dhe Nenin 41 të Kodit të Procedurës Civile të RSFJ-së (Nr.4/77-1478, 36/80-1182 dhe 69/82-1596).

³³ Neni 23.1 i Ligjit të Procedurës Penale, 1986.

³⁴ Neni 23.6 *ibid*.

³⁵ Shembull: Nenet 143.4, 225.5 dhe 238 i KPP.

³⁶ Neni 42 i Kodit të Procedurës Civile të RSFJ-së.

³⁷ Neni 43, Kodi i Procedurës Civile të RSFJ-së.

³⁸ Neni 27 i Ligjit për Gjykatat e Rregullta.

³⁹ Shih më poashtë procedurat kundër të miturve.

Gjykatat komunale veprojnë në 25 komuna, shtatë nga të cilat⁴⁰ janë përcaktuar me Ligjin mbi Gjykatat e Rregullta⁴¹ si degë të gjykatave përkatëse komunale dhe më tej, njëra prej tyre, ajo e Shtërpces u themelua si degë e Gjykatës Komunale të Ferizajit me anë të Urdhërësës Administrative të PSSP-së në tetor të vitit 2002⁴².

Gjykatat e Qarkut

Juridiksioni material: Shkalla e parë

Gjykatat e qarkut kanë juridiksion për veprat penale për të cilat parashihet dënimi me më tepër se pesë vite burg, si dhe për një numër veprash qartazi të theksuara në Ligjin për Gjykatat e Rregullta⁴³ dhe veprat që i caktohen këtyre gjykatave me anë të dispozitave specifike statutores⁴⁴. Poashtu, në bazë të Rregullores së UNMIK-ut, veprat e ndryshme – përfshirë edhe kalimin e kufirit përveç se në pikat e autorizuara kufitare⁴⁵ si dhe vepra të caktuara terroriste dhe krimet e ndërlidhura⁴⁶ - i janë caktuar për gjykim gjykatave të qarkut. Disa nga dënimet për këto krime bien nën kufirin e dënimeve të përgjithshme prej më shumë se pesë vjet⁴⁷. Gjykatat e qarkut poashtu:

1. Ndërmarrin hetime dhe hapa tjerë që janë pjesë e procedurës paraprake në rastet brenda kompetencave të tyre;
2. Sigurojnë ndihmë penale ligjore ndërkombëtare me kërkesë të organeve ndërkombëtare;
3. Zhvillojnë procedura dhe vendosin mbi kërkesat nga shtetet e huaja përkitazi me dorëzimin e të akuzuarve dhe personave të dënuar;
4. Zhvillojnë procedurë dhe vendosin lidhur me aplikimet për lirim nga akuza, caktimin, vazhdimin dhe ndërprerjen e masave të sigurisë⁴⁸.

Kur për shkak të numrit të pamjaftueshëm është e pamundur të formohet kolegji në gjykatën komunale për të vlerësuar ankesat ndaj hetimeve apo kundërshtimeve ndaj akuzave, atëherë një kolegji i gjykatës së qarkut mund të marrë juridiksionin për këtë⁴⁹.

Sa i përket procedurave civile, gjykatat e qarkut janë kompetente të vlerësojnë:

1. Kontestet lidhur me prindësinë;
2. Kontestet lidhur me vlefshmërinë apo anulimin e martesës dhe shkurorëzimit;
3. Kontestet në lidhje me mbajtjen apo mbështetjen, kur ndërlidhen me kontestet

⁴⁰ Leposavic, Skenderaj, Decan, Klina, Dragash, Gillogovc dhe Kacanik

⁴¹ Neni 33 i Ligjit për Gjykatat e Rregullta.

⁴² Udhëzimi Administrativ Nr. 2002/24, 31 tetor 2002.

⁴³ Shembull: veprat të caktuara kundër interesave shtetërore, siç janë zbulimi i sekreteve shtetërore.

⁴⁴ Neni 29.2 i Ligjit për Gjykatat e Rregullta.

⁴⁵ Në bazë të Rregullores së UNMIK-ut 2001/10, seksioni 5.3.

⁴⁶ Rregullorja e UNMIK-ut 2001/12, seksioni 7. Kjo rregullore e bën veprën kryerjen e një akti terrorist, siç përkufizohet në seksionin 1 të Rregullores dhe poashtu përshtet veprat e lidhura me kryerjen e një akti terrorist, veprat e kryera për qëllime terrorizmi si dhe veprat e kryera që kanë lidhje me organizatat terroriste.

⁴⁷ Në varësi të kategorisë së kalimit të paligjshëm të kufirit, sanksionet ndryshojnë nga një gjobë ekuivalente prej 500DM ose 30 ditë burgim, deri në maksimum 5,000DM dhe/ose një vit burgim. Fshehja e informacionit përkitazi me një plan të aktit terrorist parasheh dënimin me burg prej 6 muajsh deri në 5 vite.

⁴⁸ Neni 29 i Ligjit për Gjykatat e Rregullta.

⁴⁹ Neni 28 i Ligjit për Gjykatat e Rregullta

mbi vlefshmërinë apo anulimin e martesës, shkurorëzimit apo kontesteve të prindësisë përkitazi me kujdestarinë e fëmijëve, kur ndërlidhet me kontestet mbi vlefshmërinë ose anulimin e martesës dhe shkurorëzimit;

4. Kërkesat për kompensim që rrjedhin nga dënimi i papërligjur apo privimi nga liria;
5. Kontestet lidhur me të drejtat autoriale, mbrojtjen apo përdorimin e zbulimeve, modeleve ose vulave, apo të drejtat e përdorimit të emrit apo titullit të kompanisë;
6. Aplikacionet për njohje apo ekzekutimin e vendimeve të gjykatave të huaja;
7. Aplikacionet për këshilla mbrojtëse kundër një veprimi joligjor, sipas Nenit 70 të *Ligjit mbi Kontestet Administrative* (Nr. 4 të vitit 1977)⁵⁰.

Juridiksioni material: Shkalla e dytë

Ankesat për vendimet e gjykatave komunale iu drejtohen gjykatave të qarkut. Një gjykatë e qarkut poashtu ka autoritet të vlerësojë çështjet e konfliktit të juridiksionit ndërmjet gjykatave komunale brenda një rajoni⁵¹.

Juridiksioni territorial

Gjykatat e qarkut ushtrojnë juridiksion në një rajon që përbëhet nga dy ose më shumë gjykata komunale.

Ekzistojnë pesë gjykata të qarkut të vendosura në Prishtinë, Pejë, Prizren, Mitrovicë dhe Gjilan, që iu shërbejnë rajoneve në të cilat këto qytete janë qendra.

Trupat gjykues/Kolegjet

Siç është cekur më herët kur janë përshkruar rregullimet e gjykatave komunale, zakonisht rastet në shkallë të parë gjykohen nga një trup gjykues⁵², kurse rregullat e përgjithshme sa i përket përbërjes së trupit gjykues janë njëlloj të aplikueshme. Në rastet kur për veprën penale parashihet një dënim me 15 vite burgim, apo burgim afatëgjatë është nën kompetencën ekskluzive të gjykatës së qarkut – Trupi gjykues do të përbëhet nga dy gjyqtarë profesionalë dhe tre porotë⁵³.

Si rregull e përgjithshme, gjykatat që ushtrojnë juridiksion ankimor kanë kolegje që përbëhen nga tre gjyqtarë profesionalë⁵⁴. Kur shqyrtohen mocionet për zbutje të jashtëzakonshme të një dënimi dhe gjatë gjykimit të mocionit për shqyrtim të jashtëzakonshëm të një aktgjykimi, kolegji i gjykatës përbëhet nga pesë gjyqtarë, në rastet kur dënimi maksimal për një veprë është më i lartë se 15 vite, kurse përbëhet nga tre gjyqtarë kur dënimi i parashikuar është më i ulët⁵⁵. Kolegji poashtu përbëhet nga pesë gjyqtarë kur vendoset për mocionet për “mbrojtjen e ligjshmërisë”⁵⁶, përpos nëse ligji parashihet se kolegji i gjykatës duhet të përbëhet nga më shumë gjyqtarë, ose që një kolegji i Gjykatës Supreme duhet ta dëgjojë rastin.

⁵⁰ Neni 29 i Ligjit për Gjykatat e Rregullta.

⁵¹ Neni 28 i Ligjit për Gjykatat e Rregullta.

⁵² Neni 8 i Ligjit për Gjykatat e Rregullta. Shih poashtu nenin 19 të Ligjit të Procedurës Penale të vitit 1986 dhe zëvendësimin e synuar të tij, Nenin 24.1, të KPP (dhe nenin 41 të Kodit të Procedurës Civile të RSFJ).

⁵³ Neni 23.1, Ligji i Procedurës Penale i vitit 1986 dhe Neni 24.1, KPP.

⁵⁴ Neni 23.1, Ligji i Procedurës Penale i vitit 1986 dhe neni 24.1, I KPP.

⁵⁵ Neni 23.7, Ligji i Procedurës Penale i vitit 1986 (RSFJ).

⁵⁶ Me sa duket, kjo është referencë për këshillën për mbrojtje kundër veprave të paligjshme të referuara në nenin 70 të Ligjit për Konteste Administrative të vitit 1977, të përmendur më lartë.

Neni 24.3 i KPP thekson se gjykata e qarkut gjykon në një trup gjykues prej dy gjyqtarësh profesionalë dhe tre porotë në rastet kur vendos për dëgjimin në shkallën e dytë.

Në ankesat civile, kërkohet që trupi gjykues të përbëhet nga dy gjyqtarë profesional dhe tre porotë⁵⁷.

Gjykatat Ekonomike të Qarkut

Ligji për Gjykatat e Rregullta ka siguruar që dy gjykata ekonomike të qarkut të shërbejnë në territorin e Kosovës me seli në Prishtinë dhe Gjakovë⁵⁸. Në funksion është vetëm Gjykata Ekonomike e Qarkut në Prishtinë, ngase ajo në Gjakovë nuk është ri-themeluar pas përfundimit të konfliktit.

Juridiksioni material

Gjykata Ekonomike e Qarkut ka juridiksion të kufizuar penal në shkallën e parë, që përshkruhet si “krime ekonomike”⁵⁹. Juridiksioni civil në shkallë të parë të gjykatës përfshin:

1. Gjykimin e kontesteve ekonomike dhe kërkesat për kompensim që përfshijnë organizatat e punës, organizatat e tjera vetëmenaxhuese apo bashkësitë, si dhe bashkësitë shoqëro-politike;
2. Gjykimin e kontesteve ekonomike lidhur me mbrojtjen dhe përdorimin e zbulimeve, modeleve, vulave dhe “të drejtave për përdorimin e firmës”, si dhe kontestet lidhur me konkurrencën jo të drejtë dhe të drejtat e autorit;
3. Gjykimin e kontesteve “administrative-llogaritjeve”;
4. Zhvillimin e procedurave të zbatimit të marrëveshjeve, falimentimit dhe likuidimit të rregullt, si dhe kontestet tjera që rrjedhin nga zhvillimi i këtyre procedurave;
5. Mbajtjen e regjistrit të gjykatës të organizatave të punës së bashkuar dhe personave tjerë shoqërorë ligjorë të përshkruar si në ligj.
6. Ekzekutimin e gjykimeve të gjykatës në shkallën e parë si dhe caktimin e kontesteve që dalin gjatë dhe si pasojë e ekzekutimit të gjykimeve të tilla (ekzekutimi kundër burimeve jo-monetare bëhet nga gjykata komunale).

Gjykatës ekonomike të qarkut i është caktuar juridiksioni në lidhje me rastet e falimentimit lidhur me partneritetet e përgjithshme, partneritetet e kufizuara, kompanitë me kapitale të përbashkëta si dhe kompanitë me detyrime të kufizuara sipas Ligjit të ri mbi *Likuidimin dhe Riorganizimin e Personave Ligjorë në Falimentim*.⁶⁰

Juridiksioni territorial

⁵⁷ Neni 44 i Kodit të Procedurës Civile të RSFJ-së.

⁵⁸ Neni 36 i Ligjit për Gjykata e Rregullta.

⁵⁹ Neni 30 i Ligjit për Gjykatat e Rregullta. Përkthimi në dispozicion i Ligjit për Gjykatat e Rregullta i referohet “gjykata ekonomike e qarkut”, “krimet ekonomike” dhe “kontestet ekonomike”.

⁶⁰ Neni 5 i ligjit, i nxjerrë me Rregulloren e UNMIK-ut 2003/7. Ligji ka hyrë në fuqi më 14 korrik 2003 (90 ditë pas nxjerrjes).

Gjykatat ekonomike të qarkut kanë kompetenca territoriale për një ose më shumë komuna⁶¹. Ligji për Gjykatat e Rregullta ia kalon juridiksionin Gjykatës Ekonomike të Qarkut në Prishtinë për këto komuna: Viti, Vushtrri, Glogoc, Gjiilan, Kaçanik, Kamenicë, Mitrovicë, Leposaviq, Lipjan, Podujevë, Prishtinë, Skënderaj dhe Ferizaj. Gjykatës Ekonomike të Qarkut në Gjakovë i është dhënë juridiksioni për këto komuna: Deçan, Dragash, Gjakovë, Istog, Klinë, Rahovec, Pejë, Prizren dhe Suharekë⁶².

Në çështjet e falimentimit lidhur me partneritetin e përgjithshëm, partneritetin e kufizuar, kompanitë me kapitale të përbashkëta dhe kompanitë me detyrime të kufizuara, juridiksioni është i ushtrueshëm nga gjykata ekonomike e qarkut që ka kompetenca territoriale në hapësirën gjeografike në të cilën gjendet residenca e debitorit⁶³.

Truat gjykues /Kolegjet

Gjykatat ekonomike të qarkut i nënshtrohen rregullave të përgjithshme sa i përket kolegeve dhe pjesëmarrjes së gjyqtarëve porotë, sikurse është cekur më lartë. Gjykata Ekonomike e Qarkut në Prishtinë ka një establishment të autorizuar prej 11 gjyqtarësh ku ekziston edhe një vend i lirë pune.

Gjykata Supreme e Kosovës

Juridiksioni material

Gjykata Supreme ushtron juridiksion ankimor në shkallën e dytë dhe të tretë, si dhe ka juridiksionin e vet në çështje të caktuara dhe rol mbikëqyrës në lidhje me funksionimin e gjykatave më të ulëta.

Në bazë të Ligjit për Gjykatat e Rregullta, Gjykata Supreme është e autorizuar të merret me këto procedura:

1. Në shkallën e dytë, ankesat ndaj aktgjykimeve dhe vendimeve të tjera të gjykatave (në veçanti të gjykatave të qarkut);
2. Në shkallë të tretë vendos mbi mjetet e rregullta juridike kundër vendimeve të gjykatave të qarkut dhe atyre ekonomike të qarkut, në rastet e përshkruara me ligj;
3. Vendos lidhur me mjetet ejashtzakonshme juridike kundër vendimeve të formës së prere të gjykatave në Kosovë, siq është përcaktuar me ligj;
4. Vendos mbi revizionin kundër vendimeve të shkallës së dytë të gjykatave në çështjet kontestimore kur një gjë e tillë është e caktuar me ligj;
5. Vendos mbi ligjshmërinë e akteve definitive administrative në konfliktin administrativ⁶⁴.

Neni 430 i KPP-së i jep Gjykatës Supreme juridiksion të vendos lidhur me ankesat kundër aktgjykimeve të gjykatës së shkallës së dytë kur:

⁶¹ Neni 23 i Ligjit për Gjykatat e Rregullta

⁶² Neni 36 i Ligjit për Gjykatat e Rregullta.

⁶³ Neni 5 i Ligjit për Likudim dhe Riorganizim të Personit Juridik në Bankrotim.

⁶⁴ Neni 31 i Ligjit për Gjykatat e Rregullta

1. Një gjykatë e shkallës së dytë ka shqiptuar një dënim me burgim afatgjatë ose ka vërtetuar aktgjykimin e një gjykate të shkallës së parë me anë të të cilit është dhënë një dënim i tillë;
2. Një gjykatë e shkallës së dytë pas shqyrtimit vërteton ndryshe gjendjen faktike nga aktgjykimi i shkallës së parë dhe e bazon aktgjykimin në atë gjendje faktike; ose
3. Një gjykatë e shkallës së dytë e ndryshon aktgjykimin lirues të gjykatës e shkallës së parë dhe në vend të tij jep një aktgjykim dënues.

Korniza Kushtetuese ka themeluar një Dhomë Speciale të Gjykatës Supreme për Çështje të Kornizës Kushtetuese që ka kompetenca për të vlerësuar:

1. Pajtueshmërinë e ligjeve të miratuara nga Kuvendi me Kornizën Kushtetuese, përfshirë instrumentet ndërkombëtare ligjore të specifikuar në Kapitullin 3 mbi të Drejtat e Njeriut sipas kërkesës së Presidentit të Kosovës, çdo anëtar i Kryesisë së Kuvendit, Komiteti të Kuvendit, jo më pak se pesë anëtarëve të Kuvendit, apo Qeverisë;
2. Kontestet ndërmjet Institucioneve të Përkohshme të Vetëqeverisjes, ose ndërmjet një Institucioni të Përkohshëm të Vetëqeverisjes dhe një Komiteti të Kuvendit, një ose më shumë anëtar i Kryesisë së Kuvendit, një ose më shumë anëtarëve të Kuvendit në lidhje me të drejtat dhe detyrimet e tyre në bazë të Kornizës Kushtetuese;
3. Nëse një vendim i një Institucioni të Përkohshëm të Vetëqeverisjes shkel mbi pavarësinë apo përgjegjësitë e një trupi apo zyre të pavarur relevante; dhe
4. Nëse një akt nga një anëtar i Kuvendit, një anëtar i Qeverisë apo Presidenti i Kosovës përbën një akt zyrtar dhe nëse si i tillë ka imunitet me Kornizë Kushtetuese⁶⁵. Dhoma Speciale e Gjykatës Supreme do të gjykojë përkitazi me kërkesat dhe kundërkërkesat lidhur me vendimet apo veprimet e Agjensisë Kosovare të Mirëbesimit, që është themeluar në qershor të vitit 2002⁶⁶. Dhomës Speciale poashtu i është dhënë autoriteti që t'i udhëzojë kërkesat për vlerësim në një gjykatë që ka juridiksion të duhur, të dëgjojë ankesa nga një gjykatë e tillë, dhe të zhvendosë procedurat në pritje në një gjykatë tjetër për gjykim nga ana e Dhomës Speciale⁶⁷. Dhoma Speciale përbëhet nga një koleg prej pesë gjyqtarësh⁶⁸.

Përpos funksioneve të saj gjyqësore, Gjykata Supreme kryen funksion udhëzues dhe mbikëqyrës për gjykatat brenda territorit të Kosovës. Kjo gjykatë është përgjegjëse për:

1. Nxjerrjen e udhëzimeve për gjykatat për mënyrën e mbajtjes së shënimeve, studimin e praktikave gjyqësore dhe marrëdhënieve shoqërore si dhe ngjarjeve që janë paraqitur në punën e gjykatës;
2. Përcaktimin e “qëndrimeve parimore dhe mendimeve ligjore” për çështjet që gjejnë zbatim të përgjithshëm nga gjykatat në territorin e Kosovës;

⁶⁵ Kapitulli 9.4.11 i Kornizës Kushtetuese.

⁶⁶ Në bazë të Rregullores së UNMIK-ut 2002/13. Kategoritë e procedurave me të cilat mund të merret Dhoma Speciale janë të theksuara në seksionin 4.1 të Rregullores.

⁶⁷ Seksioni 4, nënseksioni 2, 4 dhe 5 i Rregullores 2002/13.

⁶⁸ Seksioni 3.1 i Rregullores 2002/13.

3. Zgjidhjen e konflikteve ndërmjet Gjykatave të Rregullta, konflikte të juridiksionit ndërmjet Gjykatave të Rregullta dhe gjykatave të punës si dhe konfliktet ndërmjet Gjykatave të Rregullta dhe gjykatave tjera vetë menaxhuese brenda territorit të Kosovës⁶⁹.

Juridiksioni Territorial

*Juridiksioni i Gjykatës Supreme ushtrohet brenda territorit të Kosovës.*⁷⁷

Kolegjet

Gjykata Supreme do të japë gjykim:

Në një kolegji nga tre gjyqtarë përveç kur i gjykon veprat më të rënda penale të dënueshme me së paku 15 vite burg, në cilin rast do të mblidhet kolegji nga pesë:

Në një kolegji nga pesë gjyqtarë kur vendoset në shkallën e tretë mbi një ankesë kundër një gjykimi të sjellë në shkallën e dytë:

Në një kolegji nga tre gjyqtarë kur sjell vendim mbi një mjet të jashtëzakonshëm juridik në lidhje me një vepër penale që dënohet me deri në 15 vite burg;

Në një kolegji nga pesë gjyqtarë kur sjell vendim mbi një mjet të jashtëzakonshëm juridik në lidhje me një vepër penale që dënohet me së paku 15 vite burg;

Në një kolegji nga pesë gjyqtarë kur sjell vendim mbi një mjet të jashtëzakonshëm juridik kundër një vendimi të sjellur nga njëri nga kolegjet e tij.

Kur vendos mbi revizionin dhe mbi kërkesën për mbrojtje të ligjshmërisë nga neni 401 401 të Ligjit të *Procedurës Civile*, vendos në kolegji të përbërë prej 5 (pesë) gjyqtarësh profesional.⁷⁸

⁶⁹ Neni 31 i Ligjit për Gjykatat e Rregullta.

⁷⁷ Kapitulli 1.2 I Kornizës Kushtetuese parasheh: “Kosova është një territor i pandarë në të cilin Institucionet e Përkohshme të Vetëqeverisjes (njëra nga të cilat janë Gjykatat-Kapitulli 1.5) të krijuara me këtë Kornizë Kushtetuese për Vetëqeverisje të Përkohshme do të ushtrojnë përgjegjësitë e tyre.” Shih gjithashtu Nenin 31 të Ligjit mbi Gjykatat e Rregullta.

⁷⁸ Neni 44 i Ligji i Procedurës Civile të RSFJ.

Vështrimi gjeografik

Përveç Gjykatës Supreme dhe Gjykatës së Lartë për Kundërvajtje, shpërndarja e gjykatave të juridiksioneve të ndryshme i referohet dy njësive kryesore administrative territoriale të përdorura në Kosovë: rajoneve – nga të cilët janë pesë (të emëruar sipas qyteteve kryesore të tyre, Prishtina, Peja, Prizreni, Mitrovica dhe Gjilani) – dhe komunat. Në secilin qytet kryesor të secilit rajon ka nga një gjykatë të qarkut. Siç është përmendur më parë, një gjykatë komunale mund të krijohet për territorin e një apo më shumë komunave.⁷⁹ Skema në vijim e tregon përqendrimin e gjykatave të ndryshme dhe prokurorive nëpër secilin rajon, duke treguar se ku janë të vendosura ndaras apo a i ndajnë lokalet me gjykatat apo prokuroritë tjera:

Figura 1: Vendndodhja e gjykatave dhe prokurorive në Kosovë

Rajoni i Prishtinës	Vendndodhja 1	Vendndodhja 2	Vendndodhja 3	Vendndodhja 4
Prishtina	Gjykata Supreme	Gjykata Ekonomike e Qarkut Gjykata Kundërvajtje për	Gjykata e Qarkut Gjykata e Lartë për Kundërvajtje Prokuroria Publike e Kosovës Prokuroria e Qarkut	Gjykata Komunale Prokuroria Komunale
Podujevë	Gjykata Kundërvajtje për	Gjykata Komunale		
Lipjan	Gjykata Kundërvajtje për	Gjykata Komunale		
Glllogovc	Gjykata Kundërvajtje për	Gjykata Komunale		
Ferizaj	Gjykata Komunale	Gjykata Kundërvajtje për	Prokuroria Komunale	
Rajoni i Pejës	Vendndodhja 1	Vendndodhja 2	Vendndodhja 3	Vendndodhja 4
Gjakova	Gjykata Komunale	Gjykata Kundërvajtje për	Prokuroria Komunale	
Peja	Gjykata Komunale Gjykata e Qarkut	Gjykata Kundërvajtje për	Prokuroria e Qarkut	Prokuroria Komunale
Istog	Gjykata Komunale	Gjykata Kundërvajtje për		
Deçan	Gjykata Komunale	Gjykata Kundërvajtje për		
Klinë	Gjykata Komunale	Gjykata Kundërvajtje për		
Rajoni i Prizrenit	Vendndodhja 1	Vendndodhja 2	Vendndodhja 3	Vendndodhja 4
Prizren	Gjykata e Qarkut Gjykata Komunale	Gjykata Kundërvajtje për	Prokuroria e Qarkut	Prokuroria Komunale
Malishevë	Gjykata Komunale	Gjykata Kundërvajtje për		
Rahovec	Gjykata Komunale	Gjykata Kundërvajtje për		
Suharekë	Gjykata Komunale	Gjykata Kundërvajtje për		

⁷⁹ Neni 23 i Ligjit mbi Gjykatat e Rregullta

Dragash	Gjykata Komunale	Gjykata për kundërvajtje		
Rajoni i Mitrovicës	Vendndodhja 1	Vendndodhja 2	Vendndodhja 3	Vendndodhja 4
Mitrovica	Gjykata e Qarkut	Gjykata Komunale	Gjykata për Kundërvajtje	Prokuroria e Qarkut Prokuroria Komunale
Vushtri	Gjykata Komunale	Gjykata për Kundërvajtje		
Skenderaj	Gjykata Komunale	Gjykata për Kundërvajtje		
Leposaviq	Gjykata Komunale	Gjykata për Kundërvajtje		
Zubin Potok	Gjykata Komunale	Gjykata për Kundërvajtje		
Rajoni i Gjilanit	Vendndodhja 1	Vendndodhja 2	Vendndodhja 3	Vendndodhja 4
Gjilan	Gjykata e Qarkut	Gjykata Komunale	Gjykata për Kundërvajtje	Prokuroria e Qarkut Prokuroria Komunale
Kamenicë	Gjykata Komunale	Gjykata për Kundërvajtje		
Viti	Gjykata Komunale	Gjykata për Kundërvajtje		
Shtërpce	Dega e Gjykatës Komunale	Gjykata për Kundërvajtje		
Kaçanik	Gjykata Komunale	Gjykata për Kundërvajtje		

]

Sistemi ekzistues prokurorial

Korniza Kushtetuese parasheh Prokurorin Publike të Kosovës, Prokurorit e Qarkut dhe Prokurorit Komunale,⁸⁰ të cilat do të ushtrjnë funksionet e tyre në pajtim me ligjin e aplikueshëm.⁸¹ Sistemi ekzistues i prokurorive është krijuar sipas *Ligjit të Prokurorive Publike* të Krahinës Socialiste Autonome të Kosovës, Nr. 32 nga 1976 (“Ligji i Prokurorive”), i cili parasheh për një prokurori publike krahinore (ekuivalenti i Prokurorit Publik për Kosovë), të vendosur në Prishtinë dhe për prokurori publike të qarkut dhe komunale.⁸² Janë krijuar shtatë prokurori publike komunale, në Prishtinë, Gjilan, Pejë,

⁸⁰ Neni 9.4.9

⁸¹ Neni 9.4.10

⁸² Neni 18 i Ligjit mbi Prokurorët. Oficerve në përkthimin e Ligjit në dispozicion i referohet si “prokuror” dhe “prokuror publik”.

Prizren, Mitrovicë, Gjakovë dhe Ferizaj, të gjitha përveç dy të fundit kanë patur funksione në lidhje me dy apo më shumë territore të gjykatave komunale.

Prokuroria Publike e Kosovës

Prokuroria Publike e Kosovës është mbi prokuroritë e qarkut dhe ato komunale.

Prokuroritë e Qarkut

Ligji mbi Prokurorët i ka krijuar pesë prokurori të qarkut për territoret e pesë gjykatave korresponuese të qarkut, prokuroritë janë të vendosura në qytetet ku janë të vendosura gjykatat e qarkut.⁸³ Prokurorive të qarkut në Prishtinë dhe në Pejë iu është dhënë kompetenca që të fillojnë procedura përpara gjykatave ekonomike të qarkut në Prishtinë dhe në Gjakovë.⁸⁴

Prokuroria Komunale

Secila nga shtatë prokuroritë komunale kryen funksionet sa i përket një numri të gjykatave të territoreve komunale, me përjashtimin e prokurorive të Gjakovës dhe Ferizajit, të cilat kanë kompetenca vetëm për territoret e gjykatave të tyre korresponduese. Kompetencat territoriale të prokurorive komunale janë sa vijon:

Prokuroria Komunale

Territoret e Gjykatave Komunale

Prishtina	Prishtina, Lipjani, Podujeva dhe Gllgovc
Peja	Peja, Istogu, Deqani dhe Klina
Gjakova	Gjakova
Prizreni	Prizreni, Rahoveci Malisheva dhe Suhareka
Mitrovica	Mitrovicë, Vushtrri, Skenderaj, Leposaviq dhe Zubin Potok
Gjilan	Gjilan, Viti, Kamenicë, Shtërpc dhe Kaçaqniku
Ferizaj	Ferizaj

⁸³ Neni 19 i Ligjit mbi Prokurorët.

⁸⁴ Gjykata e fundit, siç është përmendur më parë, momentalisht nuk është në funksion.

UNMIK/RREG/2005/52
20 dhjetor 2005

RREGULLORE NR. 2005/52

PËR THEMELIMIN E KËSHILLIT GJYQËSOR TË KOSOVËS

Përfaqësuesi Special i Sekretarit të Përgjithshëm,

Në pajtim me autorizimin që i është dhënë sipas Rezolutës 1244 (1999) të Këshillit të Sigurimit të Kombeve të Bashkuara në qershor të vitit 1999,

Duke marrë parasysh Rregulloren e ndryshuar nr. 1999/1 të Adiministratës së Përkohshme të Kombeve të Bashkuara në Kosovë të datës 25 korrik 1999 për Autorizimin e Administratës së Përkohshme në Kosovë,

Pas nxjerrjes së Rregullores së UNMIK-ut nr. 2001/8 të datës 6 prill 2001 për themelimin e Këshillit Gjyqësor dhe Prokurorial të Kosovës,

Me qëllim të themelimit të Këshillit Gjyqësor të Kosovës (KGJK) në vend të Këshillit Gjyqësor dhe Prokurorial të Kosovës (KGJPK) dhe me qëllim të sigurimit të një gjyqësori të paanshëm, të integruar, të pavarur, profesional dhe llogaridhënës, si dhe duke marrë parasysh riorganizimin aktual të sistemit gjyqësor të Kosovës,

Me anë të kësaj Rregulloreje shpall si në vijim:

Neni 1 Këshilli Gjyqësor i Kosovës

1.1 Me anë të kësaj Rregulloreje themelohet Këshilli Gjyqësor i Kosovës ("Këshilli") si një organ profesional nën pushtetin suprem të Përfaqësuesit Special të Sekretarit të Përgjithshëm (PSSP) duke e zëvendësuar KGJPK-në, i cili do të shpërbëhet pas formimit të Këshillit.

1.2 Këshilli ka pavarësi të plotë në kryerjen e funksioneve të tij.

1.3 Këshilli përcakton politikat administrative dhe bën mbikëqyrjen administrative të gjyqësorit dhe të gjykatave.

1.4 Këshilli është përgjegjës për përcaktimin e politikës së punës dhe për shpalljen e rregullave e të udhëzimeve për gjyqësorin dhe gjykatat për:

(a) Punësim;

(b) Aftësim dhe

(c) Emërim, vlerësim, avancim në punë, transferim dhe disiplinë të gjykatësve, të gjykatësve laikë dhe të punonjësve të tjerë jogjyqësorë.

1.5 Përfaqësuesi Special i Sekretarit të Përgjithshëm (PSSP) ushtron pushtetin suprem lidhur me emërimin dhe largimin e gjyqtarëve nga posti i tyre.

1.6 Deri në shpalljen e rregullores me të cilën do të themelohet subjekti përgjegjës për këshillimin e PSSP-së lidhur me çështjet e emërimit, të sanksionimit dhe të shkarkimit të prokurorëve, dispozitat përkitazi me këto çështje që vlejné për gjyqtarët konsiderohen se vlejné edhe për prokurorët.

1.7 Në lëminë gjyqësore, Këshilli ka përgjegjësitë vijuese:

- (a) Ushtron përgjegjësitë lidhur me organizimin dhe funksionimin e rregullt të gjykatave;
- (b) Cakton lokacionin gjeografik, numrin dhe strukturën e gjykatave në konsultim me Kuvendin e Kosovës;
- (c) Ushtron përgjegjësitë lidhur me ofrimin e kushteve teknike dhe financiare, me përkrahjen e punonjësve dhe lidhur me resurset materiale për të siguruar funksionimin efektiv të sistemit gjyqësor;
- (d) Cakton politikat dhe organizon aftësimet e punonjësve të gjyqit, duke përfshirë aftësimet profesionale, në bashkëpunim me Gjykatën Supreme të Kosovës, me ndihmën e plotë apo të pjesërishme të Institutit Gjyqësor të Kosovës (IGJK);
- (e) Ushtron përgjegjësitë lidhur me organizimin e provimeve për kualifikimin e gjyqtarëve përmes IGJK-së;
- (f) Ushtron përgjegjësitë lidhur me emërimin, aftësimin, sanksionimin dhe shkarkimin e punonjësve gjyqësor ndihmës;
- (g) Sipas nevojës jep informata dhe të dhëna statistikore për sistemin gjyqësor, duke përfshirë bashkëpunimin me organizatat e duhura përkitazi me monitorimin e pavarur të sistemit gjyqësor dhe
- (h) Ruan të dhënat personale që ndërlidhen me sistemin gjyqësor.

1.8 Këshilli harton dhe miraton rregulloren e brendshme të punës. Si një masë e përkohshme dhe deri në miratimin e rregullores së punës, Këshilli zbaton në formë të përshtatshme rregulloren e punës të KGJPK-së.

1.9 Këshilli shpall rregullat dhe procedurat që përcaktojnë bazën për ndërmarrjen e veprimeve disiplinore dhe procesin për trajtimin e akuzave, të hetimeve, pezullimit apo shkarkimit të cilitdo anëtar i Këshillit.

1.10 Këshilli e miraton kodin e mirësjelljes që përcakton standardet e etikës dhe të mirësjelljes profesionale, të cilat duhet të respektohen nga anëtarët e Këshillit, shkelja e të cilave paraqet bazën për sanksionim, duke përfshirë largimin nga Këshilli.

1.11 Pas emërimit secili anëtar i Këshillit betohet solemnisht përpara PSSP-së. Teksti i betimit është si në vijim:

“Solemnisht deklaroj dhe premtoj se do t’i kryej funksionet që më janë besuar sipas Rregullores së UNMIK-ut nr.52 dhe urdhëresave administrative të nxjerra pas saj dhe se nuk do të kërkoj e pranoj udhëzime nga asnjë burim tjetër”.

Neni 2 Përbërja

- 2.1 Këshilli përbëhet prej njëmbëdhjetë (11) anëtarëve nga të cilët shtatë (7) janë gjyqtarë dhe katër (4) nuk janë gjyqtarë. Gjyqtarët në Këshill do të pasqyrojnë barazinë gjinore dhe shumetnicitetin.
- 2.2 Gjyqtarët anëtarë të Këshillit janë kryetari i Gjykatës Supreme, dy (2) gjyqtarë nga Gjykata Supreme dhe katër (4) gjyqtarë përfaqësues të gjykatave të tjera.
- 2.3 Deri në shpalljen e rregullores që themelon subjektin përgjegjës për këshillimin e PSSP-së përkitazi me çështjet e emërimit, sanksionimit dhe shkarkimit të prokurorëve, vetëm dy nga shtatë postet për gjykatësit do t’u takojnë prokurorëve.
- 2.4 Anëtarët e tjerë të Këshillit përpos gjykatësve janë Ministri i Drejtësisë, kryesuesi i Komisionit parlamentar për çështje legislative, juridike dhe për Kornizë Kushtetuese, kryetari i Odës së Avokatëve të Kosovës dhe një profesor i lëmisë juridike.
- 2.5 Kryetari i Gjykatës Supreme është edhe kryetar i Këshillit.
- 2.6 Këshilli e zgjedh njërin nga gjyqtarët e tjerë në postin e zëvendëskryetarit të Këshillit, i cili e zëvendëson kryetarin në rastet kur ai përkohësisht mungon.
- 2.7 Këshilli mban takime sipas nevojës me qëllim të kryerjes së funksioneve të veta. Shtatë (7) anëtarët e Këshillit e përbëjnë kuorumin e nevojshëm për takim.
- 2.8 Kurdo që takimi i tillë është i lidhur me emërimin, sanksionimin dhe shkarkimin e prokurorëve, për ekzistimin e kuorumit është e nevojshme prania e dy anëtarëve nga radhët e prokurorëve.

Neni 3 Sekretaria

- 3.1 Gjatë punës së tij, Këshillit do t’i ndihmojë Sekretaria e Këshillit e udhëhequr nga drejtori që zgjedhet nga Këshilli.
- 3.2 Sekretaria e këshillon dhe e ndihmon Këshillin në kryerjen e përgjegjësive të tij, në menaxhimin e gjyqësorit dhe të gjykatave dhe është përgjegjëse për zbatimin e vendimeve të Këshillit, si dhe është përgjegjëse për të gjitha funksionet administrative dhe të hulumtimit që ndërliken me përkrahjen e Këshillit, në pajtim me rregulloren e punës së Këshillit.

Neni 4
Emërimi dhe largimi i anëtarëve të Këshillit

- 4.1 Anëtarët vijues të Këshillit shërbejnë si anëtarë sipas detyrës zyrtare:
- (a) Kryetari i Gjykatës Supreme;
 - (b) Ministri i Drejtësisë;
 - (c) Kryetari i Odës së Avokatëve të Kosovës;
 - (d) Kryesuesi i Komisionit parlamentar për çështje legislative, juridike dhe Kornizë Kushtetuese dhe
 - (e) Një profesor i lëmisë juridike, i cili do të emërohet nga Kuvendi pas rekomandimit të Këshillit drejtues të Universitetit të Prishtinës.
- 4.2 Për një periudhë njëvjeçare pas shpalljes së kësaj Rregulloreje, dy (2) nga gjyqtarët e Këshillit do të jenë gjyqtarë ndërkombëtarë.
- 4.3 Në pajtim me nenin 4.2, PSSP-ja i emëron dy (2) anëtarë ndërkombëtarë nga radhët e gjyqtarëve ndërkombëtarë që shërbejnë në Kosovë.
- 4.4 Deri në shpalljen e rregullores që përcakton subjektin përgjegjës për këshillimin e PSSP-së lidhur me çështjet e emërimit, sanksionimit dhe shkarkimit të prokurorëve, një nga postet ndërkombëtare gjyqësore do të mbahet nga një prokuror ndërkombëtar.
- 4.5 PSSP-ja i emëron katër (4) gjyqtarët e tjerë në Këshill në konsultim me Kuvendin e Kosovës dhe në konsultim me Këshillin e Kuvendin, pas emërimit të përbërjes fillestare të Këshillit
- 4.6 Anëtari i Këshillit suspendohet nga posti nëse kundër tij është shpallur aktakuza apo vendimi për mbajtje në arrest para gjykimit ose nëse është dhënë urdhri për arrestimin e tij.
- 4.7 Rekomandimi i Këshillit për shkarkimin e anëtarit të Këshillit miratohet nga PSSP-ja për çfarëdo arsyeje, përveç për shpalljen fajtor për kryerjen e veprës penale.
- 4.8 Anëtari i Këshillit mund të jep dorëheqje nga pozita e tij në Këshill me anë të kërkesës për dorëheqje dhe pas njoftimit paraprak prej tridhjetë (30) ditësh.
- 4.9 Mandati i anëtarit të Këshillit përfundon automatikisht kur në rastin e anëtarit sipas detyrës zyrtare ai nuk e mban më postin e cekur në nenin 4.1 dhe, në rastin e anëtarit tjetër, kur ai nuk e mban më postin e caktuar gjyqësor apo prokurorial të cekur në nenet 4.2-4.5.
- 4.10 Të gjitha emërimet e gjyqtarëve në Këshill zgjasin për një periudhë njëvjeçare (1).
- 4.11 Në rast të largimit nga posti të njërit nga anëtarët e Këshillit apo në rastin e vdekjes a dorëheqjes së anëtarit, PSSP-ja e emëron anëtarin e ri që zgjedhet nga lista e personave të propozuar për emërim, e cila dorëzohet nga Këshilli pas konsultimit me Kuvendin e Kosovës. Anëtari i emëruar kryen funksionin gjatë pjesës së mbetur të mandatit të anëtarit të zëvendësuar.

Neni 5

Përgjegjësitë e Këshillit lidhur me emërimin e gjyqtarëve

5.1 Përmes një shpalljeje publike, Këshilli do t'i ftojë profesionistët e fushës juridike në Kosovë që t'i parashtrajnë kërkesat për të punuar si gjyqtar dhe po ashtu do t'i ftojë kandidatët e kualifikuar të Kosovës që t'i parashtrajnë kërkesat për të punuar si gjyqtar laik. Gjithashtu, mund të pranojë rekomandimet nga pushteti rajonal dhe komunal apo nga organet gjyqësore a organet e tjera juridike përkitazi me personat që konsiderohen si të përshtatshëm për t'i intervistuar për punën e gjyqtarit laik. Këshilli i shqyrton veç e veç kërkesat për punësim dhe ia dorëzon PSSP-së rekomandimin e tij me shkrim për kandidatët duke cekur arsyet e atij rekomadimi.

5.2 Gjatë shqyrtimit veç e veç të kërkesave për punësim, anëtarët e Këshillit udhëhiqen nga nevoja e themelimit të një gjyqësori profesional, të pavarur, të paanshëm dhe shumetnik.

5.3 Gjyqtari nuk mund të mbajë ndonjë post tjetër publik a administrativ apo të angazhohet në çfarëdo pune të natyrës profesionale, qoftë me pagesë apo pa të. Këshilli mund të autorizojë gjyqtarin, sipas kushteve që i konsideron të duhura, që të angazhohet në aktivitete të jashtme, siç janë mbajtja e ligjëratave ose ushtrimi i funksioneve në fushën e profesionit të tij, të cilat nuk ndikojnë në pavarësinë ose dinjitetin e postit të tij.

5.4 Gjyqtari apo gjyqtari laik nuk mund të angazhohet në asnjë aktivitet që nuk është në përputhje me funksionet e tij, duke përfshirë angazhimin në aktivitete politike.

5.5 PSSP-ja e ushtron pushtetin suprem në emërimin e gjyqtarëve dhe të gjyqtarëve laik duke marrë parasysh rekomandimet e Këshillit sipas nenit 5.1.

Neni 6

Kriteri për zgjedhjen e kandidatëve për gjyqtarë apo gjyqtarë laikë

6.1 Kandidatët për gjyqtar duhet t'i përmbushin kriteret minimale vijuese:

- (a) Të jenë banor të përhershëm të Kosovës;
- (b) Të kenë integritet të lartë moral;
- (c) Të jenë në gjendje t'i kryejnë detyrat dhe punën gjatë orarit të plotë;
- (d) Të kenë diplomën e fakultetit juridik, që është në përputhje me ligjin e Kosovës;
- (e) Të kenë të kryer provimin e Kosovës për judikaturë apo të jenë anëtar të Odës së Avokatëve;
- (f) Të kenë të kryer provimin pranues për gjyqtar;
- (g) Të kenë vijuar dhe përfunduar aftësimet e nevojshme sipas ligjit dhe sipas rregullave të tjera në fuqi dhe
- (h) Të kenë së paku tri (3) vite përvojë pune në lëmin juridik.

6.2 Kandidatët për të shërbyer si gjyqtar laikë duhet t'i përmbushin kriteret minimale vijuese:

- (a) Të jenë banor të përhershëm të Kosovës për pesë (5) vjet;
- (b) Të kenë mbushur së paku njëzet e pesë vjet (25) në ditën e dorëzimit të kërkesës së tyre dhe
- (c) Të kenë integritet të lartë moral dhe të mos jenë përfshirë në praktika diskriminuese të përkufizuar sipas ligjit dhe rregullave e procedurave gjyqësore.

Neni 7

Komisioni disiplinor gjyqësor

7.1 Këshilli e formon Komisionin disiplinor gjyqësor me qëllim të inicimit dhe zgjidhjes në shkallë të parë të rasteve të shkeljes nga gjyqtarët dhe gjyqtarët laikë dhe me qëllim të përcaktimit të sanksioneve të duhura me rastin vërtetimit të shkeljes.

7.2 Komisioni disiplinor gjyqësor përbëhet nga zëvendëskryesuesi i Këshillit në rolin e tij si kryetar i Komisionit dhe nga dy (2) anëtarë të Këshillit të emëruar me mandate njëvjeçare (1) rotative me pamundësi të emërimit dy herë rresht.

7.3 Të gjitha ankesat i dërgohen për shqyrtim Njësia Gjyqësore për Inspektim (NJGJI). Pasi që Njësia Gjyqësore për Inspektim ta ketë kryer shqyrtimin e saj, vendos nëse akuzat mund t'i parashtrihen Komisionit disiplinor gjyqësor.

7.4 Komisioni disiplinor gjyqësor vendos për sanksionet disiplinore, përveç për largimin e gjyqtarëve apo gjyqtarëve laikë nga posti dhe mund të rekomandojë largimin e tillë të gjyqtarëve apo të gjyqtarëve laikë nga posti, por çdo rekomandim i tillë, duke përfshirë edhe arsyetimin e tij, duhet t'i paraqitet Këshillit me shkrim.

7.5 Komisioni disiplinor gjyqësor është i autorizuar për shqiptimin e sanksioneve vijuese:

- (a) Qortimit;
- (b) Qortimit dhe vërejtjes;
- (c) Suspendimit nga puna pa pagesë për periudhën deri në gjashtë (6) muaj;
- (d) Rekomandimit për largim nga posti apo
- (e) Rekomandimit për largim nga funksioni i gjyqtarit laik.

Në shqiptimin apo rekomandimin e sanksioneve, Komisioni gjyqësor disiplinor nuk shqipton sanksione që janë joproporcionale me shkeljen e vërtetuar.

7.6 Kundër vendimeve të Komisionit disiplinor gjyqësor mund të parashtrihet ankesa drejtpërdrejt në Këshill, ku nuk përfshihet zëvendëskryesuesi dhe anëtarët, të cilët kanë qenë të angazhuar në procedurën fillestare.

7.7 Këshilli e informon PSSP-në për çdo rekomandim të tillë për largim nga posti, ndërsa pushteti suprem për largimin e gjyqtarit apo të gjyqtarit laik i mbetet PSSP-së.

7.8 Procedurat disiplinore dhe ankimore do të përcaktohen me anë të një urdhërese administrative.

Neni 8

Administrimi i gjyqësorit dhe i gjykatave

8.1 Këshilli ka përgjegjësinë e mbikëqyrjes dhe përcakton politikat dhe procedurat e administrimit dhe të gjyqësorit.

8.2 Këshilli shpall rregullat dhe procedurat e brendshme të cilat paraqesin politikat administrative për funksionimin e duhur të gjyqësorit. Rregullat dhe procedurat e brendshme përcaktojnë fushëveprimin e aktiviteteve, të përgjegjësive dhe të detyrave për administratën gjyqësore dhe të gjykatave.

8.3 Sekretaria e Këshillit është përgjegjëse që në emër të Këshillit të zbatojë politikat dhe udhëzimet administrative gjyqësore dhe të gjykatave, të cilat ndërlidhen me menaxhimin dhe administrimin e duhur të gjyqësorit dhe të gjykatave.

8.4 Kryetarët e gjykatave mbajnë përgjegjësinë për administrimin e përditshëm të gjykatave të tyre dhe janë të obliguar t'i kryejnë detyrat e deleguara nga Këshilli në përputhje me rregullat dhe procedurat e Këshillit.

8.5 Kryetarët e gjykatave i menaxhojnë dhe i mbikëqyrin gjyqtarët dhe gjyqtarët laikë dhe janë përgjegjës për planifikimin e caktimin e detyrave gjyqësore, duke përfshirë organizimin, bashkërendimin dhe funksionimin e gjykatave, aktiviteteve financiare të gjykatave dhe aktiviteteve të tjera të parapara sipas rregullave dhe procedurave.

8.6 Këshilli e shpall procedurën për zgjedhjen e kryetarëve të gjykatave.

Neni 9

Përgjegjësitë e Këshillit lidhur me buxhetin e sistemit gjyqësor të Kosovës

9.1 Këshilli është përgjegjës për mbikëqyrjen e procesit të përgatitjes dhe të zbatimit të buxhetit vjetor për tërë sistemin gjyqësor të Kosovës.

9.2 Këshilli përcakton buxhetin e duhur vjetor në bashkëpunim me gjykatat që realizohet përmes kryetarëve të gjykatave.

9.3 Këshilli e menaxhon buxhetin e tij në mënyrë të pavarur dhe mban përgjegjësinë për monitorimin e shpenzimeve të fondeve të ndara dhe për funksionet e kontabilitetit e të kontrollit financiar, në përputhje me ligjin në fuqi.

9.4 Propozimi për buxhetin vjetor të gjykatave përfshin dispozitat për Këshillin dhe për sistemin gjyqësor.

9.5 Këshilli ia dorëzon buxhetin vjetor Ministrisë së Ekonomisë dhe të Financave në përputhje me udhëzimet ekzistuese të Ministrisë së Financave. Para se t'i dorëzohet buxheti Ministrisë së Financave, Këshilli ia ofron kopjen e buxhetit Ministrisë së Drejtësisë.

Neni 10
Pagat dhe beneficionet

Në konsultim me Këshillin, PSSP-ja përcakton me urdhëresë administrative honoraret që duhet të paguhen për punën e kryer nga Këshilli.

Neni 11
Zbatimi

PSSP-ja mund të nxjerrë urdhëresa administrative për zbatimin e kësaj Rregulloreje.

Neni 12
Dispozitat kalimtare

12.1 Këshilli merr autorizimin mbi të gjitha rastet dhe çështjet që aktualisht shqyrtohen nga KGJPK-ja.

12.2 Çdo masë e shqiptuar nga KGJPK-ja, duke përfshirë mes tjerash suspendimin e gjyqtarëve, mbetet në fuqi derisa të arrihet vendimi përfundimtar për rastin dhe konsiderohet se është marrë nën autorizimin e Komisionit disiplinor gjyqësor të Këshillit.

12.3 KGJPK-ja mban përgjegjësinë për administrimin e gjykatave deri në themelimin e Këshillit. Gjatë kësaj periudhe të përkohshme, drejtori i administratës së Departamentit të Çështjeve Gjyqësore i raporton kryesuesit të KGJPK-së.

Neni 13
Shfuqizimi

Rregullorja e UNMIK-ut nr. 2001/8 shfuqizohet duke filluar nga data e themelimit zyrtar të Këshillit.

Neni 14
Ligji në fuqi

Kjo Rregullore shfuqizon çdo dispozitë të ligjit në fuqi që nuk është në përputhje me të.

Neni 15
Hyrja në fuqi

Kjo Rregullore hyn në fuqi më 20 dhjetor 2005.

Søren Jessen-Petersen
Përfaqësues Special i Sekretarit të Përgjithshëm



Kosovo Judicial Council
Këshilli Gjyqësor i Kosovës
Судски савет Косова



LISTA E ANETAREVE TE KESHILLIT GJYQESOR TE KOSOVES

1. Z. Rexhep Haxhimusa, Kryetar ex officio i KGJK-së,
Kryetar i Gjykatës Supreme të Kosovës
2. Znj. Jelena Krivokapiq, Zëvendëskryetare e KGJK-së
Gjyqtare, Gjykata e Qarkut në Mitrovicë
3. Z. Jonuz Salihaj, anëtar ex officio i KGJK-së
Ministër i Drejtësisë
4. Z. Hydajet Hyseni, anëtar ex officio i KGJK-së
Anëtar i Kuvendit të Kosovës, Kryetar i Komisionit Legjislativ dhe për Çështje të
Kornizës Kushtetuese
5. Z. Enver Hasani, anëtar ex officio i KGJK-së
Profesor, Fakulteti Juridik, Universiteti i Prishtinës
6. Z. Adem Vokshi, anëtar ex officio i KGJK-së
Kryesues i Odës së Avokatëve të Kosovës
7. Z. Zait Xhemajli, anëtar i KGJK-së
Gjyqtar, Gjykata Supreme e Kosovës
8. Z. Ismet Kabashi, anëtar i KGJK-së
Prokuror, Prokuroria Publike e Kosovës
9. Z. Selim Nikqi, anëtar i KGJK-së
Gjyqtar, Gjykata Komunale në Prishtinë
10. Znj. Isabelle Arnal, anëtare e KGJK-së
Prokurore Ndërkombëtare, Departamenti i Drejtësisë, UNMIK
11. Z. Carol Peralta, anëtar i KGJK-së
Gjyqtar Ndërkombëtar, Departamenti i Drejtësisë, UNMIK



Kosovo Judicial Council
Këshilli Gjyqësor i Kosovës
Судски савет Косова



Lista e Komisioneve që funksionojnë në kuadër të Këshillit Gjyqësor të Kosovës

1. Komisioni Disiplinor Gjyqësor
2. Komisioni Disiplinor Prokurorial
3. Komisioni për Emërim dhe Zhvillim Gjyqësor
4. Komisioni për Emërim dhe Zhvillim Prokurorial
5. Komisioni i Administratës Gjyqësore
6. Komisioni për Rregulla të Brendshme
7. Komisioni për Buxhet, Financa dhe Marrëdhënie Ndërnjerëzore

Shënim:

- Kryetari i KGJK nuk duhet të shërbejë në asnjë komitet;
- Secili anëtar mund të shërbejë në dy komitete nëse njëri nga ata është Komiteti Disiplinor;
- Zëvendëskryetari do të shërbejë si kryesues i të dyja komiteteve disiplinore;
- Joanëtarët duhet të jenë gjyqtarë ose administratorë gjykate.



USAID | **KOSOVO**
NGA POPULLI AMERIKAN
OD AMERIČKOG NARODA

JUSTICE REFORM ACTIVITY IN KOSOVO

SEMINAR

CASEFLOW MANAGEMENT

**Presented for Judges and Court Administrators
of the Courts of Kosovo**

by

**Dr. Barry Mahoney
NCSC Senior Consultant
President Emeritus
The Justice Management Institute
Denver, Colorado, USA**

April 2006

Seminar on Caseflow Management

Mitrovica, Kosovo

April 2006

AGENDA

Day 1

- 9:30 – 10:00** **Registration**
- 10:00 – 11:00** **Welcome and Introductions; Overview of the Seminar
Introduction to Caseflow Management**
- *Seminar Objectives*
 - *Caseflow Management: What Is It?*
 - *Why is Caseflow Management Important?*
 - *Goals of Caseflow Management*
 - *ABA Standards Relating to Delay Reduction – Standard 2.50*
- 11:00 – 11:15** **BREAK**
- 11:15 – 11:45** **Plenary: Analyzing Data on Pending Caseloads and Case
Processing Times – Presentation of Data and Key Findings
From the NCSC Case Processing Time Study**
- 11:45 – 12:15** **Plenary: What Has Been Learned About Reducing Backlogs
and Delays?**
- *Key Findings from Research on Court Delay*
 - *Common Elements of Successful Programs to Eliminate
Backlogs and Reduce Delays*
 - *Leadership*
 - *Possible Case Processing Goals for Courts*
- 12:15 – 1:15** **LUNCH**
- 1:15 – 1:45** **Case Processing Time Standards**
- *Why Are Case Processing Time Standards Valuable?*
 - *Examples of Case Processing Time Standards*
 - *Washington*
 - *Denmark*
 - *Bosnia and Hercegovina*
 - *Possible Time Standards for Kosovo Courts*
 - *Common Obstacles to Achieving Time Standards*
- 1:45 – 2:10** **Small Group Session #1: Issues in Implementing Time
Standards in Kosovo**
- 2:10 – 2:30** **Plenary: Reports from Small Group Sessions**
- 2:30 – 2:45** **BREAK**

Day 1 (continued)

- 2:45 – 3:00** **Plenary: Using Information for Caseflow Management**
- *Information Needed for Caseflow Management*
 - *Key Questions About Pending Caseloads*
 - *Possible Indicators of Caseflow Management Effectiveness*
 - *Sample Information Report: Open Case List*
- 2:00 – 3:20** **Plenary: Attacking Old Case Backlogs**
- *Definitions: Backlog and Delay*
 - *Planning for Backlog Reduction: First Steps*
 - *Conducting an Inventory of Old Cases*
 - *Backlog Reduction: After an Inventory Has Been Completed, What Should Be Done?*
 - *Estimating Resource Needs: An Example*
 - *Backlog Problem*
- 3:20 – 3:45** **Small Group Exercise: Initial Planning for Backlog Reduction**
- 3:45 – 4:15** **Plenary: Reports from Small Group Sessions; Discussion**
- 4:15** **ADJOURN**

Day 2

- 8:30 – 9:00** **Plenary: Planning for Implementation of a Backlog Reduction Plan in Your Court**
- *Implementing a Backlog Reduction Plan*
 - *Backlog Identification and Classification*
 - *Possible Processes for Addressing Old Cases*
 - *Open Case List*
 - *Old Case Inventory Action Report*
 - *Caseflow and Caseload Indicators Report*
 - *Using Caseload Management Information*
- 9:00 – 9:30** **Small Group Session #2: Issues in Implementing Backlog Reduction**
- 9:30 – 9:45** **BREAK**
- 9:45 – 10:00** **Plenary: Reports from Small Group Discussions**
- 10:00 – 10:25** **Plenary: Assessing Current Case Management Practices**
- *Traditional Case Processing*
 - *The Continuance Conundrum*
 - *The Impact of Continuances*
 - *Basic Premises of Effective Caseflow Management*
 - *Differentiated Case Management*
 - *Operational Components of Differentiated Case Management*

- *Benefits of Differentiated Case Management*
- *The Council Of Europe Approach*
- *Key Problems in Court Operations*

10:25 – 10:45	Peer Group Session: Key Caseflow Management Functions for President Judges and Court Administrators
10:45 – 11:00	BREAK
11:00 – 11:15	Plenary: Reports from Small Group Sessions
11:15 – 11:30	Plenary: Proactive Management of Newly Filed Cases <ul style="list-style-type: none"> • <i>Techniques for Successful Criminal Caseflow Management</i> • <i>Techniques for Successful Civil Case Management</i> • <i>Checklist for Early Case Conferences</i> • <i>Axioms of Caseflow Management</i>
11:30 – 11:50	Small Group Session #3: Reviewing the Checklist
11:50 – 12:10	Plenary: Reports from the Group Discussions
12:10 – 12:30	Concluding Session; Seminar Evaluation
12:30	ADJOURN

SEMINAR OBJECTIVES

At the conclusion of this seminar, participants should:

1. **Be familiar with basic concepts and techniques of caseflow management and backlog reduction.**
2. **Know the issues related to possible adoption of case processing time standards for Kosovo courts.**
3. **Be able to develop goals, strategies, and plans for reducing backlogs of old cases and reducing the size of the overall pending caseload.**
4. **Know how to monitor progress and identify problems in implementing a backlog reduction project.**
5. **Be able to develop plans for pro-active management of cases filed in their courts in the future.**

CASEFLOW MANAGEMENT

What is it?

Caseflow management is the coordination of court processes and resources to ensure that cases move from filing to resolution in a timely manner.

- **It involves the entire set of actions that a court takes to monitor and supervise the progress of cases, from initiation to conclusion.**

- **It has both micro and macro aspects**
 - **Organization and management of daily dockets**
 - **Management of individual cases**
 - **Management of the court's overall pending caseload**
 - **Visioning and strategic planning**
 - **Budgeting and resource utilization**
 - **Court and justice system leadership**

The core purpose of caseflow management is to enable justice to be done promptly and fairly in all cases.

WHY IS CASEFLOW MANAGEMENT IMPORTANT?

Widespread concerns about court delays:

“The excessive length of judicial proceedings is a central concern of the Council of Europe.”

European Commission for the Efficiency of Justice, *Framework Programme* (June 2004)

Effective caseflow management enables courts to achieve their core purposes:

- **To provide justice in individual cases – fairly, promptly, and economically**
- **To appear to do justice**
- **To provide an impartial forum for the resolution of legal disputes**
- **To protect against the arbitrary use of government power**
- **To establish a formal record of legal status**

Focusing on caseflow management leads to improvements throughout court operations

- **Must re-examine traditional practices**
- **Need to acquire and use reliable information**
- **Highlights education and training needs**
- **Leads to improved use of information technology**
- **Excellent caseflow management is a pre-requisite for high performance throughout the court**

GOALS OF CASEFLOW MANAGEMENT

- 1. Fair treatment of all litigants**
 - Similar cases treated similarly
 - Fair processes
- 2. Timely disposition of cases**
 - Time frames can vary, depending on case complexity and other circumstances
- 3. Adequate time and opportunity for**
 - Case preparation
 - Negotiation concerning resolution
 - Consideration of difficult issues
- 4. Predictability/certainty in case scheduling**
- 5. High quality litigation process**
- 6. Effective use of limited resources**
- 7. Public confidence in the court**

ABA STANDARDS RELATING TO COURT DELAY REDUCTION

Standard 2.50 *Caseflow Management and Delay Reduction: General Principle*

From the commencement of litigation to its resolution, whether by trial or settlement, any elapsed time other than reasonably required for pleadings, discovery, and court events, is unacceptable and should be eliminated. To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation. A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket.

DIMENSIONS OF CASEFLOW AND DOCKET MANAGEMENT

1. Managing daily dockets
2. Management of individual cases
3. Management of the court's overall pending caseload
4. Trial management
5. Planning the use of available time
 - Week
 - Month
 - Year

KEY FINDINGS FROM RESEARCH ON COURT DELAY

1. **Case processing times (inception to disposition) vary widely across courts.**
2. **Statutes, rules, and case law do not explain the differences**
 - **Wide variations often exist within states and nations despite a common legal framework**
3. **Caseload complexity or “seriousness” does not explain the differences.**
4. **Approaches based on adding resources or adopting formal rules and procedures are *NOT SUFFICIENT* to reduce delays.**
 - **Need judicial commitment to active management of the caseload *and* other basic elements of effective caseload management**
6. **Where trials and case processing times are too lengthy, improvements can be made.**
 - **Court delay is not inevitable**
 - **Cases can be resolved fairly in a timely fashion**
 - **Trials can be conducted expeditiously and fairly**
7. **There is no “one best way” to reduce backlogs and delays.**
 - **BUT: There are common elements of successful programs**

COMMON ELEMENTS OF SUCCESSFUL PROGRAMS TO ELIMINATE BACKLOGS AND REDUCE DELAYS

- 1. LEADERSHIP**
- 2. GOALS**
- 3. INFORMATION**
- 4. COMMUNICATIONS**
- 5. CASEFLOW MANAGEMENT PROCEDURES**
- 6. JUDICIAL COMMITMENT**
- 7. STAFF INVOLVEMENT**
- 8. EDUCATION AND TRAINING**
- 9. MECHANISMS FOR ACCOUNTABILITY**
- 10. BACKLOG REDUCTION/ CONTROL OF PENDING
CASELOAD**

LEADERSHIP

“The ability to translate ideas into reality and sustain them over time.”

- Warren Bennis

LEADERSHIP IN ORGANIZATIONS REQUIRES:

- **A reputation for personal integrity**
- **Personal competency**
- **A vision for the future**
- **A commitment to the organization**
- **A willingness to persist**

SUCCESSFUL LEADERSHIP IN BACKLOG AND DELAY REDUCTION REQUIRES:

- **Understanding what needs to be done**
- **Making the decision to do it.**
- **Making a public commitment to eliminating the backlog and reducing delays**
- **Communicating the need for action**
- **Marshalling the resources needed for success**
- **Monitoring progress and fixing problems**
- **Persisting in moving toward the goals**
- **Rewarding those who make success possible**

POSSIBLE CASE PROCESSING GOALS FOR COURTS

- **Eliminate old case backlogs**
- **Achieve case processing time standards**
 - Need standards for all major case types
 - May want both interim (short-term) and long-term standards
- **Low rate of continuances of court events**
- **Dispositions per year consistently exceed new filings**
- **Pending caseloads at manageable level**

WHY ARE CASE PROCESSING TIME STANDARDS VALUABLE?

- 1. Provide a statement of purpose and intent**
 - Set forth what the court will seek to accomplish
- 2. Acknowledge the public interest in prompt and fair resolution of cases**
- 3. Establish expectations**
 - Lawyers, parties, and court staff will know how long cases are expected to take
- 4. Provide a framework for scheduling case events in individual cases**
- 5. Provide a way of measuring overall effectiveness in caseflow management**
- 6. Stimulate self-examination and continuing assessment of case management practices**

EXAMPLES OF CASE PROCESSING TIME STANDARDS

State of Washington

General Civil Cases

- **90% within 12 months from filing**
- **98% within 18 months**
- **100% within 24 months**

Limited Civil Cases (Smaller amounts)

- **90% within 3 months from filing**
- **98% within 6 months**
- **100% within 9 months**

Felony Cases

- **90% within 4 months from filing**
- **98% within 6 months**
- **100% within 9 months**

Misdemeanor Cases

- **90% within 3 months from filing**
- **98% within 6 months**
- **100% within 9 months**

Domestic Cases

- **90% within 8 months**
- **98% within 10 months**
- **100% within 12 months**

EXAMPLES OF CASE PROCESSING TIME STANDARDS

Denmark

Objectives for 2001

Results for 2001

Criminal Cases

- | | |
|-------------------------------|-----------------|
| • 60% decided within 2 months | 55% in 2 months |
| • 95% decided within 6 months | 93% in 6 months |

Criminal Cases Involving Violence

- | | |
|-------------------------------|-----------------|
| • 60% decided within 37 days | 50% in 37 days |
| • 75% decided within 2 months | 71% in 2 months |

Civil Cases with Court Trial

65% decided within 1 year	56% in 1 year
---------------------------	---------------

EXAMPLES OF CASE PROCESSING TIME STANDARDS

BOSNIA – HERCEGOVINA

CASE TYPE

Criminal, first instance	1 year from indictment
Criminal, Second Instance	6 months from receipt of appeal
Civil, First Instance	1 year
Civil, Urgent First Instance	6 months
Civil, Second Instance	45 days from receipt of appeal
Administrative	6 months
Administrative, 2d Instance	6 months from receipt of appeal
Enforcement	1 year

POSSIBLE CASE PROCESSING TIME STANDARDS FOR KOSOVO COURTS

District Courts

Civil 1 st instance cases	90 days
Civil 2 nd instance cases	270 days
Criminal 1 st instance cases	180 days
Criminal 2 nd instance cases	270 days

Municipal Courts

Civil cases *	180 days
Execution of civil cases *	180 days
Criminal cases	270 days
Execution of criminal cases *	90 days

*** NOTE: For case types marked by an asterisk (*), the time period would be measured from the time the case is received. For all other case types, the time would be measured from registration of the case until the time the parties receive a written judgment.**

COMMON OBSTACLES TO ACHIEVING TIME STANDARDS

1. **Existing practices may make it impossible to achieve the standards. For example:**
 - **No procedures for dealing with complex cases separately from other cases**
 - **First in-first out approach to resolving cases – priority always given to oldest case**
 - **All cases follow same procedures, with same events and similar timing**
 - **No way to identify cases that can be resolved easily and quickly with early court intervention**
2. **Judges and staff may not be familiar with techniques for effective case management.**
3. **Lawyers and parties may resist efforts to resolve cases expeditiously.**
4. **Existing caseload may be so large that judges and staff are discouraged from attempting to achieve ambitious time standards.**
5. **Court may lack timely and reliable information about caseloads and individual cases**
 - **Need information to assess impact of standards**
6. **Court may not have enough judge and/or staff resources**

Small Group Session #1

Review the possible case processing time standards for Kosovo courts that were developed by president judges and court administrators at previous seminars. Consider the following questions:

1. Are these standards appropriate for Kosovo courts? If not, what revisions would your group suggest?
2. What will be the most difficult obstacles to achieving the case processing time standards?
3. What are the most important things that each of the following can do to help achieve the time standards:
 - President judges
 - Other judges
 - Court administrator
 - Registry staff

INFORMATION NEEDED FOR CASEFLOW MANAGEMENT

1. Case-specific information

- **Case name and number**
- **Case type**
 - **Criminal cases: offense(s) charged**
 - **Civil cases: nature of claim; relief sought**
- **Attorneys**
- **Date of filing**
- **Date and nature of last event**
- **Date and nature of next scheduled event**
- **In criminal cases:**
 - **Custody status**
 - **Co-defendants**
- **What else?**

2. Information for caseload management

- **Total pending caseload**
 - **By case type and age since filing**
- **Specific cases exceeding case processing time standard (i.e., in backlog status)**
- **Filings in last month and last 12 months**
- **Dispositions in last month and last 12 months**
- **Age of cases disposed in specific time period (e.g., last month, last year)**
 - **By case type**
 - **By type of disposition**
 - i. **Verdict after evidentiary hearing**
 - ii. **Other types of dispositions**
- **Number of continuances**
- **Percentage of scheduled hearings that take place on date scheduled**

USING CASELOAD MANAGEMENT INFORMATION

Key Questions About Pending Caseloads

1. What are the trends?
 - Size of total pending caseload
 - Number of cases pending longer than the applicable time standard

2. What are the old cases on the docket?
 - Which cases are over the time standard?
 - Which cases will be over the time standard soon unless action is taken?
 - What needs to be done?

3. Are there specific categories of cases that consistently take a long time?

4. Are there specific attorneys who consistently have a large number of old pending cases?

USING CASELOAD MANAGEMENT INFORMATION

POSSIBLE INDICATORS OF CASEFLOW MANAGEMENT EFFECTIVENESS

Clearance rate: Annual dispositions equal to or greater than annual filings.

Pending Caseload:

- Total size decreasing over time
- Few (or no) cases pending longer than applicable time standard

Time to Disposition:

- Few (or no) cases taking longer than times called for by applicable time standard
- Times for median and 80th percentile cases decreasing over time

Judicial Productivity: Dispositions per judge increasing over time

Case Scheduling Effectiveness: High percentage of scheduled hearings take place on date scheduled (Few continuances)

Quality of Justice: Difficult to measure but important to ascertain perceptions of quality

* * *

IMPORTANT TO USE MULTIPLE INDICATORS!!!

DEFINITIONS

**Backlog: The number of cases pending for more than an acceptable period of time
*or***

the number of cases pending for more than the case processing time standard applicable to that category of cases

* * *

Delay: Any elapsed time other than reasonably necessary required for pleadings, discovery, and court events.

PLANNING FOR BACKLOG REDUCTION: FIRST STEPS

- 1. Define “backlog” for your court.**
 - **Does the court have case processing time standards? (If so, any cases older than the maximum period allowed under the relevant standard are part of the backlog)**
 - **If the court does not have standards, what do court leaders regard as an acceptable time for resolving cases of particular types? (older cases = backlog)**

- 2. Set priorities for case categories. Which components of the backlog should be eliminated first?**
 - Criminal - Civil - Family

- 3. Take inventory of top priority category, beginning with the oldest cases by the year in which the cases were filed.**
 - **Review registers**
 - **Review case files if necessary**
 - **Make lists of unresolved cases, by year filed**

- 4. Record, for each case on each list, the information needed to take action to resolve the case.**

- 5. Develop a plan for resolving the backlog cases.**

- 6. Identify and organize the resources needed to resolve the cases in the backlog.**

- 7. At the same time, develop a plan to prevent recently filed and newly filed cases from falling into backlog status.**

CONDUCTING AN INVENTORY OF OLD CASES

1. Focus on a single register or category of cases
2. Identify person(s) to conduct the inventory
 - Will need to provide training and supervision
3. Make inventory sheets for each year in which old unresolved cases were filed.
4. Review registers, starting with register with oldest open cases. Identify all unsolved cases.
5. For each unresolved case on each year's list of cases, record key information:
 - Case number
 - Date filed
 - Case title [Criminal: Defendant(s) names(s)]
 - Stage of case
 - Last event
 - Date of next scheduled event
 - Reason for delay (if easily ascertainable)
 - Complexity of the case
 - Simple – Standard – Complex
 - Classify: active or inactive
 - If inactive, why?
 - Action needed to resolve the case
 - Contact information for parties/lawyers

Most information should be in registers. Use physical case files if necessary.

BACKLOG REDUCTION

After an inventory has been completed, what should be done?

Set goals for eliminating portions of the backlog within specific time periods.

- **Example: All cases filed in 2003 or before to be resolved by 31 December 2006; all cases over 18 months to be resolved by 30 June 2006**

Identify and organize resources needed to eliminate the backlog.

- **Who would be responsible for leading the backlog reduction project?**
- **What resources would be necessary?**
 - **Judges - Judicial assistants - Registry staff**
 - **Messengers - Conference rooms - Courtrooms**

Identify all cases with no activity for at least two years.

- **Notify parties/lawyers of intent to dismiss or place on inactive list with expectation of dismissal**
- **To notify: mail to last known address; post notice in newspapers and in courthouse**

For cases that are active:

- 1. Classify by age. Begin with oldest cases.**
- 2. Classify by complexity: simple, standard, complex**
- 3. Create separate calendars/dockets for each set or “track”.**
- 4. Cluster cases involving same lawyers/parties; try to resolve them at same time.**
- 5. If needed action is clear: set next action date.**
- 6. If needed action is unclear, set case for conference; notify lawyers/parties to provide information about case status and readiness for trial.**
- 7. Conduct case conference; set schedule for completion of case if not resolved at the conference.**
- 8. If party does not appear for conference or hearing/trial: dismiss or default judgment.**

ESTIMATING BACKLOG REDUCTION RESOURCE NEEDS: AN EXAMPLE

Time Standard: Complete 90% of criminal cases in 6 months and 100% within one year

Number of judges assigned to criminal cases: 5

Project Goals: Eliminate backlog and meet time standard

ASSUME;

Cases pending 1 Jan 2005:	2200
2005 Filings:	2900
Cases disposed 2005	2700 (540 per judge)
Cases pending 1 Jan 2006	2400
Cases pending over 2 years:	560 (Backlog)
Cases pending 1 – 2 years:	340 (Backlog)
Cases pending 181 – 365 days:	500 (Backlog or Potential Backlog)
Cases pending 121 – 180 days:	300
Cases pending 0 – 120 days:	700
TOTAL PENDING:	2400

Estimated filings in 2006: 2900 (same as in 2005)

Estimated dispositions in 2006 if no change in practices: 2700

Annual disposition rate per judge: 540

Monthly per-judge disposition rate: 45 per judge ($2700 \div 5 = 45$)

To eliminate the backlog and resolve all cases pending on 1 Jan 2006 at current (2005) disposition rates:

Judge-months needed to eliminate backlog of cases pending over one year on 1 Jan 06 (900 cases): 20 months ($900 \div 45 = 20$)

Judge-months needed to resolve cases pending 180-365 days on 1 Jan 06: (500 cases): 11.1 months ($500 \div 45 = 11.1$)

Judge-months needed to resolve cases pending less than 180 days (1000 cases) on 1 Jan 06: 22.2 months ($1000 \div 45 = 22.2$)

Total judge-months needed to eliminate backlog and all other cases pending on 1 Jan 2006: 53.3 months

To complete the year 2006 with a manageable caseload:

Judge-months needed to resolve 1/2 of anticipated 2006 filings (i.e., 1450 cases): 32.2 months ($1450 \div 45 = 32.2$).

TOTAL judge-months needed to accomplish backlog elimination and establish current caseload with 6-month supply of cases, if existing practices and procedures are followed: 85.5 judge months (= 7.2 judge years)

- At this rate, pending caseload on 31 Dec 06 would be 1,450.

NOTE: *This example assumes that cases in the backlog are similar to other pending and incoming cases in nature and complexity.*

BACKLOG PROBLEM

Assume that your court has a backlog problem. In order to eliminate the backlog and meet applicable time standards, it would take approximately 7 judge-years if existing procedures are followed. However, the court has only 5 full-time judges assigned to criminal cases. What can the court do to achieve this goal?

Possible approaches:

- Obtain (temporary) additional judges and staff .
- Reorganize work assignments and/or court hearing hours to achieve greater productivity.
- Create a special backlog reduction unit (judges and staff) to address the “over-goal” cases; assign other judges and staff to work on current caseload.
- Design and institute new procedures that will enable more effective management of the caseload.
 - What new procedures could help?
- Re-design management information reports and data collection and analysis, to produce data necessary to identify problem cases and monitor progress toward goals
 - Need to ensure that cases currently within standard are resolved within the time standard
 - Need to organize system so that new cases are addressed promptly and monitored closely, to ensure timely resolution
- Engage bar and other essential entities to help plan program and work with the court on implementation
- What other approaches?

NOTE: These approaches can and should be combined.

Small Group Session #2

Initial Planning for Backlog Reduction: Identifying Obstacles and Potential Resources

This session provides an opportunity for seminar participants to analyze the forces operating in their court environment which can either help or hinder the planning and implementation of a backlog reduction effort in their court.

Process:

Use the forms on the following pages to identify factors that can help or hinder efforts to reduce or eliminate backlogs in your court. The factors may be specific persons in key positions, laws, rules, court facilities, availability of judges and/or staff, other resources, established practices, traditions, attitudes, etc.

Estimate the relative strength of each factor using the scale at the bottom of the form. Then list the five most important helping and hindering factors on the second page of the form.

Products:

- (1) A list of those factors that could help or hinder a backlog reduction effort in your court, and that must be considered when developing strategies and priorities.
- (2) A chart identifying the five most important helping and hindering factors.

Group

What are the five most important facilitating factors?

1.
2.
3.
4.
5.

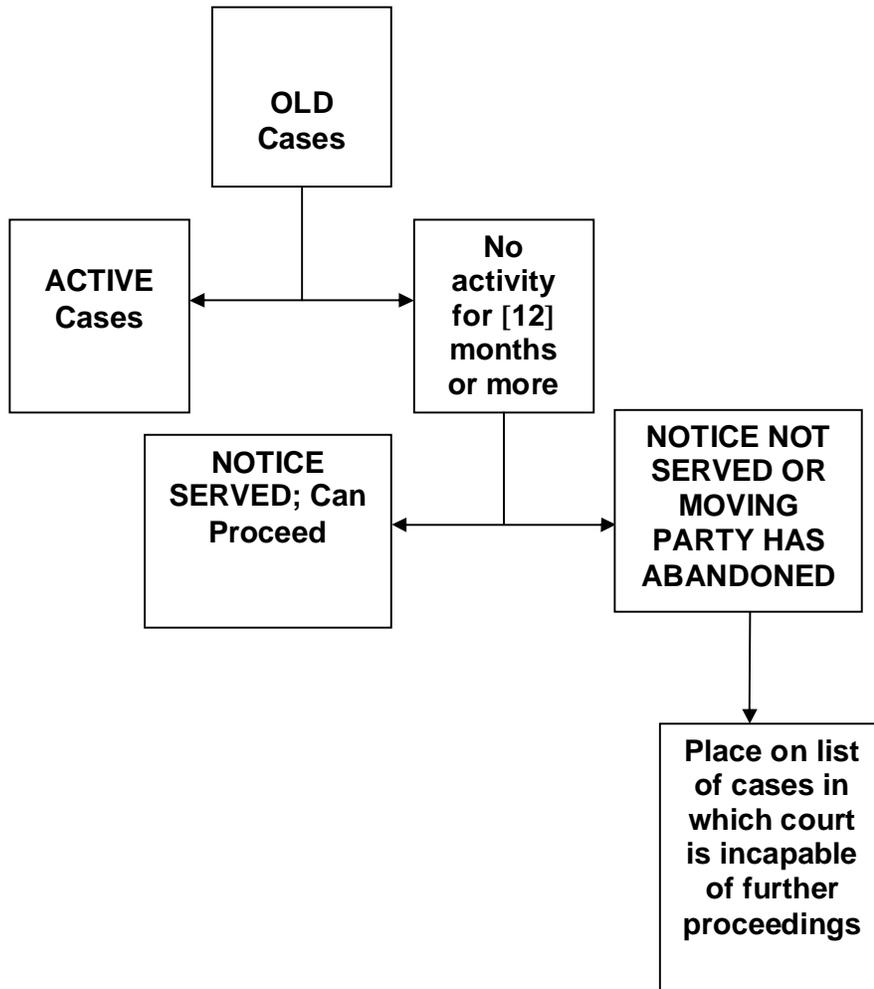
What are the five most important hindering factors?

1.
2.
3.
4.
5.

IMPLEMENTING A BACKLOG REDUCTION PLAN: ONE APPROACH

1. **Develop a database to facilitate tracking of cases.**
 - **Enter case information from the inventory lists**
2. **Using the database, sort cases into relevant categories, including**
 - **Cases over [2] years since filing**
 - **Cases with no activity in last [12] months**
 - Notice not served
 - Other reasons for lack of activity
 - **All other cases**
 - Case type
 - Complex – non-complex (“routine”)
3. **Develop and use monitoring forms or databases that will provide essential information on progress in implementing the backlog reduction project.**
 - **Open Case List for each judge**
 - **Caseflow and Caseload Indicators Report**
 - **Old Case Inventory Activity Report Form**
4. **Design procedures that will facilitate expeditious resolution of cases in the backlog**
 - **Take steps to resolve old and inactive cases**
 - **Use separate “tracks” for simple and complex active cases**
 - **Provide for early conferences with the parties**
 - Ascertain case status
 - Catalyze settlements
 - Enable mediation where appropriate
 - Determine what additional actions are needed
 - Schedule next events
5. **Provide essential education and training on caseflow management techniques for judges, registry staff, and others involved in the project**

BACKLOG IDENTIFICATION AND CLASSIFICATION



POSSIBLE PROCESS FOR ADDRESSING OLD CASES

Steps:

1. **Notify the party seeking court action of the court's intent to bring case to resolution, or place on list of cases in which court is incapable of proceeding.**
2. **Set deadline for the party to report to the court on status of case and intent concerning continuing with court action [WITHIN 30 DAYS?]**
 - **If service has not been possible, party seeking relief to provide information enabling service or case will be dismissed or placed on list of cases in which court is incapable of proceeding.**
3. **If the party that has sought court action does not report to the court within the timeline or does not provide required information concerning notice, the court may either place the case on a list of cases in which court is incapable of proceeding or may dismiss the case.**
4. **If the party reports to the court within the timeline, there will be several options:**
 - a. **Serve notice, if necessary and possible; *and***
 - b. **Order the parties to appear for a court proceeding to resolve disputed issues and schedule next hearing(s).**
 - c. **Have the case referred to mediation or arbitration (if available).**

Notification

If address is known: deliver summons or letter

If address is unknown: Post notice on notice board at the court and in newspapers

Old Case Inventory Action Report

Old Case Inventory Action Report for (month and year): _____ Date Form Completed _____
 Court: _____ Case Type _____ Judge: _____

	Case File No.	Filing Date	Date of Last Event or Paper Filed	Nature of Last Event or Paper Filed	Action Taken During Month	Was a Continuance Granted This Month?	Date and Nature of Next Scheduled Event
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
...							

KEY CASEFLOW INDICATORS CHART

Report Period	Active Pending Start	Filed	Disposed	Active Pending End	Active Pending Over 1 Year	Active Pending Over 2 Years	Clearance Rate	Number of Judges Available	Cases Disposed Per Judge
Jan	253	91	48	296			52.7%	3	16
Feb	296	67	107	256			159.7%	3	35.7
Mar	256	85	103	238			121.2%	3	34.3
Apr	238	63	95	206			150.8%	3	31.7
May	206	75	97	184			129.3%	3	32.3
Jun	184	56	78	162			139.3%	3	26
Jul	162	41	90	113			219.5%	3	30
Aug	113	61	77	97			126.2%	3	25.7
Sep	97	47	61	83			129.8%	3	20.3
Oct	83	63	88	58			139.7%	3	29.3
Nov	58	80	67	71			83.8%	3	22.3
Dec	71	58	87	42			150%	3	29
Total, Jan – Dec	253	787	998	42			126.8%	3	27.7
Jan	42	92	29	105			31.5%	3	9.7

Jan – Dec change in Total Pending Caseload: - 182 (- 71.9%)

Jan – Dec change in number pending over one year:

Jan – Dec change in number pending over two years:

Jan – Dec clearance rate: 126.8%

Jan – Dec average dispositions per month per judge: 27.7

USING CASELOAD MANAGEMENT INFORMATION

POSSIBLE INDICATORS OF CASEFLOW MANAGEMENT EFFECTIVENESS

Clearance rate: Annual dispositions equal to or greater than annual filings.

Pending Caseload:

- Total size decreasing over time
- Few (or no) cases pending longer than applicable time standard

Time to Disposition:

- Few (or no) cases taking longer than times called for by applicable time standard
- Times for median and 80th percentile cases decreasing over time

Judicial Productivity: Dispositions per judge increasing over time

Case Scheduling Effectiveness: High percentage of scheduled hearings take place on date scheduled (Few continuances)

Quality of Justice: Difficult to measure but important to ascertain perceptions of quality

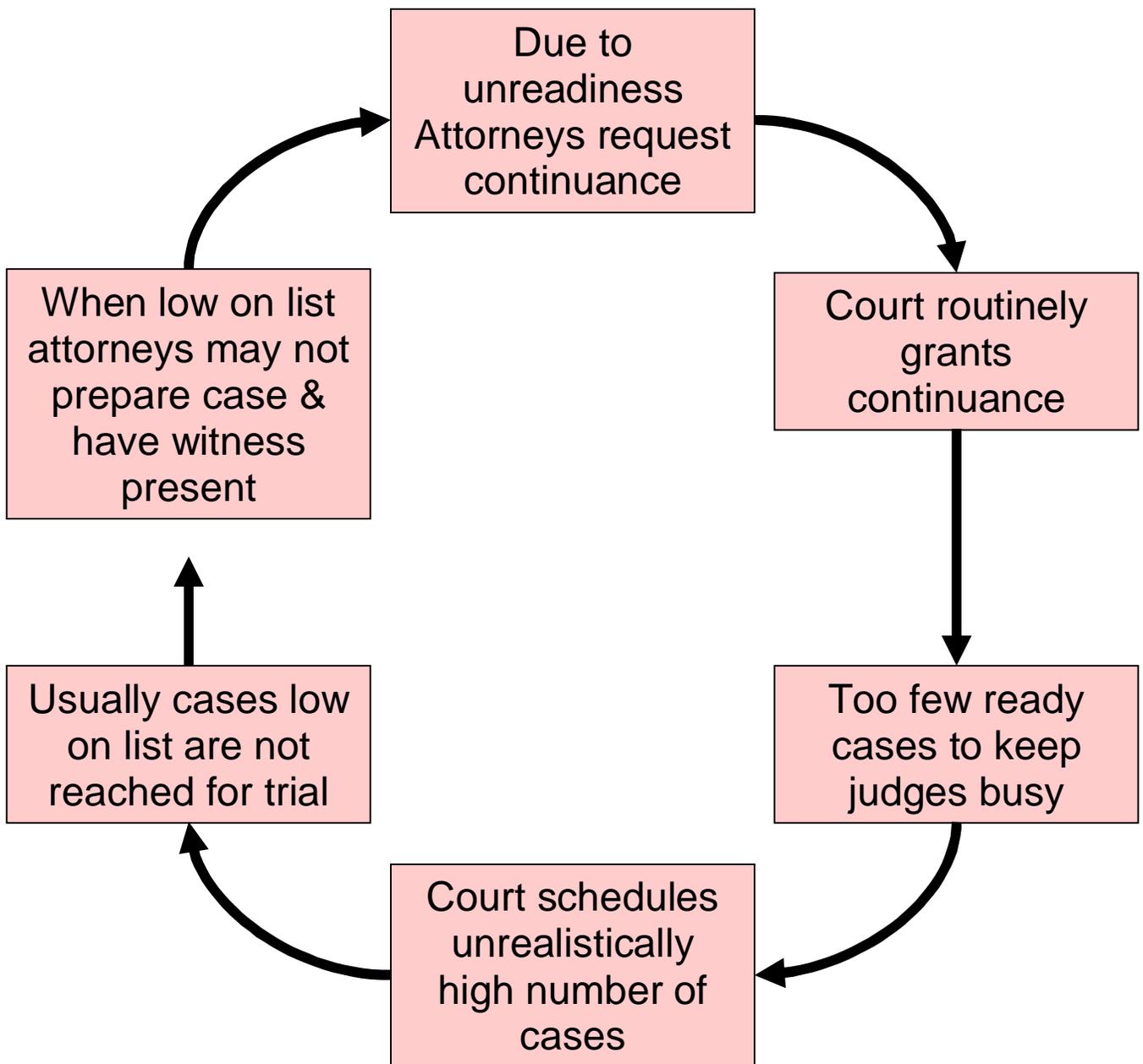
* * *

IMPORTANT TO USE MULTIPLE INDICATORS!!!

TRADITIONAL CASE PROCESSING

- **All cases are treated as if they will go to trial.**
- **All cases follow the same procedures, with the same events and similar timing.**
- **There is no way to identify cases that need early judicial attention.**
- **“First in-first-out approach to calendaring: try (or otherwise resolve) the oldest case first.**
- **Trial and hearing calendars contain many more cases than the court can handle during that day, week, or term.**
- **Lawyer scheduling conflicts are common.**
- **Continuances/adjournments are easily obtained by counsel.**
- **There are no systemic guidelines or incentives to encourage early disposition.**

THE CONTINUANCE CONUNDRUM



THE IMPACT OF CONTINUANCES

- **Delay in resolution of the case**
- **Wasted time of the judge and court staff**
- **Disruption of the schedules of parties and witnesses**
- **Dis-incentive to lawyer preparation**
- **Additional costs to the parties**
- **Added work for court clerks**
- **Additional slot taken on future docket**
- **Added work for lawyers' support staff**
- **Increased overall congestion and delay in the caseflow system**

BASIC PREMISES OF EFFECTIVE CASEFLOW MANAGEMENT

- 1. Preparation and opportunity to discuss possible disposition will help produce appropriate resolution**
- 2. Courts can encourage attorney and litigant preparation, and thus**
 - Facilitate prompt non-trial dispositions**
 - Enable efficient and effective conduct of trials**
- 3. Early dispositions lead to manageable caseloads**
- 4. Caseflow systems should be designed to meet the needs of cases that vary by**
 - Case type**
 - Complexity**
- 5. Performance goals are important**
 - Case processing time standards**
 - Pending caseload size and age**
 - Certainty in scheduling court events**
- 6. Operational performance should be measured, in relation to goals**
- 7. The basic concepts apply regardless of**
 - Case type**
 - Type of case assignment system**
- 8. The basic concepts and skills can be learned**

DIFFERENTIATED CASE MANAGEMENT (CASE CLASSIFICATION)

Differentiated case management is an approach to organizing caseloads that seeks to:

- 1. Take account of the varying degrees of complexity of the different cases in a court's caseload;**
- 2. Enable completion of work on simple cases rapidly and allowing more time for completion of work on complex cases; and**
- 3. Allocate court resources (including judge time, staff time, and courtroom time) to reflect the relative complexity of different cases.**

OPERATIONAL COMPONENTS OF DIFFERENTIATED CASE MANAGEMENT

1. Identification of factors that differentiate cases

- Subject matter
- Number and types of experts needed
- Likelihood of resolution without contested main hearing

2. Tracks for each major category or group

- Simple
- Standard
- Complex

3. Criteria for assignment of cases to a track

4. Procedures for screening cases and assigning them to the appropriate track

- Need information about case characteristics
- Should have trained staff to assist in case screening and track assignment, using criteria
- Screening and track assignment should be done EARLY; track can be changed if necessary

5. Management procedures and time frames appropriate for each track

6. Use of management information reports to monitor progress of cases on each track

BENEFITS OF DIFFERENTIATED CASE MANAGEMENT

- **Explicit recognition that cases vary in time and resource requirements for appropriate disposition.**
- **Provides for appropriate allocations of court time and resources for cases that vary in seriousness and complexity**
 - **Clustering cases with similar characteristics facilitates efficient management of the caseload**
- **Focuses court and attorney attention on cases most in need of attention.**
- **Enables court, lawyers, and parties to have realistic schedules and foreseeable time frames for case resolution**
 - **Less complex cases resolved more rapidly**
 - **Adequate time allowed for all cases**
- **Facilitates overall caseload management**
- **Helps achieve firm trial calendars.**

THE COUNCIL OF EUROPE APPROACH

European Commission for the Efficiency of Justice

Framework Programme - June 2004

A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe.

- **“The CEPEJ has decided to address the issue of the length of judicial proceedings, considering this to be a *priority concern* within the objectives of the council of Europe relating to Human Rights and the Rule of Law.”**
- **“It seems necessary for judicial systems to be given a new objective: the processing of each case within an *optimum and foreseeable timeframe*.”**
- **“The length of proceedings is measured from the time *when the authorities first have a legal responsibility towards the citizen and ends with definitive enforcement* of the final decision. Reasonable time includes in particular the time dedicated to the drafting of the decision.”**
- **“To determine whether or not the time is reasonable, the [European Court of Human Rights] has laid down various criteria: the *complexity* of the case; the *applicant’s conduct*; the *conduct of the relevant authorities* (including the courts); and *what is at stake* for the applicant.”**

KEY PROBLEMS IN COURT OPERATIONS

- **General resistance to change and introduction of new practices – judges, staff, others**
- **Practice of holding courtroom hearing sessions only for limited time periods (e.g., 10am – 2 pm, 3 days per week).**
- **Practice of scheduling large number of hearings for a single day.**
 - **Can't possibly hear all or many of them to completion**
 - **Result: Many hearings postponed or continued repeatedly**
- **Lack of a practice or tradition of imposing consequences for non-appearance of lawyers, parties, experts.**
- **Lack of focused attention to old cases.**
- **General lack of accessible information on case processing times.**
- **Judges and staff who are unable (or unwilling) to meet increased expectations of productivity.**
- **Acceptance of large old case backlogs as inevitable.**
- **Practice of giving newly-appointed judges the most intractable cases**
- **Lack of problem-solving orientation.**
 - **Little tradition of analyzing data to identify problems and help develop solutions.**
 - **Lack of professionally trained analysts/planners**

Peer Group Session

Key Caseload Management Functions for Court Presidents, Other Judges, and Court Administrators

Please discuss the following questions in the group:

1. What can we, in our positions, do (or stop doing) in order to improve caseload management and make a backlog reduction program successful in our own courts?
 - a) What are we NOT doing now that we should start to do?
 - b) What are we doing now that could be stopped or changed in order to help eliminate backlogs?
2. What other “stakeholders” should be brought into the planning process in order to develop a viable backlog reduction program?
3. What specific types of help, other than provision of additional resources, would it be desirable to have from others these stakeholders or from others who work in or have interaction with the court, in order to implement a successful backlog reduction program? List types of help needed and possible sources.
4. What can you (or persons in your position) do to obtain the needed assistance?

Report Form – Peer Group Exercise

Group: _____

**Key Caseload Management Functions for
President Judges and Court Administrators**

1. The most important things that we can do to improve caseload management and make a backlog reduction program successful:

2. Who else should we seek to bring into the planning process in order to develop a viable backlog reduction program?

3. What specific types of help are needed and who could provide it?

Type of help

Possible Source

4. What can persons in our position do to obtain the needed assistance?

TECHNIQUES FOR SUCCESSFUL CRIMINAL CASEFLOW MANAGEMENT

- 1. Case processing time standards**
- 2. Early case screening and decision-making**
 - Trained and experienced prosecutors, investigative judges, and court staff
 - Realistic charging
- 3. Early involvement of defense counsel**
- 4. Early screening for case complexity and potential disposition options by prosecutor, defense, and court**
 - Simple cases on fast track for early resolution
- 5. Early and open exchange of case information**
- 6. Effective calendar and trial management**
 - At outset – schedule for case events set in consultation with prosecution and defense
 - Early resolution of motions – before trial date
 - Opportunity for negotiation about disposition
 - Future action dates always assigned
 - Clear instructions to parties, experts, and witnesses
 - Deadlines set and enforced for submission of expert reports
 - Continuous trials – eliminate or minimize gaps between hearing dates
- 7. Availability of a range of sanctions and treatment alternatives**
- 8. Effective use of management information**
 - Monitor case processing times, continuances
 - Identify problems; measure improvement

TECHNIQUES FOR SUCCESSFUL CIVIL CASEFLOW MANAGEMENT

- **Use of case processing time standards**
- **EARLY INTERVENTION - Court attention to the case at the earliest possible point.**
- **Early case conferences.**
 - Ensure preparation by lawyers and parties
 - Establish schedule of court events
 - Explore possible settlement
- **Reasonable accommodation of lawyers' schedules.**
 - Recognize that there are times when change of schedule may be necessary
 - Expect lawyers/parties to notify the court in advance and provide reasons for continuance requests
 - Develop and use sanctions for abusive continuance practices by lawyers or parties
- **Case differentiation for track assignment and differential management.**
 - Separate tracks for simple, standard, and complex cases
- **Firm schedules for court events.**
 - Set case schedule in consultation with lawyers or self-represented litigants
 - Establish expectation that court events will take place when scheduled
 - Monitor scheduling effectiveness
- **Every case always has a next action date**

CONDUCTING EARLY CASE CONFERENCES

Purposes of the Early Conference:

- Enable the court and parties to identify the evidentiary and legal issues that must be resolved in order to dispose of the case;
- Schedule the remaining evidence and hearings necessary for the court to reach a decision;
- Explore the possibilities for settlement or early disposition.

Methodology:

- Court sends legal notice of hearing to the parties. It should contain a checklist of issues for which they should prepare before the hearing;
- Failures to appear should be sanctioned.
- Court controls the hearing, resolving each item on the checklist;
- Court sets the date for the main hearing or, only if necessary, a second hearing or conference to decide unresolved pre-main hearing issues.
- Court issues the appropriate judicial orders, which will serve as legal notice for the next court events.

CHECKLIST FOR EARLY CASE CONFERENCES

1. Which factual issues are agreed?
2. What factual issues are in dispute?
3. What evidence is necessary to adjudicate these issues?
4. What legal issues are agreed?
5. What legal issues are in dispute?
6. What is necessary to resolve these issues?
7. How long will be necessary for each side to present its evidence in the main hearing?
8. How many hours should be scheduled for the main hearing?
9. When will the main hearing sessions be held?
10. What arrangements should be made for exchange of information by the parties?
11. Will any expert witnesses be needed? If so, what expertise is needed? By when should the expert's report be submitted?
12. Are there language or physical barriers that will require an interpreter or other assistance?
13. Will any audio/visual equipment be required at the main hearing?
14. Have the parties explored possible settlement? Would the parties consider resolving the dispute through mediation or arbitration?

Small Group Session #3

Reviewing the Checklist for Conducting an Early Case Conference

Review the checklist and consider whether—and if so, how—it could be used in Kosovo courts to help first instance courts gain early control over the conduct of civil and/or criminal cases. Address the following questions for your group’s report to the plenary session:

- 1. Is it feasible to use such a checklist in civil cases?**
 - **If not, why not**

- 2. Is it feasible to use such a checklist in criminal cases?**
 - **If not, why not?**

- 3. What changes or modifications would your group suggest in the checklist to make it most useful for courts in Kosovo?**

AXIOMS OF CASEFLOW MANAGEMENT

1. Early and continuous control of case progress helps minimize delays.
2. Differentiated case management works.
3. Dispositions take place when key decision-makers have the necessary information.
4. Every case must always have a date certain, *for a purpose certain*, assigned.
5. Achieving dispositions before trial dates are set conserves time and resources.
6. Accurate and timely information is essential.
7. What you count *counts*. Information reports influence behavior.



Justice System Reform Activity in Kosovo

Seminar: Information Technology in the Courts

Questionnaire

Please complete this questionnaire as soon as you can after you arrive and give it to any NCSC staff member.

1. Name of your court _____

2. Do you have a computer? Yes____ No____

3. Where? At home____ At work____

4. If yes to either of the above or both what do you use it for?

5. How many computers are in your court?_____

6. What are they used for? _____

7. What kind of training and support do you have for your computers?

8. What would you like to learn and discuss during today's seminar?



USAID | **KOSOVO**
NGA POPULLI AMERIKAN
OD AMERIČKOG NARODA

Justice System Reform Activity in Kosovo

Court Automation Why, What, and How?

Mr. James McMillan
NCSC Senior Consultant

June, 2006

This Presentation Will Try to Answer the Following Questions

- Why should courts automate?
- Why should I participate?
- What should be automated?
- What are the options?
- What has been successful?
- How can courts automation?
- How can courts avoid project failure?

Why?

Justice and Society

Why?

Personally, what is in it for me?

Change

Two Worlds – One House



10/16/2006

Process & Decisions - the two businesses of courts

- **Process Needs
(Registry)**
 - Case Management
 - Data Exchange
 - Event Management
 - Financial Mgt.
 - Scheduling
 - Administration
 - Services
- **Decision Needs
(Judges)**
 - Document Mgt.
 - Verbal Presentation
 - Workflow
 - Legal Research
 - Analysis
 - Decision Support
 - Document Production

What Functions Should be Automated?

- **Judges?**
- **Registry?**
- **Administration?**
- **Other?**



Start Now



Computer Automated Legal Research (CALR)

- **Resources**
 - I:LAW
 - KS:LEX
 - Supreme Court Opinions
 - KSLEX:OSCE
 - OLA
 - KLC
- **Citation checking in draft opinion or decision**
- **Usability (cut and paste?)**
- **Availability?**
- **Barriers?**
- **Judge's Online Bench Book?**

Word Processing & Spreadsheets

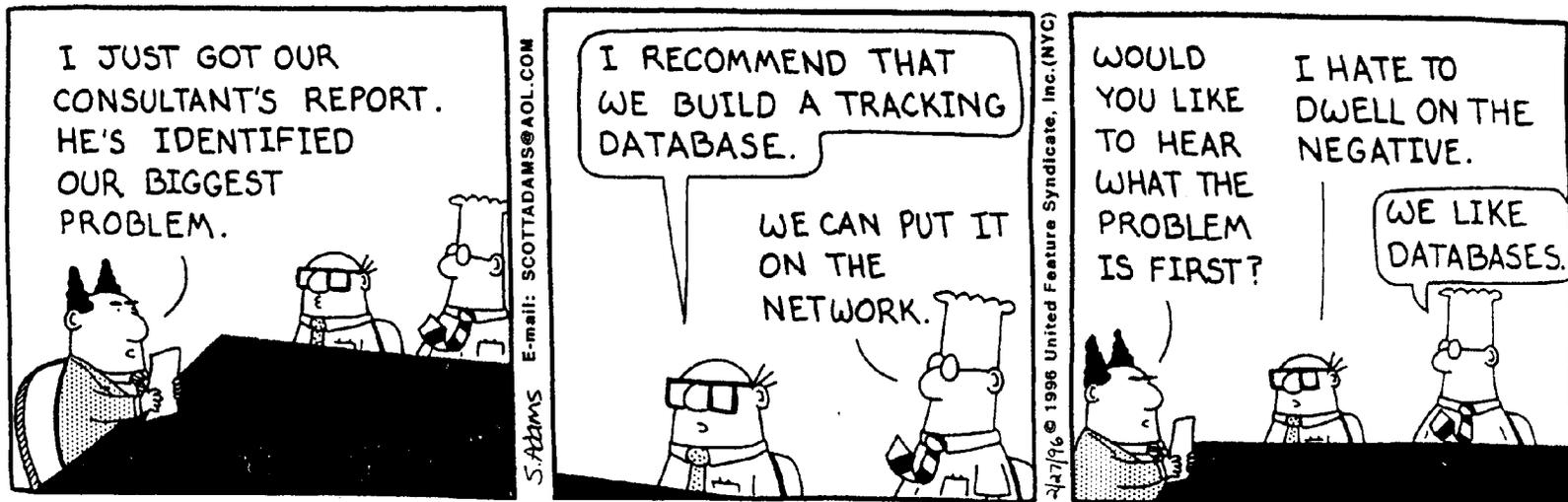
- **Basic functions**
- **Spell checking (adding legal words)**
- **Word Templates (demonstration)**
- **XML (Word 2003)**
- **Using Excel and Word for case tracking**
- **Excel data entry form (demonstration)**

Humor Break

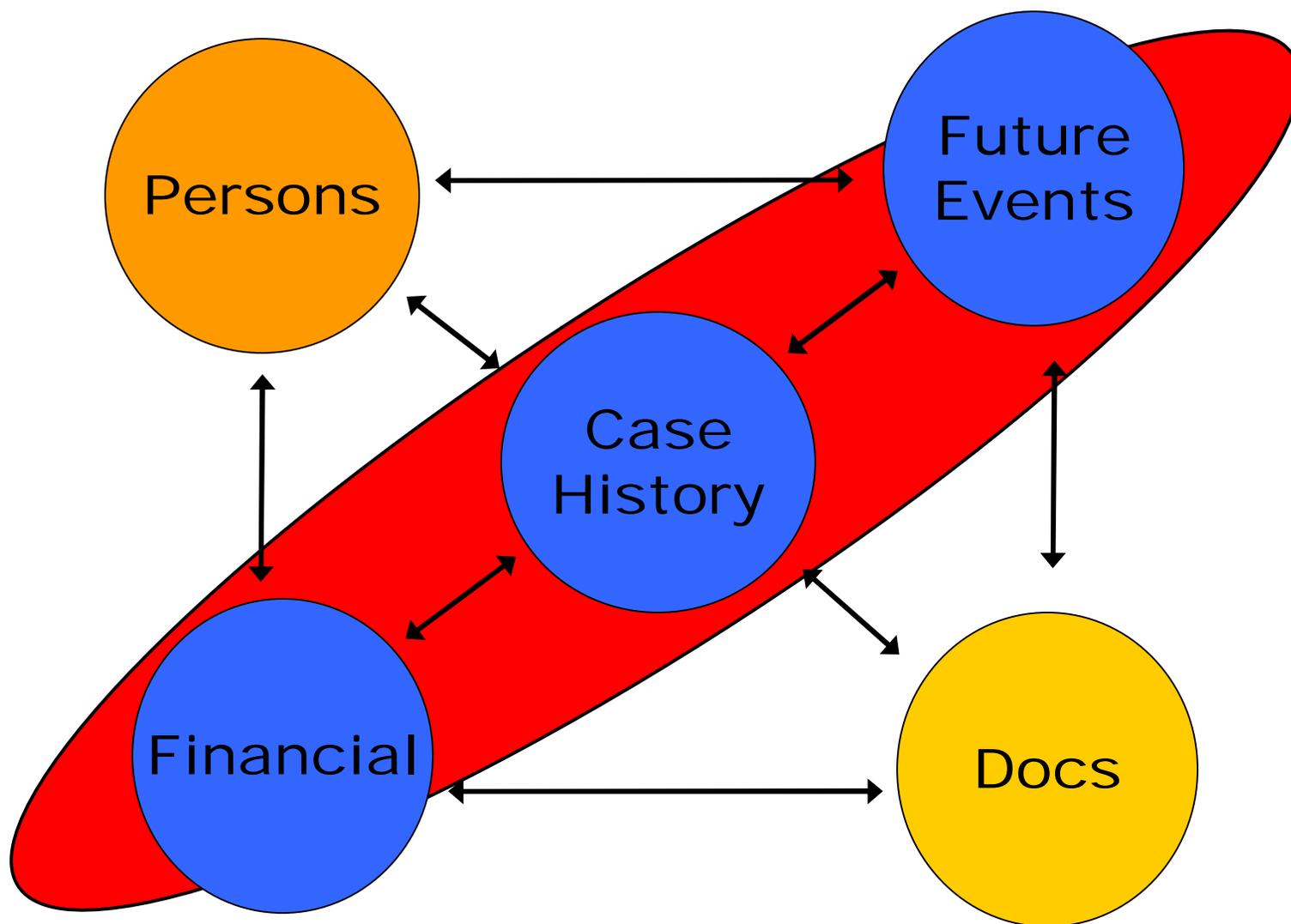
Translation here

Translation here

Translation here



McMillan **Five** Bubble Model



Case Management Systems

Basic Functions

1. **Case Initiation and Participant Indexing Function**
2. **Case Event Register and Related Record Keeping Function**
3. **Scheduling Function**
4. **Document Generation and Processing Function**
5. **Hearings Function**
6. **Disposition Function**
7. **Compliance and Execution Function**
8. **Case Closing Function**
9. **Accounting and Financial Function**
10. **File, Document, and Property Management Functions**
11. **Security and Data Integrity Function**
12. **Management and Statistical Reports Function**

Interim Case Management System Demonstration



Advanced Court Case Management Systems

- **Smart Event, Process, Task capability**
- **Bi-directional smart documents**
- **Organizational mapping**
- **Process (BPEL) engine**
- **Relationship engine**
- **Active event / case weighting**
 - **Smart assignment and work distribution**
- **Single search**
- **Service oriented architecture (data exchange)**
- **Anti-corruption analysis auditing**



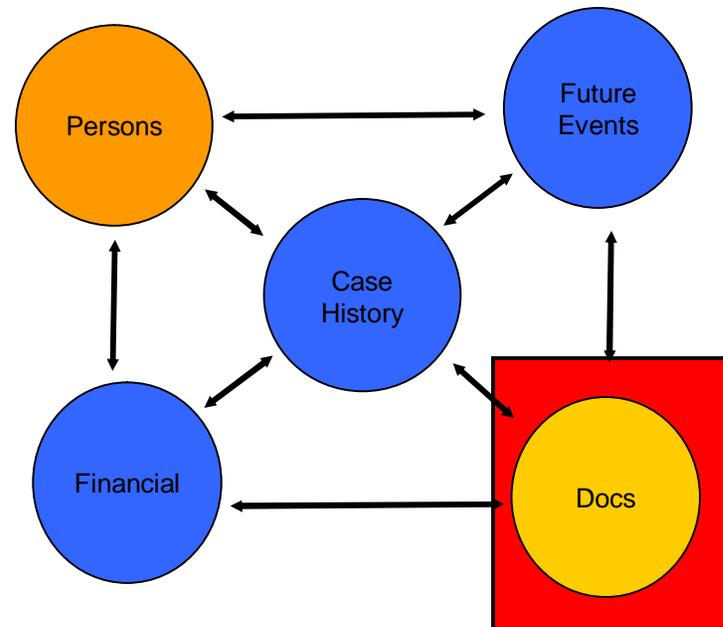
10/16/2006

17



Document Options

- **Internet**
- **E-Mail**
- **Imaging & Fax**
- **Phone/ Voice Mail/ Interactive Voice**
- **Wireless (SMS)**
- **Smart Paper**
- **Smart Document - XML**



Paper Forms for Automation

- **Structure the form for data entry**
- **Form tracking number**
- **Color coding**
- **Bar codes (more on this later)**
- **RF-ID folders**
- **Form internet posting**

Internet E-Filing

- **Internet connectivity**
- **E-Mail**
- **E-Forms**
- **E-Commerce**
- **Government Intranets**



Imaging & Fax

"Dumb Documents"

- **Scanning**
- **Smart Cover Sheets**
- **Storage and Routing
(Workflow)**
- **Retrieval**
- **Internet Technology Access**



Telephone & Voice Technology

- **Call Centers**
- **Digital Dictation**
- **Voice Mail**
- **Interactive Voice Response**
 - **US Federal PACER System**
 - **VINES System**
- **SMS**



Home Page - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Forward Stop Home Search Favorites History

Address <http://ctl.ncsc.dni.us/publicaccess/> Go Links »

NCSC

Public Access to Court Records

This site is an information clearinghouse on the topic of public access to court records and the data privacy issues that arise as courts improve and expand their court information systems and increase electronic access to court information.
PLEASE CHECK BACK OFTEN FOR NEW INFORMATION.

This web site is divided into six major sections:

- [PROJECT BACKGROUND](#) - Learn about the people and the project behind this web site.
- [LEGAL](#) - Review various legal writings on the topic of public access to court records. Writings in this section contain background information, new and emerging law, trends and issues, and multi-state summaries.
- [TECHNOLOGY](#) - Find informative materials on the technology that fuels the discussion of public access to court records.
- [STATES](#) - Read state-specific legal and policy materials.
- [FEDERAL](#) - Review the approach of the federal courts and other federal resources.
- [OTHER](#) - Discover resources and links to related projects and materials on privacy and public access to government records.

Recently Added Materials (most recent materials at top of list)

- [Virginia Legislative Activity](#) [Posted 2/15/2001]
- [Washington State - Complete Materials](#) [Posted 1/29/2001]

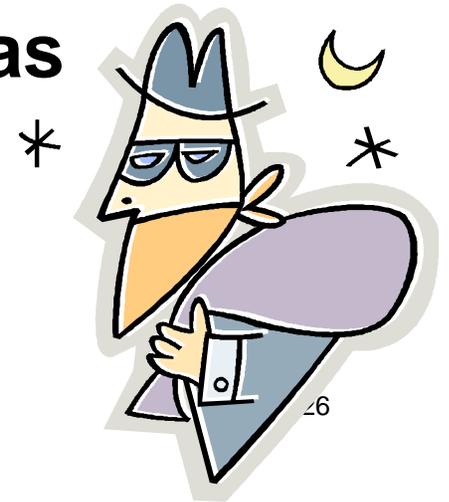
Project Background
 Technology
 States
 Federal
 Other

10/ Internet

<http://www.courtaccess.org>

Record Security Issues

- **Electronic Records Perceived Security Risks**
 - Can be accessed (without a trace)
 - Can be changed (without a trace)
 - I can't find my document
 - Computers break
 - Somebody else (system admin) has control
- **Paper security risks**



Information Security/DRM Overview

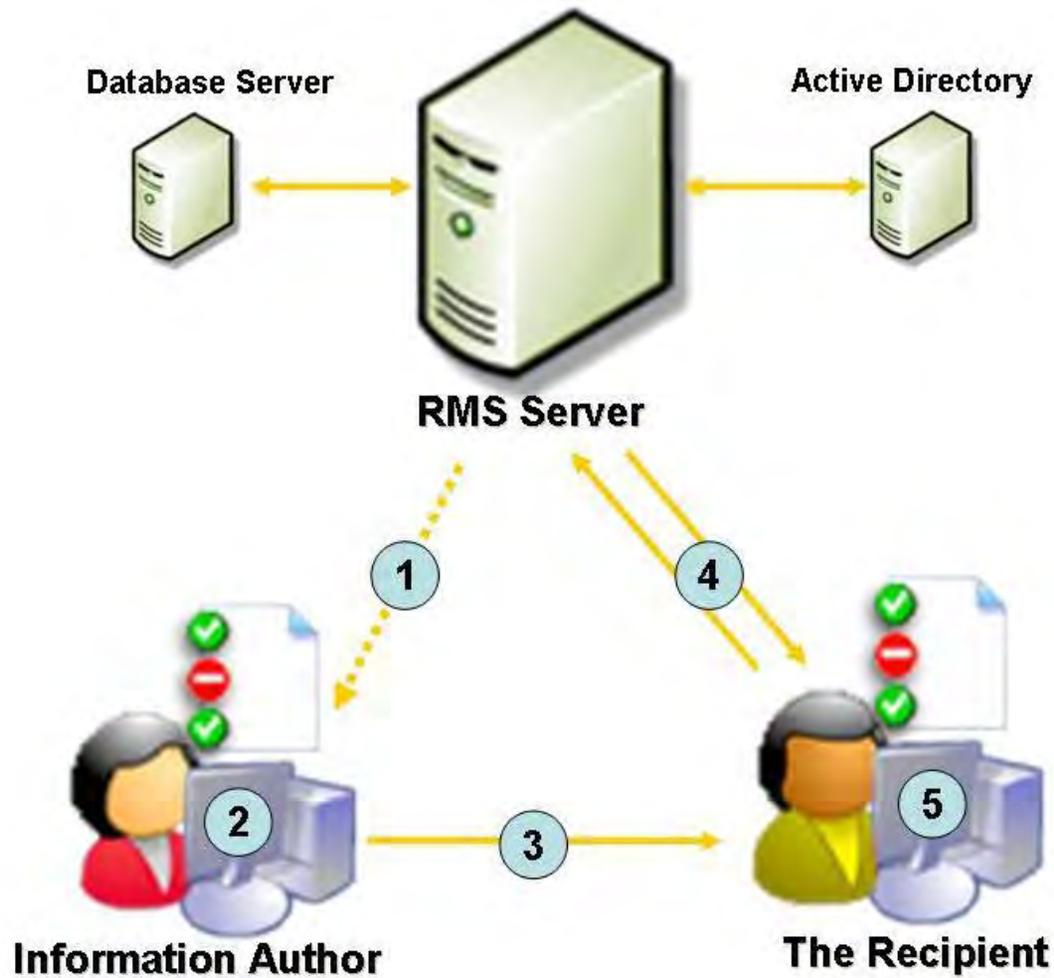
- **Music and Entertainment Industry**
- **Courts – Privacy Protection**
- **Computer files**
 - Operating System & Database Security
 - Audit tracking and trails
- **Encryption**
- **PKI (Public key infrastructure)**
- **Digital Signatures (can be separate)**
- **DRM - security is part of the file**

Signatures

- **Evidence**
- **Ceremony**
- **Approval**
 - **File stamps (altering the original)**
- **Efficiency and logistics**



Digital Rights Management (DRM) – How



Assignment & Scheduling

- Assignment depends on many factors
- **Bosnia - starting with Outlook**
- Time certain scheduling
 - Internet, Telephone
- **Police scheduling**
- Reminder system (e-mail and phone)
- **Self check-in**
- **Flat panel displays**



Project Planning

- **Problem statement - define problem**
- **Mission statement – summary of the overall goal and purpose of the project outlining general approach**
- **Project strategy – a more specific statement so that management can decide if the project fits the organizational strategic plan**

Project Planning Continued

- **Statement of project scope – define what will be done and what will not be done in the life of the project**
- **More projects exceed budgets because of project scope creep**
- **Project objectives – performance goals, quality improvement**

Project Planning Continued

- **Contractual requirements – list all deliverables**
 - Reports, documents, specifications, data
- **Work breakdown – define**
 - Tasks, sub-tasks, resources required in terms of number of persons, skills, and amount of effort
 - Cost of resources

What have we forgotten?

- **Procurement**
- **Human concerns**
- **Maintenance and Continuity**
- **Replacement**

Human Concerns

- **Behavior modification**
- **Staffing**
- **Training**
 - **Lack of allocation of funding for training is one of largest contributors to failed projects**
 - **Technical training**
 - **Users training**
- **Policy Manuals**
 - **Procedural manuals**
 - **Equipment use manuals**

Procurement Process

- **Be prepared to work**
- **Procurement Issues and Concerns**
- **Model RFP**
 - <http://www.ncscsurveys.org/courts/modelrfp/general/intro.shtml>
- **More information**
 - <http://www.naspo.org/>
 - <https://www.nascio.org/aboutNascio/index.cfm>

Priorities Exercise

The Future...

Bill Gates' Office



PHOTO: ROBYN TWOMEY

“Bill Gates” Court Bench

- Two screens plus Tablet PC
 - Screen 1 – video & citation
 - Screen 2 – drivers/criminal record
 - Tablet PC – judge’s work area/notes
- Two screens mirrored to Clerk’s PC
- IP based video conferencing
- Bluetooth microphones

Clerk Courtroom Input

Active Ink Professional Edition - [Software Request]

Custom Software Request Form

Name: Allan Warren Date: 11/7/2005

Address: 25221 Del Rio

City: Laguna Niguel State: CA Zip: 92677

Phone Number: (949) 363-6903 Cell Phone: (707) 718-5708

I am a professional who fills out a lot of forms
 I would like to enter data later
 I would like to know if the data is important
 I would like to know if I enter the same data twice
 Sending the data wirelessly would be ideal
 The data must link directly to our database

Signature: _____

of Work Stations: 1-5 6-20 21-50 51-100 100+
 # of Forms: 1 4 7 2 5 8 3 6 9

Set recognition rules for each field on a form and leverage Digital Pen 250 rich data capture to enable near real-time paper form to database applications.

Ambulance Report Doctor's Name: _____

Patient Details

First Name: _____ Date of Birth: _____

Last Name: _____

Street Number: _____ Street Name: _____

City: _____ State: _____

Incident: _____ Injury Site: _____



Ambulance Report Ambulance: _____

Doctor: *Adams* ADAMS

Submit

Patient Details

First Name	<i>OLIVIER</i>	OLIVIER
Date of Birth	<i>03 27 1989</i>	03/27/1989

“Trial by Phone”

- **Call in to conference number at specific time**
- **Convenience fee to cover phone and internet costs**
- **All documents imaged and available in court and via website**
- **Additional evidence can be faxed or e-mail ahead of time.**
- **Already successful in British Columbia**

In Conclusion

- **Better information equals better justice**
- **Technology presents opportunities**
- **Technology can eliminate the mundane**
- **Provide areas of progress:**
 - **Information presentation**
 - **Information security**
 - **Communication**



USAID | **KOSOVO**
NGA POPULLI AMERIKAN
OD AMERIČKOG NARODA

JUSTICE SYSTEM REFORM ACTIVITY IN KOSOVO

WORKSHOP

REVIEW OF PILOT COURTS' PROGRESS IN ELIMINATING BACKLOGS AND IMPROVING CASEFLOW MANAGEMENT IN CIVIL EXECUTION CASES

Organized by the

NATIONAL CENTER FOR STATE COURTS

PRISTINA, KOSOVO

April 2006

WORKSHOP OBJECTIVES

- 1. Enable participants to become familiar with the strategies and techniques being used in each of the three pilot projects addressing backlogs in civil execution cases in Kosovo.**
- 2. Review key concepts and techniques concerning implementation and monitoring of backlog reduction plans.**
- 3. Provide opportunity for participating court teams to update their backlog reduction plans and utilize available technical assistance.**

***Workshop: Review of Pilot Courts' Progress in
Eliminating Backlogs and Improving Caseflow
Management in Civil Execution Cases***

Pristina, Kosovo

April 2006

AGENDA

- | | |
|----------------------|--|
| 09:30 – 10:00 | Registration |
| 10:00 – 10:15 | Welcome; introductions; overview of the workshop |
| 10:15 – 11:00 | Plenary: Presentations by each team on progress since December 2005 <ul style="list-style-type: none">• What was the situation in December 2005?• What has been accomplished between December and April?• What are the key issues to be addressed during the next 6 months?• What will be accomplished by December 2006? By June 2007? |
| 11:00 – 11:15 | BREAK |
| 11:15 – 11:40 | Plenary: Review of key concepts and techniques for implementing and monitoring backlog reduction plans |
| 11:40 – 12:15 | Team session: Updating action plans for backlog reduction |
| 12:15 – 12:30 | BREAK |
| 12:30 – 12:50 | Plenary: Reports back from team session; discussion |
| 12:50 – 1:15 | Concluding Session: Evaluations; discussion of NCSC technical assistance capabilities and availability; closing comments by faculty |
| 1:15 | ADJOURN |

PROGRESS REPORT: ATTACKING BACKLOGS IN CIVIL EXECUTION CASES

- 1. What was the situation in December 2005?**
- 2. What has been accomplished between December 1005 and April 2006?**
- 3. What are the key issues to be addressed in the next 6 months?**
- 4. What will be accomplished by December 2006?**
- 5. What will be accomplished by June 2007?**

Pending Civil Execution Cases

Court	Pending cases (January 1, 2004)	Cases received (2004)	Total Cases (2004)	Solved cases (2004)	Pending Cases (January 1, 2005)
Pristina	7,898	3,085	10,983	1,385	9,598
Ferizaj	1,728	1,644	3,372	911	2,455
Gllokovc	95	209	304	130	174
Kacanik	653	458	1,111	148	963
Lypian	84	146	230	114	111
Podujeva	383	724	1,107	304	803
Mitrovica	1,672	683	2,355	1,282	1,073
Skenderaj	137	759	896	702	194
Vushtrri	138	500	638	365	247
Leposavic	7	30	37	24	12
Zubin Potok	1	19	20	12	8
Gjilan	1,900	887	2,787	444	2,343
Kamenica	77	255	332	195	136
Viti	321	503	824	139	650
Peja	17,311	5,767	23,078	6,225	16,853
Decan	436	468	904	51	853
Gjakova	4,454	3,170	7,624	201	5,123
Istog	773	418	1,191	196	995
Klina	572	N/A	N/A	N/A	N/A
Prizren	347	1,410	1,757	561	1,196
Dragash	21	64	85	62	23
Malisheva	37	29	66	13	53
Radovec	153	456	609	234	375
Suhareka	93	152	245	89	156
Total	39,291	21,836	60,555	13,787	44,394

Note: DJA data

Disposition of Civil Execution Cases

Court	Pending cases (January 1, 2004)	Cases received (2004)	Total Cases (2004)	Solved cases (2004)	Cases solved v. cases received (2004)	Cases solved v. total cases (2004)
Pristina	7,898	3,085	10,983	1,385	45%	13%
Ferizaj	1,728	1,644	3,372	911	55%	27%
Gllokovc	95	209	304	130	62%	43%
Kacanik	653	458	1,111	148	32%	13%
Lypian	84	146	230	114	78%	50%
Podujeva	383	724	1,107	304	42%	27%
Mitrovica	1,672	683	2,355	1,282	188%	54%
Skenderaj	137	759	896	702	92%	78%
Vushtrri	138	500	638	365	73%	57%
Leposavic	7	30	37	24	80%	65%
Zubin Potok	1	19	20	12	63%	60%
Gjilan	1,900	887	2,787	444	50%	16%
Kamenica	77	255	332	195	76%	59%
Viti	321	503	824	139	28%	17%
Peja	17,311	5,767	23,078	6,225	108%	27%
Decan	436	468	904	51	11%	6%
Gjakova	4,454	3,170	7,624	201	6%	3%
Istog	773	418	1,191	196	47%	16%
Klina	572	N/A	N/A	N/A	N/A	N/A
Prizren	347	1,410	1,757	561	40%	32%
Dragash	21	64	85	62	97%	73%
Malisheva	37	29	66	13	45%	20%
Radovec	153	456	609	234	51%	38%
Suhareka	93	152	245	89	59%	36%
Total	39,291	21,836	60,555	13,787	63%	23%

Note: DJA data

Caseloads of Execution Clerks

Court	Total Cases (2004)	Solved cases (2004)	Execution clerks (2004)	Number of cases per execution clerk	Number of cases solved per execution clerk
Pristina	10,983	1,385	10	1,098.30	138.50
Ferizaj	3,372	911	5	674.40	182.20
Gllokovc	304	130	1	304.00	130.00
Kacanik	1,111	148	1	1,111.00	148.00
Lypian	230	114	1	230.00	114.00
Podujeva	1,107	304	1	1,107.00	304.00
Mitrovica	2,355	1,282	5	471.00	256.40
Skenderaj	896	702	2	448.00	351.00
Vushtrri	638	365	1	638.00	365.00
Leposavic	37	24	1	37.00	24.00
Zubin					
Potok	20	12	1	20.00	12.00
Gjilan	2,787	444	5	557.40	88.80
Kamenica	332	195	1	332.00	195.00
Viti	824	139	1	824.00	139.00
Peja	23,078	6,225	6	3,846.33	1,037.50
Decan	904	51	2	452.00	25.50
Gjakova	7,624	201	5	1,524.80	40.20
Istog	1,191	196	2	595.50	98.00
Klina	N/A	N/A	2	N/A	N/A
Prizren	1,757	561	6	292.83	93.50
Dragash	85	62	1	85.00	62.00
Malisheva	66	13	2	33.00	6.50
Radovec	609	234	1	609.00	234.00
Suhareka	245	89	1	245.00	89.00
Total	60,555	13,787	64	955.11	215.42

Note: DJA data

MANAGING CIVIL EXECUTION CASES

Suggested Goals

- **Eliminate old case backlogs**
- **Achieve case processing time standards**
- **Dispositions per year consistently exceed new filings**
- **Pending caseloads at manageable level**
- **Appropriate (and flexible) utilization of limited court resources**

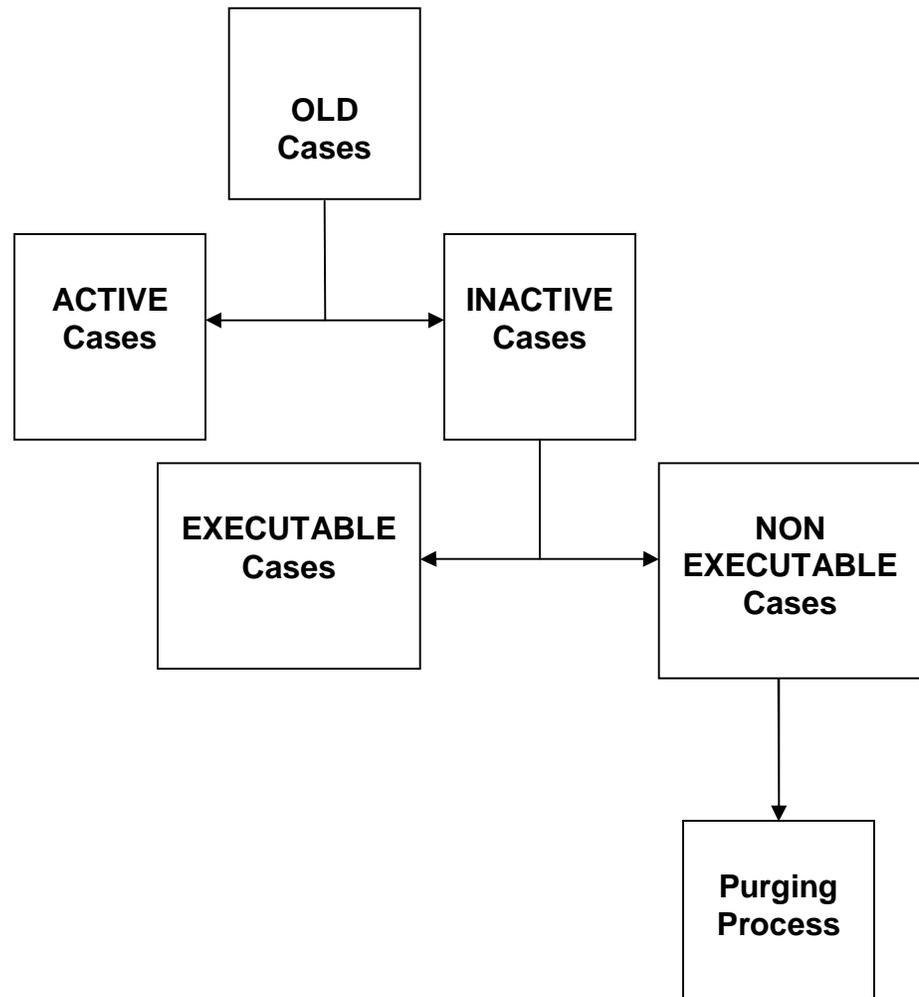
PROPOSED CASE PROCESSING TIME STANDARDS FOR CIVIL EXECUTION CASES

All civil execution cases should be resolved within 180 days after the case is received by the court.

COMMON OBSTACLES TO ACHIEVING TIME STANDARDS

- 1. Existing practices may make it impossible to achieve the standards. For example:**
 - **No procedures for dealing with complex cases separately from other cases**
 - **First in-first out approach to resolving cases – priority always given to oldest case**
 - **All cases follow same procedures, with same events and similar timing**
 - **No way to identify cases that can be resolved easily and quickly with early court intervention**
- 2. Judges and staff may not be familiar with techniques for effective case management.**
- 3. Lawyers and parties may resist efforts to resolve cases expeditiously.**
- 4. Existing caseload may be so large that judges and staff are discouraged from attempting to achieve ambitious time standards.**
- 5. Court may lack timely and reliable information about caseloads and individual cases.**
- 6. Court may not have enough judge and/or staff resources**

BACKLOG IDENTIFICATION AND CLASSIFICATION



SUGGESTED DEFINITIONS

A CASE IS

IF

Old

the case was filed 24 months or more prior to the date of inquiry.

Inactive

the last action on the case was taken 12 months or more prior to the date of inquiry.

Non-executable

one of the following affirmations is true:

- **The debtor is unknown or deceased.**
- **The debtor's location is unknown or is outside the jurisdiction of Kosovo courts.**
- **The debtor has no assets or is insolvent.**

CREATING A CIVIL EXECUTION CASE DATABASE

KEY DATA ELEMENTS

Case number

Date filed

Creditor – Name and address

Debtor – Name and address

Nature of document that is basis for execution

- Judgment -
- Authentic document – what type?

Amount of debt

Court fee – amount paid

Types of assets on which execution is sought

- Monetary -
- Non-monetary – movable
- Non-monetary – not movable

Date and nature of last court action

Date and nature of next scheduled court action

Mediation or other ADR

- Date ordered or agreed upon
- Date and nature of result

Resolution of the case – date and nature

- Settlement
- Withdrawal
- Execution completed
- Etc.

Comments

CLASSIFICATION OF CIVIL EXECUTION CASES: SAMPLE CATEGORIES

1. Age (years/months since filing)

2. Routine or complex case

A case will be classified as routine if all the following criteria apply:

- **There is information on the debtor and his assets.**
- **The creditor is seeking execution against monetary assets (bank account, salary) or the creditor is seeking execution against non-monetary assets but can be satisfied without having to go to auction.**
- **There are no external factors which may impede the execution.**

3. Type of debt for collection

- **Utility bill**
- **Alimony**
- **Unpaid loan**
- **Court judgment against debtor Etc**

4. Type of asset(s) sought for execution

- **Bank account**
- **Salary**
- **Land/house**
- **Equipment Etc**

5. Name of debtor

6. Name of creditor

OLD CASE PURGING PROCESS

SUGGESTED STEPS

1. **Advertise the purging process in the news media:**
 - the objectives of the process
 - the locations of the notice boards
 - the timeline of the process
2. **Notify the parties in eligible cases:**
 - If the address is known, deliver summons.
 - In all cases, post the names of the parties on a notice board at the court.
3. **Require the parties to report to the court within a deadline of 30 days.**
4. **If the parties do not report to the court within the deadline, the court may elect to either place the case on an inactive backlog list or simply dismiss the case.**
5. **If the parties report to the court within the deadline, they will be given the option to:**
 - a. Withdraw the case.
 - b. Transfer the case to mediation.
 - c. Keep the case in the court. If the case is kept in the court, the creditor should be informed that in the absence of additional information or activity within 90 days the court may elect to either place the case on an inactive backlog list or simply dismiss the case.

OLD CASE PURGING PROCESS DISPOSITION OF CASES

- **Withdrawal by the creditor.**
- **Dismissal by the court.**
- **Setting aside on an inactive backlog list.**
- **Transfer to mediation.**

Grounds for dismissing or setting aside the case:

1. **The case is eligible for the purging process.**
2. **The court has made a good faith effort to obtain information on the debtor and his assets but no information was obtained. The debtor is therefore presumed unknown or insolvent.**
3. **The creditor is notified of the lack of information or activity and that failure to provide the court with additional information within 90 days will lead to dismissal or setting aside as inactive. And**
4. **The creditor fails to report to the court or fails to provide additional information.**

Mediation for old case purging process:

1. **The case is eligible for the purging process.**
2. **The court has set a “mediation day”. A team of retired judges, judges in training and/or judges from neighboring courts have been put together.**
3. **The parties have elected to bring their case to mediation.**
4. **The objectives of the mediation process should be (a) catalyze agreement between the parties on a settlement; and (b) dispose of the case unless evidence of activity is presented.**

PRIORITIZING EXECUTION CASES USING A COMPUTERIZED CASE DATABASE

Objectives:

- 1. Improve the understanding of the nature and type of caseload.**
- 2. Facilitate resource allocation.**
- 3. Allow for prioritization of case resolution.**
- 4. Ensure that time targets are met.**
- 5. Highlight patterns in case resolution (or non-resolution).**

Contents:

- 1. Date of initial filing**
- 2. Actions by the parties/court and their dates**
- 3. Date of last action**
- 4. Debtor and creditor names**
- 5. Debtor and creditor addresses**
- 6. Asset information**
- 7. Type of debt to be collected**
- 8. Type of asset against which execution is sought**

The database should enable the implementation of prioritization criteria. For example it should facilitate identification of:

- Cases pending longer than the backlog threshold time standard.**
- Type of debt to be collected (for example, alimony).**
 - Quality of information available - i.e. names, addresses, asset information**

PLANNING FOR BACKLOG REDUCTION: FIRST STEPS

1. Define “backlog” for your court.
 - Does the court have civil execution case processing time standards? (If so, any cases older than the maximum period allowed under the relevant standard are part of the backlog)
 - If the court does not have standards, what do court leaders regard as an acceptable time for resolving cases of particular types? (older cases = backlog)
2. Define “active”, “inactive” and “non-executable” cases for your court.
3. Set priorities for case categories. Which components of the backlog should be eliminated first?
4. Take inventory of top priority category, beginning with the oldest cases by the year in which the cases were filed.
 - Review registers
 - Review case files if necessary
 - Make lists of unresolved cases, by year filed
5. Create a simple computerized database, usable for recording the inventory data and tracking future actions
6. Record, in the database, the information needed to take action to resolve the case.
7. Develop a plan for resolving the backlog cases.
8. Identify and organize the resources needed to resolve the cases in the backlog.
9. Develop a plan to prevent recently filed and new filed cases from falling into backlog status.

CONDUCTING AN INVENTORY OF OLD CIVIL EXECUTION CASES

1. Identify person(s) to conduct the inventory and maintain the database
 - Will need to provide training and supervision
2. Create a simple computerized database organized by year of case filing.
3. Review registers, starting with register with oldest open cases. Identify all unsolved cases.
4. For each unresolved case on each year's list of cases, enter key information into the database:
 - Case number
 - Date filed
 - Case title – creditor and debtor names
 - Amount sought
 - Specific asset information, including identity of third parties named as holding assets
 - Last court event
 - Date of next scheduled court event
 - Reason for delay (if easily ascertainable)
 - Complexity of the case
 - E.g.: Routine – Complex
 - Classify: active or inactive
 - If inactive, why?
 - Action needed to resolve the case
 - Contact information for
 - Parties - lawyers - asset holders

Most information should be in registers. Use physical case files if necessary.

After the inventory has been completed, what should be done?

1. Set goals for eliminating portions of the backlog within specific time periods.

- **Example: All civil execution cases filed in 2003 or before to be resolved by 30 June 2006; all cases over 18 months to be resolved by 31 December 2006**

2. Identify and organize resources needed to eliminate the backlog.

- **Who will be responsible for leading the project?**
- **What resources will be necessary?**
 - **Judges - Judicial assistants - Execution clerks**
 - **Other Registry staff - Messengers**
 - **Courtrooms - Conference rooms**

3. Using the computerized database, sort cases by category, including the following categories:

- **Old cases (e.g., cases over 2 years since filing)**
- **Inactive cases (e.g., no activity for at least one year)**
- **Non-executable cases, including:**
 - **Debtor is unknown or deceased**
 - **Debtor's location is unknown**
 - **Debtor has no assets (insolvent)**
- **Active cases**

4. Take steps to dispose of old, inactive, and non-executable cases:

- **Notify creditor of inactivity and/or lack of information on which to proceed. Advise creditor that failure to provide essential information within 90 days will result in dismissal of the case.**
- **To notify: mail to last known address; post notice in newspapers and on notice board in courthouse**

5. Develop plan and procedures to resolve active cases

REDUCING THE BACKLOG OF ACTIVE CIVIL EXECUTION CASES

- 1. Using the computerized database, sort cases into categories that will facilitate effective management**
 - Classify by age. Begin with oldest cases.
 - Classify by whether “routine” or “complex”
- 2. Create separate calendars/dockets for routine cases and complex and routine cases.**
- 3. Cluster cases involving same persons or entities**
 - E.g.: creditors/debtors/asset holders
 - Try to resolve them at the same time.
- 4. If needed action is clear: set next action date.**
- 5. If needed action is unclear, set case for conference; notify lawyers/parties to provide information about case status and readiness for trial.**
- 6. Conduct case conference; set schedule for completion of case if not resolved at the conference.**
- 7. If party does not appear for conference or hearing/trial: dismiss or default judgment.**

IMPLEMENTING A BACKLOG REDUCTION PROJECT: KEY ISSUES

Leadership

- Who will be responsible for the project?

Information

- What do the court president and court administrator need to know about the progress of the project?
- How will they get the essential information?

Procedures

- What new procedures will be necessary in order for the project to succeed?
- How will these procedures be adopted? Who needs to be involved?

Resource acquisition and allocation

- What resources are essential? How can they be obtained?
- How should available resources be allocated during the backlog reduction project, in order to:
 - Eliminate/reduce the backlog of old cases AND
 - Prevent recently filed cases from becoming part of the backlog

Key stakeholders

- Who – what entities and individuals – needs to be involved?
 - Within the court
 - From outside the court
- What authorizations will be needed to move ahead?

Education and training

- Who needs to learn about the plans?
- What do they need to know?
- Who will teach them?

LEADERSHIP

“The ability to translate ideas into reality and sustain them over time.”

- Warren Bennis

LEADERSHIP IN ORGANIZATIONS REQUIRES:

- **A reputation for personal integrity**
- **Personal competency**
- **A vision for the future**
- **A commitment to the organization**
- **A willingness to persist**

SUCCESSFUL LEADERSHIP IN BACKLOG AND DELAY REDUCTION REQUIRES:

- **Understanding what needs to be done**
- **Making the decision to do it.**
- **Making a public commitment to eliminating the backlog and reducing delays**
- **Communicating the need for action**
- **Marshalling the resources needed for success**
- **Monitoring progress and fixing problems**
- **Persisting in moving toward the goals**
- **Rewarding those who make success possible**

USING CASELOAD MANAGEMENT INFORMATION

POSSIBLE INDICATORS OF CASEFLOW MANAGEMENT EFFECTIVENESS

Clearance rate: Annual dispositions equal to or greater than annual filings.

Pending Caseload:

- Total size decreasing over time
- Few (or no) cases pending longer than applicable time standard

Time to Disposition:

- Few (or no) cases taking longer than times called for by applicable time standard
- Times for median and 80th percentile cases decreasing over time

Productivity: Dispositions per execution clerk increasing over time

Case Scheduling Effectiveness: High percentage of scheduled events take place on date scheduled (Few continuances)

Quality of Justice: Difficult to measure but important to ascertain perceptions of quality

* * *

IMPORTANT TO USE MULTIPLE INDICATORS!!!

MONTHLY ACTIVE CASELOAD REPORT CIVIL EXECUTION CASES

Month of _____ 2006

A. Active pending cases at the start of MONTH _____

B. New cases filed during MONTH _____

C. Cases re-opened or returned to the active list during MONTH _____

D. Total cases active during month (A+B+C) _____

E. Cases solved during MONTH _____

F. Cases placed on inactive list during MONTH _____

G. Active pending cases at end of MONTH (E-F-G) _____

MONTHLY INACTIVE CASELOAD REPORT CIVIL EXECUTION CASES

Month of _____ 2006

A. Inactive pending cases at the start of MONTH _____

B. Cases added to the inactive list during MONTH _____

C. Cases re-opened or returned to the active list
during MONTH _____

D. Total inactive cases at end of MONTH (A+B-C) _____

Old Case Inventory Action Report

Old Case Inventory Action Report for (month and year): _____ Date Form Completed _____
 Court: _____ Case Type _____ Judge: _____

	Case File No.	Filing Date	Date of Last Event or Paper Filed	Nature of Last Event or Paper Filed	Action Taken During Month	Was a Continuance Granted This Month?	Date and Nature of Next Scheduled Event
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
...							

KEY CASEFLOW INDICATORS CHART

Report Period	Active Pending Start	Filed	Disposed	Active Pending End	Active Pending Over 1 Year	Active Pending Over 2 Years	Clearance Rate	Number of Judges Available	Cases Disposed Per Judge
Jan									
Feb									
Mar									
Apr									
May									
Jun									
Jul									
Aug									
Sep									
Oct									
Nov									
Dec									
Total, Jan – Dec									

Year to date change in Total Pending Caseload:

Year to date change in number pending over one year:

Year to date change in number pending over two years:

Year to date clearance rate: 126.8%

Average dispositions per month per judge: 27.7

Team Session

Updating Plans for Backlog Reduction

In this session, members of each court team will have an opportunity to work on updating the court's plans for a civil execution case backlog reduction project for the court.

Process:

1. Review the goals for backlog reduction that the court has previously set. What are likely to be the most feasible approaches to eliminating backlogs in your court? Consider the following questions:

- Should goals be set for the time by which the backlog will be substantially eliminated?
- Can a computerized database be created?
- Could work assignments or case assignments be reorganized to achieve greater productivity?
- Could court time be re-arranged to enable greater productivity?
- Is it desirable to create a special backlog reduction unit to deal with backlog cases?
- What types of cases should be given priority?
- Is it feasible to re-design management information reports to make them more useful for monitoring the progress of the backlog reduction program and managing caseloads?
- Are there particular individuals or groups whose cooperation should be sought?
- What other possible approaches might be effective?

2. Using the planning form, first identify the tasks that must be undertaken. Then consider who should be responsible for each task, who else should be involved, what resources would be necessary, and in what timeframe it should be accomplished.

3. Complete the Report Form, indicating your tentative goals, main tasks, who would be responsible for making sure the tasks are accomplished ("LEADER"), and the first steps that the team will take to implement the

Product: A fresh work plan for achieving your backlog reduction project goals.

--	--	--	--	--

Report Form – Team Session

Court _____

Outline – Preliminary Backlog Reduction Plan

GOAL(S):

	<u>MAIN TASKS</u>	<u>LEADER</u>
1.		
2.		
3.		
4.		
5.		
6.		
7.		

FIRST STEPS

- 1.
- 2.
- 3.
- 4.

IMPROVING THE FUTURE MANAGEMENT OF NEWLY FILED CASES: FIRST STEPS

1. Expand the backlog database to facilitate the classification of newly filed cases:
 - Non-executable cases
 - Routine or complex cases
2. Use the case database and classification criteria to prioritize case resolution.
3. Adopt performance goals:
 - Time targets
 - Disposition targets
4. Clarify the respective responsibilities of judges and execution clerks:
 - In which cases is the intervention of a judge needed?
 - When in the process should the judge intervene?
5. Establish summary dismissal mechanisms
 - Criteria for eligible cases: non-executable, inactive, etc.
 - Notification process and response delays
6. Establish mediation alternatives
 - Criteria for eligible cases
 - Monthly mediation day to facilitate settlement between the parties
7. Strengthen information mechanisms.

USING CASELOAD MANAGEMENT INFORMATION

POSSIBLE INDICATORS OF CASEFLOW MANAGEMENT EFFECTIVENESS

Clearance rate: Annual dispositions equal to or greater than annual filings.

Pending Caseload:

- Total size decreasing over time
- Few (or no) cases pending longer than applicable time standard

Time to Disposition:

- Few (or no) cases taking longer than times called for by applicable time standard
- Times for median and 80th percentile cases decreasing over time

Productivity: Dispositions per execution clerk increasing over time

Case Scheduling Effectiveness: High percentage of scheduled events take place on date scheduled (Few continuances)

Quality of Justice: Difficult to measure but important to ascertain perceptions of quality

* * *

IMPORTANT TO USE MULTIPLE INDICATORS!!!

AXIOMS OF CASEFLOW MANAGEMENT

1. Early and continuous control of case progress helps minimize delays.
2. Differentiated case management works.
3. Dispositions take place when key decision-makers have the necessary information.
4. Every case must always have a date certain, *for a purpose certain*, assigned.
5. Accurate and timely information is essential.
6. What you count *counts*. Information reports influence behavior.

UNITED NATIONS
United Nations Interim
Administration Mission
in Kosovo



NATIONS UNIES
Mission d'Administration
Intérimaire des Nations
Unies au Kosovo

Department of Justice - Judicial Inspection Unit

← --- Formatted: Centered

Judicial Audit Section

INTERNAL AUDITORS' MANUAL

TABLE OF CONTENTS

1. FOREWORD	1-1
2. PURPOSE OF THIS MANUAL	2-1
3. LEGISLATIVE FRAMEWORK	3-1
4. INTRODUCTION	4-1
4.1. Definition and Objective	4-1
4.2. Accountability	4-2
4.3. International Standards	4-2
4.4. Relationships	4-3
5. THE INTERNAL AUDIT PROCESS	5-1
5.1. Risk Assessment	5.1-1
5.2. Audit Planning Cycle	5.2-1
5.2.1. Strategic Plan	5.2-1
5.2.2. Annual Plan	5.2-2
5.2.3. The Individual Audit Plan	5.2-2
5.3. Performance of an Internal Audit	5.3-1
5.3.1. Internal Audit Mission Order	5.3-1
5.3.2. Kick Off Meeting and Opening Statement	5.3-2
5.3.3. Determination of Resource Requirement and Performing the Systems-Based Audit	5.3-4
5.3.4. Planning the steps of the audit	5.3-5
5.3.5. Determining and recording the system	5.3-6
5.3.6. Assessing the Controls	5.3-9
5.3.6.1. System, Business and Management Objectives	5.3-10
5.3.6.2. Control Objectives	5.3-12
5.3.6.3. Control framework	5.3-12
5.3.6.4. Identifying Controls	5.3-13
5.3.6.5. Evaluation	5.3-17
5.3.7. Testing the application and effectiveness of controls (Compliance and Substantive Tests)	5.3-19
5.3.8. Confirming established facts	5.3-23
5.3.9. Formulating and evaluating findings	5.3-23
5.3.10. Reporting and follow up	5.3-26
5.3.10.1. The Process of the Report Writing and Report Structure	5.3-26
5.3.10.2. Closing Meeting	5.3-28
5.3.10.3. Preparation of the Action Plan by the auditees	5.3-28
5.3.10.4. Final Report	5.3-29
5.3.10.5. Follow Up	5.3-30
5.3.11. Supervision of the Audit	5.3-30
5.3.11.1. Monitoring by the Head of Internal Audit Entity	5.3-30
5.3.11.2. Ongoing Supervision by the Team Leader	5.3-31
5.3.11.3. Budget Control	5.3-32
5.3.12. Audit Files	5.3-32
5.3.13. Documentation Standards	5.3-35
5.3.14. Completing the Audit Cycle	5.3-35

Deleted: 5.3-1

6. RESPONSIBILITIES WITHIN INTERNAL AUDIT	6-1
6.1. Head of Internal Audit Entity	6-1
6.2. Team Leaders	6-2
6.3. Audit staff	6-2
7. FRAUD	7-1
7.1. Definition	7-1
7.2. Responsibilities	7-1
7.3. Fraud Investigations	7-1
7.4. Role of Internal Audit.....	7-1
7.5. Procedure In The Case Of Suspicion Aroused During an Audit	7-2

APPENDICES

1. Glossary
2. Internal Audit International Standards
3. Code of Ethics
4. Forms
5. IIA Standards (English version)
6. Strategic Planning Methodology
7. Flowchart
8. Budget Users' Internal Audit Rulebook (awaiting it's passage)

LIST OF ABBREVIATIONS

IIA	Institute of Internal Auditors (international)
C	Courts
MIS	Management Information System
OAG	Office of the Auditor General
ICQ	Internal Control Questionnaire
KJC	Kosovo Judicial Council
PCK	Prosecutor Council of Kosovo
DOJ	UNMIK Department of Justice
JIU	Judicial Inspection Unit
JAS	Judicial Audit Section
AC	Audit Coordinator
OJA	Office of Judicial Administration (formerly DJA)

1. FOREWORD

Mission Statement:

“The Judicial Audit Section (JAS) , through the process of Internal Audit, aims to provide a professional, high quality and effective review, assurance and improvement advising service to the Kosovo Judicial Council (KJC), the Prosecutor Council of Kosovo (PCK) and the Courts and Prosecutors Offices under their management”

The quality of Internal Audit performance in public institutions fully depends on application of the methodology presented in this Manual, as well as your full involvement as a professional of Internal Audit. Professionalism depends significantly on the objectivity of your views and opinions, the quality of your thought processes in applying Audit Standards and the impact and practicality of your recommendations.

As an Internal Auditor, be aware that JAS does not play an inspectorial role in the justice sector. Rather, JAS needs the co-operation of staff and managers in order to obtain sufficient and genuine information to carry out its duties. The best way to foster an atmosphere of mutual trust and co-operation is for JAS Internal Auditors to adopt a participative approach, to maintain transparency in our work and objectives, and to maintain professional relationships at all times.

Ultimately, our reputation and the respect we earn will depend on these qualities.

Although the Manual is owned by the JAS, we should be pleased to consider suggestions from everyone for improving it in the future versions since this Manual is a living document.

Good Luck to you all.

JAS Audit Coordinator

2. PURPOSE OF THIS MANUAL

This Manual is intended for the use of staff employed in the Judicial Inspection Unit's (JIU's) JAS within the UNMIK Department of Justice.¹

Its purpose is to act as a common reference point for JAS audit staff, to assist in a common understanding of the principles of modern auditing techniques and newly applied terminology, and to assist them as they carry out of their duties.

The procedures and methodologies contained in the Manual are in accordance with the international Standards for the Professional Practice of Internal Audit as set out by the international Institute of Internal Auditors (IIA), (latest edition, January 2004) but adapted to be relevant to the Kosovo Justice Sector.

To ensure that both the methodology and procedures remain consistent with best practice and reflect changes in both the legal and audit environment, the JAS is responsible for reviewing, and where necessary amending the contents of the methodology and procedures. This review will be performed annually, or more frequently if needed.

It is each auditor's responsibility to ensure that all amendments to the methodology and procedures are understood and incorporated into the Manual. Any proposed amendments should be approved by the Audit Coordinator (AC) before being formally incorporated into the Manual.

* * *

NB: Appendix 6 is specifically providing Strategic Planning and Risk Assessment methodology.

¹ Any organizational changes affecting the position of JAS within Kosovo's justice sector should immediately be reflected in this manual.

3. LEGISLATIVE FRAMEWORK

The **ADMINISTRATIVE DIRECTION NO. 2001/4 IMPLEMENTING UNMIK REGULATION NO. 2000/15 ON THE ESTABLISHMENT OF THE ADMINISTRATIVE DEPARTMENT OF JUSTICE** states the following in relevant part:

The Special Representative of the Secretary-General, Pursuant to the authority given to him under section 5 of United Nations Interim Administration Mission in Kosovo (UNMIK) regulation No. 2000/15 of 21 March 2000 on the Establishment of the Administrative Department of Justice,

Taking into account sections 1.2 and 2.2(a) of UNMIK Regulation No. 2000/15, For the purpose of establishing the Judicial Inspection Unit in order to ensure the proper functioning of the judicial system in Kosovo,

Hereby issues the following Administrative Direction:

Section 1
Judicial Inspection Unit

1.1 The Judicial Inspection Unit (hereinafter “the Unit”) is hereby established.

1.2 The Unit shall be responsible for conducting . . . audits within the judicial system in Kosovo.

Section 2
Functions

2.1 The Unit shall:

(a) Analyze and evaluate the functioning of the courts and the public prosecutors' offices;

(b) Analyze and evaluate specific judicial or prosecutorial activities for the purpose of proposing reforms for such activities; . . . and

(d) Make recommendations to the Co-Heads of the Administrative Department of Justice² in respect of matters pertaining to section 2.1 (a), (b) and (c) above.

. . . .

2.3 A member of the Unit, when performing his/her duties, shall have a general power of . . . verification and evaluation, including access to any useful document and court proceeding as well as the right to question any individual working in the judicial system or any individual

² Due to subsequent legislation, the Co-Heads of ADJ have been replaced by the UNMIK Department of Justice Director and the Kosovo Judicial Council. It is anticipated that legislation creating the Prosecutorial Council of Kosovo (PCK) will establish the PCK as yet another body intended to benefit from [JAS](#) recommendations.

Deleted: JIU

who may provide relevant information related to the purpose of the inspection, audit or investigation.

Section 3
Entry into Force

The present administrative direction shall enter into force on 11 May 2001.

Hans Haekkerup
Special Representative of the Secretary-General

Despite a broad mandate to both investigate and audit, From May 2001 until May 2005, the JIU only possessed capacity to investigate individual cases of judicial and prosecutorial misconduct. Thanks to a 2005 budget increase, the JIU was finally allowed to hire a small staff of legal professionals which now make up the Judicial Audit Section (JAS) within the JIU.

In order to fulfil its obligations to audit the justice sector under Administrative Direction 2001/4, the JAS exercises the following definition of Internal Audit:

Internal audit shall be an independent objective assurance and advisory activity designed to add value and improve business operations of the Courts and Prosecutor Offices under the control of KJC and PCK.

Internal audit shall help the justice sector to accomplish its defined objectives by encouraging and bringing a systematic, disciplined work approach in order to give recommendations to improve the effectiveness of risk management, internal control and accountable governance processes.

The internal controls' system should be understood as a body of justice sector processes, rules and procedures, including organizational structures, and methods of work set up by top justice sector management (KJC & PCK) in accordance with their respective scopes of work in order to ensure that the overall operations of the justice sector are being carried out in a legal, economical, efficient and effective manner.

4. INTRODUCTION

4.1. Definition and Objective

Internal audit is an independent, objective assurance and improvement advising activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.

(Institute of Internal Auditors)

To this end it furnishes them with analysis, appraisals, recommendations, counsel and information concerning the activities reviewed. The objective includes promoting effective control at reasonable cost.

Its overall task is to undertake, on behalf of the top justice sector management (KJC & PCK), an independent examination of arrangements for the conduct of business and for the safeguarding and proper management of the justice sector for which they have ultimate responsibility. Internal Audit recommendations should aim to maximise value for means used and for which justice sector managers are accountable to the taxpayer.

Assurance

In carrying out this role Internal Audit operates as a service to the KJC, PCK and their respective management and staff, by measuring and evaluating the effectiveness of justice sector operational systems by providing assurance and advice on the internal controls designed to ensure:

- that control practices comply with laws, policies and procedures
- that justice sector assets and interests are properly protected from any loss or harm
- that the objectives are known and will be achieved at the right cost, including quality and good customer service
- completeness and reliability of all justice sector data deemed important for decision-making purposes.
- economic and efficient use of resources

4.2. Accountability

Accountability is one of the most important principles underlying the work of a Court President or Chief Prosecutor as well as any public manager. It means being responsible to somebody for achievement of the business objectives and the use of resources of the organisation.

4.3. International Standards

Standards are the criteria by which the operations of an internal audit entity are performed, evaluated and measured. They are intended to represent the practice of internal auditing as it should be. The Standards are designed to serve the entire profession of internal auditing, in all types of organizations where internal auditors are found.

This Manual has been prepared to conform to the International Standards for Internal Audit as promulgated by the international IIA.

Five general Professional standards for Internal Audit are considered as priorities for internal audit performance:

The independence of internal auditor and / or internal audit function from the subject of the audit

The competence of internal auditor

The scope of internal audit clearly defined

The performance of internal audits according to constant, transparent and fair methodology

The management of internal audit that ensures the application of the standards

Whilst the status of Internal Audit and the impartiality of its staff are important features of Independence, this is also strengthened by the processes themselves and Auditors should ensure that the Standards and processes set out in this Manual are applied and that their professionalism is not compromised in any way. It is the responsibility of each individual Auditor to report to the AC any circumstances which would compromise his/her ability to act impartially (see Statement of Independence Form (C-800) in Appendix 4).

Further information on the Standards appears at Appendix 2 and the Code of Ethics is in Appendix 3.

A latest copy of Standards (January 2004) issued by the international IIA is attached in Appendix 5. An official Albanian and/or Serbian translation of the latest version of the international IIA standards is not yet available. Such can only occur if and when an official – IIA recognized local Internal Audit body approves such a translation.

4.4 **Relationships**

Principles of good relationships

The AC should co-ordinate internal audit plans and activities with other inspections (ie. within JIU or OJA), supervisions or assessments carried out during the same period within the justice sector in order to ensure the most effective audit coverage is achieved and duplication of effort is minimised.

JAS has relationships with other bodies as follows:

UNMIK/DOJ

For the moment, JIU/JAS's mandate is reserved to the DOJ/Director. Accordingly, all JAS audit activity must be approved by the DOJ Director. It is anticipated that – post-transition – the DOJ will take on more of an advisory and monitoring role.

KJC

To be defined

Office of the Auditor General (OAG)

The OAG provides an external audit function and as such its objectives differ from those of Internal Audit. The JAS and the OAG exchange planning information and copies of Internal Audit reports are made available to OAG after finalisation with DOJ/Director (or KJC and/or PCK post transition). .

There are also periodic meetings between OAG and JAS at senior management level.

From time to time the OAG may review JAS's internal audit operations. This may involve assessing the work of JAS to determine the reliance that may be placed upon it.

However, all contact between the employees of JAS and the OAG should be approved by the AC who should, when not present, be informed in writing about the level of contact, issues discussed and conclusions reached. Furthermore, no documentation such as audit reports, audit files etc. shall be exchanged without written consent of the AC.

Audit Committee within the UNMIK/DOJ and/or KJC/PCK

(Has to be created)

Until such time as an Audit Committee may be created, individual JAS *mission auditors* and *final audit reports* shall be approved by JIU Head before going on for final approval by the UNMIK/DOJ Director. However, draft audit reports are only to be shared with the managers of the specific courts or prosecutor offices participating in the particular audit.

Management

The AC and Audit Team Leaders should always ensure that regular contact is maintained with management. This is important in order to maintain an awareness of any major issues that may emerge or any changes to other existing conditions. This will help the JAS to better appreciate the operational restraints that justice sector management and officials are working under and also help identify areas of potential audit interest.

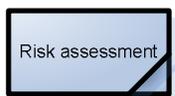
There is also a great need to assist Managers to dispel the idea that JAS is an Inspectorate and to promote a greater understanding of the benefits that JAS, as a modern Internal Audit Entity can bring to them. The AC in particular should pro-actively assist justice sector managers in understanding the role of ,internal audit and the ways in which it can help them.

5. THE INTERNAL AUDIT PROCESS

JAS resources are scarce and it is essential that work is prioritised in order to make the best use of these resources. This is achieved by way of the Internal Audit Planning Cycle which incorporates a Risk Assessment carried out in the justice sector by JAS in conjunction with justice sector managers and officials.

The complete strategic planning methodology, including risk assessment, is provided in Appendix 6 of the Manual. The following paragraphs provide an overview in order to present the entire audit cycle.

5.1. Risk Assessment



Open the audit process flowchart in annex 7 of the Manual

Risk management is a central part of the justice sector's strategic management. It is a Management responsibility and is significant to the achievement of business objectives. Effective Risk management adds value to all activities by increasing the probability of success and diminishing the possibility of failure.

Risk assessment by internal auditors, on the other hand, is a means of appraising the vulnerabilities of systems and categorising them with relation to their risk ranking. It relies a great deal on good judgment and well informed opinion and, eventually, the combined experience of auditors and managers. Accordingly JAS's Risk Assessment exercise should be carried out in full consultation with senior management and officials. Upon receipt of approval from the JIU Head, the AC shall present the results of the exercise to the UNMIK/DOJ Director after close consultation with the KJC.³

The Risk Assessment firstly sets out to define systems which cover all justice sector objectives and activities and their associated risks. The Risk Assessment goes on to prioritise these systems in accordance with a risk ranking of High, Medium or Low.

The summary of the Risk Assessment is a «Working» document which should be maintained and updated in the light of changing circumstances and risk perceptions – in particular as a result of Internal Audit activity, other audit or management reviews, new initiatives and other changes.

Methodology

The first step in the exercise is to identify all court and prosecutor office systems, objectives, missions as well as processes and activities carried out in the justice sector to achieve them. This can only be completed with the help and assistance of knowledgeable managers.

Following this it is necessary to perform an initial Risk Assessment in order to rank the systems for Audit prioritisation.

³ [KJC is likely to replace the Director in this scenario.](#)

A relatively simple way of performing this Risk Assessment is by use of a Probability/Impact matrix illustrated as follows:

Probability	High			High Risk
	Medium			
	Low	Low Risk		
		Low	Medium	High
Impact				

In using this methodology the assessors consider what is the likelihood of the system failing and what will be the impact if the system does not deliver its objectives. The outcome of these decisions is then recorded in one of the nine available positions in the matrix. This will designate the system as of High, Medium or Low risk.

In considering the impact of system failure it is important that the auditor retains a good sense of proportion. There is a tendency for Managers to claim that their own work areas are critical to success but the auditor needs to consider the overall business and ensure that, for example, the failure of office cleaning systems does not rank in impact above that of the failure of payroll operations.

In assessing the likelihood of failure it may be helpful to consider categories of Risk and the following are illustrative examples:

- A) External risks
 - a. Infrastructure (e.g. power supply systems, business relationships, Internet and e-mail)
 - b. Legal (e.g. Act on health and safety at work)
 - c. Market-oriented (e.g. competition, supply of goods and services)
 - d. Force majeure (e.g. fire, flood and earthquake)

- B) Financial risks
 - a. Fraud, theft

- C) Activities related risks
 - a. Policy (e.g. quality of decision-making policy)
 - b. Information (e.g. adequacy of information used for decision-making)
 - c. Operational (e.g. procedures for the achievement of particular objectives)
 - d. Reputational (e.g. public reputation of the organization and its consequences)
 - e. Technological (e.g. use of technology to achieve objectives)

D) Human Resources risks

- a. Personnel (e.g. adequate and sufficient staff (e.g. training, recruitment, etc)
- b. Health and Safety (e.g. well-being of people)
- c. Managerial risk - relating to the day to day responsibility and accountability of staff

In addition to specified risks there are other factors that have to be taken into consideration, such as materiality, management concern, prior audit results, recency of a particular audit and any information available to auditors relevant for Risk Assessment.

The end result of this exercise is a strategic overview of the Court business and support operations which will indicate the totality of potential Internal Audit activity.

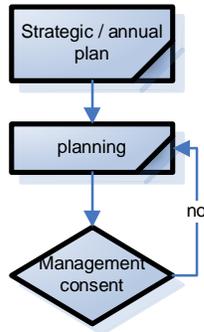
For practical, step by step application of the risk-assessment methodology see Appendix 6.

Note: Based on practical experience, before internal audit function is fully established, operating and recognised within the courts and prosecutor offices, it may be time consuming and difficult to perform a risk assessment that would fully follow methodology as presented in this Manual. In such cases, an internal audit plan could be prepared by performing a *limited risk assessment* that could consist of following actions:

- o discussion with the key management who is aware of specific areas of risk in the Court and who will support performance of audits that they have clearly expressed as a need.
- o review of relevant reports (international organisations and bodies such as World Bank, USAID, NCSC, OSCE, donor organisations etc., and local bodies such as the Office of the Kosovo Public Prosecutor, the Office of the Ombudsperson etc.) which have identified areas of concern.
- o areas and processes of general interest where possible improvements in efficiency and strengthening of controls could bring significant overall benefits to the organisation (such as procurement, human resources management, individual project management etc.).

Whenever JAS performs a Risk Assessment, it is particularly important to maintain a record of each interview of key managers and highlight specific manager contributions to the final risk assessment. It is equally important to point out where JAS's risk assessment may incorporate the concerns of international or national bodies as set out in their official reports. Recognizing the contributions of individual managers and international or national bodies will ensure that a JAS risk assessment is seen as professional and legitimate.

5.2. Audit Planning Cycle



Open the audit process flowchart in annex 7 of the Manual

The Audit Planning Cycle consists of:

- Strategic Plan
- Annual Plan
- Individual Audit Plan

5.2.1. Strategic Plan

The Strategic Plan – for a rolling period of three years – will set out strategies, objectives etc for JAS. It should give strategic direction to the KJC (and future PCK) in respect of e.g. Resources, Development etc and will also indicate a policy for achieving satisfactory audit coverage of the areas identified in the Risk Assessment.

The Strategic Plan will be prepared by the AC in conjunction with the senior management and officials of the courts (ie. KJC Court Administration Committee) and public prosecutor offices (ie PCK) during the last quarter of each year. The Plan is the basis for all JAS activity and will also serve to indicate the level of resource that is required in order for JAS to carry out its duties fully and effectively.

The Strategic Plan and Risk Assessment shall be reviewed and updated annually. The reviews will take account of the development of new systems, evolving justice sector priorities and any other factors which may affect organisational or business risk.

Any amendments to the Strategic Plan shall be authorised by the DOJ/Director in consultation with KJC (and future PCK).

5.2.2. Annual Plan

The Annual Plan shall be for one calendar year and shall be developed by the AC from the Strategic Plan in accordance with existing resources. It will include objectives and targets and propose audits to be performed during the year.

It is good practice to reserve a percentage (approximately 20%) of the available resource for contingencies such as urgent requests from justice sector management (DOJ/KJC/PCK) for help and assistance.

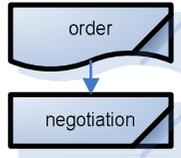
The Plan shall be drafted by the AC in conjunction with the senior management and officials of the courts and prosecutor offices (ie. KJC/PCK Audit Committee) by the end of each year. Final approval and any subsequent amendments are to be authorised by the UNMIK/DOJ Director in consultation with the KJC and future PCK.

It would be consistent with JAS's policy of transparency to deliver a copy of the approved Plan to relevant managers and for the AC to enter into informal dialogue to discuss for example the timing of individual Audits.

5.2.3. The Individual Audit Plan

The Individual Audit Plan is subject to the Standards and Procedures derived from IIA standards and are set out at paragraph 5.3 of this Manual.

5.3. Performance of an Internal Audit



Open the audit process flowchart in annex 8 of the Manual

5.3.1. Internal Audit Mission Order

JAS assignments will commence with an Internal Audit Mission Order from the AC to the leader of the selected Audit team.

The Order will set out the title of the Audit, the most probable organisational entities involved in the system or process being audited, identify the team members and indicate the timescales and budgets provisionally determined. It will also provide detail regarding the main objectives and scope of audit.

When choosing the team members, the AC will avoid any risk of conflict of interest, ensure auditor's independence and appropriate qualifications (see Statement of independence Form (C-800) in Appendix 4).

The Internal Audit Mission Order Form (C- 100) is pre-designed and appears at Appendix 4.

Note: In the period before JAS starts to work on the basis of an agreed Strategic Plan and an agreed Annual Plan, each individual Mission Order shall be prepared by the auditors performing the audit and signed by the appropriate member of senior management who is directly supporting the audit team. For the period of time that JAS remains part of UNMIK's reserved powers, the AC must get all individual audits approved through the JIU Head, and the UNMIK/DOJ/JDD Head.

5.3.2. Kick Off Meeting and Opening Statement



Open the audit process flowchart in appendix 7 of the Manual

The Opening statement is the document resulting from the Kick Off meeting. However, the first draft of this document is prepared *before* the Kick Off meeting. The draft opening statement should be the result of research and preparation activities organised by the team leader. In general, research and preparation activities include:

- **Research:** Improving JAS awareness of the audit subject through the careful review of
 - Previous audit reports
 - Reports from international or local bodies regarding the audit subject
 - All legislation and/or rules related to the audit topic
 - Figures or statistics relevant to the audit subject
 - Any other available documentation
- **Meeting Preparation:** Once research is complete, JAS will be ready to prepare for the actual Kick Off meeting by
 - Making educated assumptions about the system or business objectives related to the audit topic
 - Proposing Audit Objectives
 - Identifying specific risks affecting the achievement of business objectives
 - Identifying key controls
 - Identifying key staff to be interviewed

NB: The first draft of the opening statement should be based on the mission order and be expanded to include relevant information taken from the list above.

The results of this preliminary research and preparation are summarised in a draft opening statement which will be used as a guide when leading the Kick Off meeting. The Opening Statement Form (C-200) is at Appendix 4.

Preparation of a quality draft Opening Statement, the Kick Off meeting and final Opening Statement are crucial for the successful performance of any audit. Therefore, this task is to be

given high importance. Furthermore, Kick Off meetings will be necessary at each court or public prosecutor office selected to be part of any given audit.

The objectives of the Kick Off meeting are to:

- determine the scope of participation of related managers and their respective units in this process,
- define business objectives and control objectives,
- obtain further and lower level information,
- discuss any matters that might be important to the audit and which might affect the draft text of the Opening Statement;

The team leader will lead the Kick Off meeting in a way to facilitate the exchange of information, and to improve or update the draft opening statement. The Kick Off meeting shall take place between the JAS audit team, led by the AC whenever possible, and the justice sector manager (Court President or Chief Prosecutor) of the entity concerned. The JAS audit team should focus their questions to high level information, which can be obtained only at this level.

This is also a good opportunity to strike up relationships to facilitate ongoing communications throughout the Audit process. It is good practice at this stage to explain and discuss with the justice sector manager the audit techniques to be used (e.g. the need to talk to key staff and to obtain other information later in *the determining and recording the system* stage, review of documentation) and to obtain their co-operation in these matters. It is also a good idea for management to nominate a contact person through whom ongoing communications can be conducted.

Complete minutes **must** be taken during the Kick-off meeting. On the basis of the Kick-Off meeting the final Opening Statement shall be prepared and agreed with the Management. This agreement is necessary for avoiding any misunderstanding that could put the audit on the wrong track. However, agreement with the management should not be obtained in a formal manner wherever possible, i.e. auditors should make it as informal as possible. A JAS audit team leader shall manage the agreement process and recorded through a note to the audit file. The agreed version of the final Opening Statement should be submitted to the manager in written form. Only after the final Opening Statement is fully formulated and agreed, shall the audit team proceed further in their work.

Note: Prior to the Kick Off meeting auditors *may* run limited preliminary fact finding meetings with relevant justice sector staff in order to be fully prepared for the official Kick Off meeting. However, any such meetings should not involve staff of the particular organization(s) to be audited unless agreed with that organization's manager.

5.3.3. Determination of Resource Requirements and Performance of a Systems-Based Audit



Open the audit process flowchart in Appendix 7 of the Manual

Following the Kick Off meeting it should be possible to confirm or revise original estimates of the resources and timescales needed to complete the Audit. Notes to assist in this area are included at paragraph 5.3.11.3. (Supervision of the Audit – Internal Control).

Any significant revisions to original estimates and/or timescales that are thought to be necessary at any time shall be approved by the AC and communicated to the JIU Head and the JDD Head.

The Systems-Based Internal Audit is the principal technique for providing assurance on systems in terms of existence, effectiveness and reliability of its Internal Controls. This type of review is forward looking and constructive. It appraises system controls and makes recommendations to improve internal controls and business performance.

The intention of the notes in these sections is not to provide detailed instructions relevant to the extremely diverse activities which are subject to Internal Audit but to set down a framework to guide Auditors in their understanding of the concepts involved.

A quality review will have the following characteristics:

- independence;
- objectivity;
- professionalism;
- stakeholder focus;
- good communication with auditee;
- sufficient research and testing;
- findings supported by sufficient reliable evidence;
- well argued logical conclusions;
- practical recommendations requiring no legislative amendments whenever possible;
- legislative amendments recommended only when all other non-legislative solutions are deemed likely to fall short of justice sector goals
- clear, concise and well presented report; and,
- effective follow-up of recommendations.

Key stages of the Systems-Based Audit

- Planning the assignment
- Determining and recording the system (interviews should be conducted in this stage)
- Assessing the Controls (identifying objectives, framework and evaluating controls) (interviews should be conducted in this stage)
- Testing the application and effectiveness of controls (Compliance and Substantive Tests)
- Confirming established facts
- Formulating and evaluating findings
- Reporting and follow-up (Writing and presentation of Draft Report and issuing Final Report)

Understanding these Stages is essential in order to set the framework for a disciplined approach to completing a good quality internal audit. The Stages should not be considered as absolutely separate components; in practice the thinking process they represent should be thought of as a unified continuum which sharply identifies and focuses the objectives of the audit from an early stage.

The process shall be fully recorded in the Audit File and on the pre-designed standard forms which can be found at Appendix 4 to this Manual. The forms shall be completed in sufficient detail to clearly demonstrate the links between Business Objectives, Control Objectives, Internal control evaluations and the testing results. This provides the basis for the application of sound judgment in arriving at Audit conclusions, opinion and recommendations. Use of these forms is mandatory, as it should provide a comprehensive, well referenced and transparent audit trail.

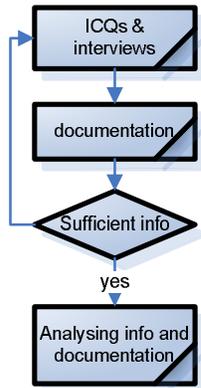
However strict adherence to the mechanics of the process will not necessarily produce good results; the essential ingredients are professionalism, good judgment and effective dialogue with Management throughout the process.

5.3.4. Planning the steps of the audit

Each step of the audit should begin by deciding objectives, scope, priorities and approach, determining resources: needed and available (staff, time, budget, information, facilities and equipment, time and resources of others), familiarisation with the area of work and auditees, developing guidance on how the work should be carried out, communication within the audit team and with others which are involved in the process.

These plans should be useful, manageable and defensible.

5.3.5. Determining and recording the system



Open the audit process flowchart in Appendix 7 of the Manual

The objective of this stage is to ensure that JAS staff gain an understanding of the area under review and is fully aware of any information or documentation which may influence their opinion on the adequacy of controls. The information obtained should enable the JAS staff to record the system in sufficient detail to arrive at an initial evaluation of the extent to which the key controls address the risks to achievement of system objectives.

This shall be done by using Internal Control Questionnaires (ICQ). ICQs will enable auditors to prepare better for interviews and to obtain all relevant information about the process and relevant internal controls. The questions shall be aimed at directly challenging the controls and processes in order to assess control objectives and risks from the agreed Opening Statement. Facts and observations shall be the result of meetings with auditees or documented evidence. All documents mentioned in the ICQ shall be referenced and filed. The ICQ form is in Appendix 4 (C-250).

For practical purposes, one ICQ shall be prepared for each interview and it can represent the minutes of that interview. However, the ICQ should never act as a constraint upon auditors when they believe that the answers provided by an interviewee give rise to logical questions not contained in the original ICQ. In practice, this will be a matter of individual auditor discretion during each interview they conduct. If, in the opinion of an individual auditor, unscripted questions yield responses which they deem significant to the audit, that auditor should report this in the ICQ form and bring the unscripted question to the attention of the Team Leader.

Note that columns in the ICQ regarding findings, recommendations and action plans shall be filled at subsequent stages of the audit.

The type of information that is relevant will depend on the nature of the audit and the area under review. However there are common control characteristics and most audits will require some research into at least some of the following:

- Business and Control Objectives
- Previous audit reports
- External audit reports
- Other management reviews
- Plans and Targets
- Performance statistics and trends
- Budget performance
- Internal procedures
- Manuals
- Guidelines
- Rulebooks
- Applicable legal framework
- Organisation Chart (Allocation of Authority and Responsibility)
- Volume statistics
- Links with other Systems
- Controls
- Managements view on Risks
- Future Developments
- Specimens of Documents
- Management Information

Following collection of all relevant material and other information the Auditor will need to record the system of control.

Recording techniques

There are principally two means to do this:

Narrative Description

Flow Chart

or, ideally, a combination of both.

In all cases the record shall be cross-referenced to relevant forms (such as ICQs, testing forms), other documents and sources of information.

Narrative Descriptions

Narrative descriptions shall be comprised of a summary of the essential control features together with as much detail as is thought necessary to aid an initial evaluation of the adequacy of controls.

Flow Charts

Flowcharting is often the best option when the flow of documents from the beginning to end of a process and between various segments is complicated.

Whilst a diagrammatic representation of the system is often easier to understand there are other disadvantages including the amount of time it may take to complete, confirm, and keep flow charts up to date. Its use is usually appropriate to record case flow management etc..

The record of the system should provide a good basis for the evaluation of the strengths and weaknesses in internal control. However, auditors should beware of information overload and should not include matters of no “audit” significance or go down to a level of detail which is incompatible with audit objectives or resources.

A list of symbols to be used in preparation of flowcharts and a sample of a flowchart representing the Audit process may be found in the Appendix 7.

Note: In practice, some auditors may not be familiar with computer software used for flowcharting. This lack of IT skills shall not prevent auditors from recording the system in a form of a flowchart. If necessary, flowcharts can be drafted by hand and given to more skilled personnel for conversion into electronic format. In the long run, all auditors should acquire basic flowcharting skills and become familiar with flowcharting functions available in Microsoft Word or Microsoft Excel packages.

Ideally, all processes within the organisation should be recorded in flowchart format and audit trail by the owners of the process.

5.3.6. Assessing the Controls

Systems comprise objectives, activities, controls and outputs. The aim of a system based audit is to relate controls to objectives of individual systems in order to build up evidence to support the auditor's professional opinion on the adequacy of the internal controls within that system to achieve its objectives.

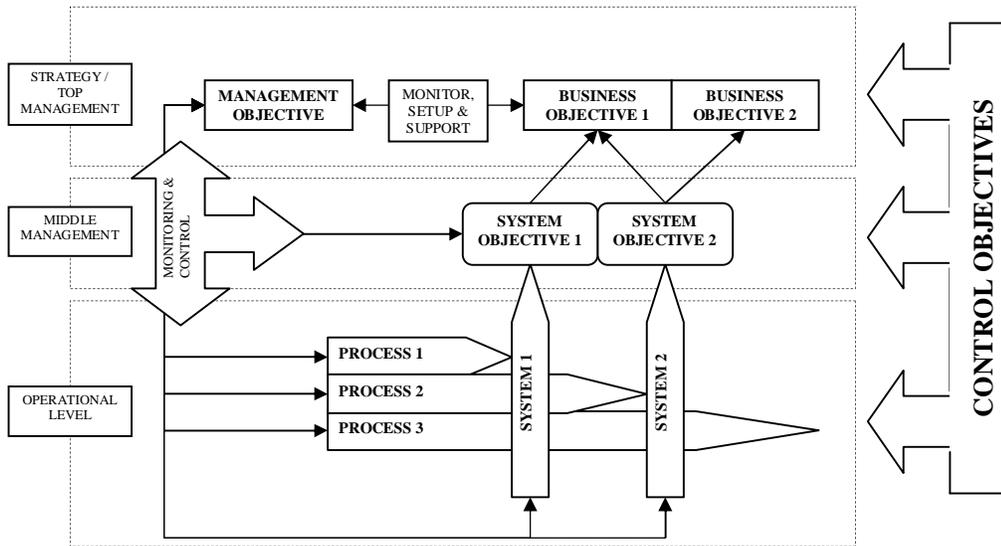
This Stage of a Systems Based Audit is meant to identify and evaluate controls. The key elements of this are:

- Confirm main system objectives, risks and environment
- Identify detailed objectives and risks in the areas under scrutiny
- Consider the controls you would expect to find: overall control framework and individual controls
- Consider the key expected controls
- Examine the actual controls and control framework
- Compare actual with expected (identify gaps)
- Compare actual with system objectives, risk and environment
- Identify strengths and weaknesses

Auditors may use the Research and Evaluation Form (C-300) in Appendix 4 to record these steps. Form C-300 is meant to assist auditors as they move from the data collection and analysis stage of the audit process to the report writing stages of the process.

5.3.6.1. System, Business and Management Objectives

Relations between System, business and Management Objectives



System objectives

In the context of the justice sector, system objectives focus on what the justice sector system is trying to achieve in terms of the delivery of a public services within existing budget constraints. All systems are established to deliver results which require use of some inputs (resources). The objective of any system is to deliver expected results by using limited resources. They may comprise one or more processes which can be divided into sub-processes that can make them less or more complex.

The amount of inputs and results is given, as mentioned above, so the best efficiency of the system will be achieved when the system produces exact amount of results with given inputs.

Volume and quality of expected results is fixed by the business objective which depends on the business decision.

The system objectives are very rarely assessed by Internal Audit which is involved at the management level and deals with processes. The auditor needs to split the system and processes in order to assess the process.

Business objectives

Business objectives are set up to define the extent (how far) or quantity (how much) of what the system should achieve compared to the volume of means used. Business objectives do not necessarily require that all the systems always reach their maximum output capacity. What is more important is to strike the right balance. Considering expectations, needs, limited resources and environment, they set out individual targets for each system in order to achieve the combination which will enable the organisation to perform in the most efficient manner.

Business objectives represent the link between long term goals of the organisation as set out by the Management, and means to achieve these goals.

Management objectives

Management objectives are focused at how we can achieve business objectives and is there anything more we can do. These strategic and long term goals are decided in accordance with the Management's view on organisation's capacity, opportunities and future needs. In order to achieve these strategic objectives top management sets out the range of necessary middle management objectives and operational level objectives. These objectives on various levels are the basis on which the business objectives and system objectives are derived.

Day to day activities are controlled by the Management in order to make sure that the organisation is operating adequately to achieve its objectives. In order to achieve efficiency of these controls the Management needs to define their objectives.

This is why the role of Management in the organisation is the most important one to be considered by the auditors when evaluating capability of the organisation to achieve objectives against risks.

5.3.6.2. Control Objectives

Control Objectives represent Management's view of the risk areas which need to be controlled in order to ensure that businesses and systems will achieve their individual goals. The implementation of individual controls addressing control objectives should provide assurance that business and system objectives will be achieved.

These Control Objectives form the basis for evaluating systems of control. Control objectives need to be specific and show the purpose of control. For example in the context of an audit regarding delivery of written criminal decisions, a control objective would be "to ensure that incarcerated criminal defendants receive a timely right to appeal from a conviction." This control objective is intended to reduce the risk that convicted criminal defendants are denied a timely right to appellate review of their criminal convictions.

Since JAS staff evaluate systems for effectiveness and efficiency it is essential that there is a clear definition of the business and system objectives agreed with the Management (This is why agreement of the Opening Statement is necessary).

If management has defined control objectives it will be necessary for auditors to ensure that they are adequate and appropriate. If control objectives have not been defined (this is almost always the case), auditors will need to determine their own control objectives against which controls in the system can be evaluated. These need to be discussed and agreed with management before evaluating the controls.

Control Objectives may be listed in column 2 of the Research and Evaluation Form (C-300).

5.3.6.3. Control framework

Control framework is the overall set of values, responsibilities and systems designed and operated to achieve the organisation's objectives and discharge its responsibilities in a cost-effective and acceptable manner. Depending on management's attitude and actions regarding the importance they place on control within the organisation, controls can operate in a disciplined and structured environment thus ensuring the achievement of the primary objectives of the system of internal control, which includes the following elements:

- Integrity and ethical values
- Management's philosophy and operating style
- Organisational structure
- Assignment of authority and responsibility
- Human resource policies and practices
- Competence of personnel.

5.3.6.4. Identifying Controls

Auditors should identify (from the Determining and recording the system Stage) the existence (or otherwise) of the key controls to meet the control objectives and record all such existing controls in the interview notes. It should be remembered that it may take more than one control to achieve the objective, and these can be:

- a) directive (ie. Supreme Court directive to ensure uniform application of law,
- b) detective (ie. Identification of criminal/civil decisions not yet written),
- c) preventive (ie. Creating a red light system to identify aging cases) and
- d) corrective (Court President issuance of reminder memorandum).

Internal control is the whole system of controls (including people, policies, plans, structures and procedures) implemented by management to ensure business objectives are achieved.

In order to ensure that courts and prosecutor offices comply with system, management and business objectives, the JAS will assess the quality of their internal control systems. Therefore, in assessing the adequacy of internal control systems JAS should adopt a top-down approach. This means that the Audit should focus initially on those high level controls which influence the operation of lower level controls. This usually means that JAS Auditors will need to involve themselves at a Management level in the area to be audited (i.e. JAS auditors should take a look at those key controls from a management perspective).

Below are listed some notes on the types of control that might commonly be appropriate to systems in the Public Sector. This is not an exhaustive list and the Auditor will need to consider other controls in arriving at his initial evaluation and conclusions.

These examples start with the higher level controls, followed by intermediate and then low level controls. They are relevant to both manual and computer-based systems.

High Level Controls

Planning

This involves establishing aims, objectives and targets and the means by which they are to be achieved. There is much “best practice” surrounding this area but main features include:

- clear statements of objectives;
- measurable targets such as time standards or case processing targets;
- implementation of lower level controls;
- reporting (monitoring) arrangements.

Organization

This includes:

the delegation of authority, responsibility and accountability to lower levels in order to achieve objectives in the most efficient manner;

the organization of work into logical and practical units, well integrated both vertically and laterally in a way which best enables achievement of objectives;

separation of duties to avoid conflicts of interest or opportunities for malpractice

the establishment of clear reporting lines;

providing clear and documented statements of the responsibilities of individuals and groups for resources, activities, objectives and targets;

avoiding undue reliance on any one individual, particularly for internal control.

All of these features also require good *communication* (vertically and laterally) in order to unify, integrate and focus effort on controls, risks and the achievement of the business and system objectives. This will include information on Objectives/Targets and progress towards their achievement which should be visible to all levels of staff.

Intermediate Level Controls

Monitoring performance (usually done through MIS)

Auditors have to assess the real capacity offered to Management for monitoring performance (to ensure the achievement of economy, efficiency and effectiveness targets).

In this field the audit is aimed at verifying that officials and/or managers implemented the necessary tools needed to monitor the performance such as periodical measures, indicators, management indicator sheets.

Recommendations can be given to improve the existing system with references to best practices in other similar institutions.

Written guidance

Management's policies and operational procedures should be documented to ensure that all staff are aware of them and work together to achieve objectives. Written guidance and procedures manuals should be:

- readily available;
- clear and concise;
- subject to checks by management to ensure that they are read and understood
- reviewed regularly.

If there is no written guidance it should be one of the management's first priorities to initiate its creation.

Recommendations can be given to improve the existing system with references to best practices in other similar institutions.

Staffing

Recruitment, retention and other staffing issues are critical to achievement of objectives. Control considerations include:

- identifying the staffing need in terms of numbers, grades, experience etc. For example, the question is whether there is method for staffing needs exist.
- recruitment; assessment of the recruitment process and transparency
- training. Process of needs expression and designation of trainees. Assessment of the result of training

Recommendations can be given to improve the existing system with references to best practices in other similar institutions.

In this regard, JAS staff should not hesitate to request information about best practices regarding court practices from the National Center for State Courts (USAID/NCSC) for as long as USAID/NCSC continues to provide support to the JAS.

Supervision

Supervision is a control, usually but not exclusively, exercised by lower level managers to ensure that day-to-day work by staff meets qualitative and quantitative standards of performance. It includes checks over the operation of controls by staff at lower levels as well as ensuring the quality and quantity of their work. Good supervision depends on interpersonal and motivational skills on the part of the Supervisor.

When reviewing adequacy of this control auditors should consider the following questions:

- Which are the indicators for effectiveness and efficiency of performance of supervision (e.g. is the supervision performed

too often resulting in decrease in efficiency of the employees which are supervised? Is it performed too rarely?)

- What is the scope of supervision?
- Are sampling methods appropriate to adequately assess performance of the supervised subject?
- Which percentage of risk is covered by supervision?

Low level controls

Authorization

This is the approval or sanction of specified activities or transactions by a manager or other responsible person before they are undertaken. It ensures that proper responsibility is taken for the controlled activities. Auditors should consider:

- Is the delegation of authorisation formal and are the authorisations defined? Is this communicated to participants throughout the process?
- Are authorities allocated to appropriate individuals or groups concerning hierarchy and processes?
- Are the responsibilities for authorization separated from activities which could lead to a conflict of interest (e.g. input/control of the input)
- Are relevant activities and transactions properly authorized? Are adequate controls prior to authorisation performed, or is it just a formal step?

Authorisation is also a control that can be relevant to the highest levels of management e.g. the authorisation (approval) of an Annual Plan, capital investments, large transactions etc.

Documentation

This involves recording information and transactions used in an organisation's business. Good standards of documentation should be established to assist and support activities and to help ensure the continuity of operations in the event of disruption. This includes the retention of information in electronic or other forms. Information must be accessible and good filing and search facilities are essential.

The work of the organization should be sufficiently well documented to enable management, external auditors or other reviewers to follow the course of operations and transactions and to identify errors, abuse or poor performance. Decisions, authorizations, transactions, checks and other information should be clearly recorded and the records safeguarded. In the context of the justice sector, court registry books and prosecutor office registry books and actual case files represent the primary sources of such documentation.

Standard documentation and forms can help to enforce conformity with procedures and legal requirements. They are often used to control transactions or the movement of valuables such as evidence or confiscated goods in criminal cases. Such documentation should be carefully designed to meet its objectives.

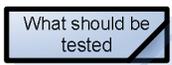
However, too much documentation could reduce the efficiency of the process and auditors should consider that when evaluating the system of documentation.

Physical Controls

These are usually readily understood and apply to the whole physical environment in which the systems (courts and prosecutor offices) operate. They include:

- access controls such as security guards, identity cards, passwords,
- physical checks on court and prosecutor office assets and records such as desks and computers, but also including confiscated goods and evidence. .

5.3.6.5. Evaluation



Open the audit process flowchart in Appendix 7 of the Manual

Once the control objectives have been established and agreed with management and the key controls identified, the auditor shall then carry out a *preliminary evaluation* of the adequacy of those controls. In doing so he/she should consider risk, i.e. what can go wrong, the probability of it going wrong and the impact consequence, on the achievement of the control objective if it does go wrong.

If controls are not present then this shall be indicated in the interview notes.

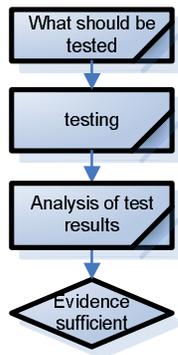
The fact that a control exists may indicate *prima facie* that control is good. However one control on its own may not be sufficient and this too will influence the Auditor's evaluation. The auditor should also consider whether there are other compensating control(s) which may enable the control objective to be met in other ways.

In general, there are three possible situations in regards to controls and how to approach each of them is suggested in the table below:

Discussion with management (interview)	Does the control appear to serve the control objectives	Assess whether risk is present	Conduct Testing – assess the actual functioning of controls	Recommendation
1. Management identifies a control and control is likely to exist	if YES – proceed	YES (ie. if risk is High)	YES - OK NO – proceed to recommendation	N / A Recommend how to improve control
	if NO – disregard the control with evidence of its failure or weakness	NO (ie. if risk is low)	N / A	N / A
2. Auditor identifies a control that exists but the management is not aware of it	if YES – proceed to recommendation	YES	N / A	Recommend how to formalise the control
	if NO – proceed to recommendation	YES	N / A	Recommend how to remove the control
3. Auditor identifies a control that should be there but is missing	if YES – agree with management and proceed to recommendation	YES	N / A	Recommend how to set up a control
	if NO – disregard the control	NO	N / A	N / A

Details of the preliminary evaluation together with initial conclusions shall be noted in the column headed ‘Comments’ on the Research and Evaluation Form (C-300). This column should be used freely to explain reasons, doubts or any other information critical to the control. In the alternative, all such information should be contained in a note to the file.

5.3.7. Testing the application and effectiveness of controls (Compliance and Substantive Tests)



Open the audit process flowchart in Appendix 7 of the Manual

Testing has two parts: compliance and substantive testing. These are described below.

Following the completion of the Control Evaluation Form the Auditor will consider what testing needs to be made to confirm (or otherwise) this initial evaluation or to determine the impact of any control deficiencies. The pre-designed form for Testing (C-400) shall be used for this purpose.

The Auditor should be absolutely clear about why, how and what s/he is to test. Before any testing commences the team leader shall approve what will be tested, to what extent and in which timeframe. Avoid “wild” testing, i.e. testing without clear, achievable and agreed objectives.

The main principle is that Internal Audit tests the control and NOT the *transaction*. (ie. the individual justice sector activity concerned.)

However in order to test the existence and functioning of a specific control it is usually necessary to test whether the justice sector activity was performed accurately.

Where the auditor thinks that the controls in place seem to be adequate to meet the control objectives s/he needs to confirm this opinion by testing to see whether they are working as intended. This is called «Compliance Testing».

The aim of this testing is NOT to search for errors or other deficiencies which could be the possible aims of substantive tests of results. Compliance tests are used to acquire evidence as to the application of controls (i.e. that they are operating as intended), while substantive tests acquire evidence about the actual effectiveness (i.e. are they in fact meeting their objectives).

If s/he thinks that controls are missing or are inadequate there is a need to obtain information on the impact of the deficiency (ie. costs of delay or appeal, loss of trust in courts, etc.) in order to convince Management of the necessity to introduce control measures. This is called «substantive testing» (test of transactions (justice sector activities and system outputs), and is necessary if an opinion is to be formed on performance and the effectiveness of the controls.

Substantive testing can often be a difficult and time consuming task and should be reduced to the minimum consistent with achieving audit objectives. While conducting substantive tests auditors should apply optimal extent of transaction (justice sector activity) testing, bearing in mind that under-testing might significantly compromise audit objectives, while over-testing will result in non-efficient use of resources. However no testing should be necessary if justice sector management agree that controls are absent and that action needs to be taken to address this deficiency. (Full details of control implications and testing to be undertaken shall be noted in columns 2 and 3 of Testing Form C-400).

In case of substantive testing random sampling techniques should be used. However, if significant numbers of errors are found then the auditor will need to revise his initial evaluation and possibly extend the testing. Again Testing Form (C-400 columns 2 and 3) shall be used to record the controls and the testing methods to be used.

It is important to identify the reasons for control failures in order to assist in recommending improvements.

One of the problems that may appear is when compliance testing shows that controls are not functioning or are just formal, but there are no errors in execution of justice sector transactions. In this case the auditors argument is not that the system will result in justice sector transaction error but that the system is “messy” i.e. too many controls which are just formal, useless, difficult to monitor and of no added value.

Compliance testing and substantive testing are usually in theory dealt with separately, but in practice they are performed together. They aim at different aspects of control but have the same purpose. In real life auditors will need to perform substantive tests (to lesser or larger extent) on basically every control they identify and on justice sector transactions which are not controlled. This enables them to acquire evidence to support their opinion. Compliance and substantive tests should be performed together where control exists. There are cases where this is not necessary, but it is usually related to automated systems/software controls and it should be elaborated (why substantive tests were not performed).

Testing can include a wide variety of activities including:

- Analysis e.g. of performance data
- Checking of accuracy of transactions and documentation
- Interviewing
- Observation
- Re-performance
- Verification e.g. of debtor balances
- Computer interrogation
- Etc.

In fact the auditor is empowered to obtain whatever information s/he needs in order to carry out his duties effectively.

The details of the tests undertaken shall be recorded on separate working papers. If necessary the test results for each control shall be summarized on a separate working paper and the overall result transferred or cross-referenced to column 4 of Testing Form (C-400).

Amount of Testing

The cost of testing large populations is usually prohibitive unless computer interrogation is possible. If the Auditor wishes to use the “live” computer system for testing purposes (e.g. by using live or dummy test data) s/he should not do so without obtaining the experience and supervision of the KJC’s IT section/expert. The Auditor should only have “read only” access to computer systems outside their own Unit.

Statistical sampling techniques can provide a measure of the reliability of the results as well as reducing costs and is useful when testing large populations.

Normally however the Auditor will use “judgment” sampling, (selecting as representative a sample as possible) and test only the minimum numbers necessary to support his opinion or convince justice sector management of the need to take action. However it is also important that testing plans take account of the requirement to obtain sufficient evidence and avoid the need to return for further testing at a later date.

It should be born in mind that this testing phase can be expensive in terms of the usage of resources and should therefore be limited to the amount necessary for its purpose (i.e. to confirm an opinion or to convince Management of the need to improve control.

Testing Scenarios

To further enhance quality of testing, use of testing scenarios is heavily recommended. They work in a way that auditor creates a mock information that is entered and passed through the system or the process that is audited. If the mock information is picked by the controls existing in the system or in the process it is a proof of effective setup of controls. Teasing the system or the process in such a way will provide highest level of assurance of its reliability or clearly show existing weaknesses.

A practical example of this is entering a non-existing (imaginary) employee, and waiting to see whether this employee will be included in the monthly calculation of salary. Auditors should be careful in designing this testing and work in cooperation with relevant staff in order not to corrupt or to put in jeopardy the existing system.

Testing financial transactions

When appropriate, audits should include testing of financial records, information and transactions. However, in preparation for such audits, JAS staff should ensure a high level of understanding of the accounting system being tested by enlisting support from financial internal audit staff with the KJC’s Office of Court Administration (OCA). There are several techniques available for testing financial transactions, such as:

- reconciliation (of accounts, original documents etc.), i.e. comparison of same information from different sources
- walk through tests, i.e. following the transaction through the system
- checking whether transaction was recorded in the appropriate chart of accounts (budget lines)

Other considerations to take into account when determining the amount of testing that is necessary may include the following:

Materiality

If high level controls are non-existent or faulty then there is little point in testing lower level controls in areas that are dependent on them.

However, in order to demonstrate to the management that high level controls are non-existent, the auditor may need to acquire sufficient evidence to support what can be achieved through testing of lower level controls. If lower level controls are functioning poorly or not functioning at all, it usually indicates a lack of existing high level controls.

Probability of Error

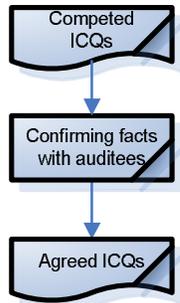
If errors will have large impact but are not expected to occur very frequently in large populations (e.g.; internal fraud) then testing should be restricted to the barest minimum. If an error is found then the case is proven but if not then it is for the auditor to convince Management in discussion that controls may be necessary.

The Auditors Competencies

It may be the case in systems where scarce technical judgment is required that the Audit unit does not have the necessary expertise to re-perform work done. In these cases it is quite acceptable for the necessary expertise to be seconded from the work area under review in order to carry out the tests if this is possible. In these circumstances the testing will need to be carried out under the supervision of a fully trained audit supervisor who needs to be satisfied that Audit Independence is not compromised.

When completing their testing Auditors should not make any markings on official records; if necessary they are to take copies of the relevant documentation for their own records. The same principle applies to computerised records where Auditors should only be allocated “read-only” access.

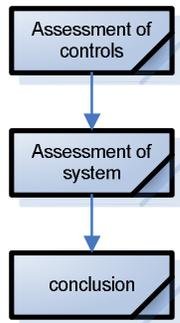
5.3.8. Confirming established facts



Open the audit process flowchart in Appendix 7 of the Manual

Once auditors collect all relevant information from documentation, interviews and testing, ICQs shall be completed and facts agreed with the auditees. This agreement shall be reached during the formal meeting on which completed ICQs shall be presented and agreed with the auditees. This is necessary to enable auditors to develop credible findings and propose relevant recommendations that will not be disputed on the basis of incorrect facts.

5.3.9. Formulating and evaluating findings



Open the audit process flowchart in Appendix 7 of the Manual

This is the Stage of a Systems Based Audit where the auditor considers the results of his earlier work before reporting on the area under review and assesses the quality of evidence, i.e. is it relevant, reliable, sufficient and useful.

The auditor will have confirmed or refined his initial assessment of controls and arrived at conclusions which will have enabled him to form an opinion on the adequacy, application and effectiveness of the whole system of internal control within the system. The conclusions should link any weaknesses found during the testing stage to the control objectives and form the basis of recommendations for improvement, while highlighting strengths, giving credit where due, and using audit to spread knowledge of good practice. Column 5 of Testing Form (C-400) shall be used for this purpose.

The key requirement of this stage should be formulating adequate findings from the established facts. This means that all observations and facts shall be evaluated against audit objectives and control objectives from the Opening Statement.

At this stage ICQ (appendix 4, form C - 250) shall be updated in the column "Findings".

The Auditor needs to exercise sound judgment in interpreting the significance of audit results and in arriving at practical recommendations to address any weaknesses found. S/he should not only have gathered sufficient evidence to arrive at conclusions but also to enable management to agree with them. The economic effects of over-control should also be highlighted.

Team leader shall organise team meeting where findings are presented and ranked according to risk levels, significance and priorities. For this purpose ICQs contain a column which indicates importance level, where each observation and fact is marked with appropriate defined risk level:

- 0 = no finding
- 1 = low risk
- 2 = medium risk, to be solved ASAP
- 3 = high risk, related finding is breaching regulations or seriously damaging efficiency

For specific audits, where appropriate, different definitions of risks at more levels can be used. In any case, definitions of risks which are used in a table shall be clearly stated in the ICQ form.

Furthermore, findings leading to same recommendation are given to the same team member who works on formulating recommendations for the report.

The auditor should then determine the recommendations to be made to management.

These should indicate:

new or alternative controls to correct or mitigate weaknesses

where controls are not being effectively applied, the action required to ensure compliance

unnecessary controls

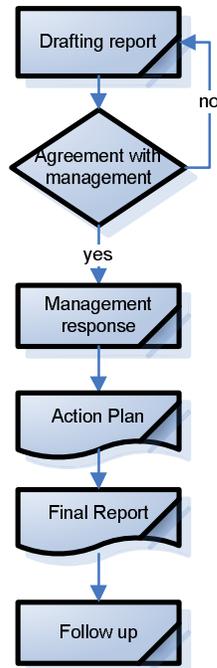
any action which should be taken by management to check that weaknesses in control have not been exploited.

When drafting recommendations, auditors should bare in mind that it is not their responsibility to propose corrective action in detail or to be involved in its implementation or operation but, where feasible, recommendations should lead management in finding solutions to weaknesses. Where a weakness is detected, the auditor should be prepared to offer advice on ways of improving control. Moreover, if there is more than one solution to the identified

problem auditor should consider management's needs and give recommendations in accordance to that.

Generally, recommendations shall not be discussed with the auditees prior to presentation of draft report, and especially not before agreement on facts. This will ensure that the recommendations presented to auditees do not come before thorough work on the findings based on agreed facts.

5.3.10. Reporting and follow up



Open the audit process flowchart in Appendix 7 of the Manual

5.3.10.1. The Process of the Report Writing and Report Structure

If the audit process is followed correctly, the Report will emerge as the final result of the audit work. It should flow directly from the working papers and ICQ. Accordingly, the order of writing sections of the draft report is as follows:

Appendices usually including:

- Flow charts
- Interview schedules and summaries
- ICQs
- Tables and graphs
- Abstracts from legal framework
- Plan of Implementation and Follow Up of Recommendations

Conclusion usually including:

- Key findings
- Relevant facts

Conclusion is necessary only if audit report is complex or opens door to the subsequent audit.

Introduction usually including:

- Methodology – what methodology was used
- Scope - Names of Auditees, Objectives and Scope of Audit
- Limitations – Lack of documentation available for review or staff for interview
- Interviewees – List of interviewees and order of interviews
- Audit team - When the Audit was performed and by whom

Presentation of Findings usually including:

- Facts - Description of the system, this section could be organised into the Control Objectives that comprise the system under review, for each Control Objective the results and statistics of the Testing stage
- Existing gaps
- Distribution/percentage - Details of significance (including Risks, statistics etc)
- Addressing risks
- Recommendations to consider - Audit opinion and recommendations. Recommendations should be referenced with numbers and letters to enable simple recording of the follow up

Executive (Audit) Summary

- Should flow from conclusion and introduction
- Balanced view of adequacy of Internal Control in the System
- Summary of overall findings and major recommendations
- Management response including a significant disagreement

This part of the report should be written to stand alone and is given to the executives in order to spare them from long reading.

Structure of the Report

Once the writing process is completed, the auditor should arrange his/her work into logical and presentable report. When constructing the Audit Report, the following order should be taken into a consideration:

- Executive or Audit Summary*
- Introduction*
- Description of the process, findings, recommendations*
- Conclusion*
- Appendix*

In practice there will be four distinct phases for the Reporting Process:

- Draft Report
- Closing meeting
- Management response
- Final Report

Draft Report

The AC should send the Draft Report to all auditees (ie. managers of courts or prosecutor offices where an audit took place). On the date of delivery, the AC should request for a meeting (Closing meeting) with all relevant managers in order to discuss the draft report.

The alternative approach could be to request a closing meeting at which the JAS will first present the Draft Report to the auditee (e.g. Power Point presentation) and then hand out the Draft Report at the end of the meeting. This would help to create the right context during the meeting and make the auditee receptive to audit recommendations.

5.3.10.2. Closing Meeting

Closing meeting follows the meeting in which all facts and findings have been agreed. There are several objectives to this meeting:

- To get agreement on Opinion and Recommendations. The Auditors may need good negotiating skills at this point.
- To give Management opportunity to challenge Internal audit Opinion before the final report issue.
- To reach a common agreement on the wording of the findings
- To obtain 1st agreement on recommendations
- To keep faith with Internal Audit's promise to be transparent and consultative at all times and maintain a professional approach.
- To agree a timetable for management response on implementation of recommendations.

Full minutes should be taken of this meeting and agreed with Management if necessary.

There is Interview Form (C-500) and Interview and Meeting Minutes Form (C-600) in Appendix 4. Filling of these forms is compulsory for all interviews and meetings with the auditees.

5.3.10.3. Preparation of the Action Plan by the auditees

On the basis of recommendations stated in the Draft Audit Report auditees should, during the closing meeting commit to prepare an Action Plan, i.e. detailed plan of actions which will be performed to improve the current situation with realistic deadlines and achievable results.

Without an Action Plan, it is not possible to issue a final report, since the Action Plan is a part of it.

5.3.10.4. Final Report

This should be the final agreed version if possible, with agreed Action Plan. If it was not possible to agree on the text of the report then any disagreement should be recorded in the Audit Summary.

The Coordinator of Judicial Audit Section shall issue the Report to the Court President who is the «owner» of the Report.

5.3.10.5. Follow Up

Plans of Implementation and Follow Up of Recommendations are critical for monitoring the implementation of Internal Audit recommendations to improve control.

An Implementation Plan shall be prepared for every completed audit and released to Management with the final Audit report. It shall record all recommendations and request Management to state the proposed date of recommendation and also the name of the Manager who is to be responsible for implementation.

Team Leaders must ensure the implementation of recommendations in the Audits for which they are responsible.

The importance of the Recommendations or the nature of the action Management has taken (if any) in implementing them may result in the AC deciding that a follow-up Audit may be necessary in the near future. Alternatively, the circumstances may indicate that no further Audit attention is warranted until the next time as indicated by the Risk Assessment.

It is recommended that there is a central database of recommendations to ensure that full and up-to-date information is readily to hand at all times.

5.3.11. Supervision of the Audit

Each Audit needs to be supervised to ensure that the quality of audit work is maintained, that the coverage and timing is within budget limits and that conclusions are relevant, sound and adequately evidenced in the Audit documentation.

There are three controls to ensure the efficiency and effectiveness the Internal Audit. These are:

Monitoring by the Coordinator of Judicial Audit Section;

Ongoing supervision by the Team leader;

Budget control.

In order to meet the requirements of the Standards and Article 4 of the Rule Book formal records of supervision and review shall be maintained at all times.

5.3.11.1. Monitoring by the Coordinator of Judicial Audit Section

The Coordinator will review the progress of Audits to ensure:

- Consistency with audit objectives and scope
- Clarity and presentation
- Sufficiency of evidence in support of logical conclusions
- Practical recommendations
- Compliance with time deadlines and other budget constraints

There are standard «check points» at the following Stages of the Internal Audit where the authorisation of the AC is required before the Audit can continue. These are:

prior to issue of the draft Opening statement Note: AC must have Mission Order approved by JIU Head and signed by UNMIK/DOJ/JDD Head prior to issuing opening statement during kick-off meetings;

prior to commencing the Testing programme; and,

prior to issue of the draft Internal Audit Report

In addition to this, the AC will personally issue the final Audit Report to the Court president and to the KJC Director.

The pre-designed Audit supervision Form (C-700) in Appendix 4 has been designed to record these authorisations.

Its use is mandatory.

5.3.11.2. Ongoing Supervision by the Team Leader

Although it is the responsibility of the AC to ensure that all Internal Audits are adequately supervised, s/he may delegate the day-to-day supervision to other suitably experienced Auditors – in particular the Team Leader of a particular audit or a designated Acting AC. .

Supervision involves monitoring the conduct of the Audit on a continuing basis throughout the assignment. This includes:

Ensuring the conduct and professionalism of audit staff on assignments

Guiding and supervising the nature and quantity of testing

Reviewing all JAS audit staff work

Ensuring that performance is in line with standards and Audit objectives

Ensuring that conclusions are sound and sufficiently evidenced in documentation

Ensuring that recommendations are implemented.

Working Papers should be inspected to ensure they meet documentation standards and are relevant to Audit Objectives, Findings and Conclusions.

All supervisory action shall be evidenced as to its date, time and results in a way that it can re-performed at a later date. The details of any corrective action required shall also be recorded together with the results of follow-up action.

5.3.11.3. Budget Control

The original time budgets notified in the Mission Order may have been adjusted in the light of further information received during the Research Stage.

In order to control the use of time spent Team Leaders should plan their time budgets against the following Stages of the Systems Audit:

Planning (i.e. from the commencement of the Audit);

Determining and recording the system;

Assessing the controls;

Testing;

Evaluating findings;

Reporting - including confirmation of established facts, Draft Report, Closing meeting and follow up.

The results of this exercise shall be recorded on the Planned Auditor Days and Actual Auditors Days Forms (E-100 and E-200) at Appendix 4. The former shall also be used to record the target dates for completion of each Stage.

It is the responsibility for each Auditor (including the Team Leaders) to maintain accurate records of the use of their time and to allocate this to the relevant stages of the Audits on which they are employed.

At each review point the AC shall confirm that the Audit is on course to be completed within the budgeted time.

5.3.12. Audit Files

There are two types of Audit File, the Permanent Audit File and the Current Audit File.

The Permanent Audit File

This contains all the ongoing information about the system. It provides essential background knowledge and should be reviewed at the start of each new audit. It should be updated as often as is appropriate with regard to major change and at the conclusion of each Audit.

Suggested Sections for the Permanent Audit File include:

General background information

To include:

- Information on Risk assessment exercise
- Aims and objectives of system or area
- Organization charts
- Expenditure and budgets
- Performance statistics

Reports

To include:

- Copies of all Internal Audit reports
- Implementation plans
- State Audit Reports
- Other Management Reports
- Copies of All DJA/OJA reports
- OSCE Reports
- Miscellaneous Int'l/Nat'l Reports regarding the justice sector
- News paper articles

Change

To include:

- Any documents concerning significant change

The Current Audit File

This contains all the information collected during the current Audit. It documents activities, decisions and logical thought processes from determining the Objectives and Scope of an Audit through to the completed Implementation Plan.

The file should not be filled up with copies of reports, financial statements, computer print-outs or other detailed management information. Where possible the Audit File should contain a clear reference to other papers that have been reviewed and copies taken only where it is essential to do so.

The Current Audit File may be organised into the following sections:

Management of the audit

- Mission order Form (C-100 Appendix 4)
- Planned auditor days Form (E-100)
- Actual auditor days Form (E-200)
- Approvals of Budget amendments
- Audit supervision Form (C-700)

System and testing documentation

- Records of System including Flowcharts if appropriate
- Draft and final Opening statement Form (C-200)

Research and evaluation Form (C-300)
Testing Form (C-400)
Minutes from the interview and meeting (C-600)
ICQs

Reporting and follow up

Draft Report and accompanying letter
Minutes of Wash-Up meeting
Final report and accompanying letter
Management Response to report
Further correspondence /minutes of meetings etc
Action Plan
Follow up of recommendations Form (B-500)

Working Papers

This section will contain documents (or references to them) which support the Auditors' initial evaluation of controls and also individual test papers in support of the testing summaries contained in the System Documentation. For some large Audits where there was a lot of testing it may not be practical to include all of this information in one file and it may be necessary to file Working Papers elsewhere. A good cross-referencing system is vital. If possible, the working papers may be kept in electronic files.

Appendix 6 of this manual shows suggested organisation of audit files, referencing system and which documentation from the current audit file should be moved to permanent audit file.

5.3.13. Documentation Standards

Documentation provides evidence of work performed and of the findings which support audit conclusions and recommendations. Exceptionally it may be needed as evidence in legal proceedings and will be an essential feature of any review – including an external review.

Documentation therefore needs to be clear, complete and accurate.

This Manual has laid down standards in the form of pre-designed documentation for certain crucial aspects of Internal Audit work (Appendix 4). This documentation should be sufficiently detailed to demonstrate the flow of logic from start to finish so that each step can be identified and the reasoning understood. The use of “comments” columns should be freely used. However it is important also that the essential features are not obscured by too many details.

In addition to these pre-designed forms it is also necessary to arrange and organise other Working Papers in such a way as to ease access to them. An adequate cross-referencing and indexing system is essential to the efficiency and preparation of review and delegation of work.

All Working Papers shall be signed and dated by the Auditor who has performed the review or completed the test; any supervisory review should be similarly evidenced.

Security/Archiving

Audit Files and Working Papers are to be kept under security conditions. Requests for access to Audit Files from other Courts should be referred to the Coordinator for approval. The Coordinator will determine an archiving/destruction policy for Audit Files.

5.3.14. Completing the Audit Cycle

Following completion of the Audit the Team Leader should consider the results and decide whether or not to revise the Risk ranking in the Risk assessment exercise.

At the end of the year, the AC will report to the UNMIK/DOJ Director on the activity for that period. The Report shall be forwarded to the Director by 31 January. The Report, when accepted and agreed shall be forwarded by the Director to the KJC. Upon request, the AC may appear before the KJC or an appropriate KJC Committee to answer questions regarding the Report.

This Annual Report will contain the AC’s opinion on the adequacy of Internal Control in the Court. This will be a balanced view in which he/she will summarise the key issues identified in individual audit reviews and identify any weaknesses that may be present in other systems or best practice that can be of benefit elsewhere.

The AC should feel free to comment on any aspect of risk management, control or governance that may have come to his attention and should also report on any major recommendations that have not been implemented.

6. RESPONSIBILITIES WITHIN INTERNAL AUDIT

6.1. Coordinator of Judicial Audit Section

The Audit Coordinator (AC) is responsible for:

developing, in conjunction with the senior management and officials of court, the vision, strategy and policy for the JAS;

drawing up and agreeing with the senior justice sector management the JAS Strategic and Annual Plans, including realistic but challenging performance indicators;

overall responsibility for the delivery and updating of the Strategic (3 year) Audit Plan and the Annual Plan;

overall management of the JAS;

managing human resources within the JAS;

ensuring that JAS's Internal Audits are completed to professional standards;

providing a comprehensive internal audit service for the court;

managing the budget and ensuring the regularity and propriety of expenditure for prudent and economical administration;

determining and providing the resources and skills for performance of the JAS's work;

the training and development of staff;

allocating Audit responsibilities;

monitoring progress on completion of Annual Plan;

production of the Annual Report and any other periodic reports requested by the DOJ Director;

liaison with the Profession and key stakeholders;

6.2. Team Leaders

Team Leaders (ie: Senior Judicial Auditors or Judicial Auditors designated by the AC as Team Leaders for particular audits are responsible for:

- the conduct of staff at work on their audits
- ensuring the effectiveness of those audits assigned to them;
- managing effective and professional relationships with auditees;
- ensuring that the quality of work carried out by the people who report to them is of the highest quality;
- ensuring that professional Standards and the procedures outlined in this Manual, together with the support documentation are complying with standards;
- following up the implementation of recommendations.

6.3. Audit staff

Audit staff (ie. all non- Team Leaders in a particular audit) is responsible for:

- professional behaviour and compliance with the Code of Ethics at all times;
- contributing to business excellence by conducting assigned audits to professional standards;
- ensuring that procedures defined in this Manual and support documentation are applied diligently to all assignments;
- each assignment, identifying audit objectives, planning the work, conducting the audit and, if appropriate, making constructive recommendations to management;
- completing audits within agreed timetable and resource budget; and
- providing advice for activity improvement.

7. FRAUD

7.1. Definition

Fraud can be defined as any deliberate irregularity or intentional misrepresentation with a view to gain recognition, material, tangible or monetary benefit and may involve:

falsification or alteration of records or documents;

suppression or omission of the effects of transactions from records or documents;

recording of false transactions;

theft and wilful destruction or loss of assets;

misapplication of accounting or other regulations or policies.

7.2. Responsibilities

Fraud/Corruption is one risk (amongst others) which may affect the achievement of objectives in the most efficient manner. In common with other risks it is Management's responsibility to ensure that sufficient controls exist to deter (or detect) any fraudulent activity.

7.3. Fraud Investigations

The investigation of a suspected fraud is a specialised subject which is initially the responsibility of the JIU's Inspection Section, who will either refer the matter to the KJC or the UNMIK/DOJ Criminal Division or both as the JIU Head deems appropriate. The JAS should never be involved in such investigations.

7.4. Role of JAS Regarding Fraud

However, JAS is expected to consider fraud and corruption as a part of the risk assessment and control evaluation stage of the Systems Audit cycle particularly in respect of high risk systems such as:

the handling of cash;

the assignment of cases;

the enforcement of judgements;

receipt of funds from outside the organisation;
disbursement of the organisation's funds;
travel and subsistence claims.

It is also often useful for JAS to review a system after a fraud has been discovered and prosecuted in order to discover whether:

- Controls to prevent the fraud were present;
- The control was sufficient to give reasonable assurance to prevent it;
- The control operated as intended
- Further controls could be appropriate
- Lessons could be learned in other courts.

If the Auditor discovers any control weaknesses which might allow fraud to occur then he/she should test to see whether the weakness has been exploited.

7.5 Procedure In The Case Of Suspicion Aroused During an Audit

JAS does not investigate judges, prosecutors, or other justice sector officials public servants and officials, but their activity may become the catalyst for an investigation.

If the auditor suspects that a judge or a prosecutor or other justice sector official is involved in an irregularity and the irregularity is a fraud rather than a mistake, then s/he will terminate the review and at the earliest opportunity report the irregularity directly to the AC.

On the basis of the reported suspicion of fraud, the AC will alert the appropriate justice sector manager within the court or prosecutor office and in doing so will advise the manager of his/her obligation to bring such conduct to the attention of the JIU and/or the local Prosecutor. If the subject of suspicion is in fact the justice sector manager of the organization being audited, then the AC must refer the matter to the next highest justice sector manager in the chain of command.

The reporting of an irregularity should, in the first instance, be made verbally. The auditor can be asked to provide a written version of events when an enquiry is launched by the official or the Court president.

Having reported the irregularity the auditor and the Coordinator shall not discuss the irregularity with any other persons without permission of the IO.

Procedure When Suspicion Aroused During an Interview

As an audit interview proceeds, it may be that the answers given by the interviewee, coupled with other evidence known to the auditor, give rise to clear grounds to suspect that the interviewee has carried out a fraudulent act or indeed the interviewee may offer to confess. At this point, the auditor will terminate the interview and immediately inform the AC.

Under no circumstances should the auditor confront the perpetrator with evidence or start/continue the investigation on his/her own.

UNITED NATIONS
United Nations Interim
Administration Mission
in Kosovo



NATIONS UNIES
Mission d'Administration
Intérimaire des Nations
Unies au Kosovo

JIU
Audit Section

STRATEGIC AUDIT PLAN

2007 - 2009

- DRAFT -

Prishtinë/Priština, July 2006

Table of content

1 INTRODUCTION	3
2. STRATEGIC PLANNING METHODOLOGY	4
2.1. Importance of using methodological approach.....	4
2.2 Terminology used	5
3. PROCESS OF PREPARATION OF STRATEGIC PLAN FOR THE PERIOD 2007 - 2009.....	6
3.1 Training of auditors.....	6
3.2. Determining key missions of Kosovo justice sector.....	7
3.3. Breaking missions down into sub missions.....	7
3.4. Determining importance – weight of each sub mission.....	8
3.5 Identification of processes – activities of each sub mission.....	12
3.6. Identification of risk of each process – activity based on impact and likelihood (probability)	14
3.7. Measuring and listing processes/activities in terms of risk.....	16
3.8. Interviewing relevant persons from justice system to confirm, amend and crystalize auditors' ideas	17
3.9. Ranking of processes/activities according to risk.....	17
3.10. Identifying audit(s) to cover each process/activity	18
3.11. Considering audit resources and number of audits that could be performed	18
3.12. Preparing a Strategic audit plan for the period 2007 - 2009.....	19
3.13. Presenting it to KJC members	23
4. SUBSEQUENT STEPS	24
4.1. Approval of this plan by DOJ director.....	24
4.2. Presentation to KJC / KJC audit committee	24
4.3. Preparation of annual audit plan	24
5. FUTURE CONSIDERATIONS	24
5.1. Annual update of strategic plan and preparation of annual audit plan.....	24
.....

1 INTRODUCTION

The Judicial Inspection Section's (JIU) Judicial Audit Section (JAS) was created to conduct systematic and comprehensive internal audits of Kosovo's justice sector. As part of JAS's obligations under UNMIK Administrative Direction 2001/4 - *to evaluate and assess the general functions and activities of the courts and prosecutor offices of Kosovo for the purpose of proposing reforms* - JAS has created the following Strategic Audit Plan (SAP) for the Kosovo justice sector.

Once approved by the UNMIK/DOJ Director, this SAP will serve as JAS's general marching orders as it endeavours to systematically conduct specific audits of the justice sector over a three year period. While the SAP is meant to ensure that JAS has a pre-approved work plan over a 3 year period (2007-2009), it is a living document subject to periodic review and is designed to accommodate management's (DOJ and/or KJC) emerging needs. Specifically, while the SAP identifies approximately 14 specific audits for each year, JAS has reserved over 20% of its annual audit time for ad hoc audits conducted upon management's request. Further, JAS and justice sector managers will have an opportunity to review and adjust the SAP as may be required.

In general, this SAP was created by using an approved methodology from the Institute of Internal Auditors (IIA). Pursuant to this methodology, the overarching business of the justice sector was first encapsulated into a *mission statement* which was immediately broken down into 10 *sub-missions* of the justice sector intended to broadly cover each and every aspect of justice sector services and/or the resources necessary for the delivery of these services. After systematically weighing the importance of each sub-mission (*see* Sec. 3.4), the JAS continued to break down the sub-missions by listing several *activities* deemed to fit within each sub-mission (*see* Sec. 3.5). In all, JAS identified 34 activities covering the 10 sub-missions within the justice sector. Once the activities were identified, JAS proceeded to conduct a risk assessment¹ of each activity so that each activity could be assigned a score for risk and ranked in terms of high, medium, or low risk (*see* Sec. 3.6 & 3.7). After verifying its activity lists and risk rankings with a variety of justice sector professionals (*see* Sec. 3.8), JAS went on to identify approximately 80 potential audit topics to cover the 34 justice sector activities. Finally, JAS formulated the proposed audit schedule based on its own audit resources², the level of risk assigned to each audit, and the level of complexity (in terms of work days needed) for each proposed audit. *See* Sec. 3.10 & 3.11.

The creation of this SAP has been a transparent process and has drawn considerably from the expertise of a variety of justice sector professionals at each step in the process. First, JAS relied heavily upon the expert opinions of all 72 Court Presidents and Chief

¹ A risk assessment is a means of appraising the vulnerabilities of systems according to impact and probability and categorizing them with relation to their risk ranking.

² JAS estimated that the combined annual "audit days" of 6 auditors was equal to 1050 days.

Prosecutors to provide comprehensive lists of audit-worthy justice sector activities to JAS.³ Second, JAS amended and refined its list of justice sector activities by consulting with recognized expert judges, prosecutors, lawyers, and trainers from every segment of the justice sector. Finally, upon completing its draft SAP, the JAS presented the draft to several KJC Committee Chairs⁴ and made adjustments to the SAP in order to accommodate their concerns. Thus, the current SAP is a Kosovan work product representing the collective effort of a wide variety of **Kosovan** justice sector managers and experts.

2. STRATEGIC PLANNING METHODOLOGY

An audit of any but the simplest of processes is a complex undertaking, in which we are expected to determine the amount and the deployment of audit resources, while neither over-auditing, nor under-auditing. To facilitate the planning and execution of such audits, we use a conceptual "internal audit risk model". Application of this model allows reasonable consistency in the quality of our audits, wherever they are performed.

Planning should take account of risk through the process of risk assessment. It is a systematic process for assessing and integrating professional judgements about probable adverse conditions and/or events. The process provides a means to organise these judgements so that they may be used to assist in developing an audit schedule.

Usually, the time resource available for this process is scarce, both for the management and the auditors who participate in it. Therefore, a time factor should be respected and once a useful and acceptable risk assessment is achieved, auditors should move to further steps of the strategic planning process.

2.1. Importance of using a methodological approach

Enabling objectivity

³ JAS received this input on 5 April at the UNMIK/DOJ's Internal Audit Seminar designed to introduce justice sector managers to the process of internal audit.

⁴ The KJC members included Pristina Municipal Court Judge Selim Nikçi, Kosovo Deputy Prosecutor Ismet Kabashi, and Kosovo Chamber of Advocates President Ramë Gashi.

By using a proper methodology, auditors follow principles that should help them to adopt an objective approach as they answer key questions about what, how and when audits take place. This is why the steps of the strategic planning process are carefully designed, and represent a natural progression.

Protecting management

Management is protected in a way that auditors are bound to follow methodology and best professional practices. In that way, auditors arrive at most important areas to be audited with the guidance of knowledgeable managers and other important actors in the justice system.

Protecting auditors

Auditors are protected in that once methodology and results are accepted by management, auditors have full legitimacy to perform audits according to the agreed plan. Still, there is always some space provided in the audit plan for “ad hoc“ audits that become important and are suggested by top management in writing.

Protected system

The system is best protected when the right balance is reached between autonomy and independence of auditors on an operational level and the ability of management to influence strategic audit planning with their knowledge and experience. This balance is further enforced by the transparent use of strategic planning methodology.

2.2 Terminology used

Here are some terms that are most commonly used in this paper.

Kosovo Justice Sector

in terms of JAS strategic planning, this concept encompasses all activities that are the responsibility of all courts and prosecutor offices in Kosovo

Strategic audit plan

a plan of audit for a rolling period setting out strategies, objectives etc. for Internal Audit

Annual audit plan

a plan developed from the strategic plan, at least annually, providing additional detail in defining the tasks to be performed, identifying critical areas, setting targets etc.

Risk assessment

a means of appraising the vulnerabilities of systems according to impact and probability and categorising them with relation to their risk ranking

Risk management

the sum of all proactive management-directed activities within a programme that are intended to acceptably accommodate the possibility of failures in elements of the programme or; a process to identify, assess, manage, and control potential events or situations, to provide reasonable assurance regarding the achievement of the organisation's objectives.

Risk

The possibility of an event occurring that will have an impact on the achievement of objectives. Risk is measured in terms of impact and likelihood / probability

3. PROCESS OF PREPARATION OF STRATEGIC PLAN FOR THE PERIOD 2007 TO 2009

3.1 Training of auditors

In May 2006, JAS auditors received a one and a half week training on strategic audit planning (including risk assessment) . This training included: 1) the theory upon which the strategic planning methodology is built, 2) a workshop with case study that further developed understanding and finally, 3) application of strategic planning skills learned to the Kosovo justice system.

During the training, JAS auditors prepared a draft strategic audit plan. Here we would like to explain this process step by step.

3.2. Determining key missions of the Kosovo justice sector

Every organisation has its mission statement. We tried to encompass key elements of the Kosovo justice sector into one main mission statement that deals with the justice sector’s service-related system objectives and a second main mission statement that deals with the provision of means and support necessary to accomplish the first main mission statement:

Missions	
1	<ul style="list-style-type: none"> To deliver to all persons a transparent, efficient, fair, impartial and independent system for the advancement of justice based on law
2	<ul style="list-style-type: none"> Efficient performance of logistics and support operations of the court

3.3. Breaking them down into sub missions

After defining the main missions, it was necessary to break them down into a second layer of objectives or sub missions:

Missions	Sub-missions
1. To deliver all persons a transparent, efficient, fair, impartial and independent system for the advancement of justice based on law	To ensure there are enough qualified professionals
	To provide access to courts and public prosecutor offices
	To collect required information from parties in order to reach a decision
	To ensure consistent application of the law
	To ensure cooperation with all institutions essential to the main mission

	To ensure rapid execution of criminal and civil decisions
2. Efficient performance of logistics and support operations of the court	To receive appropriate financial resources and manage them efficiently
	To purchase goods and services in the best quality and economical way
	To ensure enough physical space in courts
	To ensure adequate IT support

It is important to stress that there are many ways to define main and sub missions of the justice system. We understand that each individual has his / her own ideas and views regarding these concepts. We welcome any suggestion, comments and guidance since this strategic audit plan is a living document and will be at least annually adopted to reflect the needs and developments within the Kosovo justice sector.

3.4. Determining importance – weight of each sub mission

Having clearly defined the sub-missions, we need to assess the significance of each of them in respect of the main mission(s). The significance level is determined through an agreed set of criteria including in particular, the following:

- a) financial and economic conditions (the size of assets, liquidity and impact on the beneficiaries) in terms of importance of services provided in the public interest as well as the amount of financial means and assets used
- b) the size and complexity of the assessed operations, programmes and projects (for instance, multiple source financing and mutual relations among stakeholders‘ implementing structures),
- c) organisational, operational, technological and/or economic changes and the need for strict supervision (influenced e.g. by transformation, political impacts, the pace of introduction of innovations and of systems and technology upgrades, the scope of investments and the type of their sources, employee turnover, information flow system),
- d) changes in the external environment including the impact (pressure) this environment exerts on justice sector managers to favour certain adopted plans and objectives for the justice sector,

- e) ethical climate, competencies and integrity of the staff, the complexity of organisational and management structures,
- f) the complexity of procedures of services provided in the public interest, e.g. with respect to the geographical distribution of individual operations or impalpability of actions needed to provide them,
- g) information systems automation degree,
- h) internal control system adequacy and effectiveness,

However, there is a set of common characteristics that are useful in the assessment of a sub-mission's significance:

A – contribution to achievement of the mission(s)

B – value of resources

C – impact on external stakeholders

D – impact on internal systems

E – complexity

F – vulnerability

To assess a sub-mission's significance, the above-mentioned set of common characteristics can be calculated according to the following formula:

$$\text{Risk significance level} = \mathbf{A*a + B*b + C*c + D*d + E*e + F*f}$$

To determine the significance, weightings between 1 and 5 are used (with 1 being the least significant and 5 being the most significant) to differentiate the relative significance of each characteristic. This calculation will further be combined with risk impact and likelihood, giving the final risk factor.

Each sub-mission is therefore considered against the following checklist. This checklist is reviewed regularly to make sure that the factors and weightings being considered remain relevant.

The following weightings and points have been assigned to these characteristics:

- A – Contribution to the achievement of the mission(s)** [weighting 5]
- a Little or no impact on mission(s) achievement [points 1]
 - a Significantly contributing to mission(s) achievement [points 2]
 - a Crucial for mission(s) achievement [points 3]
- B – Value of Resources** [weighting 4]
- b Transaction/Resources Value < €€?? MM [points 1]
 - b Transaction/Resources Value €€?? MM - ?? MM [points 2]
 - b Transaction/Resources Value > €€?? MM [points 3]
- C – Impact on External Stakeholders** [weighting 4]
- c Little or no impact [points 1]
 - c Significant impact on external stakeholders [points 2]
 - c Major impact on external stakeholders or high position on political agenda [points 3]
- D – Impact on Internal Systems** [weighting 2]
- d Little or no impact [points 1]
 - d Significant impact on internal systems [points 2]
 - d Major impact on important internal systems [points 3]
- E – Complexity** [weighting 1]
- The following elements contribute to the complexity of a system:*
- | | |
|----------------------------|--|
| <i>Inputs</i> | <i>Diversity of sources</i> |
| <i>Processes</i> | <i>Computer support (significant part of the process) or other specialised areas or skills requiring qualification</i> |
| <i>Outputs</i> | <i>Diversity of clients</i> |
| <i>Dynamic Environment</i> | <i>System is new or liable to changes</i> |
- e One of the above-mentioned elements [points 1]
 - e Two to three of the above-mentioned elements [points 2]
 - e All of the above-mentioned elements [points 3]
- F – Vulnerability** [weighting 3]
- f System provides little weaknesses for threats of all kinds [points 1]
 - f System provides some opportunity but no history of occurrence [points 2]
 - f High risk and has a history of occurrence of attacks or disasters [points 3]

Ranking may range from minimum 19 to maximum 57 points

After applying these weightings to sub missions, the following results were reached:

Mission 1	To deliver all persons a transparent, efficient, fair, impartial and independent system for the advancement of justice based on law											
Sub-missions	a	5*a	b	4*b	c	4*c	d	2*d	e	f	3*f	Weight
• To ensure there are enough qualified professionals	3	15	1	4	1	4	3	6	2	2	6	37
• To provide access to courts and public prosecutor offices	2	10	1	4	3	12	1	2	1	2	6	35
• To collect required information from parties in order to reach a decision	3	15	3	12	2	8	2	4	2	2	6	47
• To ensure consistent application of the law	3	15	2	8	2	8	2	4	3	2	6	44
• To ensure cooperation with all institutions essential to the main mission	2	10	2	8	2	8	3	6	2	2	6	40
• Rapid execution of criminal and civil decisions	3	15	1	4	3	12	3	6	1	3	9	47

Mission 2	Efficient performance of logistics and support operations of the court											
Sub-missions	a	5*a	b	4*b	c	4*c	d	2*d	e	f	3*f	Weight
• Receive appropriate financial resources and manage them efficiently	3	15	2	8	1	4	3	6	2	3	9	45
• Purchase goods and services in the best quality and economic way	1	5	3	12	2	8	3	6	2	2	6	39
• Ensuring enough physical space	1	5	2	8	2	8	2	4	1	1	3	29
• Ensuring IT support	2	10	2	8	2	8	3	6	2	3	9	43

This weight factor is combined later on in the process with risk factor of each activity in order to arrive at overall risk rating.

3.5 Identification of processes – activities of each sub mission

It is important to point out that the key activities identified in this section do not merely represent the opinion of JAS staff. Rather, at this key stage in the process, JAS relied heavily on information and ideas received by 72 court and prosecutor office managers during the 5 April 2006 conference held by UNMIK/DOJ and USAID.

Missions	Sub-missions	Weight	Processes / Activities
3. To deliver all persons a transparent, efficient, fair, impartial and independent system for the advancement of	1. To ensure there are enough qualified professionals	37	<p>A. Process of recruitment of judges, prosecutors, administrators and other personnel</p> <p>B. Evaluation of judges, prosecutors, administrators and other personnel</p> <p>C. Training of judges, prosecutors, administrators and other personnel</p> <p>D. Management of courts and staff</p>

justice based on law			
	2. To provide access to courts and public prosecutor offices	35	E. Provide information and assistance to public about courts and PPO activity F. Pre-trial questioning of witness / victim in front of prosecutors G. Timely registration and assignment of civil cases H. Timely and efficient completion of cases (time standards) I. Distribution and delivery of court decisions
	3. To collect required information from parties in order to reach a decision	47	J. Collection of information necessary to raise indictment K. Use of court expert and information provided by him in trial L. Activities involved in pre-trial preparation
	4. To ensure consistent application of the law	44	M. Respecting of legally established deadlines by courts and prosecutors N. Identifying inconsistent application of the law between courts O. Identifying the gaps in the law and taking appropriate action
	5. To ensure cooperation with all institutions essential to the main mission	40	P. Cooperation between courts and prosecutors Q. Cooperation between different courts R. Cooperation of courts with police S. Cooperation of prosecutors with police T. Cooperation with municipality ie. executive director (cadastre, morgue, civil registry, etc.) U. Cooperation with DOJ (penal management) V. Cooperation with banks and payment authorities W. Cooperation with chamber of advocates X. Cooperation with Kosovo Trust Agency
	6. To rapidly execute	47	Y. Civil decisions

	criminal and civil decisions		Z. Criminal decisions
4. Efficient performance of logistics and support operations of the court	7. To receive appropriate financial resources and manage them efficiently	45	AA. Preparation of general budget BB. Breakdown of general budget into budgets for individual courts / prosecutor offices CC. Use of budget of each institution DD. Collection your own income (fees, taxes etc.)
	8. To purchase goods and services in the best quality and economic way	39	EE. Planning of procurement FF. Execution of procurement
	9. To ensure enough physical space	29	GG. Utilisation of courtrooms
	10. To ensure adequate IT support	43	HH. Planning of IT expenditure according to the development plan of the Courts

3.6. Identification of risk of each process / activity based on impact and likelihood (probability)

This stage of the process deals with assigning a level of risk to each process / activity according to:

- Potential impact on the system as a whole if a certain risk related to the process materialises or, if something with the process goes wrong,
- Likelihood or probability of something going wrong within a specific process.

Here is the list of processes with assumed risk factors:

Weight	Processes / Activities	Imp act	Likeli hood	Total
Relative to				

sub mission				
37	A. Process of recruitment of judges, prosecutors, administrators and other personnel	4	2	6
	B. Evaluation of judges, prosecutors, administrators and other personnel	5	4	9
	C. Training of judges, prosecutors, administrators and other personnel	5	3	8
	D. Management of courts and staff	4	1	5
35	E. Provide information and assistance to public about courts and PPO activity	4	3	7
	F. Pre-trial questioning of witness / victim in front of prosecutors	5	2	7
	G. Timely registration and assignment of civil cases	5	1	6
	H. Timely and efficient completion of cases (time standards)	4	3	8
	I. Distribution and delivery of court decisions	5	4	9
47	J. Collection of information necessary to raise indictment	4	3	7
	K. Use of court expert and information provided by him in trial	4	3	7
	L. Activities involved in pre-trial preparation	3	3	6
44	M. Respecting of legally established deadlines by courts and prosecutors	5	2	7
	N. Identifying inconsistent application of the law between courts	4	2	6
	O. Identifying the gaps in the law and taking appropriate action	3	3	6
40	P. Cooperation between courts and prosecutors	3	4	7
	Q. Cooperation between different courts	3	2	5
	R. Cooperation of courts with police	4	3	7
	S. Cooperation of prosecutors with police	3	3	6
	T. Cooperation with municipality ie. director (cadastre, morgue, civil registry, etc.)	3	4	7
	U. Cooperation with DOJ (penal management)	4	2	6
	V. Cooperation with banks and payment authorities	3	2	5
	W. Cooperation with chamber of advocates	3	2	5
	X. Cooperation with Kosovo Trust Agency	3	2	5
47	Y. Civil decisions	5	3	8
	Z. Criminal decisions	5	3	8
45	AA. Preparation of general budget	4	3	7
	BB. Breakdown of general budget into budgets for courts / prosecutor offices	2	3	5
	CC. Use of budget of each institution	3	4	7
	DD. Collection your own income (fees, taxes etc.)	3	3	6

39	EE. Planning of procurement	2	4	6
	FF. Execution of procurement	2	3	5
29	GG. Utilisation of courtrooms	3	3	6
43	HH. Planning of IT expenditure according to the development plan of the Courts	3	4	7

3.7. Measuring total risk and assigning a risk level to each process/activity

There are many ways to present the results of a risk assessment. One of them is to multiply the risk factor for each process/activity by the weight factor of the related sub-mission. In this manner, the following total risk factors were calculated:

Processes / Activities	Total risk	Weight	Total score	Risk level
A. Process of recruitment of judges, prosecutors, administrators and other personnel	6	37	222	L
B. Evaluation of judges, prosecutors, administrators and other personnel	9		333	H
C. Training of judges, prosecutors, administrators and other personnel	8		296	M
D. Management of courts and staff	5		185	L
E. Provide information and assistance to public about courts and PPO activity	7	35	245	M
F. Pre-trial questioning of witness / victim in front of prosecutors	7		245	M
G. Timely registration and assignment of civil cases	6		210	L
H. Timely and efficient completion of cases (time standards)	8		280	M
I. Distribution and delivery of court decisions	9		315	H
J. Collection of information necessary to raise indictment	7	47	329	H
K. Use of court expert and information provided by him in trial	7		329	H
L. Activities involved in pre-trial preparation	6		282	M
M. Respecting of legally established deadlines by courts and prosecutors	7	44	308	H
N. Identifying inconsistent application of the law between courts	6		264	M
O. Identifying the gaps in the law and taking appropriate action	6		264	M
P. Cooperation between courts and prosecutors	7	40	280	M

Q. Cooperation between different courts	5		200	L
R. Cooperation of courts with police	7		280	M
S. Cooperation of prosecutors with police	6		240	M
T. Cooperation with municipality ie. director (cadastre, morgue, civil registry, etc.)	7		280	M
U. Cooperation with DOJ (penal management)	6		240	M
V. Cooperation with banks and payment authorities	5		200	L
W. Cooperation with chamber of advocates	5		200	L
X. Cooperation with Kosovo Trust Agency	5		200	L
Y. Civil decisions	8	47	376	H
Z. Criminal decisions	8		376	H
AA. Preparation of general budget	7	45	315	H
BB. Breakdown of general budget into budgets for courts / prosecutor offices	5		225	L
CC. Use of budget of each institution	7		315	H
DD. Collection your own income (fees, taxes etc.)	6		270	M
EE. Planning of procurement	6	39	234	M
FF. Execution of procurement	5		195	L
GG. Utilisation of courtrooms	6	29	174	L
HH. Planning of IT expenditure according to the development plan of the Courts	7	43	301	H

The last column which grades risk as either low, or medium or high was done according to following criteria:

- Under 230 – low
- Between 230 and 300 - medium
- Over 300 - high

The goal of this grading process is that it allows JAS to concentrate on the most risky processes/activities, while - over a period of time - also covering processes graded medium and low risk.

3.8. Interviewing relevant persons from justice system to confirm, amend and crystallise auditors' ideas

Following an initial JAS risk assessment, JAS audit staff tested the accuracy of their risk assessment exercise during meetings with several key actors in the Kosovo justice system. Their ideas and/or modifications were incorporated into the work of the JAS.

Kapllan Baruti – Mitrovica District Court, President
 Tahir Rrecaj – Pristina Municipal Prosecutor, Chief Prosecutor
 Adem Ajvazi – Pristina Commercial Court, President
 Elmaze Syka – Kosovo Judges Association, Deputy President
 Adem Vokshi – Kosovo Chamber of Advocates, President
 Mehmet Neziri – High Minor Offence Court, President
 Fejzullah Hasani – Kosovo Supreme Court, Judge
 Katya Durmislieva – Kosovo Judicial Institute

3.9. Identifying audit(s) to cover each process/activity

Using the risk assessment as a base, this task was performed by auditors through brainstorming sessions which produced presented a list of 70-80 audits. Over a half of those were included in the three year strategic audit plan presented below.

3.10. Considering audit resources and number of audits that could be performed

Important parameters:

JAS legal audit professionals	1 coordinator – not directly involved in audits 6 auditors – full time auditing
Number of working days per year	260 week days less 10 days of public holidays less 20 days of personal holiday total of 230 available working days of which 75% is used on auditing giving 175 days X 6 staff totalling 1050 audit days
Average days for audit	High complexity (HC) – 6 member team over 4 weeks – 120 days
	Medium complexity (MC) – 3 member team over 4 weeks – 60 days
	Low complexity (LC) – 2 member team over 3 weeks – 30 days

Number of possible audits	HC – 3 audits totalling 360 days (1 audit potentially requested by DOJ Director/KJC)
	MC – 8 audits totalling 480 days (2 audits potentially requested by DOJ Director/KJC)
	LC – 7 audits totalling 210 days (1 audit potentially requested by DOJ Director/KJC)
	Total – 18 audits 1050 days
Potential additional capacity:	<ul style="list-style-type: none"> • Through NCSC’s Court Rotation Assistant Project (CRAP) • International expert assistance (NCSC provided upon request)

Planning of audits according to risk level (H,M,L), complexity (HC,MC,LC) and number of days available for audits requested by management

Timing of the audits	High complexity	Medium complexity	Low complexity	Days used on planned audits	Total audit days	Available days
1 quarter – 4 audits		2	2	180	270	90
2 quarter – 3 audits	1	1	1	210	260	50
3 quarter – 4 audits		2	2	180	260	80
4 quarter – 3 audits	1	1	1	210	260	50

Remaining audit days will be used for completion of audits upon request of DOJ Director/KJC.

Complexity refers to the complexity of process being audited in terms of time required to complete the audit.

Please understand that these are estimates based on research, studying of the system and advice from JAS’s internal audit trainer.

3.11. Preparing a Strategic Audit Plan for the period 2007 - 2009

Taking all into consideration, the JAS audit staff have arrived at this list of audits to be performed in the next three year period. Once again we would like to emphasize that JAS audit staff are prepared to conduct on average one ad-hoc audit per quarter upon the request of the management.

Year 1 (2007)	HC	MC	LC
1 quarter		2	2
		Audit of the preparation and maintenance of list of specialists used by the courts such as experts, interpreters and appraisers	Audit of existence of data base of performed trainings and participants
		Audit of the prosecutors' involvement in crime scene investigations	Audit of laws and procedures regulating "court days"
2 quarter	1	1	1
	Audit of the system and means of communication and cooperation between courts and prisons	Audit of the system and means of communication and cooperation between public prosecutors and police	Audit of utilisation of courtroom space
3 quarter		2	2
		Audit of the court practice in regards to criminal and civil case assignment to judges	Audit of the process of placing announcements related to court decisions on announcement boards
		Audit of the system of criminal procedure regarding all actions or proposals made by public prosecutors	Audit of administration of collection of court taxes related to certification of the contract
4 quarter	1	1	1
	Review of law and existing practice in appointing and	Audit of the system and means of communication and cooperation	Audit of the system of appointing the lawyers "ex

	using court experts in civil and criminal cases⁵	between courts and police	officio’’
Year 2 (2008)			
1 quarter		2	2
		Audit of execution of imprisonment verdicts	Audit of the system and means of communication and cooperation between courts and banks related to the process of execution of court’ decision
		Audit of the existence and maintenance of data base of probation sentences	Audit of application of the legal time limits for pre-trial detention
2 quarter	1	1	1
	Audit of employment process of judges, prosecutors and other personnel⁶	Audit of cooperation between court and probation service	Audit of the system of execution of court decisions in a case of employment disputes
3 quarter		2	2
		Audit of training selection & participation criteria	Audit of judicial practice in regards to criteria to postpone the execution of punishment (imprisonment)
		Audit of the system and means of communication and cooperation between district and municipal courts	Audit of statute of limitations in regards to execution of criminal sanctions
4 quarter	1	1	1
	Audit of process of preparation and execution of annual training programme	Audit of the system of transferring appeal cases to second instance court	Audit of the process of placing announcements related to scheduled hearings on

⁵ Audit will deal **separately** with use of court experts in civil and criminal cases

⁶ Delayed until completion of reappointment process

	for judges, prosecutors and other personnel		announcement boards in courts
Year 3 (2009)			
1 quarter		2	2
		Audit of the system of charging and collecting court expenses in criminal and civil cases	Audit of the system of publishing official gazette including new legislation
		Audit of the actions taken by prosecutors to ensure presence of criminal defendants during criminal prosecution	Audit of the practices in regards to maintaining criminal executions register
2 quarter	1	1	1
	Audit of performance evaluation process of judges, prosecutors and other personnel⁷	Audit of the system of safekeeping of court evidence – “corpus delicti”	Audit of the process of execution of punishment resulting from non payment of a fine
3 quarter		2	2
		Audit of system of revocation of conditional punishment	Audit of the system of distribution of court decision by court courier
		Audit of the process of management of official court books (registry)	Audit of the system of distribution of court decision by mail
4 quarter	1	1	1
	Audit of international legal aid in criminal procedures	Audit of the process of respecting legal time limit on announcing the indictment	Review of procedures of assigning detention to juveniles

⁷ This audit should follow the audit of employment process

3.12. Presenting the Strategic Audit Plan to KJC members

The JAS Strategic Audit Plan was presented to three members of the KJC⁸ on 6 July. The KJC members included Pristina Municipal Court Judge Selim Nikçi, Kosovo Deputy Prosecutor Ismet Kabashi, and Kosovo Chamber of Advocates President Ramë Gashi. In general, their reaction was extremely positive and they supported the strategic audit plan recognising that all audits targeted relevant issues. During the meeting, the KJC members recommended an increase in the percentage of audits in the SAP dedicated solely to prosecutorial services. JAS responded positively to the recommendation by first interviewing additional prosecutors⁹ recommended by the KJC and then adding several prosecutor-focused audits.

⁹ At KJC's suggestion, JAS interviewed Reshat Millaku, Kosovo Public Prosecutor and Mertia Bina-Rugova, Pristina Municipal Public Prosecutor

4. SUBSEQUENT STEPS

4.1. Approval of this plan by DOJ Director

In reviewing its contents for approval, the DOJ Director may wish to consider that the current SAP represents the collective work of a wide variety of Kosovan justice sector managers and experts. Other than the advisory input offered by USAID's Legal Advisor and Audit Trainer, this document is a Kosovan work product. As explained in the introduction, JAS has reserved over 20% of its annual audit time for ad hoc audits conducted upon management's request.

4.2. Presentation to KJC / KJC audit committee

Upon DOJ Director approval, JAS proposes that the Director announce the SAP approval via correspondence to the KJC Directorate with a request to support the JAS as it implements the SAP. Acknowledging the likelihood that the DOJ authority over the JAS may pass to the KJC (and the future Kosovo Prosecutorial Council), the JAS also proposes that the Director regularly seek input from the KJC regarding requests to JAS for ad-hoc audits.

4.3. Preparation of annual audit plan

Upon DOJ Director approval of this three year strategic audit plan for the 2007 – 2009 period, auditors will use the SAP as the starting point for the preparation of JAS's annual audit plan which will describe in more detail each audit included in the first year of the strategic plan.

5. FUTURE CONSIDERATIONS

5.1. Annual update of strategic plan and preparation of annual audit plan

This should be done during the last quarter of the current year.

UNITED NATIONS
United Nations Interim
Administration Mission
in Kosovo



NATIONS UNIES
Mission d'Administration
Intérimaire des Nations
Unies au Kosovo

JIU
Audit Section

CONFIDENTIAL

AUDIT REPORT

**Identification and assessment of points in the system of criminal
procedure that cause the Statute of Limitations to run in criminal cases**

Prishtinë/Priština, June 2005

|

- 1. EXECUTIVE SUMMARY.....**3**
- 2. INTRODUCTION.....**6**
- 3. LEGAL REGULATIONS.....**8**
- 4. DESCRIPTION OF KEY PROCESSES**10**
 - 4.1. Process of registering newly arrived case into court registry books 10
 - 4.2. Process of assigning cases to a judge 11
 - 4.3. Transfer of previous year(s) cases into current year case register 11
 - 4.4. Transfer of case to (second instance) another court 12
 - 4.5. Return of case from (second instance) another court 12
- 5. FINDINGS AND RECOMMENDATIONS.....**14**
 - 5.1. Frequency of occurrence of time-barred cases..... 14
 - 5.2. Issues concerning cases in which the relative SOL had run 14
 - 5.3. Identification and assessment of critical points in the system of criminal prosecution which cause the absolute SOL to run 16
 - 5.4. Cases with regular legal remedies in the court of second instance (District Court) 18
 - 5.5. Controls ensuring that the relative and absolute SOL do not run..... 18
 - 5.6. Identification of cases in which the SOL could run in the course of 2006.... 19
 - 5.7. Issues involving application of the new law..... 20
 - 5.8. Identification of areas and issues that could be dealt with in future audits. 21
- 6. APPENDICES.....**23**

1. EXECUTIVE SUMMARY

Key Audit Findings and Recommendations

The Judicial Inspection Unit's (JIU), Judicial Audit Section (JAS) carried out a pilot audit in the Municipal Courts of Gjilan/Gnjilane, Vushtrri/Vučitrn and Podujevë/Podujevo from 21 February until 3 March 2006. The topic of this pilot audit was the identification and assessment of points in the system of criminal procedure that cause the Statute of Limitations (SOL) to run in criminal cases. In each court audited, the JAS reviewed all criminal cases registered in the years 2000, 2001 and 2002.

During the audit process, JAS found 153 cases in the courts audited in which the SOL had run. In forty-eight (48) of these cases, the absolute¹ SOL had run, while in 105 of these cases the relative² SOL had run. This figure (153) represents about 5.4 % of the total number of criminal cases filed in the 3 audited courts during the 2000-02 period.³ In Section 5.1, JAS recommends a Kosovo-wide collection of similar data from all courts in order to obtain a complete picture of the SOL situation.

In order of frequency, the main reasons for the running of the absolute SOL were: a) an inability to locate the accused due to unknown or incorrect address, or due to defendants living outside of Kosovo, b) an inability to identify the accused, c) an inability to deliver the summons due to security-related issues,⁴ and d) an apparent lack of communication between 1st and 2nd instance courts regarding cases on appeal in danger of having the absolute SOL run out. In Section 5.3, JAS has offered several recommendations directed at improving municipal court cooperation with offices of the public prosecutor and other authorities in a position to assist the court with identifying and locating criminal defendants, and processing criminal cases.

In most of the cases involving the absolute SOL, JAS found that courts had issued a decision closing the case based on the statute of limitations. However, in a few cases (3 of 48), the system of control for identifying such

¹ The absolute SOL is defined in Article 91(6) of the Provisional Criminal Code of Kosovo (PCCCK) wherein it states that "criminal prosecution shall be prohibited in every case when twice the period of statutory [*sic*] limitations has elapsed (absolute bar on criminal prosecution)."

² The relative SOL, set out in Article 90 of the PCCCK, sets a deadline within which any procedural act or activity of an authorized body aimed at initiating criminal proceedings must occur. The relative SOL ranges from 2 years for less serious crimes up to 35 years for the most serious crimes. Any "act undertaken for the purpose of criminal prosecution of the criminal offence committed" resets the running of the relative SOL. *See* PCCCK Art. 91(3).

³ In the 3 audited courts, the total number of criminal cases filed during the period 2000-02 was 2828. JAS determined the SOL frequency percentage by dividing 153 by the total number of cases (2828). This does not erase the possibility that the absolute or relative SOL may still run in unresolved cases from 2000-02.

⁴ From the period 2000-2003, lack of PISG security and access to some minority communities prevented postal service and/or court delivery of summons.

cases was not functioning properly.⁵ Here, JAS has recommended that the court management formalize and tighten existing internal control systems in order to identify and –whenever possible - expedite completion of cases nearing the absolute SOL. Even when courts are faced with unpreventable absolute SOL cases, a court's early detection and closure of such cases will both hasten the removal of a cloud of prosecution from a defendant and will enhance public confidence in the court's efficient handling of its docket.

With regard to relative SOL cases, JAS discovered that most cases (56 out of 105) resulted from risks associated with the reassignment of existing cases upon the resignation or retirement of the judge to whom the cases was originally assigned. In such cases, the JAS recommends immediate case reassignment even if it means distributing criminal cases amongst less experienced judges. Given recent delays in filling vacant judicial posts, JAS considers this a high risk and stresses the fact that all judges are hired as generalists assigned to work on all cases assigned by a court president. See Section 5.2.

In other relative SOL cases, JAS found that some judges have different points of view regarding the interpretation of key language in Article 91(3) of the Provisional Criminal Code of Kosovo (PCCK) which defines the sort of actions which cause the relative SOL period to be reset. For example, in a minority of cases, it appears that judges do not consider actions such as the issuance of an arrest warrant or the issuance of a court summons as interrupting the running of the period of relative SOL. In addition to the possible issuance of a Kosovo Supreme Court directive to clarify this matter, the JAS has recommended that court management put in place functional controls and undertake necessary actions to prevent the running of both the relative and absolute SOL. See Section 5.2.

With regard to the application of the new criminal laws⁶ to old criminal cases, JAS found some substantially different court practices regarding the re-qualification of criminal cases. In some cases this has resulted in separate courts setting different SOL deadlines for identical criminal offences. Here, JAS has recommended the possibility of a Supreme Court directive aimed at ensuring uniform application of the law. See Section 5.7.

Auditors also identified 34 cases that are at risk because the absolute statute of limitations will run during 2006. It was recommended to the court management to annually list and prioritize all cases in which the statute of limitations is at risk of running.

In general it was noticed that the courts are exercising some internal control regarding the statute of limitations, due to the fact that there was a written

⁵ This apparent failure to identify an approaching deadline for action occurred more frequently in cases involving the relative statute of limitations. Of the 105 relative SOL cases found, 36 did not yet have a written decision.

⁶ The Provisional Criminal Procedure Code of Kosovo (PCPCK) and the Provisional Criminal Code of Kosovo (PCCK) entered into force on 6 April 2004.

decision issued in most of the cases in which the statute of limitations had run. However, this internal control is not sufficient to decrease the risk of the statute of limitations running in criminal cases.

This pilot audit has pointed out a number of issues that are important for the judicial system as a whole. See Section 5.8. Due to the limited scope of this audit these issues are not fully explored in this report. Nevertheless, the auditors have identified them and recommend their inclusion in a strategic audit plan that will establish a prioritized list of audits to be performed in the future on the basis of a formal risk assessment⁷.

⁷ A *risk assessment* is a process by which internal auditors and managers use their collective experience to review all key processes of a system according to two main criteria: 1) the likelihood of occurrence of a certain risk in a certain process (of the system), and 2) the impact on the system as a whole if that same risk were to occur. Risk assessments are used to help internal auditors make informed recommendations about the priority given to audit topics within a long-term audit plan.

2. INTRODUCTION

a. Audit Scope

This audit reviews the flow of criminal cases at the municipal court level with emphasis on points as specified in the primary objective of the audit.

b. Audit Purpose and Objectives

The purpose of the audit is to improve the judicial system in Kosovo.

In particular, audit objectives include:

- To identify and assess points in the system of criminal procedure that slow down or time-bar criminal prosecution pursuant to the SOL,
- To provide a professional opinion on the adequacy, application and effectiveness of controls set by management in order to prevent the running of the SOL,
- To recommend improvements to the system which management may implement in order to reduce the possibility of the running of the SOL,
- To assist with the identification of cases in which the SOL will run in 2006,
- To identify related areas and issues that could be dealt with in future audits.

c. Business Objective of the Process

- To enforce the rule of law
- To deliver justice
- To protect human rights

d. Control Objectives⁸

Control objectives are closely related to existing risks and they are set as follows:

- To ensure establishment of an adequate legal framework regulating criminal procedures
- To ensure consistency between the law and court practices in criminal procedure
- To ensure the best court management practices in accordance with the *Rules on Internal Activity of the Courts* (hereinafter RIAC). Official Gazette No. 7/81 of SAPK
- To ensure cooperation between the municipal courts and other institutions within the judicial system

⁸ Control objectives represent management's view of the purpose of the control that is implemented or needs to be implemented in order for a system as a whole to achieve its objective(s)

- To ensure coordination between courts and other public authorities
- To ensure a high level of accountability on the part of all participants in the system of criminal procedure
- To ensure the most efficient use of resources
- To ensure sound and skilled management

e. Audit Methods

Auditors used standard audit methods including:

- review of relevant laws and regulations,
- review of the RIAC,
- drawing system flow charts,
- interviews with relevant personnel,
- testing⁹.

f. Audit Team

Audit Coordinator Hydajet Hyseni, audit team leaders Dragana Ristic and Xhevdet Smakiqi, audit team members Arbëresha Raqa-Shala, Ali Ajdini, Agron Selimaj, Mahir Tutuli.

Audit was performed with the assistance of John Furnari, Judicial Audit Advisor and Tihomir Grbić, Internal Audit Consultant.

⁹ Testing is an audit technique used to obtain information on how much reliance may be placed on internal controls set by the management. Testing answers the questions related to existence and effectiveness of a systems' internal controls. In the context of this audit, JAS identified & reviewed all cases registered in 2000, 2001 and 2002 in which either the relative or absolute statute of limitations had run.

3. LEGAL REGULATIONS

Legal regulations closely related to the process were as follows:

Provisional Criminal Code of Kosovo (UNMIK Reg. No. 2003/25)
CHAPTER IX: STATUTORY LIMITATIONS

Statutory Limitations on Criminal Prosecution

Article 90

(1) Unless otherwise provided for by the present Code, criminal prosecution may not be commenced after the following periods have elapsed:

- 1) Thirty five years from the commission of a criminal offence punishable by long-term imprisonment;
- 2) Fifteen years from the commission of a criminal offence punishable by imprisonment of more than ten years;
- 3) Ten years from the commission of a criminal offence punishable by imprisonment of more than five years;
- 4) Five years from the commission of a criminal offence punishable by imprisonment of more than three years;
- 5) Three years from the commission of a criminal offence punishable by imprisonment of more than one year; and
- 6) Two years from the commission of a criminal offence punishable by imprisonment for up to one year or punishment of a fine.

(2) When the law provides for more than one punishment for a criminal offence, the period of statutory limitations on criminal prosecution shall be determined according to the most serious punishment.

Commencement and Interruption of Periods of Statutory Limitations on Criminal Prosecution

Article 91

(1) The period of statutory limitations on criminal prosecution commences on the day when the criminal offence was committed.

(2) The period of statutory limitations does not run for any time during which prosecution cannot be initiated or continued by law.

(3) The period of statutory limitations is interrupted by every act undertaken for the purpose of criminal prosecution of the criminal offence committed.

(4) The period of statutory limitations is also interrupted if the perpetrator commits another criminal offence of equal or greater gravity than the previous criminal offence prior to the expiry of the period of statutory limitations.

(5) A new period of statutory limitations will commence after each interruption.

(6) Criminal prosecution shall be prohibited in every case when twice the period of statutory limitations has elapsed (absolute bar on criminal prosecution).

4. DESCRIPTION OF KEY PROCESSES

In the course of the audit, several processes were reviewed which are key to the audit as they represent important points in the registration and tracking of a criminal cases through the court system. A brief summary of these key processes follows:

4.1. Process of registering newly arrived cases into court registry books

The system of entering newly arrived cases into the court register is guided by Article 156 paragraph 1 of the Rules on Internal Activity of the Courts (Official Gazette No. 7/81 of SAPK) (hereinafter RIAC), which states that: "Petition requests, motions, official documents, valuable letters, telegrams, packs, etc. that have been sent to the court by mail or a party has sent it directly, should be received by an authorized court employee"

Pursuant to Article 160 paragraph 1 of RIAC , "An appointed court employee opens all mail addressed to the court, except the mail that is for the president of the court, which is tagged as confidential or strictly confidential" The RIAC contains no other specific guidance on the matter of registering new cases. As a result, different court practices on the receipt of official letters were noticed during the audit performed in the courts.

In some courts, all letters arriving by mail in the Front Office (including potential new cases) are sent to the president to be opened. Upon opening and reviewing all letters, the president forwards all letters to the Office of the Chief Clerk (OCC) and those identified as new cases are entered as such in the appropriate registry book by a court clerk. However, the OCC also receives hand-delivered letters which s/he is permitted to open and – if identified as a new case – to register the case in the appropriate registry book.

An alternative practice involves the division of all letters arriving at the front office into two groups. All letters addressed to the president are sent to him, while all other letters are sent to the OCC for further processing. All letters identified by clerks at the OCC as new cases are registered as such. Meanwhile, if any of the letters sent directly to the president are identified as new cases, they are sent on to the OCC for registration.

Due to the fact that a variety of official mail receipt methodology is used in the courts, this topic represents a possible topic for future audit.

4.2. Process of assigning cases to a judge

The allocation of a case to a judge is done pursuant to Article 47 paragraph 2 of RIAC which explicitly states that: “the criminal and civil cases are allocated based on the *last digit of the case number*, taking into consideration the judges case load, if otherwise set by the law.”

In the three courts audited, JAS found that each court had interpreted the language “*last digit of the case number*” to require a rotating distribution of cases based on the number of judges available to handle criminal cases. For example, a small court with only 2 judges handling criminal matters would distribute every other case (e.g. odd cases) to the same judge whereas a larger court, with 4 judges handling criminal matters, would distribute every 4th case to the same judge. One court introduced a slight variation to a rotating distribution by distributing cases in groups of successive case numbers (e.g. judge x receives cases 101, 102, 103 whereas judge Y receives cases 104, 105, 106 etc). In all courts audited, the Criminal registry clerk registers and allocates the cases.

Nevertheless, exceptions to the rotating distribution system may occur for several reasons. For example, a trial judge may recuse himself from a matter due to a conflict of interest, or a trial judge may not possess the experience required for a particularly serious or complex criminal matter, or a trial judge may be temporarily exempt from receiving more cases through the rotation system due to an existing large caseload. In each of these cases, Court Presidents are responsible for redistributing the cases appropriately.

It is our understanding that the article dealing with allocation of cases provides instructions that are, in practice, difficult to follow due to various possible exceptions as well as the possibility for different interpretations. We recommend this issue to be a subject of a separate audit.

4.3. Transfer of previous year(s) cases into current year case register

The system of carrying over cases from previous years into the most current registry book is set forth in Article 281 paragraph 1 of RIAC : “If at the end of the year, subject of being closed, there are unsolved cases from the previous years, those cases should be [transferred into] the registry book for the next year.”

In all audited courts, the end-of-year practice of transferring unresolved cases of the previous years into the following year’s registry book was solidly in place. For example, at the end of 2001, open cases filed in 2000 were transferred into the new 2002 registry book. Whereas, at the end of 2002,

open cases filed in 2001 or earlier¹⁰ were transferred into the 2003 registry book.

4.4. Transfer of case to (second instance) another court

The process of referral of cases on appeal to a higher court is set forth in Article 255 paragraph 1 of RIAC. Article 255 states: "In respect of the legal remedies filed against a [municipal] court decision, the case is referred (by the municipal court) to the higher competent court (of second instance) with a [standardized] report."

The municipal court's referral of a case to the court of second instance is made after a party has applied for a legal remedy. After making a notation about the appeal in the criminal registry book, the clerk in charge registers the appeal in a separate internal¹¹ book and then sends the case file to the trial judge for his legal assessment as to whether the appeal is timely and allowable. After the judge signs the cover page of the case, the registry clerk refers the case file to the court of second instance.

There is an alternative method for the transfer of cases to the court of second instance, whereby only a notation regarding the appeal is entered in the criminal registry book. No separate internal book with appellate information is kept. Once the criminal registry book notation has been made, and the trial judge has signed (approved) the case for appeal, the registry clerk sends the case file to the court of second instance.

Due to the fact that there are different practices implemented in the courts with regard to registration of cases on appeal, a closer look at this process through a future audit may be advisable to determine best practices.

4.5. Return of case from (second instance) another court

Cases being remanded by the higher court to the court of first instance are regulated by Article 259 of RAIC. Article 259 states: "When the court receives the case from the higher court, the court employee writes off (closes out) the case from the appropriate registry book. If said decision was entirely or partially overruled by the higher court, the court employee will register it under [a] new number in the appropriate registry book and without any delay he will deliver it to the judge. In this case a judge is obligated to issue an order on scheduling the court sessions not later than within a month."

In all courts audited, court clerks have consistently applied Article 259 by closing out all cases upon return from the appellate court & by allocating a new case number *only* to those cases where the municipal court decision was entirely or partially overruled.

¹⁰ For example, pursuant to this process, unresolved 1999 cases would be found in the opening pages of the 2001 registry book.

¹¹ This is one of many informal notebooks kept by court clerks in order to keep track of cases. This particular internal book is dedicated to the listing of all municipal court cases sent up on appeal.

Thus, the manner in which these cases are remanded from the court of second instance is the same in all courts.

We understand that the five processes described above are just some of those relevant for the functioning of the system as a whole. However, the JAS does intend - during its performance of each future audit – to cover many other relevant processes as appropriate. Through this methodology, JAS plans to eventually review most – if not all – processes key to the functioning of the judicial system as a whole.

5. FINDINGS AND RECOMMENDATIONS

5.1. Frequency of occurrence of time-barred cases

Findings

In the three audited courts, JAS identified a total of 153 cases filed between 2000 & 2002 in which the SOL has run as of the end of February 2006. Almost all (150) of them were identified for us by the court presidents, while 3 of these cases were found during the audit process. These 153 cases represent about 5.4 % of the total number of criminal cases filed in the 3 audited courts during the 2000-02 period.¹²

In 114 of the 153 cases identified, judges have written decisions on the running of the SOL. In the remaining 39 SOL cases, no written decision had yet been drafted. We regard the issue of timely writing of a decision for all cases - not just ones involving the running of the SOL - as crucial and thus suggest that it is dealt with in a future audit.

According to the total number of audited cases, the relative SOL had run in 105 cases, whereas the absolute SOL had run in 48 cases. See Table 1 of the Appendix for a list of all 153 cases.

Recommendation

- In order to obtain a complete - Kosovo-wide - picture on this issue, a KJC letter should be sent to all courts with a request to complete a table showing all cases involving the running of relative and absolute SOL regardless of whether a decision has been written or not.
- A procedure should be implemented to ensure the writing of decisions within a reasonable timeframe after the running of the SOL.

5.2. Issues concerning cases in which the relative SOL had run

Findings

After an analysis of the 105 cases in which the relative SOL had run, the auditors established the following:

Fifty-six (56) of 105 cases indirectly resulted from the resignation of a judge. After the judge resigned, the relative SOL ran in all 56 cases before the judge's cases were reassigned to another judge. Thus, the running of the SOL was directly related to an unduly slow case redistribution process which

¹² See Footnote 4 for explanation of JAS computation.

resulted from a management approach to await the arrival of a new “criminal” judge” rather than to reassign the cases to existing judges.

The judge shortage facing some courts places an additional burden on court managers to maximize their use of existing judicial resources. While it is understandable that Court Presidents would wish to assign criminal matters (or civil matters) only to specific judges whom they deem most capable of handling them, sometimes this is simply not an option. In particular, when the relative SOL is in danger of running on a group of criminal cases, all judges working in a court should be prepared to take their fair share of the cases in order to avoid the SOL from running.¹³

With regard to the issue of action needed to reset the relative SOL, during the audit it became clear that some judges have different points of view regarding their interpretation of key language in Article 91 of the PCCK. Article 91 defines the sort of actions which cause the relative SOL period to be reset. In relevant part, Article 91 states:

The period of statutory limitations is interrupted by every act undertaken for the purpose of criminal prosecution of the criminal offence committed (Art. 91, para. 3). . . . A new period of statutory limitations will commence after each interruption. (Art. 91, para. 5).

Through a review of all files, JAS found that most judges appear to believe that actions such as a) issuance of an arrest warrant, b) issuance of summons, c) setting a court hearing, d) issuance of an indictment are sufficient actions toward criminal prosecution under Article 91 to interrupt the running of the period for the relative SOL.

However, in 5 of the audited cases, JAS found that judges closed cases based on their belief that the relative SOL had run even though actions (ie. issuance of warrants, summons, indictments etc.) had clearly taken place within an appropriate time period.

It is not within the JAS’s mandate to advocate one legal interpretation over another. Rather, JAS is obliged to point out significant inconsistencies in the application of the laws by Kosovo’s courts. Nevertheless, as high level court managers begin to address this matter, JAS wishes to point out that several articles within the Law on Criminal Procedure (LCP)¹⁴ and the Provisional Criminal Procedure Code of Kosovo (PCPCK)¹⁵ provide guidance as to what actions are considered to be actions which interrupt the deadline of the relative SOL for criminal prosecution.

¹³ Here, JAS points out that no municipal court judge in Kosovo is hired to work only on specific matters be they criminal, civil, or execution. Rather, all such judges come to their posts as generalists capable of handling all cases the court president deems it necessary to assign them.

¹⁴ See The Law on Criminal Procedure (Chapters IV, XVII, XX, XXV, XXXIII) Official Gazette of SFRY, 26/1986.

¹⁵ See Provisional Criminal Procedure Code of Kosovo (Chapters IV, XXV, XXVIII, XXX, XXXIII, XL, L) UNMIK Reg. No. 2003/26.

Recommendations

- In order to evenly distribute caseload and avoid the SOL, court management should consider abandoning the principle that municipal court judges are only assigned to specific types (criminal, civil, execution) of cases. This will help courts avoid circumstances where criminal cases remain unassigned for extended periods of time.
- Court management should undertake appropriate actions to reduce the risk of the relative SOL by requesting a special report from each judge every 6 months for cases in which the relative SOL is in danger of running.
- The Supreme Court should consider the issuance of a judicial directive with regard to which court actions interrupt the running of the relative SOL in criminal prosecutions.

5.3. Identification and assessment of critical points in the system of criminal prosecution which cause the running of the absolute SOL

Findings

With regard to the 48 cases wherein the absolute SOL had run, the main reasons for the running of the SOL period in order of frequency are as follows:

a) Unsuccessful location of offender: Twenty-eight (28) cases reached the absolute SOL due to either an unknown or incorrect address, or due to defendants living outside of Kosovo. With regard to unknown or incorrect addresses, JAS testing and interviews revealed a number of findings. First, in some cases, indictments, proposed indictments or requests for criminal investigations¹⁶ arrived at the courts without complete addresses or requisite personal information of the criminal defendant. Rather than seeking more accurate information from the prosecutor, courts have tried to summons the defendant with the limited information they received. Second, when postal delivery or court delivery of a summons to the defendant fails twice due to an address change or unknown address, in a few cases courts did not take necessary measures to secure their appearance in court.

b) Unsuccessful identification of the offender: In 10 forest theft cases, the Kosovo Forest Authority (KFA) submitted criminal reports to the prosecutor's office with inaccurate information regarding the defendant's identity. In each case, the prosecutor forwarded a proposed indictment

¹⁶ Although JAS found 3 requests for investigations with significant delays related to problems locating the defendant. Due to constant court action, none of these cases have surpassed the relative SOL. However, in each of these cases, the investigative judges have allowed more than 6 months to pass without informing the Court President about the cause of investigative delay. See CPL Article 175.

containing the same inaccurate information to the municipal court. The inaccuracies in each indictment were only discovered after the cases were assigned to a judge and a hearing was scheduled. In some cases, the court found the name of the offender to be a common name in the area. In other cases, the court found that the offender's name had been fabricated. However, in all such cases, the court's repeated attempts to identify the defendant proved unsuccessful and the absolute SOL (4 years) ran out. Pre-indictment verification of a criminal defendant's identity would substantially decrease the chances that the absolute SOL would run in such cases.

c) Unsuccessful delivery of summons due to security-related issues: From the period 2000-2003, lack of PISG security and access to some Serbian minority communities prevented service of summons to Serbian minority defendants in 9 cases. The postal service did not function in the areas concerned until late 2003. Meanwhile, court delivery of summons in these minority areas gradually improved from the period of 2000 through 2003. Through court interviews, JAS found that this problem has resolved itself through the further development of the postal service and the easing of tensions in the region.

d) Unsuccessful completion of a case while on appeal: In 1 case, the absolute SOL ran out while the case was pending before the appellate court. This apparently resulted from a failure of the 2nd instance court to prioritize a case with a small amount of time remaining in an absolute SOL period of six years.

Recommendations

Cases involving the unsuccessful location of the offender

- Upon receiving proposed indictments or requests for investigations with incomplete information regarding the defendant, Court managers should consider returning such documents to the prosecutor's office with a request to complete information on the defendant within a specified time period.
- Court managers should seek improved cooperation between courts and all authorities in a position to assist the court with locating and securing defendants for court hearings. For example, the Civil Registry Service may assist the court by identifying a new address for a defendant, whereas in addition to securing defendants for trial, the Kosovo Police Service are obliged to respond to both court requests for verification of defendant's addresses and/or identity.
- Depending upon the seriousness of the criminal offence, the office of the prosecutor may request, and the court may apply a variety of security measures (ie. passport confiscation, setting bail) to ensure the defendant's further availability to the court.

Cases involving the unsuccessful identification of the offender

- Court Managers should improve the system of discovering the identity of criminal offenders by convincing prosecutor office managers about the importance of pre-indictment identification of criminal defendants.
- Upon the creation of the Prosecutor Council of Kosovo (PCK), the KJC should consider raising this matter with the PCK stressing the importance of early identification of criminal defendants before proposed indictments are filed with the court.

Unsuccessful completion of a case while on appeal

- Ensure better cooperation between 1st & 2nd instance courts by setting up procedures that will identify & prioritize cases according to the danger that the absolute SOL (this is elaborated further in finding 5.5.).

5.4. Cases on appeal in the court of second instance (District Court)

Findings

We identified 10 cases currently with the court of second instance awaiting court decisions. Two (2) such cases arrived in 2001, while 8 arrived in 2002.

Naturally, the time the cases have spent in the court of second instance increases the risk that the absolute SOL will run.

Recommendations

- Consider implementing measures requiring the management of the court of first instance to inform the management of second instance court about cases which - at the time of transfer - are at risk of reaching the absolute SOL deadline within the following year. This could be done by attaching a note with the date of the SOL deadline to the cases referred to the court of the second instance.

5.5. Controls ensuring that the relative and absolute SOL do not run

Findings

In the course of our audit we have identified several controls which have enabled court managers to supervise the progress of cases in order to avoid the running of the relative SOL at all times, and the absolute SOL whenever possible.

They are as follows:

- a) A considerable number of regularly scheduled legal actions have been taken by the court to prevent the running of the relative SOL
- b) Courts have prioritized old cases, thus limiting the chances that the absolute SOL will run.
- c) Decisions are usually written soon after the period of absolute SOL runs
- d) Quarterly reports are submitted to the court presidents by each of the judges

However, there is no formal control mechanism focused on preventing the running of the SOL

Recommendations

- Setting up formal management control by reporting on cases close to reaching the relative SOL and the absolute SOL.
- Setting up formal management control to ensure that relative and absolute SOL decisions are written within a reasonable time.
- The court managers should require judges to collect data regarding cases that have reached the relative or absolute SOL deadlines.
- The KJC should consider making some or all of the above reporting requirements mandatory.

5.6. Identification of cases in which the SOL may run in the course of 2006

Findings

In the three audited courts, we have identified a total of 34 cases that as of the end of 2006 could reach their respective SOL deadlines. See Table 2 of the Appendix for a list of those cases.

Recommendation

- We recommend that at the beginning of each calendar year each court identify cases that could reach their SOL deadlines during that year and devise a strategy that will ensure that they are dealt with as a priority.

5.7. Issues involving application of the new law

The majority of audited cases involve criminal offences committed during 2000, 2001 and 2002. They were processed in accordance with CPL and Criminal Law of Kosovo (CLK), whereas after the entering into force of the Provisional Criminal Code of Kosovo (PCCK) and PCPCK on 6 April 2004, the procedure was continued pursuant to the new laws. Article 550 of the PCPCK, states that "All cases initiated before the date of entry into force of the present Code but which have not been completed by this date shall be continued according to the provisions of the previous applicable law".

Upon a review of rulings in the audited cases, JAS noticed a significant inconsistency in the way courts proceeded with old cases. Article 2(2) of the new Criminal Code (PCCK) requires courts to apply the "*law more favourable to the perpetrator*" in the event of a change in the law.¹⁷ While some courts have limited their application of Article 2(2) to changes in *criminal law* (ie. CPL and PCCK) other courts have applied Article 2(2) to changes in the *criminal procedure laws of Kosovo* (ie. original Law on Criminal Procedure (LPP & PCPCK) as well. As a result, some courts are re-qualifying criminal offences pursuant to Article 302¹⁸ of the LCP which requires either a court session or a panel session. However, judges at other courts appear to be re-qualifying such offences without either a court session or a panel session.

In addition, these two different interpretations of 2(2) resulted in two differing calculations of relative and absolute SOL deadlines. Some courts have scheduled hearings in which they have re-qualified¹⁹ the criminal offence under Article 277 & 272 of the CPL. In such re-qualified criminal cases, the due date for the SOL was reckoned pursuant to the new Criminal Code (PCCK). Sometimes, however, courts have not made a legal re-qualification of the criminal offence but continued to use the procedure set forth by the old Law on Criminal Procedure (LCP), and thus have calculated the due date for the SOL pursuant to the old Criminal Law (CLK).

Finally, other courts, despite never having made a legal re-qualification of the criminal offence using the procedure set forth by the old Law on Criminal Procedure (LCP), calculated the due date of the SOL pursuant to the new Criminal Code (PCCK). Since the CLK and PCCK often set different SOL deadlines for the same criminal offences, the variety of court practices

¹⁷ PCCK Art. 2(2) states: "In the event of a change in the law applicable to a given case prior to final decision, the law more favourable to the perpetrator shall apply."

¹⁸ Article 302 requires the calling a court session in order to make a re-qualification or requesting a criminal panel to make the legal re-qualification of the criminal offence in a panel session by request of the presiding judge or individual judge. Article 302 must be read in conjunction with Articles 277 & 272.

¹⁹ Re-qualification under Article 302 of CLP involves the substitution of the article describing the criminal offence in the old criminal code (CLK) with the article describing the criminal offence in the new criminal code (PCCK).

described above has resulted in courts setting different SOL deadlines for identical criminal offences.

The auditors also noticed that in such cases the prosecutor’s office did not file any appeals, indicating that they do not possess a proper control mechanism for following up on cases which they represent in court.

Recommendations

- We recommend that a careful look be taken into the process of applying the new laws. A Supreme Court directive would ensure proper application and common practices in all courts.

5.8. Identification of areas and issues that could be dealt with in future audits

In the course of this audit, the audit team identified several issues and areas within the system that could be dealt with in future audits. These were identified as a result of meetings with court officials, testing, observation and review of individual circumstances.

Here is the list of issues that could be the subject of future audits:

	Relevant area or issue	Suggested by:
1.	Availability of prosecutors in terms of how it influences efficiency of the courts	Court presidents during meetings
2.	Statute of limitations in regards to execution of criminal sanctions	Court presidents during meetings
3.	Cooperation with other public offices (police, central registry etc.) with regards to locating the suspect/defendant	Audit team as a result of audit fieldwork
4.	Audit of the process of delivering summons through court messenger / mail	Audit team as a result of audit fieldwork
5.	Inefficiency and disruptions in the judicial system as a result of changes in law	Audit team as a result of audit fieldwork
6.	Filling up of allocated but vacant judges’ seats	Court presidents during meetings
7.	Maintenance of the register book system in courts.	Audit team as a result of audit fieldwork
8.	Process of assigning cases to a judge	Audit team as a result of audit fieldwork
9.	Official mail receipt methodology	Audit team as a result of audit fieldwork
10.	Transfer of cases to another court	Audit team as a result of audit fieldwork

11	Timely writing of a decision by judge	Audit team as a result of audit fieldwork
----	---------------------------------------	---

Recommendation

- We recommend that the issues from the list above be included in the strategic plan of the JAS according to the results of the risk assessment scheduled for 2006.

6. APPENDICES

Table 1

This table covers all cases in which the statute of limitations ran.

Remark: in this chart some cases reached their SOL deadlines based on the old law, whereas others reached their SOL deadline based on the new code.

No.	No. of case	Type of crime	Starting date	Maximum penalty	Statute of limitations breach date
1.	P.No.03/2000	Unlawful detention, Article 63 par. 1 of CLS	16.11.1999	1 year	16.11 2003
2.	P.No.91/2003	Unlawful taking possession of public property Article 111 par. 1 of CLK	31.12.2000	1 year	31.12 2004
3.	P.No.182/2002	Unlawful taking possession of public property Article 111 par. 1 of CLK	01.01 2001	1 year	01.01 2005
4.	P.No.34/2000	Forest theft Article 130 par. 1 of CLK	12.08 1999	1 year	12.08.2003
5.	P.No.20/2000	Forest theft Article 130 par. 2 of CLK	30.10 1999	3 years	30.10 2005
6	P.No.41/2000	Forest theft Article 130 par. 1 of CLK	15.08 2000	1 year	15.08 2004
7.	P.No.89/2001	Forest theft Article 130 par. 1 of CLK	18.08 2001	1 year	18.08 2005
8	P.No.149/2001	Forest theft Article 130 par. 1 of CLK	17.07 2001	1 year	17.07.2005
9	P.No.202/2002	Forest theft Article 130 par. 1 of CLK	08.05.2001	1 year	08.05.2005
10	P.No.142/2001	Forest theft Article 130 par. 1 of CLK	31.12.2001	1 year	31.12.2005
11	P.No.93/2001	Forest theft Article 130 par. 1 of CLK	31.07.2001	1 year	31.07 .2005
12	P.No.95/2001	Forest theft Article 130 par. 1 of CLK	22.08.2001	1 year	22.08.2005
13	P.No.177/2004	Fraud, Article 261 par. 1 of PCCK (140 par.1 of CLK)	13.06.1998	3 years	13.06.2004
14	P.No.123/2003	Fraud, Article 261 par. 1 of PCCK (140	31.12.1999	3 years	31.12.2005

		par.1 of CLK)			
15	P.No.229/2000	Forest theft Article 130 par. 2 of CLK	18.11.1999	3 years	18.11.2002
16	P.No.237/2000	Forest theft Article 130 par. 1 of CLK	29.01.2000	1 year	29.01.2004
17	P.No.238/2000	Forest theft Article 130 par. 1 of CLK	09.02.2000	1 year	09.02.2004
18	P.No.247/2000	Forest theft Article 130 par. 1 of CLK	16.06.2000	1 year	16.06.2004
19	P.No.200/2000	Forest theft Article 130 par. 2 of CLK	18.11.1999	3 years	18.11.2005
20	P.No.228/2000	Forest theft Article 130 par. 2 of CLK	18.11.1999	3 years	18.11.2002
21	P.No.224/2000	Forest theft Article 130 par. 2 of CLK	18.11.1999	3 years	18.11.2002
22	P.No.223/2000	Forest theft Article 130 par. 2 of CLK	18.11.1999	3 years	18.11.2002
23	P.No.221/2000	Forest theft Article 130 par. 2 of CLK	18.11.1999	3 years	18.11.2002
24	P.No.219/2000	Forest theft Article 130 par. 2 of CLK	22.09.1999	3 years	22.11.2005
25	P.No.217/2000	Forest theft Article 130 par. 2 of CLK	22.09.1999	3 years	22.09.2005
26	P.No.216/2000	Forest theft Article 130 par. 1 of CLK	22.09.1999	1 year	22.09.2005
27	P.No.210/2000	Forest theft Article 130 par. 2 of CLK	29.09.1999	3 years	29.09.2002
28	P.No.208/2000	Forest theft Article 130 par. 2 of CLK	23.08.1999	3 years	23.08.2002
29	P.No.207/2000	Forest theft Article 130 par. 2 of CLK	29.09.1999	3 years	29.09.2002
30	P.No.206/2000	Forest theft Article 130 par. 2 of CLK	29.09.1999	3 years	29.09.2002
31	P.No.205/2000	Forest theft Article 130 par. 2 of CLK	18.11.1999	3 years	18.11.2002
32	P.No.204/2000	Forest theft Article 130 par. 2 of CLK	29.09.1999	3 years	29.09.2002
33	P.No.203/2000	Forest theft Article 130 par. 2 of CLK	22.09.1999	3 years	22.09.2002
34	P.No.202/2000	Forest theft Article 130 par. 2 of CLK	16.08.1999	3 years	16.08.2002
35	P.No.502/2002	Forest theft Article 130 par. 1 of CLK	30.10.2002	1 year	30.10.2005.
36	P.No.572/2002	Removal or damage of the official seal or sign Article 192 par. 1 of CLK	17.07.2002	1 year	17.07.2004
37	P.No.68/2002	Forest theft Article	04.02.2002	1 year	04.02.2004

		130 par. 1 of CLK			
38	P.No.165/2002	Forest theft Article 130 par. 1 of CLK	25.03.2002	1 year	25.03.2004
39	P.No.182/2002	Forest theft Article 130 par. 1 of CLK	21.10.2000	1 year	21.10.2004
40	P.No.313/2001	Forest theft Article 130 par. 1 of CLK	28.05.2001	1 year	28.05.2004
41	P.No.413/2001	Forest theft Article 130 par. 1 of CLK	30.10.2001	1 year	30.10.2004
42	P.No.461/2001	Forest theft Article 130 par. 1 of CLK	26.10.2001	1 year	26.10.2004
43	P.No.309/2000	Light bodily injury, Article 39 par. 2 pf CLK	14.12.1999	3 years	14.12.2004
44	P.No.348/2000	Extortion, Article 149 par. 1 of CLK	23.12.1999	5 years	23.12.2004
45	P.No.325/2000	Forging a document, Article 2003 par.3 of CLK	07.09.2000	5 years	07.09.2005
46	P.No.391/2000	Forest theft Article 130 par. 1 of CLK	24.10.2002	1 years	24.10.2004
47	P.No.175/2001	Forest theft Article 130 par. 1 of CLK	30.04.2001	1 year	30.04.2003
48	P.No.219/2001	Forging a document, Article 2003 par.3 of CLK	14.10.2000	5 years	14.10.2005
49	P.No.227/2001	Forging a document, Article 2003 par.3 of CLK	10.09.2000	5 years	10.09.2005
50	P.No.228/2001	Forging a document, Article 2003 par.3 of CLK	03.12.2000	5 years	03.12.2002
51	P.No.81/2001	Forging a document, Article 2003 par.3 of CLK	07.03.2001	5 years	07.03.2006
52	P.No.91/2001	Endangering public traffic Article 165 par. 1 of CLK	03.03.2001	3 years	03.03.2004
53	P.No.123/2001	Arbitrariness, Article 195 par. 1 of CLK	27.02.2001	6 months	27.02.2003
54	P.No.173/2000	Endangering the safety, Article 48 par. 2 in conjunction with Article 199 par. 1 of CLK	28.06.2000	5 years	26.06. 2005
55	P.No.168/2000	Larceny, Article 134 par. 1 of CLK	30.06.2000	5 years	30.06.2005

56	P.No.164/2000	Prevention of an official person from executing his official duties, Article 183 par. 2 of CLK	04.07.2000	3 years	04.07.2003
57	P.No.159/2000	Concealment, Article 154 par. 1 of CLK	05.05.2000	3 years	05.05.2003
58	P.No.110/2000	Larceny, Article 134 par. 1 of CLK	09.04.2000	5 years	09.04.2005
59	P.No.130/2000	Forest theft Article 130 par. 1 of CLK	09.04.2000	1 year	09.04.2004
60	P.No. 138/2000	Forest theft Article 130 par. 1 of CLK	02.06.2000	5 years	02.06. 2005
61	P.No. 149/2000	Forest theft Article 130 par. 1 of CLK	05.02.2000	1 year	05.02.2004
62	P.No. 146/2000	Larceny, Article 134 par. 1 of CLK	24.05.2000	5 years	24.05..2005
63	P.No. 142/2000	Forest theft Article 130 par. 1 of CLK	27.04.2000	1 year	27.04.2004
64	P.No. 140/2000	Forest theft Article 130 par. 1 of CLK	13.01.2000	1 year	13.01.2004
65	P.No. 52/2000	Forest theft Article 130 par. 1 of CLK	04.08.1999	1 year	04.08.2003
66	P.No. 53/2000	Forest theft Article 130 par. 1 of CLK	13.08.1999	1 year	13.08.2003
67	P.No. 60/2000	Forest theft Article 130 par. 1 of CLK	28.06.1999	1 year	28.06.2003
68	P.No. 62/2000	Forest theft Article 130 par. 1 of CLK	17.10.1999	1 year	17.10.2003
69	P.No. 66/2000	Forest theft Article 130 par. 1 of CLK	04.12.1999	1 year	04.12.2003
70	P.No. 67/2000	Forest theft Article 130 par. 1 of CLK	13.12.1999	1 year	13.12.2003
71	P.No. 69/2000	Forest theft Article 130 par. 1 of CLK	15.12.1999	1 year	15.12.2003
72	P.No. 71/2000	Forest theft Article 130 par. 1 of CLK	16.12.1999	1 year	16.12.2003
73	P.No. 76/2000	Forest theft Article 130 par. 1 of CLK	18.07.1999	1 year	18.07.2003
74	P.No. 79/2000	Forest theft Article 130 par. 1 of CLK	29.01.1999	1 year	29.01.2001
75	P.No. 80/2000	Endangering public traffic Article 165 par. 1 and 3 of CLK	02.04.2000	1 year	02.04.2002
76	P.No. 82/2000	Prevention of an official person from executing his official duties, Article 183	27.04.2000	3 years	27.04.2003

		par.1 and 2 of CLK			
77	P.No. 84/2000	Endangering the security Article 48 par.2 of CLK	19.04.2000	5 years	19.04.2005
78	P.No. 92/2000	Forest theft Article 130 par. 1 of CLK	18.12.1999	1 year	18.12.2003
79	P.No. 323/2000	Forging a document, Article 203 par 3 of CLK	14.09.2000	5 years	14.09.2005
80	P.No. 327/2000	Light bodily injury, Article 39 par. 2 of CLK	25.08.2000	3 years	25.08.2003
81	P.No. 329/2000	Fraud, Article 140 par.1 of CLK	02.02.2000	5 years	02.02.2005
82	P.No. 332/2000	Larceny Article 134 par. 1 of CLK	19.07.2000	5 years	19.07.2005
83	P.No. 339/2000	Forcing a document Article 203 par. 2 of CLK	15.09.1999	3 years	15.09.2005
84	P.No. 343/2000	Larceny Article 134 par. 1 of CLK	24.08.2000	5 years	24.08.2005
85	P.No. 351/2000	Larceny Article 134 par. 1 of CLK	18.08.2000	5 years	18.08.2005
86	P.No. 354/2000	Light bodily injury Article 39 par.2 of CLK	22.06.2000	3 years	22.06.2003
87	P.No. 363/2000	Forest theft Article 130 par. 1 of CLK	15.08.2000	1 year	15.08.2002
88	P.No. 368/2000	Forest theft Article 130 par. 2 of CLK	15.08.2000	3 years	15.08.2003
89	P.No. 369/2000	Forest theft Article 130 par. 2 of CLK	20.09.2000	3 years	20.09.2003
90	P.No. 385/2000	Manslaughter Article 34 par. 1 of CLK	27.08.2000	5 years	27.08.2005
91	P.No. 389/2000	Forest theft Article 130 par. 1 of CLK	25.10.2000	1 year	25.12.2004
92	P.No. 152/2001	Forest theft Article 130 par. 1 of CLK	27.03.2001	1 year	27.03.2002
93	P.No. 163/2001	Forest theft Article 130 par. 1 of CLK	26.03.2001	1 year	26.03.2005
94	P.No. 164/2001	Forest theft Article 130 par. 1 of CLK	28.03.2001	1 year	28.03.2005
95	P.No. 173/2001	Forest theft Article 130 par. 1 of CLK	24.04.2001	1 year	24.04.2003
96	P.No. 229/2001	Forging a document Article 203 par. 1 and 3 of CLK	03.09.2000	5 years	03.09.2005
97	P.No. 235/2001	Forging a document	24.12.2000	5 years	24.12.2005

		Article 203 par. 1 and 3 of CLK			
98	P.No. 237/2001	Forging a document Article 203 par. 1 and 3 of CLK	20.12.2000	5 years	20.12.2005
99	P.No. 253/2001	Forest theft Article 130 par. 1 of CLK	24.04.2001	1 year	24.04.2005
100	P.No. 277/2001	Unlawful taking possession of public property Article 111 par. 1 of CLK	21.11.1999	1 year	21.11.2003
101	P.No. 391/2002	Light bodily injury, Article 39 par. 1 of CLK	31.08.2002	1 year	31.08.2004
102	P.No. 214/2002	Arbitrariness Article 195 par. 1 of CLK	25.05.2002	6 months	25.05.2004
103	P.No. 242/2002	Endangering public traffic and forest theft; Article 165 par. 1-3 and Article 130 par.1 of CLK	02.04.2001	1 year	02.04.2003
104	P.No. 70/2000	Forest theft Article 130 par. 1 of CLK	25.10.1999	1 year	25.10.2003
105	P.No. 284/2002	Forest theft Article 130 par. 1 of CLK	14.06.2002	1 year	14.06.2004
106	P.No. 303/2002	Defamation Article 64 par. 1 and 2 of CLK	27.06.2002 28.06.2002	1 year	28.06.2004
107	P.No. 351/2002	Larceny Article 134 par. 1 of CLK	04.07.2001	5 years	04.07.2006
108	P.No. 385/2002	Threat with a dangerous tool in a brawl or a quarrel Article 41 of CLK	06.09.2002	6 months	06.09.2004
109	P.No. 38/2000	Forest theft Article 130 par. 1 of CLK	31.09.1999	1 year	31.09.2001
110	P.No. 30/2000	Endangering public traffic Article 165 par. 3 of CLK	02.03.2000	1 year	02.03.2002
111	P.No. 03/2000	Violation of freedom of choice in voting Articles 52, 53, 39 par. 4 and 1 in conjunction with Article 65 par. 1 of CLK	15.08.1999	1 year	15.08.2001
112	P.No. 284/2000	Forest theft Article 130 par. 2 of CLK	18.11.1999	3 years	18.11.2002
113	P.No. 283/2000	Forest theft Article	18.10.1999	3 years	18.10.2001

		130 par. 2 of CLK			
114	P.No. 282/2000	Forest theft Article 130 par. 2 of CLK	18.11.1999	3 years	18.11.2002
115	P.No. 281/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
116	P.No. 280/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
117	P.No. 278/2000	Forest theft Article 130 par. 2 of CLK	18.10 .1999	3 years	18.10.2002
118	P.No. 277/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
119	P.No. 276/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
120	P.No. 275/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
121	P.No. 274/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
122	P.No.273/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
123	P.No.272/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
124	P.No.271/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
125	P.No.270/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
126	P.No.269/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
127	P.No.268/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
128	P.No.266/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
129	P.No.265/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
130	P.No.264/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
131	P.No.263/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
132	P.No.262/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
133	P.No.469/2002	Forest theft Article 130 par. 1 of CLK	09.03.2001	6 months	09.03.2005
134	P.No.199/2000	Forest theft Article 130 par. 1 of CLK	18.10.1999	1 year	18.10.2001
135	P.No.197/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
136	P.No.196/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
137	P.No.195/2000	Forest theft Article	18.10.1999	3 years	18.10.2002

		130 par. 2 of CLK			
138	P.No.192/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
139	P.No.191/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
140	P.No.189/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
141	P.No.188/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
142	P.No.187/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
143	P.No.185/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
144	P.No.184/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
145	P.No.183/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
146	P.No.179/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
147	P.No.177/2000	Forest theft Article 130 par. 2 of CLK	18.10.1999	3 years	18.10.2002
148	P.No.11/2001	Forest theft Article 130 par. 2 of CLK	14.12.2000	3 years	14.12.2004
149	P.No.18/2001	Forging a document Article 203 par. 3 of CLK	05.02.2001	3 years	05.02.2004
150	P.No.37/2001	Forest theft Article 130 par. 1 of CLK	17.11.2000	1 year	17.11.2004
151	P.No.59/2001	Illicit trade Article 116 par. 1 of CLK	29.01.2001	3 years	29.01.2004
152	P.No.72/2001	Forest theft Article 130 par. 2 of CLK	10.01.2001	3 years	10.01.2004
153	P.No.60/2001	Forging a document Article 203 par. 1 and 3 of CLK	14.02.2001	3 years	14.02.2004

*More detailed information regarding individual cases are recorded in the audit file.

Table 2

This table includes all cases under the risk of reaching their respective SOL deadlines in 2006.

Nr.	Case No.	Type of crime	Starting date	Maximum penalty	Statute of limitations breach date
1.	P.No.296/2002	Threat with a dangerous tool in a brawl or a quarrel Article 41 of CLK	04.05.2002	6 months	04.05.2006
2.	P.No.135/2002	Unlawful detention Article 63 of CLS	14.05.2002	3 years	14.05.2006
3.	P.No.06/2001 P.No.33/2006	Unlawful possession of weapons or explosive substance Article 199 al.1 par. 1 of CLK	14.11.2000	3 years	14.11.2006
4.	P.No.282/2002 P.No.302/2004	Unlawful possession of weapons or explosive substance Article 199 al.1 par. 1 of CLK	06.04.2000	3 years	06.04.2006
5	P.No.412/2002	Endangering public traffic Article 165 par. 1 and 3 of CLK	26.08.2002	1 year	26.08.2006
6	P.No.413/2002	Unlawful taking possession of public property Article 111 par. 1 of CLK	02.10.2002	1 year	02.10.2006
7.	P.No.442/2002	Endangering public traffic Article 165 par. 3 of CLK	09.05.2002	1 year	09.05.2006
8.	P.No.435/2002	Endangering public traffic Article 165 par. 3 of CLK	01.09.2002	1 year	01.09.2006
9.	P.No.119/2002	Forest theft	20.09.2000	3 years	20.09.2006

		Article 130 par. 2 of CLK			
10.	P.No.224/2002	Endangering public traffic Article 165 par. 3 of CLK	26.05.2002	1 year	26.05.2006
11.	P.No.565/2002	Removal or damage of the official seal or sign Article 192 par. 1 of CLK	21.11.2002	1 year	21.11.2006
12.	P.No.574/2002	Removal or damage of the official seal or sign Article 192 par. 1 of CLK	27.11.2006	1 year	27.11.2006
13.	P.No.241/2002	Endangering public traffic Article 165 par. 3 of CLK	08.04.2002	1 year	08.04.2006
14.	P.No.561/2002	Removal or damage of the official seal or sign Article 192 par. 1 of CLK	21.11.2002	1 year	21.11.2006
15.	P.No.273/2002	Endangering public traffic Article 165 par. 3 of CLK	25.07.2000	1 year	25.07.2006
16.	P.No.274/2002	Endangering public traffic Article 165 par. 3 of CLK	19.08.2000	1 year	19.08.2006
17.	P.No.231/2002	Endangering public traffic Article 165 par. 3 of CLK	06.03.2000	1 year	06.03.2006
18.	P.No.491/2002	Endangering public traffic Article 165 par. 3 of CLK	09.07.2000	1 year	09.07.2006
19.	P.No.261/2002	Endangering public traffic Article 165 par. 3 of CLK	18.05.2000	1 year	18.05.2006
20.	P.No.81/2002	Endangering public traffic Article 165 par. 3 of CLK	29.04.2000	1 year	29.04.2006

21.	P.No.545/2002	Forest theft Article 130 par. 2 of CLK	13.11.2002	1 year	13.11.2006
22.	P.No.36/2001	Forest theft Article 130 par. 2 of CLK	17.11.2000	1 year	17.11.2006
23.	P.No.294/2000	Endangering public traffic due to intoxication Article 166 par. 1 of CLK	21.08.2000	3 years	21.08.2006
24.	P.No.491/2001	Light bodily injury Article 39 par. 2 of CLK	19.09.2000	3 years	19.09.2006
25.	P.No.355/2000	Light bodily injury Article 39 par. 2 of CLK	05.09.2000	3 years	05.09.2006
26.	P.No.574/2002	Removal or damage of the official seal or sign Article 192 par. 1 of CLK	27.11.2002	1 year	27.11.2006
27.	P.No.462/2002	Forest theft Article 130 par. 1 of CLK	18.09.2002	1 year	18.09.2006
28.	P.No.484/2002	Forest theft Article 130 par. 1 of CLK	28.09.2002	1 year	28.09.2006
29.	P.No.522/2002	Unlawful taking possession of public property Article 111 par. 1 of CLK	31.03.2002	1 year	31.03.2006
30.	P.No.38/2001	Forest theft Article 130 par. 2 of CLK	11.11.2000	3 years	11.11.2006
31.	P.No.40/2001	Forest theft Article 130 par. 2 of CLK	07.11.2000	3 years	07.11.2006
32.	P.No.131/2002	Endangering public traffic Article 165 par. 3 of CLK	29.07.2002	1 year	29.07.2006
33.	P.No.3000/2002	Forest theft Article 130 par. 1 of CLK	27.06.2002	1 year	27.06.2006
34.	P.No.499/2002	Forest theft Article 130 par. 1 of CLK	05.10.2002	1 year	05.10.2006

Introduction to Internal Audit

5 April 2006
Tihomir Grbic



KOSOVO JUSTICE SYSTEM REFORM ACTIVITY
Introduction to Internal Audit
Tihomir Grbic, 5 April 2006

Key questions:

- What is Internal Audit?
- How is it used?
- Why is it important?
- How does it work?



Key points of this presentation

1. Where does *internal audit* come from and why did we establish it?
2. Why is it necessary?
3. What internal audit should not be...
4. How to cooperate with auditors?
5. Questions and answers



1. Where does *internal audit* come from and why did we establish it?



KOSOVO JUSTICE SYSTEM REFORM ACTIVITY
Introduction to Internal Audit
Tihomir Grbic, 5 April 2006

LEGAL BASIS

Establishment of an independent Internal Audit function is mandatory to comply with local legislation as well as with European laws



KOSOVO JUSTICE SYSTEM REFORM ACTIVITY
Introduction to Internal Audit
Tihomir Grbic, 5 April 2006

The Development of Public Internal Financial Control (PIFC) including the implementation of an ***independent Internal Audit function*** in the Public Administration refers directly to one of the chapters of the “**acquis communautaire**”.

It also contributes to the improvement of the management quality and better ***governance***.

It introduces the notion of ***accountability*** that makes a Budget User Head responsible for the ***efficient*** use of resources in the achievement of business objectives.



THE NATURE OF INTERNAL AUDIT (1)

The independent appraisal of the adequacy, application and effectiveness of the organisation's systems of internal control.



KOSOVO JUSTICE SYSTEM REFORM ACTIVITY
Introduction to Internal Audit
Tihomir Grbic, 5 April 2006

THE NATURE OF INTERNAL AUDIT (2)

The aim is to work with staff, managers and directors to help strengthen the framework of control by whatever means are appropriate.



KOSOVO JUSTICE SYSTEM REFORM ACTIVITY
Introduction to Internal Audit
Tihomir Grbic, 5 April 2006

TRADITIONAL APPROACH TO AUDIT

- Financial in nature
- Compliance-oriented
- Transactions-based
- Low level
- Low profile
- Poor status
- Judged by errors and frauds found



MODERN APPROACH TO AUDIT

- Broad scope
- Expertise in management control
- Systems-based
- High level
- High profile
- Professional status
- Judged by improvements in attitudes, systems, performance and accountability



2. Why is internal audit necessary?



KOSOVO JUSTICE SYSTEM REFORM ACTIVITY
Introduction to Internal Audit
Tihomir Grbic, 5 April 2006

The Role of Internal Audit... ... and the benefits



- Provide **assurance** on the adequacy, application and effectiveness of control, risk management and governance arrangements
- **Alert** management to significant weaknesses in control that may lead or have led to material error, loss, waste, harm or other undesired result and failure to achieve the desired level of performance
- **Advise** management and staff on improvements in control and performance



Internal Audit Has to comply with:

- Internationally recognised Standards for Internal Audit
- EU member States best practices in Governance
- National legal framework
- Organisation, missions and third level regulations in force in each budget organisation



Internal Audit is one cornerstone in PIFC

Financial
Management
(adequate segregation of duties
& delegation of responsibilities)



Assessment of the efficiency
of the controls
(internal audit)

ex-ante & ex-post
controls
(performed by the management)



USAID
FROM THE AMERICAN PEOPLE

KOSOVO JUSTICE SYSTEM REFORM ACTIVITY
Introduction to Internal Audit
Tihomir Grbic, 5 April 2006

3. What internal audit should not be?



KOSOVO JUSTICE SYSTEM REFORM ACTIVITY
Introduction to Internal Audit
Tihomir Grbic, 5 April 2006

Internal Audit is an independent function but not :

- A “free electron” in the organisation because it
 - contributes to a better achievement of the general objectives (system objectives)
 - reports to the highest non operational level
 - Performs audits according to strategic and annual plans
 - Writes regular reports on activities performed



Internal Audit serves management's interests

- Because it contributes to the improvement of efficiency but it is not
 - A perverse tool
 - The recommendations should not be preconceived
 - Audits are not vehicles for “subliminal” messages
 - A “grey eminence”
 - The ears and mouth of officials and managers
 - A means to apply pressure or to spy



Internal Audit assesses the system and the processes

- But auditors are not blind and deaf in front of irregularities
 - They warn the appropriate managers to take action against irregularities according to a clearly defined process
 - Based on this information, the managers respond with due diligence and appropriate actions
- Auditors also report about inaccuracies or discrepancies
 - Proposing recommendations for
 - possible review of financial accounts and affairs
 - Improvement of the financial elements of the system



The internal audit function has to be set up as a clearly identified unit

- Internal Audit is an independent function guaranteed by
 - location on the side of the highest non operational official
 - appointment of a trusted head and staffing with suitable profiles
 - professionalism stemming from the application of international standards
 - planning and regular reporting



Independence is guaranteed by professionalism

- The application of international standards and EU member countries best practices should improve professionalism and adequacy of methods
- Auditors should be recognised as able to
 - Assess the risks
 - Evaluate the quality of systems and processes
 - Recommend useful improvements
 - Behave properly when facing problems of independence or irregularities



Independence is guaranteed by planning and regular reporting

- Planning and regular reporting avoid the risks of
 - inadequate and incomplete coverage of the scope of activities
 - lack of follow through (ie. implementation) regarding agreed upon recommendations



4. The cooperation between courts and internal audit is a key for our joint success



KOSOVO JUSTICE SYSTEM REFORM ACTIVITY
Introduction to Internal Audit
Tihomir Grbic, 5 April 2006

Cooperation in preparing audit plan

- Strategic plan
 - Your input is necessary!
- Risk assesment
 - Some of you will be asked to participate!



Cooperation in working together in the same direction supporting independence of audit function

- Accepting auditor as your best friend
- Freely exchanging opinions, concerns and views
- Provide auditor all necessary documentation
- Respecting and supporting independence of audit function



Cooperation in agreeing and implementing recommendations

- Improving internal controls
- Accepting best practices
- Thinking about efficiency



5. Questions and answers

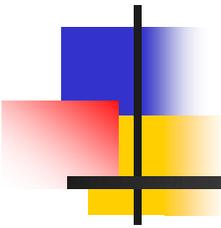


KOSOVO JUSTICE SYSTEM REFORM ACTIVITY
Introduction to Internal Audit
Tihomir Grbic, 5 April 2006

**Thank you for your attention!
Together we will succeed!**



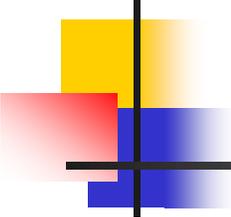
KOSOVO JUSTICE SYSTEM REFORM ACTIVITY
Introduction to Internal Audit
Tihomir Grbic, 5 April 2006



RISK ASSESSMENT AND STRATEGIC PLANNING

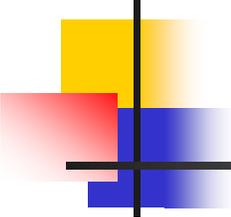
PRISTINA

May 2006



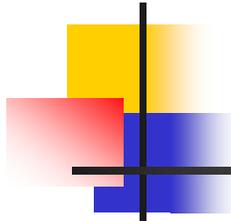
INTRODUCTION

- n You already have deep knowledge in audit !
 - n You know and use pragmatic and rational techniques to perform your audits
 - n Risk based audits are worldwide best practices
 - n Risk assessment is part a technique and part an art
 - n My purpose is make you become a kind of artist in risks



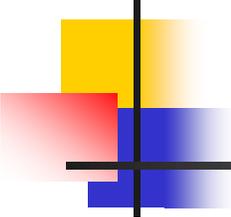
INTRODUCTION

- n Risk assessment and strategic planning in global audit process
 - n Audit resources must be deployed in a reasonable way, while neither over-auditing nor under-auditing
 - n Planning should take in account risks evaluated in a consensual way
 - n Planning gives visibility and legitimacy to audit and auditors
 - n Strategic planning is a tool to share scarce time resources available both for the management and auditors who participate in it



INTRODUCTION



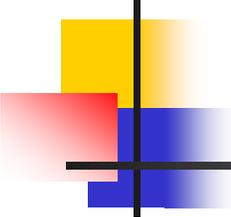


PROGRAM OF THE TRAINING

- n Missions and sub Missions identification
- n Processes and activities linked to the missions of your organisation
- n Identifying and weighting risks
- n Ranking processes regarding risks
- n Strategic planning
- n Manpower allocation
- n Annual audit plan

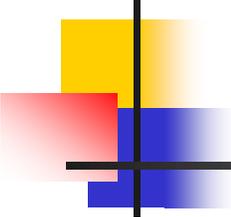
IDENTIFY MAIN MISSIONS OF YOUR ORGANISATION

Process	Tools	Output
<p>Step 1</p> <p>Identify and understand the organisation missions</p>	<ul style="list-style-type: none">n Find a sponsorn Interview with relevant and knowledgeable manager	<ul style="list-style-type: none">n List of main missions and allocated financial resources



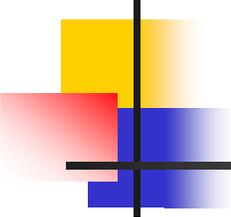
IDENTIFY MAIN MISSIONS OF YOUR ORGANISATION

- n Some examples of what is and is not a mission
 - n Fixing diseases is one of the main missions of an hospital but is not a mission of the ministry of health
 - n Recruiting appropriate staff is the mission of a recruiting agency but is not for a company or a minister
 - n Could you give me some examples ?
 - n
 - n



IDENTIFY MAIN MISSIONS OF YOUR ORGANISATION

- n Methods to identify the main missions of your organisation
 - n Consult available documentation
 - n Internal documents
 - n Information given to citizens
 - n Documents from project



IDENTIFY MAIN MISSIONS OF YOUR ORGANISATION

- n Missions identification should not follow from organisational structure since they are not set to serve the organisation but the structure should be set to achieve the missions. When identifying missions auditors should check:
 - n Wording (to prevent omissions)
 - n Whether all departments are represented
 - n Whether all means are represented

MAIN MISSIONS OF YOUR ORGANISATION

Carry out interviews relevant and knowledgeable manager(s)

- n Gain their view on key missions and policies of the your organisation
- n Get answer to that question : Why does this organisation exists ?

MAIN MISSIONS OF YOUR ORGANISATION

Carry out interviews relevant and knowledgeable manager(s)

- n Identify and understand the organisation mission(s)
- n a rough share of the total budget allocated to each mission.

MAIN MISSIONS OF YOUR ORGANISATION

Carry out interviews relevant and knowledgeable manager(s)

- n Come to the meeting with the high ranked officials
- n Draft before the organisation's mission

MAIN MISSIONS OF YOUR ORGANISATION

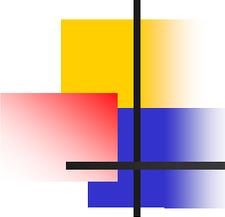
Carry out interviews relevant and knowledgeable manager(s)

- n Get before the budget information available
- n Seek official's view of how it is shared or allocated between the missions.

MAIN MISSIONS OF YOUR ORGANISATION

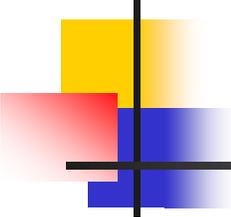
Carry out interviews relevant and knowledgeable manager(s)

- n Gain support by the top management
- n It is also highly useful to initiate the process by presenting it at the high level staff meeting.



CASE STUDY STEP 1

- n All along the training, you will have to practice concrete exercises about a public hospital
- n The Burgundy Island Hospital
- n You start now with step 1, identify the main missions of the public hospital
- n To share opinions and ideas, work will be carried out in small groups



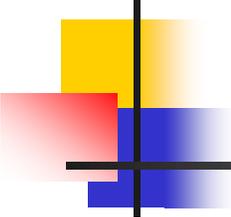
CASE STUDY PROPOSED SOLUTION FOR STEP 1

- n As you can see, the hospital role can be summarise in two main missions
- n What solutions have you proposed ?

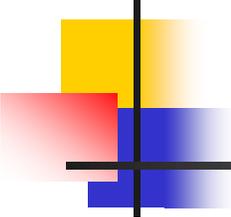
DEVELOPMENT OF MISSIONS IN SUB MISSIONS

Process	Tools	Output
<p>Step 2</p> <p>Further developments of missions into sub-missions</p>	<p>n Interview with higher operational level management</p>	<p>n Main missions breakdown into sub-missions</p>

DEVELOPMENT OF MISSIONS IN SUB MISSIONS



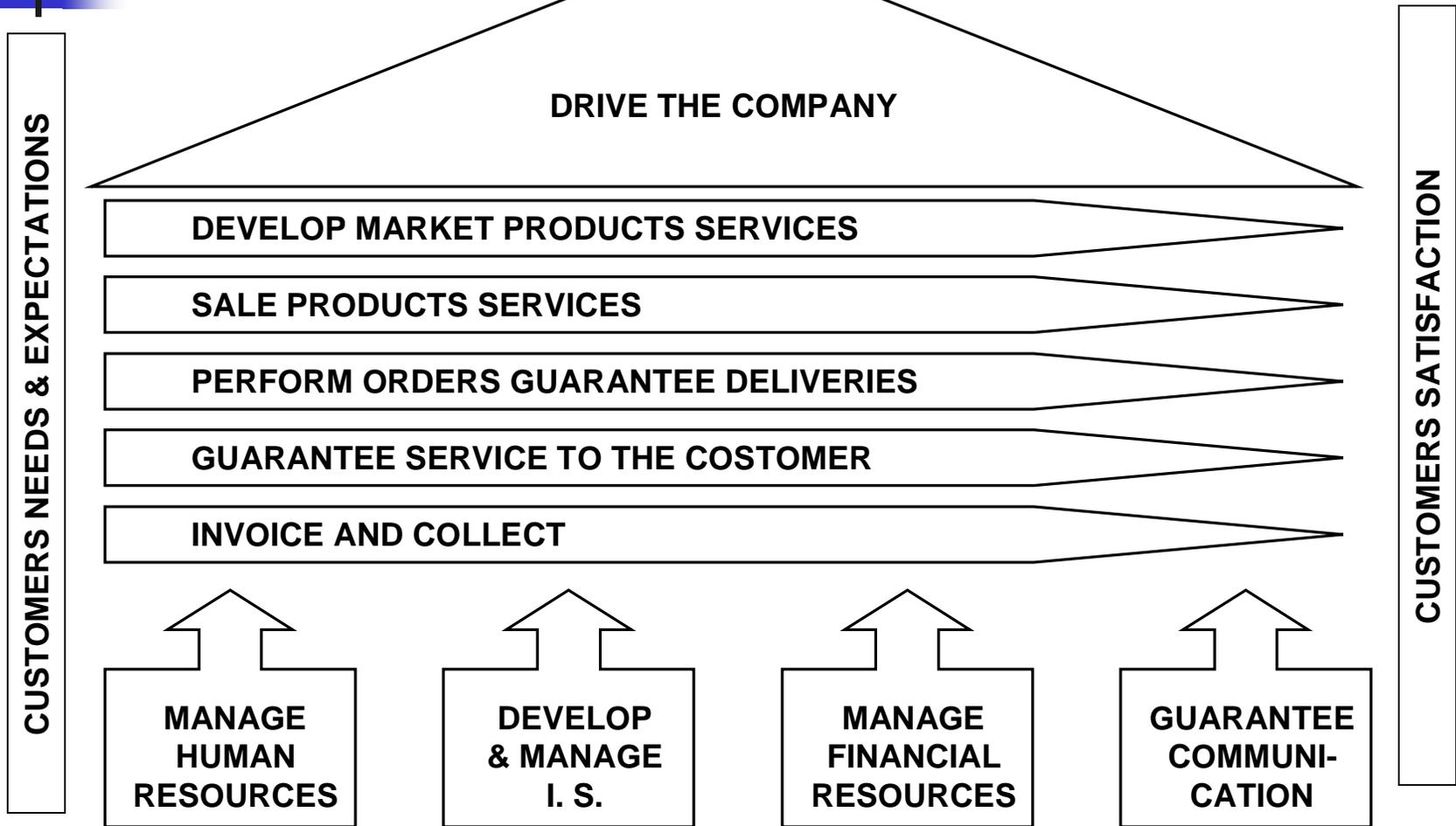
- n How to proceed ?
- n After having main missions identified (and agreed), a set of meetings is to be held on the middle-upper management level (i.e. in the ministry at the level of assistant minister). The purpose of these meetings is to identify in what ways business area under manager's responsibility contributes to achievement of the main missions.

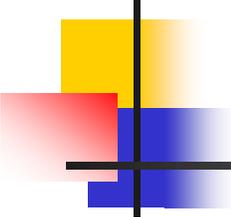


DEVELOPMENT OF MISSIONS IN SUB MISSIONS

- n Therefore, the expected input on this level are sub-missions related to the main missions.

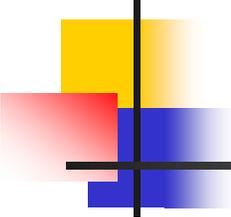
DEVELOPMENT OF MISSIONS IN SUB MISSIONS





CASE STUDY STEP 2

- n Based on the proposed solution, you will now, in sub-groups, try to identify sub-missions related to the two main missions of the Burgundy Island Hospital
- n At this stage, be careful not to go too much in details
- n As in step 1 you'll work in sub-groups

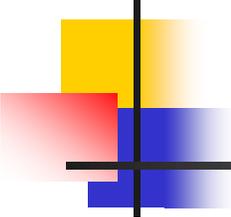


CASE STUDY PROPOSED SOLUTION FOR STEP 2

- n Don't forget that it is very important to remain as simple as possible
- n What solutions did you found ?

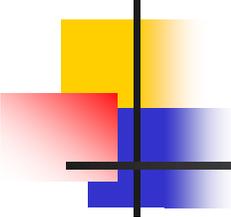
WEIGHTING THE CONTRIBUTION OF SUBMISSIONS TO MAIN MISSION

Process	Tools	Output
<p>Step 3</p> <p>Determine the significance of sub-missions in relation to organisation's main missions</p>	<p>n Interview with middle/operational manager</p>	<p>n Sub-mission weighting sheet in terms of its significance to the achievement of main objectives of the organisation</p>



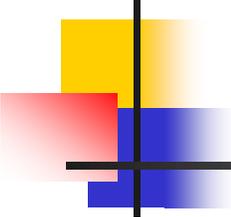
WEIGHTING THE CONTRIBUTION OF SUBMISSIONS TO MAIN MISSION

- n Why doing that ?
 - n That weighting will facilitate the ranking of activities and processes that contribute to the main missions of the organisation



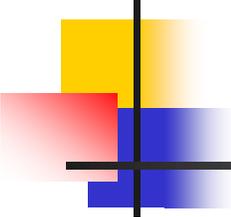
WEIGHTING THE CONTRIBUTION OF SUBMISSIONS TO MAIN MISSION

- n How doing that
 - n Assessment of the undesirable effect can be more effective when evaluating more characteristics connected to the organisation missions at the same time. The number of characteristics used for determining the risk significance level should be adequate (sufficient) so that the auditors may rely on comprehensive nature of the risk assessment.



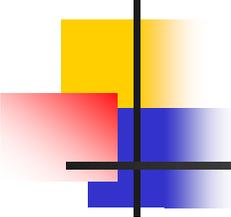
WEIGHTING THE CONTRIBUTION OF SUBMISSIONS TO MAIN MISSION (Method)

- n The significance level identification and determination criteria include, in particular, the following:



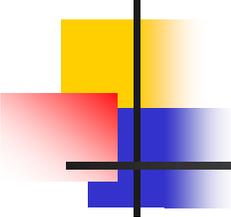
WEIGHTING THE CONTRIBUTION OF SUBMISSIONS TO MAIN MISSION (Method)

- a) financial and economic conditions (the size of assets, liquidity) and impact on the beneficiaries of services provided in the public interest, customers and suppliers (competitive environment),



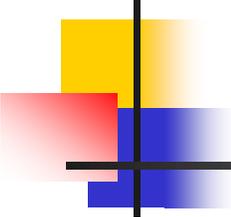
WEIGHTING THE CONTRIBUTION OF SUBMISSIONS TO MAIN MISSION (Method)

- b) the size and complexity of the assessed operations, programs and projects (for instance, multiple source financing and mutual relations among stakeholders' implementing structures),



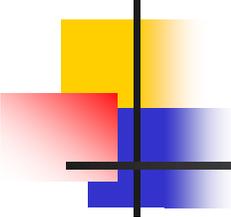
WEIGHTING THE CONTRIBUTION OF SUBMISSIONS TO MAIN MISSION (Method)

- c) organisational, operational, technological and/or economic changes and the need of strict supervision (influenced e.g. by transformation, political impacts, the pace of introduction of innovations and of systems and technology upgrades, the scope of investments and the type of their sources, employee turnover, information flow system),



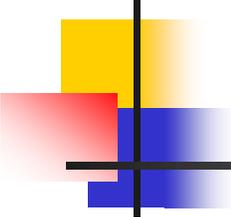
WEIGHTING THE CONTRIBUTION OF SUBMISSIONS TO MAIN MISSION (Method)

- d) changes in the external environment including the impact (pressure) this environment exerts on the chief executive of the SAB and the senior officers to favor certain adopted plan and objectives of the SAB,



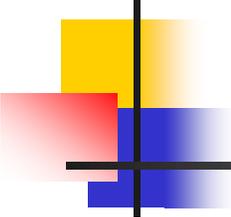
WEIGHTING THE CONTRIBUTION OF SUBMISSIONS TO MAIN MISSION (Method)

- e) ethical climate, competencies and integrity of the staff, the complexity of organisational and management structures,



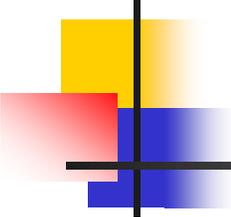
WEIGHTING THE CONTRIBUTION OF SUBMISSIONS TO MAIN MISSION (Method)

- f) the complexity of procedures of services provided in the public interest, e.g. with respect to the geographical distribution of individual operations or impalpability of actions needed to provide them,



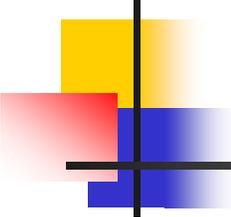
WEIGHTING THE CONTRIBUTION OF SUBMISSIONS TO MAIN MISSION (Method)

- g) information systems automation degree,
- h) internal control system adequacy and effectiveness,



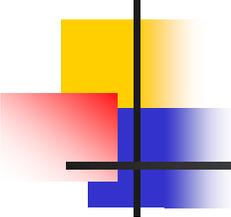
WEIGHTING THE CONTRIBUTION OF SUBMISSIONS TO MAIN MISSION (Method)

- n The following set of common characteristics usable for assessment of significance:
 - n A – contribution to achievement of the mission(s)
 - n Weighting 5
 - n a Little or no impact on mission(s) achievement [points 1]
 - n a Significantly contributing to mission(s) achievement [points 2]
 - n a Crucial for mission(s) achievement [points 3]



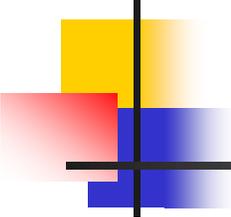
WEIGHTING THE CONTRIBUTION OF SUBMISSIONS TO MAIN MISSION (Method)

- n The following set of common characteristics usable for assessment of significance:
 - n B – value of resources
 - n Weighting 4
 - n b Transaction/Resources Value < €€?? MM
[points 1]
 - n b Transaction/Resources Value €€?? MM - ??
MM [points 2]
 - n b Transaction/Resources Value > €€?? MM
[points 3]



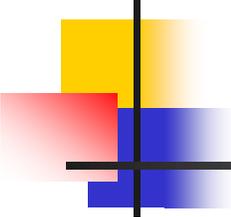
WEIGHTING THE CONTRIBUTION OF SUBMISSIONS TO MAIN MISSION (Method)

- n The following set of common characteristics usable for assessment of significance:
 - n C – impact on external stakeholders
 - n Weighting 4
 - n Impact on External Stakeholders [weighting 4]
 - n c Little or no impact [points 1]
 - n c Significant impact on external stakeholders [points 2]
 - n c Major impact on external stakeholders or high position on political agenda [points 3]



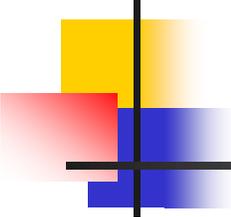
WEIGHTING THE CONTRIBUTION OF SUBMISSIONS TO MAIN MISSION (Method)

- n The following set of common characteristics usable for assessment of significance:
 - n D – impact on internal systems
 - n Weighting 2
 - n d Little or no impact [points 1]
 - n d Significant impact on internal systems [points 2]
 - n d Major impact on important internal systems [points 3]



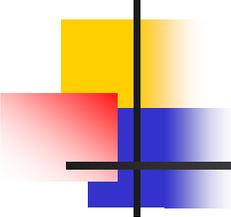
WEIGHTING THE CONTRIBUTION OF SUBMISSIONS TO MAIN MISSION (Method)

- n The following set of common characteristics usable for assessment of significance:
 - n E – complexity
 - n Weighting 1
 - n e One of the elements mentioned in the method [points 1]
 - n e Two to three of the elements mentioned in the method [points 2]
 - n e All of the elements mentioned in the method [points 3]



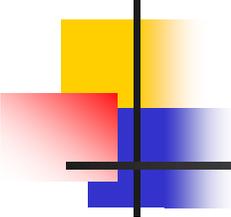
WEIGHTING THE CONTRIBUTION OF SUBMISSIONS TO MAIN MISSION (Method)

- n The following set of common characteristics usable for assessment of significance:
 - n F – vulnerability
 - n Weighting 3
 - n f System provides little weaknesses for threats of all kinds [points 1]
 - n f System provides some opportunity but no history of occurrence [points 2]
 - n f High risk and has a history of occurrence of attacks or disasters [points 3]



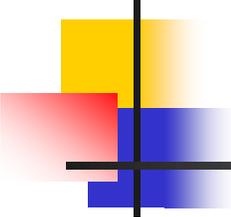
WEIGHTING THE CONTRIBUTION OF SUBMISSIONS TO MAIN MISSION (Method)

n Risk significance level = $A^*a + B^*b + C^*C + D^*d + E^*e + F^*f$



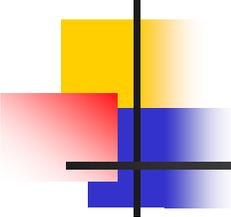
CASE STUDY STEP 3

- n Be careful in the weighting of sub missions, this step is important in the preparation of the strategic planning
- n For that you will work in sub-groups



CASE STUDY PROPOSED SOLUTION FOR STEP 3

- n This is a proposed solution
- n In real life, the result depends widely on the management opinion and of facts and evidences
- n What solutions did you found

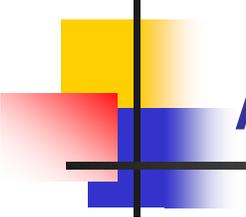


PROGRAM OF THE TRAINING

- n Missions and sub Missions identification
- n Processes and activities linked to the missions of your organisation
- n Identifying and weighting risks
- n Ranking processes regarding risks
- n Strategic planning
- n Manpower allocation
- n Annual audit plan

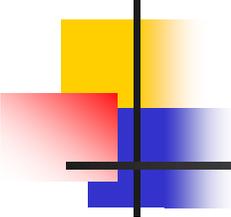
IDENTIFYING PROCESSES AND ACTIVITIES

Process	Tools	Output
<p>Step 4</p> <p>Identification of processes or activities directed to achievement of the organisation's missions</p>	<p>n Interview with Heads of divisions and other relevant middle management</p>	<p>n List of processes</p>



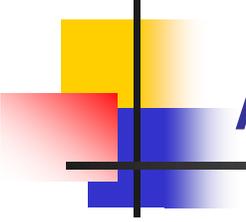
IDENTIFYING PROCESSES AND ACTIVITIES

- n Some examples of processes
 - n Payroll
 - n Procurement
 - n Accounting
 - n ...



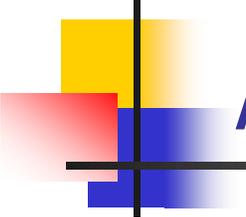
IDENTIFYING PROCESSES AND ACTIVITIES

- n Definition : A process is a set of linked actions to reach a common objective implying a progression to the objective.



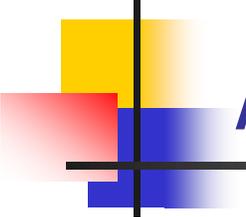
IDENTIFYING PROCESSES AND ACTIVITIES (Method)

- n Interviews with management at the appropriate level (i.e. usually heads of divisions for the ministry) are carried out in order to identify all the processes directed to achievement of main missions through the sub-missions.



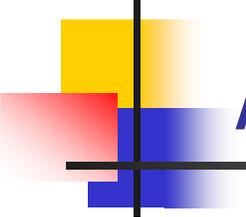
IDENTIFYING PROCESSES AND ACTIVITIES (Method)

- n The grouping of the processes is made according to their respective objectives (i.e. processes with identical, similar or complementary objectives are grouped together and linked with appropriate sub-missions).



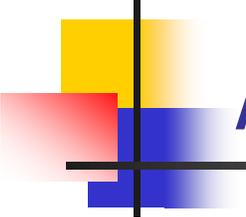
IDENTIFYING PROCESSES AND ACTIVITIES (Method)

- n The basis for this “catalogue” of processes or activities may be lines from the budget, functional organisation decree and similar documents.



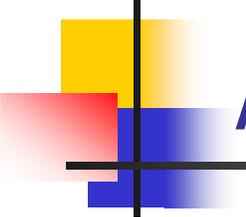
IDENTIFYING PROCESSES AND ACTIVITIES (Method)

- n Still, it is important to bear in mind that this information is only the basis for identification of the processes.



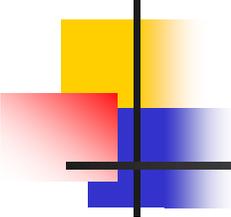
IDENTIFYING PROCESSES AND ACTIVITIES (Method)

- n The final confirmation of the existence of the process may be only obtained from the relevant manager, usually head of division.



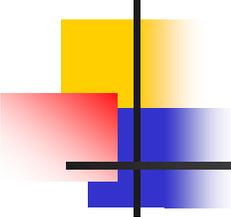
IDENTIFYING PROCESSES AND ACTIVITIES (Method)

- n If the end of a certain activity cannot be linked to sub-mission, the activity is most likely continued in other organisational unit. This commonly occurs since the processes do not necessarily match or follow organisational structure.



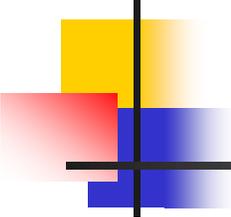
CASE STUDY STEP 4

- n This stage is very important
- n The processes identification is one of the most critical step of risks assessment
- n For that you will work in sub-groups



CASE STUDY PROPOSED SOLUTION FOR STEP 4

- n As you can see, it is still important to keep simple
- n Be careful, at the strategic plan level, you must stay at a global level of process
- n At the end of this stage, it is important to come back on missions and sub missions to check consistency of the founded results

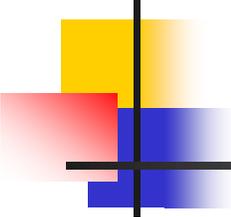


PROGRAM OF THE TRAINING

- n Missions and sub Missions identification
- n Processes and activities linked to the missions of your organisation
- n **Identifying and weighting risks**
- n Ranking processes regarding risks
- n Strategic planning
- n Manpower allocation
- n Annual audit plan

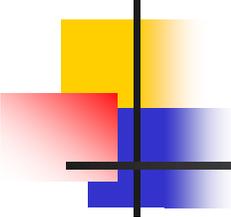
RISKS IDENTIFICATION

Process	Tools	Output
<p>Step 5</p> <p>Identification of risks associated with the processes</p>	<ul style="list-style-type: none">n Interview with Heads of divisions and other relevant middle managementn Knowledge of the businessn Past experience	<ul style="list-style-type: none">n List of processes with risks



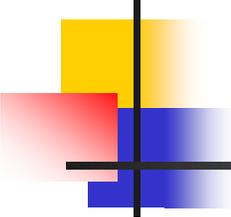
RISK DEFINITION

- n threat to the successful achievement of objectives of the processes



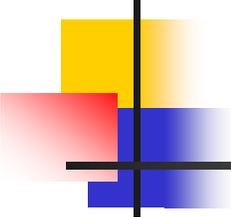
EXAMPLES OF RISKS

- n Anything that poses a threat to the achievement of a department's objectives, programs or service delivery for citizens;



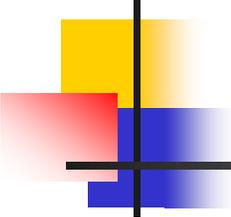
EXAMPLES OF RISKS

- n Anything that could damage the reputation of a department and undermine the public's confidence in it;



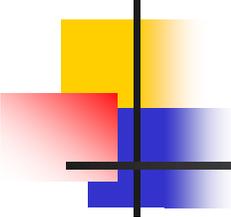
EXAMPLES OF RISKS

- n Failure to guard against impropriety, malpractice, waste or poor value for money;



EXAMPLES OF RISKS

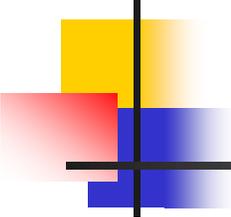
- n Failure to comply with regulations such as those covering health and safety and the environment;



EXAMPLES OF RISKS

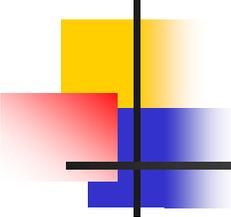
- n An inability to respond to or to manage changed circumstances in a way that prevents or minimises adverse effects on the delivery of public services.
- n ...See document given

RISKS IDENTIFICATION METHODS



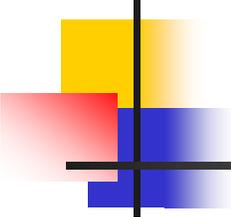
- n Brain storming using headings such as :
- n Strategic headings : Reputation, Financial, Service provision, Political

RISKS IDENTIFICATION METHODS



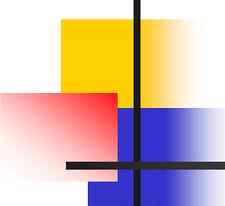
- n Brain storming using headings such as :
- n Operational headings : Commercial, Human resource, Operational, Financial, Information technology, Asset management

RISKS IDENTIFICATION METHODS



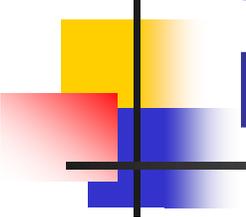
- n Brain storming using headings such as :
- n Memo headings as APRICOT :
Assets, People, Reputation,
Information, Continuity of
Operations, Targets

RISKS IDENTIFICATION METHODS



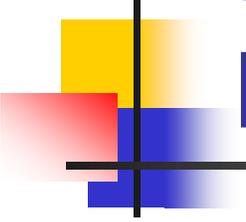
- n Use of check lists (see example given)
- n Each risk is considered against a pre-agreed checklist. It is sometimes difficult to draw up a list that will provide parameters that can be used widely. If checklists are used, they should be reviewed regularly to make sure that they remain relevant to the areas of operation being considered

RISKS IDENTIFICATION METHODS

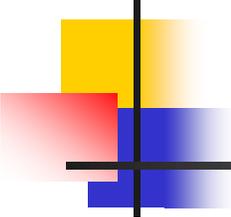


- n Past experience
- n Historic records maintained by the organisation, or available to it from other sources, are valuable for identifying incidents, their frequency and impact. Careful analysis can form a vital stage in the process of identifying risks.

RISKS IDENTIFICATION METHODS

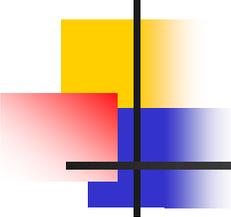


- n Past experience
- n The information must be reliable and as comprehensive as possible, ideally identifying 'near misses' as well as actual incidents. If data is available for a three- or five-year period, this will reduce the possibility of short-term problems distorting the trends indicated.



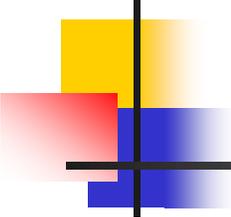
CASE STUDY STEP 5

- n The purpose of the case study is to use the three methods proposed
- n Each sub- group will first identify the risks of a process using strategic headings
- n A different process is given to each sub-group



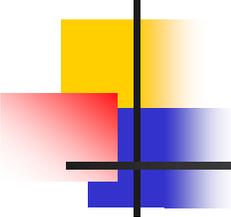
CASE STUDY STEP 5

- n Each sub- group will identify the risks of a process using operational headings
- n A different process is given to each sub-group
- n The scope of processes is limited to the first sub-mission of mission 1 and the last sub-mission of mission 2



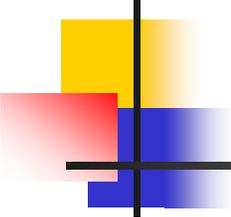
CASE STUDY STEP 5

- n Each sub- group will identify the risks of a process using APRICOT headings
- n A different process is given to each sub-group
- n The scope of processes is limited to the first sub-mission of mission 1 and the last sub-mission of mission 2



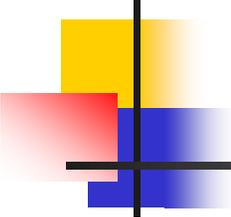
CASE STUDY STEP 5

- n Each sub- group will identify the risks of a process using second check list
- n A different process is given to each sub-group
- n The scope of processes is limited to the first sub-mission of mission 1 and the last sub-mission of mission 2



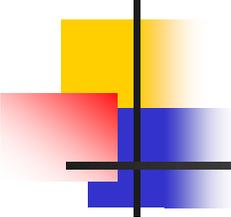
CASE STUDY STEP 5

- n Each sub- group will identify the risks of a process using first check list
- n A different process is given to each sub-group
- n The scope of processes is limited to the first sub-mission of mission 1 and the last sub-mission of mission 2



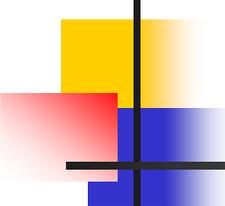
CASE STUDY PROPOSED SOLUTION FOR STEP 5

- n This is a proposed solution to continue exercises on the case study
- n What differences did you see in the proposed methods ?
- n May I have examples of risks you identified



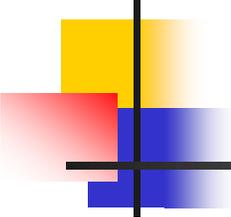
RISK ASSESSMENT

- n Be careful, nobody gives easily his risks and weaknesses
- n Management and employees will be tempted to minimise the risks
- n At the step of risks identification and assessment you must always give clear explanations about the objectives of these tasks



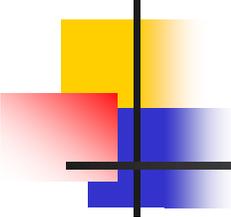
RISK ASSESSMENT

Process	Tools	Output
<p>Step 6</p> <p>Assess the risks in terms of impact and likelihood</p>	<ul style="list-style-type: none">n Interview with Heads of divisions and other relevant middle managementn Knowledge of the businessn Past experience	<ul style="list-style-type: none">n List of processes with assessed risks in term of impact and likelihood



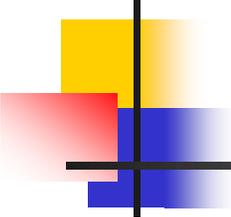
RISK ASSESSMENT

- n Landmarks
- n Risk assessment, as said in the beginning, is a kind of art
- n Several methods exist to assess, qualify, quantify, sort, fix risks



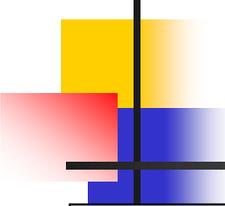
RISK ASSESSMENT

- n The assessment based on impact and likelihood is the common one
- n We will see this method in detail



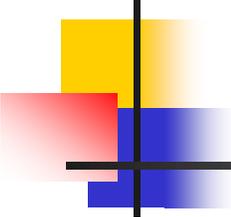
RISK ASSESSMENT

- n Other methods exist, to quantify impact
- n Value at risk, Cost at risk, Return on capital, probability of ruin, expected cost of ruin ...
- n Some of them are dedicated to specific activities (bank, insurance...)



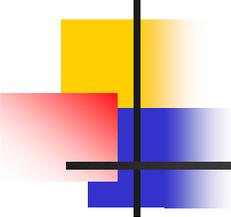
RISK IMPACT ASSESSMENT

Rating	Impact	Description
4-5	Severe	<ul style="list-style-type: none">• Disruption of all essential programs/services• Loss of major assets• Serious environmental damage• Death• Significant loss of public trust• Public outcry for removal of Minister and/or departmental official
2-3	Moderate	<ul style="list-style-type: none">• Disruption of some essential programs/services• Loss of assets• Some environmental damage• Serious injury• Some loss of public trust• Negative media attention
1	Minor	<ul style="list-style-type: none">• Schedule delays to minor projects/services• Loss of assets (low value)• Temporary environmental effect• First aid treatment• Setback in building public trust• Some unfavourable media attention



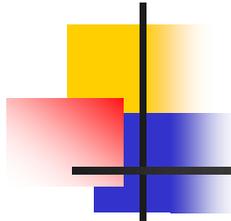
RISK IMPACT ASSESSMENT

- n Be careful, don't take in account the likelihood of the risk
- n Imagine that the event occurs



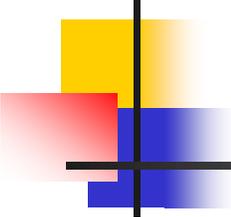
CASE STUDY STEP 6

- n Using the proposed analysis board given, try to assess the impact of two risks, given by the teacher.
- n Imagine reasons that could support your choice (most important than the choice itself)



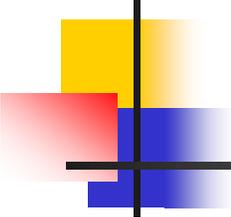
RISK LIKELIHOOD ASSESSMENT

Rating	Likelihood	Description
4-5	High	The event is expected to occur in most circumstances
2-3	Medium	The event should occur at sometime
0-1	Low	The event occurring is unlikely



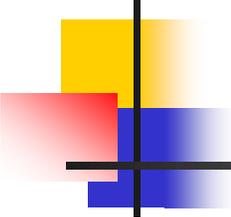
RISK LIKELIHOOD ASSESSMENT

- n In that step you take in account measures and protections taken to avoid the risk
- n The main way to reduce risks is to reduce the likelihood while improving the internal control system



CASE STUDY STEP 7

- n Using the proposed analysis board given, try to assess the likelihood of two risks, given by the teacher.
- n Imagine reasons that could support your choice (most important than the choice itself)

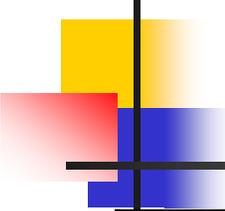


CASE STUDY PROPOSED SOLUTION FOR STEPS 6&7

- n This is the result of supposed discussions with management and employees involved in the assessed processes
- n Can you explain some choices you made ?

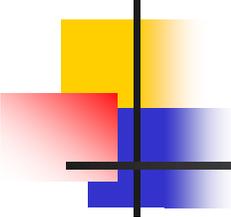
CASE STUDY PROPOSED SOLUTION FOR STEPS 6&7

IMPACT	Severe		B4-C1-C2-C3- E1-A11- AJ4	
	Moderate	A1-B1-D1-D3- AI2-AJ5-	A2-B2-B3-C4- D2-E2-E3-AI3- AJ1-AJ2-AJ3- AK1-AK2- AK3-AK4	
	Minor			
		Low	Medium	High
		LIKELIHOOD		



RISK ASSESSMENT

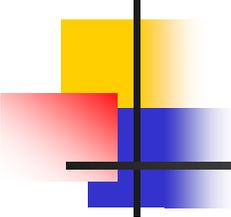
Process	Tools	Output
<p>Step 7</p> <p>Calculation of total risk weighting for each process</p>	<ul style="list-style-type: none">n Spreadsheetn Sub-missions significance	<ul style="list-style-type: none">n List of processes with weighted risksn Sub-missions weighting



RISK ASSESSMENT

- n Cross impact and likelihood

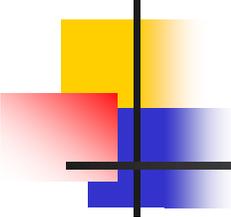
- n The risk rating is the combination of impact and likelihood, according the method used in the training, it can go to a maximum of 25 points



RISK ASSESSMENT

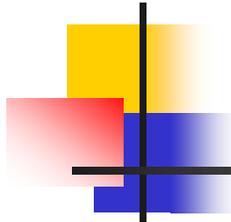
- n Unacceptable risk

- n Management may consider some risks as unacceptable, (human death, corruption..) even though impact and/or likelihood are medium or low, such risks must be rated as a decision rather than calculation to be pointed out all along the risk assessment process



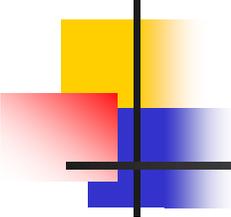
RISK ASSESSMENT

- n Representation
- n The color matrix representation is used internationally
- n Several variants exist from 3*3 to 5*5 matrix
- n Beginning from scratch, a 3*3 matrix gives enough information in the simplest way



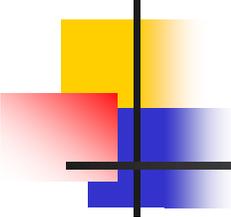
RISK ASSESSMENT

IMPACT	Severe			
	Moderate			
	Minor			
		Low	Medium	High
		LIKELIHOOD		



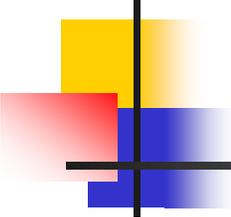
RISK ASSESSMENT

- n Significance weighting
- n To be able to sort processes regarding risks, you have to take in account the significance of the sub-missions(s) to which the process contributes



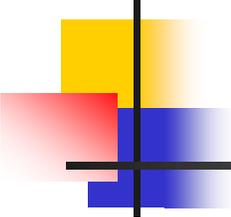
RISK ASSESSMENT

- n Some landmarks can be given, but the final method depends widely on the considered organisation and management



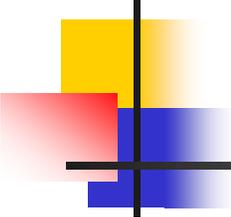
RISK ASSESSMENT

- n Auditor's and management judgment should be the main tool to solve that point



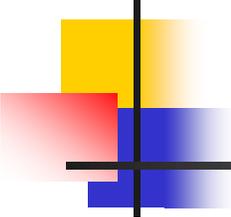
RISK ASSESSMENT

- n Several scenarios should be prepared to help management in taking decisions



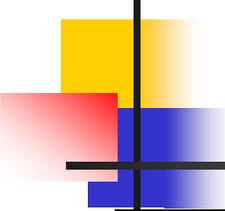
RISK ASSESSMENT

- n Combining highest risk of the process with significance of sub-mission
- n The number of high or medium risks of a process can also be taken in account
- n The presentation of the result is the list of process associated to the level of risk and level of stake (significance) Process (risk, stake)



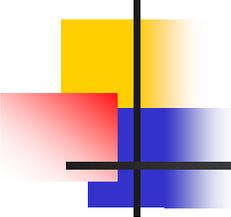
PROGRAM OF THE TRAINING

- n Missions and sub Missions identification
- n Processes and activities linked to the missions of your organisation
- n Identifying and weighting risks
- n **Ranking processes regarding risks**
- n Strategic planning
- n Manpower allocation
- n Annual audit plan



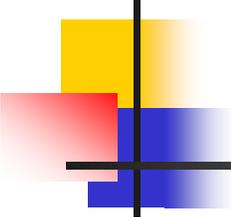
PROCESSES RANKING

Process	Tools	Output
<p>Step 8</p> <p>Ranking of the processes</p>	<ul style="list-style-type: none">n Spreadsheetn Sub-missions weighting	<ul style="list-style-type: none">n List of processes sorted according risks and sub missions weighting



PROCESSES RANKING

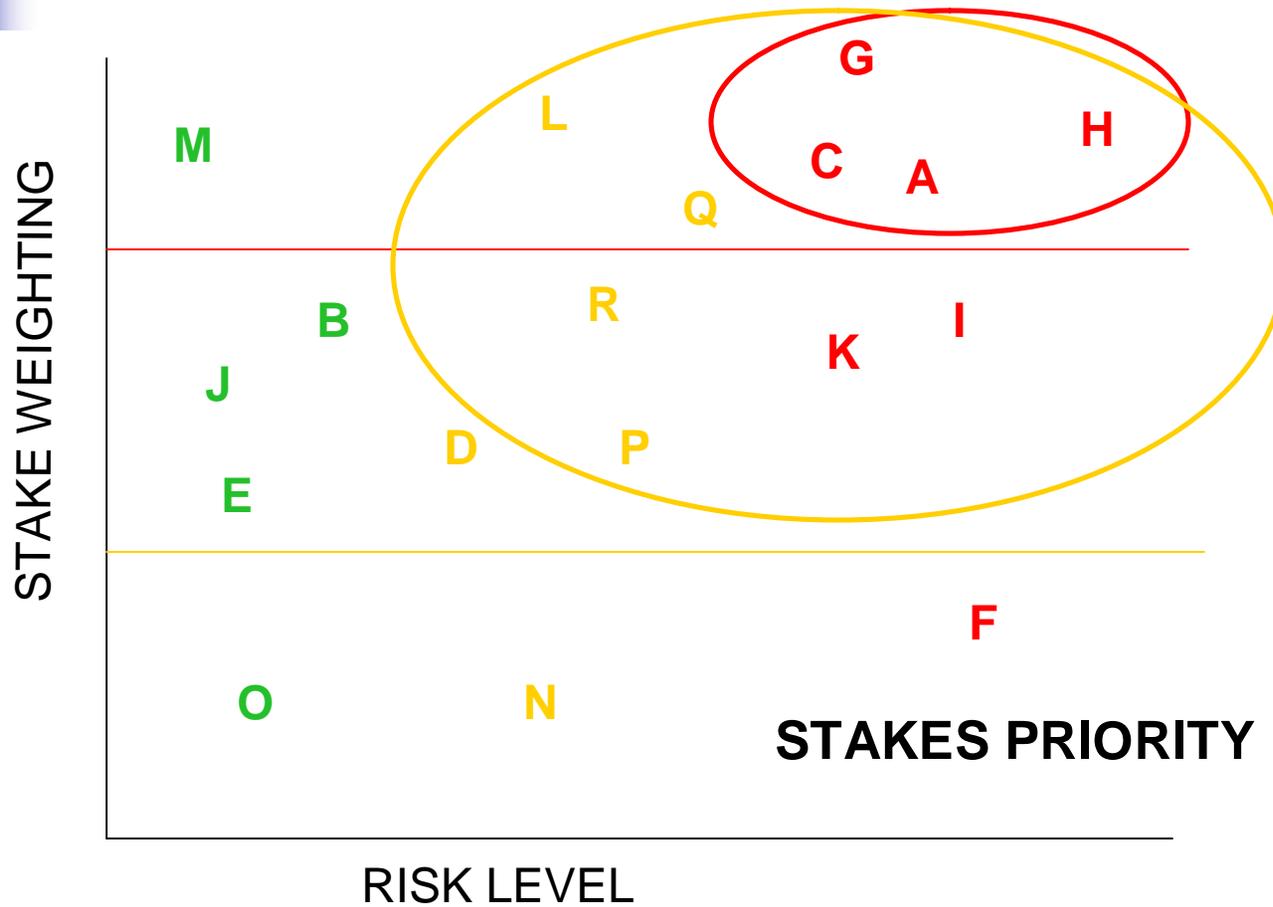
- n Objectives of processes ranking
 - n The processes ranking will help drafting both strategic planning and annual plan
 - n It will give management good information to take decisions regarding programs and manpower allocation



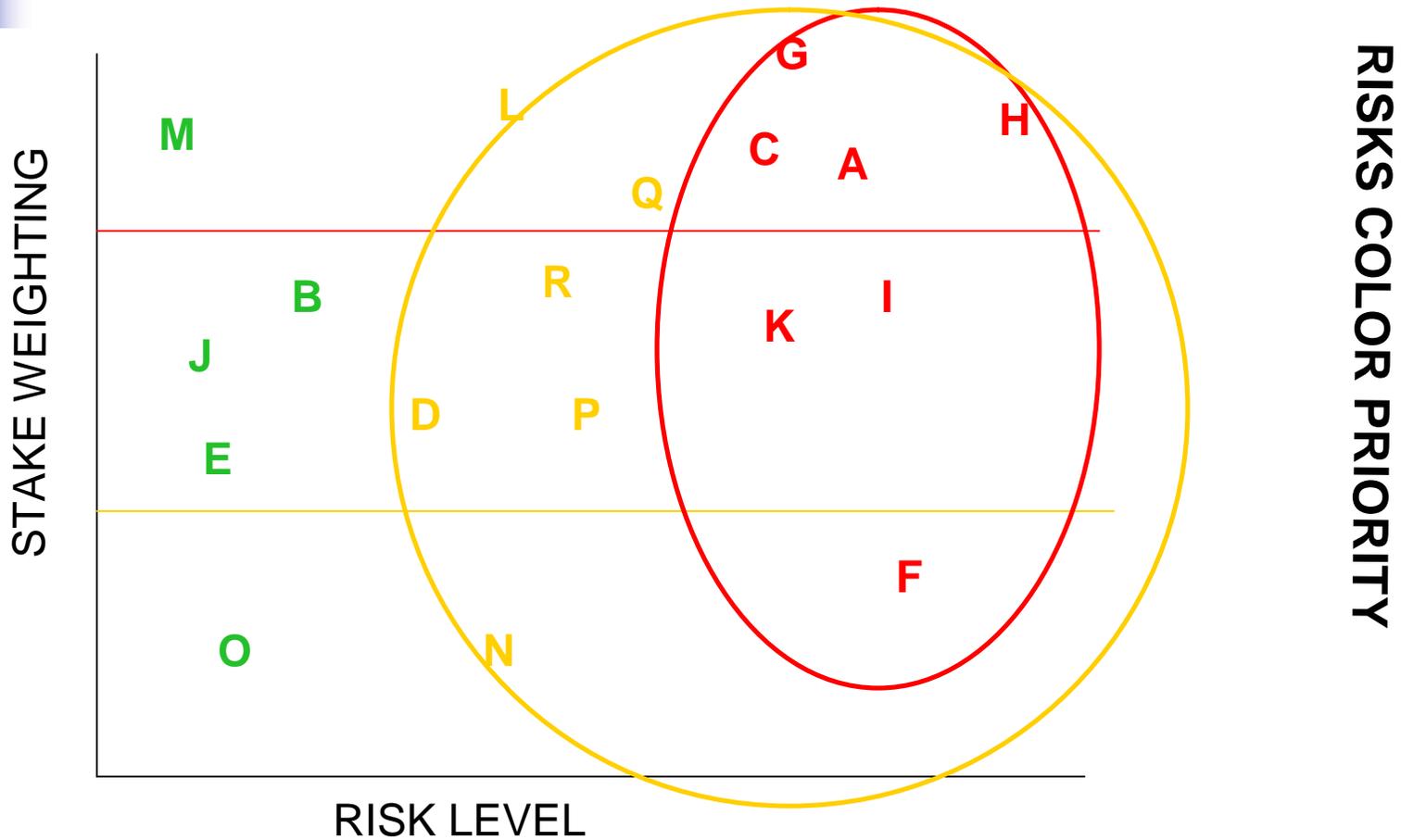
PROCESSES RANKING

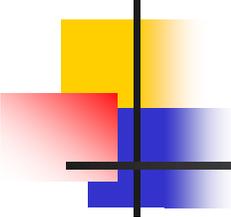
- n Possible approach
 - n Several approaches are possible, either the management or/and auditors consider stake or risk in first
 - n Several representations can be done, the best being a bi-dimensional graph

PROCESSES RANKING



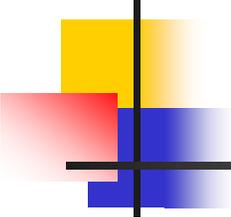
PROCESSES RANKING





CASE STUDY STEP 8

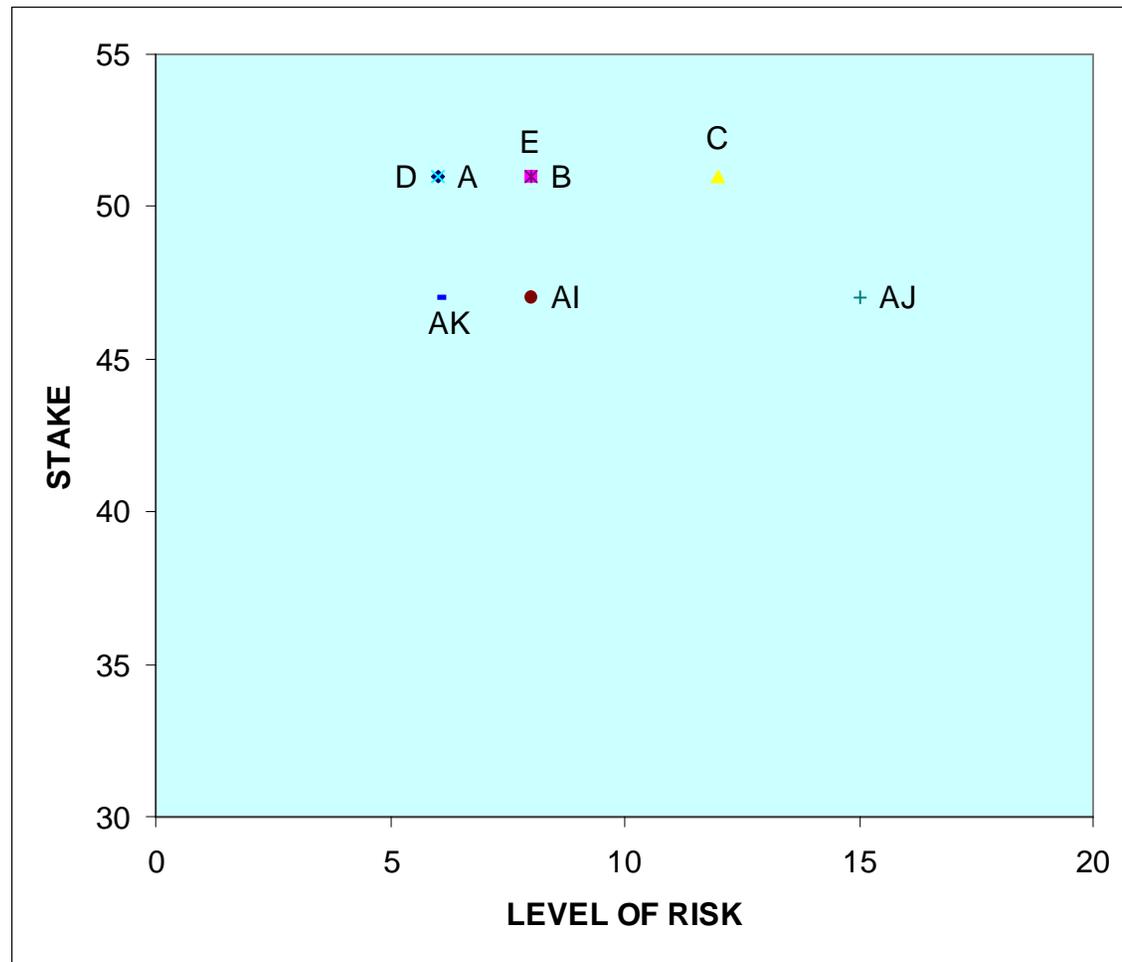
- n Based on the result of previous exercise, you will
- n Prepare the ranking of processes while taking in account the higher risk of each process and set a scenario 1
- n Put the result on a bi-dimensional graph.



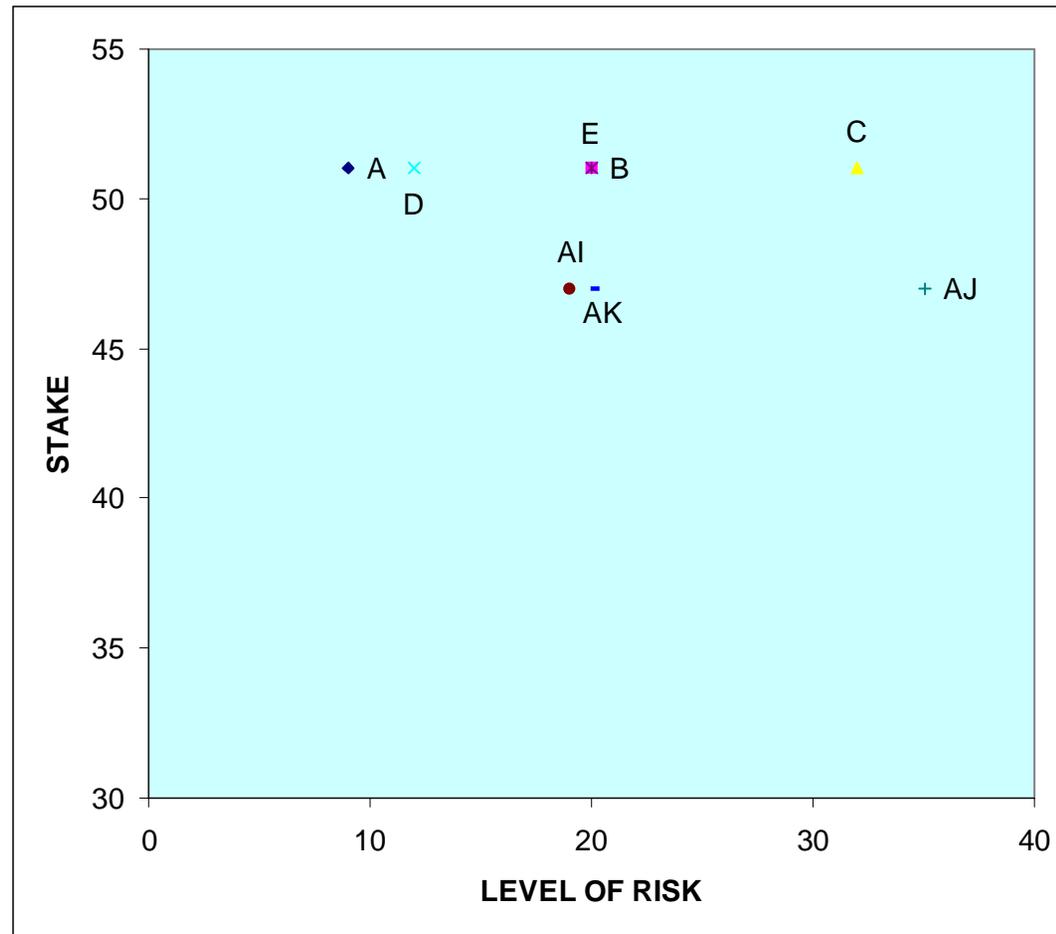
CASE STUDY STEP 8

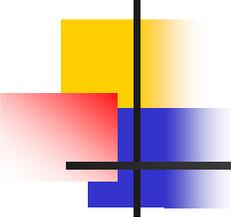
- n Do exactly the same exercise while taking in account the total score of all risks of each process and set scenario 2
- n Put the result on a bi-dimensional graph
- n Explain differences

CASE STUDY PROPOSED SOLUTION FOR STEP 8 Scenario 1



CASE STUDY PROPOSED SOLUTION FOR STEP 8 Scenario 2



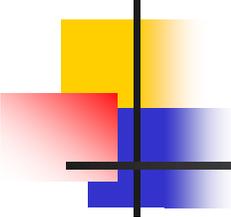


PROGRAM OF THE TRAINING

- n Missions and sub Missions identification
- n Processes and activities linked to the missions of your organisation
- n Identifying and weighting risks
- n Ranking processes regarding risks
- n **Strategic planning**
- n Manpower allocation
- n Annual audit plan

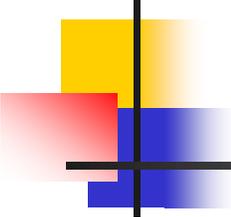
STRATEGIC PLANNING

Process	Tools	Output
<p>Step 9</p> <p>Decision regarding processes included in strategic plan</p>	<ul style="list-style-type: none">n Spreadsheetn Weighted risksn Auditor's and management judgment	<ul style="list-style-type: none">n Draft strategic planning



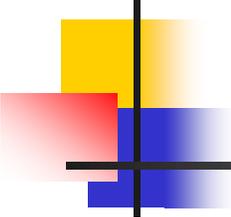
STRATEGIC PLANNING

- n Selecting and ordering processes to be audit in the next three years
- n Based on the map prepared before, a formal list of processes can be ordered for the next three years



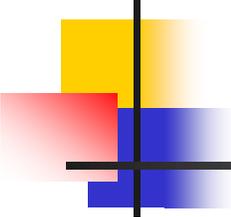
STRATEGIC PLANNING

- n Management could request several scenarios associated with manpower requirements to make decisions



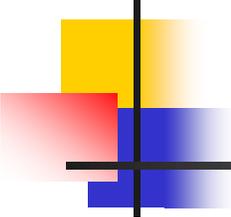
STRATEGIC PLANNING

- n Criteria and landmarks
- n Specific or single events should be considered at this stage
 - n Important changes in organisation
 - n New tools or application implementation
 - n



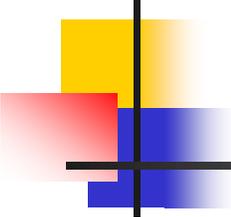
CASE STUDY STEP 9

- n Based on the maps done previously, find arguments in all the case to decide whether each process assessed should be audited or not.
- n In addition to this, what else could be done to reach consensus?



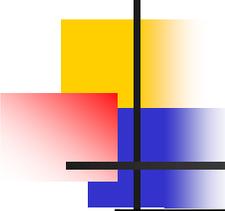
CASE STUDY PROPOSED SOLUTION FOR STEP 9

- n Regarding the scores with both methods, only process A and D could raise questions to decide whether they should be audited or not



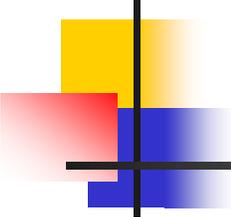
PROGRAM OF THE TRAINING

- n Missions and sub Missions identification
- n Processes and activities linked to the missions of your organisation
- n Identifying and weighting risks
- n Ranking processes regarding risks
- n Strategic planning
- n **Manpower allocation**
- n Annual audit plan



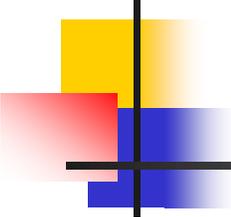
MANPOWER ALLOCATION

Process	Tools	Output
<p>Step 10 Manpower allocation</p>	<p>n Auditor's and management judgment</p>	<p>n Audit resources allocation</p>



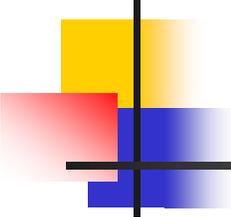
MANPOWER ALLOCATION

- n Objectives of manpower allocation
 - n At the stage of strategic planning, the manpower allocation is the result
 - n It represents the ideal situation needed to achieve the strategic audit plan



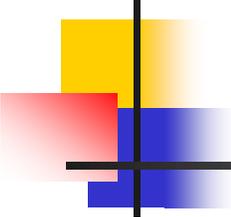
MANPOWER ALLOCATION

- n How to start from scratch ?
- n Past experience missing, the number of estimated man-days necessary to complete an audit will usually be an indication of the scope



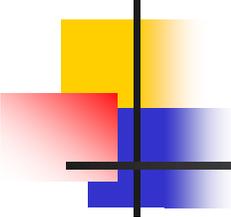
MANPOWER ALLOCATION

- n Be careful that the number of processes to be audited does not equals the number of audits
- n A cross consideration with means can give a maximum approach



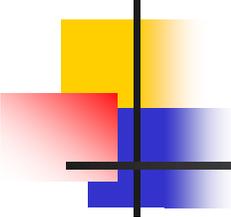
MANPOWER ALLOCATION

- n Landmarks and illustration
- n We can consider the accounting process and the recruitment process, they need several means, risk analysis can give information on the quantity of audits necessary on such large processes



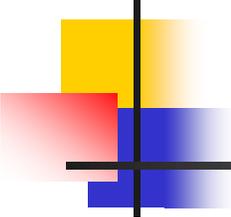
CASE STUDY STEP 10

- n Based on management decision about the processes to be audited in the next three years and regarding the priorities, you will set up a draft of manpower allocation and recruiting plan
- n Keep in mind that the audit department is starting its activities



CASE STUDY PROPOSED SOLUTION FOR STEP 10

- n Evaluation of the available man*days in one year for a full time auditor
- n Evaluation of the necessary quantity of audit for each process
- n Evaluation of the average quantity of man*days of auditors and team leader for one audit
- n Find a “good” solution out of the calculation result

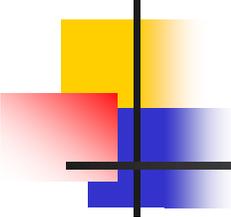


PROGRAM OF THE TRAINING

- n Missions and sub Missions identification
- n Processes and activities linked to the missions of your organisation
- n Identifying and weighting risks
- n Ranking processes regarding risks
- n Strategic planning
- n Manpower allocation
- n **Annual audit plan**

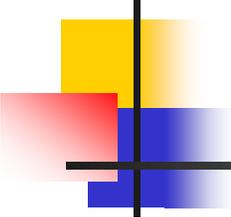
ANNUAL AUDIT PLAN

Process	Tools	Output
<p>Step 11 Establish an annual audit plan</p>	<p>n Auditor's and management judgment</p>	<p>n Audit resources allocation</p>



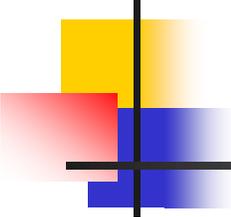
ANNUAL PLAN

- n How to start from strategic planning
- n Strategic plan gives a list of processes to be audited



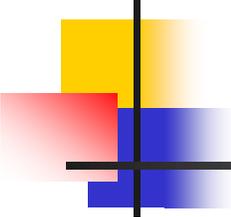
ANNUAL PLAN

- n The annual plan gives a list of audits
- n Even if the audits are not completely described, at this stage it is necessary to have ideas about scope and purpose



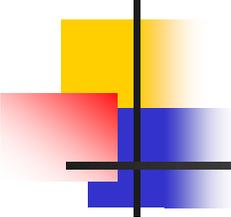
ANNUAL PLAN

- n Additional criteria to take in account
- n Single events can impact audit plan
 - n Training campaign, new software implementation, new organisation



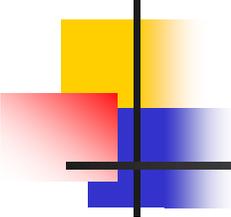
ANNUAL PLAN

- n Some periods are not favorable
 - n Annual report period in accounting
 - n Beginning of courses in schools and universities
 - n ...
- n Management can also request some audits regarding his concerns



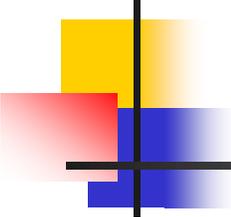
CASE STUDY STEP 11

- n Now you can set the annual audit plan for year 2005.



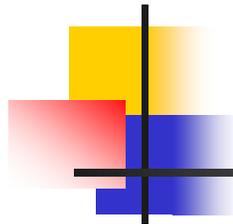
CASE STUDY PROPOSED SOLUTION FOR STEP 11

- n The estimated quantity of single audits being exactly one third of the estimated one of the strategic planning, some audits on waste accessories removal and rooms and beds management will be placed into the last quarter of 2005 to consider the possibility to postpone them on the first quarter of 2006.



CASE STUDY PROPOSED SOLUTION FOR STEP 11

- n In the same considerations, the scope of accounting audit shall be sharply delimited to avoid a too much long audit or a too global and vague one.
- n Annual audit plan needs to be reshuffled monthly



CONCLUSION



USAID Justice System Reform Activity in Kosovo

Comparative Study on Access to Court's Documents¹

Introduction

This Comparative Study is intended to help USAID's Justice System Reform Activity in Kosovo (JSRAK) and Kosovo Judicial Council (KJC) determine the legal situation and practice of transparency with regard to the access to documents related to justice sector in the legislative system of Slovenia, Croatia, Bosnia Herzegovina (including Republika Srpska)², and how these best practices could be implemented in Kosovo. In addition, excerpts from main European documents have been cited. In order to make it more extensive, the study has made some references to the US Court, as it appeared to give a good illustration on how the same practice could be implemented in Kosovo. The report tries to grasp whether the states have laws in place for providing information (public documents) and, if yes, the means and methods on how their citizens can access the required information related respective justice systems. The present report is a web based study.³

The study gains significance especially as the right to access to information held by public bodies is one of the most fundamental human rights protected under international laws, even though there is as yet no fixed international standard governing the right of

¹ Depending from different states the term Documents, may be found also as Information.

² The original intention was to cover more states, however majority of European states have their Courts' or other related web sites in their own languages.

³ Taking into consideration that the study is based only on the information posted on respective web sites, the author refrains from any inaccuracy in the report.

access to information held by public bodies. International treaty law, as it currently stands, establishes only a general right to freedom of information. However, the right of access to information held by public bodies has become a benchmark of democratic development. More than 65 countries around the world now have laws establishing mechanisms for the public to request and receive government-held information (access to information or freedom of information laws).

Basic standards for Freedom of Information legislation are set down in Article 19's Principles on "The Public's Right to Know" and in the Council of Europe's Recommendation on Access to Official Documents.

Council of Europe Recommendation on Access to Official Documents

The Recommendation was adopted on 21 February 2002, so it is fairly recent; through its eleven articles the Recommendation sets out the basic principles and rules that should form part of any freedom of information act. It explicitly states that these principles constitute a minimum standard.

Basic principle: openness

The point of departure in any freedom of information act should be that all official documents are, as a rule, public. This is the basic message of article III of the Recommendation.

Scope

The Recommendation concerns only 'official' 'documents' held by 'public authorities'. So it is important to know what public authorities are, what is meant by documents, and when they are official.

The Recommendation defines all three fairly broadly. 'Public authorities' refers to bodies at all levels of government: national, regional and local. It also includes all natural and legal persons that perform public functions or hold executive

administrative authority. **It does not, however, include legislative bodies and judicial authorities**⁴. Though, in a democracy governed by the rule of law, the judgments of the courts and the minutes of the meetings of legislative bodies have to be not just public, but also freely accessible.

European Union

Regulation 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents grants a right of access to documents of the three institutions to any Union citizen and to any natural or legal person residing, or having its registered office, in a Member State. "Document" is defined broadly and it is assumed that all documents, even if classified, may be subject to right of access unless it falls under one of the exceptions. If access is refused, the applicant is allowed a confirmatory request. A complaint against a refusal can be made with the European Ombudsman or an appeal can be brought before the Court of First Instance.

Situation on Access to Public Documents in the Regional States

Slovenia

Slovenia is a parliamentary democracy and a member of the European Union. The constitution was adopted, and effective from, 23 December 1991.

In order to understand the situation in Slovenia, with regard to the Access to Public Documents and Court's Public Information Officer, two main Slovenian acts have been studied in this report:

- The Act on the Access to Information of Public Character
- Court Act of the Republic of Slovenia

⁴ Dr Jan van Schagen, member of the Council of Europe group of specialists on freedom of information

Court Act of the Republic of Slovenia

The Courts Act of the Republic of Slovenia (Courts Act) presents the Law by which the judicial power of Slovenia is organized and regulated. Article 82, of the Courts Act, regulates access to courts documents by which it foresees that *“For the purpose of effective management and transparency of court matters, for the sake of their records and for statistical reporting, courts shall keep registers, books of lists of names and auxiliary books, which shall contain personal and other data from the records.*

Data under the previous paragraph may be used and communicated by courts in accordance with their statutory authority. The court shall have access to the archived data on file, whereas the others shall have it in accordance with the provisions of the statute regulating the protection of personal data. The data shall be permanent.

More detailed form and contents of individual court registers, books of lists of names, auxiliary books and prescribed forms for the operation of courts, shall be determined in accordance with the statute by the minister competent for justice.”

Most importantly, the official web site of the Supreme Court of Slovenia has a special section introducing the access to information, how to access it, and the catalog listing all open documents and information related to justice system in Slovenia.

The Act on the Access to Information of Public Character

In 2003, Slovenia adopted and promulgated the Act on the Access to Information of Public Character. Article 1 of the Act stipulates *“...[t]he procedure which ensures everyone free access to information of public character held by state bodies, local government bodies, public agencies, public funds and other entities of public law, public powers holders and public service contractors (hereinafter referred to as “the bodies”).* The following article 2 stipulates that *“The catalogue of the bodies referred to in the first paragraph of this Article shall be made public annually by the Government of the Republic of Slovenia”.*

There are exemptions for information related to criminal prosecutions and administrative or civil procedures.

Decree on the Provision of Public Information

The secondary legislation of the Act on the Access to Information of Public Character, the Decree on the Provision of Public Information, lays down the method by which public information shall be provided, the method by which such information shall be published on the world-wide web and the method by which a catalogue of public information shall be drawn up. It lays down in detail what is deemed to be data from a document in production and what information is public.

In addition, there is a sample catalogue of opened public documents that each public body of Slovenia has to put together in order to let the public know of the ways to access information.

The catalogue listing information about the public documents related to justice system in Slovenia could be found in www.sodisce.si, however in the Slovenian language only.

Croatia

Croatia is a parliamentary democracy and a candidate member for the European Union. The constitution was adopted, and effective from, 21 December 1990, and amended on several occasions afterwards.

With regard to the Access to Public Documents, the Act on the Right of Access to Information has been analyzed.

Act on the Right of Access to Information

The Act on the Right of Access to Information was approved by the Parliament on 15 October 2003 and signed by the President of Croatia on 21 October 2003.

Any person has the right to information from bodies of public authorities, including state bodies, local and regional governments, and legal and other persons vested with public powers. The law also requires appointing an information officer and to develop a catalog of the information that they possess. Article 22, para. 1, stipulates that “*The body of public authority, in order to provide access to information, is obliged to render a decision to designate a special official person, with authority to decide on the exercise of the right of access to information (hereinafter: the information officer)*”.

However, no information from Croatian sites is posted with regard to list of documents, that bodies within justice system of Croatia could be accessible to the citizens.

Bosnia and Herzegovina

Bosnia and Herzegovina (BH) is a federation of two entities: Bosnian Croat Federation and Republika Srpska, and of an independent Brcko District. It is a parliamentary democracy. The justice system in BH reflects the complex political framework.

The Freedom of Access to Information Act

The Freedom of Access to Information Act (FoAIA) was adopted in July 2001 in Bosnia and Herzegovina and in the Republika Srpska in May 2001. It went into effect in February 2002. Article 1, para (c) of the FoAIA, stipulates “...[e]nable every natural person to request the amendment of, and to comment on, his or her personal information in the control of a public authority”.

Article 3, para 2.c. specify that public authority includes judicial authority amongst other public bodies.

The High Judicial and Prosecutorial Council (HJPC) of Bosnia, has posted the documents that are accessible to its citizens, namely Index Register of information administered by the HJPC of BiH. The lists includes:

1. Front Office

- a. Information on the projects financed from the donors' funds

2. Appointment Department

- a. names and number of appointed judges, including Court Presidents, lay judges and reserve judges in all courts at the State, Entity, Cantonal, District, Basic and Municipal levels in Bosnia and Herzegovina, including the Brcko District of Bosnia and Herzegovina;
- b. names and number of appointed Chief Prosecutors, Deputy Chief Prosecutors and prosecutors in all prosecutors' offices at the State, Entity, Cantonal and District levels in Bosnia and Herzegovina, including the Brcko District of Bosnia and Herzegovina;
- c. information on public announcements for vacant positions in courts and prosecutor's offices and the number of candidates applying for certain vacant positions;
- d. information on imposed disciplinary measures (final decisions);

3. Legal Department

- a. information on the projects covering the area of judicial reform
- b. information on the status of laws and other regulations of interest for judiciary
- c. information on operations of the entity training centres for judges and prosecutors

4. Budget and Statistics Department

- a. data on adopted budgets of courts and prosecutor's offices;
- b. data on quantitative criteria for evaluation of judges' and prosecutors' performance.

5. Information and Communication Technology Department
 - a. information on projects concerned with court administration and usage of information and communication technology in courts
 - b. data on court administration performance
6. Administration and Finance Department
 - a. Information on financial and material business operations
 - b. data on administrative operations
 - c. financial data on budget and budget execution of the Council, the Secretariat and the Office of Disciplinary Counsel
 - d. financial data on the Council's projects
7. Office of Disciplinary Counsel
 - a. data on complaints lodged against judges and prosecutors
 - b. data on Joint Consent Agreements for Finding of Disciplinary Liability signed with judges and prosecutors
 - c. data on disciplinary complaints lodged against judges and prosecutors.

In addition to the HJPC, the official web site⁵ of the Republika Srpska Prosecutors' Office lists the list of all the documents accessible to the public.

United States

State of Kansas

The Kansas Court has its The Open Records Act Office Procedures, establishing access to public records under control of Kansas courts. The information detailed in the site are very useful and start from the information on which records are available, exceptions fees, how to request a document, etc. As this study tries to reveal best practices and how those could be implemented in Kosovo, below are excerpts from the Kansas Court web site, intended to help its citizens on how to access a court document.

With regard to the records and their availability, many records maintained by the Kansas courts are open for inspection. Commonly requested records include:

⁵ http://www.tuzilastvo-rs.org/lat_indeks.html - local language only

- Statistical data regarding trial and appellate court performance
- Court budgets
- Court case files and transcripts
- Final civil and criminal judgments Exceptions to the Open Records Act

The Kansas Open Records Act recognizes that some records contain information that is private in nature. For this reason, the Act lists a number of exceptions. Some of the common court records closed by statute include:

- Adoption records
- Personal information of public employees
- Certain criminal investigation records
- Search warrants, unless entered into evidence
- Expunged criminal records
- Many child-in-need-of-care and juvenile records
- Grand jury proceedings

Other specifically exempt records are listed in K.S.A. 45-221 and others may be exempt pursuant to judicial order or caselaw.

Recommendation

Until recently, all the activities related to judiciary were perceived as reserved matters of UNMIK⁶. Taking into consideration that transfer of powers process is still ongoing (yet there are few reserved matters as: appointment of judges and prosecutors, extradition, etc) it is of high interest and recommended to Kosovo Judicial Council to establish an Administrative Instruction, based on the Law on Access to Public Documents, to reinforce the access to courts open documents pertaining not only to KJC, but all other agencies under the competences of KJC, including all the courts of Kosovo, regular and minor offences, respectively, that would:

⁶ In some courts access to information was denied with a justification that they are reserved power of UNMIK

- a) clearly define both the public's and the media's right to information that are consistent with a litigant's privacy rights; and
- b) would ultimately institute thorough and firm groundwork for PIOs.

The law requires that each institution, in this case KJC, to create a **register of documents**, if possible in electronic form. Each document should be recorded in the register with a reference number, title and description and date it was created or received. Institutions are required to make documents available directly through an electronic register, especially legislative documents and those relating to the development of policy and strategy. Each institution is also required to produce an annual report on cases of denials with reasons and the number of sensitive documents not recorded in the register.

In addition, it is of high public interest to recruit as soon as possible Public Information Officers; one at the KJC level and five at District Court level in order to ensure transparency and openness of the justice system and help build up public trust toward justice sector in general.

DRAFT
Report On Print Media Coverage of Court Reporting
Maureen Taylor, Ph.D. Social Impact
May 22, 2006

Background on the IREX/NCSC Workshop

In spring 2006, IREX in conjunction with the NCSC provided 5 workshops during a 7-week period that focused specifically on Court Reporting. The Court Reporting Workshops were held on April 8, 22, 29 and May 13 and 27. This report provides a mid-term evaluation of the outcomes of the workshops. Using a Content Analysis framework, this document reports the changes in content of court reporting in the 8 daily newspapers. The research design specifically measures changes in content tied to the IREX/NCSC workshop objectives.

The objective of the workshops was to: explain the legal framework guiding Kosovo, define legal terminology, clarify the constitution, illustrate the different levels of the court system, and highlight the roles of the different actors in the legal system (prosecutor, defender, accused, judge, and court) to journalists.

Sample

There are eight daily newspapers published in Kosovo. IREX-Kosovo collected weekday papers from March 1 to May 15, 2006. The researcher, Maureen Taylor and translator, Yeta Limani, conducted the content analysis from May 12 to May 20, 2006.

The researcher selected papers from a five week period (March 6, 2006 to April 7, 2006) for the baseline. These dates were selected to provide a Time 1 baseline of the amount and quality of the court reporting appearing in Kosovo newspapers before any training.

The researcher selected newspapers from the five week period of April 10 to May 13 for the Time 2 portion of the study. These dates were selected to provide evidence of any increased amount and improved quality of the court reporting appearing in Kosovo newspapers at the midpoint of the workshops. A third study should be conducted from the five weeks from June 1 to July 5 to capture the full impact of the workshop on print content after these journalists graduate from the IREX/NCSC course.

The sampling frame contained over 350 daily newspapers during the ten weeks of the study. The researcher determined that a random sample of 35%-40% of the newspapers would be adequate for generalization. The Time 1 baseline sample included 157 papers split evenly among the 8 papers. The Time 2 sample included nearly 200 papers split evenly among the 8 papers.

The researchers randomly selected 64 papers from the Time 1 baseline period (8 of each paper) and 64 papers from the Time 2 (8 of each paper). A total of 128 papers were examined in the content analysis.

Content Analysis Procedures

A content analysis is a quantitative methodology that allows a researcher to carefully analyze content of newspapers or any type of printed documents. Content analysis is a research tool that measures the presence of certain features within texts. Newspaper articles about the courts or legal process are studied in this IREX/NCSC Court Workshop evaluation. In this study, each newspaper article is coded, or broken down, into two manageable levels—content features and editorial support.

Coding

The team scanned each newspaper in the sample for stories that reported information involving a legal case or legal situation. Cases may have appeared in the Municipal, District, or Supreme Court. A legal case can include charges of corruption, fraud, theft, civil lawsuit, constitutional law, appeals, murder, rape, and assault.

The translator read each newspaper from cover to cover looking for stories that mentioned court cases or the legal process. Each story that met this criterion was treated as a unit of analysis. Each news story was photocopied and translated from Albanian into English. To check for translation accuracy, several stories that had been translated from Albanian into English were translated back again into Albanian to check for accuracy.

The researchers coded for two different types of news features: Story Content and Editorial Support. **Story Content** refers to specific qualities of the news story that the journalist controls. For instance, total column centimeters, quotes from multiple sources, use of facts rather than opinion, overall quality of the story (1-10), correct use of legal terminology, and an understanding of the legal process.

Editorial Support measures the extent to which an editor recognized that the story was important and made editorial decisions to support and promote the story. Examples of editorial support includes the prominence of stories (appearing above the fold, having large font headlines, featuring a pull quote, stories located in shaded boxes, stories with shaded text), photos accompanying stories, and the location of the story in the newspaper.

Both story content and editorial support were measured to provide a complete evaluation of the articles.

Workshop Attendees

Over 20 journalists in Kosovo attended one or more of the workshops. A total of 7 print reporters from 7 newspapers attended the IREX/NCSC workshops--Burim Etemaj of *Epoka E Re*, Eta Morina of *Express*, Besim Toska of *Bota Sot*, Florido Maligi of *Iliria Post*, Paulin Paksku of *Kosova Sot*, Betim Musliu of *Lajm* and Laura Katoma of *Koha Ditore*. Zeri did not send a reporter to the workshops.

The researchers tracked the number and quality of stories by these 7 reporters before and midway through the workshops. In the Time 1 baseline, there were five articles about the courts by journalists who would enroll in the workshop. Eta Morina of *Express* had published three articles in the time period before the first workshop. Betim Musliu of *Lajm* had published two articles about cases appearing in the courts.

It is expected that the all workshop attendees would write more stories about the courts with their new training and that the quality of the stories would improve as well.

What Counts As Workshop Impact

Workshop impact is measured in three ways:

First, the IREX/ NCSC workshops seek to **increase the number** of news stories reporting about the legal process and court cases by the seven print journalists attending the workshops.

Second, the workshop seeks to promote **improved quality** of the articles overtime.

Third, if the quality of the articles is indeed increasing, then it is hoped that there will be **increased editorial support** for articles about court issues so that articles appear with greater prominence in the newspapers.

Results of the Content Analysis

Time 1: Court Coverage Before the Workshops

The sample was comprised of 64 newspapers. A total of 30 articles met the criteria for the study in the Time 1 baseline. For the results in the time period before the workshop, see Table 1 for a quantitative breakdown of the data. In addition to the quantitative analysis of these 30 stories, the researcher also qualitatively examined the news stories for trends.

Content Issues

In the sample period before the workshop, there appears to be an emphasis on protocol journalism. Twelve of the 30 stories (40%) were generated by protocol journalism. That is, the stories were based on news conferences, released documents, and official statements. Another trend was that five of the 30 stories (16%) were merely transcripts of a court trial. The pre workshop articles show that when official information was not available, many journalists reported what people “close to the story” told them.

Court reporting during the Time 1 baseline shows stories averaging 137 cm per a story with a range of 35 cm to 420 cm in length. Length was determined by taking the total number of column length and multiplying it by the width of the column. Many newspapers in Kosovo vary in column width and this was the only way to standardize the article size. Approximately 53% of the stories cited more than one source. This at first may seem positive, but many of the protocol generated stories had two or more people speaking at the news conference so the opportunity to cite more than one person was very easy. Additionally, more than half (60%) of the stories relied on facts rather than opinions. Many times these facts were supplied by court documents or quotes by members of the judiciary or government leaders during news conferences or round tables.

The reporters appear to be using correct legal terminology in three quarters (75%) of the stories. The topics of the stories focus on fraud, abuse of power, slander, and murder. The reporters are correctly using key legal terminology such as the difference between detention, arrest, and under suspicion correctly. More advanced legal terminology is beyond the scope of this research.

The overall quality of the stories was low. Story quality was operationalized as: 1) the story having a clear lead paragraph, 2) the story having a clear news angle, 3) the story supports its claims with evidence, and 4) useful quotes. Quality was also determined by whether or not the story actually told the reader something useful about the court case. In the Time 1 baseline the score for story quality was 5.36 out of 10. There is much room for improvement.

Editorial Support

Although the workshop is targeted to journalists, the researcher also coded for editorial support for a story. Stories that are well written and well researched are generally rewarded by editors with more prominence. Table 1 shows the stories in this sample received varying levels of editorial support. Many stories had enticing, news worthy headlines but they failed to live up to the promise of the headline.

Seventy percent of the stories appeared above the fold (a time honored print tradition that highlights important articles) and 76% of the stories featured headlines that were larger than other headlines on the page. Additionally, 57% of the stories were accompanied by a photograph. However, many times the photo appears to be a stock photo of a building or a photograph of a politician speaking in a news conference. These types of photographs add little support to the story. In some cases, the photograph was actually larger in size than the story.

Overall, the stories published before the workshop are split between protocol journalism (12) and stories that meet only the most basic levels of quality (13). Additionally, five of the stories contained mostly transcripts of court testimony and did not show any additional research or creativity beyond reporting what the witness said or the questions asked by the prosecutor.

This pre workshop period serves as a baseline for the quality and quantity of court reporting. The next section reports on the mid-point workshop period.

Time 2: Total Court Coverage Midway Through the Workshops

The sample in Time 2 was comprised of 64 newspapers. A total of 37 articles met the criteria for the study in Time 2. These articles included stories written by workshop attendees and non-workshop attendees. The second column on Table 1 shows the basic frequencies of the major content and editorial categories for the aggregated stories for all court stories at the mid point of the workshops.

For content issues, it appears that the Time 2 stories averaged 160 cm per a story with a range of 40 cm to 308 cm in length. Approximately 65% of the stories cited more than one source in their story. There appears to be fewer protocol journalism stories in this time period. Additionally, more than half (82%) of the stories relied on facts rather than opinions of the key players.

The reporters continue to use key legal terminology correctly (90%) and there appears to be an increase in the number of stories that actually cite the law (paragraph and article) in the story. This practice of citing the articles and explaining the law to readers makes a story informative, educational, and interesting.

The overall quality of the stories is improving but it is still quite low (average of 6.0). There were fewer bad stories (quality score of less than 5 points) in Time 2.

The 37 news stories were also coded for editorial support. The stories in this sample received varying levels of editorial support.

Fewer stories appeared above the fold in Time 2 (60%) and fewer stories were accompanied by photographs (46%). More than 86% of the stories featured headlines that were larger than other headlines on the page. *Lajm* published 9 stories and its format uses shaded text and pull quotes. Therefore, there was an increase in both of these editorial support features.

Overall, there were no clear examples of protocol journalism in Time 2. This is good news. Many of the stories included an investigative edge that brought new information into a court case. One disturbing trend is emerging. There appears to be a growing use of “sources close to the newspaper” and “anonymous sources tell us” as support for claims made in the story. Many more stories in Time 2 met the most basic levels of quality with four stories garnering a quality score of 8 out of 10 points.

Evidence of Workshop Impact on Court Reporting

One goal for this content analysis is to identify changes in quality and quantity on the attendees of the workshops. In the Time 1 baseline period, two of the workshop attendees accounted for a total of five articles about the courts. Of the seven print journalists who attended the workshops, five of them have published articles in the randomly selected newspapers after the first workshop. In total, there have been 12 midpoint workshop articles about the courts appearing in Time 2. This is over a 100% increase in the number of articles from Time 1.

Besim Toska of *Bota Sot* has published three articles and Betim Musliu of *Lajm* has published four court articles in the time after the first workshops.

Burim Etemaj of *Epoka E Re* and Paulin Paksku of *Kosova Sot* each published two articles. Paksku will not publish any more articles about the courts. He has recently left his position as a journalist due to threats to his family.

Eta Morina of *Express* published one article about the courts during the mid-point workshop coding period.

Table 2 breaks down the scores for the workshop attendees in the Time 2 period. On content issues, all of the stories written by workshop attendees in Time 2 avoided protocol journalism. There was also a decrease in stories that merely provided transcripts of the court case. When the workshop attendees' story scores were separated from the other journalists Time 2 stories, we see an increase in story quality. The average story quality score is 7.05—a full point higher than the aggregated score for Time 2. Stories written by the attendees appear to be longer and all show evidence of reporting facts and using legal terminology correctly.

There appears to be mixed levels of editorial support for these stories. On most indicators, there is an increase in editorial support. Table 2 shows that court articles generally had larger headlines, more photographs, and more attention getting features such as text boxes, shaded text and pull quotes. Again, this may be a reflection of the format of the newspapers that had the most coverage of the courts. There is a decline in the number of stories above the fold and this may be attributed to the fact that many of the stories by this group of reporters are not about high profile protocol stories. Rather, they are investigative and legal oriented so they may have less prominence in the editor's mind as a candidate for above the fold placement.

There were a few exemplar stories that illustrate some of the successes of the training. IREX/NCSC workshop attendee, Besim Toska of *Bota Sot* wrote an article about courtroom culture. In his May 4 article entitled, *Judicial Culture Lacking in Court Session*, Toska explained how order is maintained/not maintained in the courtroom. He identified the specific articles of the KPPC and explained the penalties for disturbing the order in the court. It is an informative yet interesting article that provides a rare look into the courts.

Another article by IREX/NCSC workshop attendee Betim Musliu of *Lajm* covered the problems of court appointed defense lawyers. The article explains how their low wages and desire to be called back for additional cases creates a “passive defense” strategy that endangers the rights of the accused for a fair trial. Again, this article is informative and interesting. It shows the paradox of the perceived benefit of a public defender for those who cannot afford a lawyer and the realities of public defense for the poor.

Conclusions and Recommendations

Overall, there appears to be an increased number of stories and increased quality in court reporting. The fact that the number of stories has increased by attendees suggests that they are using their newfound knowledge to write court stories. Continued analysis of print coverage of the courts will determine if court coverage benefits from long-term media attention.

All research designs have limitations and the limitations of this research design are two fold. First, only 7 print reporters are attending the workshops. They can have only limited impact on increasing the quality and quantity of overall court reporting in the print media. Some attendees did not appear to have an article published in the Time 2 period. This could be an issue of random sampling that merely missed analyzing the days in which they published stories. Or, it might mean that they are waiting for the conclusion of the IREX/NCSC workshops to start their foray into court reporting.

The second limitation is in the coding period. The workshops are continuing through the end of May and additional training sessions will take place after this study is completed. A third study is needed after the final workshop on May 27 to truly capture the full impact of the increased quality and quantity of court reporting in the print media. Social Impact will work with Chief of Party Andrew Clayton to deliver this third content analysis. In order to fully measure the long term impact of the workshop on court reporting, a fourth data set should be analyzed during fall 2006. This final study would tap into the long term impact of the workshop on court reporting.

Regardless of these limitations, there are some conclusions and recommendations that may help IREX and NCSC to better train reporters for their crucial role in court reporting.

1. The reporters need to use their new knowledge of the courts to explain the articles of the law to readers. Kosovo's citizens need to know the key terms, key people and their responsibilities in the legal system, and the responsibilities of the different courts. A weekly column might be useful that covers "The Law and You". Here, citizens could learn specific information about the law and see how it is applied in Kosovo.

2. The move away from protocol journalism needs to continue. The decrease in protocol journalism in the second time period is a positive finding. However, as investigative journalism increases, journalists need to use unnamed sources sparingly. Story quality will suffer if too many unnamed sources are used to support claims.

3. Reporters should add context and value to court room testimony stories. Many articles in the Time 1 baseline and Time 2 merely paraphrased what the witness said, what the defense attorney said, and the prosecutor's questions. Paraphrasing a trial is a valuable building block for court stories. However, additional information such as interviews with key players, legal background and a clearer emphasis on daily life would make these stories more interesting, and thus, increase their impact.

Table 1: Results From Before and Mid Way Through The Workshops

	Before Workshop	Mid-Point of Workshop
Total Number of Stories	30	37
Papers with the Most Court Coverage Articles	Koha Ditore Express	Lajm Epoke E Re
Stories by Workshop Attendees	5	12
Overall Story Quality (out of 10)	5.36	6.0
Average Column Centimeters	137 cm	160 cm
Percentage Citing Multiple Sources	53%	65%
Percentage Reporting Facts (not opinions)	60%	82%
Percentage Showing Understanding Of Basic Legal Process and Terminology	77%	90%
Prominence of Stories		
Stories appear above the fold	70%	60%
Stories have larger font headlines	76%	86%
Stories feature a pull quote	6%	24%
Stories located in shaded boxes	17%	11%
Stories feature shaded text	13%	22%
Percentage with Photos	57%	46%

Table 2: Workshop Attendees' Aggregated Scores on Content and Editorial Issues

	Midway Through the Workshops
Stories by Workshop Attendees	12
Overall Story Quality (out of 10)	7.05
Average Column Centimeters	179 cm
Percentage Citing Multiple Sources	75%
Percentage Reporting Facts (not opinions)	100%
Percentage Showing Understanding Of Basic Legal Process and Terminology	100%
Prominence of Stories	
Stories appear above the fold	58%
Stories have larger font headlines	100%
Stories feature a pull quote	42%
Stories located in shaded boxes	50%
Stories feature shaded text	42%
Percentage with Photos	66%