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MINISTRIA E DREJTËSISË

MINISTARSTVO PRAVDE / MINISTRY OF JUSTICE

CONCEPT DOCUMENT FOR REALISATION OF CIVIL RIGHTS INCLUDING THE RIGHT OF PARTIES TO A TRIAL WITHIN A REASONABLE TIME

March 2023

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Summary of the Concept Document

General information	
Title	Concept document on realisation of civil rights including the right of parties to a trial within a reasonable time
Lead ministry	Ministry of Justice, Department for European Integration and Policy Coordination (DEIPC)
Contact person	Ruzhdi Osmani, Deputy Director DEIPC, 038 200 18 092
SOP	This concept document is foreseen in the list of concept documents for 2023
Strategic priority	Justice in time
Decision	
The main issue	Solving the problem of implementing the right to trial within a reasonable time
Summary of consultations	It is envisaged that preliminary consultations will be carried out
Proposed Option	Option 4
Main expected impacts	
Budgetary impacts	The budgetary impacts are given in the following tables
Economic impacts	The economic impacts are given in the following tables
Social impacts	The social impacts are given in the following tables
Environmental impacts	The tables below reflect the environmental impacts
Cross-sectoral impacts	Impact on fundamental rights, gender and social justice
Administrative workload	No relevant impacts are expected in this category
The SME test	This test is not relevant to this concept document.
Next steps	
Short-term	Drafting and adoption of the Law on the right to trial within a reasonable time
Long-term	n/a

Introduction

Based on the Constitution of Kosovo, all citizens are equal before the law[1]. Everyone enjoys the right to equal legal protection without discrimination and the principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions[2].

States have a general obligation to resolve the problems to which the determined violations extend and to ensure that national remedies are effective in law and in practice.

The right to a trial within a reasonable time is a basic procedural human right guaranteed by the European Convention on Human Rights and Fundamental Freedoms (ECHR). This right serves as a guarantee for the protection of the parties from unreasonable delays in the procedures. [3]

The length of the proceedings is a very complex problem which many European States experience with different degrees of gravity: for some of them it is a generalized problem, a "systemic" one", whereas for others it must rather be seen as an occasional dysfunction of an otherwise effective system of administration of justice.[4] The speed of the procedure is only one element of the right to a fair trial, which must nevertheless be treated appropriately in terms of a fair procedure.

Although the procedural laws provide for the determination of legal timelines for the use of legal remedies (appeals, responses to the claim), there is a lack of appropriate mechanisms related to the close monitoring of the court proceedings, which requires each court to collect data regarding each individual stage of the court proceedings. The Law on Contested Procedure (LCP), article 394 and article 395 determines the deadline of fifteen (15) days for responding to the claim from the day when the regular and complete claim was submitted to the court. Also, when sending the claim, the court will instruct the respondent about the obligation, the content that the response to the claim shall have, as well as about the procedural consequences in case he/she fails to submit the response to the claim before the court, within the appropriate deadline. Article 400 of the LCP also defines the deadlines for holding the main preparatory session and the deadline for issuing the judgment. Article 400 of the LCP stipulates that after receiving the response to the claim, the court convenes the preparatory session. If the respondent fails to submit the answer to the claim, and the conditions for the issuance of the contumacious judgment have not been met, the court will convene the preparatory session after the expiration of the legal deadline for submitting the response to the claim. The preparatory session is held, as a rule, no later than thirty (30) days from the day on which the respondent's response to the claim reached the court. Article 420 paragraph 2 of the LCP determines that the main hearing session will be held, as a rule, within thirty (30) days from the day when the preparatory session ended. Furthermore,

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[1] Article 24 of the Constitution of Kosovo
[2] Article 24 of the Constitution of Kosovo
[3] Article 6 of the ECHR
[4] Venice Commission, Report on the Effectiveness of National Remedies in Respect of Excessive Length of Proceedings, CDL-AD(2006)036rev, April 2007

Article 153 paragraph 1 of the LCP stipulates that the Court issues the verdict at the latest within fifteen (15) days from the close of final evaluation.

In special contested procedures (priority cases such as obstruction of the possession, employment disputes), shorter deadlines for decision by the court have been determined. LCP by its article 479 determines that when setting the deadlines and court sessions, the court shall always pay attention to the need for urgent resolution of disputes due to the obstruction of possession, but each case will be looked into its nature and circumstances. In employment disputes, the court will also always have in mind that these cases need to be resolved as soon as possible, due to the employment dispute. In the judgment by which the fulfilment of any obligation is ordered from the employment dispute, the court shall set a deadline of seven (7) days. LCP also defines the deadlines for the submission of ordinary and extraordinary legal remedies[5] and extraordinary legal remedies, where the deadlines are also defined when the Court of Second Instance shall decide.[6]

The Law on Administrative Conflicts also provides for procedural deadlines regarding the issuance of decisions by the court and the submission of ordinary and extraordinary legal remedies.[7] Article 47 of the Law on Administrative Conflicts stipulates that if a verbal review has been conducted, immediately after the end of the verbal review and consultation has ended, the court shall issue the judgment, respectively the decision. However, in this regard, the Law should foresee the deadline for issuing the judgment. Article 65 of the Law also obliges the competent body when deciding, instead of annulled administrative act, another act shall be issued. The competent body is obliged to issue another act, without a delay, within thirty (30) days from the date of delivering the judgment. In this case the competent body is obliged on the legal point of view of the court and on courts remarks regarding the procedure.

Meanwhile, the time limits for completion of cases pending with the state prosecutors are determined by the Criminal Procedure Code, specifically Article 84 and Article 157 which determine the time limits as well as the actions that must be taken by the state prosecutors from the moment of receiving the criminal report until the indictment is filed, such as: Article 84 of the Criminal Procedure Code, which stipulates that Following the receipt of the criminal report, the state prosecutor shall issue written ruling dismissing a criminal report within thirty (30) days or requests supplemental information pursuant to Article 83 of this Code. If the state prosecutor has required supplemental information, he shall issue the ruling dismissing the criminal report within six (6) months from the day of the filing of the initial criminal report.

The Article 157 of the Criminal Procedure Code stipulates that if an investigation is initiated, the investigation shall be completed within two (2) years.

Therefore, the procedural laws explicitly provide the legal deadlines for the use of legal remedies as well as legal deadlines for court action. However, these laws do not provide effective legal

[5] LCP, article 176
[6] LCP, article 211 (Revision), 234 (retrial), 245 (Request for Protection of Legality)
[7] Law on Administrative Conflicts, Article 49 – Article 62)

remedies for addressing the inaction of the responsible institutions in those cases where they are obliged to act.

One of the most critical issues facing the Kosovo judiciary is the backlog (old cases accumulated as well as the large number of received cases). Solving of this problem is one of the prerequisites for reaching the standard for trial within a reasonable time. The reports of the European Commission for Kosovo, the reports of civil society organizations, constantly emphasize that the accumulated cases, especially in civil proceedings and the execution of judgments remain a challenge and calls for an effective judicial system and the timely service of justice. [8]

It should also be noted that according to the Law on Courts[9], each judge should have at least one professional collaborator, serving exclusively the judge in question. However, in the Basic Court of Pristina, a professional collaborator serves two judges. [10] The importance of professional collaborator is extremely high in shortening the time of resolving of the cases. The professional collaborator assists in the preparation of written decisions, judgments, other decisions, providing necessary legal materials, reviewing laws.

Figure 1: Table with general information for the concept document

Title	Concept document on realisation of civil rights including the right of parties to a trial within a reasonable time
Lead ministry	Ministry of Justice, Department for European Integration and Policy Coordination (DEIPC)
Contact person	Ruzhdi Osmani, Deputy Director DEIPC, 038 200 18 092
Strategic Operational Plan	SECURITY AND RULE OF LAW: Effective justice
Strategic priority	Justice in time
Working group	**Ruzhdi Osmani**, Deputy Director, DEIPC/MoJ, chairman **Albulena Uka**, Coordinator for CEPEJ, Senior Official/MoJ, Deputy Chair **Nexhat Kelmendi**, Senior Constitutional Legal Adviser/CC, **Eros Gashi**, Cabinet of the Ministry of Justice/MoJ **Afrim Shala**, Judge at the Court of Appeal/KJC **Zenel Leku**, Judge at the Court of Appeal/KJC **Florentina Beqiraj**, Coordinator of the Human Rights Unit/MoJ **Kaltrina Nuhiu**, Legal Officer, LD/MoJ **Saranda Salihu**, Officer for Media Analysis and Monitoring/MoJ

[8] Reports of the European Commission for Kosovo 2020, 2021
[9] Article 39 paragraph 2 of the Law on Courts
[10] Interviews with judges

	Gëzim Bislimi, Senior Budget Analyst/MFLT **Sadedin Gërguri**, Budget and Finance Division/MoJ **Kushtrim Canolli**, Senior Policy Planning Officer, OSP/PMO **Alberita Hyseni**, Senior Legal Officer, LO/PMO **Dodona Gashi**, Senior Officer, OCP/PMO **Leotrim Gashi,** KLI **Rinor Hoxha**, Legal Expert **Albina Qestaj,** Intern/MoJ

Chapter 1: Definition of the problem

1.1. The main problem, causes and effects

The main problem is defined in the following situational analysis (problem tree) that is created by various causes. This problem creates certain effects on the parties who have faced delays in the courts. All these are elaborated below.

Figure 2: The problem tree, presenting the main problem, causes and effects

Effects	Violation of the basic right to trial within a reasonable time
	Loss of citizens' trust in the justice system
	Causing material and non-material damage to citizens who are faced with prolonged court proceedings
Main problem	The high number of unresolved cases and the prolongation of court proceedings
Causes	Lack of necessary professional staff: judges and professional collaborators
	Lack of legal mechanisms to enforce the right to a trial within a reasonable time
	The "ping pong" effect between the courts of appeals and basic courts

1.2. Kosovo legislation and policy framework

The Republic of Kosovo has a significant number of legal acts related to the regulation and guarantee of the right to a trial within a reasonable time. This legal framework is elaborated in the following table.

Policy document, law or sublegal act	Link to the Official Gazette	State institution(s) responsible for implementation	Role and duties of the institution(s)
Constitution of the Republic of Kosovo	https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702	Institutions of the Republic of Kosovo	The Constitution guarantees equality before the law for all citizens. Everyone enjoys the right to equal legal protection, without discrimination. According to the Constitution, the principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions.
Law on Courts	https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18302	Kosovo Judicial Council Courts Ministry of Justice	**Drafting of legislation and implementation supervision** **Implementation of legislation:** According to the Law on Courts, every judge should have at least one professional collaborator, serving exclusively the judge in question.
Law on Contested Procedure	https://gzk.rks-gov.net/ActDetail.aspx?ActID=2583	Courts, (parties to the proceedings) Ministry of Justice	**Drafting of legislation and implementation supervision** **Implementation of legislation:** The Law on Contested Procedure regulates the time limits within which the necessary actions must be carried out by the parties to the proceedings. LCP also defines the deadlines for the submission of ordinary and extraordinary legal remedies and extraordinary legal remedies, also defining the deadlines when the second instance court

			shall decide.
Law on Administrative Conflicts	https://gzk.rks-gov.net/ActDetail.aspx?ActID=2707	Courts Ministry of Justice	**Drafting of legislation and implementation supervision** **Implementation of legislation:** This law provides the procedural deadlines regarding the issuing of decisions by the courts and submission of ordinary and extraordinary legal remedies. The law also obliges the competent body when deciding, instead of annulled administrative act, to issue another act. The competent body has the duty to issue it without delay, within thirty (30) days from the date of delivering the judgment. In this case, the competent body is obligated on the legal point of view of the court and on courts remarks regarding the procedure.
Law on the Constitutional Court	https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2614	Kosovo Judicial Council Constitutional Court Ministry of Justice	**Drafting of legislation and implementation supervision** **Implementation of legislation:** The Law on the Constitutional Court stipulates that every individual is entitled to request from the Constitutional Court legal protection when he/she considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.
Law on Enforcement Procedure	https://gzk.rks-gov.net/ActDetail.aspx?ActID=2870	Courts and private enforcement agents Ministry of Justice	**Drafting of legislation and implementation supervision** **Implementation of legislation:** This law shall provide for the procedure in which courts and private enforcement agents determine and carry out enforcement, on the

			basis of the enforcement titles and authentic documents, unless if by the special law it is foreseen otherwise.
Criminal Procedure Code	https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861	Prosecutions, Courts, police, other law enforcement institutions.	**Drafting of legislation and implementation supervision** **Implementation of legislation:** The purpose of this Code is to determine the rules of criminal procedure which are mandatory for the work of courts, state prosecution and other participants in criminal proceedings provided by this Code.
Law on Kosovo Judicial Council	https://gzk.rks-gov.net/ActDetail.aspx?ActID=18335	Ministry of Justice Kosovo Judicial Council	**Drafting of legislation and implementation supervision** **Implementation of legislation:** The Council is a fully independent institution in exercising its functions and enjoys organizational, administrative and financial independence for the fulfilment of the duties defined by the Constitution and by law. The Council ensures that the courts respect the principles of non-discrimination, proportionality, as well as human rights and gender equality, guaranteed by the Constitution and international agreements and instruments applicable in the Republic of Kosovo.
Law on Kosovo Prosecutorial Council	https://gzk.rks-gov.net/ActDetail.aspx?ActID=2709	Ministry of Justice Kosovo Prosecutorial Council	**Drafting of legislation and implementation supervision** **Implementation of legislation:** The Council is a fully independent institution in the exercise of its functions in order to provide an independent, professional and impartial prosecutorial system as defined by the Constitution and by law. The Council ensures that the Prosecution Offices respect

			the principles of non-discrimination and proportionality, as well as human rights and gender equality, guaranteed by the Constitution and international agreements and instruments applied in the Republic of Kosovo;
Law on Academy of Justice	https://gzk.rks-gov.net/ActDetail.aspx?ActID=13318	Ministry of Justice Academy of Justice	**Drafting of legislation and implementation supervision** **Implementation of legislation:** According to this Law, the Academy of Justice regulates the method and conditions under which the training of judges and state prosecutors is conducted in the Republic of Kosovo, the training of judicial and prosecutorial administrative staff, develops training needs assessment process based on of the requests of the Kosovo Judicial Council, Kosovo Prosecution Council, as well as other issues.

1.3. Data, reports and mechanisms of the justice system and other data related to the handling of court cases

In the following text, the concept document refers to the reports that are published periodically by the KJC, the KPC, reports by civil society organizations (in relation to the duration of completion of cases) as well as interviews with judges in relation to the case load, the work norm for judges, the average number of completed cases and the rate between received and resolved cases within the certain time periods.

- **Data of the Kosovo Judicial Council (KJC)**

The KJC prepares monthly and annual reports in relation to the number of cases, the judge’s workload and the efficiency in the completion/adjudication of cases according to their nature (based on the standards of work norms for judges). In the following text, this concept document refers to the 2022 Annual Report, the Statistical report on the work of the courts for the first half of the year 2022 (01.01.2022 – 06.30.2022), the Report for 2021 and the Report for 2020.

The reports reflect the number of cases by type, including a brief analysis of judge’s caseload with difficult and easy cases (as classified by their nature), the judge's efficiency in adjudicating the cases, and the average at the level of Kosovo.

According to the 2022 annual report, the total number of judges was 404, of which 385 adjudicated the cases.[11]

On the first half of the year, the Report presents the total number of judges within the Kosovo courts, which is 388 in total (Supreme Court 18, Special Chamber 15, Court of Appeals 56 and Basic Courts 299), of which the total number of judges adjudicating the cases is 375 (within the first 6 months of 2022). Also, the report presents the total number of support staff (civil servants), which is a total of 1,507[12].

In addition, the report presents the total number of cases that the judges were working on (caseload) during the 6-month reporting period, at all levels of the courts, which are 295,590 cases in total (of which 222,314 are inherited cases and 73,276 cases were received during the reporting period January-June 2022). Out of this number of cases, within this period, the courts have resolved 59,261 cases, while 236,329 cases have remained unresolved. From this total number of cases at all levels of courts for the first half of the reporting year:

- The Supreme Court had the caseload of 1150, of which 406 were inherited, 744 received, 737 resolved and 413 remained unresolved);
- The Special Chamber had the caseload of 16.469, of which: (15.665 were inherited, 804 received, 1,517 resolved and 14,952 remained unresolved);
- The Court of Appeals had the caseload of 24,021, of which: (15.064 were inherited, 8,957 received, 8,730 resolved and 15,291 remained unresolved);
- Basic courts had the caseload of 253.950 of which: (191,179 were inherited, 62,771 received, 48,277 resolved and 205,673 remained unresolved).

Based on the above, in general (at all levels of the courts), it results that the number of resolved cases is lower than the number of cases received within the reporting period, and adding to this the number of cases that have been inherited (*cases that were worked on during the reporting period*), it results that the number of resolved cases is small, and this increases the number of inherited cases even more for the following period (*the second half of 2022, where the number of unresolved, inherited cases remain 236,329*) compared to the reporting period (*the first half of the year 2022, where 222,314 cases were inherited*), where the difference is 14,015 more cases. This situation creates the need for greater efficiency, which would also include trial within a reasonable time. Therefore, the main conclusion is that based on the current capacities, especially the number of judges and professional collaborators, there is an increasing trend in the number of unresolved cases, and consequently the delays in resolving cases.

The report also presents the workload according to the type of cases (criminal, civil, economic, etc.) reflected in the tables below, based on data from the KJC.

[11] The Report is available at: https://www.gjyqesori-rks.org/wp-content/uploads/reports/45114_RAPORTI%20STATISTIKOR%20I%20GJYKATAVE%20VJETOR%202022.pdf

[12] The Statistical Report of the KJC on the work of the courts for the firxt six months of 2022 (01.01.2022 – 30 .06.2022). The Reports is available at: https://www.gjyqesori-rks.org/wp-content/uploads/reports/31910_KGJK_Raporti_gjashtemujor_pare_2022.pdf

Court	Number of caseloads	Number of inherited cases	Number of received cases	Number of resolved cases	Number of unresolved cases
Supreme Court	1150	406	744	737	413
Special Chamber	16469	15665	804	1517	14952
Court of Appeals	24021	15064	8957	8730	15291
Basic Courts	253950	191179	62771	48277	205673
Total	**295590**	**222314**	**73276**	**59261**	**236329**

Table 1: Number of cases in the courts during the first half of the year 2022

Court	Number of caseloads	Number of inherited cases	Number of received cases	Number of resolved cases	Number of unresolved cases
Supreme Court	1974	392	1582	1568	406
Special Chamber	19008	17364	1644	3343	15665
Court of Appeals	31151	10811	20340	16087	15064
Basic Courts	284836	145708	139128	91170	193666
Total	**336969**	**174275**	**162694**	**112168**	**224801**

Table 2: Number of cases in the courts in the year 2021

Court	Number of caseloads	Number of inherited cases	Number of received cases	Number of resolved cases	Number of unresolved cases
Supreme Court	1580	171	1409	1188	392
Special Chamber	22157	20936	1221	3222	18935
Court of Appeals	25859	11640	14219	15048	10811
Basic Courts	198706	110981	87725	52792	145914
Total	**248302**	**143728**	**104574**	**72250**	**176052**

Table 3: Number of cases in the courts in the year 2020

According to the tables, it can be noticed that there is a trend of increasing number of cases received during the year 2021 and the first half of the year 2022. At the end of the reporting period there is also a large number of unresolved cases, where for the first half of the year 2022, a total of 236,329 cases remained unresolved. In conclusion, in turns out that this trend regarding the adjudication of cases is a negative indicator in relation to the guarantee of the right to trial in a reasonable time. This creates the necessity to increase the number of judges and professional collaborators, in addition to other measures that must be taken to guarantee the right of citizens to a fair trial within a reasonable time.

It is worth noting that the Kosovo Judicial Council, by its decision KJC.no.241/2022, dated 31 May 2022, approved the Strategic Plan for the Improvement of Access to Justice 2022-2025, related to the Efficiency and Prioritization of Cases within the Judicial System[13]. This plan aims to address and resolve cases that are of priority, including cases remanded to trial, cases of high priority pursuant to relevant legislation, cases received by courts more than two years ago, as well as other cases which require swifter action. The objective of this plan is to increase effectiveness and efficiency in disposing cases, strengthen the capacities of the judiciary in handling the large number of cases falling under the framework of high-priority cases, ensure fair judicial proceedings, as well as establish criteria for prioritizing cases of a specific nature. Considering the importance of strategic plans for the judicial system in the Republic of Kosovo, the KJC, by its decision KJC.no.397/2022, dated 20 October 2022, established the commission for Monitoring, Evaluation and Reporting of the Strategic Plan for the Improvement of Access to Justice 2022-2025, as well as the Strategic Plan for efficient resolution of corruption and organized crime cases 2022-2024, which consists of five (5) judges of the Supreme Court of the Republic of Kosovo.

In the following text, the data will be presented according to the nature of the cases:

a) Criminal cases

During the first 6 months of 2022[14] at the level of the basic courts, the caseload was as follows: General criminal - Preliminary procedure (caseload 3,726, of which cases pending at the beginning of the reporting period 2,101 cases, while the number of received cases during the reporting period is 1,625 cases. The number of resolved cases is 1,332, while the clearance rate is 82%. The number of cases pending at the end of the reporting period, that are older than 2 years, is 979 cases. The average duration of the resolved cases is 38.38 days, while the average age of pending cases at the end of the reporting period is 600.03 days). These data are also reflected for criminal cases in other stages and departments.

It should be underlined that the above data, provided by the KJC, are only related to the average duration of handling the cases in the stages of criminal proceedings, and not in relation to the duration of the final adjudication of the criminal case, which means also the standard of assessment of the trial in reasonable time (such data is not reflected in the data/reports of the KJC). Example: in the pre-trial proceedings at the level of Basic Courts, it appears that the average duration for adjudication of criminal cases at this stage is 38.38 days (which reflects only the 6-month reporting period), while the average time for cases waiting to be processed at this stage is 600.03 days, which is also not indicative of the average duration that can be assessed in terms of reasonable time for adjudication of the cases.

[13] KJC Strategic Plans available at: https://www.gjyqesori-rks.org/planet-strategjike/

[14] The statistical report of the KJC on the work of the courts for the first half of the year 2022 (01.01.2022 – 30.06.2022). The report is available at: https://www.gjyqesori-rks.org/wp-content/uploads/reports/31910_KGJK_Raporti_gjashtemujor_pare_2022.pdf

Furthermore, based on the data presented by the reports of the KJC and by the Reports on monitoring the concrete cases in criminal proceedings at the basic courts, it turns out that the delays in the completion of criminal cases are very long.

Thus, based on the data from the monitoring of the cases in criminal proceedings by civil society organizations, it appears that many of the cases that go through our courts, last for years, exceeding the standard of a trial within a reasonable time.[15] Example: In a criminal case in the Basic Court in Pristina in which the indictment was filed on 16.07.2007, the court proceedings underway for more than 13 years (Case PKR.no.423/14), and it can be said that the court's efforts to take the measures to hold the sessions are minimal.

Before the Basic Court of Prizren, in a criminal case of abuse of authority, the indictment was filed on 11.12.2014, while there is no final decision issued in relation to this case, even in 2020 (Case PKR. no. 66/19). This case has been returned twice for re-trial, which has greatly influenced the proceedings to be prolonged to a large extent. This case shows that the so-called "*ping pong effect*" (*which is mentioned in the reports referred to in this concept document for administrative cases*) is also present in criminal cases. Also, in the Court of Gjilan, an unresolved case was encountered even after 8 years since the indictment was filed. The indictment dated 22.10.2012 charges a person of counterfeiting money, and as such has not been completed even in 2020 (Case PKR.no.175/13). Also, in the Basic Court of Peja, in a criminal case of Unlawful occupation of real property of another person (Case P.no. 433/16), the indictment filed on the (sic!) and even in 2020 the case has not resolved, or after almost five years. Similarly, in the Basic Court of Gjakova, in a criminal proceeding initiated by the indictment dated 25.05.2016, no decision was issued even in 2020 (Case PKR.no.64/18), causing almost 5 years to pass without any decision of the first instance court.[16]

From the duration of above stated cases, the even greater problem of delays in the completion of the cases and non-compliance with the standard for trial in a reasonable time, consists in the fact that all of these above-mentioned cases are in the first instance procedure (Basic Court), with the exception of the case in the B.C. in Prizren, where the case has been returned twice for retrial by the Court of Appeal. If we take into consideration the potential duration of the proceedings before the Court of Appeal, as a second instance, or even before the Supreme Court, which as a third instance decided on the extraordinary legal remedies, it turns out that the average time to complete these cases is excessively long, and it exceeds even the average duration of some civil or administrative cases.

On the other hand, based on the data of the KJC report, which are referred to above, what comes into view are the statistics regarding the performance of judges, the rate of cases and other aspects that are mainly related to the workload of judges with cases, but there is no mechanism on the assessment of the standard for a trial within a reasonable time. The setting of this standard would mean accurate criteria on the average adjudication of cases of a certain nature, and on this basis, to conduct the evaluation of the judges' performance in relation to this standard. This

[15] Application of a fair trial within a reasonable time in the courts of the Republic of Kosovo, Analysis by Justice Today, GLPS, April 2020.
[16] *Ibid.*

remains a challenge for the justice system, not guaranteeing the basic right of citizens to have their case resolved within a reasonable time, in addition to a fair trial.

As noted from the statistical report (for the first half of the year 2022), unlike the handled cases referred to in the Draft Regulation on the norms of judges (which was in public consultation in 2022), which determines the work norm for judges on the basis of the number of cases that must be resolved within a month and calendar year (based on a system of evaluation with points per case, depending on their nature), but does not contain any criteria regarding the duration of the resolution of cases.

Determining the criteria for assessing the average time for resolving the cases in this regulation would also enable the monitoring of the work of judges in relation to the reasonable time for the completion of cases, as is foreseen the monitoring and measures that are taken in cases of non-fulfilment of the work norm. Article 22 of this Draft Regulation (Monitoring the implementation of work norm) provides that in cases of non-fulfilment of the work norm, the judge will be required to submit a written report, and if the report is not presented with the reasons for non-fulfilment of the work norm, the president of the court must initiate disciplinary proceedings. This would be one of the mechanisms that the KJC could apply to comply with the standard for a trial in a reasonable time. Also, the Regulation No. 01/2021 on the Performance Evaluation of Judges, while there are no criteria on the reasonable time for the resolution of cases, the performance evaluation in relation to this standard is not provided either. Even this regulation should be amended (*after creating the normative base that determines the average time for the completion of the cases*) and within the competences of the Performance Evaluation Commission, the evaluation regarding the completion of the cases within a reasonable time should be determined.

Thus, according to the statistical data of the KJC dated 30.06.2022, the number of pending criminal and civil cases is 200,935 (two hundred thousand and nine hundred and thirty-five) cases in total. From this total number of 200,935 cases:

- 19.367 are pending for 0 to 1 month,
- 41.485 are pending for 2 to 6 months;
- 44.941 are pending for 7 to 12 months;
- 42.209 are pending for 13 to 24 months;
- 10.933 cases are pending for 25 to 30 months;
- 7.742 are pending for 31 to 36 months
- And 34.258 cases are pending for more than 36 months.

Also, according to the report, it results that the number of old cases at the end of 2021 is 49110 cases, while on 30.06.2022 this number of old cases is 52933. Based on these data, at the end of the period 30.06.2022 comparing to the end of the 2021, the number of old cases has increased by 7,8%.

The data of the Kosovo Prosecutorial Council (KPC):

According to the ECtHR caselaw, in cases under criminal proceedings, it is important that the requirements of Article 6 of the ECHR are applied from the investigation stage, even in relation to pre-trial actions). According to the ECtHR, in relation to the criminal procedure, Article 6 also applies to the pre-trial procedures (such as the preliminary actions that are taken before the initiation of the criminal procedure, including the actions of the police), where this clarification was given arguing that: the guarantees provided for in Article 6 are applied not only in court proceedings, but also in the stages that precede and follow the criminal procedure. In criminal cases, the guarantees are also applied in the pre-judicial investigations conducted by the police, while beyond the fact that the guarantees are offered from the moment of the filing of the indictment as a rule, the other conditions of Article 6, especially those contained in paragraph 3, are applied even before the case is sent to court (Imbroscia vs. Switzerland). Therefore, based on the standard established by the ECtHR that the requirements of Article 6 of the Convention must be applied even in the investigation phase, it is important that in order to guarantee the right to trial within a reasonable time in criminal cases, the prosecutorial system (in relation to the phase of investigation and indictment within the criminal procedure) should be also analysed.

Based on the data of the Kosovo Prosecutorial Council (KPC) for the year 2021 and the first half of the year 2022, it can be noted that accurate statistics are kept regarding the average of number of received cases, caseload, cases resolved by prosecutors (according to prosecutors' offices and departments) in relation to the work norm determined according to the Administrative Instruction No. 01/2018 for Determining the indicative norm for state prosecutors and by the Administrative Instruction No. 01/2021 amending and supplementing the Administrative Instruction No. 01/2018 for Determining the indicative norm for state prosecutors, but there is no other data regarding the time needed for resolving the cases, namely the (average) duration of investigations in criminal cases. According to the information provided by the KPC, it is pointed out that the statistics office does not possess the data regarding the duration of the investigations, due to the manner of data collection, and these data will be able to be kept after the CMIS Statistics Module becomes operational.

Also, the annual work report of the State Prosecutor for 2021 provides general information about the work of the State Prosecutor. According to this report, during 2021, the State Prosecutor (SP) had a caseload of total 132,069 criminal reports - cases. Out of this number of cases: 80396 or 60.87% are inherited/carried over as unresolved cases from previous years and 51673 or 39.13% were received during the year 2021. During the year 2021: 50118 or 37.94%1 of the caseload during the year 2021, have been resolved or sent to the competent bodies, while 81951 or 62.06% of all pending cases have remained unresolved.

The report also contains the data regarding the efficiency in resolving the cases during the year 2021, where: 1555 criminal reports- cases have been resolved, that is, less than the received number during the reporting period (2021), or 3.00% of the total number of received cases. And when the number of cases carried over from previous years (which according to the report are 80,396) is added to this, it results that the efficiency in resolving the cases is much lower. In this case, the increase in the number of prosecutors should also be taken into consideration, which is considered one of the important prerequisites for the efficiency of the State Prosecutor.

Based on the analysis of these data and other documents of the State Prosecutor Office and the KPC, it results that there is no special mechanism that would determine the criteria on the average duration to resolve cases, so that this could also serve as a basis for evaluation of the performance of prosecutors. Therefore, in the same way as the KJC, the KPC must create a mechanism for determining the (average) duration of investigations by prosecutors, as one of the criteria for evaluating their performance. This would be one of the measures in order to complete the investigations on time and without delays, as a prerequisite for the completion of the criminal process within a reasonable time. The creation of such a mechanism would create the basis to request from the prosecutor a written justification in cases where there are delays in the completion of investigations, or else, to initiate the disciplinary proceedings.

In addition, several aspects remain a challenge in the prosecutorial system, which are considered prerequisites for a fair process and timely completion of cases, such as: justification of decisions on the initiation and duration of investigations (especially in cases of detention on remand), timely notification of defendants on the charges, use of alternative procedures, etc.

As the ordinary legal remedy, it is considered: the appeal against the judgment and appeal against the ruling, while as an extraordinary remedy: Request for reopening of the criminal proceedings; Request for extraordinary mitigation of punishment and Request for protection of legality.

In addition to the types of legal remedies, the Criminal Procedure Code of Kosovo under its articles 375-378 defines the "General rules of the appeal procedure" as well as the basis/grounds for presenting the legal remedy in the following provisions, where they are explicitly provided. But no provision contains the basis to submit a request, objection or complaint against the delays in the proceedings, namely the violation of the right to trial in a reasonable time. Therefore, as such, the legal remedies in criminal proceedings are not efficient as far as this right is concerned.

b) Civil and administrative cases

The Law No. 06/L – 054 on the Courts, Article 12 provides the subject matter jurisdiction of the Basic Court. Paragraph 1 of this article stipulates that the Basic Courts shall be competent to adjudicate all cases in first instance, unless otherwise foreseen by Law. The court cases of a civil nature (civil disputes) are handled by the general department operating within the seat of each Basic Court and each branch of the basic court, including the Court of Appeal. Three (3) divisions operate within the General Department, namely the Criminal Division, the Division for Minor Offences and the Civil Division. The civil legal disputes (contentious, non-contentious, enforcement and domestic violence cases) are handled in the Civil Division.

With the entry into force of the Law on the Commercial Court, all commercial disputes and administrative conflicts initiated by commercial companies will be transferred to the jurisdiction of the Commercial Court, as defined by this law. The first instance Chambers of the Commercial Court consist of four (4) separate departments, including the Department for Economic Matters, the Fiscal Department, the Department for Administrative Matters and the General Department.

So far, about 8,000 cases have been transferred to this court. However, the number of judges seems to be insufficient.

The civil division consists of 107 judges in all the civil divisions of the Basic Courts of Kosovo[17] where this number is significantly lower compared to previous years (only in the Basic Court of Pristina the number of judges in 2021 was thirty-one (31), whereas for the year 2022 the number of judges is twenty-two (22)). The reason for the decrease in the number of judges is the transfer of judges and promotions in the administrative department of the Basic Courts, the Court of Appeal and the Commercial Court, and these positions have not yet been filled.

Based on statistics of the KJC, the number of inherited cases is increasing in 2021, while the number of received cases is smaller compared to 2020. However, the first half of 2021 finds the basic courts of Pristina with about 146,000 civil cases which must be adjudicated by 107 judges.

Most of the judges of this division have over 1000 cases that need to be dealt with, which makes it impossible for the judge to complete the cases on time, and as a result, it leads to the violation of principle of a trial within a reasonable time to be violated. [18]

The data related to the number of civil cases are provided in tabular form below:

Reporting period 2021[19]						
Cases	Inherited cases	Received cases	Total caseload	Cases resolved during the reporting period	Unresolved cases during the reporting period	Average duration of resolved cases
Contested	84465	18635	103100	12280	90820	689 days
Out-contentious	4805	1604	6409	1366	5043	357 days
Enforcement	23495	13173	36668	8294	28374	184 days
Total	112765	33412	146177	21940	124237	

Table 4: Number of civil cases in 2021

Reporting period 2020

[17] KJC Six-Month Report of 2022, https://www.gjyqesori-rks.org/wp-content/uploads/reports/31910_KGJK_Raporti_gjashtemujor_pare_2022.pdf
[18] Interviews with judges of civil division
[19] KJC, statistical reports 2021, 2020.

aces	Inherited cases	Received cases	Total caseload	Cases resolved during the reporting period	Unresolved cases during the reporting period	Average duration of resolved cases
Contested	55424	29319	84743	20329	64414	N/A
Out-contentious	3444	2935	6379	2312	4067	N/A
Enforcement	164	6178	6342	439	5903	N/A
Total	59032	38432	97464	23080	74384	N/A

Table 5: Number of civil cases in 2020

The duration of a court proceedings is the most important indicator for measuring the performance of judicial systems. According to CEPEJ, there are two important indicators concerning the duration of judicial proceedings (both for civil cases and for criminal or administrative cases)[20]. The actual duration measures the laps of time between the date on which a new case is initiated and the date where a judgment is issued. In its statistical reports, the KJC has estimated the duration of time it takes to resolve a case by applying the CEPEJ formula[21]. According to KJC data, the average duration of contentious cases is about (3) years, the average duration of non-contentious cases is over two (2) years, while the average duration of enforcement cases is less than one (1) year. [22] However, CEPEJ emphasizes that the mere arithmetical average is not representative of the reality in the judicial system[23]. Despite the average calculated by the KJC, the civil division has a number of cases dating back to the year 2000 for which a meritorious decision has not yet been made. Based on the data generated by the judges, the handling of a civil case within the timeframe of three-four year happens very rarely and is considered the best possible scenario.[24] Furthermore, according to the monitoring of court sessions by civil society organizations, there are a number of cases where the preparatory session

[20] https://rm.coe.int/komisioni-evropian-per-efikasitetin-e-drejtesise-cepej-matja-e-cilesis/16807477ca

[21] DT indicator determines the number of days necessary for a pending case to be solved in court and provides further insight into how a judicial system manages its flow of cases. This indicator compares the number of resolved cases during the observed period and the number of unresolved cases at the end of the observed period. 365 is divided by the number of resolved cases divided by the number of unresolved cases at the end, so as to be able to express it in number of days. For instance, the calculation of the average duration of 1,000 proceedings of cases resolved within one year by a given court shows that the average duration is of one year. Considering the breakdown of the respective durations and the matters considered in the individual cases, there will be a considerable range of issues discussed and a large spread of time-scales.

[22] The CEPEJIT formula used by KJC to calculate the average duration of reosolving the cases

[23] Ibid.

[24] Interview with judges of the civil division of the Basic Court of Pristina.

has been scheduled after two years and the judgment has not yet been completed.[25] There are cases when the claim was filed in 2007 while the preparatory session was scheduled in 2017.

As for the reference work norm, judges of the civil division are obliged to resolve 27 cases within a month, while within a year, the same judges must resolve 329 cases. A certain number of judges within this division exceed this work norm, but which is not reflected in the KJC statistics.[26]

Based on the findings form the monitoring by the Civil Society Organizations that continuously monitor the court hearings, show that civil court proceedings are prolonged at almost every stage of the proceedings, from the scheduling of the preparatory hearing, the response to the claim, the court hearing, etc. All these violations in the end constitute a long delay in civil cases, which in some cases lasts for decades. A number of factors have contributed to the excessive duration of civil cases, and finally to the violation of the principle of trial within a reasonable time: the large number of inherited and received cases compared to the number of judges, the lack of professional collaborators, the return of cases twice by the Court of Appeal for retrial to the first instance court (ping-pong effect), the postponement of hearings as a result of the non-appearance of the parties at the hearing as well as the absence of judges.

An important factor in the increase in the number of civil claims is also the failure to decide on the subsequent property claim of the injured party in the criminal proceedings. According to the Criminal Procedure Code, a property claim arising from the commission of a criminal offense is settled on the motion of the authorized persons in criminal proceedings if this would not considerably prolong those proceedings. There is a tendency in almost most of the criminal proceedings that the criminal courts avoid deciding on the subsequent property claims, even though it’s their obligation based on the Criminal Procedure Code, by instructing the parties to a civil litigation, since the Criminal Procedure Code allows this. This practice has aggravated the situation by accumulating cases in civil disputes. In almost no criminal judgment where the injured party is instructed in a contested procedure, there is no reasoning as to why the court refused to decide on the property claim in the criminal procedure, and the judges do not hold any kind of responsibility for such a violation of the Code.

The situation is almost the same in the administrative department of the Basic Court of Pristina. Even the European Commission's Report for 2021 states that the Basic Court of Pristina still continues to face a large number of administrative cases (inherited and new). The "backlog" of administrative cases at the end of August 2021 was 1993 cases.

According to the Law on Courts, the Department for Administrative Matters operates within the Basic Court in Pristina, and it adjudicates the cases and decides on administrative conflicts according to claims filed against final administrative acts and has jurisdiction over the entire territory of the Republic of Kosovo. With the establishment of the Commercial Court, a number of cases belonging to the administrative-fiscal division have been transferred to this court. Law No. 03/L-202 on Administrative Conflicts (LAC) is the basic law on which an administrative

[25] Civil Justice, Kosovo Law Institute (2019)
[26] Interview with judges of the civil division.

court proceeding is conducted. Currently, the new Draft Law on Administrative Conflicts (LAC) is being reviewed in the Assembly.

In this department there are nine (9) judges and only two (2) legal collaborators. If we compare it to the civil division, this department has less burden in terms of dealing with the number of inherited and received cases.

The following table shows the data on the number of cases for the period 2022 (first half of the year), 2021 and 2020 in the administrative department of the Basic Court of Pristina.[27] The number of fiscal administrative cases is not included in the tables, since a certain number of them have been transferred to the Commercial Court.

	Inherited	Received during the reporting period	Total caseload	Resolved	Unresolved	Average duration in resolving the cases	Number of judges
2022 (I Six-Month period)	6156	1499	7655	1290	6365	842.00 days	8
2021	6347	2816	9163	2951	6212	880.00 days	12
2020	6380	1905	8285	1947	6338	998.00 days	

Table 5: Number of civil cases in 2021

According to the table above, there is an increasing trend of the received cases, while the average duration in resolving the cases has been shortened compared to 2020 by about one hundred (100) days. The number of judges during the year 2022 has decreased from 12 to 8 judges and this may also have influenced the non-fulfilment of the work norm. There are 1657 pending cases at the end of the reporting period for 2022 older than two (2) years for the six-month period 2022, which is an indicator that the long duration of court proceedings in the administrative department continues to be worrying. In conclusion, the average resolution of an administrative case is more than two years.

According to data from KJC[28], for the six-month period of 2022, the administrative department has managed to fulfil the work norm. Meanwhile, for the 2021 reporting period, the judges of the administrative department have almost managed to fulfil the work norm with 20.49 cases. Each judge in this department has approximately the caseload of 600 cases, which is a high amount compared to the number of judges.

At the administrative department, in addition to the caseload, the lack of sufficient reasoning in the judgments has been identified as problematic, so that the parties have a clear understanding of why it was decided as in the operative part of the judgment. Judgments of cases monitored by

[27] KJC Reports 2020, 2021, 2022, https://www.gjyqesori-rks.org/wp-content/uploads/reports/31910_KGJK_Raporti_gjashtemujor_pare_2022.pdf
[28] KJC Statistical Report for the first half of 2022

civil society and international organizations (OSCE)[29] show that in many cases the court does not provide a concrete reasoning and concrete instructions for the administrative body that will review the court's instructions when the case is returned for retrial, and as a result, this prolongs the administrative cases.[30]

Also, the tendency of the judges of the administrative department not to decide on the merits of the case, but by first sending the case for retrial to the administrative body, causes delays in resolving of administrative cases.[31]

Non-legal decisions of administrative bodies have also contributed to the large number of administrative lawsuits.[32] In a significant number of cases, administrative decisions provide poor reasoning or no-reasoning.

c) Handling of the cases by the Court of Appeals (ping-pong effects)

According to civil society reports[33], the most pressing concern that has a consequence in delaying decisions on cases concerns the so-called "ping pong effect" between administrative bodies and courts, according to which appeals to the courts against decisions of administrative bodies are not decided by the courts on the merits of the case, but the same appeals are returned to administrative bodies several times for review and decision. Also, in 30-40% of cases, the Court of Appeal does not decide on the merits of the case, but returns it to the first instance court for retrial (in a number of cases even twice), a practice that prolongs the time in resolving the case for the party.

According to the legal mandate, the Court of Appeal is a court of second instance with territorial jurisdiction throughout the Republic of Kosovo. Six departments operate within this court, namely: The General Department, the Department for Serious Crimes, the Department for Economic Matters, the Department for Administrative Matters, the Department for Juveniles and the Special Department for Cases Under the Competence of the Special Prosecution of the Republic of Kosovo. Currently, the Court of Appeal has 52 judges and 82 support staff - civil servants.

The tables related to the caseload in the Court of Appeal for criminal, civil and administrative cases, is presented below:

[29] https://www.osce.org/files/f/documents/8/b/24638.pdf
[30] KLI, Administrative Justice
[31] Interviews with Lawyers, Reports on Monitoring of Court Sessions: KLI: Administrative Justice
[32] Interviews with of the Administrative Department.
[33] Effective legal remedies in Administrative Justice, Kosovo Law Institute, September 2017

	Inherited cases	Received cases	Workload	Resolved cases	Unresolved cases	Number of judges
2021	756	7253	8009	7162	847	17
2020	743	5914	6657	5901	756	

Criminal case load 2021, 2020 based on the annual reports of KJC

	Inherited cases	Received cases	Workload	Resolved cases	Unresolved cases	Number of judges
First Six-Month period 2022	13061	4080	17141	4270	12871	28
2021	9039	11019	20058	6997	13061	24
2020	9916	6,599	16515	7,476	903	

Civil case load for the period 2022, 2021, 2020 based on the annual reports of KJC

	Inherited cases	Received cases	Workload	Resolved cases	Unresolved cases	Number of judges
First Six-Month period 2022	1024	528	1552	469	1083	3
2021	721	1180	1901	877	1024	3
2020	544	797	1341	620	721	

Administrative case load for the period 2022, 2021, 2020 based on the annual reports of KJC

According to the data of the KJC reflected in the tables above, the number of received cases is constantly increasing, and there is also an increase in the number of judges, which makes it stand better in terms of fulfilling the norm and resolving the cases. However, the KJC has not provided data regarding the average duration in resolving a case by the Court of Appeal, and there is also a lack of data regarding the manner in which cases are resolved by this court. Pursuant to the

Article 403 of the Criminal Procedure Code, among other things, the Court of Appeal has the jurisdiction to decide on the merits of the case, and to modify the judgment of the first instance court. If this practice were to be applied, and if the Court of Appeal would return the cases for retrial only in necessary cases, the time to resolve a court case would be significantly reduced. In a number of these situations, there are cases that are returned even for very minor issues that do not meet the criteria defined by the Criminal Procedure Code for returning the cases for retrial.[34]

As stated above, the large number of cases in relation to the small number of judges, irregularities during court proceedings, the lack of reasoning of the judgments are contributing factors in prolonging the proceedings and in violation of the principle of trial within a reasonable time.

Calculation of the time in resolving the civil and administrative cases

As it was stated above, the KJC has a special formula that it applies to determine the average duration of the court proceedings. The overall duration of court proceedings includes two elements: the beginning of the time period (Dies a quo) and expiration of the time period (Dies ad quem). These points may differ for the purposes of criminal and civil proceedings. As regards the starting point of the relevant period, time normally starts to run from the moment the action is brought before the competent court[35] unless a request to an administrative authority is a prerequisite for the initiation of court proceedings, in which case the period may include the mandatory preliminary administrative procedure[36]

In the civil court proceedings, the length of the procedure is calculated from the moment the appeal or lawsuit was filed with the court[37]: when criminal proceedings also include civil lawsuits, which have not been dealt with in criminal proceedings and the party has been instructed to file a property claim, the starting point is determined on the date of filing the civil lawsuit in criminal proceedings.[38]

Whereas, in administrative cases in which the administrative authorities are parties to the proceedings, the preliminary (pretrial) phase can also be considered. When the law regulates that for resolving of a certain case, administrative channels must be used, the total duration of the procedures is calculated from the date of submission of the complaint for the resolution of the dispute to the administrative authorities. [39]

In principle, the duration of the proceedings ends on the day when the decision on resolving the dispute is issued, which is the moment when the final act of the court becomes final. As for the end of the period, it usually covers the entire proceedings in question, including the proceedings

[34] Reports on monitoring by the civil society organizations, KLI: Justice at the second instance, analysis of judgments published on the official website of the KJC
[35] Poiss v. Austria, 1987, § 50; Bock v. Germany, 1989, § 35
[36] Kress v. France [GC], 2001, § 90;
[37] Portington v. Greece (No. 109/1997/893/1105), §20
[38] Casciaroli v. Italy (No. 1973/86), §16 Tomasi v. France (No. 11973/86), §124
[39] Siermiński v. Poland (No. 53339/09), § 65

before the second instance court.[40] Therefore, the reasonable time includes all stages of the legal proceedings aimed at resolving the dispute, not excluding the subsequent stages in the trial on the merits, as well as the final decision, and the decision on procedural costs and expenses. The moment of the end of the duration of a judgment in some cases is also considered the moment when the same is executed. Therefore, the execution of a decision issued by any court should be considered as an integral part of the proceeding for the purposes of calculating the duration of the civil proceedings.[41]

1.4. Decisions of the Constitutional Court on violation of Article 6 of the Convention on Human Rights (right to trial within a reasonable time)

The right to trial within a reasonable time is part of the basic human rights and freedoms stipulated by the Constitution of the Republic of Kosovo.[42] Any court matter that exceeds the reasonable trial time would have to be verified by the Constitutional Court. Kosovo is not a member state of the Council of Europe (EC) and therefore is not a contracting party to the European Convention on Human Rights (ECHR). However, Kosovo has constitutional provisions that define human rights and fundamental freedoms guaranteed by international agreements and instruments, which also include the principle of trial within a reasonable time provided for in Article 6 of the ECHR. Article 22 of the Constitution stipulates that the human rights and freedoms guaranteed by the ECHR are guaranteed by the Constitution and applicable directly in the Republic of Kosovo and have priority, in case of conflict, over the provisions of laws and other acts of public institutions.

Pursuant to the Constitution of Kosovo, the Constitutional Court is an independent body for the protection of constitutionality and makes the final interpretation of the Constitution. Individuals are authorized to address violations by public authorities of their individual rights and freedoms, guaranteed by the Constitution, but only after exhausting all legal remedies defined by law.[43] Every individual has the right to seek legal protection from the Constitutional Court in case he claims that any public authority has violated his individual rights and freedoms guaranteed by the Constitution.[44]

Pursuant to Article 49 of the Law on the Constitutional Court, the request for violation of the right to trial within a reasonable time (Article 6 of the Convention) shall be submitted within the period of four (4) months. The deadline begins to run from the day when the court decision was delivered to the applicant. In all other cases, the deadline begins to run on the day the decision or act is publicly announced. Based on this article, the court decision results to be a precondition for the party to obtain the right to file a request before the Constitutional Court for violation of the right to a trial within the reasonable time guaranteed by Article 6 of the ECHR. However, based on the practice of the European Court of Justice, the legal remedy must be effective and

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[40] (König v. Germany, 1978, § 98

[41] Martins Moreira v. Portugal, 1988, § 44; Di Pede v. Italy, 1996, § 24

[42] The Kosovo Constitution, article 71

[43] Article 47, Law on Constitutional Court

[44] Article 47, Law on Constitutional Court

available.[45] Human rights are those foreseen by the European Convention of Human Rights, which the Constitution of Kosovo is obliged to implement. These rights shall have judicial protection. Judicial protection is carried out according to the principles defined in Article 6 of the Convention. Article 32 of the Constitution [Right to Legal Remedies] states: "Each person has the right to use legal remedies against judicial and administrative decisions that violate his rights or interests in the manner defined by the Law." When a judicial system by inactivity does not fulfil Article 6 of the Convention (judgment within a reasonable time), it is claimed that the conditions are fulfilled for the Constitutional Court, which evaluates the existence of the violation of this right, to make a meritorious decision. The analogy of this is administrative silence in administrative disputes. The vicious circle sanctioned by the Law on the Constitutional Court (Article 49) which provides for the exhaustion of the legal remedy in regular courts in order for the Constitutional Court to decide meritoriously on the case will stimulate the continuation of violations of human rights and freedoms by the judicial power.

However, in practice there have been cases when the Constitutional Court has dealt with the cases even without exhausting the legal means in the previous stages[46]. In the judgment of Case KI41/12 (Case of Diana Kastrati), the court in its reasoning states that "The regulation of the exhaustion of legal remedies is based on the assumption reflected in Article 13 of the ECHR (with which it is closely related) that there exists effective legal remedy available regarding the alleged violation of the individual's rights provided for in the Convention. The national legislation does not provide measures to address the inactivity of the responsible institutions in those cases when they are obliged to act. Therefore, this prevents the applicants from request in the realization of their rights for effective legal remedies, provided for by Article 32 and Article 54 of the Constitution and Article 13 of the ECHR. Based on the reasoning of the Constitutional Court, the national legislation does not foresee for effective legal remedies to address the inactivity of the judicial institutions, therefore, the precondition to extend the legal remedies so that the party gains the right to make a request before the Court cannot be valid.

The Constitutional Court reminds in the case Kl06/10 Valon Bislimi against the Ministry of Internal Affairs, the Kosovo Judicial Council and the Ministry of Justice, that according to the proper judicial practice of the ECtHR, applicants shall exhaust available and effective domestic remedies. Moreover, this rule should be applied with a certain degree of flexibility and without excessive formality. The ECHR further accepted that the rule of exhaustion of remedies is not absolute and cannot be applied automatically. In the case of a review, if applicable, it is important to consider the particular circumstances of each individual case. This means, among other things, that it shall take into account not only the existence of official remedies in the system of the country in question, but also the general legal and political context in which they operate, as well as the personal circumstances of the applicant.[47]

[45] Case Latak v. Poland and Lominski v. Poland

[46] T.K. against Radio and Television of Kosovo and the Energy Corporation of Kosovo, Request No. KI 11/09, dated October 16, 2009 and V.B. against the Ministry of Internal Affairs, the Judicial Council of Kosovo and the Ministry of Justice, Request No. KI 06/10, on October 30, 2010

[47] For more: Judgment of the ECHR in the case of Akdivar v. Turkey)

The Constitutional Court in August 2022, also decided in the case KI 19/21 in which it found a violation of the right to a fair trial within a reasonable time as guaranteed by the Constitution.[48]

Decisions of the Constitutional Court are mandatory for the judiciary and all persons and institutions of the Republic of Kosovo.[49] As far as compensations are concerned, the decisions of the Constitutional Court have a declarative and constative character, i.e. they confirm that there has been a violation of Article 6 of the Convention, and they do not determine the necessary measures to remedy the violation, including compensation to the party for the damage suffered, as happens with court in Strasbourg. In this particular case, based on the decision of the Constitutional Court, the party acquires the right file a claim for damages before the Court of First Instance Court, where we once again can be in a situation where the proceedings are being delayed. Therefore, the effect of the decisions of the Constitutional Court does not give contentment to the party because it has to wait for the decision of the Basic Court. On the other hand, since Kosovo is not a member of the Council of Europe, the parties cannot turn to the European Court of Justice for claims that their right to a trial within a reasonable time has been violated. The institutions of the judicial system of the Republic of Kosovo should give great importance to this jurisprudence, which also binds all the institutions of the Republic of Kosovo, in this case the judicial system.

1.4. Relevant International standards

For the purpose to draft this concept document, we consulted a number of international instruments, regarding the right to a hearing in reasonable time including the standards of the European Court of Human Rights, and several European practices regarding this right.

1.4.1. Standards of the jurisprudence of the ECHR

The concept of a reasonable time limit under the ECHR reflects the optimal balance between the length and quality of the judicial revision of the case. A comprehensive and complete review by the court of the circumstances of the case, in accordance with the procedural rights of the parties, always requires time. To ensure the above balance, the concept of reasonable time is based on an individual approach in each case. This approach will be based on criteria such as:

- the complexity of the case
- the behavior of the parties
- actions of the court and other state bodies involved in the process

[48] The judgment of the Constitutional Court in case no: https://gjk-ks.org/wp-content/uploads/2022/08/ki_19_21_agj_shq.pdf
[49] Article 116 of the Constitution of Kosovo

- the importance of the case for the persons in question (prosecutor/defendant)

The assessment of the duration of the procedure for the purpose of a reasonable period is very individual and is based on the circumstances of the specific case. The same length of procedure may be considered reasonable in one case and unreasonable in another. The Court uses different standards of review in cases involving a structural problem of unreasonable delays in some national systems. If the problem is structural and persistent, the Court applies a lower standard of proof, not entering into detailed revision, especially when the lack of effective domestic remedies against violations has been established in the past by the Court's case law.

a) Reasonable term and efficiency of judicial organization

The ECtHR considers that the excessively long duration of court proceedings as an indicator of the poor functioning of the judiciary. According to the case law of the European Court of Human Rights in the case of *Zimmermann and Steiner v. Switzerland* (No. 8737/79), the ECHR imposes an obligation on the contracting states to organize their legal system in a way that enables the courts to fulfil the requirements of Article 6 § paragraph 1 of the ECHR, including trial within a reasonable time. The state bears responsibility not only for any unnecessary delay in the process. Its duty is also to improve the situation in the judiciary or adjust it accordingly with the circumstances, to cope with the backlogs and repeated cases. The state also bears responsibility for all errors in the organization of the judiciary, which contribute to the unnecessary delay of the procedures. In this context, the backlog in the courts does not constitute a valid justification for releasing the states from responsibility for the total delay in the procedures. In accordance with the principle of subsidiarity of the ECHR, the issue of excessive prolongation of the proceedings should be dealt with in the first place by the domestic courts.

b) Where and when the reasonable time standard applies

According to Article 6 §, paragraph 1 of the ECHR, the right to a hearing within a reasonable time can be exercised in relation to the consideration of a person's civil rights and obligations or criminal charges against a person in court proceedings.

The term civil case is interpreted very broadly. This includes all proceedings, the outcome of which is decisive for private rights and obligations, and includes the entirety of what continental law defines as private law, regardless of the law that regulates a particular matter - civil, commercial, administrative, etc. - or the authority competent to resolve the dispute – whether civil or criminal courts, administrative courts, constitutional courts, professional courts or even administrative bodies. Thus, civil cases include disputes related to the status of individuals, family law, private property, etc. Generally, the determining factor is whether the actions have financial consequences. If so, the proceeding is considered a civil matter. The scope of proceedings relating to civil rights and obligations has therefore been significantly expanded to cover a variety of disputes. The monetary nature of a dispute, for example, has made it possible

to classify it as a civil judicial procedure, a process which, in domestic law, would fall under public law. Thus, Article 6 is applicable to disputes between private individuals and a public authority – regardless of whether the latter acts as a private individual or as a depositary of the public authority – if the administrative procedures involved affect the exercise of property rights, as with procedures that relate to expropriation, pre-emption, planning permission, a dispute over a development plan that regulates construction, land consolidation, environmental protection, etc.

In criminal cases, the ECHR applies an autonomous concept of what is meant by the term "criminal charges". In the case of *Engel and others v. the Netherlands* (No. 5100/71 et al.) the ECtHR formulated for the first time the criteria on the basis of which it is determined whether we are dealing with a criminal charge. These criteria were further developed in Öztürk v. Germany (No. 8544/79). The relevant criteria to determine whether a case is criminal are, on the one hand, the nature of the offense – that is, the violation of a general rule whose purpose is both preventive and punitive – or, on the other hand, the type and measure of punishment. Based on these criteria, the ECHR uses the term "criminal charge" in the general sense, including:

- disciplinary offense *(Engel and others v. the Netherlands*, No. 5100/71 et al., §§84–85)
- customs matter (*Salabiaku v. France,* No. 10519/83, §24)
- tax case (*Bendenoun v. France*, No. 12547/86), §47)
- administrative offenses (*Öztürk v. Germany,* No. 8544/79, §§46–56)

Furthermore, due to the broad interpretation by the ECtHR, the guarantees of Article 6 of the Convention also extend to:

- constitutional procedures *(Ruiz-Mateos v. Spain*, No. 12952/87, §§31–32)
- legal relations in the field of investigative activities (*Vanyan v. Russia,* No. 53203/99, §§43–50; *Khudobin v. Russia*, No. 59696/00, §129; Bykov v. Russia (Grand Chamber), No. 4378 /02, §§94–105)

c) Reasonable period

In civil cases, in general, the period is calculated from the moment of a submitting the claim or allegations is presented to the court (*Portington v. Greece, No. 109/1997/893/1105, §20)*. It may happen that, in certain circumstances, in civil cases the period may run even before the submission of the claim to the court to which the claimant addresses for the resolution of the dispute (*Golder v. United Kingdom, no. 4451/70, §32*). For example, when the law stipulates that the legal remedy is used for the preliminary resolution of the dispute by administrative means, the total processing time is calculated from the day of submission of the complaint to the administrative body for the resolution of the dispute. Another example is the case when the criminal proceedings contain a civil claim, which was not considered in the criminal proceedings, and the claimant appeals to the civil court. In these cases, the starting point is determined by the date of filing the civil claim in the criminal procedure.

In criminal cases, the deadline begins with the filing of the indictment. As a general rule, according to the jurisprudence of the European Court of Human Rights, the term 'charge' can generally be defined as an official notification given to an individual by a competent authority of the allegation that he has committed a criminal offence. However, in some cases, the accusation may take the form of other measures which carry the implication of such an allegation and which also significantly affect the situation of the suspect (Foti and Others v. Italy, no. 7604/76 etc., § 52; Corigliano v. Italy, no. 8304/78, §34).

Generally, the period to be taken into account ends in both criminal and civil cases with a final decision, against which there is no further appeal. This varies from country to country and depends on each country's jurisdiction and the circumstances of the case.

d) Effective remedy

In the case *of Kudla v. Poland* (No. 30210/96), the ECtHR established the existence of a systemic connection between the right to a fair trial within a reasonable time from Article 6 §, paragraph 1 of the ECHR and the right to an effective remedy in Article 13 of the ECHR:

156. the above considerations, the ECtHR considers that the correct interpretation of Article 13 is that this provision guarantees an effective legal remedy before the national authority for the alleged violation of the right guaranteed by Article 6 §, paragraph 1, to have the case heard within a reasonable time."

This position of the ECtHR on the relationship between Article 6, Paragraph 1 and Article 13 of the European Convention was additionally confirmed in other cases, such as the case of *Lukenda v. Slovenia* (No. 23032/02):

87. *In the specific case, the Government failed to prove that the administrative procedure, the compensation of damages, the request for supervision or the constitutional claim can be considered as effective legal remedies (...). For example, when an individual submits an administrative complaint alleging a violation of his or her right to a trial within a reasonable time, while the case in question is still pending, he or she may have a reasonable expectation that the judicial administration will investigate the merits of the complaint. However, if the main procedure ends before it has time to do so, it discards the action. Finally, the ECHR also concluded that the entire legal remedies in the circumstances of these cases are not effective".*

Two types of remedies are possible against the violation of the standard of reasonable time: preventive and compensatory. Mechanisms that are limited to compensation are usually weak and insufficient to deal with the essence of the problem. Ideally, the ECtHR requires a combination of both types of remedies, thus enabling a solution to the underlying problem of excessive delays. In conclusion, a remedy that protects the right to a trial within a reasonable time must be effective. This means that national courts can "fundamentally correct" an excessively long court process in favor of their requester.

1.4.2. European Commission for the Efficiency of Justice (CEPEJ): Duration of court proceedings in Council of Europe member states based on the case law of the European Court of Human Rights (CEPEJ(2018)26)

CEPEJ, develops concrete measures and tools intended for policy makers and judicial practitioners in order to: analyze the functioning of judicial systems and guide public justice policies, have better knowledge of judicial time frames and optimize time management in the judiciary, promote the quality of the public service of the judiciary, facilitate the application of European standards in the field of the judiciary.

According to the CEPEJ report,[50] The court shall take into account several criteria to assess whether the duration of the procedure is reasonable, such as: the complexity of the case, the behavior of the applicant, the behavior of the national authorities and what is at risk for the applicant.

The complexity of the case and the conduct of the applicant may release the State from its responsibility if a reasonable time has been exceeded, provided that the reasons are objective enough not to be attributed to the State, and the domestic authorities, moreover, have shown enough care.

Certain cases, which are of particular importance to applicants, are considered a priority. "Priority" cases include:

• labor disputes,

• compensation for accident victims;

• cases in which the applicant is detained during the procedure;

• cases where the applicant's health is a critical issue or where the applicant's age is a factor to be considered

• cases related to maintaining family life, disputes related to maintenance obligations and cases related more generally to the civil status of the applicant;

• procedures related to the violation of absolute rights guaranteed by the Convention (in particular Articles 2, 3 and 4 of the Convention).

1.5. The European states practices

Some countries have adopted specific laws and procedures to introduce a remedy that deals with unreasonable length of proceedings. This happened as a result of successive decisions of the

[50] https://rm.coe.int/cepej-2018-26-en-rapport-calvez-regis-en-length-of-court-proceedings-e/16808ffc7b

ECtHR, which found violations of deadlines, as well as the lack of effective means to deal with violations at the national level. This section presents a description of the practice in Italy, Bulgaria, Slovakia and Croatia.

a) Italy

Italy, as a result of a large number of complaints and ECtHR decisions in which a violation of Article 6 was established, adopted Law no. 89/2001, the so-called Pinto act.

The Pinto Act allows any party in a criminal, civil, administrative, or tax proceeding to appeal a violation of a reasonable time limit and to obtain financial compensation from a domestic court. The compensation is calculated only for the period that exceeds the reasonable period.[51] Complaints and request for compensation are sent to Appellate courts, which shall decide within 4 months from the moment the claim is submitted. The final decision of the Appellate court can be appealed to the Court of Cassation. The final decision becomes immediately enforceable. The law allows appeals to be filed within 6 months from the date the process ended or when the process is ongoing. Finally, the Law foresees a compensation budget. However, the Law does not provide for any measure to accelerate the procedure. This fact was assessed by the Committee of Ministers of the Council of Europe as a deficiency of the Law.[52] Also the CEPEJ[53] emphasized the mechanisms that are limited to compensation are too weak and do not adequately encourage states to modify their operational process and offer compensation only a *posteriori* in case of a proven violation instead of trying to find a solution to the problem of delay.

The ECtHR has tested the Pinto Act in many cases and in different contexts. The case worth mentioning here is *Scordino v. Italy (No. 1)* (No. 36813/97*).*[54]

As a result of numerous criticisms from both the Committee of Ministers of the Council of Ministers and the European Court of Human Rights, Italy has undertaken several successive changes. The last change was in 2012. The new changes include provisions according to which access to the legal remedy "Pinto" is conditional upon the completion of the main proceedings, and compensation is excluded or limited in some cases. However, the purely compensatory nature of the Pinto tool is retained. The changes in the Pinto Act did not convince the ECHR of the effectiveness of remedies in special cases.[55]

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[51] https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-72935&filename=001-72935.pdf&TID=thkbhnilzk

[52] See CM/Inf/DH(2004)23 and Interim Resolution ResDH(2005)114.

[53] (CEPEJ (2004) 19 Rev 2 § 6).

[54] https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-72925%22]}

[55] See *Petrella v. Italy*, no. 24340/07, judgment of 2021, as one of the latest examples in a long series of cases judged by the ECtHR against Italy.

b) Bulgaria

In the pilot judgments *Dimitrov and Hamanov* v. Bulgaria (No. 48059/06 2708/09) and Finger v. Bulgaria *(No. 37346/05)*[56], The ECtHR requested that Bulgaria adopt legal remedies for the review of protracted criminal proceedings. The ECtHR has also requested the approval of a compensatory instrument in cases of protracted criminal, civil and administrative proceedings. As a result, in 2012 Bulgaria adopted amendments to the Law on Justice of 2007. The amendments resulted in the addition of a new chapter to the Law of 2007, more precisely chapter 3a entitled "*Consideration of complaints against the violation of the right to review and decide on matter within a reasonable time* ". New provisions were introduced, most of which entered into force on October 1, 2012. These changes provide that request for compensation in connection with the delay of the procedure are sent to the Minister of Justice through the Inspectorate of the Supreme Court of Justice (Inspectorate). When considering these requests, the minister (or a person authorized by him) is assisted by a panel consisting of an inspector and two experts who work in a special unit of the Inspectorate. The deadline for reviewing applications is six months. The procedure is free of charge for claimants. Claims shall be directed "against acts, actions, or omissions of judicial authorities," thereby violating the right to a hearing and decision in a case within a reasonable time. Consideration of applications related to delays that are not the result of the inactivity of judges or judicial officials, but, for example, the overload of the judicial system as a whole, is not excluded. Criteria that must be taken into account when considering applications are the total duration of procedures, delays attributed to competent authorities, as well as delays attributed to the applicant and his representative (Article 60d (2)(5)). The essence of the request and the amount of compensation must be determined in the light of ECtHR case law. The compensation is paid from the budget of the Ministry of Justice. Then the Ministry of Finance shall return to the budget of the Ministry of Justice the funds that are paid in the name of compensation every quarter. Compensation does not exceed 10,000 levs (around EUR 5,000) per case. The Council of Ministers increased the budget of the judiciary by 300,000 Bulgarian levs intended for the creation of a special unit in the Inspectorates that deals with reports from Chapter 3a of the 2007 Law.

In parallel with the amendment of the Law from 2007, the amendments to the Law on Liability of the State and Municipalities for Damage from 1988 (Law from 1988) were adopted, where Article 2b entitled "*Liability of judicial authorities for violation of the right" was added that the case be investigated and decided within a reasonable time*". New Article 7(2) provides that claims for compensation under Article 2b shall be brought to the court in whose area the damaged person has his current address or residence. Another new provision, Article 8(2) provides that natural or legal persons may file claims under Article 2b (1) in relation to proceedings that have ended only if they have already exhausted the administrative procedure from Chapter 3a of the 2007 Act, and the procedure has not resulted in a resolution.

[56] https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-104698%22]}

In the case of *Valcheva and Abrashev v. Bulgaria* (No. 6194/11 34887/11), the ECHR found that the Bulgarian legal framework is in line with the requirements and standards of the ECHR. The court appreciated the fact that the Bulgarian system provided for two procedures for requesting damage compensation. If the administrative procedure did not provide a solution, the interested party could turn to the courts, where an enforceable court decision could be reached in a short period of time.[57] The court also assessed that the essence of the request and the amount of compensation were determined in the light of ECtHR case law.

c) Slovakia

Slovakia is one of the countries with a large number of decisions of the European Court of Human Rights regarding the violation of the right to trial within a reasonable time. Until 2002, claims for compensation in cases of procrastination of the court proceedings were made through the State Liability Act. This law has been assessed as ineffective in many decisions of the European Court of Human Rights.[58] However, after the decision of *Kudl v. Poland* (No. 30210/96), Slovakia undertook constitutional changes in 2002 and amended Article 127 of the Constitution, which stipulates that the Constitutional Court will decide on appeals by natural or legal persons regarding the violation of their fundamental rights or freedoms or basic human rights and freedoms provided for in international treaties ratified by the Slovak Republic. The Constitutional Court, when it determines that the appeal is founded, makes a decision that the rights or freedoms of a person have been violated by a legally binding decision, specific measure or other interventions. It annuls such decision, measure or other intervention. When the established violation is the result of inactivity, the Constitutional Court can order the authority that violated the rights or freedoms to take the necessary actions. At the same time, the Constitutional Court can return the case to the competent authority for further proceedings, order the competent authority to refrain from violating fundamental rights and freedoms or, depending on the case, order those who violated the rights or freedoms determined to restore the state that existed before the violation. By decision on appeal, the Constitutional Court can award appropriate financial compensation to the person whose rights have been violated.

These constitutional changes were accompanied by amendments to the Law on the Constitutional Court, which in Articles 49-52 more closely implements the constitutional provisions. More specifically, according to Article 50(3), a person requesting adequate financial compensation shall state the amount and explain the reasons for such a request. Article 56(3) provides that, when a violation of fundamental rights or freedoms is established, the Constitutional Court may order the body responsible for the violation to act in accordance with the relevant rules. It can also return the case to the competent authority for further action, stop the continuation of the violation or, depending on the case, order the restoration of the state before the violation.

[57] In the case *Vokurka v. Czech Republic*, no. 40552/02, the ECtHR rated the Czech system, which is similar to the Bulgarian one, as effective

[58] See for example the decisions *J.K. v. Slovakia*, No. 38794/97 and *Havala v. Slovakia*, No. 47804/99.

According to Article 56, paragraph 4, the Constitutional Court can grant appropriate monetary compensation for non-material damage to a person whose rights or freedoms have been violated. Article 56, paragraph 5, stipulates that the authority that violated the rights of a person in a specific case is obliged to pay compensation within two months of the decision of the Constitutional Court becoming final.

In the decision *Andrasik and others v. Slovakia* (No. 57984/00), the ECHR considered that the above changes constituted an effective tool in the sense of the ECHR. The Court is convinced that the appeal under Article 127 of the Constitution, together with the relevant provisions of the Law on the Constitutional Court, constitute an effective legal remedy which is able to prevent the continuation of the alleged violation of the right to a trial within a period of reasonable time and provide adequate compensation for any violation that occurred.

d) Croatia

In the case of *Horvat v. Croatia,* no. 51585/99, the ECtHR found a violation of the right to trial within a reasonable time. Also, the Croatian legal framework in terms of effective means for resolving delays in resolving cases was considered ineffective. The legal framework at that time consisted of Article 59, paragraph 4 of the Law on the Constitutional Court, which provided that the Constitutional Court, exceptionally, may consider a constitutional appeal before exhausting other available legal remedies, if it is convinced that the disputed act or omission is. to act within a reasonable time, seriously violates the constitutional rights and freedoms of the party and that, if he does not act, the party risks serious and irreparable consequences.

The ECtHR determined that the procedure in accordance with Article 59, Paragraph 4 of the Law on the Constitutional Court is considered initiated only if the Constitutional Court, after preliminary consideration of the appeal, decides to accept it. Hence, although the person in question could appeal directly to the Constitutional Court, the formal initiation of the procedure depended on the Constitutional Court's verdict. Additionally, in order for a party to file a constitutional appeal pursuant to this provision, two cumulative conditions shall be met. Firstly, the applicant's constitutional rights must have been seriously violated by the fact that no decision was made within a reasonable time and, secondly, there must have been a risk of serious and irreparable consequences for the applicant. These terms were considered to be too broad, leaving room for inconsistent interpretation and therefore creating legal uncertainty.

After *Horvat's* decision, the Croatian Parliament adopted the Law on Amendments to the Law on the Constitutional Court, which added Article 59(a), which later became Article 63 of the Law on the Constitutional Court. This provision establishes that the Constitutional Court reviews the constitutional claim even before all legal remedies have been exhausted in cases where the competent court has not decided within a reasonable time on the claim regarding the rights and obligations of the applicant or on the criminal complaint against him. If the constitutional appeal is approved, the Constitutional Court sets a deadline in which the competent court will decide on

the merits. By decision, the Constitutional Court will determine the applicant's adequate compensation for the established violation of his constitutional rights. The compensation is paid from the state budget within three months from the day the party submitted a request for its payment.

In the *Slavicek v. Croatia case*, no. 20862/02, the ECtHR noted that this new provision removed the obstacles that were decisive when the Court found that the previous Article 59(4) did not meet all the requirements to constitute an effective remedy in relation to the duration of the proceedings. According to the ECtHR, the wording of Article 63 of the Law on the Constitutional Court is clear and shows that it is specifically designed to deal with the issue of excessive delays in proceedings before local authorities. According to the new law, anyone who believes that the procedure for determining his civil rights and obligations or the criminal complaint against him has not been completed within a reasonable time, can file a constitutional complaint. The Constitutional Court shall consider such an appeal and, if it deems it to be well-founded, shall set a deadline for deciding on the merits of the case, as well as award compensation for the excessive delay of the procedure. The Court assesses that this is a legal remedy in accordance with Article 13 of the ECHR.

Chapter 2: Goals and objectives

Chapter 1 defines the main problem, its causes and consequences. Policies, relevant legislation, international standards and experiences of other countries are also elaborated. This chapter sets out the objectives to be achieved by this policy.

The strategic goal of this policy is to exercise the right to a trial within a reasonable time and to increase citizens' trust in justice.

The purpose of this policy is to exercise civil rights, including the right to trial within a reasonable time as guaranteed by the Constitution of Kosovo and the European Convention on Human Rights and Fundamental Freedoms.

Figure 2: Relevant goals of the Government

The purpose of the policy	**Name of the relevant planning document (source)**
2.2. The law enforcement 2.2.1 Improving the integrity of justice institutions 2.2.2 Reforming the criminal, civil and administrative justice system	Program of the Government of the Republic of Kosovo 2021-2025
3.1. Functioning of the judiciary The need for increasing professionalism and competence1 3.2. Criminal justice 4.1. Strengthening the Judicial and Prosecutorial system 4.1.1. Increasing the accountability of the judicial and prosecutorial system 4.1.2. Increasing the efficiency of the judicial and prosecutorial system 4.1.3. Raising the professionalism and competence of judicial and prosecutorial personnel 4.2. Strengthening the Criminal Justice system 4.3. Strengthening Access to Justice	National Strategy for the Rule of Law 2021-2025
Implementing the right to trial within a reasonable time	According to this document concept

Chapter 3: Options

Within this chapter, the Concept Paper addresses five main options regarding the exercise of civil rights, including the right to a trial within a reasonable time:

- Option 1 - Without any changes, which envisages maintaining the status quo;
- Option 2 – Improvement of implementation and enforcement without legal changes;
- Option 3 – Exercising the right to a trial within a reasonable time through legal changes;
- Option 4 – Exercising the right to a trial within a reasonable time frame through improving the application of existing legislation and new legal changes;
- Option 5 – Exercising the right to trial within a reasonable time in the Constitutional Court.

3.1. Option "without any changes"

This option means "no change" and the continuation of the existing situation, not adopting a new legal basis for providing effective legal remedies for the protection of the right to a trial within a reasonable time, and not even building a system of measures and mechanisms on the basis of the current legislation, improve the effectiveness of the protection of this right. As such, this option cannot remain as an alternative, based on the numerous problems and deficiency regarding guaranteeing the right to a trial within a reasonable time and the use of effective remedies, which are also identified in this concept.

The main problems with this option consist of:

- Lack of effective legal remedies that guarantee the protection of the right to a trial within a reasonable time. The existing legislation of Kosovo does not provide for any effective legal remedy that foresees the possibility of a request for the acceleration of court proceedings, an appeal or even a request for compensation for damages in cases of unjustified delay of court proceedings.
- Lack of special criteria that determine the average duration (reasonable deadlines) for resolving cases (according to their scope and nature) within the judicial and prosecutorial system. The KJC (as well as the Supreme Court) and the KPC (as well as the Chief State Prosecutor) in none of their documents or by-laws (guidelines, decrees, administrative instructions, decisions, etc.) provide special criteria for this. average time (reasonable time based on objective and measurable criteria) to resolve the case, and they do not even keep data according to this standard.

The legislative power in Kosovo has adopted a considerable number of laws in the criminal, civil and administrative fields, in which the general provisions provide for the right to a fair trial and within a reasonable time, but none of these acts provide for effective legal remedies dedicated to the protection of the right to a trial within a reasonable time. This deficiency is also expressed in criminal cases, which are characterized as very sensitive in terms of freedoms and human rights, such as: cases in which a measure of detention is determined, where the Criminal Procedure Code provides general criteria for its determination and duration, but there is no mechanism for monitoring the reasoning of such decisions and effective judicial supervision that ensures that the application of this measure is allowed only as a last resort (*ultima ratio*).

3.2. Options to improve implementation and enforcement without legislative changes

Within this option, the possibility of improving the existing situation through the proper fulfillment of existing legal obligations is considered, even with the possibility of budgetary support. Within this option, interventions in by-laws, such as the current Rulebooks of the KJC and KPC, cannot be envisaged.

In this regard, relevant institutions that can take measures to improve implementation and enforcement without legislative changes would include, but not be limited to:

Ministry of Justice: To undertake actions to promote and strengthen the use of alternative dispute resolution mechanisms and the free legal professions.

KJC: Consider plans to increase the number of judges, professional associates and legal officials, based on a detailed analysis of real needs, as a precondition for conducting cases without delay and respecting the standards for rendering judgments within a reasonable time. This would also mean an increase in the budget for the judiciary. It is essential that the Kosovo Judicial Council plans to increase the number of judges and support staff so that each judge has a manageable number of cases/in which the work rate would not affect exceeding the deadlines for making a meritorious decision. As for the number of judges and professional associates, the Judicial Council should make a detailed analysis, where the number of new personnel would be justified in relation to the need to solve cases and guarantee judgments within a reasonable time, as well as budget costs for their recruitment. The KJC should immediately take measures to eliminate the ping-pong effect so that the Appellate court, according to the Code of Criminal Procedure, decides on the merits of the case and only when it is necessary to return the cases for retrial. This aspect should be resolved by the legal opinion of the Supreme Court, where the obligation of a special explanation of the decisions of the Court of Appeal, in cases of returning the case for retrial, with the explanation that it is necessary, is established. Also, this legal opinion should establish the standard that the Appellate Court gives clear reasons and instructions to the first-instance court.

Also, as part of option 2, the KJC, through its mechanisms, must ensure that the postponement of each session and the reasons for this postponement are recorded in CMIS by all judges. In particular, the periodic reports of court presidents to the KJC highlight the number of postponed hearings in relation to all hearings within the court, as well as the reasons for their postponement.

The Supreme Court: in the exercise of its constitutional and legal powers, as the highest judicial instance in Kosovo, adopts principled stands, legal opinions and special guidelines regarding the implementation of the principle of trial within a reasonable time in all courts of Kosovo. In this way, the Supreme Court would clarify the constitutional obligations, those arising from the ECHR and the practice of the ECHR, also in other laws in force (*from the criminal, civil and administrative fields) for the implementation of trial standards within a reasonable time (written explanation, postponement of the hearing in the first and second instance, the use of legal deadlines shall be explained in writing, returning to the judgments of the basic courts only, when necessary, instructions to the criminal courts to decide on the property legal demand, etc.).*

In particular, legal opinions of the Supreme Court should guide the priority implementation of alternative procedures for the conclusion of court cases, in all cases where this is possible according to the law in force. Also, the Supreme Court must give legal opinions and principled positions in connection with the observance of legal deadlines established by law.

KPC: To issue written instructions and general mandatory decisions for all chief prosecutors and prosecutors in order to increase efficiency in concluding cases within reasonable deadlines. Also, to carry out continuous supervision over the application of these standards defined by the acts approving them, in order to take measures to carry out procedural actions on time.

Academy of Justice: design a special training program for judges and prosecutors regarding the standard of trial within a reasonable time in criminal, civil and administrative proceedings (*referring to the highest international standards and good practices of other countries*). Such a program would have to be prepared on the basis of professional expertise, based on the practice of the ECHR in relation to Articles 6 and 13 of the ECHR. In addition to the principles contained in the Constitution, legislation, ECHR, the program shall also foresee practical measures related to the implementation of preconditions that guarantee the right to a fair trial and within a reasonable time. E.g.: within the framework of the criminal procedure, refer to the main aspects that begin in the investigation phase (justification of the duration of the investigation and within the legal term) Also, it is necessary that the Academy of Justice in cooperation with the KJC and the KPC - in it publish manuals and various materials on the application of standards of hearing within a reasonable time.

Constitutional Court: Regarding the application of option 2, without legal changes, which would mean that there would be no effective legal remedies provided by law for the protection of the right to a trial within a reasonable time, then jurisdiction has an even more important role of the Constitutional Court of the Republic of Kosovo. This is for the reason that while there is no judicial protection for the right to a trial in a reasonable time, this could be supplemented to a certain extent by the practice of the Constitutional Court, which referring to Article 31, paragraph 2 of the Constitution, will to guarantee the protection of this right, also in view of Article 13 of the ECHR (for effective legal remedies) in relation to *Article 6,* paragraph 1 of the convention, based on the standards affirmed by the ECHR in many cases of its practice. This would require the Constitutional Court to continue to accept parties' requests for a trial within a reasonable time, even without exhausting all stages of the court proceedings, while there are no effective means to guarantee that right in regular courts. In 2018, such a practice was argued by the People's Advocate, through a Legal Opinion in the capacity of friend of the court (Amicus curiae) for the Constitutional Court (also elaborated in this concept). Of course, even the decisions of the Constitutional Court that would confirm the violation of the right to a trial within a reasonable time cannot have an effect (e.g., exercise the right to compensation for damages) or

be an adequate substitute for effective legal remedies, in order to protect the right to a trial within a reasonable time that would be determined by law.

3.3. The option of exercising the right to a trial within a reasonable time through legal changes

A possible option regarding the guarantee of the right to a trial within a reasonable time is the adoption of a special law for this purpose. This would also mean the determination of special (effective) legal remedies for the protection of this right.

Such a law would be based on the principles of the Constitution of the Republic of Kosovo, where the right to a fair trial and within a reasonable time is defined as a basic human freedom and right, expressed in the constitutional guarantee that "*Everyone enjoys the right to a fair and impartial public debate on decisions about rights and obligations or to any criminal charge brought against him/her within a reasonable time...*" (Article 31 [Right to a fair and impartial trial], paragraph 2). Also, this would be in accordance with the requirements of Article 6 (1) ECHR and Article 13 for effective legal remedies, which according to Article 22 of the Constitution are directly applicable in the legal order of Kosovo.

The adoption of the new law foresees the possibility of effective legal remedies in connection with the protection of the right to a trial within a reasonable and expected period for the parties, it would consist of a legal basis for: submitting a request for the acceleration of the procedure; as well as the possibility of submitting a request for compensation.

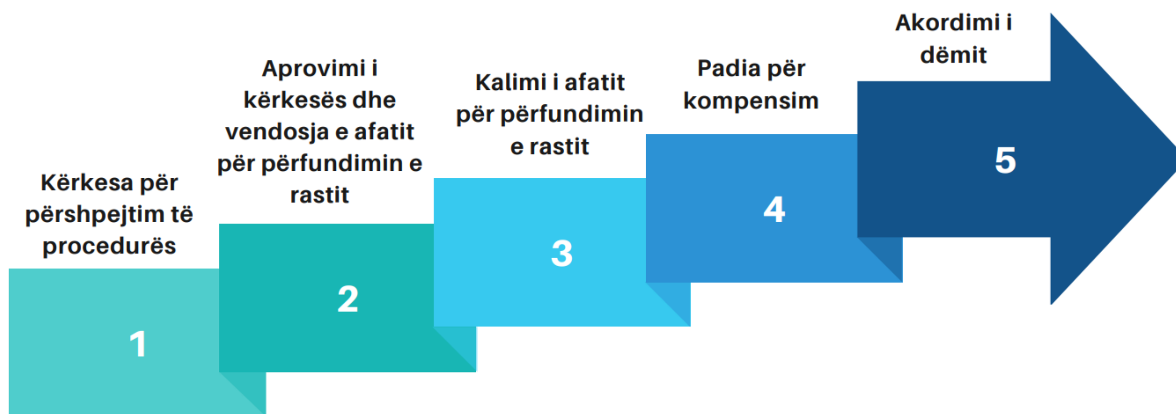
In this case, the parties can submit a request for acceleration of the procedure during the procedure until its completion, while a compensation request can be initiated after the completion of the procedure following a request for acceleration of the procedure in which it was determined that there were unjustified delays in the procedure. This law will also define the basic rules on the basis of which the previous term will be framed, that is, the criteria that the court will take into account when deciding the case, namely: the complexity of the case, the behavior of the parties, the court actions and other authorities involved in the process and the importance of the case for the persons alleging the violation.

The new law, in addition to effective legal remedies, must also determine the competent authorities that decide on these legal remedies. This way:

a) The request for acceleration of procedure is decided by the president of the court before which the court proceedings are conducted. Regarding the request, a deadline for returning the response is also defined (e.g., 60 days). The decision must be well-reasoned and can be appealed to the president of the highest court. An complain is not allowed against the decision on the request to speed up the procedure to the President of the Supreme Court.

b) Claims for damages shall be submitted to the competent court under the legal jurisdiction of the courts. The law shall determine the deadline in which a claim for compensation can be submitted after the decision on acceleration of the procedure, as well as the deadline in which a decision on the claim for compensation must be made. In terms of appeals against the decisions of the competent court on the claim for compensation, the rules on the right to claim to the highest court apply.

In visual form, the combined procedure of the request for acceleration of the procedure and the filing of a claim for damages would look like this:



Regarding the criminal procedure, part of it is the phase of investigation and indictment carried out by the State Prosecutor (who is responsible for the investigation of criminal cases according to the Kosovo law), therefore, the request for acceleration the procedure, complaints and requests for compensation should be recognized as the right of the parties and for this phase of the criminal proceedings. Such a practice is also known in the system of other European countries (*such as: Belgium (where the request can be submitted not only by the defendant but also by the state prosecutor), Bulgaria, Denmark, Portugal, where each party can submit a request also in connection with the proceedings before the prosecution, that the procedure is accelerated*[59]).

The above-mentioned mechanisms, which would be determined with the new law, apply in all judicial procedures[60]. The new law on the protection of the right to a trial within a reasonable time should establish general deadlines for solving criminal, civil and administrative cases, as well as general principles in this direction. On the other hand, the law would also provide for the obligation of the KJC and the KPC to approve relevant regulations for setting the correct criteria on a reasonable (average) time for resolving cases, depending on their nature, as well as mechanisms for evaluating the work of judges and prosecutors for this purpose.

[59] For more on this aspect, see also the Report of the Venice Commission (REPORT ON THE EFFECTIVENESS OF NATIONAL REMEDIES IN RESPECT OF EXCESSIVE LENGTH OF PROCEEDINGS (Adopted by the Venice Commission at its 69th Plenary Session (Venice, 15-16 December 2006)), parag.81-86.

[60] Moreover, this standard has been clarified by the practice of the ECtHR, in the sense that legal remedies for this purpose cannot be exclusive for a specific procedure (see also: Gast and Popp v. Germany, 2005), but all actions based on the constitution and law in order to speeding up proceedings, compensation for damages or even the application of disciplinary measures against judges, can be used for alleged violations of the reasonable duration of proceedings in criminal cases, as well as in proceedings related to other matters (civil, administrative). See Report of the Venice Commission, *Ibid.*

3.4. The options of exercising the right to a trial within a reasonable time through improved implementation of existing legislation and new legal amendments

A possible option for solving the problem elaborated in this concept is a combination of the measures foreseen in Option 2 and the legislative changes described in Option 3.

Consequently, according to option 2, measures are included to improve the existing situation through proper fulfilment of existing legal obligations, even with the possibility of budgetary support. These measures are undertaken by institutions such as: KJC, Chief State Prosecutor, Supreme Court, Academy of Justice. Exceptionally, option 2 does not include only the previous measure for the Constitutional Court, which does not have to continue with the resolution of complaints related to the violation of the right to a trial within a reasonable time, because this measure will be replaced by part of the amendment of the new law, which will be implemented through two new legal remedies (request for speeding up the procedure and request for compensation).

However, all measures and actions provided for in option 3 will also apply to this option. Consequently, the adoption of a new law for exercising the right to a trial within a reasonable time is foreseen. The new law will provide a legal basis for two effective legal remedies: Request for acceleration of the procedure and claim for damages. In this case, the parties can submit a request for acceleration of the procedure during the procedure until its completion, while a compensation request can be initiated after the completion of the procedure following a request for acceleration of the procedure in which it was determined that there were unjustified delays in the procedure. This law will also define the basic rules on the basis of which the previous deadline will be set, that is, the criteria that the court will take into account when deciding the case, namely: the complexity of the case, the behaviour of the parties, the court actions and other authorities involved in the process and the importance of the case for the persons alleging the violation. The competent authorities that decide on these legal remedies will also be defined by law. Like in following way:

a) The request for acceleration of the procedure is decided by the president of the court before which the court procedure is conducted. In connection with the request, a deadline has been set for returning the answer (example: 60 days). The decision shall be well-reasoned and can be appealed to the president of the highest court. A complaint to the President of the Supreme Court is not allowed against the decision on the request to accelerate the procedure.

b) Claims for compensation are presented to the competent court under the legal jurisdiction of the courts. The law shall determine the deadline in which the request for compensation can be presented after the decision to accelerate the procedure, as well as the deadline in which the request for compensation shall be decided. Regarding the appeal against the decisions of the competent court for the request for compensation, the rules for the right to appeal to the highest court are applied.

3.5. The option of exercising the right to trial within a reasonable time in the Constitutional Court

A valid option to achieve the exercising of the right to a trial within a reasonable time is the exercising of this right through the Constitutional Court. As explained in this concept document, the Constitutional Court already has a case law s where it has decided on the right to a trial within reasonable time. Since such a possibility already exists, this option would enable the Constitutional Court to be vested with such an authority expressly by law as well. This can be done by amending the current Law on the Constitutional Court.

Initially, the basic principles of the functioning and organization of the Constitutional Court are regulated by the Constitution. Chapter VIII provides for general principles, jurisdiction and authorized parties, composition and mandate, organization, legal effect of decisions and other essential matters of the operation of the Court. Article 113 lists the cases and authorized parties on which the Court decides. However, in paragraph 10 of the same article, it is enshrined that the additional jurisdiction can be regulated by law.

In the Law on the Constitutional Court, more specifically in Chapter III, the special procedures related to the procedures defined by Article 113 of the Constitution are regulated. Therefore, based on this option, the implementation of the right to trial within a reasonable time can be carried out through the amendment of the law on the Constitutional Court, whereby a new special procedure will be added. Specifically, after Article 54 of the Law on the Constitutional Court, new articles would be added which would regulate the procedure for filing a claim for compensation by individuals related to the claim for the violation of the right to a trial within a reasonable time. The amendments also include the deadlines within which the Court shall decide, which, similarly to other procedures before this Court, can be 60 days. Also, in this special procedure, it would be clarified that the obligation of exhaustion of all legal remedies by individuals will not apply, i.e. the claim for compensation should be made during the course of the respective court proceedings when the party claims that the trial was not conducted within a reasonable time.

The remaining part related to the procedures for claiming this right are regulated by a special law on trial within reasonable time. This law would define the main rules on which the future reasonable time limit will be framed, i.e. the criteria that the court will take into account when deciding on the case, which include: the complexity of the case, the behavior of the parties, the actions of the court and other state authorities involved in the process and the importance of the case for the persons alleging the violation. The law also contains the limits of the compensation amounts in case the Court establishes the violation of the right to trial within a reasonable time. The law will clarify the procedure that the claim for compensation of damages due to the violation of the right to trial is submitted to the Constitutional Court within reasonable time and that the Constitutional Court will have the power that, in the event it finds a violation of this right, to grant the party a financial compensation based on the law. It should be noted that this option would significantly increase the workload to the Constitutional Court.

Chapter 4: Identification and assessment of future impacts

The table below presents the most important impacts that have been identified at this stage related to this policy. Appendices 1 to 4 present the assessment of all impacts in accordance with the tools for the identification of economic, social, environmental and fundamental rights impacts.

Figure 6: The most significant impacts identified per impact category

Categories of impacts	**Relevant impact identified**
Economic impact	Increasing the efficiency and speed of processing the cases, especially those of a civil nature will have a positive impact on improving the conditions for the operation of existing businesses, as well as for attracting foreign investments. Improving access to justice will increase legal certainty for businesses and will also have impact on the attraction of direct foreign investments, which will have a direct impact on the economic development of the Republic of Kosovo.
Social impact	The length of proceedings remains one of the most critical and complex issues in the rule of law sector. It directly affects the right to a trial within a reasonable time, as defined by the Constitution and the ECHR. According to the findings from the monitoring of international and local organizations, citizens' trust in the justice system continues to remain low. The continuous prolongation in the adjudication of cases, especially those of a civil nature, is a key factor in undermining the citizens' trust in the judicial system. Moreover, the parties lack an effective legal remedy for speeding up the procedures, in the case of significant delays in resolving their cases, as well as the possibility of compensation for such delays. Issuing the legislation for the trial within a reasonable time, which foresees the effective legal remedies and the creation and strengthening of the mechanisms aimed at respecting the Article 6 of the European Convention, will improve the access to justice for the citizens, the efficiency and accountability of the judicial and prosecutorial system and as a result will contribute to the restoration of citizens' trust in the justice system and the respect of the party's right to a trial within reasonable time.
Environmental impact	The environmental protection related issues will be addressed in a more efficient and timely manner.
Impact on fundamental rights	The right to a trial within reasonable time is a fundamental human procedural right guaranteed by the Constitution of Kosovo and the European Convention on Human Rights and Fundamental Freedoms. States have a general obligation to resolve the problems where the

	violations are found and to ensure that national remedies are effective in law and in practice. The absence of these effective legal remedies means a non-fulfillment of one of the guarantees of the Constitution (Article 31, *par*.2), as well as the requirement of Article 13 of the ECHR for effective legal remedies. The adoption of a special law on trial within a reasonable time and the creation of mechanisms for the close monitoring of court cases would guarantee that the right of the party to a trial within a reasonable time is respected. This would also mean to establish special (effective) legal remedies for the protection of this right.
Gender impact	The interventions proposed under the above Options equally and adequately produce results for both men and women.
Social equality impact	It is not expected to have a direct impact on social equality.
Impact on the youth	It is not expected to have a direct impact on the youth.
Impact on administrative workload	It is not expected to have a direct impact on the administrative workload.
Impact on SMEs	It is not expected to have a direct impact on SMEs

4.1: Challenges with data collection

The working group for the drafting of this Concept Document consists of various relevant actors both within the institutions of Kosovo and external. As a result, no challenges were encountered in collecting the data needed to perform the analysis in this Concept Document.

Chapter 5: Communication and consultations

With the establishment of the working group for the drafting of this concept document, the Ministry of Justice has included in the working group the main actors interested in the process who had the opportunity to contribute directly to the drafting and analysis of this document.

After the completion of the first draft of the Concept Document, it was forwarded to preliminary consultations and public consultations in all institutions, organizations and other partners who did not have the opportunity to be part of their group, and this was a good platform to provide their contribution to further enrich the analysis that have been performed. Finally,

communication activities of this new policy are planned to be carried out, in accordance with the recommended option.

Figure 7: Summary of communication and consultation activities carried out for the concept document

The consultation process aims to: - Consult interested parties on the contents of the Concept Document, and especially on the considered options and their estimated impact.						
The main purpose	Target group	Activity	Communication/notification	Indicative timeline	Required budget	Person in charge
Preliminary written consultations	Work group	Internal consultations	Through e-mail	13.04.2022-20.04.2022	/	Albulena Uka/MoJ
Preliminary consultations	Institutions of the Republic of Kosovo	Sending the concept document to the relevant institutions	Through e-mail		/	Ruzhdi Osmani/ DEIPC/MoJ
Written public consultations	All interested parties	Publication of the concept document on the portal for public consultations	Through the consultation portal		/	Albulena Uka/MoJ

Chapter 6: Comparison of options

In order to address the problems analyzed in this concept document, five concrete options have been proposed, each of them foresee different implementation modalities. In this section, they will be compared with each other, using multi-criteria analysis. This methodology takes into account the following criteria: efficiency, effectiveness, ethics and cost. Initially, in order to understand how efficient the different options are, based on the elaborated options, the cost estimate of each option was carried out, taking into account the expenditure categories for the years 2023-2026 of the implementation of the Concept Document.

Initially, Option 1, which does not foresee the undertaking of any legal action or change, but which consists of continuing with the current state of play, does not constitute a solution to the problem regarding the standard of trial within a reasonable time and the possibility of effective legal remedies for the protection of this right. On the contrary, maintaining the current state of play without any changes means the continuation of the consequences, such as: The constitutional and legal rights of Kosovo citizens regarding access to justice and effective legal remedies will not be respected in accordance with the Constitution, the jurisprudence of the ECtHR and the spirit of the ECHR, which are directly applicable in Kosovo, as well as with the relevant EU acquis. Thus, by implementing this option, the principle of trial within reasonable time will continue to be violated. Also, this option will cause a decrease in citizens' trust in the justice system. However, it should be noted that the only advantage of implementing this option is that there would be no additional cost.

Further, Option 2, which envisages taking measures to improve and implement the current legislation without legal changes, cannot result in a complete solution to the problem. Although this option proposes an intervention in the current state of play, this is limited since this option does not envisage changes of a legal nature. Option 2 would increase the efficiency of the implementation of the standard for trial within a reasonable time, but this would depend on the efficiency of the measures to be taken by the justice system bodies and the mechanisms that would be created for this purpose. By not creating a special legal basis, the achievement of this standard would be based on the integrity and responsibility of judges and prosecutors in fulfilling their duties, in-depth knowledge of the ECHR and ECtHR standards, where in addition to basic knowledge, it is required to have specific training for this purpose. On the other hand, this option would not constitute a complete solution to the problem, especially in relation to effective legal remedies for judicial protection of the right to a fair trial (which could be created by law). The fact that there will be no major budget costs as a result of the implementation of this option can be considered as an advantage.

Option 3, which consists on the adoption of a special law for the implementation of the right to a trial within reasonable time, also has to do with the fact that in a single act most of the effective measures and tools for guaranteeing the trial would be addressed within reasonable time, for all court proceedings (criminal, civil and administrative). In addition, the introduction of effective legal remedies in a special law, which would enable the parties to file a request for acceleration of the procedure and a claim for compensation of damage to the presidents of the respective courts, with the possibility of appeal to the court of the highest instance, would also strengthen the possibility of effective protection of the right to a trial within reasonable time. The adoption of the new law for this purpose would mean that the legal system of Kosovo includes special mechanisms, which would provide additional guarantees for citizens to exercise their right to a trial within reasonable time, also by making the special legal remedies available. On this basis, it should be emphasized that the provision of effective legal remedies of appeal in view of Article 13 of the ECHR, in the case of Kosovo, also carries with it the specificity that the state of Kosovo is not a member of the Council of Europe yet, therefore not a party to the ECHR and there is still no case that has been handled by the ECtHR, which would assess the level of guarantee for the right to a trial within reasonable time by the justice system in Kosovo, within the meaning of Article 6, *par.*1 of the ECHR. This naturally makes it even more necessary to take extensive measures in this direction, including the adoption of a special legal basis for the

judicial protection of this right, through the creation of adequate legal remedies. The advantage of this option is that, through it, a legal basis would be created for the exercising of this right effectively. However, the budgetary cost can be considered as a disadvantage that can potentially become a burden to the state for the compensation of all parties whose right to a trial within reasonable time has been established to have been violated.

Option 4 - The main advantage of this option consists in addressing the problem of the prolongation of judicial proceedings from many aspects, including the implementation of current legislation as well as new legal changes. Through the implementation of the current legislation, a greater financial support is foreseen in the achievement of the foreseen measures for the relevant institutions such as the KGJC, KPC, Supreme Court, Justice Academy and Constitutional Court. However, through legal changes, namely through the adoption of a new law, the creation of the possibility and the legal remedies for seeking and exercising the right to trial within a reasonable time in the system of regular courts, respectively to the presidents of the respective courts and to appeal to the presidents of higher-instance courts is foreseen. These legal remedies would enable the parties in court proceedings to request the acceleration of the procedure and compensation for the damage caused by the prolongation of the court process. However, the disadvantage of this option can be considered the cost that it carries as the option with the highest cost due to the greater number of measures it contains. To this cost is potentially added the number of claims for compensation of damages from the parties whose rights to a trial within reasonable time are found to have been violated.

Option 5, which foresees the exercising of the right to a trial within a reasonable time through the Constitutional Court. According to this option, the current law on the Constitutional Court would be amended in which additional powers would be given to the Constitutional Court. Based on this option, the exercising of the right to a trial within a reasonable time can be implemented through the amendment of the law on the Constitutional Court, in which a new special procedure will be added for the procedure of filing a claim for compensation by individuals related to claim for violation of the right to trial within reasonable time. The remaining part related to the procedures for seeking this right is regulated by a special law on trial within reasonable time. With this law, the main rules would be determined based on which the future reasonable time would be framed, that is, the criteria that the court would take into account when deciding on the case. As such, this option has advantages since it would create a path for the exercising of the right which is already recognized, but the part of compensating the damages directly by the Constitutional Court would be added, in addition to establishing the violation of the right. The advantage of option 5 is considered the fact that the procedure for the parties would be simple and effective. However, the shortcoming of this option is considered the fact that the Constitutional Court could be overloaded with claims within a very short period of time and consequently the efficiency of this court would suffer, therefore it would not even be possible to render decisions on the requests for the exercising of the right within a reasonable time and for the compensation for damage. Also, similar to the two previous options, the shortcoming of this option can be considered the additional cost that can potentially be burdened to the state by providing the opportunity to compensate the parties whose right to trial within reasonable time has been violated.

6.1. Implementation plans for the various options

Figure 3: Implementation plan for Option 2

Exercising of the right to a trial within reasonable time							Cost estimate
Exercising of the right to trial within reasonable time							
Output, activities, year and responsible organization/department							
Output	**Activity**	**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Responsible institution/ department**
Output 1.1 The right to a trial within reasonable time enforced by the judiciary	Activity 1.1.1 - Increasing the budget for the judiciary	x					Assembly
	Activity 1.1.2 - Drafting the plan and detailed analysis for planning the increase in the number of judges, professional associates, legal officers and IT infrastructure	x					KJC
	Activity 1.1.3 – Approval of the Instruction on Eliminating the “ping-pong” effect in the courts	x					KJC
	Activity 1.1.4 – Drafting of special Guidelines regarding the implementation of the principle of trial within reasonable time in all courts of Kosovo	x					Supreme Court

	Activity 1.1.5 – Issuance of two legal opinions from the Supreme Court regarding compliance with the standard for trial within a reasonable time	x					Supreme Court	
	Activity 1.1.6 – Drafting and approval of the Guidelines on Registration of Postponement of Sessions in CMIS and Reasoning for such postponement	x					KJC	
	Activity 1.1.7 – Drafting of periodic reports of Court Presidents that include data on the number of postponed hearings and the reasoning	x					KJC	
Output	**Activity**	**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Responsible institution/ department**	
Output 1.2 The right to trial within reasonable time implemented by the	Activity 1.2.1 – Drafting of special Guidelines regarding the application of the principle of trial within reasonable time at the stage of investigation and filing of the Indictment	x					KPC, Chief State Prosecutor	

Output	Activity	Year 1	Year 2	Year 3	Year 4	Year 5	Responsible institution/ department	
Output 1.3 Judges trained to adjudicate within reasonable time	Activity 1.3.1 – Designing a special training program for judges regarding the standard of trial within a reasonable time, also referring to the highest international standards and good practices of other countries	x					AoJ, KJC	
	Activity 1.3.2 – Holding of five trainings by the Academy of Justice for judges regarding the observance of the standard for trial within reasonable time	x					AoJ	

Figure 4: Implementation plan for Option 3

Exercising the right to a trial within a reasonable time								Expected cost
Implementing the right to a trial within a reasonable time								
Output, activities, year and responsible organization/department								
Output	**Activity**	**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Responsible institution/ department**	
Output 1.1 Legislation on the right to trial within a reasonable time adopted	Activity 1.1.1 – Drafting of the Law for trial within a reasonable time	x					MoJ	
	Activity 1.1.2 – Public discussion of the Law for trial within a reasonable time	x					MoJ	
	Activity 1.1.3 – Proceeding for adoption the Law for trial within a reasonable time	x					MoJ	
	Activity 1.1.4 – Adoption of the Law for trial within a reasonable time	x					Assembly	
	Activity 1.1.5 – Adopting the sub-legal act, by KJC, that determines the average time (with objective and measurable criteria) for the resolution of cases, depending on their type and nature	x					KJC	

Figure 10: Implementation plan for Option 4

Exercising the right to a trial within a reasonable time							Expected cost
Implementing the right to a trial within a reasonable time							
Output, activities, year and responsible organization/department							
Output	**Activity**	**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Responsible institution/ department**	
Output 1.1 The right to a trial within a reasonable time is enforced by the judiciary	Activity 1.1.1 – Increasing the budget for the judiciary	x					Assembly	
	Activity 1.1.2 – Drafting the plan and the detailed analysis to plan the increase of the number of judges, professional associates, legal officers and IT infrastructure	x					KJC	
	Activity 1.1.3 - Adopting the Instruction for eliminating the "ping-pong" effect in courts	x					KJC	
	Activity 1.1.4 - Drafting of special Guidelines regarding the implementation of the principle of trial within a reasonable time in	x					Supreme Court	

	all courts of Kosovo							
	Activity 1.1.5 - Issuance of 2 legal opinions from the Supreme Court regarding compliance with the standard for trial within a reasonable time	x					Supreme Court	
	Activity 1.1.6 - Drafting and adoption of the Guidelines for registration in CMIS of adjournments and justification for every hearing	x					KJC	
	Activity 1.1.7 - Drafting of periodic reports of court presidents that include data on the number of adjourned hearings and justification	x					KJC	
Output	**Activity**	**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Responsible institution/ department**	
Output 1.2 The right to a trial within a reasonable time is enforced by the	Activity 1.2.1 - Drafting of special Guidelines regarding the implementation of the principle of trial within a reasonable time in investigation and indictment stage	x					KPC, Chief State Prosecutor	

Output	Activity	Year 1	Year 2	Year 3	Year 4	Year 5	Responsible institution/ department	
Output 1.3 Judges trained for trial within a reasonable time	Activity 1.3.1 - Drafting a special training program for judges regarding the standard of trial within a reasonable time, referring as well to the highest international standards and good practices of other countries	x					AoJ, KJC	
	Activity 1.3.2 - Holding 5 trainings from the Justice Academy for judges regarding compliance with the standard for trial within a reasonable time	x					AoJ	
Output	**Activity**	**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Responsible institution/ department**	
Output 1.2 Legislation on the right to trial within a reasonable time adopted	Activity 1.2.1 - Drafting of the Law for trial within a reasonable time	x					MoJ	
	Activity 1.2.2 – Public discussion of the Law for trial within a reasonable time	x					MoJ	

	Activity 1.2.3 - Proceeding for adoption the Law for trial within a reasonable time	x					MoJ	
	Activity 1.2.4 – Adoption of the Law for trial within a reasonable time	x					Assembly	
	Activity 1.2.5 - Adopting the sub-legal act, by KJC, that determines the average time (with objective and measurable criteria) for the resolution of cases, depending on their type and nature	x					KJC	

Figure 10: Implementation plan for Option 5

Exercising the right to a trial within a reasonable time								Expected cost
Implementing the right to a trial within a reasonable time								
Output, activities, year and responsible organization/department								
Output	**Activity**	**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Responsible institution/ department**	

Output 1.1 The right to a trial within a reasonable time is enforced in the Constitutional Court	Activity 1.1.1 - Drafting of the Law to supplement and amend the Law on the Constitutional Court	x					MoJ	
	Activity 1.1.2 - Drafting of the Law to supplement and amend the Law on the Constitutional Court	x					MoJ	
	Activity 1.1.3 - Proceeding the Law for adoption to supplement and amend the Law on the Constitutional Court	x					MoJ	
	Activity 1.1.4 - Adopting the Law to supplement and amend the Law on the Constitutional Court	x					Assembly	
Output 1.2 Legislation on the right to trial within a reasonable time is adopted	Activity 1.2.1 - Drafting of the Law for trial within a reasonable time	x					MoJ	
	Activity 1.2.2 – Public discussion of the Law for trial within a reasonable time	x					MoJ	
	Activity 1.2.3 - Proceeding for adoption the Law for trial within a reasonable time	x					MoJ	
	Activity 1.2.4 – Adoption of the Law for trial within a reasonable time	x					Assembly	

	Activity 1.2.5 - The sub-legal act by KJC that determines the average time (with objective and measurable criteria) for the resolution of cases, depending on their type and nature, is adopted.	x					KJC	

Chapter 6.2: Comparison table with all three options

[Based on available data, available time and policy guidelines, decide on the tool you want to use to present the data collected for the concept document and, determine the optimal option that can be implemented: CEA, CBA, MCA. Use figures 93, 94, 95 and 96 in the Handbook to make the comparison.

Give a brief narrative overview of the three options. Also present the option chosen and the main reasons why it was chosen.]

The table will be filled out after receiving comments from the prior public discussion

Figure 5: Comparison of options

Comparison tool:			
Relevant positive impacts	Option 1: No change	Option 2: Improving implementation and execution	Option 3:
Relevant negative impacts			

Relevant costs									
Assessment of the expected budget impact	Year 1	Year 2	Year 3	Year 1	Year 2	Year 3	Year 1	Year 2	Year 3
Completion									

Chapter 7: Conclusions and next steps

Based on the analyzes made in this Concept Document and taking into account the comparison of the options reviewed, with the aim of eliminating the identified problems and achieving the set objectives, it is recommended to the Government to approve Option 4, i.e. the exercising of the right to trial within a reasonable time-frame through improving the implementation of current legislation and new legal changes. The implementation plan of the recommended option is presented in Chapter 6 of this document.

7.1. Provisions for monitoring and evaluation

The monitoring of the implementation of this Option, taking into account that it includes institutions from the three levels: the legislative, the executive and the judiciary, will be carried out by all three of them. Regarding the implementation of the Concept document, annual reports will be prepared in order to inform the above-mentioned institutions. The ex-post evaluation according to the determined methodology will be conducted in the 5th year of the implementation of the Concept Document.

Annex 1: Economic impact assessment form

Category of economic impacts	**Main impact**	**Is this impact expected to occur?**		**Number of organizations, companies and/or individuals affected**	**Expected benefit or cost of impact**	**Preferred level of analysis**
		Yes	**No**	**High/low**	**High/low**	
Jobs[61]	Will the current number of jobs increase?		X			
	Will the current number of jobs decrease?		X			
	Will it affect the level of payment?		X			
	Will it affect the ease of finding a job?		X			
Doing business	Will it affect access to business finance?		X			
	Will certain products be removed from the market?		X			
	Will certain products be allowed in the market?		X			
	Will businesses be forced to close?		X			
	Will new businesses be created?		X			
Administrative	Will businesses be forced to fulfil the obligations of providing new		X			

[61]When it affects jobs, there will also be social impacts.

burden	information?					
	Have the obligations of providing information been simplified for businesses?		X			
Trade	Are current import flows expected to change?		X			
	Are current export flows expected to change?		X			
Transport	Will there be an effect on the way passengers and/or goods are transported?		X			
	Will there be any changes on the time needed to transport passengers and/or goods?		X			
Investments	Are companies expected to invest in new activities?		X			
	Are companies expected to cancel or postpone investments?		X			
	Will investments from the diaspora increase?		X			
	Will investments from the diaspora decrease?		X			
	Will direct foreign investments increase?		X			

	Will direct foreign investments decrease?		X			
Competitiveness	Will the price of product business, such as electric energy, increase?		X			
	Will the price of business inputs, such as electric energy, decrease?		X			
	Are innovation and research likely to be promoted?		X			
	Is innovation and research likely to be hindered?		X			
Impact to SME	Are the affected companies mainly SMEs?		X			
Prices and competition	Will the number of goods and services available to businesses or consumers increase?		X			
	Will the number of goods and services available to businesses or consumers decrease?		X			
	Will the prices of existing goods and services increase?		X			
	Will the prices of existing goods and services decrease?		X			
Regional economic	Will any particular business sector be affected?		X			

impacts	Is this sector concentrated in a certain region?		X			
General economic development	Will future economic growth be affected?		X			
	Could it have any effect on the inflation rate?		X			

Annex 2: Social impact assessment form

Category of social impacts	**Main impact**	**Is this impact expected to occur?**		**Number of organizations, companies and/or individuals affected**	**Expected benefit or cost of impact**	**Preferred level of analysis**
		Yes	**No**	**High/low**	**High/low**	
Jobs [62]	Will the current number of jobs increase?		X			
	Will the current number of jobs decrease?		X			
	Are jobs in a particular business sector affected?		X			
	Will it have any impact on the level of payment?		X			
	Will it have any impact on the ease of finding a job?		X			
Regional social impacts	Are social influences concentrated in a particular region or city?		X			
Working conditions	Are the rights of workers affected?		X			
	Are standards for working in hazardous conditions provided for or repealed?		X			

[62]When it affects jobs, there will also be economic impacts.

	Will it have an impact on the way social dialog is developed between employees and employers?		X			
Social inclusion	Will it have an impact on poverty?		X			
	Is access to social protection schemes affected?		X			
	Will the prices of basic goods and services change?		X			
	Will it have an impact on the financing or organizing of social protection schemes?		X			
Education	Will it have an impact on primary education?		X			
	Will it have an impact on high school education?		X			
	Will it have an impact on higher education?		X			
	Will it have an impact on vocational training?		X			
	Will it have an impact on worker education and lifelong learning?		X			
	Will it have an impact on the organizing or structure of the education system?		X			

	Will it have an impact on academic freedom and self-governance?		X			
Culture	Does the option affect cultural diversity?		X			
	Does the option affect the financing of cultural organizations?		X			
	Does the option affect opportunities for people to benefit from or participate in cultural activities?		X			
	Does the option affect the protection of cultural organizations?		X			
Governance	Does the option affect citizens' abilities to participate in the democratic process?		X			
	Is everyone treated equally?	X				
	Will the public be better informed about certain issues?	X				
	Does the option affect the way political parties work?		X			
	Will it have any impact on the civil society?		X			
Health and	Will it have any effect on people's lives, such as life expectancy or		X			

public safety[63]	mortality rates?					
	Will it have an impact on food quality?		X			
	Will health risk increase or decrease due to harmful substances?		X			
	Will there be health effects due to changes in noise levels or air, water and/or soil quality?		X			
	Will there be health effects due to changes in energy use?		X			
	Will there be health effects due to changes in waste landfills?		X			
	Will there be an impact on people's lifestyles, such as levels of interest in sport, changes in nutrition, or changes in tobacco or alcohol use?		X			
	Are there particular groups that face much higher risks than others (determined by factors such as age, gender, disability, social group or region)?		X			
Crime and safety	Does it affect the likelihood of criminals being caught?		X			
	Does it affect the potential proceeds from crime?		X			

[63]When there is an impact on public health and safety, then there are regular environmental impacts.

	Does it affect the level of corruption?		X			
	Does it affect the capacity of law enforcement?	X				
	Does it have any effect on the rights and safety of victims of crime?	X				

Annex 3: Environmental impact assessment form

Category of environmental impacts	**Main impact**	**Is this impact expected to occur?**		**Number of organizations, companies and/or individuals affected**	**Expected benefit or cost of impact**	**Preferred level of analysis**
		Yes	**No**	**High/low**	**High/low**	
Sustainable climate and environment	Will it have an impact on the emission of greenhouse gases (CO_2, methane, etc.)?		X			
	Will fuel consumption be affected?		X			
	Will the diversity of resources used to generate energy change?		X			
	Will there be any price difference for environmentally friendly products?		X			
	Will certain activities become less polluting?		X			
Air quality	Will it have an impact on the emission of air polluters?		X			
Water quality	Does the option affect freshwater quality?		X			
	Does the option affect groundwater quality?		X			
	Does the option affect drinking water		X			

	resources?					
Soil quality and land use	Will there be an impact on soil quality (relating to acidification, pollution, use of pesticides or herbicides)?		X			
	Will it have an impact on soil erosion?		X			
	Will land be lost (through construction, etc.)?		X			
	Will land be gained (through decontamination, etc.)?		X			
	Will there be any changes in land use (e.g. from forest use to agricultural or urban use)?		X			
Waste and recycling	Will the amount of waste generated change?		X			
	Will the ways in which waste is managed change?		X			
	Will there be any impact on waste recycling?		X			
Use of resources	Does the option affect the use of renewable resources (fish reserves, hydro-power, solar energy, etc.)?		X			
	Does the option affect the use of non-renewable resources (groundwater, minerals, coal, etc.)?		X			

Degree of environmental risks	Will there be any effect on the likelihood of risks, such as fires, explosions or accidents?		X			
	Will it affect preparedness for natural disasters?		X			
	Is the protection of society affected by natural disasters?		X			
Biodiversity, flora and fauna	Will there be an impact on protected or endangered species or areas where they live?		X			
	Will the size or connections between areas of nature be affected?		X			
	Will it have any effects on the number of species in a certain area?		X			
Animal welfare	Will animal treatment be affected?		X			
	Will animal health be affected?		X			
	Will the quality and safety of animal feed be affected?		X			

Annex 4: Fundamental rights impact assessment form

Category of impact on fundamental rights	**Main impact**	**Is this impact expected to occur?**		**Number of organizations, companies and/or individuals affected**	**Expected benefit or cost of impact**	**Preferred level of analysis**
		Yes	**No**	**High/low**	**High/low**	
Dignity	Does the option affect people's dignity, their right to life or integrity?	X				
Freedom	Does the option affect the individual freedom rights?		X			
	Does the option affect a person's right to privacy?		X			
	Does the option affect the right to marry or start a family?		X			
	Does the option affect the legal, economic or social protection of individuals or families?	X				
	Does the option affect freedom of thought, conscience or religion?		X			
	Does the option affect freedom of speech?		X			
	Does the option affect freedom of assembly or association?		X			
Personal data	Does the option include the processing					

	of personal data?					
	Are the individual's rights of access, rectification and objection guaranteed?	X				
	Is the way in which personal data is processed clear and well protected?	X				
Asylum	Does this option affect the right to asylum?		X			
Property rights	Will the rights to privacy be affected?		X			
	Does the option affect the freedom of doing business?		X			
Equal treatment [64]	Does the option protect the principle of equality before the law?	X				
	Are certain groups likely to be harmed directly or indirectly by discrimination (e.g. any discrimination based on sex, race, color, ethnicity, political or other opinion, age or sexual orientation)?		X			
	Does the option affect the rights of persons with disabilities?		X			
Children's rights	Does the option affect children's rights?		X			
Good	Will administrative procedures become		X			

[64]Gender equality is addressed in the *Gender Impact Assessment*

administration	more complicated?					
	Is the way in which the administration makes decisions affected (transparency, procedural deadline, right of access to a file, etc.)?		X			
	Regarding criminal law and prescribed punishments: are the rights of the defendant affected?		X			
	Is access to justice affected?	X				