



POLICY PAPER

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IMPUNITY IN KOSOVO: THE FIGHT AGAINST HIGH PROFILE CORRUPTION

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Table of Contents

I. Introduction	1
II. The EU requirements for Kosovo in the fight against high profile corruption	2
III. A variety of laws, policies and mechanisms to fight corruption.....	4
IV. Current state of affairs in the fight against corruption: Investigation, prosecution and conviction of corruption cases.....	9
a) The prosecution and investigation of corruption cases:.....	9
b) Handling of corruption cases:.....	11
c) Investigation and indictment of corruption cases:	11
d) Adjudication of corruption cases by Courts.....	13
V. Intentional delays in handling of High Profile Corruption: The Prescription of Corruption Offences	14
VI. Investigation and confiscation of wealth in cases of high profile corruption.....	16
VII. Conclusion and Recommendations	20
VIII. Annex.....	22

I. Introduction

Almost a decade from declaring its independence Kosovo continues to struggle with becoming a functional state. Following the new government election in December 2014, Kosovo underwent massive numbers of its citizens migrating illegally to EU member states. EUROSTAT reports that only in the first months of 2015 there were 50 000 asylum seekers from Kosovo to EU member states with the number falling in the second quarter of 2015 to 10 000 (EUROSTAT News release 163/2015).

Further, the political polarisation in between the current PDK and LDK led government (Kosovo Democratic Party and Democratic League of Kosovo and) and the opposition parties (Self-Determination Movement, Alliance for Future of Kosovo and Nisma) has been obstructing the functioning of the Kosovo Assembly regular sessions as of September 2015. Blocked by teargas thrown by few Kosovo opposition MP's, the coalition in power responded with arrests of these MP's or holding of sessions in other venues of the Assembly building by not allowing opposition MP's to attend.

The efforts of the opposition parties against the coalition in power erupted in further stringent means used and violent protests in order to end the existing coalition following the 2014 Kosovo Constitutional Court decision. The Court ruled that the right to form the new government after June national elections of 2014 is given only to the political party which has won the majority of votes.¹ The decision ended any hopes for post electoral coalitions by non-majority parties. After 6 months of institutional deadlock the LDK left suddenly the post-election coalition with Nisma, VV and AAK, forming a new government in December 2014 with PDK. The election of the PDK and LDK government resonated a similar coalition that Kosovo had gone through from 2007-2010. It further ended hopes for Kosovo citizens for any change amidst growing dissatisfaction due to lack of economic development and allegations of high corruption.

The political situation exacerbated further with the continuation of the violent protests organised by the opposition parties against the Kosovo government agreements with Serbia on the right of Serb Majority Municipalities to form an Association. In a decision issued in December 2015, the Kosovo Constitutional Court found the Association not “fully compliant” with Kosovo constitution standards on human rights and principles of diversity.² The decision failed to ease the political tensions in between government and opposition parties. In spite of the decision of the Constitutional Court, the opposition parties have continued to use teargas to obstruct Assembly of Kosovo work insisting for new elections. Yet, the coalition in power remains determined to stay in power, by managing the fragile peace with heavy police forces.

¹ See Constitutional Court ruling Nr. KO119/04 available at http://www.gjk-ks.org/repository/docs/gjk_ko_119_14_shq.pdf

² See Constitutional Court ruling Nr. KO130/15 available at http://www.gjk-ks.org/repository/docs/gjk_ko_130_15_shq.pdf

Under the ‘stability’ mantra supported also by the international community and amidst ‘instability’ promoted by the Kosovo opposition, Kosovo’s development as a functional state continues to be fragile. In the midst of these political factors, Kosovo judicial system is far-off from delivering on the EU requirements to end impunity for high profile corruption and delivering results in the fight against organised crime. In December of 2015 Kosovo was evaluated to have failed in implementing 8 criteria’s out of 95 in the third and final report of the EU Commission for Kosovo. Stuck in a limbo between the political instability and lack of willingness by the EU member states to deliver politically on the free visa regimes for Kosovo citizens, the EU perspective for Kosovo remains blurry. Differently, political instabilities have not been an obstacle for the EU to deliver on Ukraine’s and Georgia’s citizens free travel within the EU, expected to move freely during 2016.

In the current political climate, corruption in Kosovo is tagged by the EU progress report of 2015 as “endemic” and ending high profile corruption seems far from reality. Characterised with selective justice and political appointments including in public boards and enterprises it continues to lag behind in delivering the rule of law requirements as conditioned by the EU. Kosovo is still challenged in delivering on viable and sustainable results by creating independent, autonomous and well balanced justice system, especially in cases of high profile corruption.

II. The EU requirements for Kosovo in the fight against high profile corruption

With majority of the EU criteria’s fulfilled by Kosovo, the fight against high profile corruption and the effective confiscation of inexplicable wealth remains an outstanding criteria to be fulfilled as a matter of priority.³ An ambitious requirement for short-term delivery, the report leaves aside the verification of the wealth of public officials as required by the initial Visa Liberalisation Roadmap agreement with Kosovo.⁴ The report also requires transferring a number of judges and additionally supporting staff across Kosovo serious crime departments and building of a track record of investigations, final court rulings and confiscations in serious organised crime and corruption cases. Notably the report requires that the Central Coordinator for serious organised crime and corruption is provided with the mandate and also the resources to lead multidisciplinary teams of financial investigations and also to monitor the judicial follow-up for such cases.⁵

Furthermore, as in previous reports Kosovo continues to demonstrate poor results in the fight against corruption, particularly high-profile cases. The 2015 Progress Report for Kosovo, considers

³ Third Report on Progress by Kosovo in fulfilling the requirements of the Visa Liberalisation Roadmap, (December 2015) available at http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/international-affairs/general/docs/third_report_progress_kosovo_fulfilling_requirements_visa_liberalisation_roadmap_en.pdf

⁴ Visa Liberalisation with Kosovo Roadmap, at,

http://eeas.europa.eu/delegations/kosovo/documents/eu_travel/visa_liberalisation_with_kosovo_roadmap.pdf

⁵ Ibid.

Kosovo to be at an early stage in the fight against corruption, with overall limited progress.⁶ Hence, strong political will and commitment is needed to tackle this phenomenon properly, accompanied also with a comprehensive and strategic approach that provides real results in the fight against corruption. In addition, the real progress needs to be demonstrated by a track record of successful prosecution and convictions.⁷ In order to improve the overall fight against corruption the report calls upon the Kosovo government to pay particular attention and prioritize the cases of high-level corruption, especially in public procurement sector as well as ensure final convictions. Investigations of high-level corruption are rare and so far have not resulted in final convictions.⁸ Also, the cooperation between police and prosecution needs to be strengthened through joint investigations on high level corruption cases. The system of track record of cases handling from investigation to final court rulings must be completed.⁹

The EU has also noted a close link between the undue political influence and limited capacity to conduct effective financial investigations. Thus, the effective asset confiscation and the tackling of financial investigations remains limited also due to lack of expertise and willingness. In addition, among the recommendations provided has been to integrate financial investigations into all investigations of corruption and organized crime.¹⁰ The report also reinstates the continued excessive political influence on law enforcement and judicial bodies.¹¹ Hence it calls upon the political authorities to ensure the empowering of law enforcement bodies to ensure they will act effectively and impartially in the investigation of corruption.

The EU also notes the ongoing existence of numerous bodies mandated to fight corruption that are disconnected and disintegrated while also having overlapping mandates and unclear division of tasks. It also notes the involvement of civil society in the development and monitoring of anti-corruption policies however with a consultation process that lacked transparency and constructive communication.

There is also a need to revise the applicable Law on Conflict of Interest and other related laws and regulations, in terms of bringing them in line with European standards. Hence, there need to exist a clear definition for categories of public officials whilst also adopt measures to prevent and sanction conflict of interest.¹² The report considers a positive development the fact that the majority of senior officials declared their assets in 2015 and that the Anti-Corruption Agency raised charges against 71 senior public officials, who did not declare their assets. However, the Agency still should prioritize the positions that are prone to corruption and consider measures that would allow for effective

⁶ European Commission, 2015 Progress Report for Kosovo, pg.15. Available at, http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_kosovo.pdf

⁷ Ibid.

⁸ Ibid, pg. 16.

⁹ Ibid, pg. 15.

¹⁰ Ibid, pg. 7.

¹¹ Ibid, pg. 16.

¹² Ibid.

investigation of inexplicable wealth.¹³ There is still lack of necessary capacity and willingness by the prosecutors to pursue corruption cases.¹⁴ In order to improve the interagency cooperation between prosecutors and the Anti-Corruption Agency, the adoption in 2014 of the standard operating procedure (SOP) to priorities serious crime cases in between the agencies has been evaluated as a positive development. This resulted in the prioritization of 9 (nine) serious cases of corruption and money laundering during 2015.¹⁵ Again with limited results, many challenges are repetitious.

Majority of the EU requirements related to the fight against corruption, are reiterated from previous Progress Reports. So far Kosovo political elite have demonstrated marginal willingness to address seriously the EC requirements particularly in ending the impunity of high profile corruption cases. Consequently, the lack of political will has led to weak results of rule of law institutions in combating corruption effectively. The fulfilment of these requirements is crucial for Kosovo to advance in its EU path. Furthermore its is also a necessity to develop independent, autonomous and well balanced justice system, in order to build a functional and stable state for its citizens.

III. A variety of laws, policies and mechanisms to fight corruption

Kosovo continuous to lack final convictions in the fight against high-profile corruption, although it has constantly amended laws and created new mechanisms. Legislation has been generally evaluated by the EU as compliant to the EU *acquis*, however the drafting of numerous laws, by-laws and mechanisms has been evaluated as a constant tactic of GoK to spread resources and diminish the importance of the existing ones.¹⁶ Characterised with ad hoc responses, and with overlapping mandates, often the mechanisms and laws enacted lacked a comprehensive and strategic analysis and approach. The response was often influenced by politics in order to deliver on the political processes of the EU such as the visa liberalisation requirements.

Kosovo started drafting a number of laws to fight corruption as of 2004 starting from the Suppression of Corruption Law,¹⁷ and ending with recent changes in the new Criminal Code of Kosovo (2013) with a specific chapter that deals with 16 offences related to official corruption and criminal offences against official duty.¹⁸ As a novelty the code criminalised the offence of Conflict of Interest (Article 424), Giving bribes to foreign public official (Article 430) and the Failure to report or falsely report property, revenue/income, gifts, other material benefits or financial obligations (Article 437). Reacting to a systemic phenomena of corruption as well as the EU requirements, the

¹³ Ibid.

¹⁴ Ibid, pg. 16 and 17.

¹⁵ Ibid.

¹⁶ See for example KIPRED report “The Impunity in Kosovo: Inexplicable Wealth” November 2013, available at http://www.kipred.org/repository/docs/THE_IMPUNITY_IN_KOSOVO_INEXPLICABLE_WEALTH_632453.pdf

¹⁷ No.2004/34, The Suppression of Corruption Law, available at http://www.kuvendikosoves.org/common/docs/ligjet/2004_34_en.pdf

¹⁸ See Kosovo Criminal Code at <http://www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf>.

GoK pushed for the adoption of other specific laws such as Law on Declaration, Origin and Control of High Public Officials and Declaration, Origin and Control of Gift for all Public Officials (hereby: Law on Declaration of Property)¹⁹ and Law on Extended Powers for Confiscation of Assets Acquired by Criminal Offence.²⁰

With a number of offences criminalised the new Criminal Code nevertheless, in comparison to the 2003 UNMIK Code, foresees lenient sentences related to abuse of official duty by decreasing the maximum of imprisonment from eight (8) to five (5) years. Differently, to other countries in the region as FYR of Macedonia, Croatia, Montenegro and Serbia have increased the sentences in relation to abuse of official duty, ranging from five (5) to ten (10) years depending on the amount misused by the official person.²¹ In a country characterised with widespread corruption, this move is not justifiable. Nevertheless, the Code has defined in detail what the abuse of an official position includes,²² that was a legal gap in the previous Code.

Differently, for the offences of giving bribes and accepting bribes, comparing to previous Code, the sentences have been increased up to eight (8) years when the offences result in a benefit exceeding fifteen thousand (15,000) EUR.^{23and24} However, the long term effect on fighting corruption with criminalising of giving bribes might have a preventative aim, nevertheless it remains to be analysed further to what extent has this provision decreased reporting of corruption to law enforcement agencies by citizens that might have been engaged in corruption related affairs.

Furthermore, Kosovo Assembly has drafted an additional law to the provisions of the Criminal Code and Criminal Procedure Code related to sequestration and confiscation of assets illegally obtained and have further adopted a special law on Extended Powers for Confiscation of Assets Acquired by Criminal Offences. The law offers extended powers for procedures foreseen in the Criminal Procedure Code when these provisions are not sufficient. In March 2015, a parliamentary working group has started to monitor the implementation of this law and has also sought input from civil society organisations. Even though this was a positive step, the working group has met only

¹⁹ Law No. 04/L-050, Law on Declaration, Origin and Control of High Public Officials and Declaration, Origin and Control of Gift for all public officials, at <http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20declaration%20of%20property%20of%20senior%20public%20officials.pdf>

²⁰ Law No. 04/L-140, Law on extended powers for confiscation of assets acquired by criminal offence, available at <http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20extended%20powers%20for%20confiscation%20of%20assets%20acquired%20by%20criminal%20offence.pdf>

²¹ See for example criminal Code of Macedonia, Article 353, Criminal Code of Serbia, Article 359, Criminal Code of Croatia, Article 317, and Criminal Code of Montenegro, Article 416.

²² See Article 422, Paragraph 2 of Kosovo Criminal Code, "For purposes of this Article, the abuse of official position includes, but is not limited to: 2.1. intentionally or knowingly violating a law relating to the official's office, duties or employment; ... 2.5. intentionally subjecting another person to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, ... that he knows is unlawful; or 2.6. intentionally denying or impeding another in the exercise or enjoyment of any legal right, privilege, power, or immunity. Available at <http://www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf>.

²³ Article 429, Paragraph 3 of Criminal Code.

²⁴ Ibid, Article 428, Paragraph 3.

once in a period of almost seven months due to the Assembly blockage by the opposition. The monitoring of the law by KIPRED has indicated several shortages due to low implementation level. The law so far has been categorised to have been used only once and has remained rather un-known in implementation by prosecution and the judiciary since its adoption.²⁵

Furthermore, other legal provisions also foresee that senior public officials are obliged to declare their property, revenues and their origin to the Anti-Corruption Agency (ACA) in accordance to the Law on Declaration of Property.²⁶ However, verification of property has proven difficult as prosecutors claim not to have a sufficient legal basis to act and initiate investigations.²⁷ However in order to conduct verification, prosecutors could rely on a reasonable suspicion that the property is acquired by criminal offence. So far senior officials are verified only by the ACA with a capacity to verify only 20% of officials. The EU recommended that the agency should not only randomly select senior officials for verification but also select positions that may be prone to corruption.²⁸ Further, the failure to report or falsely report property and other material benefits or financial obligations, has been criminalised under Article 437 of the Kosovo Criminal Code, punished by imprisonment up to three (3) years, and if data is falsified up to five (5) years imprisonment. The recent punitive measures have achieved just the opposite aim with the fines and sentences decreasing in comparison when the offence was defined as a minor one.²⁹ The effects of the law have been negative, opposite to the expectations to strengthen the correct reporting of high officials.

By end of 2013, Kosovo failed to define clearly what is considered high-profile corruption. With the issuance of an Administrative Instruction (AI)(2013) the Kosovo Chief Prosecutor, EULEX Chief Prosecutor and Chief Prosecutor of SPRK, defined the position and the monetary value of corrupted acts considered as high-profile corruption.³⁰ According to this AI, a corruption offence for prosecutors to investigate are cases when the defendant is the central executive and municipal head as President, Assembly Head, Prime-Minister and cabinet ministers, mayors and highest civil servant level as Permanent Secretary's and other decision-makers such as President of Supreme Court and Court of Appeal. A high profile corruption case is considered if the offence may have caused damage of monetary value of 500,000.00 Euros or more.³¹ In the cases when damage is

²⁵ Ibid.

²⁶ Law on Declaration of Property, Article 5.

²⁷ KIPRED interview with State Prosecutors, September 2015 Prishtina.

²⁸ Pg. 17 of the EU Progress Report for Kosovo 2015, available at

http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_kosovo.pdf

²⁹ KIPRED interview with a high official of Anti-Corruption Agency, August 2015.

³⁰ Criminal acts of corruption are taken from the Criminal Code such as: 1. Entering into harmful contract, aggravated from bribery (Article 291(2)), Unjustified giving of gifts (316), Escape of persons deprived of liberty, aggravated from bribery (405 (2)), Facilitating the escape of persons deprived of liberty (406(2)), Abusing official position or authority (422), Misappropriation in office (425), Fraud in office (426), Unauthorised use of property (427), Accepting bribes (428), Giving bribes (429), Giving bribes to foreign public official (430), Trading in influence (431), Issuing unlawful judicial decisions (432), Unlawful collection and disbursement (435), Unlawful appropriation of property during a search or execution of a court decision (436) See http://www.psh-ks.net/repository/docs/Udhezim_kur_nje_veper_e_korrupsionit_do_te_konsiderohet_si_e_nivelit_te_larte.pdf

³¹ Ibid.

estimated higher than 1 million Euros, it is automatically defined as a case of high-level corruption case.³² Even though there has been a clearer legal definition offered by the prosecutorial services, its implementation especially at the SPRK level has been weak as shown from the further analysis.

In the area of drafting and developing new legislation, in 2015 the GoK initiated the drafting of the so-called “Anti-Mafia Law” intending to shift the burden of proof from prosecutors investigating the case to the suspected official with inexplicable wealth. Seen as an initiative with potential to violate human rights i.e. deprivation of property, guaranteed under Article 1 of the First Protocol to the European Convention on Human Rights, the Government in its Concept Document notes this risk.³³ The shift of burden of proof is also seen contrary to the “presumption of innocence” principal as basic rule in the criminal procedure law.³⁴ Nevertheless, Kosovo should consider the confiscation *in rem* of property obtained from crime based on the civil law standard on balance of probabilities rather than the criminal standard of beyond any reasonable doubt.³⁵ Such measures if temporary should create sufficient legal basis to investigate inexplicable wealth.

Amidst the variety of laws and by-laws kicked-off, Kosovo created a number of institutional mechanisms in its efforts to fight corruption. A legacy from UNMIK era in 2008 and ³⁶ part of the Ahtisaari package of laws, Kosovo set up the Special Prosecutorial Office (SPRKO). However, the office has failed to deliver on the numbers required with low number of cases investigated and convicted. For example until October 2015, in average an SPRKO prosecutor handled 13.6 percent of cases annually,³⁷ if compared to 2 (two) cases per month set as normative or 22 cases annually as required in the Kosovo Prosecutorial Council directives.³⁸ With an annual budget of not more than 899,085 thousand Euro’s for special prosecutors, the SPRKO was not sufficiently resourced as a special body leading also to the poor results in the fight against high profile corruption. Parallel to this the Government of Kosovo continued to push in parallel for the creation of another set of mechanisms to fight corruption undermining SPRKO potential and autonomy. For example in February 2010 the Prime-Minister of Kosovo issued a decision to form a Task Force composed of police and prosecutors for the fight against corruption to be part of the SPRK.³⁹ Additionally, recently the new Chief State Prosecutor in line with the EU requirements for visa liberalisation has

³² Ibid, Article 1.

³³ Reversal of the burden of proof in confiscation of the proceeds of crime: a Council of Europe Best Practice Survey, Best Practice Survey No. 2, pg. 7, available at, http://www.coe.int/t/dghl/monitoring/moneyval/web_ressources/CoE_BP_burdenproof.pdf

³⁴ Kosovo progress report 2015, pg. 16.

³⁵ KIPRED report, “The Impunity in Kosovo: Inexplicable Wealth”, November 2013, pg.16. Available at http://www.kipred.org/repository/docs/THE_IMPUNITY_IN_KOSOVO_INEXPLICABLE_WEALTH_632453.pdf

³⁶ Adopted March 2008, available at <http://www.kuvendikosoves.org/common/docs/ligjet/03-L-052%20a.pdf>

³⁷ See pg. 25, of <http://kli-ks.org/wp-content/uploads/2015/12/2.-Fighting-Corruption-in-Kosovo-Priority-in-letter1.pdf>

³⁸ Pg. 18, of Article 2 paragraph 1.5 of the Administrative Directive for determining the annual rate for Prosecutors, approved by Kosovo Prosecutorial Council on January 24, 2012. See the link 2012, [per_Percaktimin_e_Normes_Orientuese_Vetore_per_Prokurore.pdf](http://www.kipred.org/repository/docs/2012-01-24-Administrative-Directive-for-determining-the-annual-rate-for-Prosecutors.pdf).

³⁹ See KIPRED Report Fulfilling the EU Requirements in the Fight Against Corruption and Organised Crime, 2014. Available at <http://www.kipred.org/>.

appointed a specialised team to investigate financial and economic crimes under the lead of the National Coordinator for serious organised crime and corruption cases, aside from the SPRKO structure, resonating the “mini-SPRKO.”⁴⁰ It remains unclear if the SPRKO mandate will be duplicated or overlapped with as high profile cases remaining within that office.

The independence of the rule of law bodies has continuously been undermined as a result of connections between political authorities and the judicial authorities. Moreover, the lack of proper control mechanisms for the latter has resulted in absence of accountability of these bodies resulting also in poor records of fighting corruption. Additionally, the EU Rule of Law mission, EULEX, as the largest Common Foreign and Security Mission with a budget spend of more than 950.000 mil. Euro’s, from 2009, has been mandated also to tackle high level corruption.⁴¹ However, the mission amongst other has been preoccupied dealing with own staff accusations for corruption erupting in 2014 with the Maria Bamieh case, a former EU prosecutor from UK raising suspicions over internal corruption of EULEX senior staff. The criminal allegations of the case are on-going with Bamieh claiming that the mission has tried to silence her as “whistleblower” and decided to take her discrimination claim to a London based employment tribunal. These suspicions remain yet to be confirmed. Nevertheless, facts remain that even seven years after its engagement, corruption is widespread in Kosovo with the mission characterised in part of its governance ‘dysfunctional’, and far from setting up independent and autonomous investigations. In particular Kosovo with the support of EULEX has been evaluated to have failed to set out the foundation for a system to effectively fight the corruption.⁴²

In ending, a variety of laws and by-laws have been set up in Kosovo to deal with corruption acts. The independence of the rule of law bodies has continuously been undermined as a result of initiatives led by the GoK often dominated by the weak response of judicial authorities. A comprehensive and strategic review is needed of the judicial system response to corruption cases, in order to move away from ad hoc responses often dominated by political processes.

⁴⁰ Pg.3 of the Kosovo Government input on the fulfillment of the remaining eight (8) recommendations from the visa liberalization dialogue, Ministry of European Integration. Copy available with KIPRED.

⁴¹ See <http://www.eulex-kosovo.eu/?page=2,16>.

⁴² See pg.22 of the “Review of the EULEX Kosovo Mission’s Implementation of the Mandate with a Particular Focus on Handling of the recent allegations,” Report to the Attention of the High Representative/Vice President of the European Commission, Ms Federica Mogherini. Drafted by Prof. Jean-Paul Jacque, upon the request of the EEAS, Honorary Director General of the Council of the EU, 31st March 2015.

IV. Current state of affairs in the fight against corruption: Investigation, prosecution and conviction of corruption cases

The efforts of state institutions to battle this problem have produced pitiable results mainly due to the lack of political will to build independent and sufficiently resourced judicial system followed by the poor performance of the rule of law institutions. Numerous changes in the legal framework related to anti-corruption efforts have not provided for a sufficient environment for rule of law institutions to combat corruption effectively, particularly high level corruption. For example, public procurement sector remains the most prone sector for high profile corruption.⁴³ For years now also the EU has acknowledged this area as potential to corruption.⁴⁴ It consumes a significant amount of public money with 488 millions of Euros spend only in 2014 through use of public procurement procedures and with approximate annual spending of 30% of Kosovo budget.⁴⁵ The so-called “tender mania” has ensured that businesses close to officials in power win deals expected to pay off by financing particular political parties. Often several economic operators ensure their main existence through works and services with public authorities.⁴⁶ Gaps for public procurement to continue being one of the most prone sectors for corruption have been also ensured through the frequent legal amendments of the Public Procurement Law in the past years causing intentional difficulties in implementation of the law. Furthermore, the tactful appointment in functionalising the Procurement Review Body has been delayed by political parties in power in order to weaken the monitoring process of procurement in Kosovo.⁴⁷ Often the legal amendments sponsored by the government, have been tactfully used to ensure shield from corruption investigations and have continued to create a number of mechanisms to fight corruption often with overlapping mandates.

a) The prosecution and investigation of corruption cases:

Despite the public commitments to fight corruption, the rule of law stakeholders continued to deal mainly with petty crimes of corruption whereas the investigation of high profile cases of corruption remained scarce.⁴⁸ Prosecutorial services also admit that often the work of state prosecutors and judges does not go further beyond public calls for fighting corruption.⁴⁹ The lack of concrete results in the fight against high profile corruption is also linked with political interferences and neglect of

⁴³ KIPRED interview with prosecutors and judges, August 2015 in Prishtina.

⁴⁴ See Progress Reports for Kosovo 2013, 2014 and 2015.

⁴⁵ Republic of Kosovo, Office of the Auditor General, Annual Audit Report 2014, pg.39. At http://oag-rks.org/repository/docs/RVA-Eng_319961.pdf

⁴⁶ Council of Europe, Project Against Economic Crime (PECK), Assessment Report on Compliance with International Standards in the Anti-Corruption (AC) Area, April 2015, pg. 104. At, http://www.psh-ks.net/repository/docs/AC_ENG_WEB.pdf

⁴⁷ Ibid, pg. 104.

⁴⁸ KIPRED interview with a Judge from the Basic Court in Prishtina, 21 August 2015.

⁴⁹ KIPRED interview with Special Prosecutor of SPRK Prishtina, September 2015 in Prishtina.

prosecutors often followed by media pressure.⁵⁰ Recently, the SPRK Prosecutor and former National Coordinator Against Corruption issued a concerning statement related to work of prosecutorial services by reinstating that prosecutors often conduct investigations from offices, by sitting in café's and restaurant's with politicians, acting as bureaucrats. In other cases, the pressure towards prosecutors is direct or may be manifested by using media campaigns.⁵¹ The articles published in media often leak initial stages of investigations to the public by increasing the public pressure against particular prosecutors. Hence, prosecutors often consciously decide not to deal with big cases in order to avoid the media exposure.⁵²

Furthermore, in November 2013 in order to deal with corruption cases the Kosovo Prosecutorial Council (KPC) adopted an Action Plan covering corruption cases until end of June 2014.⁵³ Despite the action plan the results were minimal. For example the SPRK for the timeline set by the Action Plan had at work 55 cases of corruption against 322 persons.⁵⁴ It managed to solve only 18 cases against 121 persons or 33 % of cases in procedure. The SPRK continued to be neglectful in dealing with the set norm especially in the use of potential experts for investigations of economic crimes and financial crimes. Even though there are profiled experts including nine (9) financial experts covering procurement, taxes and other financial matters their assistance is rarely utilised by the special prosecutors.⁵⁵

Additionally, prosecutors complain for having difficulties in proving their cases in front of the court due to the complexity of high profile cases, often refusal of witnesses to cooperate and occasional obstructions by different institutions to respond timely to their requests.⁵⁶ Also the absence of a specific department to deal with cases submitted by the SPRK within the courts causes delays in proceeding the cases by the Basic Court in Prishtina.⁵⁷ In general majority of prosecutors and judges lack the expertise in handling complex corruption cases that are often interlinked with complex financial crimes therefore continue to perform poorly specifically when handling of corruption, particularly of high profile cases. They often seem comfortable not to handle high profile corruption cases in order not to get exposed to media pressure.

⁵⁰ "We are upset, and tired of bureaucratic prosecutors, who conduct investigations from their offices or cafes or restaurants having lunches with politicians and in some cases even suspicious persons. We are tired of prosecutors who care more for own interests and rights, rather than fighting crime. This is unacceptable for us." See statement of Prosecutor Drita Hajdari at, News Portal TELEGRAFI, "Only few are fighting corruption" ("Pak kush po e lufton korrupsionin"), 15 September, 2015. KIPRED translation taken from <http://www.telegrafi.com/ekonomi/lajme-ekonomi/pak-kush-po-e-lufton-korrupsionin.html>.

⁵¹ KIPRED interview with Special Prosecutor of SPRK Prishtina, 22 September 2015 in Prishtina.

⁵² Ibid.

⁵³ Kosovo Prosecutorial Council, Action Plan on Increasing the Effectiveness of the Prosecutorial System in the Fight Against Corruption, pg. 3. At http://www.psh-ks.net/repository/docs/Action_Plan_-_Corruption.pdf.

⁵⁴ State Prosecutor Report, pg. 3, available at http://www.psh-ks.net/repository/docs/284_Raport_mbi_zbatimimin_e_planit_te_veprimit.pdf

⁵⁵ Statement of a high official of the EU Office in Kosovo, at KIPRED and SiV Roundtable, October 2015 in Prishtina.

⁵⁶ KIPRED interview with State Prosecutor Prishtina, September 2015 in Prishtina.

⁵⁷ KIPRED interview with State Prosecutors and judges, August-September 2015 in Prishtina.

b) Handling of corruption cases:

From 2013 until first half of 2015 investigation and submission of corruption cases through criminal reports were mainly initiated by the Kosovo Police, followed by the Anti-Corruption Agency. The self-initiative of prosecutors to investigate and follow up with indictments of corruption cases continued to be minimal during the monitored period. For example, during the year 2013 prosecutors submitted only 4 (four) corruption reports by self-initiative. In 2014 the cases self-initiated by prosecutors grew slightly to 11 corruption reports whilst in the first half of 2015 the self-initiative dropped to no cases reported by prosecutors (See Table 1.1 in Annex). In particular, of special concern is the lack of initiatives by the SPRK prosecutors mandated to deal with high profile corruption cases. From 2013 until first half of 2015, there were no cases submitted of criminal corruption reports initiated by special prosecutors (See Table 1.2).

During 2013 there were 778 cases of corruption in total at work by prosecutors. By end of 2013 there were only 40% of cases resolved by prosecution or only 314 cases. By end of 2013 majority of cases related to corruption remained unresolved namely 464 cases or 60% (See Table 1.3). The SPRK mandated to deal with high profile cases of corruption, worked with 47 cases in total during 2013. By the end 2013 the SPRK managed to resolve only 17 cases or 36%. The majority of cases of high profile corruption remained unresolved, respectively 30 cases or 64% (See Table 1.4).

The poor record of prosecution in investigating corruption cases also continued during 2014 and the first half of 2015. The number of cases resolved during 2014 showed slight improvements with 444 cases of corruption resolved or 45%, out of 976 cases at work. At the end of 2014 there were 532 of unresolved cases of corruption or 55% (See Table 1.3). Differently, during 2014 the results of the SPRK prosecutors alone was less than satisfactory with only 17 cases of corruption resolved or 26%, out of 66 cases at work. In total there were 74% of cases unresolved by the end of the year 2014 by the SPRK (See Table 1.4)

The first half of 2015, indicated again lack of satisfactory handling of corruption cases in general. From 717 cases at work and carried over also from previous years, there are 128 cases only resolved related to corruption or 18% (See Table 1.3). Further, the SPRK alone managed to resolve only 5 (five) cases of corruption or 9%, out of 53 cases at work (See Table 1.4).

c) Investigation and indictment of corruption cases:

In recent years there has been an increase reported of using covert measures by prosecutors to investigate corruption cases. The use of covert measures increased significantly throughout the years

reported with 96 orders for covert measures used during 2013, with 118 covert measures used in 2014 and another 123 orders used during the first half of 2015.⁵⁸

However, out of the total of cases filed with criminal reports on corruption, prosecutors have continued the trend of dismissing and terminating investigations for a significant number of persons, indicting only few of the cases. In 2013 out of 665 persons with criminal reports of corruption, prosecutors dismissed/closed or terminated investigations for 353 persons, or for 53% of cases. Only 47% of cases were indicted for corruption against 312 persons. This trend continued during 2014 as well. With criminal reports against 1011 persons prosecutors dismissed/closed or terminated investigations against 545 persons or 54% of cases. In 2014 the prosecutors indicted 471 persons or 47%. In the first half of 2015 prosecutors had a slight increase of indictments against 185 persons or 61% of cases and dismissed/closed or terminated investigations against 116 persons or 39% (See Table 1.5).

Furthermore, the SPRK has also shown poor results in indictments throughout the reporting period. The number of persons against whom criminal reports were dismissed/closed or terminated was significant during the years 2013 and 2014. Only in 2013, against 98 persons with criminal reports filed special prosecutors of the SPRK dismissed/closed reports and closed investigations for 69 persons or 70%. Only 29 persons were indicted for corruption or 30%. The number of dismissed/closed reports and terminated investigations was higher during 2014, with only 26 % of cases indicted or 28 persons with 84 persons closed from investigation or cases dismissed/closed. During the first half of 2015, there was a slight improvement with 37 out of 41 persons indicted or 90% of cases indicted with criminal reports (See Table 1.6). The special prosecutors dismissed/closed criminal reports for 4 (four) persons or 10% of cases. Even though there is improvement in indictments nevertheless the average number of cases handled by prosecutors is low with indictments including less than 5 (five) cases of corruption dealt by prosecutors for the first half of 2015.

The National Coordinator against Economic Crimes and Corruption send a proposal forward to Kosovo Prosecutorial Council to appoint a commission to analyse the pattern and causes of dismissal/closure of criminal reports and termination of investigations by prosecutors. The commission amongst other would also analyse if the dismissals came as a result of poorly filed criminal reports by police or other institutions, or are affected by poor handling of cases by prosecutors.⁵⁹ In October 2015, the newly appointed State Prosecutor of Kosovo has allowed for the decision to establish the commission that is composed of four prosecutors to assess the standing of corruption cases in prosecution offices including cases dismissed/closed or terminated.⁶⁰

⁵⁸ Inter-Institutional Tracking Mechanism for Harmonizing Statistics of Characteristic Criminal Offences for year 2013 and KIPRED email communication with Kosovo Prosecutorial Council.

⁵⁹ Kosovo Prosecutorial Council, Report on the Implementation of the Action Plan for Enhancing the Efficiency of the Prosecutorial System in the Fight Against Corruption., 16 October 2014, pg. 7. At http://www.psh-ks.net/repository/docs/284_Raport_mbi_zbatimimin_e_planit_te_veprimit.pdf

⁶⁰ Statement of high official of State Prosecutor's Office, at KIPRED and SiV Roundtable, October 2015 in Prishtina.

Intended to increase accountability of prosecutors it remains to be evaluated for its effectiveness and potential interference from the state prosecutor's office to other instances of prosecution.

d) Adjudication of corruption cases by Courts

Similar to prosecutorial services, the courts have also had a setback in handling of corruption cases. For example, during 2014 the Courts worked with 655 cases of corruption however managed to adjudicate only 35 % or 229 cases. Majority of 426 or 65% of cases remained unresolved. From resolved cases by courts there were 120 guilty judgements on corruption against 132 persons. Out of this total there were 35 persons sentenced to prison whilst other cases were sentenced with fines and other sentences. Differently, courts issued 41 decisions of acquittal for 58 persons (See Tables 1.7 and 1.8).

In the first half of 2015, courts worked with 490 cases of corruption and were able to resolve and adjudicate only 84 cases or 17% of them. Out of the total of cases resolved, there were 46 guilty judgments against 65 persons. Sentences of imprisonment were issued in 14 cases against 24 persons whilst there were 12 acquittals against 17 persons (See Tables 1.7 and 1.8).

Furthermore, data reporting of court decisions related to corruption cases have continued to be ambiguous. Due to a lack of proper case management system linking the law enforcement, prosecution and courts to a central database, statistics of cases continue to be reported differently by different institutions. The Prosecutorial Council developed its own database, known as the "Inter-Institutional Tracking Mechanism for Harmonising Statistics of Characteristic Criminal Offences." Data published in the tracking mechanism by the KPC are public. However, statistics entered of court decisions in the KPC's Tracking Mechanism do not match with the statistics entered in the database of the Kosovo Judicial Council. The records entered in the KPC's Tracking Mechanism are much lower than those entered by the KJC. The mismatch occurs that cases reported by the KPC are not necessarily reported in the same year with the KJC and courts often delay timely reporting of cases.⁶¹ According to KPC data during the year 2014 courts decided against 103 persons whilst KJC reports cases against 307 persons. For example while the KPC reported for 67 persons declared guilty for corruption charges and 18 acquitted, the KJC reported 132 persons declared guilty with 58 persons acquitted. This is a significant discrepancy in the statistics entered.⁶²

In an attempt to resolve the issue of case management, the Government of Norway sponsored the ICT/CMIS Project as of 2013 by signing a Memorandum of Understanding with the KJC, KPC, Ministry of Justice (MoJ) and the Norwegian Embassy. However, the project faced adversities from its onset mainly due to the lack of ability and professional capacities of judicial and administrative staff to handle the ICT reform required by the project.

⁶¹ KIPRED interview with high official of Kosovo Judicial Council, 25 August, 2015 in Prishtina.

⁶² Statement of Judge of the Gjakova Basic Court, at KIPRED and SiV Roundtable, held on 7 October 2015, Prishtina.

The discrepancy in data reporting by institutions involved must be urgently resolved as it has had an impact and serious consequences on the performance of the judiciary that lacks clear data reporting and continues to undermine the credibility of the rule of law institutions.

V. Intentional delays in handling of High Profile Corruption: The Prescription of Corruption Offences

Another tactic to delay the decisions on the corruption cases, were also the set time limits to investigate and file indictments especially in cases that are related to high profile officials. In at least two high level corruption cases the so-called Kosovo Energy Corporation (KEK) and the Kosovo Police Arms case related to abuse of power and official authorisations, the ending of the two-year time limits for investigation were used as cause of dismissal of the case as indictments were not filed by prosecutors within this timeline. The KEK case involved the indictments by the EULEX prosecutor on 16 January 2015, against high level officials including Mayor of Skenderaj Sami Lushtaku, Director of KEK Arben Gjukaj, the Chairman of the Procurement Review Body Hysni Hoxha, KEK's Chief of Procurement Hasan Pruthi and close cousin of Mayor Lushtaku Milazim Lushtaku owner of the security company that was awarded the tender with KEK and estimated damage to KEK with the value of 6.182.609, 76 Euro.⁶³ The indictment was against 7 (seven) defendants in total, accused of committing the crimes of Fraud and Falsifying of Documents, Abusing Official Position or Authority, Incitement to Abusing Official Position or Authority, and Entering into Harmful Contracts. In August 2015, the Court of Appeals approved the request of the defendant lawyers to dismiss the case based on the time limits of investigation that had ended in October 2014 with the indictment of the prosecutor occurring in January 2015 only.⁶⁴

Another high profile corruption case closed on similar grounds related to a tender process for supply of arms, ammunition and surveillance equipment for the Kosovo Police (KP) and the so-called Apex case involving alleged money laundry crimes. The indictment was also filed by EULEX prosecutor of SPRK, on 19 January 2015 against three officials of the Ministry of Internal Affairs and two businessmen, for various criminal offences, including of Organized Crime, Unauthorized Supply, Transport, Exchange or Sale of Weapons, Fraud and the Abuse of Official Position or

⁶³ The EULEX Prosecutor indicted the owners of the company "Security Code" including the close cousin of Mayor Sami Lushtaku, Milazim Lustaku, Esat Tahiri and anotheir partner Agron Jusufi. See also EULEX Press Release, "Indictment filed in KEK corruption case", 16 January 2015. At, <http://www.eulex-kosovo.eu/en/pressreleases/0653.php>

⁶⁴ The Court of Appeal justified its decision by use of Article 159 of the Criminal Procedure Code, Paragraph 1 defining the Time Limits of Investigation. Hence, "*If an investigation is initiated, the investigation shall be completed within two (2) years. If an indictment is not filed, or a suspension is not entered under Article 157 of this Code, after two (2) years of the initiation of the investigation, the investigation shall automatically be terminated.*"

Authority. However, the indictment was overthrown in May 2015 invoking the above mentioned reasons.⁶⁵

In accordance to the Kosovo Criminal Procedure Code the timeline set for the investigation period is 2 (two) years and criminal proceedings should end if after the investigation period no indictment is filed by the prosecutor within a reasonable time after the end of the investigation time limit.⁶⁶ It can be extended for another six (6) months only in specific cases defined by the Code.⁶⁷ The timeline of investigation and indictment seem not to be interpreted the same by the Supreme Court judges and President of Supreme Court. Under the circular issued by the Supreme Court President the timeline set automatically ends also the criminal procedure, making the indictment rather impossible after the end of legally set timelines.⁶⁸ The majority of state prosecutors so far have claimed that they are using the Supreme court interpretation as prosecutors can not indict persons after the phase of investigations has legally ended and have been advised not to do so with the circular stating that after the end of the legal timeline for investigation, cases should not be brought to courts as they will be automatically refused.⁶⁹ Similarly the criminal offence indictment and prescription of the indictment has been used in the case known as “APEX’ case,⁷⁰ related to organised crime of gambling and casino industry in Kosovo. The indictment was filed in April 2015 by a EULEX Prosecutor against eleven (11) defendants.

Differently, in a case filed by the EULEX SPRK prosecutor to the Supreme Court panel of the so-called KEK case, the panel found that indictment may be filed after the end of the suggested timeline for investigation however within a reasonable time.⁷¹ Furthermore, the panel does not agree with the issued opinion of the Supreme Court Head and does not find it legally mandatory.⁷²

This practice was followed only in the complaint of the SPRK prosecutor and the adjudication by the Supreme Court panel deciding to find indictment in the KEK case as valid and send the case to first instance court for retrial. In the other cases of APEX and Kosovo Police arms case indictments were prescribed due to the timelimits set by the Supreme Court Circular. These legal uncertainties have to be quickly resolved by the Supreme Court issuing a clarifying circular and defining in detail legal formulations related to prescription of criminal offences especially related to complexed cases

⁶⁵ See EULEX Press Release at <http://www.eulex-kosovo.eu/?page=2,10,2>. See also “No one convicted for the weapons scandal” (S’ka të dënuar për aferën e armëve), 5 June 2015. At, <http://klankosova.tv/ska-te-denuar-per-aferen-e-armeve/>.

⁶⁶ See Supreme Court decision on the KEK case, November 2015. Available with KIPRED. See also the Criminal Procedure Code of Republic of Kosovo, Article 159, Paragraph 1, available at <http://www.assembly-kosova.org/common/docs/ligjet/Criminal%20Procedure%20Code.pdf>

⁶⁷ Article 159, Paragraph 2 of Criminal Procedure Code.

⁶⁸ Circular of the Supreme Court President for Chief State Prosecutor, issued 19 January 2015. The circular is available with KIPRED.

⁶⁹ KIPRED interview with a SPRK High official and KJC high official (Enver Peci), August-September 2015.

⁷⁰ See Special Prosecutor Office Statement, at <http://www.psh-ks.net/?page=2,8,719>

⁷¹ See Supreme Court decision on the protection of legality by the SPRK prosecutors on the KEK case, issued November 2015. Available with KIPRED.

⁷² Ibid.

of organised crime and corruption of high profile. As stated by the EU Progress Report 2015,⁷³ the timelines set to investigate cases of organised crime and corruption is short resulting in courts not having sufficient information to come to an informed decision.

The failure to file indictments in the timeline foreseen has provided room for Kosovo state prosecutors not to deal with complexed cases supporting the impunity for few high profile cases. Furthermore, the Kosovo Agency Against Corruption has also reported that this tactic has been used by the prosecutors with cases submitted for investigations by the Agency were left unattended and prescribed as indictments were not filed in a timely manner.⁷⁴ Nonetheless, prosecutors are operating within the set timeline of the circular of the Supreme Court by using the possibility of prescribing the cases when not filing an indictment within the time limits for investigation.⁷⁵ Few of the cases prescribed have been characterised as intentional.⁷⁶

The current timeline set for investigations of organised crime cases and high profile corruption appears rather short, given the complexity of the cases.⁷⁷ Therefore, necessary legislative steps should be undertaken to ensure, that time-limits for investigation do not hinder the effective fight against corruption. Chief Prosecutors should also ensure regular reporting of state prosecutors regarding the investigation status of cases in order to rule out any intentional negligence in particular in cases related to high profile corruption.

VI. Investigation and confiscation of wealth in cases of high profile corruption

A track record of successful prosecution and convictions of especially high profile cases of corruption have been a requirement by the EU reiterated over the past years.⁷⁸ In order to improve the overall fight against corruption the EU also has requested that there is prioritisation on the cases of high-level corruption, especially in public procurement sector by deciding with final convictions. Investigations of high-level corruption have been increasing although rare and so far have not resulted in final convictions.⁷⁹

During 2015, few politicians were sentenced for corruption, with several cases ongoing after being returned in retrials. For example the Mayor of Prizren Mr. Ramadan Muja initially convicted for

⁷³ Kosovo Progress Report 2015, pg. 15.

⁷⁴ The annual report of the Anti-Corruption Agency, January - December 2013 and 2015, pg. 14, 15. At, <http://www.akk-ks.org/repository/docs/Raporti-01-Janar-31-Dhjetor-2013-verzioni-shqip.pdf> and <http://www.akk-ks.org/repository/docs/Raporti%20vjetor%20final%202014%20-%20versioni%20shqip%20%281%29.pdf>

⁷⁵ KIPRED interview with State Prosecutor, September 2015 in Prishtina.

⁷⁶ KIPRED interview with official of Anti-Corruption Agency and Special Prosecutor of SPRK, August and September 2015 in Prishtina.

⁷⁷ See also Council of Europe, Project Against Economic Crime (PECK), Assessment Report on Compliance with International Standards in the Anti-Corruption (AC) Area, April 2015, pg.186.

⁷⁸ Third Report on Progress by Kosovo in fulfilling the requirements of the Visa Liberalisation Roadmap, (December 2015) available at http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/international-affairs/general/docs/third_report_progress_kosovo_fulfilling_requirements_visa_liberalisation_roadmap_en.pdf.

⁷⁹ Ibid, pg. 16.

corruption charges with 2 (two) years of conditional imprisonment by the Basic Court of Prizren, in an appeal, was returned to retrial. Meanwhile, the prosecutor of the case appealed to Supreme Court that again returned the case to the Court of Appeals for review.⁸⁰ The case is ongoing.

The former Minister of Transport and Post-telecommunication Mr. Fatmir Limaj was also charged with suspected corruption in so-called MTPT 1 and MTPT 2 cases. The indictments were joined in 2015 in one indictment and the case is on-going.⁸¹ Additionally, one former PDK affiliated politician in power remains under trial such as the Mayor of Skenderaj, in the so-called KEK case that was initially prescribed but returned by the Supreme Court to trial.⁸² Furthermore, two former LDK ministers of Mr. Astrit Haraqija and Mr. Valton Beqiri were charged for abusing official position and signing contracts in the value of 570.000 Euros opposite to the requirements of the Public Procurement Law. They were sentenced only conditionally with 10 months, and are currently appealing the decision.⁸³ Another case on-going is the case against another LDK MP Mr. Naser Osmani, charged in December 2015 for corruption.⁸⁴ In majority of cases, former politicians not strongly connected to the political party power structures have been investigated with few exceptions.

Recently within the period of two months of second half of 2015, several prosecutors and judges, mainly of senior level, have been subject of arrests and indictments by their counterparts for potential serious criminal offenses of corruption and organized crime. Amongst the high profile indicted officials have been the President of the Court of Appeals, Mr. Sali Mekaj indicted by the SPRK local prosecutor on the suspected crime of abuse of official position or authority.⁸⁵ Also the former Constitutional Court Head Mr. Enver Hasani was indicted for suspected criminal offence of fraud in office.⁸⁶ The recent events have been praised by few judicial officials considering these actions as necessary to “clean the closet”, before these institutions are able to start combating crime in other sectors.⁸⁷ Others have claimed that this might be a way to remove out of the way prosecutors that might not be faithful nor obedient to the newly appointed Chief State Prosecutor.⁸⁸

Furthermore, in relation to investigations into inexplicable wealth, KIPRED has reported in the past that many of the high officials upon appointment in decision-making positions gained inexplicable

⁸⁰ Telegrafi, “Supremja Kthen në Apel Vendimin për Ramadan Mujën (The Supreme Court Returns to appeal decision on Ramadan Muja), at <http://www.telegrafi.com/supremja-kthen-ne-apel-vendimin-per-ramadan-mujen/>

⁸¹ Betimi për Drejtësi (Vow for Justice), “Anulohen seancat për muajin shkurt në rastin MTPT” (Sessions for February in the case MTPT were canceled), <http://betimiperdrejtesi.com/vjollca-kelmendi-deshmon-sot-ne-rastin-limaj-te-mtpt-se/>

⁸² Supreme Court decision with KIPRED.

⁸³ See Koha net at <http://koha.net/?id=27&l=86897> Haraqija and Beqiri sentenced to 10 months conditionally (2015).

⁸⁴ State Prosecutor News, “Special Prosecution of the Republic of Kosova has filed indictment against eight (8) defendants charged for criminal offenses: “Abusing Official Position or Authority”, “Legalization of false content”, “Fraud” and “Tax Evasion”, at <http://www.psh-ks.net/?page=2,8,873>

⁸⁵ State Prosecutor Office, Media Press Release, 21 July 2015. At, <http://www.psh-ks.net/?page=2,8,775>

⁸⁶ Special Prosecution of the Republic of Kosovo has filed an indictment against defendants: Enver Hasani, Hakif Veliu and Albert Rakipi for the criminal offense “Fraud in Office”. 31 July 2015. At, <http://www.psh-ks.net/?page=2,8,780>

⁸⁷ KIPRED interview with high officials of the Kosovo Judicial Council, August 2015 in Prishtina.

⁸⁸ KIPRED source local NGO activist on rule of law issues, September 2015.

wealth not matching their overall incomes.⁸⁹ Furthermore, the EU in its Visa Liberalisation Roadmap requirements with Kosovo had enlisted the need to kick-off the investigations into inexplicable wealth. However, Kosovo state prosecutors complain to lack a legal basis to act in such cases, even though the declaration of property and assets by senior officials are public.⁹⁰ In order to conduct verification prosecutors could also rely on a reasonable suspicion that the property is acquired by criminal offence. So far senior officials are verified only by the ACA with a capacity to verify only 20% of officials with the EU recommending that the agency should not only randomly select senior officials for verification but also select positions that may be prone to corruption.⁹¹ Furthermore, the National Coordinator for Economic Crimes has also recommended for the creation of a police unit that would help ACA officials to verify the asset declaration of public officials.⁹² Consequently, if there would be an increase of wealth reported a joint team of ACA-Police-Prosecution should be set up to verify such cases.⁹³

However, without a shift of burden of proof from state prosecutors to the suspects in proving their origin of wealth, there seems to be an overall lack of willingness by prosecutors to investigate the creation of inexplicable wealth in Kosovo acquired by high profile officials, continuing the impunity from investigation and prosecution. With the entry into force of the new Criminal Code in 2013, the false declaration of property, is considered a criminal offence. A proper investigation by state prosecutors on the source of the wealth acquired by the high officials has not been conducted so far. Therefore during 2015 high officials have continued to provide less information on the source of the wealth acquired. Through a sample selection⁹⁴ for example few MP's for example have not provided sufficient information on the property declared, by declaring only inherited real estate without offering complete information related to the year of benefiting the property nor declaring the value of the real estate leaving it marked with a zero value.⁹⁵

⁸⁹ See for example KIPRED report “The Impunity in Kosovo: Inexplicable Wealth” November 2013, available at http://www.kipred.org/repository/docs/THE_IMPUNITY_IN_KOSOVO_INEXPLICABLE_WEALTH_632453.pdf.

⁹⁰ KIPRED interview with State Prosecutors, September 2015, Prishtina.

⁹¹ Pg. 17 of the EU Progress Report for Kosovo 2015, available at http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_kosovo.pdf

⁹² Kosovo Prosecutorial Council, Report on the Activities and Recommendations of the National Coordinator for Combating Economic Crimes, April-June 2014, pg.3. At, http://www.psh-ks.net/repository/docs/Nr.856.2014_RAPORT_TREMUJOR_PRILL_QERSHOR_I_KOORDINATORIT-KPK.PDF

⁹³ Ibid.

⁹⁴ KIPRED analysed in total 47 MPs with 17 MPs from the biggest parliamentary party i.e. the Democratic Party of Kosovo (PDK), 16 MP from Democratic League of Kosovo (LDK), 6 MPs from Alliance for Future of Kosovo (AAK) and 8 MPs from Vetevendosje party (VV). Furthermore, the property declarations of the cabinet of the Government were also analysed.

⁹⁵ See declaration of wealth of PDK MP Besim Beqaj at, http://www.akk-ks.org/declaration/2015/Kuvendi_i_Republikes_se_Kosoves/Besim_Beqaj.pdf, MP Blerta Deliu-Kodra at, http://www.akk-ks.org/declaration/2015/Kuvendi_i_Republikes_se_Kosoves/Blerta_Deliu-Kodra.pdf and/or MP Safete Hadergjonaj, at, http://www.akk-ks.org/declaration/2015/Kuvendi_i_Republikes_se_Kosoves/Safete_Hadergjonaj.pdf

In cases where indictments have been made in general confiscation of illegally obtained wealth continues to be very low by courts. During 2015 the National Coordinator against Economic Crimes reported an amount of 70,489.00 Euros.⁹⁶ During 2014 the confiscated property after the final court judgement amounted to 1 million Euro confiscated however from an old confiscation registered only recently in 2014.⁹⁷ In the year 2013, the amount sequestrated was approximately 1,555,258.43 Euro whereas the amount confiscated 6,700.00 thousand Euros.⁹⁸ Overall, there has been a steady increase of confiscation however minimal amounts have been confiscated and transferred to Kosovo budget throughout the years.

In ending, the majority of the cases recently investigated and indicted are being directed against former politicians or figures with weaker political powers. Addressing the high profile cases that are linked directly to power structures of the leading parties in coalition PDK and LDK seems rather not a common practice. The current coalition continues to act within its ‘marriage out of convenience’ relationship in order to guarantee the impunity from investigation and prosecution of their current political elite in power.

⁹⁶ E-mail communication of KIPRED with National Coordinator against Economic Crimes, January-February 2016.

⁹⁷ KIPRED source, official of the EU led and funded project.

⁹⁸ KIPRED E-mail Communication with NCEC, 2014-2015.

VII. Conclusion and Recommendations

There has been a prompt and selective response by state prosecutors and courts towards investigating and indicting individual cases against public peace and order caused by opposition protests. Differently the justice is served much slower when it comes to ending the impunity of high profile corruption cases of the coalition in power. More than eight years after Kosovo declared its independence and its justice system continues to be rated by the EU in its early stage of well-functioning. (EC Progress report 2015)

Kosovo will continue to suffer and be dysfunctional state as a result of corruption, especially of high profile corruption and its impunity, as long as the real political will to fight it effectively is absent. In this regard, the increase of accountability and responsibility from the judiciary is more than necessary. Notwithstanding the amendments and promulgation of new laws, their failure in implementation has left the fight against high profile corruption in its initial stage. In particular, the confiscation of assets generated by high-profile corruption is almost non-existent.

The existing record on persecution, indictments and court decisions related to cases of high-profile corruption are showing a growing trend. However, these cases are recent and we have yet to see the results, starting from creating a data-base of records on final/ executable judgments and confiscation of assets acquired illegally. Prescription of offenses that are associated with corruption cases of high level appears as a tactic to leave the complicated cases out of attention of the justice system by providing messages that are not good for the rule of law in general and continuing impunity of these cases.

In order to improve the fight against corruption, particularly of high profile and fulfill the EU requirements in this respect, KIPRED proposes the following recommendations:

- The decision-making authorities must demonstrate clear political will to fight high-profile corruption, in particular by allocating sufficient human and budgetary resources. In particular, a comprehensive and strategic review is needed of the judicial system response to corruption cases, in order to move away from ad hoc responses often dominated by political processes. In order to provide a more focused and strategic response the review should also take into account work of stakeholders including of civil society;
- The strategic review should also ensure the creation of independent and autonomous judicial system to deliver promptly and through a non-selective approach.. Further, the judicial system should act and resist on any possible interferences by developing a clear communication strategy with stakeholders including handling of possible media exposure at initial stages of investigations;
- The judicial authorities must act within the framework of current legislation to combat corruption, including high-profile corruption. Kosovo may consider confiscation of property of the same kind (*in rem*) acquired by criminal offense, based on the civil law standard on balance of probabilities rather than the criminal standard of beyond any reasonable doubt. Such temporary measures should create a sufficient legal basis to investigate unexplained wealth.

- Special Prosecutors will have to increase transparency and accountability towards public on the occasion of the criminal prosecution of high-profile corruption cases by communicating regularly with the public. Furthermore, special prosecutors would have to move out from their current “comfort zone” by demonstrating concrete and self-initiative in investigating and filing indictments for high-profile cases.
- In accordance with EU requirements, the Anti-Corruption Agency should increase number of the verifications of assets for high-profile officials, who are more exposed to corruption, rather than in randomly selected cases. Cooperation between the prosecution, the Anti-Corruption Agency, the Kosovo Cadastral Agency and the Tax Administration should be formalised in accordance with the recommendations of the National Coordinator against Economic Crimes, in order to increase the effectiveness of these bodies in the fight against high-profile corruption.
- Prescription of investigations for high-profile corruption cases should be discontinued as a practice. The Supreme Court should issue an immediate opinion to clarify any legal uncertainty created by the issuance of the decision of the panel of this court for the individual case as well as the circular issued by the Head of the Supreme Court.

VIII. Annex

Table 1.1: Number of corruption criminal reports submitted to all Prosecutions, during the period 2013, 2014 and first half of 2015						
According to the submitter	<i>Reports</i>	<i>Persons</i>	<i>Reports</i>	<i>Persons</i>	<i>Reports</i>	<i>Persons</i>
	Year 2013		Year 2014		First half of 2015	
Kosovo Police	236	634	198	449	98	197
Anti-Corruption Agency	78	196	147	186	10	15
Kosovo Customs	1	9	2	2	2	6
Received in competence	0	0	22	57	11	34
Injured Party	39	71	60	144	44	114
EULEX	4	16	1	1	0	0
Others (citizen,...)	18	45	24	89	16	23
Prosecutor upon self initiative	4	6	11	17	0	0
Total to all Prosecutions	436	1046	503	1011	186	400

Source: Kosovo Prosecutorial Council

Table 1.2: Number of corruption criminal reports submitted to SPRK, during the period 2013, 2014 and first half of 2015						
According to the submitter	<i>Reports</i>	<i>Persons</i>	<i>Reports</i>	<i>Persons</i>	<i>Reports</i>	<i>Persons</i>
	Year 2013		Year 2014		First half of 2015	
Kosovo Police	0	0	10	63	2	7
Anti-Corruption Agency	1	6	4	14	0	0
Kosovo Customs	1	9	0	0	0	0
Received in competence	0	0	8	41	4	12
Injured Party	1	2	0	0	0	0
EULEX	2	7	0	0	0	0
Others (citizen,...)	1	11	9	38	1	2
Prosecutor upon self initiative	0	0	0	0	0	0
Total to SPRK	6	35	31	156	7	21

Source: Kosovo Prosecutorial Council

Table 1.3: Corruption cases dealt by all Prosecutions during the period 2013, 2014 and first half of 2015

All Prosecutions	Number of Cases at work	Number of Persons	Number of Cases Resolved	% of Cases Resolved	Number of Persons whom Cases were Resolved	Number of Cases Unresolved	% of Cases Unresolved	Number of Persons whom Cases remained Unresolved
Year 2013	778	2161	314	40%	665	464	60%	1496
Year 2014	976	2569	444	45%	1011	532	55%	1558
First half of 2015	717	2007	128	18%	301	589	82%	1706

Source: Kosovo Prosecutorial Council

Table 1.4: Corruption cases dealt by SPRK during the period 2013, 2014 and first half of 2015

SPRK	Number of Cases at work	Number of Persons	Number of Cases Resolved	% of Cases Resolved	Number of Persons whom Cases were Resolved	Number of Cases Unresolved	% of Cases Unresolved	Number of Persons whom Cases remained Unresolved
Year 2013	47	297	17	36%	98	30	64%	199
Year 2014	66	368	17	26%	107	49	74%	261
First half of 2015	53	274	5	9%	41	48	91%	233

Source: Kosovo Prosecutorial Council

Table 1.5: The manner of Solved Corruption cases by all Prosecutions during the period, 2013, 2014 and first half of 2015

All Prosecutions	Number of Cases Resolved	Number of persons against whom were Filed Criminal Reports/Cases were Resolved	Number of persons for whom prosecutors Dismissed Criminal Report and Terminated Investigations	%	Number of Indicted persons	%
Year 2013	314	665	353	53%	312	47%
Year 2014	444	1011	545	54%	471	47%
First half of 2015	128	301	116	39%	185	61%

Source: Kosovo Prosecutorial Council

Table 1.6: The manner of Solved Corruption cases by SPRK during the period, 2013, 2014 and first half of 2015

SPRK	Number of Cases Resolved	Number of persons against whom were Filed Criminal Reports/ Cases were Resolved	Number of persons for whom prosecutors Dismissed Criminal Report and Terminated Investigations	%	Number of Indicted persons	%
Year 2013	17	98	69	70%	29	30%
Year 2014	17	107	84	79%	28	26%
First half of 2015	5	41	4	10%	37	90%

Source: Kosovo Prosecutorial Council

Table 1.7: Decisions of First Court Instance for cases of corruption, by Case, during period 2014 and first half of 2015

Year	Number of Cases at work	Number of Cases Resolved	Number of Cases Unresolved	Guilt Judgments				Total Guilt Judgments	Acquittals	Rejected Judgments	The case was resolved in another manner
				Imprisonment sentence	Fine sentence	Conditional sentence	Other sentence				
Year 2014	655	229	426	38	37	43	2	120	41	20	48
		35%	65%	17%	16%	19%	1%	52%	18%	9%	21%
First half of 2015	490	84	406	14	13	19	0	46	12	11	15
		17%	83%	17%	15%	23%	0%	55%	14%	13%	18%

Source: Kosovo Judicial Council

Table 1.8: Decisions of First Court Instance for cases of corruption, by Persons, during period 2014 and first half of 2015

Year	Number of persons with cases at work	Number of persons against whom proceedings have been completed	Number of persons against whom proceedings have not been completed	Persons declared Guilty				Total Persons declared Guilty	Number of persons Acquitted	Number of persons whom judgment was rejected	Number of persons whom cases were resolved in another manner
				Number of persons sentenced to prison	Number of persons sentenced to a fine	Number of persons convicted on bail	Other sentences				
Year 2014	1306	307	999	35	41	54	2	132	58	40	77
		24%	76%	11%	13%	18%	1%	43%	19%	13%	25%
First half of 2015	1107	141	966	24	13	28	0	65	17	21	38
		13%	87%	17%	9%	20%	0%	46%	12%	15%	27%

Source: Kosovo Judicial Council