A background on the Kosovo Rule of Law System

Kosovo is a post-conflict country that became independent in 2008. The country is still building the capacities of the prosecutorial and judicial system. In 2004, Kosovo transitioned from an inquisitor system towards a hybrid between civil & adversarial system. In 2015, the international community relinquished control of the judicial system to Kosovar government. Currently, during the investigation stage, the prosecution must seek judicial orders for most extraordinary investigation measures, similar to the U.S. system. Once a case is charged by indictment, a trial court is appointed. For any case involving potential punishment of less than 10 years, a single judge panel is appointed. Where the charges involve potential punishment exceeding 10 years, a three-judge panel is selected. There is no jury system. The majority of the evidence is submitted by the prosecutor prior to trial, and only live witnesses are called during the trial stage. During a trial, the judges are permitted to ask questions and guide the trial; in other words, the judges are more active during trial than in the typical U.S. trial. After the Court decides a case, both the defense and the prosecution have the right to appeal, including any sentence rendered, to the Appellate Court. The Appellate Court is comprised of a three-judge panel. Kosovo also has a Supreme Court, which has no authority to reverse an Appellate Court decision if their ruling would be to the detriment of a defendant, but only issue a ruling on whether there was an error committed. Finally, there is a Constitutional Court that decides issues involving the constitution. Kosovo has approximately 200 prosecutors lead by a Chief State Prosecutor, and overseen by a Prosecutorial Council, and approximately 450 judges overseen by a Judicial Council.

Sentencing related issues in Kosovo
For the last decade, local and international criticism of Kosovo’s justice system focuses on sentencing practice in general and more specifically disparities in treatment and insufficient reasoning provided for the sentences imposed. OPDAT worked with the Supreme Court of Kosovo to draft Sentencing Guidelines to address these concerns. These recently passed Guidelines provide a detailed explanation and clarification of the existing provisions of the criminal law as well as identifying and offering solutions to some of the practical problems to improving uniformity in sentencing by establishing a “uniformity in approach.” The Guidelines are currently not binding on courts but strongly emphasize that departures should be particularly scrutinized by reviewing courts, similar to the U.S. Federal system. The ultimate goal is to avoid unwarranted disparity and maintain discretion through a structured judicial framework of principles that is clear, concise and established in advance. The Guidelines also contain examples and references to the case law of international courts and tribunals on application of the individual circumstances of defendants and a comprehensive explanation of the application of aggravating and mitigating factors available in the Criminal Code. Currently pending amendments to the Criminal Procedure Code will introduce a “Sentencing Hearing.” This is an unknown practice in the past and the justice system lacks any an understanding of this concept.

Overall, Kosovo is at the early stages of setting up a more refined sentencing system and procedure that places significantly greater importance on the sentencing process. Generally, support among the judiciary, prosecutors and the defense bar are strong and positive.

Establishment of a Sentencing Commission
A Sentencing Advisory Commission was established mid-2018. The Commission evaluates current sentencing policy, develops annual revisions and identifies areas of sentencing that are particularly problematic and require additional guidance. The Commission is comprised of seven members (representatives from courts, prosecution, defense bar and Justice Academy) and is supported by two legal staff who are mainly working on analyzing Court decisions.

Study Visit to Minnesota
The delegation is comprised of members of the Commission, Commission staff, one academic, two additional prosecutors and DOJ/OPDAT staff from Kosovo and D.C.
STUDY VISIT PARTICIPANTS BIO

1. Lana Owens is a Resident Legal Advisor with the Overseas Prosecutors Development and Assistance (“OPDAT”) at Embassy Pristina. Prior to joining OPDAT, Lana served as an Assistant United States Attorney in the Central District of California, Los Angeles for 11 years. As a prosecutor, Lana specialized in human trafficking, complex fraud, violent and organized crime, narcotics offenses, and crimes against children prosecutions. For the past two years, Lana has worked as the Human Trafficking Coordinator where she trained prosecutors, local and federal law enforcement, and NGO staff on optimal human trafficking investigation and prosecution techniques. Lana earned her law degree from University of California, Berkeley in 2004. After graduation Lana clerked for United States District Court Judge, Ronald S.W. Lew. Lana practiced white collar criminal defense for several years at Latham and Watkins, LLP.

2. Benina Kusari – OPDAT Kosovo Legal Specialist
Benina Kusari is a Legal Specialist and has been working for the Embassy since March 2010. Prior to joining the Mission, Benina worked for OSCE Kosovo Verification Mission, UNMIK, and the IJPC on appointment of judges and prosecutors. She has a Bachelor and Master Law degree from the University of Pristina. Her portfolio includes the Kosovo Prosecutorial Council, the Forum of Women Judges and Prosecutors, legal reform, sentencing, victim's issues, etc. She is a certified Trial Advocacy Trainer. Benina has published her book on Victims’ rights as State Obligation. She is also the co-drafter of the Domestic Violence Bench-book for judges and prosecutors and the Kosovo Sentencing Guidelines. She is married and has two daughters and a son.

3. Enver Peci – President of the Supreme Court of Kosovo and member of Kosovo Sentencing Commision
Mr. Peci has been appointed President of the Supreme Court since 2017. Previous experience includes: Chairman of Kosovo Judicial Council from 2010 to 2016, Judge at the Supreme Court, Judge at the Appellate Court and Municipal Court of Mitrovica from 2001 to 2010. From 1987 until 1992, he worked as a judge at the Municipal Court in Mitrovica, and from 1993 to 2000, he worked as a lawyer. Since 20014 Mr. Peci has been a trainer at the Kosovo Judicial Institute.

4. Agim Maliqi – Judge at the Supreme Court of Kosovo and member of Kosovo Sentencing Commission
Mr. Maliqi has been appointed as a judge at the Supreme Court of Kosvoa since 2018. On July 2008, he was appointed judge in the Municipal Court of Ferizaj, also served as Vice President of this court. During 2011 - 2016, Mr. Maliqi was a member of the Kosovo Judicial Council and served for 2 years as Vice-Chairman of the Kosovo Judicial Council.
5. Aferdita Bytyqi – President of Basic Court in Prishtina and member of Kosovo Sentencing Commission
Ms Bytyqi has been appointed President of Basic Court in Prishtina since 2016. In 2010 Bytyqi was appointed judge in the Municipal Court of Prishtina, where she worked until 2012, in 2013 she was appointed judge in the Department of Serious Crimes at the Basic Court of Pristina. In 2014 she finished her postgraduate studies in the field of criminal law and received her LLM.

6. Burim Ademi – Judge of the Special Department/Appellate Court
Judge Ademi has recently been appointed as Appellate Judge in the Special Department. From January 15, 2015 Mr. Ademi was appointed judge in the Serious Crimes Department, a position he held until he was appointed to the Appeal on 01.07.2019. Previous experience includes: Legal Officer at the Ministry of Justice - Legislative Drafting from 2007 – 2010, associate in a Law firm, from 2010 to 2012. He was member of the working group drafting the Kosovo Sentencing Guidelines.

7. Skender Çoçaj – Chair of Kosovo Judicial Council
Mr. Çoçaj has been appointed Chair of Kosovo Judicial Council since March of 2019. Previous experience: In 2010 he was appointed as a judge in the Municipal Court of Prizren where he worked until 2013. From November 2014, he was appointed as a Judge at the Department of Serious Crimes of the Basic Court in Prizren, a position he still holds. Since June 2016 he is a member of the KJC. He was member of the working group drafting the Kosovo Sentencing Guidelines.

8. Bahri Hyseni- Chair of Kosovo Prosecutorial Council
Member of the KPC since January 2016. Works as prosecutor in Ferizaj. He holds a PHD title in Criminal Law. Previous experience includes: Advisor to the Minister of Justice (2013); Member of the Kosovo Assembly (2007-2011) where he was also the head of the Assembly’s Legislative committee; Member of the Kosovo Judicial Council (2008); Mayor of Shterpce; Permanent Secretary of the Public Services Ministry (2002-2005) etc. He currently serves Chair of the KPC.

9. Agron Qalaj – Prosecutor in the Office of Chief State Prosecutor
Mr. Qalaj currently serves as prosecutor in the Office of Chief State Prosecutor. He works as prosecutor since 2003 and for 4 he served as Chief Prosecutor for Ferizaj Basic Prosecution Office. Mr. Qalaj holds an LLM from Wake Forest University in North Carolina. He is also a certified Trial Advocacy Trainer.
10. Xhevdet Halili- Criminal Law Professor

Mr. Halili works as Criminal Law and Criminal Policy Professor at Pristina University. He finished his LLM in Ohio Northern University in U.S. He has several publications on the criminal justice. He has several publications on Smuggling of human beings; Human trafficking; Control, identification and use of police force etc. Previously he worked as Advisor in the Office of Prime Minister and as Police Inspector.

11. Jeton Zymeri - Legal officer at the Supreme Court of Kosovo

Mr. Zymeri works as a legal officer at the Supreme Court of Kosovo from 07.02.2019. Previous work experience: From 10.05.2013 until 06.02.2019 Mr. Zymeri worked at the Municipality of Lipjan as an Legal Officer for property and legal issues. He is currently finishing his master’s degree at the University of Pristina. He is currently also supporting the work of the Kosovo Sentencing Commission.

12. Nita Lumezi – Legal officer at the Supreme Court of Kosovo

Miss Lumezi works as a legal officer at the Supreme Court of Kosovo. Previous work experience: intern at Kosovar Civil Society Foundation and the Office of the Prime Minister of Kosovo. She is currently finishing her master's degree in criminal law at the University of Pristina.

13. Brittany Garcia- OPDAT Program Analyst

Brittany Garcia currently serves as a Program Analyst for OPDAT’s justice sector development programs in Central and Eastern Europe, Eurasia, and the Near East. In this capacity, she coordinates with OPDAT Resident Legal Advisors and Legal Specialists to strengthen the prosecutorial and judicial capacity of partner countries. Prior to joining OPDAT, Brittany worked in the Office of Professional Responsibility in the Court Services and Offender Supervision Agency for DC, assisting in the investigations of employee misconduct allegations. She holds a Master of Arts in International Affairs degree from The George Washington University.