

# Judicial Independence in Kosovo.

## A Critical Analysis of Select Provisions of the Law on Courts

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### **Abstract**

As the Republic of Kosovo continues to develop as independent state, the world watches closely. Of particular interest to many is whether Kosovo will truly embrace the rule of law or whether it's growth will continue to be hampered by the long shadow of corruption. As the judiciary plays a central role in ensuring the rule of law is implemented and followed, it is critical that judges are free to exercise their judicial power freely and without fear of recourse from other members of the government, or the public. To this end, the newly revised Law on Courts is a key piece of legislation, as it specifies the qualifications, rights, and duties of the judges. This paper will analyze key provisions of the Law on Courts, paying special attention to how they impact judicial independence.

**Keywords:** law on courts; judicial independence; initial training; corruption; judicial compensation; protection.

### **Introduction**

Over the past two decades the judiciary in Kosovo has undergone radical change. In the period immediately following the breakup of Yugoslavia, the task of transforming Kosovo's socialist institutions fell under the purview of the United Nations Mission in Kosovo (UNMIK). During this period of UNMIK stewardship, the international community worked together to establish democratic institutions and reinforce the rule of law. The UNMIK administration of Kosovo's legal institutions continued until Kosovo declared independence in 2008. Shortly after, UNMIK began the process of transferring many of their powers to the newly established government of Kosovo.

Among the first orders of business in the Republic of Kosovo was to reform the judicial system. To this end, a series of laws were passed in 2010, including, the Law on the

Kosovo Judicial Council<sup>1</sup>, the Law on Courts<sup>2</sup>, Law on State Prosecutor<sup>3</sup>, and the Law on the Kosovo Prosecutorial Council.<sup>4</sup> Despite these attempts to reorganize the courts and establish judicial independence, Kosovo has struggled to reduce the influence exerted by politicians and other interested parties on the judiciary and has been hampered by allegations of corruption.<sup>5</sup>

In 2018, the Law on Courts was revised in order to address some of the issues that may hinder judicial independence. Implementing new laws to address the shortcomings of the judicial system is commendable, but simply replacing failed legislation with new legislation is unlikely to ensure judicial independence, or to eradicate the specter of corruption. Accordingly, this paper will provide a critical analysis of some of the key provisions of the revised “Law on Courts” and offer recommendations that may help to strengthen the effect of this legislation, when appropriate.

## Corruption in Kosovo

The struggle to eliminate endemic and systematic corruption in Kosovo has been one of the toughest battles for anti-corruption agencies, civil society organizations, and those within the Kosovar government who are dedicated to implementing the rule of law. According to Transparency International’s Corruption Perceptions Index (CPI) 2018, which measures citizens’ perception of public sector corruption, Kosovo ranked 93 out of 180 countries.<sup>6</sup> Kosovo scored a 37 on the index, matching the score of neighbor North Macedonia, with only Albania (36), Moldova (33), Ukraine (32), and Russia (28) scoring lower in Europe.<sup>7</sup>

While anticorruption efforts have been evolving for more than a decade, the CPI data would suggest that corruption is still a pressing issue. Despite reform efforts, scholars have noted there is often a great disparity between what is said, and what is actually done by institutional leaders to fight corruption in Kosovo.<sup>8</sup> While most in government voice their support for the rule of law, in practice very few high profile individuals are

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<sup>1</sup> Law on the Kosovo Judicial Council, Law No. 03/L-223 (2010) (Kos.) [Abolished by the Law on Kosovo Judicial Council, Law No. 06/L-055, in 2018].

<sup>2</sup> Law on Courts, Law No. 03/L-199 (2010) (Kos.) [This law was abolished by the Law on Courts, Law No. 06/L-054 in 2018].

<sup>3</sup> Law on State Prosecutor, Law No. 03/L-225 (2010) (Kos.) [This law has since been amended and supplemented twice, once in 2015 by Law. 05/L-034, and again in 2018 Law. No. 06/L-025].

<sup>4</sup> Law on the Kosovo Prosecutorial Council, Law No. 03/L-224 (2010) (Kos.) [Abolished by the Law on Kosovo prosecutorial Council, Law No. 06/L-056 in 2018]

<sup>5</sup> See U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., *Kosovo 2018 Human Rights Report* 17 (2018).

<sup>6</sup> Amnesty International, *Corruption Perceptions Index 2018*, <https://www.transparency.org/cpi2018> (last visited September 22, 2019).

<sup>7</sup> See *id.*

<sup>8</sup> See generally Ehat Miftaraj, Betim Musliu & Hyrije Mehmeti, *Integrity of Justice System in the Fight Against Corruption* 25 (2018).

charged, and even fewer are convicted.<sup>9</sup> Further, in the few instances where they were convicted, they often received lenient punishments.<sup>10</sup>

Corruption takes many forms in Kosovo, including political interference in the prosecution of high-profile cases. One notable case that illustrates the prevalence of political interference in Kosovo is that of Special Prosecutor Elez Blakaj, who resigned from his post on August 13, 2018. At the time of his resignation, Blakaj was investigating several high profile cases, including one that alleged government officials were part of fraud scheme that gave military pensions to those who did not qualify for the benefit, costing Kosovo an estimated 68 million euros.<sup>11</sup> One of those indicted was a Member of Parliament, Shkumbin Demaliaj, who said he would “deal with” the prosecutor during an interview with Radio Television of Kosovo (RTK).<sup>12</sup> Similarly, Milaim Zeka, also a member of the Kosovar Parliament, publicly threatened prosecutor Afrim Shefkiu, who was investigating Zeka for fraud at the time.<sup>13</sup>

While outright threats to prosecutors or judges are one way in which politicians may interfere in the judicial process, there are other, less obvious methods employed as well. For example, ensuring that a specific judge hears a certain case may ensure the desired result is achieved. To avoid this problem, Kosovo court regulations require cases to be randomly assigned, but this regulation is not consistently applied.<sup>14</sup>

Shielding cases involving high profile defendants from the public view is yet another form of potential impropriety. This occurred in the case of Appellate Court President Salih Mekaj, who was arrested and charged with “misuse of authority or official position”, as well as “exertion of influence”.<sup>15</sup> After closed door proceedings, which excluded members of the media and public, Mekaj was eventually acquitted of all charges.<sup>16</sup> The decision to resolve this case in private raised questions regarding transparency in the Kosovo courts, and whether this high ranking member of the judiciary was afforded preferential treatment in the handling of his case.

While the cases noted above certainly garnered a lot of media attention, they are not isolated occurrences. This would seem to suggest that despite the repeated claims of

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<sup>9</sup> *Id.*

<sup>10</sup> U.S. Dep’t of State, *supra* note 1, at 17.

<sup>11</sup> U.N. Secretary-General, *Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo*, ¶16, U.N. Doc.S/2018/981 (Nov. 1, 2018).

<sup>12</sup> Die Morina & Balkan Investigative Reporting Network (BIRN), *Kosovo MP Arrested for “Intimidating Prosecutor”*, Balkan Insight (Sep. 27, 2018), <https://balkaninsight.com/2018/09/27/kosovo-mp-arrested-for-intimidating-a-prosecutor-09-27-2018/>.

<sup>13</sup> *2nd Kosovo Lawmaker Detained for Threatening Prosecutors*, The Seattle Times, (Sep 28, 2018), <https://www.seattletimes.com/nation-world/2nd-kosovo-lawmaker-detained-for-threatening-prosecutors/>.

<sup>14</sup> *Kosovo 2019 Report*, at 15, COM (2019) 260 final (May 29, 2019).

<sup>15</sup> FOL Movement, *The Demand for Judicial Transparency* 3, (Feb. 28, 2017).

<sup>16</sup> *Id.*

government officials that may pay lip service to their support of anticorruption efforts and the rule of law, corruption is still present at the highest levels in Kosovo.

## The Law on Courts

Judicial independence was something that those who drafted the Constitution of the Republic of Kosovo (CRK) took very seriously. Specific provisions were included in the CRK that ensured not only a separation of powers, but also acknowledged that, “The judicial power is unique, independent, fair, apolitical and impartial and ensures equal access to the courts.”<sup>17</sup> In addition, individual judges were also granted independence when performing their duties, with the CRK emphatically declaring, “Judges shall be independent and impartial in exercising their functions.”<sup>18</sup> Similarly, the Law on Courts was designed to regulate the organization, functioning, and jurisdiction of the courts in Kosovo.<sup>19</sup> Article 3, mirrors the language of the CRK, affirming that the exercise of judicial power should be free from outside influence.<sup>20</sup> Further, Article 40 implores judges to act, “objectively, and independently, in line with the principles provided under the Code of Professional Ethics of Judges”.<sup>21</sup>

While these declarations alone do not ensure judicial independence, there are some additional provisions of the Law on Courts that attempt to address some of the underlying causes that may make judges susceptible to political influence, or corruption in general. Specifically, Article 31, which deals with the initial training of judges, Article 35, which covers judicial compensation, and Article 36, which provides for protective measures for judges and their families.

### A. Article 31: Initial Training

One major addition to the most recent version of the Law on Courts was the inclusion of a provision mandating an initial training period for newly appointed judges. The training is organized by the Academy of Justice (AOJ) and is twelve months in duration.<sup>22</sup> The training curriculum covers a broad range of topics, including: national and international legislation; the Criminal Code of the Republic of Kosovo; the Criminal Procedure Code of the Republic of Kosovo; civil, administrative and commercial law; as well as personal and interdisciplinary skills.<sup>23</sup> Of particular interest are a series of professional ethics training sessions that occur as part of the personal and interdisciplinary skills portion

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<sup>17</sup> Constitution of the Republic of Kosovo, Jun. 15, 2008, art. 102.1.

<sup>18</sup> *Id.* at art. 102.4.

<sup>19</sup> See generally Law on Courts, Law No. 06/L-054 (2018) (Kos.)

<sup>20</sup> *Id.* at art. 3.

<sup>21</sup> *Id.* at art. 40.

<sup>22</sup> Academy of Justice, *Initial Training Program for the Newly Appointed Judges 2019/2020* 4 (2019) (Kos.) [Hereinafter *Initial Training Program*].

of the curriculum. The professional ethics training consists of ten sessions, lasting a total of thirty hours.<sup>24</sup> The training focuses heavily on, “concrete cases drawn from the reality of life in Kosovo” and is designed to create the conceptual tools needed to analyze and resolve ethical issues.<sup>25</sup>

The acknowledgment that newly appointed judges need an initial standardized training curriculum above and beyond that provided during their legal education, and that professional ethics play a vital role in their development, is crucial step in creating a professional, independent judiciary. Historically, implementing quality judicial training has been a problem in Kosovo. Most notably, the Kosovo Judicial Institute, the predecessor of the Academy of Justice, has had a number of issues with capacity building as it relates to instituting effective judicial training programs in Kosovo.<sup>26</sup> Among the many impediments was the use of trainers that were either unqualified or appeared to be unqualified.<sup>27</sup> Another potential pitfall that hindered reform efforts by the Kosovo Judicial Institute was identified by researchers as “ignorance of the local culture.”<sup>28</sup> Essentially what this meant is that those donors who provide support for judicial training endeavors in Kosovo often simply took what worked in another country and tried to replicate it in Kosovo, without modifying it accordingly to work within the unique culture and context of Kosovo.<sup>29</sup> This “copy and paste” approach to judicial training may work in some instances, but would seem to be largely ineffective when attempted in Kosovo.

### *B. Salary and Judicial Compensation*

According to the Southeast European Leadership for Development and Integrity (SELDI), Kosovar citizens perceive judges, and the courts in general, to be amongst the most corrupt institutions in Kosovo.<sup>30</sup> This perception may be deserved, as there have been instances of members of the judiciary engaging in overt acts of corruption, such as abusing their official position for personal gain, or purposely subverting the legal process to achieve the desired legal result.<sup>31</sup> While there are certainly many causes of corruption, Van Rijckeghem and Weder found a correlation between inadequate

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<sup>24</sup> *Id.* at 34.

<sup>25</sup> *Id.*.

<sup>26</sup> See generally Charles A. Ericksen & Lavdim Krasniqi, *The Challenges of Capacity Building in Judicial-Training Institutions – The Kosovo Experience*, 4 J. of the Int’l Org. for Jud. Training 66, 66-73 (2015). [Hereinafter *The Challenges of Capacity Building*].

<sup>27</sup> *Id.* at 70.

<sup>28</sup> *Id.* at 70-71.

<sup>29</sup> See *id.*

<sup>30</sup> Southeast European Leadership for Development and Integrity (SELDI), *Assessment of Corruption in Kosovo* 2016 18 (2016).

<sup>31</sup> Labinot Leposhitca & Arber Kadriu, *Corrupted Liberalization* 7-8 (2018).

salary and public sector corruption, but noted that it would likely require large wage increases to eradicate corruption via pay raises.<sup>32</sup>

Article 35 of the Law on Courts took steps to ensure the salaries of members of the judiciary were comparable to other government employees entrusted with similar levels of responsibility. For example, this provision mandated that, “the President of Supreme Court shall receive a salary not less than that of the Prime Minister of the Republic of Kosovo.”<sup>33</sup> Not only does this requirement ensure equal pay for these high ranking members of government, it would seem to reaffirm the notion that the Prime Minister and the President of the Supreme Court are equals, a subtle, but powerful statement. The salary of other Supreme Court justices was set at 90% of the salary of the President of the Supreme Court and a sliding scale was implemented to establish the salary of lower level judges.<sup>34</sup> Many, like Basic Court judges, received a higher guaranteed basic salary than they had under the previous version of the Law on Courts.

Raising salaries does not necessarily mean that there will be less corruption, nor does it guarantee that judges will be free from outside interference when rendering decisions. However, paying judges a salary that is equal to their counterparts in other branches of government, may help to reduce acts of corruption committed by judges acting out of financial necessity, due to low salaries, or perceived unfair treatment, due to disparities in salary between branches of government.

### *C. Article 36: Protection*

Being threatened or targeted for violence because of your career choice is an unfortunate, and often tragic reality for people in many professions. Given the contentious and sometimes volatile nature of the work judges are often tasked with, it should come as no surprise that many judges fear for their safety, both in the courthouse, and while in the community. Threatening behavior against members of the judiciary can take a number of forms, including receiving inappropriate or threatening communications, being inappropriately approached, or being physically assaulted.<sup>35</sup> One study found that 52% of Pennsylvania judges who responded to their survey reported being victims of some sort of inappropriate or threatening behavior.<sup>36</sup> These dangers were not limited to the courthouse, with between 17% and 44% of incidents happening outside of the courthouse.<sup>37</sup>

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<sup>32</sup> See generally Caroline Van Rijckeghem & Beatrice Weder, *Bureaucratic Corruption and the Rate of Temptation: Do Wages in the Civil Service Affect Corruption, and by How Much?*, 65 J. of Dev. Econ. 307, 307-331 (2001).

<sup>33</sup> Law on Courts, *supra* note 15, at art. 35.

<sup>34</sup> *Id.*

<sup>35</sup> Donald J. Harris, Charlotte L. Kirschner, Kristina Klatt Rozek, & Neil Alan Weiner, *Violence in the Judicial Workplace: One State's Experience* 576 ANNALS of the Am. Acad. of Pol. and Soc. Sci. 38-40 (2001).

<sup>36</sup> *Id.* at 40.

<sup>37</sup> *Id.*

More recently, a survey of 163 American trial judges was conducted, and found that respondents experienced a moderate amounts of concern for their own personal safety, and that of their family.<sup>38</sup> The types of threats judges were most commonly concerned with were: being inappropriately approached, being confronted face-to-face, receiving threatening letters or phone calls, and being physically assaulted.<sup>39</sup>

Cognizant of the potential threats judges and their families face, Article 36 of the Law on Courts provides judges with the ability to request special protective measures for themselves, or a family member, if their lives are threatened as a result of the judge performing their judicial duties. This provision was a holdover from the 2010 Law on Courts, and would seem to suggest a continued commitment to provide for the safety of members of the judiciary, and their families, in the face of threats of harm from those who would wish to do them harm.

## Recomandations

### A. *Article 31: Initial Training*

As previously noted, training is only effective if the trainers are actually qualified for the task at hand, and not simply chosen for the sake of convenience, or because of their political connections.<sup>40</sup> The Academy of Justice organizational chart shows the Head of the Training Department for Judges and Prosecutors supervising the work of the Senior Initial Training Officer, and reporting directly to the Executive Director of the AOJ.<sup>41</sup> As it would appear that the Senior Initial Training Officer, and any subordinates, would directly implement the training modules, those serving in these roles should be strictly vetted and hired based on their level of competence and expertise. Ensuring trainers are hired based on merit would appear to be a truly difficult task, as nepotism is fairly rampant in Kosovo, with a recent United Nations Development Programme (UNDP) Kosovo report suggesting that Kosovo's civil service is, "riddled with nepotism, favoritism, and patronage."<sup>42</sup> Accordingly, measures must be implemented to ensure that qualified individuals are being selected for positions as trainers. For maximum effectiveness, this may require monitoring and evaluation of hiring practices by civil society organizations, or some other neutral third party.

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<sup>38</sup> David M. Flores, Monica K. Miller, Jared Chamberlain, James T. Richardson, & Brian H. Bornstein, *Judges' Perspectives on Stress and Safety in the Courtroom: An Exploratory Study*, 45 Ct. Rev.: The J. of the Am. Judges Ass'n 76, 79-84 (2009).

<sup>39</sup> *Id.* at 84.

<sup>40</sup> *The Challenges of Capacity Building*, *supra* note 21, at 70.

<sup>41</sup> Academy of Justice, *Organizational Chart*, <https://ad.rks-gov.net/en/organizational-chart> (last visited September 22, 2019). (Kos.)

<sup>42</sup> UNDP Kosovo, *Public Pulse on Corruption 3* (October, 2016).



In addition, ensuring that any training sessions are based on best practices and specifically designed for implementation in the unique context of the Republic of Kosovo is critical. This would seem to be addressed, at least in terms of ethics training, by the previously mentioned focus on providing concrete examples based on real life cases in Kosovo, but as the old axiom notes, the devil is always in the details, so there may still be stumbling blocks in developing meaningful and effective training initiatives, depending on who is actually conducting the training sessions, and whether they are narrowly tailoring the content to fit the needs of the judiciary in Kosovo. To this end, regular program review by an outside agency may be useful in helping to determine if the training modules are meeting the needs of the target audience, and to allow for the inclusion of new examples or issues that may need to be addressed.

Another potential area for conflict results from the selection of personnel to conduct the training sessions and to evaluate candidates. If trainers are selected based on their political or family connections, rather than based on merit and character, the entire training process could be undermined. To this end, the selection of trainers should be strictly scrutinized to ensure the AOJ does not suffer from the same shortcomings of the Kosovo Judicial Institute. Continued monitoring of trainers would also be in order, to ensure that once selected, trainers continue to meet the standards of the AOJ.

#### *B. Article 35: Salary and Judicial Compensation*

Raising the salary of members of the judiciary to more closely mirror those of their counterparts in the other branches of government is commendable, but ultimately may not be enough to stop corruption. Relying on public sector pay raises alone is an insufficient anticorruption strategy, as a multifaceted approach that addresses other conditions that may allow corruption to flourish.<sup>43</sup>

In Kosovo, the salary of members of the judiciary is calculated in the manner prescribed by the Law on Salaries in Public Sector.<sup>44</sup> Salaries consist of a basic salary, plus some allowances for things like market conditions, performance bonuses, and length of employment.<sup>45</sup> For the purposes of our analysis, we will focus strictly on the basic salary of judges, which is based on the calculation provided in Article 21 of the Law on Salaries in the Public Sector.

Each public sector employee is assigned a salary class, ranging from 1 to 69, as well as a corresponding salary coefficient, which ranges from 1 to 10.<sup>46</sup> The basic salary is then calculated by multiplying the employee's salary coefficient with the monetary value of

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<sup>43</sup> Ting Gong & Alfred M. Wu, *Does Increased Civil Service Pay Deter Corruption? Evidence from China*, 32 Rev. of Pub. Personnel Admin. 192, 193-201 (2012).

<sup>44</sup> See generally Law on Salaries in Public Sector, Law No. 06/L-111 (2019) (Kos.)

<sup>45</sup> *Id.* at art. 4.

<sup>46</sup> *Id.* at art. 21(3).



the coefficient. The monetary value of the coefficient is currently set at two hundred and thirty-nine Euros per month.<sup>47</sup> Based on these calculations, the basic salary for members of the judiciary is as follows:

Position	Class	Coefficient	Monthly Basic Salary in Euros / U.S. Dollars <sup>48</sup>
President of the Constitutional Court	A2	9	€2,151.00 / \$2,359.69
Deputy President of the Constitutional Court	A3	8.5	€2,031.50 / \$2,228.54
President of the Supreme Court	A4	8	€1,912.00 / \$2,097.45
Judge of the Constitutional Court	A4	8	€1,912.00 / \$2,097.45
Judge of the Supreme Court	A5	7.75	€1,852.25 / \$2,031.87
President of the Court of Appeals	A7	7	€1,673.00 / \$1,835.24
Judge of the Court of Appeals	A8	6.75	€1,613.25 / \$1,769.70
President of the Basic Court	A8	6.75	€1,613.25 / \$1,769.70
Judge of the Basic Court for Serious Crimes	A9	6.65	€1,589.35 / \$1,743.57
Supervisory Judge in the Basic Court Branch	A12	6.15	€1,469.85 / \$1,612.47
Judge of the Basic Court	A17	5.25	€1,254.75 / \$1,376.50

*Table 1. Basic Salary for Select Members of the Judiciary (2019)*

Raw salary data provides some insight into what members of the Kosovar judiciary earn, but more information is needed to accurately evaluate whether or not members of the judiciary are being fairly compensated for their services. By comparing what judges earn to the average Kosovar, and then to members of the Kosovar diaspora who may be working abroad, we can better explore the relative value of the public sector salaries drawn by members of the judiciary.

While there are certainly many statistical methods available that may be used to determine average individual earnings, we chose to use Gross National Income (GNI) per capita in Purchasing Power Parity (PPP) dollars for our comparison. According to the World Bank, the average GNI per capita in PPP dollars for Kosovo in 2018 is \$11,580.<sup>49</sup> A cursory glance at the earnings chart listed above shows that even the lowest member of the judiciary earns much more than the average Kosovar, with the lowest salaried judge listed above earning approximately \$16,518 per year (\$1,376.50 per month, for twelve months) in basic salary, without accounting for any additional allowances. While this would seem to suggest that members of the judiciary are well compensated for their services, it fails to consider the salary earned by another key group of Kosovars, those who are part of the diaspora.

<sup>47</sup> *Id.* at art. 23(1).

<sup>48</sup> Xe.com, *Xe Currency Converter*, <https://www.xe.com/currencyconverter/> (last visited Sep. 2, 2019). [Euro to U.S. dollar exchange rates based on currency conversion rate of 1 USD = 0.911560 EUR on September 2, 2019]

<sup>49</sup> The World Bank, International Comparison Program Database, *GNI per capita, PPP (Current International \$)*, <https://data.worldbank.org/indicator/NY.GNP.PCAP.PP.CD> (last visited Sep. 23, 2019). [Hereinafter The World Bank].

Throughout the 20<sup>th</sup> century many Kosovars have emigrated to other parts of Europe, and to a lesser extent to other parts of the world.<sup>50</sup> Approximately 100,000 Kosovars left the country in the wake of the ethnic violence that marked the breakup of Yugoslavia in the 1990's.<sup>51</sup> Many of those who left Kosovo stayed in Europe, with large percentages of Kosovars emigrating to Germany, Switzerland, Italy, Austria and Sweden.<sup>52</sup>

While these individuals may no longer reside in Kosovo, they do have a tremendous influence on life in Kosovo for many of their family members, who rely on them for financial support.<sup>53</sup> Because so many Kosovars earn a living outside of Kosovo, any analysis of domestic salaries should include a review of what these same people might earn if they were to choose to live and work abroad. Below is the GNI per capita in PPP figures for leading destination countries for members of the Kosovo diaspora<sup>54</sup>:

Country	GNI Per Capita, PPP
Germany	\$55,800
Switzerland	\$69,220
Italy	\$42,490
Austria	\$55,960
Sweden	\$53,990
United States	\$63,390
France	\$46,900
Belgium	\$51,470
United Kingdom	\$45,660

Table 2. GNI Per Capita (PPP) for Top Diaspora Destinations (2018)<sup>55</sup>

Assuming that the average member of the diaspora earns anywhere close to the figures listed above, it becomes obvious that there would be large pay gap between even the highest paid member of the judiciary, the President of the Constitutional Court, who earns \$2,359.69 per month, or \$28,316.28 annually, and the average worker in one of the diaspora destination countries. As such, it is not hard to posit that some judges may seek to supplement their income via unscrupulous means. This would seem to be a critical stumbling block, as it would be near impossible to pay public sector employees wages that are comparable with what the members of the diaspora may earn, but not paying them more may perpetuate the cycle of corruption.

<sup>50</sup> See generally Besim Gollopeni, *Kosovar Emigration: Causes, Losses and Benefits*, 54 Soc. and Space 295, 298-299 (2016).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 310.

<sup>54</sup> *Id.* at 302. [Top (10) landing countries for Kosovar emigration]

<sup>55</sup> The World Bank, *supra* note 44.

### C. *Article 36: Protection*

The Law on Courts clearly anticipates that judges may be targeted for performing their judicial duties, and provides protection for judges, and their family members, in the event that there is a threat to their life. While this is clearly helpful, there may be some concern as to the protection available to judges, or their families, in instances where the threat is less serious. As previously noted, threats to members of the judiciary take many forms, including inappropriate contact, or inappropriate communication, which do not always result in explicit threats, and as such would seem to merit police protection.

Further, politicians in Kosovo sought to influence judicial decisions, either directly, or by using the media to pressure judges into making decisions that are in the interest of the politician.<sup>56</sup> As such, pressure from other members of the government may be the most common hindrance to judicial independence, and consequently pose a substantial threat to the free exercise of judicial power, yet barring an explicit threat, no avenue is available for judges to request protection in such instances. Accordingly, this provision seems well intentioned, but inadequate given the narrow scope of instances that would warrant protection. Legislators may want to revise this portion of the law to permit members of the judiciary to request protection in situations other than threats to their life, or that of a family member, or alternately, to provide judges with a permanent security detail, if the judge so desires. Knowing that they have around the clock protection may help eliminate some of the safety concerns judges may have and allow them to freely exercise their judicial power.

## **Conclusions**

If the Republic of Kosovo expects to truly embrace the rule of law and meet the expectations of the international community, the establishment and maintenance of an independent judiciary is vital. Legislation that adequately trains new judges, fairly compensates them, and protects them when they may be targeted for performing their duties, is clearly appropriate, and a welcome step towards ensuring judicial independence. But legislation alone, even the most well intentioned and expertly crafted, will have little impact if there is not buy-in by all branches of government, as well as the citizenry. Kosovo can't afford to draft model legislation, and then simply continue conducting business as usual, with a heavy reliance on nepotism, bribery, and politicians placing their thumb on the scales of justice.

The framework to eliminate corruption in Kosovo exists, but so far it has been ineffective. This failure is largely due to a lack of political will by those in positions of

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<sup>56</sup> Victoria Jennett, *Corruption Risk Assessment of the Kosovo Judicial System* 19 (May, 2017).

power within the Kosovar government. Simply stated, many are content to continue exploiting their position for personal gain, and many citizens accept this corruption as an unfortunate, but ever-present reality of life in Kosovo. As such, the role of the judiciary is of critical importance to the future development of Kosovo as a nation. The judiciary has the power to hold those who break the public trust accountable, and to change the culture of corruption. If specific defects in existing legislation were remedied, for example, providing enhanced protection of judges, the judiciary may have all the necessary tools to effect this much needed cultural change. Whether the judiciary will embrace the rule of law and be agents of change is yet to be seen, and could, of course, be the fatal flaw in plan to move Kosovo away from the corruption that so far has plagued governmental institutions.

How the fledgling Republic of Kosovo deals with the disparities between what the law says on paper, and how it is implemented is not only critical to the future stability of Kosovo, but for other developing nations as well. International development agencies and civil society organizations have invested millions of dollars and countless hours of expertise in projects aimed at strengthening the rule of law in Kosovo, and in other parts of the world. While there are certainly examples of success, there are just as many, if not more, examples of failure. If Kosovo was able to overcome its long history of corruption, specifically as it relates to the judiciary, it may be a step towards true reform. The lessons learned in Kosovo may help ensure other developing nations do not repeat the same mistakes, and in turn may help save resources, and even lives.

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