

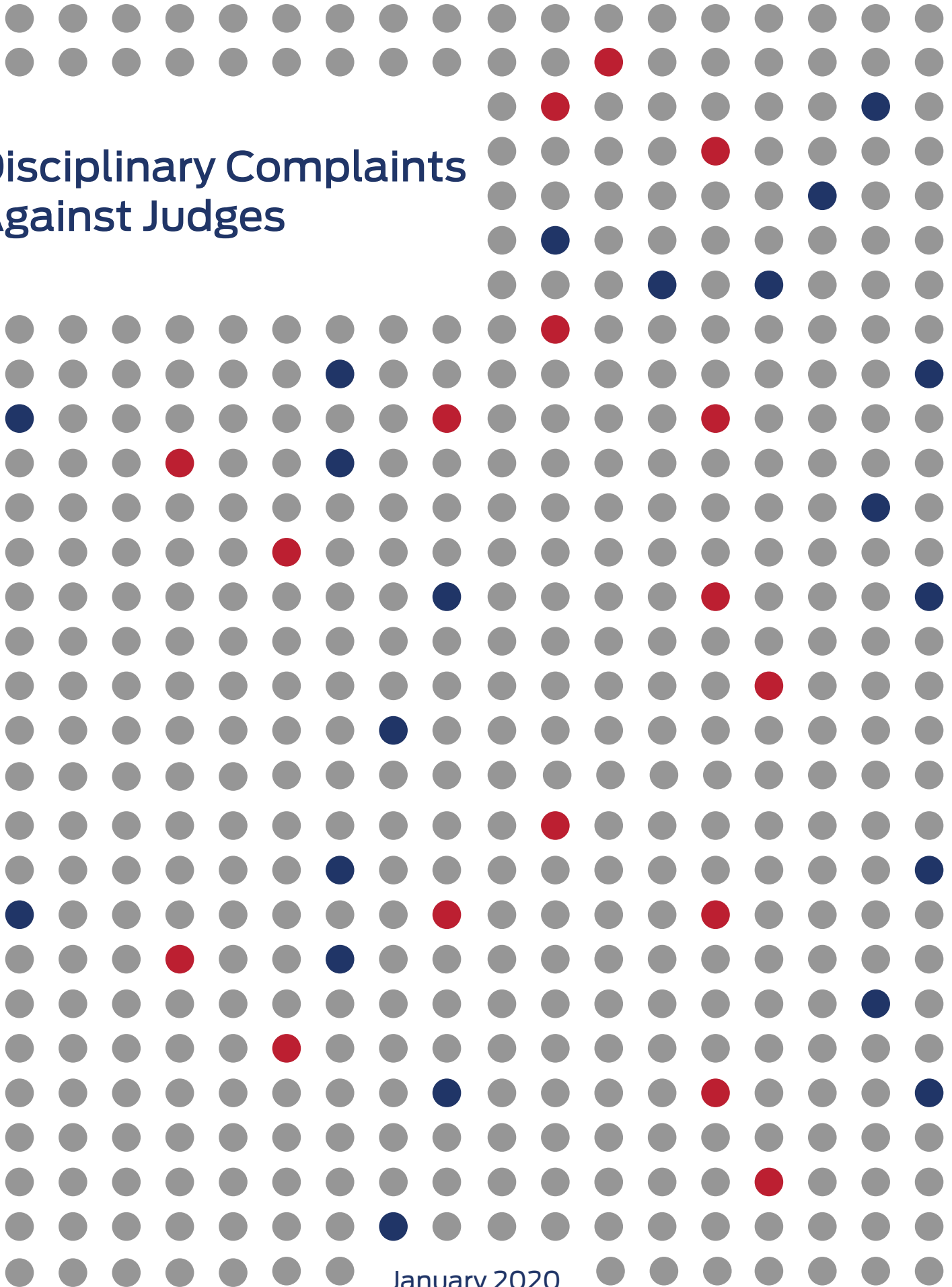


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**FOL**

# Disciplinary Complaints Against Judges





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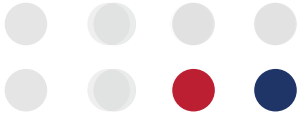
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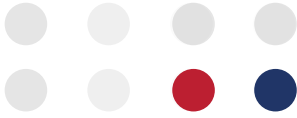
**BIRN Kosovo** is an independent non-governmental organization, with the primary goal of contributing towards a successful democratic process, including justice system reforms. In order to reach its goal, BIRN Kosovo has established a renowned online anti-corruption platform, and produces televised debates, in-depth investigations in the field and thorough analytical reports that influence the system.

**FOL Movement** is a non-governmental organization devoted to contributing towards good governance, preventing and fighting corruption through supporting and promoting civic activism, and enhancing the transparency and accountability of public institutions.



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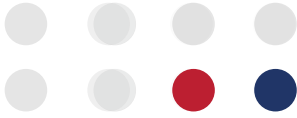
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## Acronyms

BIRN	.....	Balkan Investigative Reporting Network
IAP	.....	Ombudsperson Institution
JSSP	.....	Justice System Strengthening Program
KGJK	.....	Kosovo Judicial Council
LPDGJ	.....	Law on Disciplinary Procedures of Judges
USAID	.....	United States Agency for International Development





## Executive Summary

The monitoring outlined in this report was conducted by BIRN Kosovo (BIRN) and FOL Movement (FOL), commissioned by the USAID Justice System Strengthening Program (USAID/JSSP). The report aims to assess the efficiency of competent institutions in treating disciplinary complaints initiated against judges and court presidents of the Republic of Kosovo over a period of four months, specifically between July 1 and November 1, 2019.

The report aims to communicate the number of complaints received by the Competent Authority, the number of cases rejected and dismissed, and the number of cases referred to the State Prosecution, as well as the number of cases in which the initiation of disciplinary procedures was requested from the Kosovo Judicial Council, KJC.

The main findings of the report include:

- That the Law on Disciplinary Liabilities of Judges does not provide an address for citizens to file a complaint against Supreme Court judges;
- There is a strong need for compliance with deadlines when handling disciplinary cases, starting from the Competent Authority and the KJC;
- In order to enhance transparency regarding disciplinary cases, the KJC should create an electronic register;
- There are often delays and shortcomings in treating disciplinary cases, starting with the lack of notifications from the KJC when receiving disciplinary complaints;
- There is often a lack of compliance with the period foreseen for the revision of disciplinary complaints by the Competent Authority;
- There is a frequent failure to notify the Ombudsperson Institution and the party that submitted the complaint;
- The principle of confidentiality of procedure has been disrespected by the KJC, by disclosing the identity of judges subject to disciplinary procedure while establishing investigative panels.

In the period covering July 1 to November 1, 2019, the courts that provided data received 34 complaints, out of which 19 cases, or 56% of the complaints were rejected. In five cases, or 14% of the complaints, an initiation of investigations was requested, while five further cases are still being processed. For the other five cases, there was no information provided regarding decisions on the complaints, or the stage that the complaints have reached.

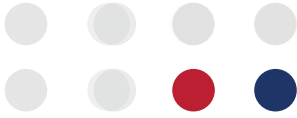
The KJC provided partial or unclear data. Between July 1 and November 1, the KJC stated that it had received 29 notifications for an initiation of procedures, though this number cannot be verified based on the responses provided by the courts, due to some of them not having provided data.

According to the KJC's data, 21 of these complaints were deemed unfounded and were rejected, whereas the KJC ex-officio suspended judges from their office in two cases.

Between July 1 and November 30, the Ombudsperson Institution received four disciplinary complaints. None of the complaints were rejected, though no initiation of disciplinary procedures at the KJC were requested either. In three cases, the complaints were sent to the Competent Authority, and in one case to the State Prosecutor.

The Supreme Court of Kosovo received three cases between July 1 and November 1, in one of which an initiation of investigations was requested, while no information on the conclusion of the two other cases has been provided.





The Court of Appeals received two complaints in the reported period, one of which was rejected, while for the other an initiation of investigations by the KJC was requested.

Between July 1 and September 1, nine complaints were received by the Basic Court of Prishtina, out of which four were rejected, while five remain undecided on in spite of the legal deadline to treat such cases within 30 days.

During the monitoring period, July 1 to November 1, the Basic Court of Prizren received eight complaints, out of which six were rejected while in two cases, a request to initiate an investigation was made.

The Basic Court of Peja received five disciplinary complaints between July 1 and November 1, out of which two complaints were rejected as ungrounded, the suspension of a judge was requested in one case, while no information was provided on the outcome of the other two cases.

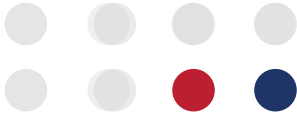
The Basic Court of Ferizaj received only one disciplinary complaint between July 1 and November 1, which was rejected. The Basic Court of Gjakova also received only one disciplinary complaint during this timeframe. It was later withdrawn by the complainant. No disciplinary complaints were submitted to the Basic Court of Mitrovica between July 1 and November 1.

BIRN received responses from the Basic Court of Gjilan only after a conference held on December 12, 2019. The court received four complaints between July and November 2019, all four were rejected.

The need for immediate improvement is reflected in this report, which should begin with addressing the following:

- The Law on Disciplinary Liabilities of Judges does not provide an address for citizens to file complaints against Supreme Court judges;
- Ensuring compliance with deadlines in treating disciplinary cases starting from the Competent Authority and the Kosovo Judicial Council;
- Improving the recording of data on disciplinary cases and enhancing transparency around the treatment of these cases;
- The KJC must maximize its efforts not to allow the repetition of cases where procedural principles protecting privacy have been violated by the disclosure of the identity of judges that are subject of disciplinary procedure in the initial phases, specifically the establishment of investigative panels;
- The KJC must urgently increase transparency, and push Kosovo courts to do the same, as well as provide full and qualitative statistical data concerning the handling of disciplinary cases. This would not only contribute to further opening up the KJC to the public and enhance public trust in its work, but also keep the system open to monitoring by observers who monitor the justice system and assess the work of the KJC and the Competent Authorities.





## Introduction

This report aims to assess the efficiency and transparency in the handling of disciplinary cases against judges and court presidents in the Republic of Kosovo between July 1 and November 1, 2019. This period is relatively short in terms of effective monitoring of this process, and consequently the monitoring will continue until June 2020.

Through this report, the overall number of complaints received by the Competent Authority is demonstrated, as well as the number of rejected and dismissed cases, the number of cases referred to the State Prosecutor, and the number of cases for which the initiation of disciplinary procedures at the Kosovo Judicial Council (KJC) was requested. In the future, the monitoring will also include complaints against the KJC's disciplinary procedures at the Supreme Court.

Furthermore, the report also aims to reflect on the KJC's decision-making and the work of investigative panels established by the Council in regards to the treatment of disciplinary complaints. It will also reflect on the work of the Ombudsperson Institution in regards to disciplinary complaints.

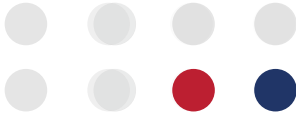
In this report, the efficiency of the procedure and how disciplinary complaints were dealt with by the Competent Authority and Kosovo Judicial Council were assessed, in particular reflecting on the timing and procedural aspects of treating disciplinary cases, thus shedding light on the shortcomings and gaps encountered, initially in regards to the Law 06/L- 057 on Disciplinary Liability of Judges and Prosecutors<sup>1</sup>, as well as the shortcomings and delays of the Competent Authority and Kosovo Judicial Council in treating disciplinary complaints. The report also reflects on omissions by the KJC in treating disciplinary complaints.

The report will only examine the statistical and time aspects of the disciplinary complaints and will fully respect the confidentiality of the procedures and therefore will not reveal the identity of the individuals involved, or the content of the investigative actions undertaken.

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<sup>1</sup> Kosovo Assembly, (2018). Law No.06/L-057, Law on Disciplinary Liability of Judges and Prosecutors. Retrieved from: [http://www.kuvendikosoves.org/Uploads/Data/Documents/Ligjinr06L-057\\_5VbMuFW4aw.pdf](http://www.kuvendikosoves.org/Uploads/Data/Documents/Ligjinr06L-057_5VbMuFW4aw.pdf)





## Monitoring methodology

This report was drafted by using quantitative methods of data collection, including recording the number of complaints received, the number of rejected complaints, the number of dismissed complaints and the number of complaints in which the initiation of investigations by the KJC was requested. The data was obtained from the Competent Authorities: heads of Courts, the KJC and the Ombudsperson Institution.

For purposes of this report, an analytical method was used in assessing the data to ascertain whether the Competent Authority, Judicial Council and the Ombudsperson Institution acted in compliance with the provisions of the Law on Disciplinary Liability of Judges and the Regulation of Kosovo Judicial Council for Disciplinary Procedure.

Further, for the purpose of conducting the monitoring, statistical and comparative methods were used in order to assess the efficiency of the Competent Authority and the Judicial Council in treating disciplinary complaints.

We believe that it should be emphasized that most of Kosovo’s Basic Courts, the Court of Appeals and the Ombudsperson Institution showed rectitude in their cooperation with the project, enabling us access to the data.

BIRN and FOL on December 12 have organized a conference revealing the preliminary findings of the disciplinary complaints and the same were sent to Kosovo Courts for further comments that were later included in the final report.

## General tabulated data on disciplinary cases

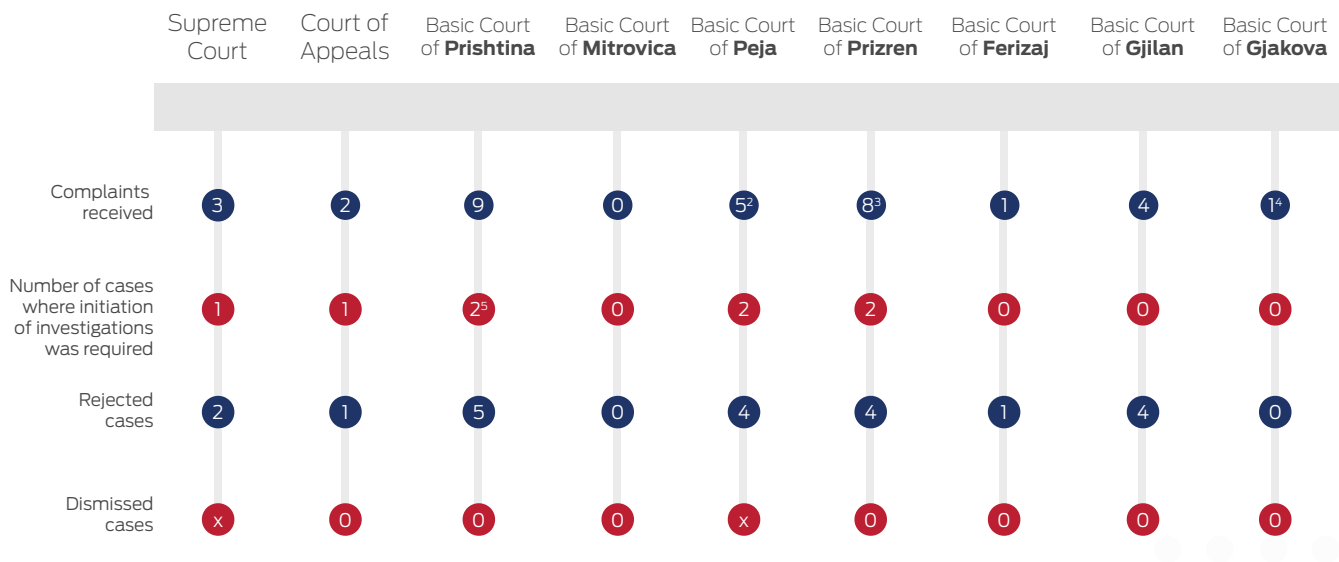


Figure 1: Overall data on Kosovo Courts for the period covering July 1 to November 1, 2019.

\*Kosovo Assembly, (2018). Law No.06/L-057, Law on Disciplinary Liability of Judges and Prosecutors. Retrieved from: [http://www.kuvendikosoves.org/Uploads/Data/Documents/Ligjnr06L-057\\_5VbMuFW4aw.pdf](http://www.kuvendikosoves.org/Uploads/Data/Documents/Ligjnr06L-057_5VbMuFW4aw.pdf)

<sup>2</sup>In one case, the initiation of investigations was requested ex-officio

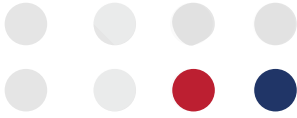
<sup>3</sup>The Court of Prizren did not provide data on what happened with two of the disciplinary complaints received.

<sup>4</sup>It was withdrawn by the complainant

<sup>5</sup>The Basic Court of Prishtina notified that these two cases are in the process of being submitted to the Council for initiation of disciplinary procedure.







Number of notices on the receipt of complaints by the Competent Authority

29

Complaints that resulted in disciplinary violations

3

Rejected cases

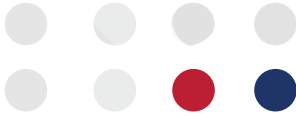
21

Number of investigation panels formed

2

Figure 2: Overall data from Kosovo Judicial Council for the period covering July 1 to November 1, 2019.





## Individual review of cases per Courts

### Kosovo Judicial Council

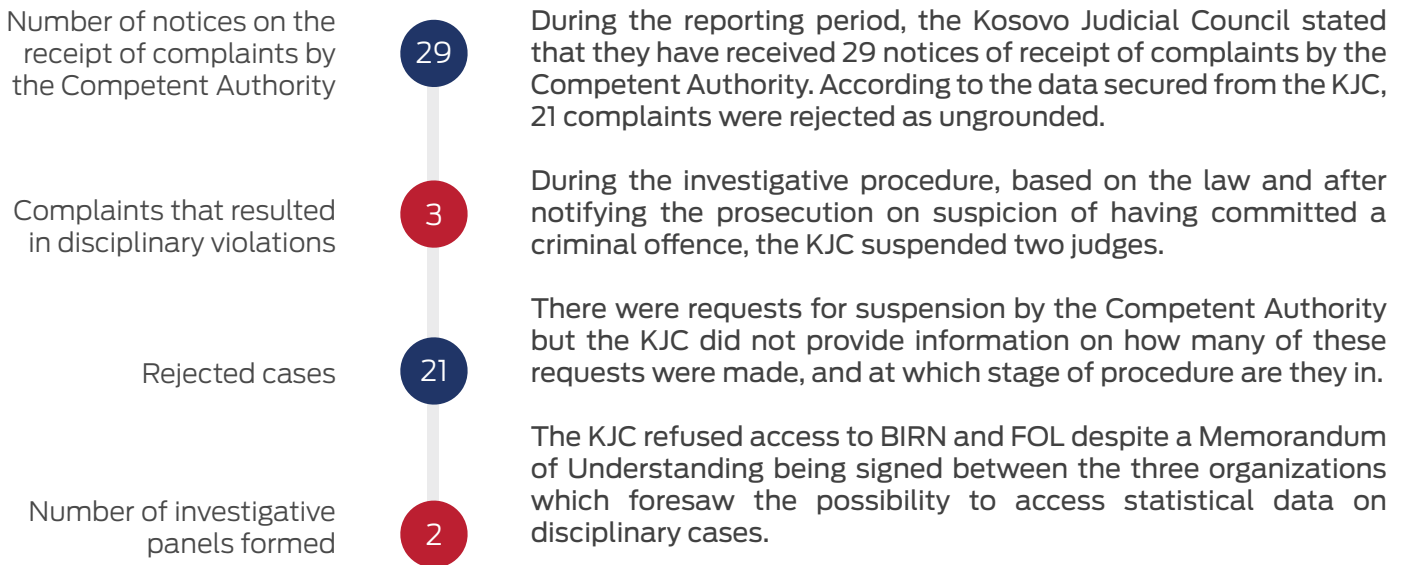


Figure 3:  
Data on KJC disciplinary cases

Specifically, the KJC did not provide data regarding the number of requests received by the Competent Authority on the initiation of disciplinary procedures, on the manner and the deadlines of treating these requests, on establishing investigative panels, the timing of the establishment of investigative panels, actions and dates of undertaking investigative actions, the number of hearings held, time scope within which panels were formed, and other data that was required.

The only data provided by the KJC were general, incomplete and unclear, and could not be used to assess the efficiency of investigative panels treating these cases, and the time aspects defined by the Law.

### Supreme Court

24 judges

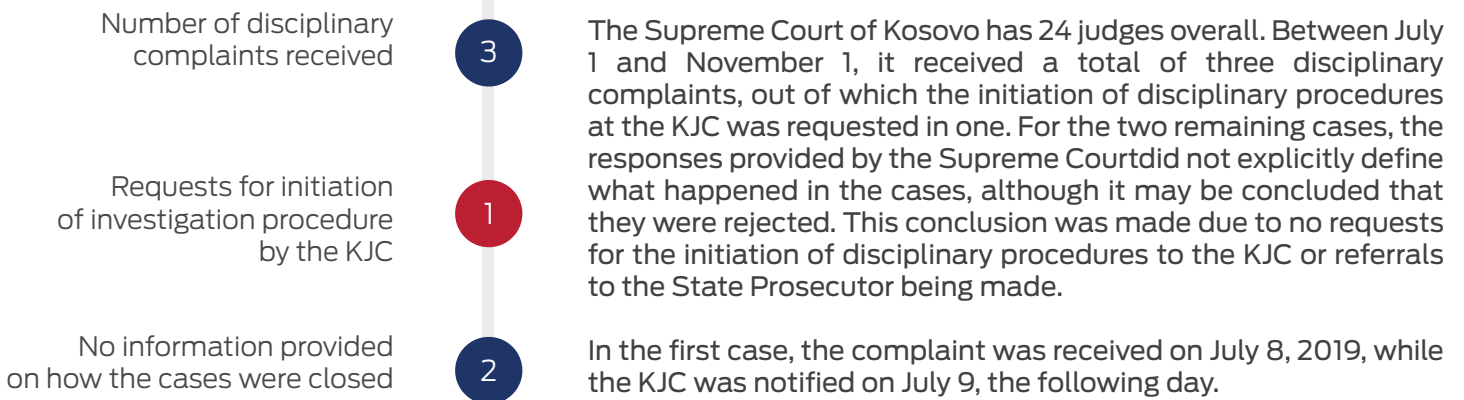
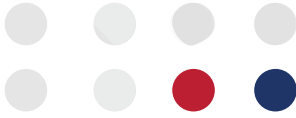


Figure 4:  
Data on disciplinary cases at the Supreme Court between July 1 and November 1, 2019.

© Kosovo Judicial Council, BIRN Kosovo, FOL Movement (2019). Memorandum of Understanding. Retrieved from [https://www.gjyqesori-rks.org/wpcontent/uploads/lgs/70901\\_Memorandum\\_Mirkuptimi\\_KGJK\\_BIRN\\_Levizja\\_FOL.pdf](https://www.gjyqesori-rks.org/wpcontent/uploads/lgs/70901_Memorandum_Mirkuptimi_KGJK_BIRN_Levizja_FOL.pdf)





In the second case, the complaint was received on Friday, July 19, 2019. On Monday, July 22, the Competent Authority notified the KJC on having received a complaint.

The third case of disciplinary complaints at the Supreme Court was received on October 14, 2019. One day later, October 15, 2019, the KJC was notified. Eleven days after receiving the complaint, the Competent Authority requested the initiation of a disciplinary investigation.

Of the aforementioned data, it may be concluded that the Competent Authority, the head of the Supreme Court, treated the disciplinary cases within the deadline of 30 days, as per the provisions set out in the Law and Regulations on Disciplinary Procedure for Judges and Prosecutors.<sup>7</sup>

## Court of Appeals

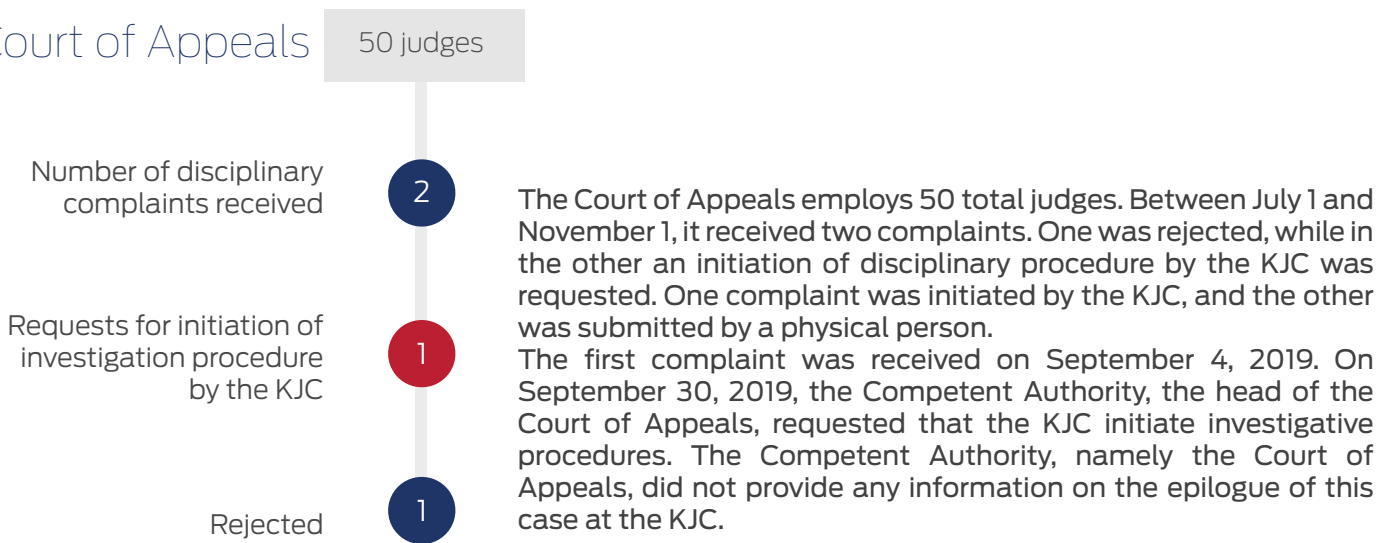


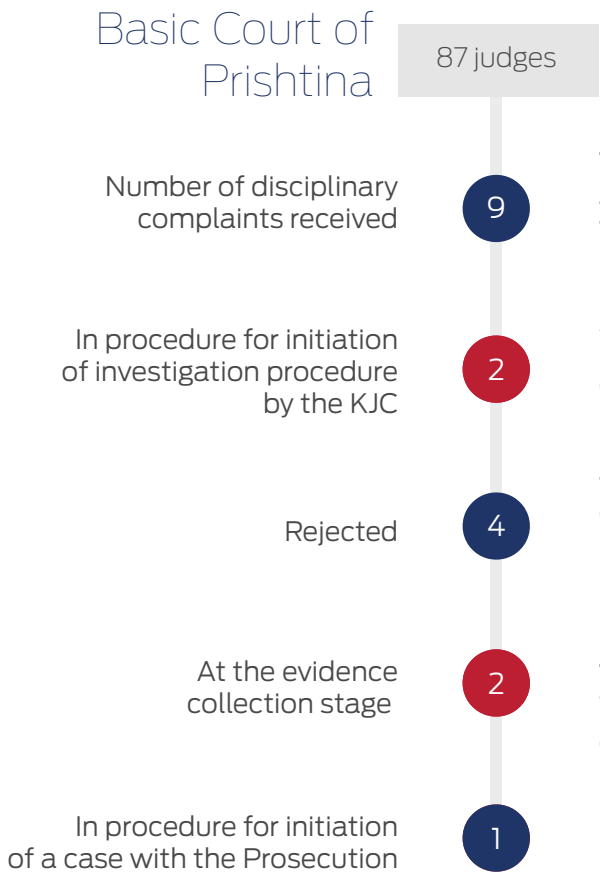
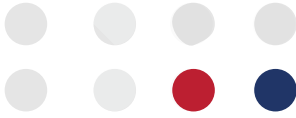
Figure 5:  
Data on disciplinary cases  
at the Court of Appeals between  
July 1 and November 1, 2019

The second complaint was received on September 24, 2019. It was rejected on October 21, 2019 as ungrounded. On October 25, 2019, the complainant was notified, as well as the judge and the KJC. The Court of Appeals did not provide information on when it notified the KJC on having received the complaint, but the complaint was dealt with within the legal deadline of one month.

Paragraph 4 of Article 7 of the Regulation on Disciplinary Liability of Judges stipulates that “In regards to the decision issued, the Competent Authority immediately notifies in writing the party who submitted the complaint, the Council and Ombudsperson when foreseen with the Law”. In this case, it is noted that four days passed after the complaint being rejected, while no information was provided on the date when the Ombudsperson Institution was notified.

<sup>7</sup>Kosovo Assembly, (2018). Law No.06/L-057, Law on Disciplinary Liability of Judges and Prosecutors. Retrieved from: [http://www.kuvendikosoves.org/Uploads/Data/Documents/Ligjinr06L-057\\_5VbMuFW4aw.pdf](http://www.kuvendikosoves.org/Uploads/Data/Documents/Ligjinr06L-057_5VbMuFW4aw.pdf)





The Basic Court of Prishtina has 87 judges overall. Between July 1 and September 1, 2019, nine complaints were submitted to the Basic Court of Prishtina. Out of these, four were rejected. In two cases, procedures to initiate the case at the KJC were made. Two complaints are still at the evidence collection stage, while for one complaint a case is being initiated with the Kosovo Prosecution.

Of the cases presented by the Basic Court of Prishtina, it may be noted that the legal deadline of 30 days for the initial revision of disciplinary cases has not been respected, and there are clear delays in notifying the KJC and the Ombudsperson Institution on the disciplinary complaints received.

Despite BIRN having requested data for the period of September 1 to November 1, 2019, the Basic Court of Prishtina responded only in regards to the first reporting period.

The first complaint was received on July 2, 2019 while on July 12, 2019 the KJC and Ombudsperson Institution were notified about the complaint received. The Competent Authority issued a ruling on September 20, 2019, which was sent to all parties involved on the same day.

Figure 6:  
Data on disciplinary cases at the Basic Court of Prishtina between July 1 and September 1, 2019.

For this case, the Competent Authority did not provide information on the type of ruling issued. However, the fact that no request for an initiation of disciplinary procedure by the KJC or referral to the state prosecution was made likely means that the case was either rejected or dismissed. It may also be noted that the complaint was received on July 2, 2019 and received a ruling on September 20, 2019, surpassing the legal deadline of 30 days.

Furthermore, 10 days passed between the moment the Competent Authority received the complaint and the notification of the Kosovo Judicial Council. Paragraph 2 of Article 4 of the Regulation on Disciplinary Liability of Judges stipulates that “the complaint is received by the Competent Authority or an official authorized by the Competent Authority. The Competent Authority notifies the Council immediately in writing on the complaint received”.<sup>8</sup>

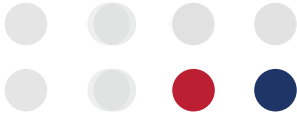
The second complaint was received by the Competent Authority on July 2, 2019 whereas the KJC and Ombudsperson Institution were notified of the complaint on July 12, 2019. The complaint was still in the process of having a request filed for the initiation of a disciplinary investigation at the KJC as of November 20, 2019.

Similarly to the previous case, it may be noted that the deadline foreseen for the notification of the KJC on the complaint received was not respected, while the 30-day legal deadline on reviewing the disciplinary complaint by the Competent Authority was also violated.

The third complaint was received on July 19, 2019, whereas the KJC and Ombudsperson Institution were notified on August 7, 2019, 18 days after the receipt of the complaint. Currently, the complaint is at the evidence collection stage.

<sup>8</sup> Ibid.





The fourth complaint was received on July 15, 2019, while the KJC and Ombudsperson Institution were notified about the complaint received on August 7, 2019.

On November 12, the Competent Authority ruled on the case. However, no response was provided on the type of ruling, but considering that initiation of investigations by KJC was not requested and the case was not referred to the State Prosecution, it may be concluded that the case was rejected or dismissed.

It is clear that the 30-day deadline for the initial review of the complaint by the Competent Authority as stipulated in paragraph 1 of Article 6 of the Regulation on Disciplinary Liability of Judges has been surpassed.

In regards to the third and fourth complaint, there are inconsistencies concerning the number allocated to each complaint.

The Complaint received on July 15, 2019 was registered with chronological number AD/GJTHP/21/19. However, the Complaint received on July 19 2019 was registered with chronological number AD/GJTHP/20/19.

Thus, despite the fact that the Complaint with number 20/19 was received four days after the complaint with no. 21/19, it was registered before the complaint which was in fact received beforehand.

The fifth complaint was received on July 24, 2019, whereas the Competent Authority notified the KJC and Ombudsperson Institution on August 7, 2019 on the complaint received. Despite the fact that 119 days have passed, the complaint was still in the process of being submitted to the KJC as of November 20,2019.

Furthermore, regarding this complaint, the deadline for the notification of the KJC by the Competent Authority on the complaint received was violated as well.

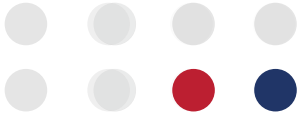
The sixth complaint received on August 9, 2019. The Competent Authority did not provide information on when they informed KJC about the complaint. A decision on the complaint was issued on October 17 2019, however no clarification was provided as to what type of decision it was.

As with the previous cases mentioned, due to no information being available about whether the case was referred to the State Prosecution, or if initiation of disciplinary procedures by the Judicial Council was requested, it is concluded that this case was either dismissed or rejected. However, it may be noted in this case as well that the 30-day deadline for initial review of the complaint was not respected.

The seventh complaint was received on August 15, 2019 and is still in the process of being submitted to the Prosecution due to suspicion of a criminal offence.

Although the Law on Disciplinary Liability and the Regulation on Disciplinary Liability do not define a clear deadline in terms of the time within which the Competent Authority should refer the case to the State Prosecution, a period of three months may be deemed as a delay in treating this specific complaint.





The eighth complaint was received by the Competent Authority on August 27, 2019, and the KJC and Ombudsperson Institution were notified on the complaint on the same day.

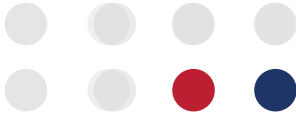
On October 28, 2019, the Competent Authority issued a ruling on the complaint. No details were provided on the type of ruling, but the complaint was not referred to the KJC or the State Prosecutor. In line with the previous cases, it is clear that the deadline of 30 days for initial review of the complaint was not respected.

The ninth complaint was received on August 29, 2019 with the KJC and Ombudsperson Institution notified about the complaint a day later. The case is still at the evidence collection stage, and the 30-day deadline for the initial review of the complaint by the Competent Authority was not respected in this case either.

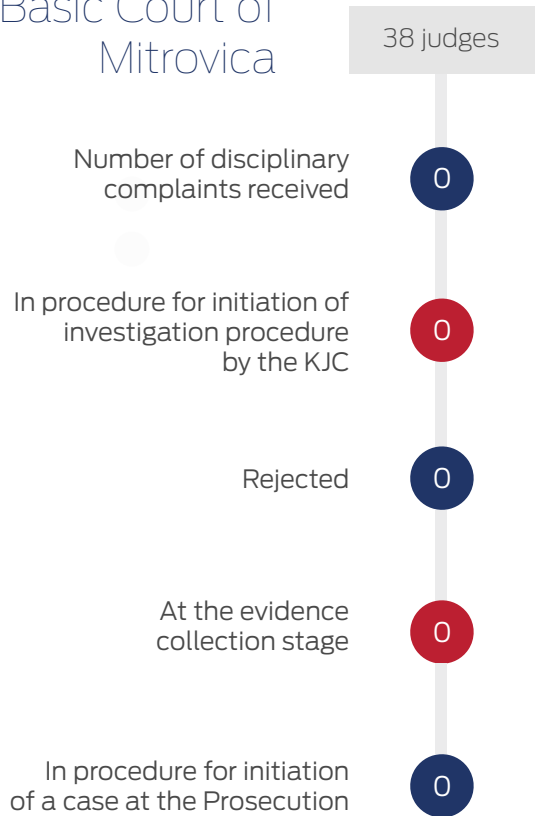
In conclusion, the cases submitted at the Basic Court of Prishtina show that the 30-day deadline for the initial review of disciplinary cases has not been respected, and there have been clear delays in notifying the KJC and Ombudsperson Institution about the disciplinary complaints received.

The Basic Court of Prishtina did not provide any data regarding the rulings issued on disciplinary complaints, thus leaving room to understand the type of ruling only based on potential requests to the KJC for initiation of disciplinary procedure or referral of the cases to the State Prosecutor.





### Basic Court of Mitrovica



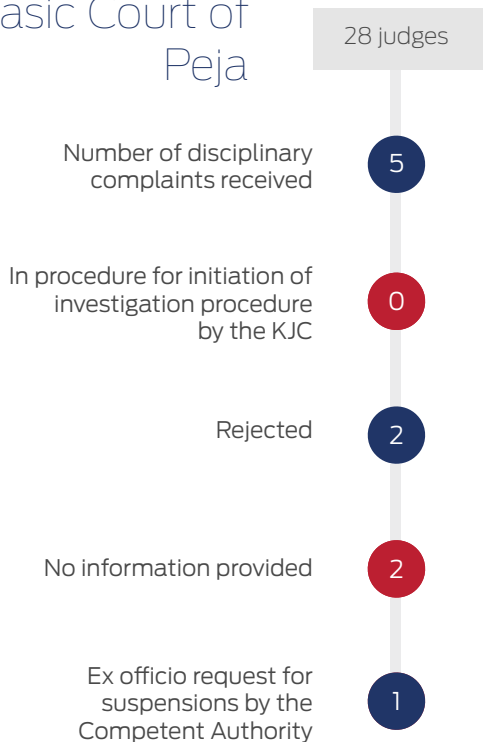
BIRN requested data regarding disciplinary cases and how they were processed at the Basic Court of Mitrovica for the monitoring period. It received a response saying that no disciplinary process against judges occurred between July 1 and November 1.

However, the head of the Court revealed that during this time period, they received three complaints against the work of two judges. However due to the nature of the complaints they did not result in disciplinary procedures.

The head of the Basic Court of Mitrovica, Nikola Kabasic, did not provide any information regarding the basis used in treating these complaints, and whether they were treated per the provisions of the Law on Disciplinary Liability of Judges or not.

Figure 7:  
Data on disciplinary cases at the Basic Court of Mitrovica between July 1 and November 1

### Basic Court of Peja



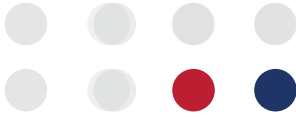
The Basic Court of Peja has 28 judges in total. Between July 1 and November 1, it received five complaints, out of which two were rejected. No information was provided on another two, while in one case, the suspension of the judges was requested ex officio.

The first complaint was received on July 26, 2019. The Basic Court of Peja notified the KJC, despite the complaint having been submitted at the KJC as well. The Competent Authority did not provide any information on what type of ruling was issued regarding the complaint, how the complaint was processed or dates regarding the actions taken.

The second complaint was received on August 6, 2019. In this regard, KJC was notified on the same day, although there is no information available on whether the Ombudsperson Institution was notified or not.

Figure 8:  
Data on disciplinary cases at the Basic Court of Peja between July 1 and November 1.



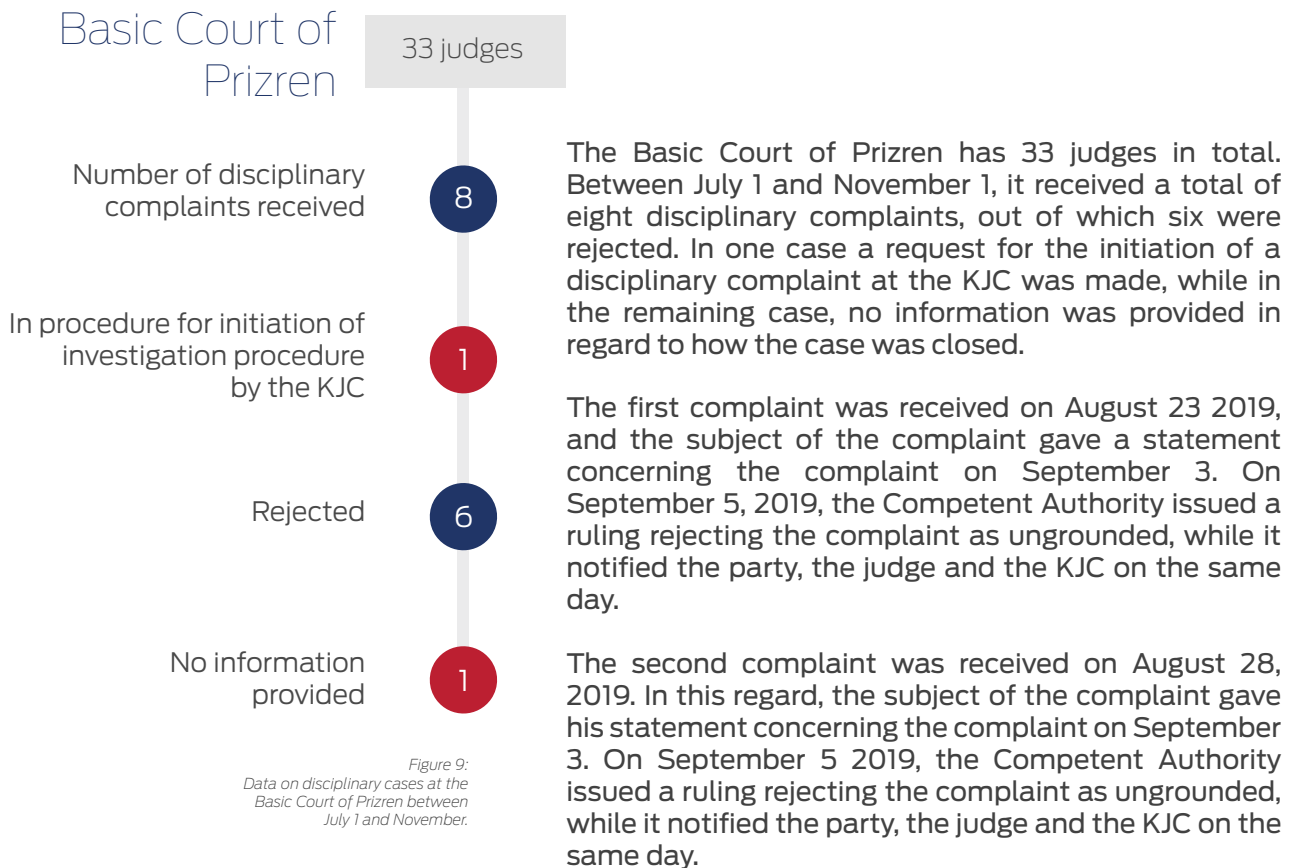


The third complaint was received on September 2, 2019 while the Competent Authority issued a decision rejecting the complaint as ungrounded on September 6, 2019.

The Competent Authority claims that it did notify the parties, the judge and the KJC, however, it did not provide any data on when exactly were they notified.

The fourth complaint was received on September 9, 2019, while the Competent Authority ruled to reject the complaint on the same day.

In the fifth case the Competent Authority requested initiation of investigations and suspension of a judge ex officio. However, it did not provide any additional information on how the case was closed.



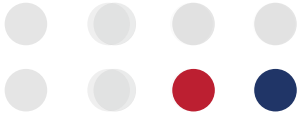
The third complaint was received on August 28, 2019. The subject of the complaint gave a statement on September 2 and the Competent Authority ruled on the complaint on September 5, rejecting the complaint as ungrounded while notifying the party, the judge and KJC on the same day.

The Competent Authority did not request the initiation of investigations at the KJC in any of the cases, and no case was referred to the State Prosecutor.

Regarding the remaining five complaints, the Competent Authority did not provide any data on the dates the complaints were received. Nevertheless it did provide information on the rulings issued by the Competent Authority and the date of issuing these rulings.







Regarding the first complaint made between September 1 and November 1, the ruling by the Competent Authority was issued on October 28 2019, while on the same day it notified the KJC and the Ombudsperson Institution, who in this instance submitted the complaint.

The second complaint in this period was submitted to the KJC on October 14, 2019, together with a dossier. No additional information on how the case was closed was provided.

For the third complaint, the Competent Authority responded that they received a request from the Office of the Disciplinary Prosecutor but they did not clarify the date when the request was received. The Competent Authority requested a statement by the subject of the complaint on October 7, 2019, while on October 12, 2019, the subject of the complaint gave a statement. The case was sent to the KJC with the request to initiate disciplinary procedures on October 14, 2019.

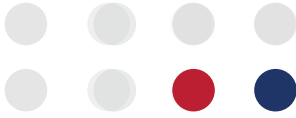
In regards to the fourth complaint, the requesting party was notified on September 30, 2019 that a ruling was made on his request in June 2019 while on June 20, 2019 the complainant and the KJC were informed on the ruling as well. Concerning this case, the Competent Authority did not provide full and accurate information as the date of notifying the requesting party pre-dates the date when the ruling on the complaint was issued.

The fifth complaint was received on September 13, 2019 through the KJC while the subject of the complaint gave a statement on September 27, 2019. The KJC and the complainant were notified on the same day.

Thus, with the exception of the fifth complaint during the second time period, the Competent Authority did not provide even basic data regarding the disciplinary cases received, while data concerning the type of the ruling are lacking, as well as the final information on how the case was closed.

Consequently, it is almost impossible to objectively assess whether deadlines provided in the Law on the Disciplinary Liability of Judges and the Regulation on the Disciplinary Liability of Judges were respected.





### Basic Court of Ferizaj

24 judges

- Number of disciplinary complaints received
- In procedure for initiation of investigation procedure by the KJC
- Rejected
- No information provided



The Basic Court of Ferizaj has 24 judges overall. Between July 1 and November 1, 2019, it received one disciplinary complaint. The case was rejected.

During the monitoring period, there was only one disciplinary case. This complaint was received on August 5, 2019 by the Ombudsperson Institution, who delegated competencies on the case alleging disciplinary violations to the Basic Court of Ferizaj.

In this regard, the Competent Authority notified the KJC on August 22, 2019 on the received complaint. On August 23, 2019 a written statement by the judge was received. The complaint was rejected as ungrounded.

The complaint was rejected on August 28, 2019.

Figure 10: Data on disciplinary cases at the Basic Court of Ferizaj for the period of 1st July to 1st November

Regarding this case on which only partial information was provided, it may be noted that the legal obligation on immediate notification of the KJC on complaints received was not respected, while no data was provided on how the case was closed.

### Basic Court of Gjilan

29 judges

- Number of disciplinary complaints received
- In procedure for initiation of investigation procedure by the KJC
- Rejected
- No information provided



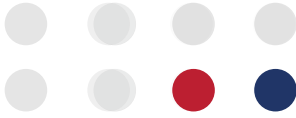
IRN and FOL, through USAID/JSSP support, held the “Enhancing the Transparency of the Judiciary” conference on December 12, 2019, where the initial monitoring data on disciplinary procedures against judges were presented. During the conference, the head of the Basic Court of Gjilan, Mr. Ramiz Azizi, committed to send the data on disciplinary cases.

As a consequence, BIRN received the data from the Court of Gjilan on December 30, 2019. According to the data provided, between July and November 2019 the Basic Court of Gjilan received four disciplinary complaints in total, all of which were rejected. This Court has 29 judges overall.

The Basic Court of Gjilan provided data on the dates of rejection and dates of notification of parties in all these cases. However, it did not provide information on when the complaints were received.

Figure 11: Data on disciplinary cases at the Basic Court of Gjilan between July 1 and November 1.





The first complaint was rejected on July 1, 2019; the second September 20, the third on October 29 and the fourth on October 31. The parties were notified on the same day the rejection was ruled on for all the aforementioned cases.

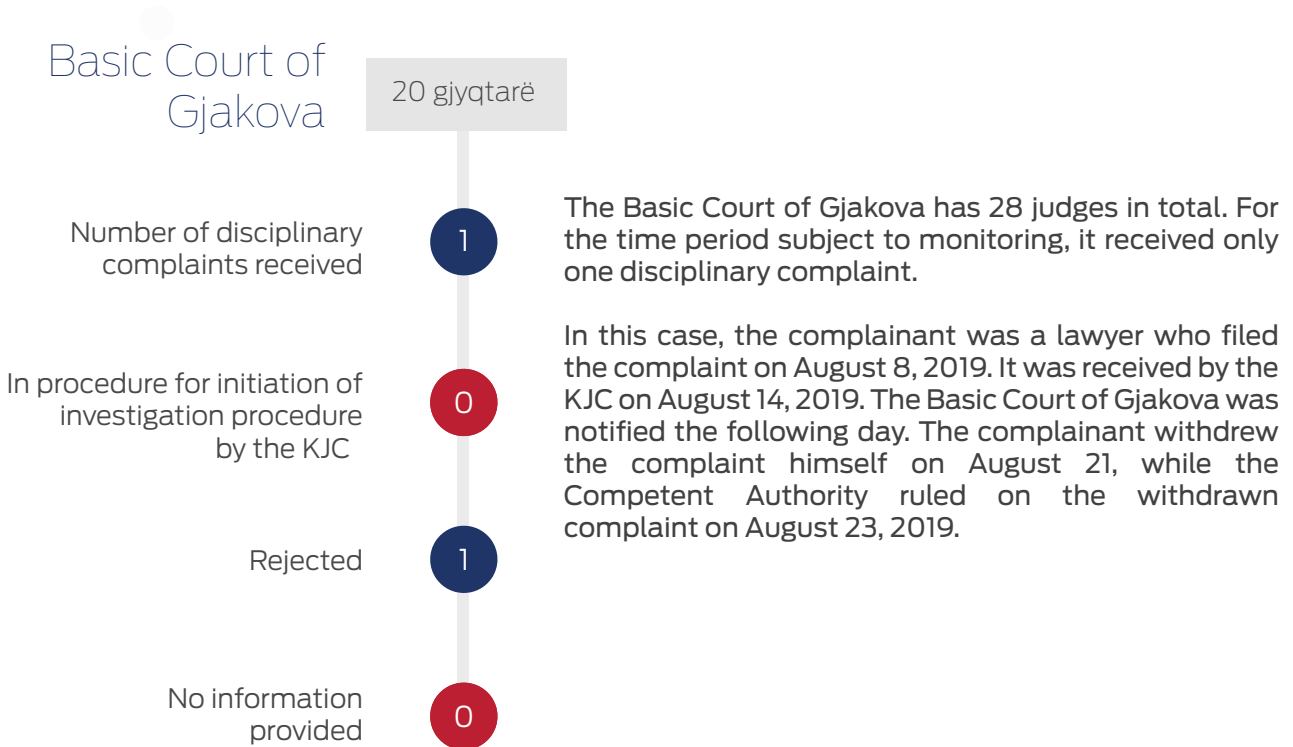
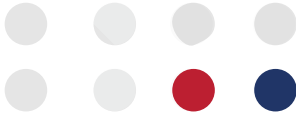
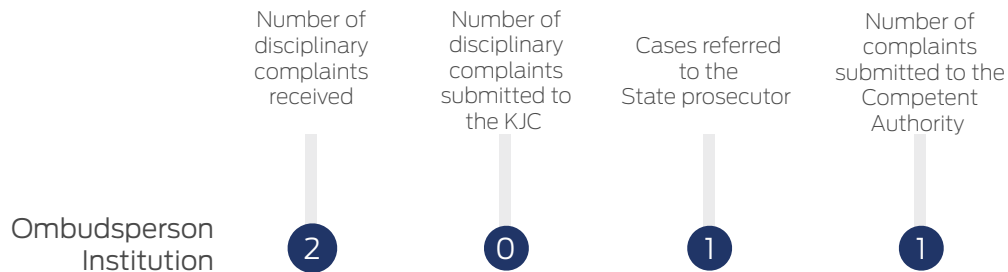


Figure 12:  
Data on disciplinary cases at the  
Basic Court of Gjakova between  
July 1 and November 1, 2019.





## Ombudsperson Institution



1st July – 1st September 2019

Figure 13: Overall data by the Ombudsperson Institution for the period covering 1st July to 1st September



1st July – November 2019

Figure 14: Overall data by the Ombudsperson Institution for the period covering 1st July to 1st November

Between July 1 and September 1, the Ombudsperson Institution received two complaints against judges

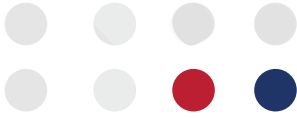
One of which was referred to the Competent Authority, while the other was sent to the state prosecutor.

**The first complaint** – was received on July 24 2019. On July 31, the Ombudsperson Institution submitted the complaint to the Competent Authority at the Basic Court of Ferizaj. The Ombudsperson received a response from the Court on August 28 2019.

**The second complaint** – was received on August 16, 2019. On August 20, 2019, the Ombudsperson submitted the complaint to the Competent Authority, a request, in writing, to the Basic Court of Prishtina. The Basic Court of Prishtina responded on September 18 2019.

According to this data, it is noted that the Ombudsperson was notified within the legal deadline (30 days) by the Competent Authority about both complaints received.





Between September 1 and November 1, the Ombudsperson received two complaints

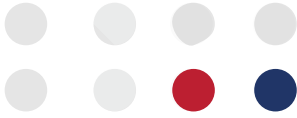
Both were filed by physical persons and neither were dismissed. None of the cases was sent to the KJC nor referred to the State Prosecutor.

**The first complaint** – was received on September 9, 2019. The Ombudsperson sent the complaint to the Head of the Basic Court of Mitrovica on 12 September 2019. The Ombudsperson received a response on September 23, 2019.

**The second complaint** – was received on September 30, 2019 while the Ombudsperson sent the complaint to the head of the Basic Court of Prizren on October 2, 2019. The Ombudsperson received a response by the Court on October 29.

The Ombudsperson was notified within the legal deadline (30 days) by the Competent Authority on both complaints received.





## The new Law on Disciplinary Liability of Judges

### Shortcomings of the Law

Law 06/L- 057 on Disciplinary Liability of Judges and Prosecutors was published in the Official Gazette of the Republic of Kosovo on December 26, 2018, entering into force 15 days later.

The law aimed to create an independent, efficient and accountable judicial system. At the same time, it aimed to eliminate the proven shortcomings in treating disciplinary issues against judges of the Republic of Kosovo.

Furthermore, the law defines actions that constitute disciplinary violations while also defining standard procedures and basic principles of undertaking disciplinary investigations against judges.

The Law regulates the initiation of a disciplinary case, deadlines for undertaking disciplinary actions, the statutory limitation of disciplinary violations, criteria for initiating investigations, criteria for closing investigations, establishing investigative panels, their work, decision making at the Kosovo Judicial Council regarding disciplinary cases, and the legal means that may be used against Kosovo Judicial Council decisions.

The new Law constitutes an in-depth and essential reform in the disciplinary processes against judges when compared to previous procedures that stipulated a special role for the Office of the Disciplinary Prosecutor.

With the new Law, a crucial role is assigned to the Competent Authority which means that the heads of Court will now serve as the first filter of disciplinary complaints and as the initiators of requests at the Council for the initiation of disciplinary procedures.

Despite the positive changes brought upon by the new Law, at least one crucial matter remains unregulated.

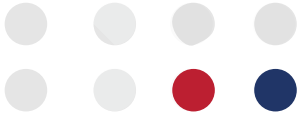
Article 9 of the Law, which defines the Competent Authority where a complaint may be filed against a judge, provides no address for complaints against Kosovo Supreme Court judges.

It stipulates that complaints against judges of Basic Courts may be initiated to the head of the Basic Court, complaints against judges of the Court of Appeals are submitted to the head of the Court of Appeals, complaints against the heads of the Basic Courts and the head of the Court of Appeals are submitted to the Head of the Supreme Court, and complaints against the head of the Supreme Court are initiated to Kosovo Judicial Council.

However, it is not stipulated where complaints against judges of Kosovo Supreme Court can be sent.

While a logical interpretation and analogy makes us conclude that similar to judges of the Basic Courts and the Court of Appeals, for which it is clearly stipulated that complaints are initiated to the head of the Court, in regards to the Supreme Court, this is not stipulated explicitly anywhere, creating a gap and a serious omission by the parties responsible for drafting the law.





## Violation of confidentiality of procedure

On its 222nd meeting held on July 31, 2019, the KJC ruled on establishing an Investigative Panel against a judge.

However, when the KJC published the ruling to establish the investigative panel on its official website, it published the name of the judge (the subject) against whom the Investigative Panel was being established.

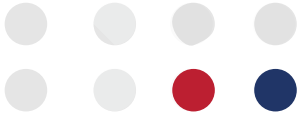
The name of the judge was also revealed in the link where the decision was published, which read: "Decision No.179.2019. on the Establishment of the Investigative Panel in the case of Sylë Lokaj."

Through this, the KJC violated article 3 (Principles of Disciplinary Liability) of the Regulation on the Disciplinary Liability of Judges and Prosecutors, respectively paragraph 1, sub-para. 1.2. "The principle of official secrecy", where it is stated that "the Head of the Court, the authorized official and judges members of the investigative panel are obliged to maintain confidentiality and not to share in private or public (confidentiality) regarding the disciplinary procedure until the decision on the imposition of disciplinary measure against the judge becomes final."

In this specific case, despite the mistake on the KJC website being corrected, the erroneous decision is still available and consequently the judge who is the subject of disciplinary liability is identifiable.

Such cases clearly hinder the Law on the Disciplinary Liability and harm the entire disciplinary process.



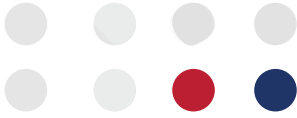


## Recommendations

- The Competent Authority must comply with the provisions of the Law on Disciplinary Liability of Judges and Prosecutors, and the KJC Regulation on Disciplinary Liability in regards to the initial reviewing of received complaints;
- The Competent Authority must keep full physical and electronic data registers on complaints, while statistical data should be published on the KJC web portal, as was the practice before with the Office of the Disciplinary Prosecutor.
- Supplementing/Amending the Law on the Disciplinary Liability of Judges and Prosecutors should be initiated in order to remedy the omissions in the law related to addressing the complaints.
- The Law on Disciplinary Liability of Judges and Prosecutors should foresee the possibility of suspending judges in other cases, and not only be limited to criminal offences;
- The Competent Authority should comply with the provisions of the Law on Disciplinary Liability of Judges and Prosecutors, and the KJC Regulation on Disciplinary Liability, regarding the deadline within which disciplinary complaints must be reviewed, as well as for the deadlines foreseen on informing the KJC about complaints received;
- The Competent Authority should also comply with the Law in regards to informing the Ombudsperson and the party in the procedure who filed the complaint on the decision issued;
- A significant increase in the levels of caution should be exercised by the KJC and the Competent Authority when treating disciplinary cases, especially concerning violations of the principle of confidentiality during procedures. Disclosing the identity of the subject in procedure before a decision is final, as has happened with a case noted in this report, should be avoided at all costs;
- The KJC and the Competent Authority must show a higher level of willingness to provide statistical information on the procedures and the efficiency of disciplinary cases.
- The KJC must take the necessary steps in deactivating the current web page of the Office of the Disciplinary Prosecutor, in order to not cause confusion to the parties which may file complaints through this institution that has ceased to exist.







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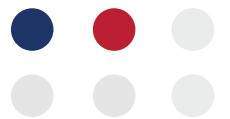
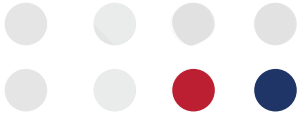
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Janar, 2020

