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INVESTIGATION OF CORRUPTION IN KOSOVO: (MIS) COOPERATION BETWEEN POLICE AND PROSECUTION

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Prepared by: Ariana Qosaj-Mustafa

Research supported by: Kastriot Jahaj and Violeta Haxholli

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Kosovar Institute for Policy Research and Development
Rexhep Mala Str, No 5A
10 000 Prishtina, Kosovo
Phone and Fax: +381 38 227 778
www.kipred.org

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I. Introduction

Kosovo institutions have been addressing as a matter of priority the EU requirements for the Visa Liberalization Roadmap for Kosovo and the Feasibility Study for Kosovo. The EU has requested from Kosovo government to address around 150 criteria in order for Kosovo to advance in its EU free travel and integration processes. Therefore, Kosovo government has been trying to provide evidence of results in its fight against corruption, including developing a tracking mechanism to prove the successful rate of prosecutions and convictions of corruption. Tackling corruption particularly at the level of high profile officials, including requirements such as better coordination among the rule of law enforcement bodies and impartial investigations of corruption by also ensuring reliable corruption statistics are a necessary requirements for Kosovo to advance in its EU path.¹

The Kosovo institutions have been efficient in proposing new legislation, drafting of new policies and strategies however, have proven weak in efficient and impartial delivery of such requirements. This brief analyses the cooperation in between Kosovo Police and prosecution and its recent initiatives by looking at whether this cooperation and initiatives have been in line with the set requirements.

Since the declaration of independence of Kosovo, the public satisfaction with the work of the Kosovo Police and the State Prosecution has been declining. Whereas the Kosovo Police continuously enjoys the highest public trust over the last 6 years (80% September 2008 to 75.1% April 2013) the state Prosecution enjoys the lowest (22.7% in May 2008 to 17.7% April 2013). Such a discrepancy in public trust is also reflected in attempts for efficient inter-institutional cooperation, especially in the area of fighting corruption.

Legal framework for cooperation between Kosovo Police and Prosecution in investigating corruption is largely in place and it is in detail specified by Kosovo's Criminal Procedure Code and Kosovo Law on Police. Nevertheless, problems occur when it comes to practical cooperation that is impeded by the lack of proper database and cases file management.

There has been progress in filing cases against corruption, though the local prosecutors mainly dealt with low profile cases. In addition, initiating investigations as foreseen by law has been minimal by local prosecutors (0.52%), while Kosovo Police has initiated almost 77% of cases. Until now, high profile and risky cases have been investigated and prosecuted by EULEX. The inability of local prosecutors to deal with high profile cases remain as serious concern for strengthening performance of rule of law institutions.

Investigations of corruption of high profile cases by local prosecutors and Kosovo Police are a hostage of political interference and lack of independence of these institutions, which as a fact is widely acknowledged by domestic officials, diplomatic presence in Kosovo and European Union (EU) Commission annual Reports. The lack efficiency and independence of rule of law institutions to deal with corruption makes the extension of EULEX mandate both necessary and inevitable.

II. Provisions of the Criminal Procedure Code to cooperation

The Criminal Procedure Code (No. 04/L-123) and the Law on Police (Nr. 03/L-035) are the main laws that foresee the cooperation between Kosovo Police and prosecutorial services in Kosovo. Under the new Criminal Procedure Code (CPC) of Kosovo (2013), the major role on investigation of crimes has been foreseen for the prosecutorial services supported by the police for the proper conduct of investigations. The State Prosecutor depends on the police, but not exclusively, as stated in the CPC that "a state prosecutor may

¹ European Commission, Kosovo's 2013 Progress Report. Pg 10, 12 and 13. At http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/kosovo_2013.pdf

initiate a criminal proceeding upon receiving information from the police among other actors.”² However, in the investigation process both bodies shall work jointly in the initial steps.³ The prosecution directs and supervises the police work and other bodies conducting the criminal investigation, once such a measure is authorized or initiated whilst also has the right to access all relevant investigative information that police has in its possession.⁴

Furthermore, as stated in the Code the police have a duty to provide a report to the competent state prosecutor according to the foreseen timeline of twenty four (24) hours as soon as they obtain a reasonable suspicion that a criminal offence prosecuted ex officio has been committed.⁵ Based on this report the prosecution decides whether to initiate or not a criminal proceeding.⁶ In cases that the prosecution may decide to withdraw from a criminal proceeding a decision should be drafted stating clearly the reasons for a termination of criminal proceeding with a written decision within thirty (30) days.⁷ The police play a major role in prosecution of criminal offences when it comes to the necessary collection of information for initiation of investigation and the police are bound to follow the prosecution’s request.⁸ If an indictment has not been filed after two years of initiating the investigation, it is considered that the investigation is automatically terminated.⁹

Line of accountability is from the police to the prosecutor with the police duty to report immediately to the state prosecutor on the measures undertaken under their instruction. In cases if they will not be able to conduct any of the foreseen investigative measures they shall report immediately to the state prosecutor the reasons for their inability to undertake such measures.¹⁰ The Code foresees the cooperation in between the state prosecutor and the police also when it comes to the so-called Temporary Sequestration, with both prosecution and police sharing responsibility to guard and register appropriately such items.¹¹ Moreover, the

² Criminal Procedure Code of the Republic of Kosovo, Article 6, Initiation of Criminal Proceedings, paragraph 3. At <http://www.kuvendikosoves.org/common/docs/ligjet/Criminal%20Procedure%20Code.pdf>

³ Criminal Procedure Code of the Republic of Kosovo, Article 69, Investigation by Police, paragraph 2.

⁴ Ibid, paragraph 3 and 4.

⁵ The code states that “...the police criminal report shall be submitted to the state prosecutor along with objects, sketches, photographs, reports obtained, records of the measures and actions undertaken, official notes, statements taken and other materials which might contribute to the effective conduct of proceedings.” Criminal Procedure Code of Kosovo, Article 81, Police Criminal Report, paragraph 2 and 3.

⁶ If the measures and actions undertaken by the police, the evidence, and the information gathered provide no basis for a police criminal report and there is no reasonable suspicion that a criminal offence has been committed, the police will nevertheless send a separate report to that effect to the state prosecutor. Criminal Procedure Code of the Republic of Kosovo, Article 70 and 81 of the Code paragraph 4..

⁷ Reasons enlisted under the Criminal Procedure Code of Kosovo are: 1.1. there is no reasonable suspicion that a criminal offence has been committed; 1.2. the period of statutory limitation for a criminal prosecution has expired; 1.3. the criminal offence is covered by an amnesty or pardon; 1.4. the suspect is protected by immunity and waiver is not possible or not granted by the appropriate authority; or there are other circumstances that preclude prosecution. (Article 82, Dismissal of Police Criminal Report, Paragraph 1).

⁸ “The state prosecutor may undertake investigative actions or authorize the police to undertake investigative actions relating to the collection of evidence.” Article 104, Decision to Initiate Investigative Stage, paragraph 4 and Article 83, paragraph 1.

⁹ Criminal Procedure Code of Kosovo, Article 159 states on Time Limits of Investigation that ‘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.’ At:

<http://www.kuvendikosoves.org/common/docs/ligjet/Criminal%20Procedure%20Code.pdf>

¹⁰ Criminal Procedure Code of the Republic of Kosovo, Article 83, Supplemental Information to Police Criminal Report, paragraph 3.

¹¹ Objects that are temporary sequestered shall be photographed and maintained in appropriate containers or transparent plastic bags and the authorized police and state prosecutor shall maintain the photographic record of the chain of custody for each object or set of documents. See Criminal Procedure Code of the Republic of Kosovo, Article 112, Temporary Sequestration, paragraph 2, 4,5 and 7.

state prosecutor may authorize the police also to examine, analyze and search for information or data contained within the computer equipment, electronic storage media or similar device including financial records of a suspect that are lawfully obtained through a court order or by consent.¹² Furthermore, under the Kosovo Law on Police, there are other detailed cooperation provisions outlined in line with the Criminal Procedure Code of Kosovo covering the relationship between Police, Public Prosecutors and the Court.¹³

The prosecutorial services through the KPC have in recent years due to the EU requirements on the fight against corruption undertaken a number of initiatives to enhance its efficiency and success rate on the fight against corruption. In 2012, the KPC intensified its efforts by also drafting of two Memorandum's of Understanding to address the issue of threats against prosecutors and to intensify the cooperation of law enforcement agencies in the fight against corruption.¹⁴ In the same year the KPC also adopted the "Strategic Plan for Inter-Institutional Cooperation 2013-2015 of the Kosovo State Prosecutor" by making the KPC lead agency in standardizing criminal investigations on corruption and also foreseeing other memorandums of understanding that should be signed with different law enforcement agencies to increase the effectiveness of the work against corruption.¹⁵ Such MoU's still have to be drafted. The plan also foresees joint reporting of these agencies on the results in fight against organized crime and corruption.¹⁶

Additionally, in 2013 the State Prosecutor drafted the "Action Plan on Increasing the Effectiveness of the Prosecutorial System in the fight against Corruption" by making Chief Prosecutors in the Basic Prosecution Offices as lead institutional connection in the fight against corruption cases. The plan is foreseen to be evaluated by the KPC in June 2014.¹⁷ The Action Plan tries to overcome the weak links of cooperation in between rule of law bodies by targeting in particular the cooperation amongst Police and Prosecution. Further, the Action Plan requires from Chief Prosecutors of Basic Prosecution Offices in Kosovo to discuss with Kosovo Police and with other agencies cases at the preliminary investigation phase that may need earlier assignment of Prosecutor before the criminal report is filed.¹⁸ The provisions enlisted under this Action Plan foresee in more detail measures for implementation that are envisioned by the Kosovo Criminal Procedure Code but seek to raise the level of implementation and accountability of the prosecutorial services by regular monitoring of the KPC. The section below looks at the legal aspects of this cooperation and identifies further the problems in implementation.

¹² Criminal Procedure Code of the Republic of Kosovo, Article 147 and 148, Computer Analysis and Financial Analysis, paragraph 2.

¹³ Republic of Kosovo Law No.04/L-076 on Police, Article 6, Relationship between Police, Public Prosecutors and the Court, paragraph 1, page 4, http://www.kosovopolice.com/repository/docs/Law_on_Police.pdf

¹⁴ See for example Memorandum of Understanding signed in between KPC, Kosovo Judicial Council, Ministry of Justice, Ministry of Finance, Ministry of Internal Affairs, Central Bank of Kosovo, Agency Against Corruption and Kosovo Agency for Intelligence to appoint a National Coordinator for the fight of Economic Crimes (http://www.psh-ks.net/repository/docs/Nr.231.2014_-_Memorandum_Bashkepunimi_fin.pdf).

Also see KPC and Ministry of Internal Affairs Memorandum of Understanding on Cooperation in the Area of Individual Security of Prosecutors in cases of threats against prosecutors (http://www.psh-ks.net/repository/docs/Nr.932.2013-Marreveshje_Mirekuptimi_mes_KPK-se_dhe_Policise_se_Kosoves-Bashkepunimi_ne_fushen_e_sigurise_individuele_te_prokuroreve_ne_rastet_e_kercenimeve_ndaj_tyre.pdf)

¹⁵ See Part 4A, 4E, 4H of the Strategic Plan for Inter-Institutional Cooperation 2013-2015, adopted in November 2012. At http://www.psh-ks.net/repository/docs/Strategic_Plan_for_Inter-Institutional_Cooperation_2013-2015_1.pdf

¹⁶ Strategic Plan for Inter-Institutional Cooperation 2013-2015, Part 4H, Coordination of Inter-Institutional Communication with Media and Public, paragraph 1, page 8, http://www.psh-ks.net/repository/docs/Strategic_Plan_for_Inter-Institutional_Cooperation_2013-2015_1.pdf

¹⁷ Article 8, Ibid.

¹⁸ Action Plan on Increasing the Effectiveness of the Prosecutorial System in the fight against Corruption, Article 7, Cooperation with Police, Anti-Corruption Agency and other applicants of the criminal reports, http://www.psh-ks.net/repository/docs/Action_Plan_-_Corruption.pdf

a) Problems on efficiency: institutional capacities and cooperation

The main Kosovo Police body mandated to fight corruption in Kosovo is the Directorate on Investigating Corruption and Economic Crimes that is based in Prishtina and has 6 regional units that report to the Directorate. The Directorate has managed over past last two years to increase the number of police officers to 130 staff, while 96 officers are directly involved in investigations.¹⁹

The Directorate also does regular performance evaluation and is working on developing the Standard Operating Procedures to clarify roles and responsibilities, a practice that has not been applied to State Prosecution until the adoption of the “Action Plan on Increasing the Effectiveness of the Prosecutorial System in the fight against Corruption.” As a result, majority of the corruption cases instigated in Kosovo has been conducted by the Kosovo Police. Much later then Kosovo Police, the Kosovo Prosecutorial Council KPC has just recently initiated a more dynamic system to evaluate the performance of the prosecutors. There is a database created that registers the actions of prosecutors by also engaging an internal commission composed of senior prosecutors observing the work of younger prosecutors. In this evaluation of performance amongst other the self-initiative criteria on initiating cases has been incorporated including a normative on cases that have been solved²⁰. In 2013 the KPC has evaluated that prosecutors had overcome the percentage of cases up to 200% however without evaluating the quality of the cases meaning to what extent the cases have been successfully implemented.

In terms of irregularities on the initiation of criminal proceedings, according to the Head of Directorate on Investigating Corruption and Economic Crimes of Kosovo Police, there have been cases when prosecutors after receiving information from the media, verbally instructed the Directorate to initiate the investigation.²¹ In accordance to the Criminal Procedure Code of Kosovo²² police should be notified by the prosecution on initiation of investigation in writing and also on the withdrawal of prosecutors from criminal proceeding. However, the police states that often themselves they require explanations from prosecution with the reasons stated by prosecutors being not sufficient as required by the law. In general, the police confirm that the cooperation is best when working with Chief Prosecutors of Basic Prosecution Offices.²³

Moreover, the administration of State Prosecution has often registered the same case, several times. According to the Head of the Directorate on Investigating Corruption and Economic Crimes of Kosovo Police this happened when a case was opened and additional evidences submitted by the police for the same case were filed by the administration of State Prosecutors as new cases²⁴. This has led to enormous increase of cases reported and had a direct impact on the efficiency and concluding the cases.

As a result of the pressure to fight corruption and the requirements of the EU on developing a tracking mechanism, the Kosovo Prosecutorial Council (KPC) has made some efforts to overcome multiplication and mismanagement of cases, by establishing the database known as Tracking Mechanism. The database has become functional with difficulties and was launched in November 2013. The database is expected to become fully functional and to provide accurate results by June 2014. It has also codified²⁵ the anti-corruption criminal offences as this posed a problem in the past with case file management of corruption and other criminal cases, which were not classified according to respective categories.

¹⁹ Interview with Director of Directorate against Corruption and Economic Crimes Mr. Emin Beqiri, April 2014.

²⁰ Ibid

²¹ Ibid.

²² Criminal Procedure Code of Kosovo Article 82, Dismissal of Police Criminal Report, Paragraph 1

²³ Supra note at 19.

²⁴ Interview with Director of Directorate against Corruption and Economic Crimes Mr. Emin Beqiri, April 2014.

²⁵ The Code for corruption cases used is KORR/Name of the person indicted.

Data and case files management has been identified as one of key issues for improving of performance of rule of law institutions by EU Commission Progress Report of 2013 (missing footnote) and it has been a reoccurring theme for several years. However, some half – measure steps in addressing this issue has been undertaken by these institutions in 2013 and 2014. In this regard, Kosovo Prosecutorial Council in March 2014 issued a report to harmonize the statistics for year 2013 as tracked by the prosecution and the courts. The report ‘Harmonizing of Statistics of the Inter-Institutional Tracking Mechanism on characteristics of criminal offences including corruption cases, was drafted based on the information from the database system developed by the KPC.²⁶ The database is a simple Access database system that tracks cases including of corruption, standardizes different criminal offences in accordance to the new Criminal Procedure Code and tracks these cases from the initiation, indictment, upholding or refusal of indictments by courts and provides for judgment details by courts. Even though, the report has tried to standardize the multiplication of the cases reported nevertheless, the database does not include the execution of court final decision and sentencing of the cases, opposite to the EU requirements on tracking the success rate of the corruption cases investigated and sentenced in Kosovo. The simple Access database has supported the process of collection of data however does not solve the problem on regular and transparent data collection system and case file management in measuring the efficiency and success rate of prosecutorial and court system.

A comprehensive approach in solving the problem of data and case file management has been undertaken by the Norwegian Ministry of Foreign Affairs jointly with the Ministry of Justice, Kosovo Judicial Council and Kosovo Prosecutorial Council, which will implement an advanced Information Communication Technology based system for Case Management and Information System (CMIS) targeting the Kosovo Judiciary and Prosecutorial services so-called “Project on Information Management System of Cases by Courts and Prosecution services.”²⁷ The Norwegian Ministry will fund 6.660.000 Euro for the project with 1.500,000 Euro matching funds by KJC and KPC. The project is at its first phase of implementation however, the Norwegian Ambassador to Kosovo Mrs. Ian Braathu has made clear to Kosovo authorities that in the case of lack of progress in the current (first) phase, Norwegian government will reconsider the continuation of supporting this project.²⁸ KJC and KPC have not the luxury to fail in the implementation of this project, due to the consequences that such a failure may cause to the overall administration of the rule of law in Kosovo and its progress towards visa liberalization and EU integration process.

Due to the requirements of the EU Commission enlisted in the Visa Liberalization Roadmap and Stabilization and Association Agreement, the Kosovo Prosecutorial Council has taken the lead in increasing the effectiveness of the anti-corruption activities by drafting the Strategic Plan and Action Plan. The new requirements of the Kosovo criminal procedure code balance the role of police and prosecution to investigate and indict criminal cases. The Code allows for flexibility for the police to investigate criminal activity but also

²⁶ Annual Report (2013) on Harmonization of Statistics: Inter-Institutional Mechanism for Harmonization of Statistics for characteristic criminal offences, Kosovo Prosecutorial Council. At [http://www.psh-ks.net/repository/docs/ANNUAL_REPORT_\(2013\)_ON_TRACKING_MECHANISM.pdf](http://www.psh-ks.net/repository/docs/ANNUAL_REPORT_(2013)_ON_TRACKING_MECHANISM.pdf)

²⁷ The project is also in line with the Kosovo Judicial Council Strategy on ICT 2012-2017. At http://www.kgjk-ks.org/repository/docs/Kosovo-ICT-strategy_389023.pdf and the Memorandum of Understanding in between Kosovo Judicial Council and Kosovo Prosecutorial Council related to putting in use Information and Communication Technology (ICT) in Courts and Prosecution Offices

http://www.psh-ks.net/repository/docs/MOU_KJC_and_KPC ICT_USE__2_.pdf

²⁸ “Norvegjia ia kushtëzoi milionat Kosovës: Ambasadori Norvegjez kërkoi gjyqësor efikas,” pg.1 and 5 Kosova Sot newspaper, 8 April 2014.

foresees proactive role for the prosecutors to conduct investigations focusing on corruption or organized crime even when not knowing the names of defendants.²⁹

Additionally, Kosovo Prosecutorial Council, EULEX and Chief Prosecutor of the Special Prosecutors Office of Kosovo (SPRK) have issued a joint guideline to define all cases of corruption including high profile corruption cases. They have appointed 45 prosecutors that should prioritize the fight against corruption and economic crimes investigations. As a result, there has been an increase on the corruption cases investigated and indicted. But, realities of taking institutional lead in opening cases of corruption are not in line with the legal requirements and the KPC Strategic and Action Plan that envisages a leading role for prosecutors. In 2013, the KPC has reported that amongst cases tracked the cases of corruption have dominated with 53.60% i.e. 778 cases, followed by 22.60% of cases of narcotics/drugs, from the overall number of 1585 cases indicted. But, the cases initiated by the prosecutors on their own initiative are minimal only 5 cases or 0.52% in comparison to the Kosovo Police that has initiated 76.99% of cases 746 in total.

The KPC finds lack of initiative by prosecutors as one of the main problems of failing to be effective in the fight against corruption³⁰. The example of the lack of prosecutors that have applied to be part in the SPRK once the advertisement opened at SPRK in 2013. There were no local prosecutors applying to work with the SPRK. In accordance to KPC it has shown a lack of willingness but also courage by prosecutors to be part of a structure to fight corruption and organized crimes cases³¹.

A non-legal and unrealistic deadline that may hamper quality of criminal proceedings by State Prosecution has been set by KPC's Action Plan. According to the Plan, cases reported until November 2013 by different agencies including reports of the Agency against Corruption and criminal proceedings filed by the police should be indicted or terminated by June 2014.³² The Director of the Kosovo Prosecutorial Council has stated that "Prosecutors are obliged to either indict or terminate cases, as the prosecutor is obliged to give results."³³ The imposed deadline apart that is not in line with Criminal Code of Kosovo, most probably will increase probability for unprofessional handling of cases by prosecutors, opens the room for mismanagement and selective justice. Moreover, it makes State Prosecution vulnerable to widely noted political interference, since the deadline coincides with the timing of general elections in Kosovo.

III. Political (in)dependence of Police and Prosecution in fighting corruption

According to the EU Commission 2013 Progress Report for Kosovo,³⁴ political interference in the work of the judiciary remains a serious concern. Political interference into the judicial system of Kosovo started with government coalition between PDK (Democratic Party of Kosovo) and LDK (Democratic League of Kosovo) in 2008. At that time, as one judicial representative stated Presidents of key Courts and other judicial positions were divided amongst then coalition parties LDK and PDK.³⁵ The trend of political interference became harsher with the new government led by PDK after the 2010 elections. Heads of key positions in

²⁹ Smibert, John, "Guide to the Criminal Procedure Code of Kosovo (2013) and Criminal Procedure Code of Kosovo," Office of Overseas Prosecutorial Development and Training, US Embassy Prishtina. At http://www.kgjk-ks.org/repository/docs/Udhezuesi-dhe-kodi-i-procedures_anglisht_225215.pdf

³⁰ KIPRED interview with Shkelzen Maliqi, Director General of the Kosovo Prosecutorial Council, January 2014

³¹ Ibid

³² See Article 3, paragraph 1, Article 4, paragraph 2 and Article 8, Paragraph 5 on prioritizing cases and deadlines of the Action Plan, and At: http://www.psh-ks.net/repository/docs/Nr.1285.2013-Plani_i_Veprimit_per_Rritjen_e_Efikasitetit_te_Sistemit_Prokurorial.pdf

³³ KIPRED interview with Shkelzen Maliqi, Director General of the Kosovo Prosecutorial Council, January 2014.

³⁴ European Commission, Kosovo's 2013 Progress Report, pg 12. At http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/kosovo_2013.pdf

³⁵ KIPRED source, senior local prosecutor, December 2013.

justice institutions, Kosovo Judicial Council (Enver Peci), Kosovo Prosecutorial Council and State Prosecutor (Ismet Kabashi) and Head of Constitutional Court (Enver Hasani) are from Mitrovica, while only, Head of Supreme Court (Fejzullah Hasani) is from Kamenica. In the prosecutorial services the connections or loyalty to the ruling party PDK or former structures of ShIK are often quoted as someone is ‘... very strong to Mitrovica.’³⁶ Likewise the political interferences have been noted in few appointments of prosecutors from regions of Mitrovica, Drenas, Glogovc and Ferizaj, often referred to as stronghold regions of the PDK.³⁷ Similar interferences were noted in the past in the presidential degrees of court appointments of judges and prosecutors by former Presidents.³⁸ In this regard, the fact that Kosovo Prosecution has initiated only 5 cases in 2013³⁹ shows the institutional weakness and potential interference in the justice system.

Concerns about political interference in the law enforcement institutions have been expressed publicly by representatives of Kosovo Government and diplomatic presence in Kosovo. The Kosovo’s Minister of Internal Affairs, Mr. Bajram Rexhepi has stated that informal individuals, deputies, high profile leaders call the police and interfere in the police work potentially as a return for the favors of the formers towards the latter. However, the Minister claims that he has managed to diminish such interferences within Kosovo Police.⁴⁰ Apparently there are non-formal groups in police which are individuals or institutions which aim is to influence in the operational aspect and they are continuing to exercise influence on the Police.⁴¹ In similar lines the Ambassador of Germany in Kosovo Peter Blomeyer, has expressed his concern that EULEX judges and prosecutors have reported the pressure exercised on local (Kosovar) judges and prosecutors by the politicians or powerful people⁴² Pressure has been reported by the Anti-Corruption Agency as well. Officials of this Agency have received phone calls, private e-mails, letters, and even office visits allegedly to get information regarding some cases under investigation. This has been considered by the Agency pressure and a tendency of intimation towards its officials and their work and has called for such actions to stop.⁴³

There is evidence that even Prime–Minister Thaçi and key members of the Government were involved in investigative work of police and prosecution. The case occurred in June 2008 when an alleged intruder entered in Prime Ministers house initially reported in media as assault against the PM. Despite the police investigations results showing that this was a failed robbery attempt, prosecutor kept preceding the case as attempted murder against Prime Minister Hashim Thaçi. Investigations showed that the perpetrator didn't have a gun, and didn't know that that house was of the PM.⁴⁴ As a consequence of this case, General Major Mr. Rrahman Sylejmani, who has professionally stated that this case has not to deal with murder, but robbery, was later discharged from his function as Assistant of Police Commissioner for the Crime Pillar.⁴⁵

³⁶ KIPRED source, interview with official of mid-level management at State Prosecutors Office, September 2013. See also information available online on appointment of prosecutors, President’s Office, archived news at <http://www.president-ksgov.net/>

³⁷ KIPRED source, interview with official of mid-level management at State Prosecutors Office, September 2013. See also information available online on appointment of prosecutors, President’s Office, archived news at <http://www.president-ksgov.net/>

³⁸ See “The Inseparable Power: An analysis of the independence of the judiciary in Kosovo” (September 2011) KIPRED, at http://www.kipred.org/advCms/documents/84611_Inseparable_power_ENG_final.pdf

³⁹ See Annual Report (2013) on Harmonization of Statistics: Inter-Institutional Mechanism for Harmonization of Statistics for characteristic criminal offences, Kosovo Prosecutorial Council. At [http://www.psh-ks.net/repository/docs/ANNUAL_REPORT_\(2013\)_ON_TRACKING_MECHANISM.pdf](http://www.psh-ks.net/repository/docs/ANNUAL_REPORT_(2013)_ON_TRACKING_MECHANISM.pdf)

⁴⁰ See Bajram Rexhepi interview for a local television at, <http://www.koha.net/arkiva/?page=1,13,174633>

⁴¹ KIPRED interview with Adviser of Internal Affairs Minister (Fisnik Rexhepi), 14 January, 2014.

⁴² See the interview of Ambassador Peter Blomeyer for a local newspaper at, <http://www.zeri.info/artikulli/25371/politikanet-telefonojne-prokuroret>

⁴³ “Presion mbi Agjencinë kundër Korrupsion”, Indeksonline, 27 January, 2014 <http://indeksonline.net/?FaqeID=2&LajmID=83236>

⁴⁴ KIPRED source, Kosovo Senior Police management, November 2013.

⁴⁵ Ibid.

However, political interference does not influence solely police investigations but also structural management change. According to Mr. Behar Selimi, member of the Parliamentary Committee on Legislation and the former Acting Director General of Kosovo Police, this influence does not come from the Ministry of Internal Affairs, but rather from individuals in politics or from persons that hold public posts.⁴⁶ In 2011 it has been reported, that the Minister of Internal Affairs Mr. Bajram Rexhepi due to allegations that senior police officials are affiliated to various illegal intelligence structures in Kosovo, made a number of changes in the structure of the Kosovo Police. However, after few months the alleged police officers have been returned to the same management position.⁴⁷

Since the declaration of independence, Kosovo Police in cooperation with local prosecutors have investigated few cases of high profile cases of corruption, which were indicted, but not proven in Courts, like the case of former Governor of Kosovo Central Bank, Mr. Hashim Rexhepi. Incapability of initiation of cases for high level corruption is a clear indicator of political interference and lack of independence of justice system that evidently exists only on paper in Kosovo. Due to these extremely poor results undermines Kosovo's progress in addressing the requirements clearly stated continuously by EU Commission Reports for improvement of performance of rule of law institutions. Thus, extension of the EULEX mandate is necessary for ensuring the basic efficiency of justice system in dealing with high profile cases of corruption.

IV. Conclusions and Recommendations

The cooperation in between police and prosecution has improved in the last year, however lack of own initiatives by prosecution to conduct impartial and efficient investigations remains worrisome. The multiplication of cases handled by police, prosecution and courts continues to cause problems with the backlog of cases and in developing an accurate and reliable tracking mechanism for Kosovo. Furthermore, the case and data file management is still far away from ensuring transparent and accountable management system in order to serve the public interest in fulfilling the EU requirements for Kosovo.

While there are significant improvements in criminal charges increased at the overall prosecution level, the cases mainly dealing with petty crime corruption cases continue to shift attention away from the need for Kosovo to investigate indict and sentence high profile cases of corruption.

Political interference remains a serious concern and a challenge for Kosovo to secure and promote the efficiency, impartiality and fairness of the justice system, which if it is not addressed immediately may have devastating effects to the already weak rule of law system in the country. Ensuring fairness of law enforcement and prosecutorial criminal proceedings should become a key priority of Kosovo political and rule of law institutions in order to ensure fair and equitable criminal justice and effective protection of citizens in line with international best practices.⁴⁸

Impartial and efficient law enforcement and prosecutorial services is vital for professional administration of justice, without which Kosovo's progress towards EU Integration and Visa Liberalization are hardly imaginable. Thus, investigations and criminal proceedings should ensure professional and politically unimpeded coordination among the law enforcement and other rule of law bodies.

⁴⁶ KIPRED interview with MP Mr.Behar Selimi, 12 December, 2013.

⁴⁷ See KIPRED Report "The Impunity in Kosovo: Inexplicable wealth" pg.14, 2013. At: http://www.kipred.org/advCms/documents/42734_Investigating_inexplicable_wealth_ENG.pdf

⁴⁸ See for example "Guidelines on the Role of Prosecutors", adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. At <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfProsecutors.aspx>.

KIPRED proposes the following recommendations to overall improve the investigation, indictment and sentences of high profile corruption by ensuring the efficiency, impartiality and fairness of the justice system:

- **Hands-off in appointments and administration of justice:** The next Government of Kosovo and political elite should stop their interference in appointment of management structure of judicial institutions and police and end current practices of political appointments, including regional domination of party strongholds in power. Any further interference in criminal proceedings by the Government officials and MPs should be sanctioned by specific amending Criminal Code of Kosovo
- **Management structure change should be remedied in accordance to strict criteria's:** Any future management structure changes within Judicial System and Police should be remedied in accordance to the applicable law, by including the criteria's of track records of normative of cases realized, meritocracy and success case rate of respective candidates. Furthermore, previous management structure changes that have been interfered by politics should be remedied by creating rules of promotion only based on meritocracy and evaluation of professional integrity.
- **Reduce backlog of cases by harmonizing data and multiplication of cases:** Statistical data management and file management has to be urgently and professionally administrated in order to overcome multiplication and backlog of cases and to avoid any failure that may endanger the committed donations by Norwegian Government. Kosovo Prosecutorial Council together with the Kosovo Judicial Council should regularly inform the public about progress on handling of cases and make the database system (upon indictment) available to general public in accordance to applicable law (access to official documents).
- **Implement the Action Plan in line with the Criminal Procedure Code provisions:** The Action Plan on Increasing the Effectiveness of the Prosecutorial System in the fight against Corruption should be changed in order to fulfill legal requirements that derive from the Kosovo Criminal Procedure Code. In case it remains it has to be closely monitored by Parliament, Civil Society and EULEX in order to ensure quality handling of cases to be terminated until June 2014 and avoid political influence of selective justice in this process during upcoming Kosovo general elections.