Disciplinary measures against judges and prosecutors
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Introduction

This analysis aims to present legal regulation of disciplinary procedures against judges and prosecutors of the Republic of Kosovo, the work of Kosovo Judicial Council (KJC), and Kosovo Prosecutorial Council (KPC) in implementing the Law no. 06/L–057 on Disciplinary Liability of Judges and Prosecutors and the imposed measures on judges and prosecutors who have been subject to disciplinary procedure during the period June 2009 – April 2020.

Furthermore, this analysis focuses on the publication of disciplinary decisions and their impact on the advancement process (promotion of judges and prosecutors) and the evaluation of their performance.

Judges and prosecutors carry out their jobs independently, based on Constitution and law. Their entire activity must be based on impartiality, integrity, professionalism, and independence. Therefore, the KJC and the KPC should continue their efforts to maintain the independence of the judicial and prosecutorial system.

Taken into account that judges and prosecutors do not always do their jobs on the basis of the abovementioned principles, they are disciplined by the relevant Councils, as punishments for their wrongdoings and malpractices, which are recognized by applicable law as disciplinary offenses.

The development of disciplinary procedures against judges and prosecutors and the imposition of sanctions against them are undertaken in accordance with Law no.06/L–057 on Disciplinary and Responsibility of Judges and Prosecutors, which was first put into effect on 13 December 2018.

Legal regulation of the disciplinary procedure of judges and prosecutors under Law on Disciplinary Liability of Judges and Prosecutors

Before the enforcement of the Law on Disciplinary Liability of Judges and Prosecutors, the development of disciplinary procedures against judges and prosecutors was done within the Office of the Disciplinary Counsel (ODC) framework. The ODC was a separate and independent body that served both KJC and KPC.

The main function of this body was to examine the allegations for misconduct by judges and prosecutors, presenting proof and cases to the Disciplinary Commission in support of disciplinary actions for misconduct.¹

With the entry into force of the Law on Disciplinary Liability of Judges and Prosecutors, the initiation and development of disciplinary procedures have taken another turn. Now, the development of such a procedure is not done within the ODC, but this competence has been delegated to the KJC and KPC, which will take the necessary steps to develop the investigations and impose disciplinary sanctions if the last ones are applicable in each concrete case.

Article 9 of the Law on Disciplinary Liability of Judges and Prosecutors determines the procedure for initiating investigations on disciplinary offenses.² The initiation of a disciplinary proceeding against a judge or prosecutor is done through an appeal. Similar to the procedure developed by ODP, an appeal can be submitted by natural persons or legal persons.³ Depending on

¹Office of the Disciplinary Council, last time available on 9 April, 2020( link: http://zpd-rks.org/sq/ballina/)
²Assembly of the Republic of Kosovo, Law no. 06/L – 057 on Disciplinary Liability of Judges and Prosecutors, article 9, of date 26 December 2018 (link: https://gzk.rks-gov.net/ActDetail.aspx?ActID=18336 )
³Assembly of the Republic of Kosovo, Law no. 06/L – 057 on Disciplinary Liability of Judges and Prosecutors, article 9, of date 26 December 2018 (link: https://gzk.rks-gov.net/ActDetail.aspx?ActID=18336 )
the level of the judge or the prosecutor, the complaint must be submitted to the President of the Court, respectively to the Chief Prosecutor of the competent Prosecution. Meanwhile, when we have to deal with disciplinary violations by the President of the Basic Court and the Court of Appeals, the appeal is addressed to the President of the Supreme Court. Whereas, regarding the Chief Prosecutor, the complaint is addressed to the Chief State Prosecutor.

In cases against the President of the Supreme Court and the Chief State Prosecutor, the appeal is addressed directly to the relevant councils.

In this regard, it should be mentioned that the Law on Disciplinary Liability of Judges and Prosecutors does not specify who is the competent authority to receive the complaint on disciplinary offenses of the Supreme Court judges. Article 9 of this law explicitly states that the appeal against the judges of the Basic Court and the Court of Appeals must be addressed to the Presidents of the courts in which the judges serve. The complaint against the President of Basic Court and Appeal Court should be submitted to the President of the Supreme Court, while the complaint against the President of the Supreme Court should be submitted directly to KJC.

Meanwhile, Justice Today finds that the case of the judges of the Supreme Court remains a legal vacuum because according to the hierarchy system which has been applied in the case of judges of the Basic Court and the Court of Appeals, the appeal against the judges of the Supreme Court should be addressed to the President of the Supreme Court, but the above-mentioned law does not clearly provide such provision.

In addition to these possibilities, the above-mentioned law, paragraph 9, stipulates that natural and legal persons may submit a complaint against a judge or prosecutor for disciplinary offenses to the Ombudsperson Institution of Kosovo (OIK). After receiving the complaints, this institution shall forward the complaint to the competent authorities. These authorities must review these complaints within 30 days and decide on them. In case the complaint submitted by the Ombudsperson is not reviewed within the set legal deadline, or the complaint is rejected without any grounded reason, then this institution has the right to request from KJC and KPC to initiate investigative proceedings against the President of the Court or the Chief Prosecutor, according to article 9 para. 7 of the Law on Disciplinary Liability of Judges and Prosecutors.

Also, Article 9 par 3 of the aforementioned law gives the right to Ombudsperson that in cases when the same considers that the Competent Authority has decided to dismiss the appeal against that judge or prosecutor contrary to Article 9 para. 5 then this institution may turn to the relevant councils to initiate investigative proceedings against the judges/prosecutors in question.

After receiving the complaint, the competent authority, if it sees it as grounded, may request from the relevant Council the initiation of investigations, from KJC, in the case of judges or the KPC, in the case of prosecutors, and it may dismiss the complaint, or reject it.

The competent authority rejects the complaint if the same is anonymous or the alleged offense is statute-barred. Legal provisions stipulate that the competent authority does not require the initiation of investigations and the relevant Council does not initiate investigations against a judge or prosecutor for a disciplinary offense if five (5) years have passed from the time that the alleged disciplinary offense

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4 Assembly of the Republic of Kosovo, Law no. 06 / L - 057 on Disciplinary Responsibility of Judges and Prosecutors, Article 9, par., 6 dated 26 December 2018 (Link: https://gzk.rks.gov.net/ActDetail.aspx?ActID=18336)
has been committed unless the disciplinary offense constitutes a criminal offense. Meanwhile, the complaint is rejected in case it is determined as evidently frivolous, and unfounded. Relevant councils may decide to not initiate an investigation at all if they have reason to believe that the person in question has not committed a disciplinary offense.

The KJC, in the case of judges, and the KPC, when dealing with prosecutors, form investigative panels consisting of three (3) judges or prosecutors of another court/prosecution. Talking of the composition of investigative panels, the law has left it to the discretion of the respective Councils to select the members of the investigative panels. The KJC selects the members of these panels, who will serve in concrete cases, by lottery, determined within the Regulation no. 05/2019 on the Disciplinary Procedure of Judges. The list of judges who may be part of the investigative panels may include up to 80 but not less than 30 judges.

The work of the investigative panel should be completed within 3 months from the day when it was established, however, in exceptional circumstances, the KJC and KPC may extend the investigation for an additional period of up to 2 months. As defined by the Law on Disciplinary Liability of Judges and Prosecutors, the investigative panel during the investigation phase has the right to enter on a voluntary settlement with the judge who is subject to disciplinary proceedings. Within 15 days from the end of the investigation, the investigative panel submits the findings report of the concrete case to the Council. The report specifies the findings on all the facts and evidence collected during the investigation procedure.

Regarding the investigative panels, which are formed by the KPC, their composition is determined by Regulation 05/2019 on the Disciplinary Procedure of Prosecutors, approved on 7 June 2019. In the development of disciplinary proceedings by KPC, the only difference from the above procedure which is used in cases submitted to the KJC is the number of participants who may be part of the list of investigative panels. Under this Regulation, the number of prosecutors who may be part of the investigative panels can be up to 40 but not less than 15 prosecutors.

According to these bylaws, the relevant councils also determine the chair of the investigative panels from among the constituent members of the panel. It is the duty of the chairperson of the investigative panel to present the report to the members of the respective councils. The subject of the investigation has the right to have access to the evidence collected by the investigative panel; the same can be stated in relation to disciplinary violations that are the object of the procedure.

As a disciplinary measure during the investigation, the investigative panel may request from the relevant Council the suspension of the judge, respectively the prosecutor, and the same during the duration of the suspension will accept 50% of the monthly salary.

The Law on Disciplinary Liability for Judges and Prosecutors has also determined the possibility of agreeing on a voluntary settlement of the alleged disciplinary offense. The agreement is concluded between the investigative panel in the specific case and the subject of the investigation, and the same has a legal effect as the decision on the disciplinary offense, issued by the relevant Council.

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6Assembly of the Republic of Kosovo, Law no. 06 / L - 057 on Disciplinary Responsibility of Judges and Prosecutors, Article 10, dated 26 December 2018 (Link: https://gzk.rks.gov.net/ActDetail.aspx?ActID=18336)
Thereafter, the Council shall schedule a hearing in 30 days upon receiving the written report on the investigation of the judge or the acceptance of the disciplinary offense agreement. The council may hold more hearings if the necessity derives out of the complexity of the case. The hearings held for this purpose are closed to the public. After the hearing, the KJC and the KPC draft the decision resulting from that meeting within 15 days.

The respective Councils shall reach its decision within two (2) months from the receipt of the report of the investigation panel.

Meanwhile, the publication of decisions is done only after they have become final, respectively, after the specified period of time to appeal the decision has been spent. Parties have the right to appeal against the decisions of the Council to the Supreme Court of Kosovo, within fifteen (15) days from the day of receipt of the decision. Other courts in Kosovo shall not have the competence to review and decide on the disciplinary proceedings against judges and prosecutors.

According to the Law on Disciplinary Liability of Judges and Prosecutors, the complaint against disciplinary decisions that are submitted to the Supreme Court is reviewed by a trial panel of three (3) members of this court elected by the President of the Supreme Court. If the President of the Supreme Court is the subject of the Council’s decision, then the oldest judge of the Supreme Court will elect the members.

The law also stipulates that judges who are subject to disciplinary proceedings cannot be part of the panels for reviewing appeals to the Supreme Court as a second instance procedure. Justice Today considers disturbing the fact that in the case that the subject of disciplinary proceedings is a judge of the Supreme Court, the appeal against the decision of the Council for disciplinary proceedings against him/her will be reviewed by his/her colleagues.

The trial panel of the Supreme Court decides on the appeal within 30 days. The Supreme Court may uphold the Council's decision, change it, or return it to the Council for reconsideration. The decision of the Supreme Court is final.

In this case, it is concerning that parties are not allowed to appeal the final decision of the Supreme Court, respectively to start the administrative conflict. This is because we are presented with a collision of laws between Law no. 03 / L-202 on Administrative Disputes and the Law on Disciplinary Liability of Judges and Prosecutors, as the Law on Administrative Disputes in its Article 13 stipulates that for any decision of the second instance an administrative dispute may be initiated, considering that the final administrative acts may be countered. Meanwhile, the Law on Disciplinary Liabilities of Judges and Prosecutors does not provide for such a possibility.

Disciplinary offenses and sanctions

The legal provisions stipulate that a judge/prosecutor has committed a disciplinary offense if he/she is convicted of a criminal offense, violates the law, or violates his/her official duties.

In case the subject of the disciplinary procedure is found guilty, the disciplinary sanctions that can be imposed under the Law are:

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12Assembly of the Republic of Kosovo, Law no. 06 / L - 057 on Disciplinary Responsibility of Judges and Prosecutors, Article 15 dated 26 December 2018 (link: https://gzk.rks.gov.net/ActDetail.aspx?ActID=18336 )
13Assembly of the Republic of Kosovo, Law no. 03 / L-202 On Administrative Disputes, Article 16 of 21 October 2010 (link: https://gzk.rks.gov.net/ActDetail.aspx?ActID=2707)
14Regarding disciplinary violations, see LAW no. 06 / L - 057 On Disciplinary Responsibility of Judges and Prosecutors, Article 5 par.2 (Link: https://gzk.rks.gov.net/ActDetail.aspx?ActID=18336)
1. non-public written reprimand;
2. public written reprimand;
3. temporary wage reduction up to fifty percent (50%) for a period of up to one (1);
4. temporary or permanent transfer to a lower level court or prosecution office;
5. proposal for dismissal.\textsuperscript{15}

When we talk about the above-mentioned measures that can be imposed on a judge/prosecutor who has committed a disciplinary violation, it depends on the action or actions sanctioned by the Law on Disciplinary Liability of Judges and Prosecutors, defined in Article 5 as a disciplinary offense for judges and Article 6 as a disciplinary offense for prosecutors.\textsuperscript{16}

**General statistics of disciplinary cases against judges and prosecutors during the period June 2019-April 2020**

Justice Today, during the systematic monitoring of the work of the KJC and KPC, special attention has been paid to the meetings of the Councils. From 1 June 2019 to 30 April 2020, a total of 14 meetings of the KJC were published on the Justice Today platform. In four (4) of them, investigative panels were formed, while in five (5) of these meetings there were hearings regarding disciplinary proceedings.

![MEETINGS MONITORED IN KJC, JUNE 2019 - APRIL 2020](image)

At the 231st meeting of the KJC, as a result of taking preventive measures against COVID-19, a decision was taken to suspend all deadlines for reviewing the reports of the investigative panels.\textsuperscript{17}

As mentioned above, Justice Today has also reported on the meetings held in the KPC, where from 13 meetings during the period June 2019-April 2020, in four (4) meetings there were formed investigative panels and in five (5) other meetings there were held hearings regarding disciplinary proceedings.

Justice Today, out of these 13 meetings of the KPC, has monitored only 11 of them, since meeting number 179 held on March 16, 2020 and meeting number 180, held on April 15, 2020, were


\textsuperscript{16}Assembly of the Republic of Kosovo, Law no. 06 / L - 057 On Disciplinary Responsibility of Judges and Prosecutors, Articles 5 and 6, dated 26 December 2018 (link: [https://gzk.rks.gov.net/ActDetail.aspx?ActID=18336](https://gzk.rks.gov.net/ActDetail.aspx?ActID=18336))

held without the presence of the media, due to the Covid-19 pandemic and the restriction of public participation in these meetings. KPC in its future meetings, has enabled the participation of the media and civil society within the ZOOM platform, where Justice Today has requested access to these meetings on April 23, 2020. At meeting 179 it was decided to substantially reduce the activities within the KPC, while in meeting 180, among others, the issue of current management of the Covid-19 pandemic in the prosecutorial system was discussed, and two hearings were held, where the reports of the investigative panels regarding the disciplinary procedures against two prosecutors were treated.
Disciplinary procedures conducted by Judicial Council and Prosecutorial Council of Kosovo

As mentioned above, the initiation of disciplinary procedures against judges and prosecutors is done through a complaint submitted to the president of the court/chief prosecutor of the prosecution in the relevant Councils.

The Law on Disciplinary Liability of Judges and Prosecutors has stipulated that a complaint about the disciplinary offense of a judge or prosecutor may also be submitted to the Ombudsperson Institution of Kosovo (OIK). As mentioned above under the Law on Disciplinary Liability of Judges and Prosecutors the OIK has more extended competencies than those that this institution practices in relation to the disciplinary proceedings against judges and prosecutors.

According to the report of this institution in the Annual Report of 2019, it is emphasized that the Law on Disciplinary Liability of Judges and Prosecutors gives to the OIK in specific cases, two types of competencies: 1) the competence to request the KPC and the KJC- of initiating disciplinary proceedings, and 2) the power to appeal to the Supreme Court, in individual cases.

The OIK considers that both competencies set out in the Law exceed the powers of the OI, taking into account the Law on the People's Advocate, other applicable laws, and the opinions of the Venice Commission. This is because this institution considers that the initiation of disciplinary procedures against a judge or prosecutor by the OIK can only be done if the latter has refused to cooperate with the OIK, according to Article 25, paragraph 2 of the Law for the People's Advocate. Moreover, this institution opines that their competencies are exceeded regarding the power to appeal.

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to the Supreme Court, as this institution can only initiate court cases in general cases and not in cases of individuals. According to this institution, they can intervene in individual cases, but not file such complaints.

Consequently, from the data provided by the OIK, in the period June 2019 - April 2020, this institution has received 14 complaints of citizens against judges and prosecutors dealing with court cases where they are parties, which then is submitted to competent authorities.

Out of 14 complaints, 12 of these were considered admissible and sent to the competent authorities for investigation, while two (2) complaints were declared inadmissible and rejected.

Of the 12 cases opened for investigation, four (4) cases are still pending, while for eight (8) cases, the competent authorities in the Courts and the Prosecutor have found the complaints of the citizens submitted by the OIK unfounded, therefore rejecting them.\(^1\)

Thus, since OIK is an institution committed to international standards for the promotion of fundamental human rights and freedoms, in cases where it has received citizen complaints against judges and prosecutors, it should use the legal basis to initiate the disciplinary proceedings before the Councils itself. However, in order to do so, the legal regulation of this institution must be changed and the same competence should be recognized by the Law on the People’s Advocate.

In cases where appeals are accepted as grounded, hearings held as part of the procedures for disciplining judges and prosecutors are closed sessions, and decisions arising from them are discussed only in the presence of members of the relevant Council. This is because Law No. 06 / L-056 on the Kosovo Prosecutorial Council (Law on the KPC) in its Article 14, and Law no. 06 / L-055 on the Kosovo Judicial Council (Law on the KJC) in Article 14, states that members of the Councils may decide to hold these closed meetings. After the completion of the disciplinary procedure, then the decisions are published on the website of the respective Council. The publication of these decisions is done only after they have become final.\(^2\)

**Disciplinary procedures conducted by the Kosovo Judicial Council**

Disciplinary Commission of KJC, in 2019, after the entry into force of the Law No. 06 / L-57 on Disciplinary Liability of Judges and Prosecutors has received 135 disciplinary complaints against judges filed by natural and legal persons, which were handled by the competent authorities and the KJC. Except for the 135 complaints, the KJC has also received 92 decisions by the competent authorities, rejecting the appeals as unfounded. From the total number of complaints mentioned above, the KJC received 16 requests from the competent authorities to initiate a disciplinary investigation. After reviewing the requests, for initiating disciplinary investigations, the KJC established 14 investigative panels, while for two (2) requests, in accordance with Article 12 paragraph 9, of Law no. 06 / L-057, on Disciplinary Liability of Judges and Prosecutors, two (2) judges were suspended from duty, by decision.\(^3\)

Of the 14 investigative panels established, the KJC received five (5) reports on the facts and evidence collected, and it took four (4) decisions, imposing the following disciplinary measures: in two (2) decisions it issued non-public written remarks; in a decision, the subject of the disciplinary

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\(^1\)(link:https://www.oik-rks.org/2020/04/02/raporti-vjetor-2019/)

\(^2\)The Assembly of the Republic of Kosovo, Law No. 06 / L-056 on the Kosovo Prosecutorial Council, Article 14, which entered into force on April 3, 2019 (link: https://gzk.rks.gov.net/ActDetail.aspx?ActID=18920) and Law no. 06 / L-055 On the Kosovo Judicial Council, Article 14, which entered into force on 26 December 2018 (link: https://gzk.rks.gov.net/ActDetail.aspx?ActID=18335)

procedure was released from responsibility; while in a decision a temporary reduction of the salary of
30% for three (3) months was imposed.

Meanwhile, from the beginning of January 2020 to April 2020, the KJC has received 47 notices of
acceptance of complaints filed by natural and legal persons and 52 decisions.22 Also, during this
period, the KJC, as a competent body, received a complaint against the President of the Supreme
Court of Kosovo, which has been dismissed as unfounded. The table below shows the number of
complaints received from each of the competent authorities and the number of decisions taken by the
same.23

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<th>Number of complaints recieved against judges in each court</th>
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<td>Number of complaints</td>
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<td>KJC</td>
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<td>Supreme Court</td>
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<td>Court of Appeals</td>
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<td>Prishtina Basic Court</td>
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<td>Prizren Basic Court</td>
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<td>Ferizaj Basic Court</td>
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<td>Mitrovica Basic Court</td>
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A total of six (6) disciplinary decisions were published on the KJC website, during the period
June 2019-April 2020, meanwhile 2 decisions were taken which where non-public written reprimands
which are not supposed to be published on the website. In four (4) of the published decisions, the
persons subject to the procedure were declared responsible for disciplinary violations as follow:
“negligence in performing, failure to perform or abuse judicial functions”; “involvement in conduct,
whether in office or privately, which damages the reputation of the court or may damage the public’s
confidence in the impartiality or credibility of the judiciary”, as well as “violation of the Code of Ethics
for Judges”. In a decision, the KJC received the plea agreement between the investigative panel and
the judge, subject to the procedure. Meanwhile, in one of the decisions, the subject was declared
irresponsible for the alleged disciplinary offense.

22The discrepancy between the complaints and the number of decisions taken by the competent authorities is a result of the transfer of
complaints from the previous year.

23This data is secured via official email from the Kosovo Judicial Council, on 13 May 2020.
Analysis of disciplinary decisions published by the KJC

The final report, no. ODC-2018-229, of the first case no. KJC / KD / 03/2019 was developed by ODC. The ODC had initiated the disciplinary investigation on the basis of a denunciation received by a person against the judge-subject to the procedure. According to this report, the judge-subject of the procedure committed misconduct under Article 34 para. 1 point 1.2 and point 1.4 of the Law No. 03 / L-223 on the Kosovo Judicial Council, already revoked. The beginning of the investigative procedure by the ODC was done as a result of a denunciation by the real party in interest in a court case, claiming that nine (9) years had passed since the submission of the lawsuit and the case had not yet received the final epilogue.

In this case, the judge in question took the first procedural action three years after the case had been received. The same had decided to request the payment of the court fee by the plaintiff. Meanwhile, other scheduled hearings were postponed for various reasons. Following such negligence, the party in the proceedings requested the disqualification of the judge, a request which was approved by the President of the relevant Court. Upon the appointment, the new judge of the case began a judicial review immediately. Therefore, the ODC found negligence to perform on the part of the judge in this case.

The judge-subject of the procedure in this case stated that he had been verbally told in court that another case was expected to come from another court so that the cases could be merged. However, the Disciplinary Commission described these claims of the judge as unserious behavior. The judge in question also stated during the investigative procedure that the appellant had threatened him, but the Commission considered these as an attempt to influence the decision-making as the threat was not reported to the relevant bodies. Therefore, as a conclusion, with the decision dated 06.06.2019, the Commission found the judge in question responsible for the above violations, therefore it imposed on the same the disciplinary measure temporary reduction of salary by 30% for a period of six months.

The second case is the case initiated against the President of the Basic Court in Gjilan - Ramiz Azizi, who was suspected of misconduct while testifying as a witness in a case. Specifically specified in the legal provisions of the Law on Disciplinary Responsibility of Judges and Prosecutors, Article 5, paragraph 1, point 1.3 – “violates his/her official duties as a judge”; article 5, paragraph 2, point 2.11 and 2.15 - performs any function, duty or service, assumes any responsibility or engages in any activity, is a candidate for, or is elected to any function or duty which is incompatible with the duties of a judge under the Constitution, the Law on Courts, and the Code of Ethics and Professional Conduct of Judges; and engages in behavior while on duty or in private which harms the reputation of the court or which may harm public confidence in the impartiality or credibility of the judiciary.

The disciplinary investigation against the President of the Basic Court in Gjilan was initiated through the appeal filed in the Supreme Court of Kosovo, by the defendant, Sevdail Azemi, in the court case he had testified. No misconduct of the judge was proven by the minutes of the hearing in question and the same record was signed by both the judge and the prosecution. Therefore, in the

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24 Assembly of the Republic of Kosovo, Law no. 03 / L-223-Law on the Kosovo Judicial Council (link: https://gzk.rks.gov.net/ActDetail.aspx?ActID=2713)
26This is because the Law on Disciplinary Responsibility of Judges and Prosecutors, article 9, par 1, sub paragraph 1.2 stipulates that an appeal against the President of the Basic Court must be submitted to the Supreme Court. The President of the Supreme Court regarding allegations of disciplinary violations by Presidents of Courts Basic and the President of the Court of Appeals.
absence of proving the misconduct alleged by the appellant, the KJC, on 06.11.2019, found Judge Ramiz Azizi irresponsible for the above violations.27

Meanwhile, so far in 2020, four disciplinary decisions have been published, taken by the KJC. The first published case is the decision by which the judge of the Court of Appeals, Fillim Skoro, was found responsible for the offense defined in Article 5, paragraph 2, point 2.15, which states: ‘engaged in behaviour while on duty or in private which harms the reputation of the court or which may harm public confidence in the impartiality or credibility of the judiciary.’ The disciplinary investigation against the judge in question was initiated by the President of the Court of Appeals, at the request of the Office for Judicial Evaluation and Verification, which operates within the KJC. The judge in question was found to have committed a disciplinary violation, as he led two judicial panels where his friend was accused. Although the judge knew that this case confuses his impartiality, he did not request his exclusion from the relevant panel.

The investigative panel had also brought the plea agreement, related to the subject in question, to the KJC, but the same was rejected by the Council as unfounded, as it assessed that the legal qualification of disciplinary offense did not correspond to the factual description of actions of the disciplinary subject. In this regard, on 27.12.2019, the KJC, after reviewing the mitigating and aggravating factors for the case in question, found Judge Fillim Skoro responsible for the above violations, thus imposing a disciplinary measure of temporary reduction of salary by 30% for the period from 3 months. 28

The second case is the decision KJC.No.50 / 2020,29 by which Nazim Vllaço, a judge at the Basic Court in Prizren, was found responsible for disciplinary violations set out in Article 5, paragraph 2, sub-paragraph 2.7, ‘in continuity fails to timely perform official duties required by Law;’ and sub-paragraph 2.12, ‘in continuity fails to participate in disciplinary procedures and to respond to disciplinary investigations unless permitted by Law; of the Law on Disciplinary Liability of Judges and Prosecutors. The initiation of the disciplinary investigation, in this case, was done by the President of the Basic Court in Prizren, Ymer Hoxha, ex officio member.

The investigative panel in this case found Judge Vllaço responsible, for the above violations based on the material evidence presented by the Competent Authority and the impossibility to directly hear the subject of the disciplinary investigation regarding the statements of the Competent Authority, due to his absence and non-cooperation. Also, the investigative panel found the judge responsible for the disciplinary offense, where he was absent from work during August and November 2019 and for his absences did not notify the president of the court and no one else which resulted in postponing the hearings. Also, he did not participate in the announcement of the verdict on 21 March 2019, although he was previously notified as a member of the judicial panel, and his absence was not justified. In this regard, the KJC after administering all the evidence presented by the investigative panel dated. 21.02.2020, Judge Nazim Vllaço was imposed the disciplinary sanction ‘a temporary reduction of the salary by thirty percent (30%) for six (6) months’.

The third case is the decision of the KJC No. 51/2020\textsuperscript{30} by which Shaban Shala, a judge at the Basic Court in Prizren, was found responsible for disciplinary violations set out in Article 5, paragraph 2, sub-paragraph 2.7, ‘in continuity fails to timely perform official duties required by Law;’ of the Law on Disciplinary Liability of Judges and Prosecutors. The initiation of the disciplinary proceedings against the judge in question was made by the judge of the Basic Court in Prizren, Ymer Hoxha, according to the complaint from the plaintiff, Makifete Saliuka.

According to the report of the investigative panel, it is confirmed that Judge Shala for the case C.nr.672 / 14, which according to the KJC Strategy, although it was of an urgent and priority nature, not only did he not initially assign it but also dragged out the placement procedure.

Also, the investigative panel emphasized that the investigative subject had also communicated by phone with Mrs. Makifete Saliuka about the case in hand which violates the provisions of Article 5, paragraph 2, paragraph 2.8 ‘engages in any ex-parte communication concerning the cases’; However, the KJC reviewed the claim of the investigative panel and assessed that it does not stand, as from the evidence administered and from the statement of Mrs. Makifete Saliuka it was announced that the communication between them was after the complaint was prescribed in ODC. In this regard, the KJC, after administering all the evidence, on 21.02.2020, imposed on the judge Shaban Shala the disciplinary sanction “temporary reduction of the salary by thirty percent (30%) for a period of four (4) months.”

The fourth case is the decision KJC no.62 / 2020,\textsuperscript{31} by which the plea agreement between the investigative panel and the judge, Latif Xhemaili, a judge at the Basic Court in Pristina, was accepted. From the investigative report presented by the investigative panel, it was confirmed that Judge Latif Xhemaili committed a disciplinary offense after delaying the drafting of the judgment for the case C.nr.257 / 15, for a period of 10 months. This delay was also voluntarily accepted by the judge, in which case it was agreed to enter into a plea agreement, where he was found responsible for disciplinary violations by imposing a disciplinary sanction “temporary reduction of salary to a height of 10 % in duration for 4 months.”

In this regard, it should also be noted that during this period of monitoring by Justice Today, in the KJC, no disciplinary proceedings were conducted against the judges of the Supreme Court of Kosovo. The reason for this may be the non-determination of the competent authority for initiating disciplinary proceedings by the Law on Disciplinary Liability of Judges and Prosecutors. Meanwhile, from the data provided by the KJC, there was a complaint against the President of the Supreme Court of Kosovo. The appeal was addressed directly to the KJC as defined in Article 9 par. 1.3 of the Law on Disciplinary Liability of Judges and Prosecutors, which was rejected by the Council as unfounded.

Consequently, from the analysis of the decisions published by the KJC, we can conclude that in the period June 2019 - April 2020, the disciplinary proceedings conducted within the KJC it has been confirmed that non-public written reprimands have been issued against two judges, two judges acted negligently in handling one of their cases; a judge served as part of a criminal panel in two cases where there was a conflict of interest; a judge did not perform his official duties on time and did not participate in disciplinary proceedings against him without any reasons permitted by law, and a judge in continuity failed to timely perform official duties required by Law.


Disciplinary proceedings conducted by the Kosovo Prosecutorial Council

The law on the KPC, which entered into force on April 3, 2019, in Article 14, which talks about the nature of the KPC meetings, has left it to the discretion of the Council to keep the meeting closed when there are issues related to prosecutors or personnel dealing with prosecutors.

Thereby, disciplinary proceedings against prosecutors are conducted without the presence of the public and the only document that becomes public is the final decision of the Council, in which it is decided whether the prosecutor has committed disciplinary offenses or not.

From the data provided by the Kosovo Prosecutorial Council, it appears that during the period June 2019 - April 2020, the KPC has received 15 requests for the initiation of investigations against prosecutors by the Chief Prosecutors of the respective prosecutions. As a result, 13 investigative panels were established, while in 2 cases there was a merger of proceedings because the complaint was for the same prosecutor.

Consequently, all requests for the initiation of investigations against prosecutors have been submitted by the Chief Prosecutors of the respective prosecutions and the KPC has not received any request of this nature from the Ombudsperson Institution due to the conflict between the provisions governing disciplinary proceedings and the Law on the Ombudsperson Institution.\footnote{These data are obtained via official email from the Kosovo Prosecutorial Council, on 14 May 2020.}

In the official KPC portal, during 2019, a total of 7 decisions of disciplinary proceedings that have been conducted against prosecutors, while four non-public written reprimands have been issued which are not public. Where in 5 of them, the KPC reached a decision and in two published cases there were judgments by the Supreme Court. These judgments are the result of a complaint filed by the subject of disciplinary proceedings against the decision of the KPC and as provided by law, the meritorious decision regarding these complaints is taken by the Supreme Court of Kosovo. In four of these decisions of the KPC, it was proved that the prosecutor who was the subject of the procedure did not commit disciplinary offenses as claimed by the party who filed the complaint.

Whilst, only in two cases, the Council, with a decision, has proved that the prosecutors-subject of the disciplinary procedure, was found guilty after violations of the provisions of the Code of Ethics and also of the Law in force have been confirmed.

Whereas, in the two judgments announced by the Supreme Court it was found that the prosecutors subject to the disciplinary procedure have violated the provisions of the Code of Ethics and Professional Conduct for Prosecutors, and the Law on Disciplinary Liability of Judges and Prosecutors.

Regarding the disciplinary measures, KPC has imposed the measure of the reduction of salary for a period of time as well as the measure of a permanent transfer to a lower level.

Analysis of disciplinary decisions published by the KPC

In the first case, the disciplinary proceedings conducted against the prosecutor Agim Kurmehaj, Chief Prosecutor in the Basic Prosecution in Peja, initiated after receiving the complaint from the Office of the Chief State Prosecutor, under the sign OCSP AD / No.01 / 2019, ended with the rejection of the claims of the Competent Authority. The appeal filed on 13 February 2019, called for the violation of the provisions of the Law on Disciplinary Liability of Judges and Prosecutors regarding the procrastination of the case PPN no. 489/12. However, at the meeting of September 23, 2019, the
KPC accepted the report of the Investigative Panel in which it was proved that the prosecutor, subject to disciplinary proceedings, was never charged with this criminal case and the same was prescribed on May 20, 2014, while Mr. Kurmehaj was appointed Chief Prosecutor in the Basic Prosecution of Peja on January 1, 2017.\(^{33}\)

The same as in the above case, in the second case, KPC had taken the same decision on November 12, 2019, in the disciplinary procedure AD / No.19 / 2019, conducted against the prosecutor of the Basic Prosecution in Pristina-Department for Minors, Raze Loshaj. At the 174th meeting of the KPC, a hearing was held in which all the allegations of the complaint were rejected, submitted by the acting Chief Prosecutor of the Basic Prosecution in Pristina, Kujtim Munishi, on July 29, 2019. The initiator of this disciplinary procedure had requested from the KPC to impose disciplinary measures on the prosecutor Raze Loshaj, due to negligence in handling the case PP.I.nr .70 / 19. \(^{34}\) However, the case was rejected by the evaluation panel.

Also, in the third decision, taken by the KPC, dated January 31, 2020, based on the report from the investigative panel in the case AD / No. 03/2019, against the prosecutor Huma Jetishi, was evaluated that she had not committed any disciplinary offenses. The disciplinary procedure was initiated by the Chief Prosecutor of the Basic Prosecution in Gjilan, on September 4, 2019, where he requested from the KPC to impose non-public written remarks on the prosecutor, as the same had damaged the image of the State Prosecutor when she left the main trial in the case P.nr.853 / 2016, after the vulgar language used against her by the lawyer, Tomë Gashi.\(^{35}\)

The fourth case, under the sign AD / No.17 / 2019, regarding the prosecutor, Ferdane Sylejmani-Prosecutor in the Basic Prosecution of Pristina, the Serious Crimes Department, KPC fully approved the report of the Investigative Panel, which confirmed the claims of the appeal filed by the acting Chief Prosecutor of this prosecution, Kujtim Munishi, thus she was found guilty for violating the provisions of the Code of Ethics and Professional Conduct for Prosecutors on the principle of professionalism.\(^{36}\)

More precisely, the same prosecutor, in a court case, failed to defend in a dignified and professional manner the indictment, filed by herself, with concrete and convincing evidence which she had had available during the investigation and in the hearing, on the basis of which the defendant would have been proven guilty by the court.\(^{37}\)

Furthermore, according to the investigative panel, it is stated that this prosecutor's office had concrete material evidence in this case and that the same, instead of supporting the indictment, manifested extreme unprofessionalism, evaluating the material evidence as inadmissible and then finally renounced the criminal prosecution of the accused, where, as a result of this, the court received a rejection verdict.\(^{38}\)
Thus, in the reasoning behind the decision it is stated that the prosecutor of the case has violated the provisions of the Code of Ethics and Professional Conduct for Prosecutors on the principle of professionalism, more precisely the point where it is determined that c) the Prosecutor implements the highest standards of care while performing functions official and g) the prosecutor must always be prepared during representations in Court.

The enacting clause of the decision states that the prosecutor, Ferdane Sylejmani, is imposed the disciplinary sanction “Permanent transfer from the position of the prosecutor from the Department of Serious Crimes to the position of the prosecutor in the General Department”. This sanction was imposed in accordance with Article 7, paragraph 1, point 1.4 of the Law on Disciplinary Liability of Judges and Prosecutors.39

In the fifth case, under the sign AD.nr.01 / 2019 dated 15 April 2020, KPC took a decision by which it rejected as ungrounded the report of the Investigative Panel Ad. 01.2019, dated March 4, 2020, regarding the Prosecutor of the Basic Prosecution in Gjilan - General Department.

The procedure was initiated at the request of the Chief Prosecutor of the Basic Prosecution in Gjilan, in which case KPC, through this decision has confirmed that in the case of prosecutor Esat Ademi, no elements of disciplinary responsibility were found, which are contrary to the general principles of the Code of Ethics and Professional Conduct for Prosecutors and Law no. 06 / L-057 on Disciplinary Responsibility of Judges and Prosecutors. In this regard, the prosecutor in question has been released from disciplinary liability after it has been established that he has not committed a disciplinary violation.40

Analysis of the judgments of the Supreme Court published by the KPC

Regarding the judgments of the Supreme Court of the Republic of Kosovo, concerning the complaints from the prosecutors for the decisions of disciplinary offenses announced by the KPC, in one of them it was decided to partially approve the complaint while in the other cases the appeals were rejected as evaluated unfounded.

The Supreme Court, on 04.02.2020, announced the judgment AA.nr.1 / 2020, in which the complaint from the prosecutor, Muharrem Bajraktari, the prosecutor in the General Department of the Basic Prosecution in Peja, against the decision of the KPC which had imposed the measure of temporary reduction of salary by 50% for a period of 1 year, was partially confirmed, This decision of the KPC came as a result of disciplinary proceedings under the marks AD / No.01 / 2019 and AD / No.04 / 2019 against the prosecutor Muharrem Bajraktari, initiated with the complaint filed by the Chief Prosecutor of the Basic Prosecution in Peja.

The reasoning of the Supreme Court states that the entire decision taken by the KPC, in this case, is confirmed, except for the aspect of disciplinary sanction, since in making this decision the mitigating circumstances such as the level of cooperation throughout the disciplinary procedure and the considerable number of cases of the prosecutor in the matter, were not taken into account. Therefore, according to the Supreme Court, the change of the disciplinary measure from the temporary reduction of the salary by 50% in a period of 1 year to the measure of temporary reduction of the salary

39Ibidem.
by 50% in a period of 6 months, will achieve the goal of disciplinary sanction against prosecutor Muharrem Bajraktari.\textsuperscript{41}

In another verdict, announced on January 9, 2020, the Supreme Court rejected the appeal from the prosecutor in the Basic Prosecution in Pristina, Ruhan Salihu, and upheld the decision no. 729/2019 of the KPC, dated November 12, 2019.

According to this decision, KPC evaluated that prosecutor, Ruhan Salihu, had violated the disciplinary provisions of the Code of Ethics and Professional Conduct for Prosecutors, as well as had acted contrary to the article 6, par.2, point 1.2 of the Law on Disciplinary Liability of Judges and Prosecutors.

In this case, the KPC, after reviewing the report of the Investigative Panel, case AD / No.18 / 2019, imposed on the prosecutor of the case the disciplinary measure “temporary reduction of the salary of 30% for a period of 6 months”. Ruhan Salihu appealed against this decision, requesting a change in the decision in order to replace the imposed disciplinary measure with non-public written remarks or written public remarks since no disciplinary proceedings had ever been instituted against his.

The president of KPC, Bahri Hyseni, in response to the complaint of the prosecutor Ruhan Salihu, had rejected all the allegations of appeal, proving once again that the prosecutor had acted contrary to the Code of Ethics and the Law on Disciplinary Liability of Judges and Prosecutors. As stated in the judgment of the Supreme Court, the subject of disciplinary proceedings, prosecutor Ruhan Salihu, had not treated the criminal case PP.I.nr.70 / 2019 professionally, so he had not requested the detention of the defendant, nor had he required to have the forensic examination of the victim of this case.

In the end, the Supreme Court upheld the decision of the KPC and rejected the complaint of the prosecutor Ruhan Salihu, assessing that the disciplinary measure corresponds with the number and serious violation of the prosecutor, the consequences and circumstances of the disciplinary offense, performance, and his conduct throughout the disciplinary proceeding.\textsuperscript{42}

Consequently, from the analysis of the decisions published on the KPC website, we conclude that in the period June 2019 - April 2020, based on the disciplinary procedures carried out within the KPC, 4 prosecutors were sentenced to non-public written reprimand, one prosecutor was transferred from the Department for Serious Crimes to the General Department, and 2 prosecutors were sentenced to a wage reduction for a certain period of time. While during this period, the Supreme Court has reviewed a total of two cases of complaints regarding the decisions of the KPC, wherein one of them has partially approved the appeal and in the other case has approved the decision of the KPC.

The impact of disciplinary measures on the promotion of judges and prosecutors

Disciplinary sanctions imposed on judges and prosecutors directly affect their advancement (promotion) as well as their performance appraisal. The Law on Disciplinary Liability of Judges and Prosecutors has provided that records on disciplinary investigations or sanctions are deleted after a


period of five (5) years, except for disciplinary sanctions imposed for intentional violations of the law or disciplinary violations that resulted in the imposition of a sentence for a serious criminal offense.\textsuperscript{43} The same rule is provided in the Regulation on Disciplinary Procedure for Judges, the Regulation on Disciplinary Procedure for Prosecutors, the Regulation on Procedures for Selection, Appointment, Evaluation, Suspension and Dismissal of Court Presidents and Supervisory Judges, as well as the Regulation for the Appointment of Chief State Prosecutor and Chief Prosecutors of Prosecution Offices. This is also due to the fact that judges do not have the right to apply for promotion positions (e.g. as President of a Concrete Court) if they were imposed on any disciplinary offense, except to a non-public written reprimand.\textsuperscript{44} Meanwhile, the impact of disciplinary measures imposed is also seen in the process of evaluating the performance of judges.\textsuperscript{45}

Regarding the above cases, it is worth mentioning that the judge, Fillim Skoro, who has been part of the Court of Appeals since its establishment in 2013, after the imposition does not meet the conditions to seek his advancement as a judge in the Supreme Court of Kosovo.\textsuperscript{46} Thus, in this regard, he has not made any progress. The same applies to Judge Nazim Vllaço, a judge at the Basic Court in Prizren, who cannot be included in the list of successful candidates for promotion to the Court of Appeals.

Meanwhile, Shaban Shala, who is a judge in the Basic Court in Prizren, who has been imposed a disciplinary sanction “\textit{temporary reduction of salary by thirty percent (30\%) for a period of four (4) months\textsuperscript{47}}”, is included in the initial list of candidates who meet the requirements for promotion to the Court of Appeals. This is because the internal job competition for judges in the Court of Appeals was published on 06.01.2020,\textsuperscript{48} while the disciplinary sanction against the judge was taken on 21.02.2020. This situation is not foreseen by the Regulation on the Procedure for Promotion of Judges. This regulation does not provide any provision regarding the impact of each of the disciplinary measures in the process of advancement (promotion). Unlike this regulation, the Regulation on Procedures for the Selection, Appointment, Evaluation, Suspension, and Dismissal of Presidents of Courts and Supervisory Judges provides for a provision which stipulates that a judge may not run for the position of President of the Court or Supervising Judge if he/she has been imposed any disciplinary sanction.

The Kosovo Judicial Council, with the approval of the regulation on the Disciplinary Procedure of Judges, has repealed the Regulation on the Determination of Improper Behavior which has specifically defined the time period of the impact of disciplinary sanctions on the advancements depending on the severity of the disciplinary offense. While the current regulation does not define the time period of the impact of sanctions, but the same deadline, a period of 5 years is set for all sanctions.

\textsuperscript{43}Assembly of the Republic of Kosovo, Law no. 06 / L - 057 On Disciplinary Responsibility of Judges and Prosecutors, Article 7 par 5, dated 26 December 2018 (link: https://gzk.rks.gov.net/ActDetail.aspx?ActID=18336)

\textsuperscript{44}Kosovo Judicial Council, Regulation on Procedures for Selection, Appointment, Evaluation, Suspension and Dismissal of Presidents of Courts and Supervisory Judges, (link: https://www.gjyqesori-rks.org/wp-content/uploads/lsi/Regulllore%202016%20per%20procedurat%20e%20perzgjedjes%20merimit%20vleresimit%20pezullimit%20dhe%20shkerkimit%20te%20kyetareve%20te%20gjykatave%20dhe%20gjyqtareve%20e%20mbikqyres.pdf)

\textsuperscript{45}Kosovo Judicial Council, Regulation on Judge Performance Evaluation, Article 12, dated 30 August 2016 (link: https://www.gjyqesori-rks.org/wp-content/uploads/lsi/Regulllore%202016%20per%20vleresimit%20e%20performances%20te%20gjyqtareve%20dhe%20shtojcave.pdf)


Meanwhile, regarding the prosecutorial system, all state prosecutors with a permanent mandate have the right to advance in various positions within the prosecutorial system in Kosovo. Such a thing is defined by Regulation No. 03/2016 on the Transfer and Advancement of State Prosecutors, which entered into force on March 31, 2016.49

According to this Regulation, any permanent state prosecutor may request advancement from one department to another of the same prosecutor’s office or a higher-level prosecutor’s office, as well as to the Office of the Chief State Prosecutor (OCSP), depending on the open position for advancement.50 Article 9 of the Regulation, as conditions for the advancement of prosecutors, is also a positive assessment of performance and that the state prosecutor has not been imposed a disciplinary measure, except for reprimand.

From what has been said above, we conclude that no state prosecutor who has been charged to one of the disciplinary measures, other than a non-public reprimand, will be considered for his advancement to other positions within the prosecutor's office where he is engaged, to another prosecutor's office or in the OCSP.

From the data provided by Justice Today, none of the prosecutors who have been found guilty of disciplinary violations have applied for the advancement of prosecutors who have been announced by the Council.

Conclusion and Recommendations

Justice Today in this analysis has presented the legal regulation of disciplinary procedures against judges and prosecutors, its application by the KJC, KPC, and OI sanctions which are imposed on them in case they are found guilty, and the impact of these measures on them in terms of advancement in duty.

Also, the decisions of the KPC and the KJC were analyzed and evaluated, as well as the judgments of the Supreme Court regarding the disciplinary procedures reviewed during the period June 2019-April 2020. Further, in this analysis are presented the general statistics of disciplinary cases monitored by Justice Today.

As mentioned in this paper, judges, and prosecutors exercise their activity based on the principles of impartiality, integrity, professionalism, and independence. The councils should be guardians of their work so that judges and prosecutors do not deviate from performing their duties in accordance with applicable law.

From the findings of Justice Today, it is a disturbing fact that there is a conflict between the provisions governing disciplinary proceedings, where in one hand the Law on Disciplinary Liability of Judges and Prosecutors gives the competence to the Ombudsperson Institution (OI) to initiate investigative proceedings in the KJC and KPC, while the law on the Ombudsperson Institution, does not recognized such a competence.

Furthermore, worrying is the fact that the Law on Disciplinary Liability of Judges and Prosecutors does not clearly define the competent authority for filing a complaint regarding disciplinary violations by judges of the Supreme Court of the Republic of Kosovo. From our findings we give the following recommendations:

Justice Today invites the Ministry of Justice to amend/supplement Law 05 / L-019 on the People’s Advocate so that:

1. To include the competencies to request from KJC and the KPC to initiate disciplinary proceedings against prosecutors and judges, and the competence to appeal to the Supreme Court for individual cases, as defined by the Law on Disciplinary Liability. Judges and Prosecutors.

Justice Today calls upon the Ministry of Justice to initiate supplementation/amendment of Law no. 06 / L-057 on Disciplinary Liability of Judges and Prosecutors, so:

1. To determine the competent authority to file appeals against judges of the Supreme Court of the Republic of Kosovo.
2. To determine how the conflict of interest should be avoided in cases when the subject of the disciplinary procedure are judges of the Supreme Court, and they also appeal the decision of the KJC in this court.

Justice Today urges the KJC to supplement/amend the Regulation on the Procedure for Advancement for Judges, as well as the Regulation on the Disciplinary Procedure of Judges so that:

1. To determine the impact of disciplinary sanctions on the promotion process.
2. To determine the duration of impact, of each disciplinary sanction separately, on promotion, corresponding to the size of the sanction.

Justice Today calls upon KPC to supplement/amend the Regulation on Transfer and Advancement of Prosecutors, so that:

1. To change the disciplinary sanctions and their impact on the advancement regarding the disciplinary sanctions defined by the Law on Disciplinary Liability of Judges and Prosecutors, as well as the Regulation on Disciplinary Procedure for Prosecutors.

Justice Today encourages the KJC and the KPC to increase transparency by publishing within the legal deadline all final decisions taken in relation to violations of disciplinary measures by judges and prosecutors.