Snapshot

The nature of disciplinary issues in the judicial and prosecutorial system of Kosovo and the functioning of the disciplinary mechanism
The nature of disciplinary issues in the judicial and prosecutorial system of Kosovo and the functioning of the disciplinary mechanism

Author: Justice Today
June 2021

Contributors to this report:
Donjeta Plana, Liridon Salihi, and Rinon Arifi

The Project “Monitoring the Judicial and Prosecutorial System in Kosovo” is funded by the Foreign, Commonwealth and Development Office through the British Embassy in Pristina.

The contents of this publication are the sole responsibility of the Group for Legal and Political Studies and do not necessarily reflect the views of the Foreign, Commonwealth and Development Office.
Executive Summary

Snapshot .................................................................................................................................................... 1

Snapshot .................................................................................................................................................... 2

Introduction ................................................................................................................................................ 5

Legal regulation of disciplinary proceedings against judges and prosecutors based on the Law on
Disciplinary Liability of Judges and Prosecutors .................................................................................... 6

Denial of the right to appeal for the initiating party of the disciplinary procedure – a violation of
human rights ................................................................................................................................................. 14

Violations and disciplinary sanctions ........................................................................................................ 16

KJC handling of disciplinary cases ............................................................................................................ 17

Table 1 Analysis ......................................................................................................................................... 18

Table 2 analysis .......................................................................................................................................... 19

Handling of disciplinary cases by KPC ........................................................................................................ 21

Table 3 Analysis ......................................................................................................................................... 22

Table 4 Analysis .......................................................................................................................................... 24

Appeal of KJC and KPC decisions to the Supreme Court ........................................................................ 28

The role of Court Presidents and Chief Prosecutors in disciplinary proceedings .................................. 29

Conclusions and recommendations .......................................................................................................... 32
ACRONYMS:

KJC – Kosovo Judicial Council

KPC – Kosovo Prosecutorial Council

LDL – Law 06/L-057 on Disciplinary Liability of Judges and Prosecutors

DPO – Disciplinary Prosecutor’s Office

OPI – Ombudsperson Institution
Introduction
In this report, Justice Today intends to present the way the disciplinary mechanisms function within Kosovo Judicial Council (hereinafter KJC) and Kosovo Prosecutorial Council (hereinafter KPC) from entry into force of Law 06/L-057 on Disciplinary Liability of Judges and Prosecutors (hereinafter LDL) until May 2021.

Furthermore, this report contains the analysis of the above Law and KJC and KPC regulations on disciplinary proceedings, addressing their advantages and disadvantages in detail. Special attention in this regard is given to statistical data related to conducting disciplinary proceedings against judges in KJC and prosecutors in KPC, from entry into force of the new law on disciplinary proceedings.

While drafting this report, Justice Today has highly appreciated the way the KJC website gives information related to the process of disciplinary proceedings against judges, especially for the special indicator with disciplinary statistics and disciplinary decisions, which is shown separately from other decisions of this council, thus providing easier access for citizens. Such a spirit of opportunity has not been encountered on the KPC website, which we consider should follow the KJC example. On the other hand, KPC maintains a very good practice of publishing the decisions taken by the Supreme Court against KPC appealed decisions, thus providing a complete and accessible overview to the public. Such a practice is not seen on the KJC website, where decisions taken by the Supreme Court are not published neither on KJC website nor that of the Supreme Court.

In conclusion, after addressing all the issues mentioned above, Justice Today attempts to offer its perspective in resolving these obstacles, providing relevant recommendations to relevant institutions so that the disciplinary proceedings against judges and prosecutors is properly conducted.
Legal regulation of disciplinary proceedings against judges and prosecutors based on the Law on Disciplinary Liability of Judges and Prosecutors

Prior to entry into force of the LDL, the disciplinary proceedings against judges and prosecutors were conducted within the Office of the Disciplinary Counsel (ODC). The ODC was a separate and independent body serving both the KJC and the KPC.

The main function of this body was to investigate allegations of misconduct by judges and prosecutors, present evidence, and cases to the Disciplinary Committee in support of disciplinary actions for misconduct.¹

With the entry into force of the LDL, the initiation and conducting of disciplinary proceedings has taken a different direction. Currently, this procedure does not take place within the ODC; this power has been delegated to KJC and KPC, which will take the necessary steps to conduct investigations and impose disciplinary sanctions if the latter are applicable in each specific case. LDL article 9 sets out the procedure for initiating investigations into disciplinary violations.² Disciplinary proceedings against a judge or a prosecutor are initiated through an appeal. As in the procedure conducted by the ODC, appeals can be filed by both natural and legal persons.³ Depending on the level of the judge or prosecutor, the appeal should be submitted to the President of the Court, i.e., to the Chief Prosecutor of the competent Prosecution. Meanwhile, when it comes to disciplinary violations by the President of the Basic and Appellate Court, the appeal is addressed to the President of the Supreme Court. Whereas, regarding the Chief Prosecutors, the appeal 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 noted that the LDL does not explicitly define the Competent Authority to which appeals for disciplinary violations of Supreme Court judges should be submitted. Justice Today considers the issue of

¹ Office of the Disciplinary Prosecutor, last accessed on 9 April 2020 (link: http://zpdrks.org/sq/ballina/)
Supreme Court judges a legal gap in the law. This is due to the hierarchical system, which is applied in the case of judges of the Basic Court and the Court of Appeals, in that case, the appeal against Supreme Court judges should have been addressed to the President of the Supreme Court, but the law does not explicitly provide such a provision.

In addition to these possibilities, the LDL in article 9, paragraph 3 stipulates that the natural and legal person may file an appeal for disciplinary violations against a judge or a prosecutor to the Ombudsperson Institution (hereinafter OPI). After receiving the appeals, this institution directs them to the competent authorities. These authorities have an obligation to review them and bring the decisions within 30 days. In case the appeal submitted by the Ombudsperson is not reviewed within the legal deadline or the appeal is rejected without any grounds, then OPI has the right to request from KJC and KPC to initiate an investigative procedure against the President of the Court or the Chief Prosecutor, according to article 9, paragraph 7 of the Law on Disciplinary Liability of Judges and Prosecutors. Also, article 9, paragraph 3 of the above-mentioned law recognises the right of the OPI that in cases when they consider that the Competent Authority has taken a decision to dismiss the appeal against a judge or a prosecutor, in violation of article 9, paragraph 5, then this institution can turn to the relevant councils to initiate investigative procedures against the judges/prosecutors.

However, the OPI considers that the LDL gives two types of powers to this institution in specific cases: 1) the power to request the KPC and the KJC to initiate disciplinary proceedings, and 2) the power to appeal to the Supreme Court in individual cases.

The OPI considers that both powers defined by the Law exceed the usual powers of the OPI, taking into account the Law on the Ombudsperson, other applicable laws and the opinions of the Venice Commission. This is because this institution considers that initiating disciplinary proceedings against a judge or prosecutor by the OPI can be done only in case the latter have

---


refused to cooperate with the OPI according to article 25, paragraph 2, of the Law on the Ombudsperson. Meanwhile, regarding the authority to file an appeal to the Supreme Court, this institution considers it exceeds its powers, as this institution can only initiate court cases in general, not individual cases. According to this institution, they can intervene in individual cases, but not file such appeals.⁶

Therefore, since the OPI is an institution committed to international standards for the promotion of fundamental human rights and freedoms, in cases where they have received citizens’ appeals against judges and prosecutors, they should use the legal basis to initiate disciplinary proceedings themselves with the KJC or KPC.

Upon receipt of an appeal, if the OPI as the Competent Authority sees it as grounded, they may request the relevant Council to initiate investigations, KJC in the case of judges or KPC in the case of prosecutors, and may also dismiss or reject it. In this regard, the law has given control of the first instance to the Competent Authority for handling appeals, who have the authority to qualify or not qualify as a violation the reason that was given as the basis for initiating disciplinary proceedings. The Competent Authority dismisses the appeal if it is anonymous or the alleged violation has reached the statute of limitation. For Justice Today, even such a situation is extremely confusing because the Competent Authority in this case is not dealing with the eventual violation at all, which is the reason for filing the appeal nor is it considering its seriousness. In this regard, it is hard to comprehend the need or the reason for dismissing appeals that come from anonymous persons, knowing that the legal basis of the law and the Regulation 05/2019 on the Disciplinary Proceedings of Judges (hereinafter the Regulation) itself do not allow the appellant to have access to the disciplinary proceedings initiated by them, i.e., to appeal the decision taken by the Council and the Supreme Court in case of appeal.

The legal provisions stipulate that the Competent Authority does not request the initiation of an investigation, and the relevant Council does not initiate an investigation against a judge or a prosecutor for a disciplinary violation if 5 years have passed since the alleged disciplinary violation was committed, unless the disciplinary violation constitutes a criminal offence. Meanwhile, the appeal is rejected if it is considered that the violation is obviously not serious and unfounded. Relevant councils may decide not to start an investigation at all if they have reason to believe that the person in question has not committed a disciplinary offence. KJC, in the case of judges, and KPC when dealing with prosecutors, form investigative panels consisting of 3 judges or prosecutors of a court/prosecution other than the one from which the judge/prosecutor comes. When we talk about the composition of investigative panels, the law has left the selection of members of the investigative panels at the discretion of the relevant Councils. KJC selects the members of these panels, who will serve in specific cases, by lot, as determined within the regulation. The list of judges, from which the judges are selected to take part in investigative panels may include up to 80 but not less than 30 judges.

The work of the investigative panel must be completed within 3 months from the day when it was established; however, in exceptional circumstances, KJC and KPC may extend the investigation for an additional period of up to 2 months. As defined by the LDL, during the development phase of the investigation, the investigative panel has the right to enter into a voluntary agreement with the judge, who is subject to disciplinary process. Within 15 days from the completion of the investigation, the investigative panel submits the report with the findings of the specific case to the Council. The report specifies the findings on all facts and evidence collected during the investigation procedure.

---


Regarding the aspect of investigative panels that are formed by the KPC, their composition is determined by the regulation approved on June 7, 2019. In conducting disciplinary proceedings by the KPC, the only difference with the procedure above that is used in cases presented to the KJC is the number of participants who may be part of the list of investigative panels. With this regulation, the number of prosecutors who can 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 chairperson of the investigative panels from among the constituent members of the panel. It is the duty of the chair of the investigative panel to present the report with the findings to the members of respective Councils. The subject of the investigation has the right to have access to the evidence collected by the investigative panel, and they can also state their case in relation to the disciplinary violations that are the subject of the procedure.

As a disciplinary measure during the investigation, the investigative panel may request the relevant Council suspend the judge, respectively the prosecutor, who throughout the duration of the suspension will receive 50% of their monthly salary.

The LDL has also determined the possibility of concluding a voluntary agreement for the alleged disciplinary violation. The agreement is concluded between the investigative panel in the specific case and the subject of the investigation, and it has the same effect as the decision on the disciplinary violation, issued by the relevant Council. Thereafter, the Council shall schedule a hearing within 30 days of the receipt of the written report on the judge’s inquiry or of the agreement on the disciplinary violation. The council may hold more hearing sessions if this arises from the complexity of the case. Hearing sessions held for this purpose

---

are closed to the public. After holding the hearing session, the KJC and KPC draft the decision resulting from that meeting within 15 days.

Justice Today is sceptical about the effectiveness and purpose of imposing a disciplinary measure through an agreement to admit this violation. In principle, this option should not have a negative side due to the fact that it has similarities with the institute of plea bargaining in criminal proceeding. However, Justice Today considers that the disciplinary procedure has essential differences in relation to the criminal procedure and that the possibility of concluding an agreement to admit the alleged disciplinary violation minimises the effect of the disciplinary measure. This argument is further strengthened when we consider that subparagraph 2.2 of paragraph 2 of article 13 of LDL has left room for the judge/prosecutor who is the subject of the investigation and the investigative panel to agree on the type of disciplinary measure to be imposed without specifying exactly the type of disciplinary measure in relation to the alleged violation. This issue is mutually related to the fact that the LDL has not clearly defined the type of disciplinary measure imposed for each disciplinary violation, which has left a discretionary space in relation to the type and severity of the disciplinary measure imposed.\(^{12}\) In addition, this legal provision has not required the fulfilment of any other cumulative condition for this agreement to be finalised. If we compare the issue of the plea bargaining in criminal proceedings, it is clear that the Code of Criminal Procedure has precisely foreseen the minimum and maximum limit of the criminal sanctions that should be given depending on what stage of the proceedings the plea bargaining is reached.\(^{13}\)

Therefore, in this regard, Justice Today considers that the LDL should initially be as concise as possible regarding the type and the minimum and maximum of disciplinary measures for each alleged violation, and then create the possibility to at least determine the upper limit of the disciplinary measure as part of the plea bargaining for these types of violations. For example, hypothetically, if for a certain disciplinary violation, a salary reduction of 50% for a

---


one-year period would be foreseen, with an agreement to admit the violation, the subject of the investigative disciplinary procedure would be sentenced to a 50% salary reduction for a six-month period. This way, Justice Today considers this would prevent the effect of the imposed disciplinary measure gets minimized and would enable to reach the goal of building an accountable and professional judicial and prosecutorial system.

Relevant Councils, after receiving the report from the investigative panel, must reach a decision within 2 months. Meanwhile, the decisions are published only after they have become final, i.e., after the specified period of time to appeal against the decision has elapsed. On the issue of publishing decisions, Justice Today has noticed a confusing situation. In a written response received from Kosovo Judicial Council, it is stated that pursuant to LDL article 14, paragraph 5, this institution publishes only first instance decisions on the KJC website after they become final. Then it is stated that this institution does not publish the decisions of the Supreme Court on the appeals against disciplinary decisions of the KJC in the website of the KJC, because those decisions belong to the Supreme Court. Although Justice Today, through an official request addressed to the Supreme Court, had full access to decisions related to disciplinary matters, those decisions were not published in the website of the Supreme Court, nor on that of the KJC. This way, these decisions were not easily accessible to the public, media, and civil society on the websites of these bodies. Meanwhile, the KPC website in this regard, although they follow the good practice of publishing decisions taken by the Supreme Court, we consider that in general, this council should separate the disciplinary procedure in these publications. Respectively, we suggest they follow the example of KJC in forming a special indicator with statistics and disciplinary decisions more easily accessible to the public. Justice Today considers that the current KPC website does not provide citizens and stakeholders with easy access to KPC decisions due to the fact that they are not separate from other decisions and are not sorted according to certain periods.
Following the decision, the party dissatisfied with the decision of the Council may file an appeal with the Supreme Court within 15 days from the date of receipt of that decision. Other courts in Kosovo do not have jurisdiction to review and decide on disciplinary proceedings against judges and prosecutors. According to LDL, the appeal against disciplinary decisions that is submitted to the Supreme Court, is reviewed by a panel of 3 judges of this court, who are elected by the President of the Supreme Court. If the subject of the disciplinary procedure is the President of the Supreme Court, the selection of panel members is done by the oldest judge of this court.

The LDL also stipulates that the judges who are subject to disciplinary proceedings cannot be part of the panels for reviewing appeals in the Supreme Court as a second instance in this procedure. Justice Today sees as disturbing the fact that in case the subject of the disciplinary procedure is a judge of the Supreme Court, the review of the appeal against the decision of the Council for disciplinary procedure against him will be done by his own colleagues. Such a circumstance calls into question the objectivity of decision-making due to the fact that the judges of the same court decide on appeals related to each other’s disciplinary violations.

The trial panel of the Supreme Court decides on the appeal within 30 days. The Supreme Court may confirm the decision of the Council, amend it, or send it back to the Council for review. The decision of the Supreme Court is final. In this case, the fact that the parties are not allowed to appeal the decision of the Supreme Court as a final decision, i.e., to start the administrative dispute, remains a matter of concern. This is because we are presented with a collision of laws between Law 03/L-202 on Administrative Disputes and the LDL, because the Law on Administrative Disputes in its article 13 stipulates that for any decision of the second

instance one can start an administrative dispute since the final administrative acts can be challenged. Meanwhile, the LDL does not foresee such a possibility.

Denial of the right to appeal for the initiating party of the disciplinary procedure – a violation of human rights

After analysing the LDL, i.e., article 15, paragraph 1 and article 2, paragraph 1, subparagraph 1.5 of the regulation, Justice Today has noticed the subject that submits the request for initiating the disciplinary procedure is not allowed then to appeal against the decision of the Judicial Council by which the request for initiating the disciplinary procedure is dismissed. According to this law and regulation, the only competent party to file an appeal to the Supreme Court is the Competent Authority or the President of the Court/Chief Prosecutor of the Prosecution that initiated the procedure. Consequently, according to our legislation governing this area, the subject that submits the request for initiating disciplinary proceedings is not considered a party that enjoys rights and obligations in this process.

Justice Today has reported about such circumstance in the case known as Stenta 1 number PKR.nr.396/16. Justice Today considers that this situation represents violations of human rights, namely the right to appeal against judicial and administrative decisions. The right to appeal against court decisions is a fundamental right of the parties in court proceedings, a right guaranteed by the Constitution of the Republic of Kosovo, international instruments, and other laws in force in our country. Article 32 of the Constitution of the Republic of Kosovo explicitly states, “Every person has the right to use legal remedies against judicial and administrative decisions that violate his/her rights or interests in the manner prescribed by law.” Thus, the right to a legal remedy includes the right to appeal the decisions of the competent bodies in any judicial and administrative procedure, including disciplinary proceedings. This stems from the fact that in

---

17 Justice Today, Ferid Agani is not considered a party by the Supreme Court to file an appeal against KJC decision on the disciplinary procedure against judge Shadije Gërguri, 2021, accessible on the following link: Ferid Agani nuk konsiderohet palë nga Supremja për të paraqitur ankesë ndaj vendimit të KGJK-së për procedurën disiplinore ndaj gjyqtarës Shadije Gërguri – Drejtësia Sot (rolpik.org)
addition to court proceedings, in any other proceedings, including matters relating to
disciplinary measures against judges and prosecutors, there are stakeholders in these
proceedings. In the present case, the accused party in a criminal process has a direct interest
in the conduct of disciplinary proceedings against the judge or prosecutor, because in his
view, his criminal procedural rights have been violated. This becomes even more powerful
when we consider the fact that in a criminal proceeding, defendants have a host of
fundamental rights which are inalienable. In this way, the hierarchical importance of these
rights makes the interest of the person initiating the disciplinary proceedings inevitable.
Moreover, state institutions have an obligation to recognise and respect the rights of
defendants in court proceedings; therefore, they should be provided with the status of a party
in a disciplinary procedure to substantially raise allegations of violation of their interests.

Moreover, the issue of disciplinary liability, in addition to infringing or restricting a right for the
interested party, is also a violation of the public interest at the same time. In this regard, it
should be borne in mind that the authority of judges and prosecutors is in the service of the
public good, therefore, through the violation of individual interest, the general interest is also
damaged.

However, despite this fact, under current legislation, the party or entity, against which a
criminal proceeding has been conducted, cannot be considered a direct party in a disciplinary
proceeding conducted against a judge or a prosecutor. Therefore, according to Justice Today,
the legal norm set out in article 2, paragraph 1, subparagraph 1.5 of the regulation should be
amended to allow the party, whose request was rejected by the KJC, to appeal to the Supreme
Court. To achieve this, any person who is subject to criminal proceedings must first be
considered a party to the proceedings under the regulation, in order to then be entitled
to appeal. This recommendation is also based on the fact that the LDL, respectively article 15,
paragraph 3, recognizes the right of the Ombudsperson to file an appeal to the Supreme Court
for cases when the proceedings before the Competent Authority are initiated by the
Ombudsperson. So, in this regard, it is essential that the party initiating the disciplinary
procedure be recognized as a party as it is known to the Ombudsperson under the same
circumstances.
**Violations and disciplinary sanctions**

Legal provisions stipulate that a judge/prosecutor has committed a disciplinary offence if convicted of a criminal offence, violates the law, or violates his or her official duties.\(^1\)

Disciplinary sanctions that can be imposed according to the Law, in case the subject of the disciplinary proceedings is found guilty, are:

1. Non-public written reprimands;
2. Public written reprimands;
3. Temporary salary reduction up to fifty percent (50%) for a period of up to one (1) year;
4. Temporary or permanent transfer to a lower court or prosecution;
5. Proposal for discharge.\(^2\)

When we talk about the measures above that can be imposed on the judge/prosecutor who has committed a disciplinary violation, it depends on the action or actions that have been sanctioned by the LDL, defined in article 5 as a disciplinary violation for judges, and article 6 as a disciplinary violation for prosecutors.\(^3\)

Regarding disciplinary measures, Justice Today considers that they should be specified and clearly defined to emphasize the type and severity of disciplinary measures imposed for a particular violation. However, in this regard, it should be borne in mind that in order to achieve this goal, actions or omissions that constitute disciplinary violations must be restructured and clarified. This is due to the fact that with articles 5 and 6 of the LDL, disciplinary violations are defined in general. More precisely, these legal provisions have clarified the types of disciplinary violations that are mainly related to the basic principles of court proceedings, such as the issue of impartiality, equality, and professional and personal integrity. This generalization of actions or omissions that are found as disciplinary violations then makes it

\(^1\) Regarding disciplinary violations for more see law 06/L-057 On Disciplinary Liability of Judges and Prosecutors, article 5, paragraph 2 (link: https://gzk.rks.gov.net/ActDetail.aspx?ActID=18336)


impossible to concretely identify disciplinary measures for each violation. Moreover, Justice Today has noted that the impact of disciplinary sanctions on the promotion of judges is nonexistent with the legislation governing this area. Justice Today has carefully analysed the LDL, the Regulation on Disciplinary Procedure and Regulation no. 01/2014 on the Procedure of Promotion of Judges. This legislation does not condition the internal promotion of judges if they have a disciplinary measure imposed. For Justice Today, it is worrying how the LDL and relevant regulations have not foreseen the fact that the imposition of a disciplinary measure is an obstacle to the promotion of judges. This phenomenon severely undermines the principle of professionalism of the work of the judicial system, leaving the possibility for judges to be promoted despite the fact that they have been found responsible for disciplinary violations.

**KJC handling of disciplinary cases**

Immediately after LDL entry into force, KJC approved the Regulation on Disciplinary Procedure of Judges, which started to be applied from July 1, 2019. In accordance with this regulation, a list of 70 judges as members of investigative panels was approved.

<table>
<thead>
<tr>
<th></th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints received</td>
<td>135</td>
<td>135</td>
<td>36</td>
</tr>
<tr>
<td>Complaints rejected by the competent authority</td>
<td>92</td>
<td>126</td>
<td>21</td>
</tr>
<tr>
<td>Request for initiation of disciplinary investigation</td>
<td>16</td>
<td>20</td>
<td>6</td>
</tr>
<tr>
<td>Investigative panels</td>
<td>14</td>
<td>18</td>
<td>6</td>
</tr>
<tr>
<td>Reports on facts and evidence</td>
<td>4</td>
<td>13</td>
<td>3</td>
</tr>
<tr>
<td>Public hearings</td>
<td>5</td>
<td>20</td>
<td>10</td>
</tr>
</tbody>
</table>

Table 1
Table 1 Analysis
From the beginning of conducting proceedings according to LDL until the end of May 2021, KJC has received a total of 306 appeals for 2019 and 2020, of which 135 were disciplinary appeals, while for this part of 2021, this institution has received a total of 36 appeals filed by natural and legal persons against judges; these appeals were handled by the competent authorities and the KJC.

Out of the total number of appeals received, many them were dismissed by the competent authority, i.e., 239 appeals, where the majority were dismissed in 2020.

Regarding the requests to initiate disciplinary proceedings, KJC has received 42 requests, of which 16 were filed in 2019, 20 in 2020, and 6 in 2021.

The largest number of investigative panels was established in 2020; of 18 investigative panels established, 14 were established in 2019, and 6 were established until May 2021.

In this regard, year 2020 also leads in terms of hearing sessions with a total of 20 hearing sessions held, 5 hearing sessions were held in 2019, and 10 were held in 2021.

<table>
<thead>
<tr>
<th>KJC - Disciplinary decisions data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public written reprimand</td>
</tr>
<tr>
<td>---------------------------</td>
</tr>
<tr>
<td>Year 2019</td>
</tr>
<tr>
<td>Year 2020</td>
</tr>
<tr>
<td>Year 2021</td>
</tr>
</tbody>
</table>

Table 2
From the sessions mentioned above, after reviewing 2019 reports, KJC has taken a total of four decisions and has imposed the following measures:

- 2 cases – Non-public written reprimand;
- 1 case – Release from disciplinary liability;\(^{21}\)
- 1 case – Temporary salary reduction of thirty (30%) for a period of three (3) months.\(^{22}\)

Meanwhile, although the measures for temporary or permanent transfer to a lower court are defined by law, as well as the measures of written public reprimand, throughout 2019, KJC did not find that these measures should be imposed as sanctions in concrete cases.

In 2020, KJC has taken 19 decisions and imposed the following measures:

- 2 cases – Non-public written reprimand;
- 1 case – Public written reprimand;
- 13 cases – Disciplinary proceedings subjects were released from liability;\(^{23}\)

---


• 1 case – Temporary salary reduction of 10% for a period of 4 months;  
• 1 case – Temporary salary reduction of 30% for a period of 4 months;  
• 1 case – Temporary salary reduction of 30% for a period of 6 months.

In this regard, it is worth noting that decision KGJK.nr.6/2020 where KJC has approved the plea bargaining between the Investigative Panel and the subject of disciplinary proceedings, against which a temporary salary reduction of 10% for a period of 4 months was imposed. KJC based such decision on LDL article 13, which explicitly stipulates that, “During the investigation procedure, the investigation panel and the judge or prosecutor under investigation may agree on a voluntary settlement of the alleged disciplinary offence.”

We should note that in 2019, KJC suspended 2 judges by decision, in accordance with article 12, paragraph 9. According to the same legal provision, in 2020, KJC suspended a judge by decision because of suspicion of committing a criminal act. Meanwhile, during this period, KJC has in no case imposed the measure of temporary or permanent transfer to a lower court.

During this period of 2021, KJC has held 10 hearing sessions, and has decided as follows:

---


Justice Today, October 2020, KJC suspends judge Lekë Prenaj (link: http://www.rolpjik.org/kgjk-pezullon-nga-puna-giytarin-leke-prenaj/)

24
25
26
28
• 2 cases – Non-public written reprimand:

• 1 case – Public written reprimand;

• 5 cases – Subjects of disciplinary proceedings have been released from liability;

• 1 case – A public written reprimand was issued for one of the subjects, while a temporary salary reduction of thirty percent (30%) for a period of 6 months was imposed on the other subject;

• 1 case – investigative panel report was dismissed due to the disciplinary violation reaching absolute statute of limitations.

Whereas like in the previous years, during this period, in the disciplinary proceedings they handled, KJC has not imposed the sanction of temporary or permanent transfer to a lower court.

If we look at the trend of imposing disciplinary sanctions against judges from entry into force of the new Law on Disciplinary Liability, the largest number of disciplinary proceedings initiated by this institution have ended in release from disciplinary liability, whereas in no case has this institution imposed the sanction of temporary or permanent transfer to a lower court.

Handling of disciplinary cases by KPC
After LDL entry into force, in order to handle disciplinary cases against prosecutors as efficiently as possible, KPC approved Regulation 05/2019 on Disciplinary Proceedings against Prosecutors (hereinafter Regulation) on 07 June 2019, which contains provisions


that regulate the issue of specifying and defining procedures to receive, review, investigate, and decide on appeals for disciplinary violations against prosecutors.

Table 3

Table 3 Analysis
The data included in this table were received from KPC by email on 9 and 16 June and 9 July\textsuperscript{31} and referring to these statistics, we can see that from 2019 to 30 June 2021, KPC has received a total of 131 prior notices from the Competent Authority. From this total of prior notices, in this period, of 24 requests received to initiate disciplinary proceedings against prosecutors, they established 20 Investigative Panels to collect evidence related to allegations of disciplinary violations by state prosecutors.

As can be seen from the table data, in 2020, KPC has received the largest number of prior notices of the Competent Authority, a total of 45 appeals were filed by parties alleging disciplinary violations by prosecutors. We have 42 appeals in the first six months of this year

\textsuperscript{31} Data received from KPC, June – July 2021
alone, by which we can conclude that we have an increasing trend of disciplinary appeals against prosecutors.

From the data obtained from KPC, we find that of 13 requests to initiate disciplinary proceedings in 2019, 11 investigative panels were established, while 1 case was merged with the request from 2020 because the subject of investigation was the same, and one request was dismissed upon KPC decision.

In 2020, KPC has received 6 requests to initiate disciplinary proceedings against prosecutors, but one of them was dismissed because it was not submitted by the Competent Authority (CA), while the other request was combined with another case from the previous year where the subject in the disciplinary proceedings was the same.

The data for the period 1 January to 30 June 2021 show that all requests to initiate disciplinary proceedings have been approved, which means that we have no cases of merging disciplinary proceedings against prosecutors nor cases of dismissing requests to initiate these types of proceedings.

<table>
<thead>
<tr>
<th>KPC – Disciplinary decisions data</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>No disciplinary violations</strong></td>
</tr>
<tr>
<td>Year 2019</td>
</tr>
<tr>
<td>Year 2020</td>
</tr>
<tr>
<td>Year 2021</td>
</tr>
</tbody>
</table>

Table 4
Table 4 Analysis
As stated above, from 2019 to 30 June 2021, KPC has established 20 investigative panels to collect evidence and draft a report on allegations of disciplinary violations of prosecutors. From the reports of these investigative panels, KPC has taken 16 disciplinary decisions, while 4 disciplinary cases are in process.

Referring to KPC decisions during this reporting period, in 7 cases prosecutors who have been subject to the investigation procedure for disciplinary violations, have been released from this liability because it was established that they had not committed the disciplinary violations alleged by the Competent Authority.\footnote{Kosovo Prosecutorial Council, decision KPK.Nr.32/2021, February 2021, link: https://prokuroriarks.org/assets/cms/uploads/files/Dokumente%20Publikime/KPK/Vendime/2021/Vendim%20Nr.%2032.2021%20-%20Flakiri%20Sylejmani.pdf}

Whereas, in 8 other decisions, KPC has ascertained the disciplinary violation of the state prosecutors, in which case it has imposed the following sanctions:

2. One case of disciplinary sanction “Salary reduction of 50% for 1 year,” amended after the appeal to the Supreme Court of Kosovo;\textsuperscript{34}
3. One case of disciplinary sanction “Permanent transfer from the Department of Serious Crimes to the General Department;”\textsuperscript{35}
4. Four cases of disciplinary sanction “Non-public written reprimand;” and
5. One case of plea bargain agreement.

As can be seen from the decisions above, in this period, KPC has in no case so far imposed the disciplinary sanctions of “Public written reprimand” and “Proposal for discharge from the position of state prosecutor.”

According to table data, it is clear that KPC has taken the most disciplinary decisions during 2019, so in four cases it was found that there is no disciplinary violation by the prosecutor, in four cases they issued non-public written reprimands, in one case they imposed the disciplinary sanction of salary reduction, and in one case they decided to transfer them from a higher department to a lower department of the same Prosecution.

In 2020, KPC took only 4 disciplinary decisions, in two of which the prosecutor, who was subject to the procedure for disciplinary violation, was found not liable for the alleged violation, in one case a disciplinary sanction of salary reduction of 30% for 6 months was imposed, and in another case, a plea bargain agreement was reached.

Whereas, when we talk about the period 1 January – 30 June 2021, KPC has taken only one disciplinary decision where it has concluded that the claim of the Competent Authority for disciplinary violation of the prosecutor against whom disciplinary proceedings have been conducted does not stand, while in four cases, for which investigative panels have been


established, no decision has yet been made regarding the subjects of the disciplinary investigation.

It should be noted that during this time, KPC received a request from the OPI to initiate disciplinary proceedings, but that the KPC had rejected it, and after the appeal was filed by the OPC, the Supreme Court upheld the decision of the Council. Carefully analysing these data, we have observed that the OPC has exercised the right to initiate disciplinary proceedings despite the fact that this Institution in the response given to Justice Today,\(^\text{36}\) has claimed that it has no jurisdiction in this regard. Justice Today considers that this action of the OPI is in full compliance with its jurisdiction in relation to disciplinary proceedings against judges and prosecutors. The LDL has clearly foreseen the possibility for this institution to initiate disciplinary proceedings against judges and prosecutors. Therefore, considering the fact that this is a special law that regulates this particular area, the OPI must act in accordance with the regulations provided in it, which provides the room that this institution has in terms of initiating disciplinary proceedings and exercising legal remedies versus certain decisions. As a result, Justice Today considers that this institution in this case has correctly interpreted its rights in relation to disciplinary proceedings against judges and prosecutors.

From the decisions published on the official KPC web portal,\(^\text{37}\) it appears that during the period June 2019 – 7 June 2021, KPC has in six cases taken a decision that has confirmed the disciplinary non-liability of prosecutors, who have been subject to disciplinary proceedings.\(^\text{38}\) Further, from web portal data show that KPC has taken two decisions where

\(^{36}\) See page 8 of this document

\(^{37}\) Kosovo Prosecutorial Council official web portal, link: https://prokuroria-rks.org/kpk/dokumente-publikime/82/93/567/567/


26
they imposed the disciplinary sanction “Temporary salary reduction of 30% for 6 months” to subjects of disciplinary proceedings after it has been proven that they have committed the disciplinary violation alleged by the Competent Authority.\(^{39}\) In the framework of disciplinary sanctions related to the temporary salary reduction, KPC has taken a decision by which they imposed the disciplinary measure "Temporary salary reduction of 50% for 1 year" to a prosecutor after establishing that he had committed the disciplinary violation alleged by the Competent Authority, which was subsequently amended by the Supreme Court of Kosovo.\(^{40}\) Whereas the highest disciplinary sanction imposed is decision KPK.Nr.620/2019, taken on 27 September 2019, by which the disciplinary measure “Permanent transfer from the position of prosecutor of The Department of Serious Crimes in the General Department ” was imposed to a prosecutor of the Basic Prosecution in Prishtina.\(^{41}\)

Given that according to the Law, disciplinary decisions in which the disciplinary sanction"Non-public written reprimand" is imposed are not published on the KPC web portal; based on data obtained on 16 June 2021, it turns out that so far, KPC has imposed this disciplinary measure in five disciplinary cases.

---


Appeal of KJC and KPC decisions to the Supreme Court

From LDC entry into force until now, 4 appeals have been filed directly to the Supreme Court of Kosovo against KJC disciplinary decisions. Following the review of the appeals by the Supreme Court of Kosovo, the following decisions were taken:

- In one case – the appeal was upheld and the KJC decision overturned, returning the case for retrial;
- In two cases – the appeal was rejected as unfounded;
- In one case – the appeal was considered inadmissible.

Whereas when we talk about the disciplinary decisions taken by the KPC that have been appealed to the Supreme Court of Kosovo, according to data published on the KPC website:

- In one case – the appeal was considered inadmissible;
- In two cases – it upheld the decisions taken by the KPC;
- In one case – the appeal was partially approved.

While analysing the decisions of Supreme Court regarding disciplinary issues, Justice Today has come across two decisions that have found the appeals of the Competent Authority as inadmissible. These decisions clarify that the Competent Authority has the right to appeal the KJC decision on disciplinary proceedings only in cases where this institution does not take a decision within 2 months after receiving the report of the investigative panel. 42 Thus, according to this interpretation provided by the Supreme Court, the Competent Authority is not considered a party in the investigative proceedings in terms of definitions regarding who is in the capacity of a party according to the regulation. Justice Today considers that this type of interpretation has significant shortcomings and is essentially legally unfounded. This conclusion is based on the fact that with these decisions, the Supreme Court has minimized the effect of the appeal, emphasising that the Competent Authority has no right to appeal the merits of the KJC decision in disciplinary proceedings. This way, the only room for appeal is

42 Supreme Court of Kosovo decision AA.nr.14/2020, accessible on the following link: 4_AA_14-2020.pdf and decision AA.nr.9/2020, accessible on the following link: Aktvendim - AA nr. 9 2020 - Gjykata Supreme e Kosovë.pdf
based on procedural issues during the decision-making, i.e., whether the KJC has taken a decision on the report of the investigative panel within the period specified in the LDL.

Thus, in general, the course of disciplinary proceedings in many directions has denied or limited the effect of the appeal as an inalienable legal remedy, which is guaranteed by domestic and international legislation. In this regard, Justice Today considers that in such situations, the overall regularity of the disciplinary proceedings is being substantially damaged, thus evading the two-instance principle of decision-making of state bodies as one of the main principles that should follow their activity.

The role of Court Presidents and Chief Prosecutors in disciplinary proceedings

According to the data received from KJC, from the moment of entry into force of the Law until May 2021, this institution has received 12 requests to initiate ex officio proceedings by the Presidents of courts without prior appeal from any other subject. In this regard, they have announced that for 2019, 5 disciplinary cases have been initiated ex officio. During 2020, 4 disciplinary cases were initiated ex officio, while from January 2021 until May of the same year, KJC announced that 3 disciplinary cases were initiated ex officio.

Based on the analysis of data provided by KPC, the difference between the number of appeals from natural and legal persons and decisions taken by the Competent Authority regarding allegations of disciplinary violations of prosecutors shows that Chief Prosecutors have used the opportunity to act ex officio in 7 disciplinary cases, without appeals from any other entity.

Analysing the number of disciplinary proceedings initiated ex officio by the competent authorities, Justice Today considers that it is a positive step by court presidents/chief prosecutors to initiate these proceedings on their own initiative. This action finds full support in the LDL for the fact that article 12, paragraph 2 explicitly provides for the possibility of

43 Data received from Kosovo Judicial Council, requested by Justice Today (email dated 02 June 2021)
44 Data received from Kosovo Judicial Council by email dated 07 June 2021.
disciplinary proceedings to be initiated ex officio. More precisely, this legal provision stipulates that, “The Competent Authority requests the Council to initiate disciplinary investigations on the basis of an appeal filed by a natural or legal person, which has not been rejected under article 9, paragraph 6 of this Law, or ex officio when there is a reasonable basis to believe that a judge or prosecutor has committed a disciplinary offence.” Therefore, in view of such a legal basis, Justice Today considers that the respective court presidents or chief prosecutors have clear and specific powers in terms of initiating the procedure. Thus, this legal regulation provides the possibility and obligation for the competent authorities to initiate the procedure whenever they believe that there is a sufficient basis that argues the disciplinary violation of judges/prosecutors. This means that court presidents and chief prosecutors have an important role to play in the disciplinary system of judges and prosecutors. Consequently, Justice Today deems it utterly necessary to use the opportunity to initiate disciplinary proceedings ex officio. This way, a system of accountability and proper sanctioning of disciplinary violations would be created, thus avoiding the dependence on the respective subject filing an appeal.

It is also worth mentioning a special phenomenon encountered by Justice Today during the monitoring of the judicial and prosecutorial system of the Republic of Kosovo. This phenomenon is related to the possibility of the practice of demotion/transfer of judges or prosecutors from one department to another by decision of the president of the court or the appointed chief prosecutor. Justice Today has encountered at least one specific case in the Basic Court in Prishtina, in which there is a suspicion that this practice has been used. So, according to the assessment of Justice Today, in this case, there is a concern that a judge was transferred from the Department for Serious Crimes to the General Department, with the aim of disciplinary sanctioning, but without conducting disciplinary proceedings. In principle, but also based on the interpretation on the competencies of the president of the court regarding

45 Justice Today has submitted requests for information to all basic courts and prosecutions of the Republic of Kosovo. From the information obtained, it is worth noting that none of the courts have reported on cases of demotion of judges. It should also be noted that we did not receive a response from the Basic Court and Prosecution of Prishtina to emails sent on 03.06.2021.
the efficient administration and management of courts, it can be considered that such transfers of judges are carried out in order to complete the court cases as soon as possible. These competencies are provided in Law 06/L-054 on Courts and Law 03/L-225 on the State Prosecutor. These laws provide for a wide range of responsibilities of court presidents/chief prosecutors, including organising courts and prosecutors’ offices in such a way that they perform their duties efficiently.\(^{46}\) This implies that court presidents or chief prosecutors have the legal possibility to transfer judges/prosecutors between relevant departments in the name of better management of the respective institution. However, in this regard, it should be noted that these actions are quite debatable when we consider disciplinary issues. Justice Today considers that the fact whether the transfer of judges or prosecutors from a higher department to a lower department is being used as a self-disciplinary measure by the heads of courts/prosecutors’ offices should be addressed in particular. Based on the analysis of the actions in the above-cited case, considering the development of numerous disciplinary proceedings against the specific judge (disciplinary proceedings which in all cases have found the judge not liable for the alleged disciplinary violation),\(^{47}\) Justice Today considers that it is highly likely that the president of the court imposed a “disciplinary measure” on the judge by transferring her from the Department of Serious Crimes to the General Department of the Basic Court in Prishtina. In this regard, the problem lies in the legality of the imposition of this “disciplinary measure” because it has not followed the legal path that coincides with the KJC as a body with authority in conducting disciplinary proceedings. So, what remains concerning is the suspicion that there is a phenomenon that court presidents/chief prosecutors may misinterpret the Law on Courts or the State Prosecutor, thus allowing themselves demoting of judges/prosecutors without regard to disciplinary proceedings at all as provided by special law. Moreover, this situation in itself produces additional powers in terms of disciplinary

---

\(^{46}\) For competencies of the president of the court, see article 14 of Law 06/L-054 on Courts (link: [ActDetail.aspx](http://rks.gov.net)). For the competencies of chief prosecutors of prosecutions see article 13 of Law 03/L-225 on the State Prosecutor (link: [Microsoft Word - T. Ligi]\(p\)\(:\)\(353\)r prokurorin e shtetit-shqip.doc](http://rks.gov.net)).

violations for court presidents and chief prosecutors, which are non-existent in the Law on Courts and the State Prosecutor but also in LDL. However, Justice Today considers that this phenomenon is indicative of the fact that court presidents or chief prosecutors see the initiation of disciplinary proceedings before the KJC as a competent body as ineffective. As a result, they use their legal power to internally organise the institutions they run to “punish” judges/prosecutors they believe have committed disciplinary offences. Although these actions are unacceptable and inappropriate, Justice Today considers that KJC and KPC should handle this phenomenon with caution, in order to avoid any tendentious misinterpretation of legal provisions by court presidents/chief prosecutors. But they should also open a wide-ranging discussion on the shortcomings of the LDL in this regard and the obstacles to its implementation in practice.

Conclusions and recommendations
In this report, Justice Today has addressed the issue of the function of the disciplinary mechanism by the KJC and KPC from the moment of entry into force of LDL until May 2021.

In this regard, the above-mentioned law and KJC and KPC regulations deriving from this law have been discussed in detail, highlighting their shortcomings in terms of conducting a disciplinary procedure as fairly as possible. We have also presented statistical data regarding the disciplinary procedures developed by the respective Councils and the disciplinary decisions taken by them.

Judges and prosecutors exercise their activity based on the principles of impartiality, integrity, professionalism, and independence. Councils should be the guardians of their work so that judges and prosecutors do not deviate from performing their duties in accordance with applicable laws.

From the findings of Justice Today, it is concerning the fact that there is a collision between the provisions governing the disciplinary procedure where on the one hand the LDL gives authority to the Ombudsperson Institution (OPI) to initiate investigative proceedings in KJC and KPC, while on the other hand, according to the legislation in force, no such responsibility
is recognised to the same institution. Also of concern is the fact that in the LDL, the competent authority to file an appeal regarding disciplinary violations by judges of the Supreme Court of the Republic of Kosovo is not explicitly defined.

In this regard, the inability of the appellant, who is the initiator of the disciplinary proceedings against a judge/prosecutor, to appeal the decision taken by KJC and KPC to the Supreme Court is a problem in itself because according to the law and regulations in force, the capacity of a party in the proceedings is not recognised.

An issue that deserves special treatment is the non-publication of Supreme Court decisions taken against KJC decisions on disciplinary proceedings against judges, which are not published neither on the KJC website nor on the website of the Supreme Court of Kosovo.

Based on the findings, we give the following recommendations:

Justice Today invites the Ministry of Justice to amend/supplement Law 05/L-019 on the Ombudsperson to:

1. Include the competences to request the KJC and the KPC to initiate disciplinary proceedings against prosecutors and judges, and the power to appeal to the Supreme Court on individual cases, as defined by the Law on Disciplinary Liability of Judges and Prosecutors.

Justice Today invites the Ministry of Justice to initiate the amendment of Law 06/L-057 on Disciplinary Liability of Judges and Prosecutors to:

1. Define the competent authority under which appeals should be filed against judges of the Supreme Court of the Republic of Kosovo.
2. Define how the conflict of interest should be avoided in cases when the subject of the disciplinary proceedings are judges of the Supreme Court, and they appeal the decision of the KJC in this court.
3. To precisely define the subjects that are considered parties in the disciplinary proceedings, subjects that have the right to appeal the decisions of the Councils in
the Supreme Court, including the subject who initiates the procedure with an appeal to the Competent Authority.

Justice Today invites the KJC to supplement/amend the Regulation on the Procedure for the Promotion of Judges, as well as the Regulation on the Disciplinary Proceedings of Judges to:

1. Define the impact of disciplinary sanctions on the promotion process.
2. Define each disciplinary sanction individually, the duration of their impact on promotion in relation to the severity of the sanction.
3. Specify the subjects that are considered parties in the disciplinary proceedings in the case of attacking the decisions of the KJC in the Supreme Court, including the subject who initiates the procedure with an appeal to the Competent Authority.
4. Justice Today invites KJC and the Supreme Court to publish the decisions of the Supreme Court taken in relation to the disciplinary decisions taken by the KJC in the first instance.

Justice Today invites the KPC to supplement/amend the Regulation on the Transfer and Promotion of Prosecutors to:

1. Change the disciplinary sanctions and their impact on promotions regarding the disciplinary sanctions defined by the Law on Disciplinary Liability of Judges and Prosecutors, as well as the Regulation on the Disciplinary Procedure for Prosecutors.
2. Justice Today invites the KPC to update their website to include a special indicator for disciplinary proceedings against prosecutors, including statistics and disciplinary decisions more easily accessible to the public. In this regard, KPC is invited to follow the good practice of the KJC website.