

ANNEX IV JUSTICE SYSTEM

Article 1 Court Structure

1.1 The Supreme Court shall ensure the uniform application of the law by deciding on appeals brought in accordance with the law. At least fifteen per cent (15%) of the judges of the Supreme Court, but in no case fewer than three (3) judges, shall be from Communities that are not in the majority in Kosovo.

1.2 At least fifteen per cent (15%) of the judges of each District Court, but in no case fewer than two (2) judges, shall be from Communities that are not in the majority in Kosovo.

1.3 If there is no basic court on the territory of one of the new municipalities established pursuant to Annex III, that municipality may, by decision of the Municipal Assembly, submit a request to the Kosovo Judicial Council (KJC) for a decision on the establishment of a basic court within its territory, or for one of the existing basic courts on the territory of another municipality to have jurisdiction for the territory of the new municipality. An existing municipality, where the majority of the population belongs to a Community that is not in the majority in Kosovo and which does not have a basic court of its own, shall have the same right.

1.3.1 The KJC shall grant such requests unless, in the case of a request for a new basic court, the weighted caseload for that jurisdiction would be insufficient to justify the existence of a separate court.

1.3.2 If a request for the establishment of a new basic court is granted by the KJC, the competent authorities shall take all necessary measures to ensure that any new court is established and functioning within a period of six months from the date of the decision.

1.3.3 If a request for the establishment of a new basic court is not granted by the KJC, or if the municipality requests an existing court to have jurisdiction for its territory, the competent authorities shall take all necessary measures to improve access to justice for local communities made difficult by reason of geographical isolation, lack of security or other relevant factors. Such measures may include the establishment in the territory of the new municipality of a Department of an existing basic court that the new municipality has requested have jurisdiction for its territory, or provide for the holding of sessions in the territory of the new municipality of this basic court.

Article 2 Judges and Prosecutors

2.1 The composition of the judiciary and the prosecution service shall reflect the ethnic diversity of Kosovo and the need for equitable representation of all Communities, having due regard for internationally recognized principles of gender equality, as reflected in the human rights instruments referred to in Article 2 of Annex I of this Settlement.

2.2 Kosovo judicial institutions shall, in particular, reflect the ethnic composition of their area of jurisdiction. The Kosovo Judicial Council shall take such measures as are necessary with a view to increasing the number of judges and prosecutors from Kosovo Communities that are currently underrepresented among judges and prosecutors serving in Kosovo or in any part thereof.

2.2.1 To fulfill its responsibilities to this end, the KJC shall, *inter alia*, give preference, among equally qualified applicants for service as judges or prosecutors, to members of underrepresented Communities.

2.2.2 The preference for equally qualified candidates from underrepresented Communities shall apply as long as the percentage of judges and prosecutors who are members of Communities that are not in the majority in Kosovo is below 15%, and/or the percentage of judges and prosecutors who are members of the Kosovo Serb Community is below 8%.

Article 3 The Judicial and Prosecutorial Appointment Process

3.1 The on-going, one-time, comprehensive, Kosovo-wide review of the suitability of all applicants for permanent appointments, until the retirement age determined by law, as judges and public prosecutors in Kosovo (the "Appointment Process"), shall continue to be carried out in accordance with Administrative Direction 2006/18¹ and shall not be affected by the termination of UNMIK's mandate or the entry into force of the new Constitution, as set forth in Article 14 of this Settlement, except to the extent provided for in this Annex.

3.1.1 All successful candidates who have been appointed or reappointed as judges and prosecutors by the SRSG as part of the Appointment Process shall continue to serve in their posts until the natural expiration of their appointment, or until such time as they are dismissed in accordance with law.

3.1.2 Following the termination of UNMIK's mandate, as described in Article 14 of this Settlement, the Independent Judicial and Prosecutorial Commission (IJPC) shall submit recommendations on candidates for appointment or reappointment as judges and prosecutors in writing to the Kosovo Judicial Council (KJC), which shall exercise final authority to propose to the President of Kosovo candidates for appointment or reappointment as judges and prosecutors.

3.1.3 All successful candidates who have been appointed or reappointed as judges and prosecutors by the President of Kosovo on the proposal of the KJC as part of the Appointment Process shall continue to serve in their posts until the natural expiration of their appointment, or until such time as they are dismissed in accordance with law.

3.2 At the conclusion of the transition period provided for in Article 14 of this Settlement, the composition of the KJC, and its procedures in the Appointment Process regarding the selection of judges for judicial positions that are reserved for members of Communities that

¹ Implementing UNMIK Regulation No. 2006/25 on a Regulatory Framework for the Justice System in Kosovo.

are not in the majority in Kosovo, shall be established and carried out in accordance with the provisions of Article 4 of this Annex.

Article 4 The Kosovo Judicial Council

4.1 There shall be a Kosovo Judicial Council (KJC) responsible, *inter alia*, for decisions on the proposal of candidates for judicial office, promotion and transfer of judges and, for disciplinary proceedings against judges. The powers and procedures of the KJC, including on matters related to the discipline and dismissal of its own members, shall be determined by law. The KJC shall have full independence in the performance of its functions.

4.2 The KJC shall be composed of thirteen (13) members.

4.2.1 Among those thirteen, five (5) members shall consist of the Kosovan members of the IJPC who have been vetted by the IJPC as part of Phases 1 and 2 of the Appointment Process, in accordance with Administrative Direction 2006/18. Of these five members, one (1) judge and one (1) prosecutor, randomly selected, shall serve on the KJC until the natural expiration of their existing mandates, at which time they shall be replaced by one (1) judge and one (1) prosecutor vetted by the IJPC and elected by their peers following methods intended to ensure the widest representation of the judiciary and prosecutorial service. The remaining two (2) judges and one (1) prosecutor, from among the five Kosovan IJPC members, shall serve on the KJC for an additional one (1) year term after the natural expiration of their existing mandates, at which time they shall be replaced by the same procedure as their former IJPC colleagues. In the event that an entity responsible for matters related to the appointment, disciplining and dismissal of prosecutors were established, all five remaining members of the KJC shall be judges.

4.2.2 Among the remaining eight members, two (2) members shall be elected by the Kosovo Assembly members holding seats reserved or guaranteed for representatives of the Kosovo Serb Community, two (2) members shall be elected by the Assembly members holding seats reserved or guaranteed for representatives of other Communities, and two (2) members shall be elected by the Assembly members holding seats attributed during the general distribution of seats. In each case, at least one of the two members shall be a judge vetted by the IJPC. Two (2) international members, one of whom shall be a judge, shall be selected by the ICR on the proposal of the ESDP Mission.

4.2.3 All members of the KJC shall possess the relevant professional qualifications and expertise necessary for the work of the KJC.

4.3 Candidates for judicial positions that are reserved for members of Communities that are not in the majority in Kosovo, may only be nominated for appointment by the entire KJC by the majority of the KJC members elected by the Assembly members holding seats reserved or guaranteed for members of Communities that are not in the majority in Kosovo. If this group of KJC members does not nominate a candidate for a position at two subsequent sessions of the KJC, all KJC members shall have the right to nominate a candidate for these judicial positions. Such candidates shall be drawn from qualified applicants who have met all the criteria provided for by law.

4.4 Candidates for judicial positions within basic courts the jurisdiction of which includes, exclusively, the territory of one or more municipalities where the majority of the population belongs to the Kosovo Serb Community may only be nominated for appointment by the entire KJC by the two KJC members elected by the Assembly members holding seats reserved or guaranteed for the Kosovo Serb Community acting jointly and unanimously. If these two members do not nominate a candidate for a position at two subsequent sessions of the KJC, all KJC members shall have the right to nominate a candidate for these judicial positions. Such candidates shall be drawn from qualified applicants that have met all the criteria provided for by law.

4.5 No judge may be dismissed or transferred against his/her will to another post unless upon proposal by the KJC in accordance with the Constitution and the law. A judge dissatisfied with such a decision shall have the right of appeal to the Supreme Court.