

No money for the rule of law

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How Kosovo's budget process affects judicial independence



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This paper has been prepared as part of the **ENGAGE II Fellowship Programme**, with support by the **Open Society Initiative for Europe (OSIFE)**. The Fellowship Programme involves academic, civil society and think tank actors from Central and Eastern Europe, the Western Balkans and Eastern Partnership countries. It engages selected fellows in EU-level policy debates on the rule of law in domains such as rights and security, foreign and economic affairs. The programme entails training, study visits, public events and the publication of policy papers. See the penultimate page for more details about the ENGAGE II Fellowship.

The programme is coordinated by the **CEPS Justice and Home Affairs Unit** and includes several **CEPS senior research fellows**. This publication has been written under the supervision of **Sergio Carrera**, Head of **CEPS Justice and Home Affairs Unit**, and **Cinzia Alcidi**, Head of the **Economic Policy Unit**.

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Contents

1. Introduction	1
2. The budgeting process for the Kosovo Judicial and Prosecutorial Councils.....	2
3. Appropriation of financial resources for the courts and prosecution offices in practice	6
4. European-level principles on the budgetary independence of the courts and prosecution offices.....	9
4.1 EU support for developing budgetary benchmarks for the courts and prosecution offices in Kosovo	11
5. Conclusions and recommendations	12
Annex	14

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Berat Thaqi

Abstract

This paper analyses the budgeting process for the judicial institutions in Kosovo in order to identify whether the government can interfere with judicial autonomy through budgetary resources. Further, the budgeting process for these institutions is analysed in light of some of the Council of Europe's recommendations. The paper concludes that the actual budgeting process can jeopardise the independence and effectiveness of judicial institutions. Some of the problems identified in the process of budgetary appropriations include a lack of time and professional resources for Kosovo's parliament to scrutinise budgetary requests, as well as a lack of timely data and benchmarks for budgetary appropriations. The paper highlights the need for transparency, the development of benchmarks and the involvement of judicial institutions during the budget process. It concludes by offering a number of specific recommendations for Kosovo on how to improve the budget process for the judiciary.

1. Introduction

The rule of law has been one of the main challenges in the process of state building in Kosovo. According to the US State Department, corruption in Kosovo is endemic, while the European Commission's country reports state that Kosovo is still at an early stage of preparation in the fight against corruption and organised crime. According to the Commission, rule of law institutions lack funding and human resources.¹ Furthermore, they lack training and the number of staff directly assisting judges is lower compared with countries of a similar size, such as Serbia, Montenegro, Croatia and Estonia.² The administration of justice remains slow and inefficient, prosecutors lack professionalism as they are inadequately trained and e-justice tools remain underdeveloped.³

According to a study conducted by the Council of Europe's European Commission on the Efficiency of Justice (CEPEJ) with 2014 data, Kosovo spends significantly less on judicial expenses per capita compared with EU countries such as Croatia, Austria and Estonia or some of the neighbouring countries, like the Republic of North Macedonia and Montenegro, but more than Albania. On the other hand, relative to its GDP Kosovo spends more on its judicial system than neighbouring countries Albania and the Republic of North Macedonia, but less than Bosnia and Herzegovina or Montenegro.⁴

Kosovo is a democratic republic based on the separation of powers, where the judicial system is unique, independent, apolitical and exercised by courts.⁵ At the same time, the state budget is proposed and approved by the government and Assembly of Kosovo, respectively. Both bodies are political and the law obliges them

¹ European Commission, "Kosovo Country Report 2016", source: <http://bit.ly/2y5CWZF>.

² CEPEJ, "In-depth assessment report of the judicial system in Kosovo", source: <http://bit.ly/2NfzvVo>.

³ European Commission, "Kosovo Country Report 2016", source: <http://bit.ly/2y5CWZF>.

⁴ CEPEJ, "In-depth assessment report of the judicial system in Kosovo", source: <http://bit.ly/2NfzvVo>.

⁵ Constitution of the Republic of Kosovo, Article 4.

to manage public expenditure based on the principles of effectiveness and efficiency, while also maintaining sustainable economic growth and stability.⁶ In this regard, the executive and legislative branches can use a shortage of budget resources as a subtle way to undermine or interfere with the autonomy of the prosecution offices and courts.⁷ While the independence of the judicial system from the legislative and executive branches has gained sufficient attention from the media, civil society, political parties, etc., the aspect of ‘budgetary independence’ of the judiciary has been under-researched. The purpose of this paper is to analyse the budgeting process for the Kosovo Judicial Council (KJC) and Kosovo Prosecutorial Council (KPC) in order to identify whether the executive or legislative branches can interfere with judicial autonomy through budgetary resources. Further, the budgeting process for these institutions is analysed in light of some of the Council of Europe’s recommendations.

The paper is organised as follows: in section 2 the background of the budgeting process for the KJC and KPC is described. Section 3 includes an analysis of how the budgetary appropriations for the courts and prosecution offices are conducted in practice. Section 4 provides a contrast between some of the most critical European-level recommendations on the budgetary independence of the judicial system and the budgeting process in Kosovo. The last section provides conclusions and recommendations for how to improve the budgetary independence of the judicial system in Kosovo and what initiatives the EU can undertake to help countries in this regard.

2. The budgeting process for the Kosovo Judicial and Prosecutorial Councils

The law that sets the principles of budgeting for all public authorities and public undertakings in Kosovo, including the KJC and KPC, is the Law on Public Financial

⁶ Ibid., Article 120.

⁷ Council of Europe, “The role of public prosecution in the criminal justice system”, source: <http://bit.ly/2U0wkDW>.

Management and Accountability.⁸ The budgeting process starts with the Medium-term Expenditure Framework (MTEF), in which the estimated budget ceilings for the next year for all public sector organisations (except municipalities) are set. The MTEF should be submitted by the government to the Assembly of Kosovo no later than 30 April of the fiscal year.⁹ However, the Committee for Budget and Finance at the Assembly of Kosovo rarely gets involved with the MTEF in detail.¹⁰

By 15 May, the Ministry of Finance issues budget circulars for all budgetary organisations. Among others, budget circulars contain budget ceilings for the next fiscal year, non-binding estimates for the following two years and the deadline by which budgetary organisations must submit their budget proposals and requests to the Ministry of Finance. Each organisation's request should be submitted within applicable budgetary ceilings set in the budget circulars. Yet, contrary to the Law on Public Financial Management and Accountability, the amended laws on the KJC and KPC state that these two submit their budget proposals directly to the Assembly of Kosovo.¹¹ Prior to 2015, if the Ministry of Finance did not approve the budget proposals as requested by the KJC, then the ministry would have to submit to the Assembly of Kosovo the original requested budget of the KJC and the ministry's comments on that.¹²

According to OECD principles on budgetary transparency, the government should submit the budget to parliament three months prior to the start of the fiscal year.¹³ Yet, in Kosovo by law the Ministry of Finance delivers a proposed Kosovo consolidated budget, appropriation law and the updated MTEF to the Assembly of

⁸ Law No. 03/I-048 on Public Financial Management and Accountability, source: <http://bit.ly/2h3BfRW>.

⁹ Ibid., Article 19.

¹⁰ Interview with an official of the Parliament of Kosovo, October 2018.

¹¹ Law No. 05/L-033 on Amending and Supplementing Law No. 03/I-223 on the Kosovo Judicial Council, Article 9, source: <http://bit.ly/2EhWtsl>.

¹² Law No. 03/I-223 on the Kosovo Judicial Council, Article 15.1.

¹³ OECD, "OECD Best Practices for Budget Transparency", source: <http://bit.ly/2BGwzwo>.

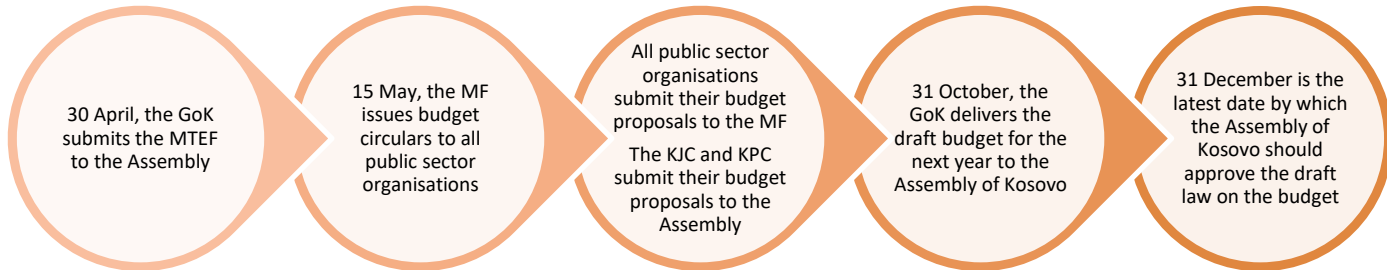
Kosovo only two months before the end of the fiscal year. The proposed appropriations law establishes appropriations and contains an approved number of temporary and permanent employees for each budgetary organisation.

After Kosovo's consolidated budget is submitted to the Assembly of Kosovo, the draft law on the budget follows the same procedures as any other law. First, it must be approved by the Parliamentary Committee on Budget and Finance, then it will be discussed at a parliamentary plenary session for the first reading. The draft goes back to the committee in order to discuss amendments (including budgetary requests) made by other parliamentary committees and members of parliament (MPs). Usually the committee gets 60–100 budgetary requests by MPs and has less than 20 working days to scrutinise such requests.¹⁴ Moreover, the Committee on Budget and Finance lacks the human resources to scrutinise in detail the budgetary requests of budgetary organisations. The committee can choose to support such requests or not; it approves a report with amendments, which is delivered to all MPs five days prior to the parliamentary session for the final reading. On the final reading, MPs can issue requests for changes to budgetary appropriations with or without the support of the functional Committee on Budget and Finance. Each amendment should be reviewed and voted upon by MPs.¹⁵ The latest date by which the Assembly of Kosovo should approve the draft law on the budget is 31 December (see Figure 1).

¹⁴ Interview with an official of the Parliament of Kosovo, October 2018.

¹⁵ Assembly of Kosovo, Rules of Procedure of the Assembly of the Republic of Kosovo, source: <http://bit.ly/2In3Wkl>.

Figure 1. Budgeting process – a timeline



Note: GoK = Government of Kosovo; MF = Ministry of Finance.

Source: Author's elaboration based on the Law on Public Financial Management and Accountability.

Besides articles that regulate the budgeting process for all budgetary organisations, there are additional articles regulating the principles of budgetary appropriations for the courts and other independent agencies. According to Article 63.2, the KJC acts as an exclusive representative of all courts when it comes to budgetary submissions and other obligations specified in accordance with the law on the KJC. The role of the KJC in developing and overseeing the judiciary's budget and determining the number of judges is also set in the Constitution of Kosovo.¹⁶ The KPC and the chief state prosecutor plays the same role for the prosecution offices.¹⁷

The most important article with regard to the budgetary independence of the courts and prosecution is Article 65. According to Article 65.1, "[n]o budget organization, public authority, person or undertaking shall use or attempt to use the budgeting and appropriations process for an independent agency or a court in

¹⁶ Constitution of the Republic of Kosovo, Article 108.5.

¹⁷ Law No. 03/L –224 on the Kosovo Prosecutorial Council, source: <http://bit.ly/2EkkpLB>.

a manner that is intended to exert political, personal or commercial influence over such agency or court”. Further, Article 65.3 states: “In the case of a court, no public authority, person or undertaking – other than the KJC, the Ministry of Finance and the Assembly – shall participate in or attempt to influence, directly or indirectly, the budgeting and appropriation process affecting that court.”

3. Appropriation of financial resources for the courts and prosecution offices in practice

As mentioned above, since 2015 budget requests for the KJC and KPC by law must be directly forwarded to the Assembly of Kosovo. In practice, however, the budgetary resources of these two institutions are still reviewed and proposed by the Ministry of Finance.¹⁸ As we can see from Figure 2, during 2016–2018 the Ministry of Finance delivered a budget proposal to the functional committee of the Assembly of Kosovo with much lower budget ceilings compared with what had been requested by the KJC and KPC, and the Assembly of Kosovo approved almost exactly the same budget ceilings as those submitted by the Ministry of Finance.¹⁹

Compared with the cumulated budgetary requests of the KJC and KPC for 2016–2018, the cumulated budget approved was €18.7 million less (-17%).²⁰ Of the €18.7 million of funding refused, 69% fell in the category of wages and salaries, 21% was for goods and services and 10% for capital investments.²¹

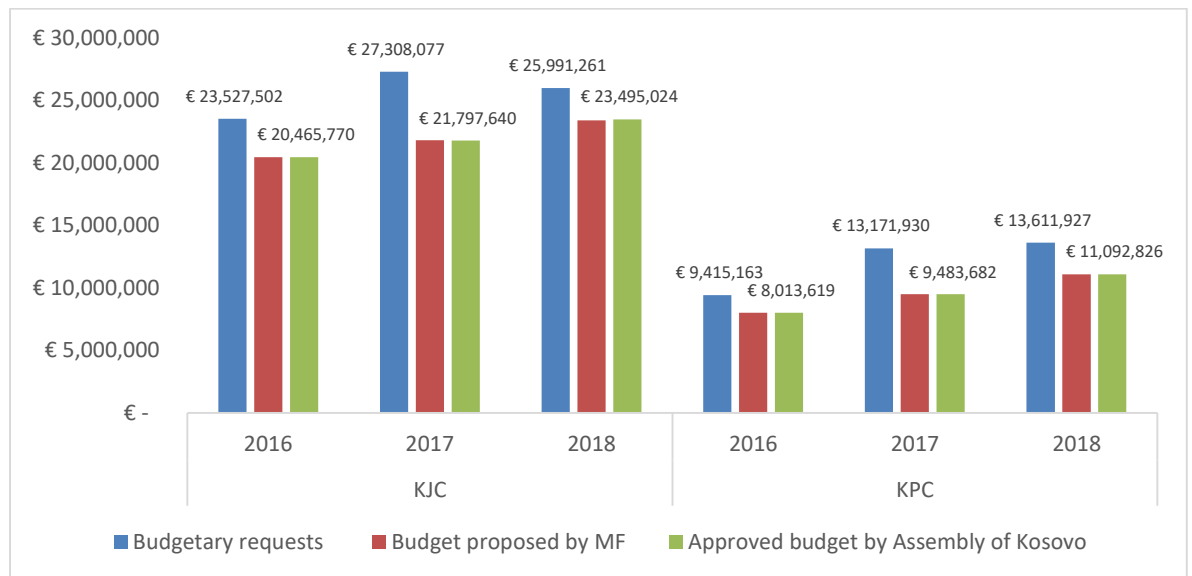
¹⁸ CEPEJ, “In-depth assessment report of the judicial system in Kosovo”, source: <http://bit.ly/2NfzvVo>.

¹⁹ Ministry of Finance, Draft law on the budget of the Republic of Kosovo for year 2018, source: <http://bit.ly/2DSF73H>.

²⁰ Author’s calculations based on Ministry of Finance data.

²¹ See Annex 1, Table A1 for detailed data.

Figure 2. Budget requests and approvals for the KJC and KPC for the years 2016–2018



Source: Based on Ministry of Finance data adopted by the author.

In order to identify whether there was a rationale behind the refusals of the budgetary requests of the KJC and KPC, the following paragraphs analyse parliamentary discussions for the budgetary appropriations for 2018. During parliamentary debates on the budget for 2018, with regard to the budgetary requests of the KJC and KPC, the minister of finance declared that even though the budgetary requests of these two institutions might be reasonable, the government did not have the financial capacity to fulfil all budgetary organisations' requests. In addition, he stated that these two institutions had not filled their vacant positions during 2017.²² Among others, these two institutions had requested budget increases for professional assistants for judges and prosecutors – requests that were not supported by the Ministry of Finance.²³ Still, aside from positions not being filled due to political agreements, which go beyond KJC or KPC competencies, in its annual reports of 2017 the National Audit Office did not criticise the KJC or

²² Assembly of Kosovo, Transcript of extraordinary plenary session, 22 December 2017, source: <http://bit.ly/2Gwqg2J>, p. 31.

²³ Ibid.

KPC for not filling their vacant positions.²⁴ Further, the claim by the Ministry of Finance that there were insufficient financial resources suggests that the rule of law was not a priority as asserted in the Government of Kosovo Program 2017–2021.²⁵ On the same note, while through a corrupted process the government increased the budget for fake war veterans by 55% (€20.8 million) in 2018, the budget for the KJC and KPC was increased by only 11% (€3.3 million).²⁶

The budgetary requests of the KJC and KPC were not supported either by the functional Parliamentary Committee on Budget and Finance.²⁷ This committee is led by an MP from the opposition party and according to the head of the committee, in 2018 they did not support these requests due to the lack of budgetary resources, but they would support such requests if there was a process of budget review during the year.²⁸ The fact that budgetary requests were not supported by MPs from the ruling or opposition political parties suggests that resources were not deliberately cut from the judiciary by the government. At the same time, neither the Ministry of Finance nor the head of the committee provided or have a rationale for why they refused such requests.

Contrary to the Ministry of Finance and head of the Parliamentary Committee on Budget and Finance, these budgetary requests were supported by the head of the Parliamentary Committee on Legislation during the second reading of the draft law on the budget. However, the budgetary requests for the KJC and KPC did not obtain

²⁴ In the Technical Dialogue between Kosovo and Serbia conducted by political representatives, in the process of integrating four northern municipalities in Kosovo that are mostly populated by the Serb minority, the parties agreed that there will be one Basic Court and Basic Prosecution Office for seven municipalities in the Mitrovica region; therefore, the budget was allocated for new staff. For details please see the agreement: <http://bit.ly/2T3kf3w>.

²⁵ Government of Kosovo, Government of Kosovo Program 2017–2021, source: <http://bit.ly/2SJjptq>.

²⁶ US Embassy in Kosovo, Ambassador Delawie's Remarks at the Annual Judicial Conference on "Improvements and Challenges in the Kosovo Judiciary, and Proposals for Solutions", December 2, 2017, source: <http://bit.ly/2BLp3R7>.

²⁷ Assembly of Kosovo, Meeting minutes of the Committee on Budget and Finance, 15 December 2017, source: <http://bit.ly/2Im2SGM>.

²⁸ Ibid., p. 33.

a majority of MPs' votes, and parliament passed the budget of Kosovo without substantive debate.²⁹

4. European-level principles on the budgetary independence of the courts and prosecution offices

The most influential document at the European level on budgetary effects on judicial independence is Recommendation (94)12 of the Committee of Ministers on the Independence, Efficiency and Role of Judges.³⁰ Chapter five of this document defines principles for certain aspects of financing the judiciary, and clearly states that courts should be allocated a sufficient number of judges and qualified supportive staff. While the number of judges and prosecutors per capita in Kosovo are comparable with EU countries, the number of assistants per judge is lower. In their annual reports for 2016 and 2017, the KJC and KPC mentioned the lack of budget for professional staff, administrative staff, experts and payments for lawyers as one of the main challenges to their work.³¹ Notably, compared with other countries of a similar size, the number of professional staff directly assisting judges is lower in Kosovo.³²

Besides general principles, the memorandum of Recommendation (94)12 goes into more detail with regard to the role of the courts and councils during the budget preparation process. According to the memorandum, to assist authorities in making an informed assessment of the budgetary requests of the courts, both the courts and councils can be involved during the process of budgetary appropriations. Also, the Consultative Council of European Judges (CCJE) recommends that an independent authority for managing the courts should be given a coordinating role

²⁹ European Commission, "Kosovo 2018 Report", pp. 8 and 42, source: <http://bit.ly/2uZVilP>.

³⁰ Council of Europe, *Report on the Independence of the Judicial System Part I: The Independence of Judges*, Adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010).

³¹ Kosovo Prosecutorial Council, *Annual Report 2017*; Kosovo Judiciary Council, *Annual Report 2017*.

³² CEPEJ, "In-depth assessment report of the judicial system in Kosovo", source: <http://bit.ly/2NfzvVo>, p. 62.

during the budgeting process and that this authority should have direct contact with the body of parliament. In contrast to these recommendations, the Kosovo Parliamentary Committee on Budget and Finance does not regularly organise budget hearings with the KJC during the process of budgetary appropriations.³³

According to the CCJE, even though there are different levels of economic development and financial capabilities that countries can support, budgetary sources for the judiciary should be given priority, as “the judiciary and the courts as an essential arm of the State have a strong claim on resources”.³⁴ Relative to its GDP, Kosovo has spent slightly more than other countries on the judiciary, but has not prioritised spending on it, as per capita spending is not similar to EU countries or some of the neighbouring countries.³⁵

Besides the recommendations of the Committee of Ministers about judges, the committee has also adopted Recommendation (2000)19 on “The role of public prosecution in the criminal justice system”.³⁶ Unlike the recommendation about judges, this document is less detailed, focusing only on the principle that “states should take effective measures to guarantee that public prosecutors are able to fulfil their professional duties and responsibilities under adequate legal and organisational conditions as well as adequate conditions as to the means, in particular budgetary means, at their disposal.” This recommendation is partially implemented in the law on the state prosecutor in Article 31.³⁷

³³ Interview with an official of the Parliament of Kosovo, October 2018.

³⁴ Opinion No. 2 (2001) of the Consultative Council of European Judges (CCJE) for the Attention of the Committee of Ministers of the Council of Europe on the Funding and Management of Courts with Reference to the Efficiency of the Judiciary and to Article 6 of the European Convention on Human Rights, source: <http://bit.ly/2X7tbnL>.

³⁵ CEPEJ, “In-depth assessment report of the judicial system in Kosovo”, source: <http://bit.ly/2NfzvVo>.

³⁶ Council of Europe, “The role of public prosecution in the criminal justice system”, source: <http://bit.ly/2U0wkDW>.

³⁷ Law No. 03/I –225 on the State Prosecutor, Article 31.

Another important document that provides annual comparative information on dimensions such as the independence, quality and efficiency of national justice systems for EU member states is the EU Justice Scoreboard.³⁸ With regard to budgetary data this publication provides very useful information on indicators, such as general government total expenditure on law courts per inhabitant and as a percentage of GDP, criteria for determining financial resources for the judiciary, the number of judges and lawyers per inhabitant, training, etc. Unfortunately, this publication does not include data for candidate countries or countries that have signed Stabilisation and Association Agreements with the EU (such as Kosovo). Providing similar data on a regular basis for such countries would be a useful way for policy-makers to compare where their countries stand in terms of resources appropriated for the courts and prosecution offices.

4.1 EU support for developing budgetary benchmarks for the courts and prosecution offices in Kosovo

In February 2018, the European Commission adopted the strategy for “A credible enlargement perspective for and enhanced EU engagement with the Western Balkans”.³⁹ Reforms to the rule of law are the first priority, and specifically mentioned is the need to develop indicators to measure such reforms. Currently, under the initiative of the “Horizontal Facility for the Western Balkans and Turkey” supported by the EU commissioner for Enlargement and European Neighbourhood Policy and the Council of Europe, a project is being implemented aiming to improve the quality of the justice system in Kosovo by making available the methodology and tools of the CEPEJ.⁴⁰ With the help of this project, the Council of Europe published comparable data for Kosovo and other countries on the efficiency of the

³⁸ European Commission, “EU Justice Scoreboard”, source: <http://bit.ly/2DR1Jlf>.

³⁹ European Commission, “Strategy for the Western Balkans”, source: <http://bit.ly/2SHDFLX>.

⁴⁰ Council of Europe, “Strengthening the Quality and Efficiency of Justice in Kosovo (KoSEJ)”, source: <http://bit.ly/2SX1S04>.

judiciary and resources allocated.⁴¹ In March 2019, the second assessment of judicial resources according to the CEPEJ methodology was published using 2017 data.⁴² The project mentioned above is scheduled to end in May 2019; a challenge with respect to donor-driven initiatives is that they tend to lack sustainability.⁴³

5. Conclusions and recommendations

The limited professional capacities of the Parliamentary Committee on Budget and Finance, the time constraints of parliament to scrutinise the budget, a lack of regular budget hearings with the KJC and KPC, and a lack of comparable data relative to other countries are some of the reasons that may lead to the limited budgetary capacities of the KJC and KPC to effectively fulfil their missions. No evidence was found that ruling political parties deliberately wanted to interfere with the independence of the judicial system, but neither the Ministry of Finance nor parliament of Kosovo could provide rationales for why they had refused the budgetary requests of the KJC and KPC.

As recommended by the Council of Europe, the KJC and KPC should be involved during budgetary appropriations, which should be mandatory and ensured by law. Kosovo's parliament should use benchmarks and provide arguments transparent to the public when it supports or refuses the budgetary requests of the KJC and KPC. Besides ensuring transparency in the process, the professional capacities of staff of the Committee on Budget and Finance should be increased. Further, the law on budget appropriations should be submitted to the Assembly of Kosovo at least three months prior to the start of the fiscal year, so that committees are given more time to assess budgetary requests.

In order to develop benchmarks that can be used for policy-makers and other stakeholders, the KJC and KPC should publish data according to the CEPEJ

⁴¹ CEPEJ, "In-depth assessment report of the judicial system in Kosovo", source: <http://bit.ly/2NfzvVo>.

⁴² Council of Europe, "Comparative Assessment of the Judicial System in Kosovo from 2014 to 2017", source: <http://bit.ly/2HRI20d>.

⁴³ Council of Europe, "What is the Horizontal Facility?", source: <http://bit.ly/2TW5nBf>.

methodology, while the EU should continue to support initiatives that increase the capacities of the courts and prosecution offices to publish data according to that methodology. In this regard, as benchmarks for measuring reforms on the rule of law are one of the requirements of the enlargement strategy for the Western Balkans, the EU should publish or support initiatives such as the EU Justice Scoreboard for candidate and other countries that have signed Stabilisation and Association Agreements with the EU.

Annex

Table A1. Cumulated budgetary requests and approvals for KJC and KPC 2016-2018

(in €)

	Capital investments	Goods and services	Municipal expenses	Number of employees	Subsidies and transfers	Wages and salaries
KJC	14,087,000	54,315,924	6,369,929	31,175	3,800,000	217,512,331
Approved budget	2,856,000	11,494,583	1,350,000	6,589	850,000	49,207,851
Budget circular 1	3,115,000	11,197,757	1,415,929	6,436	750,000	30,747,981
Budget circular 2	1,170,000	7,426,158	900,000	4,277	500,000	30,608,452
Budgetary requests	4,090,000	12,702,843	1,354,000	7,396	950,000	57,729,997
Draft budget	2,856,000	11,494,583	1,350,000	6,477	750,000	49,218,050
KPC	12,158,000	24,465,860	2,795,820	10,376	n.a -	90,345,915
Approved budget	2,912,000	4,837,656	598,890	2,242	n.a -	20,241,581
Budget circular 1	1,474,500	4,538,788	598,890	2,044	n.a	12,798,842
Budget circular 2	1,327,500	2,767,104	399,260	1,346	n.a	12,481,437
Budgetary requests	3,532,000	7,484,656	599,890	2,502	n.a -	24,582,474
Draft budget	2,912,000	4,837,656	598,890	2,242	n.a	20,241,581

Source: Ministry of Finance

Note: n.a means that KPC did request any budget about subsidies and transfers

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For the period 2018–19, six highly-qualified Fellowship members were selected:

- Denis Cenuşa, Researcher at the Institute for Political Science and PhD candidate at the Justus-Liebig University in Giessen, and Associated Expert at Expert-Grup, Chisinau
- Judit Bayer, Professor of Media Law and International Law at the Budapest Business School
- Simonida Kacarska, Director and co-founder of the European Policy Institute, Skopje
- Naim Rashiti, Executive Director and Senior Balkan Analyst, Balkans Policy Research Group, Pristina
- Maria Repko, Deputy Director at the Centre for Economic Strategy, Kiev
- Berat Thaqi, Policy Analyst at the GAP Institute, Pristina





GAP Institute is a Think Tank established in October 2007 in Kosovo. GAP's main goal is to attract professionals to create an environment of professional development and research, as seen in similar institutions in Western countries. This also provides Kosovars with opportunities to research, develop and implement projects in order to advance the Kosovo society. Priority for this Institute is the mobilization of professionals to address the country's economic, political and social challenges. GAP's main goals are to fill the gaps between government and citizens, and between problems and solutions.

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