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# **THE FIGHT AGAINST CORRUPTION: A COMPARATIVE ANALYSIS BETWEEN KOSOVO AND CROATIA**

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## 1 EXECUTIVE SUMMARY

The Special Prosecution Office of Kosovo (SPRK) is the leading institution mandated to deal with corruption and organized crime cases of high profile. The purpose of this policy paper is to provide a comparative analysis of the successful fight against corruption in Croatia and the current efforts to combat corruption and organized crime in Kosovo. This paper uses the Bureau for Combating Corruption and Organized Crime (USKOK) in Croatia as a comparative example and model for SPRK in Kosovo to learn from in order to increase its efficiency.

The institutions in Kosovo have established an institutional and legal framework to deal with this problem and have updated this framework many times due to their continuous failures. Some steps were taken in fighting this phenomenon, while few laws enacted such as: Law on Anti-Corruption Agency,<sup>1</sup> Law on the Declaration, Origin and Control of Property and Gifts of Senior Public Officials<sup>2</sup> and Law on Prevention of Conflict of Interest in Exercise of Public Functions.<sup>3</sup> Also, the Government of Kosovo (GoK) has drafted two strategies: Anti-Corruption Strategy and Action Plan for 2009-2011,<sup>4</sup> and the recent Anti-Corruption Strategy and Action Plan for 2013-2017, approved by the Kosovo Assembly,<sup>5</sup> which has faced delays for adoption for almost two years. This is a basic document in fulfilling the short term criteria requested from Kosovo to advance in the visa liberalization dialogue and was a precondition for the country to obtain a positive answer regarding the Stabilisation and Association Agreement (SAA).

However, there is a serious lack of improvement in fighting corruption because of many institutional mechanisms mandated to fight corruption with blurred and overlapping mandates, as well as lack of accountability by institutions to follow up properly and enhance the implementation of the anti-corruption policies. The 2013 Progress Report has also noted the results on the fight against corruption as limited.<sup>6</sup> Excluding Kosovo institutions, the European Union's (EU) rule of law mission in Kosovo EULEX has also the mandate to fight corruption. Even though the entire institutional and legal machinery is available, high level corruption continues to be present in Kosovo. Since Kosovo has defined the EU integration amongst main priorities, establishing an effective institutional and legal framework to deal with the issue of corruption is therefore essential.

The European Union also has reported that corruption is one of the negative components of Kosovo and constantly recommends this phenomenon to be fought.<sup>7</sup> The EU feasibility study for a Stabilization and Association Agreement between EU and Kosovo clearly states that Kosovo should provide tangible results in the fight against corruption, including figures on implementation of the anti-corruption laws, effective implementation of Kosovo's anti-corruption legislation and establishment of effective mechanisms for preventing corruption.<sup>8</sup> The same importance is given in the Visa Liberalization Roadmap and the Structured Dialogue on the Rule of Law with Kosovo. The

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<sup>1</sup> See the Law at, <http://www.kuvendikosoves.org/common/docs/ligjet/2009-159-ang.pdf>

<sup>2</sup> See the Law at, <http://www.assembly-kosova.org/common/docs/ligjet/Law%20on%20declaration%20of%20property%20of%20senior%20public%20officials.pdf>

<sup>3</sup> See the Law at, [http://www.kuvendikosoves.org/common/docs/ligjet/2007\\_02-L133\\_en.pdf](http://www.kuvendikosoves.org/common/docs/ligjet/2007_02-L133_en.pdf)

<sup>4</sup> Kosovo Assembly Plenary Session of 12 October, 2009, <http://www.kuvendikosoves.org/?cid=2,159,2615>

<sup>5</sup> Kosovo Assembly Plenary Session of 11 February 2013, <http://www.kuvendikosoves.org/?cid=2,159,4737>

<sup>6</sup> See page 13, European Commission Progress Report for Kosovo 2013, at

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/brochures/kosovo\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/kosovo_2013.pdf)

<sup>7</sup> See European Union yearly reports of progress for Kosovo at, <http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/>

<sup>8</sup> See, The Feasibility Study for a Stabilisation and Association Agreement between the EU and Kosovo at, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/ks\\_feasibility\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_feasibility_2012_en.pdf)

2013 Progress Report has also noted that continued efforts are necessary to ensure the accountability of high-ranking officials and politicians.<sup>9</sup>

This policy paper concludes that the establishment of numerous bodies to fight corruption have caused an overlap in mandates, inefficiency, increased lack of accountability and decreased conviction rates. It seems to be a continuous tactics of the government to create and appoint new Coordinators or Task-Forces as soon as EU pressure increases. The creation and appointment of various mechanisms and task-forces jeopardise the implementation of the existing laws and policies by outsourcing the budget in different directions whilst the results on the fight against corruption seem weak with conviction rates remaining low. In addition, while the criminal charges have increased at the overall state prosecutor's level from 362 cases in 2009 to 628 cases by September 2013,<sup>10</sup> the number of unsolved cases remains worrisome mainly dealing with petty crime corruption cases shifting attention from high profile cases.

Simplifying the role and responsibility of each institution with appointed lead institutions in the fight against corruption is the momentum that Kosovo should not miss. This is the key lesson learned from Croatia's case. Moreover the on-going reforms on the current mandate of EULEX combined with a strong conditionality by the EU towards the Kosovo institutions should also include the transfer of competencies of the rule of law bodies to local structures, hand in hand with increasing of their capacities.

## 2 INTRODUCTION

In midst of all the laws, policies and mechanisms Kosovo continues to be highly ranked when it comes to the level of corruption.<sup>11</sup> The Government of Kosovo is continuing to rhetorically state that rule of law is amongst its main priorities<sup>12</sup> on the other hand in practice it has prioritised investments in the infrastructure in terms of budgetary expenditure with the budgetary share for the rule of law has decreased.

The budget allocation is a reliable indicator for showing the trends of government support and priorities. The overall Kosovo budgetary expenditures for the year 2013 are over 20% lower compared to the previous year. This is the only year where a decrease in state expenditures is observed since 2009.<sup>13</sup> The overall annual budget decrease for 2013 has also impacted further the trend of decreasing the budgetary support for the rule of law institutions. For the year 2013 only 2.17% of the total budgetary expenditures were allocated for three main branches of justice, investigations, prosecutions and courts.<sup>14</sup> Although the overall budget for special prosecutors increased in 2011 and 2012 in comparison to 2010, in 2013 the financial resources for special prosecutors have decreased to a high extent. An even larger decrease in the budget has impacted

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<sup>9</sup> See page 12, 2013 Progress report for Kosovo at, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/brochures/kosovo\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/kosovo_2013.pdf)

<sup>10</sup> KIPRED email communication with Prosecution officials, December 2013

<sup>11</sup> See, Transparency International, Corruption Perceptions Index, Kosovo, <http://www.transparency.org/cpi2013/results>

<sup>12</sup> "Kosovë, Kuçi: Sundimi i ligjit, prioritet i qeverisë", LajmeShqip, 14 June, 2011, <http://www.lajmeshqip.com/kombetare/kosove-kuci-sundimi-i-ligjit-prioritet-i-qeverise>

<sup>13</sup> See Kosovo's yearly central budget tables at, <http://mf.rks-gov.net/sq-al/ministriaefinancave/buxhetiirepublikessekosoves/buxhetiendrore.aspx>

<sup>14</sup> See Kosovo's yearly central budget tables at, <http://mf.rks-gov.net/sq-al/ministriaefinancave/buxhetiirepublikessekosoves/buxhetiendrore.aspx>

directly the Police special operations.<sup>15</sup> The allocated budget for police special operations went from 5.4 million Euros in 2012 to 526,893 Euro in 2013.<sup>16</sup>

In addition, some disturbing findings were also reported in the Global Corruption Barometer 2013<sup>17</sup> conducted by Transparency International (TI). According to this barometer, the percentage of respondents who report having paid bribes in 2012 to any of the eight service providers in Kosovo is 16%. The institution scoring highest on perceived level of corruption, among a set of 12 major institutions regarding the most corrupt institutions in the country, is Kosovo's judiciary which was scored at 4.3 followed by political parties at 4.2.<sup>18</sup>

Besides citizens, businesses have also reported to pay bribes to a high extent. In addition, businesses report to pay 1 bribe every seven weeks that is in average 7.7 bribes a year. Interestingly in 38% of cases businesses have claimed to offer bribes on their own initiative. Differently over 50% of bribes are requested by the public official's mostly custom officials (1.9%), tax officials (1.8%), provincial and municipal officials.<sup>19</sup> As reasons for bribery businesses enlist various factors as: big power of these officials, lack of officials integrity, low wages of public officials, and the influence of strong corrupted individuals followed by lack of accountability.<sup>20</sup>

Despite the high presence of corruption, the response by Kosovo institutions has been low compared to the corruption scale. Although the number of new criminal charges on corruption offenses dealt by the Prosecution has increased over the six years,<sup>21</sup> the number of unresolved cases has continued to be high, with an average of 54% of criminal charges remaining unresolved.<sup>22</sup> This statistics are affected also by the backlog of cases in the Prosecutors offices that have increased on annual basis ranging from 123 criminal charges in 2009 inherited from 2008, to 307 criminal charges in 2013<sup>23</sup> (see table 1.1).

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<sup>15</sup> Ibid.

<sup>16</sup> See Kosovo's yearly central budget tables at, <http://mf.rks-gov.net/sq-al/ministriaefinancave/buxhetiirepublikessekosoves/buxhetiqtendrore.aspx>

<sup>17</sup> This barometer draws on a survey of more than 114,000 respondents in 107 countries. It addresses people's direct experiences with bribery and details their views on corruption in the main institutions in their countries. It also provides insights into people's willingness to stop corruption.

<sup>18</sup> According to Transparency International Barometer on a scale of 1 to 5, where 1 means 'not at all corrupt' and 5 means 'extremely corrupt'. Also other institutions following the barometer perception in Kosovo are Medical and Health 4.0, Parliament/Legislature 3.9, Business/Private Sectors 3.5, Public Officials/Civil Servants 3.3, similar as Education System, Police 3.1, Media 3.0, NGO's 2.3, Religious Bodies 2.0, Military 1.6. See <http://www.transparency.org/cpi2013/results>

<sup>19</sup> See Business, Corruption and Crime in Kosovo: The impact of bribery and other crime on private enterprise, UNODC report 2013 at, [http://www.unodc.org/documents/data-and-analysis/statistics/corruption/Kosovo\\_Business\\_corruption\\_report\\_EN.pdf](http://www.unodc.org/documents/data-and-analysis/statistics/corruption/Kosovo_Business_corruption_report_EN.pdf)

<sup>20</sup> Ibid.

<sup>21</sup> 2008: 227, 2009: 239, 2010: 263, 2011: 370, 2012: 376 and until 30 September 2013: 321 (KIPRED email communication with Prosecution officials, December 2013)

<sup>22</sup> In 2009, 155 criminal charges remained unresolved out of 362 old and new criminal charges dealt by the Prosecutor offices; in 2010: 282 out of 418; 2011: 267 out of 652; 2012: 277 out of 643;

<sup>23</sup> In 2010: 155 criminal charges were inherited from the past year; 2011: 282; 2012: 267.

Table.1.1: Prosecution corruption statistics for the period 2008- September 2013								
Year	Number of criminal charges inherited from the previous years	The number of new criminal charges	Total criminal charges	The number of individuals indicted et al.	The number of criminal charges resolved	%	The number of criminal charges unresolved	%
2008	n/a	227	227	184	n/a	n/a	123	54.19%
2009	123	239	362	130	207	57.18%	155	42.82%
2010	155	263	418	187	136	32.54%	282	67.46%
2011	282	370	652	354	385	59.05%	267	40.95%
2012	267	376	643	296	366	56.92%	277	43.08%
2013	307	321	628	122	151	24.04%	477	75.96%

When it comes to the courts, there has been an increase of resolved cases. While in 2011 the courts resolved 136 cases<sup>24</sup> in 2012 there were 183 cases resolved.<sup>25</sup> However, the prison sentences for corruption offenses have been low. In 2012, out of 183 cases, only 10% of them or 19 cases were sanctioned with imprisonment. A year before this percentage was slightly higher. Out of 136 cases resolved by the courts in 2011, 15% of them or 20 cases were sanctioned with imprisonment. At second instance court cases are also appealed and go to re-trial or sanctions may get lowered. An overall analysis of the tracking mechanism to monitor the case development of cases from indictments, sentencing, appeal and final court judgements are needed to show the implementation of the anti-corruption measures. Also the European Union has expressed the need to monitor also the final court judgements of corruption offences in the Visa Liberalisation criteria's for Kosovo.<sup>26</sup>

The Anti-Corruption Agency (ACA) has also dealt with corruption offenses however showing minimal results. The number of indictments resulting from the cases ACA has submitted to prosecutors and police for further proceeding has been very low. Out of 52 cases submitted by the ACA in 2012 only 7 of them resulted on indictments by the prosecutors. The same occurred in 2011 whilst the numbers were even lower in the past years.

Besides Kosovo's rule of law bodies, since 2008 EULEX has assisted Kosovo in dealing with corruption and other offenses particularly of high profile. However, its results have not been very satisfactory. Only under the lead of the last appointed civilian German Head of Mission Bernd Borchardt more evident results in investigation and indictments of few high profile cases have been noted. Nevertheless results of conviction rates remain to be seen.

From 2008 until November 2013, there were 266 investigations conducted, EULEX prosecutors alone have managed to file only 16 indictments regarding corruption offenses or only 6%.<sup>27</sup> Prosecutors claim that witnesses hesitate or withdraw from their statements once the investigation has started.<sup>28</sup> In other cases, intelligence-led policing and investigations are not followed through

<sup>24</sup> See page 11, Anti-Corruption Agency analysis on Prosecution and Trial of Corruption cases in Kosovo 2012 at, <http://www.akk-ks.org/repository/docs/0.07%20Raporti%20me%20statisikat%202012%20versioni%20perfundimtar%20shqip.pdf>

<sup>25</sup> See page 11, Anti-Corruption Agency analysis on Prosecution and Trial of Corruption cases in Kosovo 2013 at, [http://www.akk-ks.org/repository/docs/Raport\\_Analize\\_2012%20%281%29.pdf](http://www.akk-ks.org/repository/docs/Raport_Analize_2012%20%281%29.pdf)

<sup>26</sup> Page 11 of the Visa Liberalisation with Kosovo Roadmap.

<sup>27</sup> In 2008-2009 there were 46 investigations that have resulted with 2 indictments; in 2010 out of 44 investigations there were 3 indictments; in the year 2011 there were 68 investigations with 3 indictments only and in 2012 out of 64 cases were investigated and 4 were indicted and until November 2013 there 44 investigations with only 4 indictments. KIPRED Email communication with EULEX officials, December 2013.

<sup>28</sup> KIPRED interview with local prosecutor, December 2013

whilst few state also lack of knowledge of Kosovo context, language and mentality by EULEX investigators to successfully pursue the cases<sup>29</sup> (see table 1.2).

Table.1.2: EULEX Prosecution corruption statistics for the period 2008- November 2013				
Year	Number of cases inherited from the previous years	The number of new cases	The number of Investigations	The number of Indictments
2008/2009	n/a	96	46	2
2010	n/a	57	44	3
2011	52	93	68	3
2012	65	51	64	4
2013	56	7	44	4 filling of indictments

From 2008 to November 2013 EULEX judges issued 43 verdicts in corruption related offences. The judges found 56 individuals guilty for corruption offenses whereas 30 individuals innocent.<sup>30</sup>

Even though there has been attention paid by local prosecutors to increase numbers of reports on the fight against corruption due to the requirements of the EU for visa liberalization, the local prosecutors have stayed away from dealing with high level corruption cases, mainly dealing with easier crime cases of corruption. High-profile cases have been handled mainly by EULEX prosecutors.

**a) PERPLEXED MECHANISMS ON THE FIGHT AGAINST CORRUPTION**

There is a serious lack of improvement in fighting corruption especially due to many mechanisms that have blurred and overlapping mandates. Also lack of proper intentions by leading institutions to create effective corruption mechanisms and the creation of numerous and perplexed bodies have made the overall results poor.

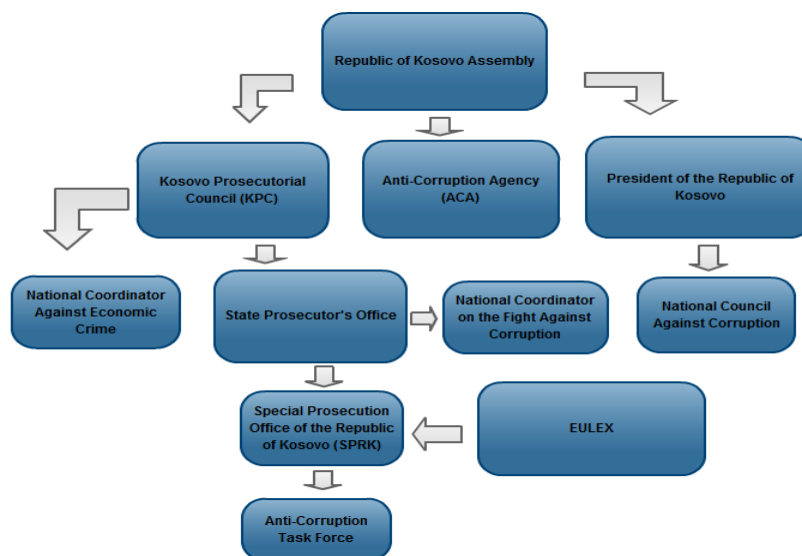


Fig.1.1. Numerous mechanisms on the fight against corruption

<sup>29</sup> KIPRED source Kosovo Police Investigator, 2012.

<sup>30</sup> KIPRED Email communication with EULEX officials, December 2013.



**ACA (2007):** The Anti Corruption Agency (ACA) established in 2007 as an independent institution to verify and report on declared wealth of state officials and conflict of interest,<sup>31</sup> continuous to be under constant criticism by both the state institutions<sup>32</sup> and the opposition parties.<sup>33</sup> The ACA mandate to verify the wealth declared by the state officials has been stuck in a limbo without sufficient investigative powers, often leading to limited results in the fight against corruption. This is also shown by the statistical data given by the Agency. Out of the total number of cases for the period 2008-2012 reported by ACA to have been send to Kosovo Prosecutors and the Police, only 9.39% of these cases ended with indictments by the Prosecution.<sup>34</sup> The head of the ACA Hasan Preteni expressed his concerns to KIPRED on the existing legal framework that offer limited approaches for ACA on verification on the origin of assets reported by state officials or neither does oblige the officials to prove the origin of their wealth.<sup>35</sup> This has justified the situation whereas the ACA has been limited and exercises a partial but not full control of the Asset Declarations of all public officials.<sup>36</sup>

**SPRK (2008):** Special Prosecution Office of the Republic of Kosovo was established by the Law on the Special Prosecution Office of the Republic of Kosovo (Law No. 03/L-052),<sup>37</sup> adopted in March 2008, as one of the laws in the Ahtisaari package, aiming to provide Kosovo with the institutions required for “supervised independence”. The SPRK became operational from 9 December 2008 as a “permanent and specialized prosecutorial office operating within the Office of the State Prosecutor in Kosovo”. The SPRK is administered by both the Kosovo authorities (Ministry of Justice) and by EULEX, and headed by a EULEX prosecutor.<sup>38</sup> The SPRK law was drafted under the lead of the United Nations administration in Kosovo during 2007 in order to meet with Kosovo’s needs to fight organised crime, money laundry, terrorism, economic crimes and war crimes. The mission was aware of its diminished role after Kosovo institutions would declare independence in 2008, aimed the creation of the SPRK to also ensure the transfer of UNMIK unresolved cases<sup>39</sup> to the new upcoming EULEX Rule of Law mission. As from its establishment, the SPRK mainly focused on war crime cases, however in recent years it has increasingly paid attention to high level corruption cases. Nevertheless, the results have been limited with approximate 26% of conviction rate for cases charged by the SPRK in the year 2012. In comparison the USKOK office in 2012 had a 95% conviction rate.

**The SPRK Special Anti-Corruption Task Force (2010):** Besides the ACA, after unsuccessfully advancing in the fight against corruption, the Kosovo government issued a decision in February 2010,<sup>40</sup> to establish the Special Anti-Corruption Task Force within SPRK with its main task to fight

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<sup>31</sup> <http://www.akk-ks.org/?cid=2,6>

<sup>32</sup> “Përplasen rreth korrupsionit”, Telegrafi, 24 August, 2012, <http://www.telegrafi.com/lajme/p-rplasen-rreth-korrupsionit-2-24539.html>

<sup>33</sup> See the record of Kosovo Assembly Committee on Legislation at, [http://www.kuvendikosoves.org/common/docs/proc/proc\\_2013\\_05\\_20\\_12\\_4941\\_al.pdf](http://www.kuvendikosoves.org/common/docs/proc/proc_2013_05_20_12_4941_al.pdf)

<sup>34</sup> See ACA yearly reports at, <http://www.akk-ks.org/?cid=2,16>

<sup>35</sup> KIPRED interview with Hasan Preteni, 13 June, 2013

<sup>36</sup> See KIPRED’s report The Impunity in Kosovo: Inexplicable Wealth at, [http://www.kipred.org/advCms/documents/42734\\_Investigating\\_inexplicable\\_wealth\\_ENG.pdf](http://www.kipred.org/advCms/documents/42734_Investigating_inexplicable_wealth_ENG.pdf)

<sup>37</sup> See Law on the Special Prosecution Office of the Republic of Kosovo at, [http://www.kuvendikosoves.org/common/docs/ligjet/2008\\_03-L052\\_en.pdf](http://www.kuvendikosoves.org/common/docs/ligjet/2008_03-L052_en.pdf)

<sup>38</sup> Ibid.

<sup>39</sup> There were 321 cases transferred from UNMIK prosecutors/judges to EULEX justice component. See <http://www.eulex-kosovo.eu/en/justice/prosecution.php>

<sup>40</sup> Kosovo Government Decision of 26 February, 2010, [http://www.kryeministri-ks.net/repository/docs/Vendimet\\_e\\_Mbledhjes\\_se\\_110\\_-te\\_te\\_Qeverise\\_2010.pdf](http://www.kryeministri-ks.net/repository/docs/Vendimet_e_Mbledhjes_se_110_-te_te_Qeverise_2010.pdf)

high-level corruption.<sup>41</sup> The decision states that in cooperation with EULEX, Kosovo government requests from the SPRK to create the special anti-corruption department consisted of international prosecutors, local prosecutors, persons knowledgeable on taxation and 30 police officers that will be selected by the Government of Kosovo.<sup>42</sup> The mandate of the Task-Force is to research and fight the negative phenomenon of corruption in Kosovo.<sup>43</sup> The decision has also committed protection for prosecutors and their families however this has not been followed through in practice. In a visit to the SPRK, the EULEX Head of Mission, Yves de Kermabon referred to the establishment of this Task Force “a strong signal from the government to fight against corruption”<sup>44</sup> whereas the civil society representatives expressed their doubts on the effectiveness of this task force.<sup>45</sup> Its credibility was further diminished when the head of this Task Force, Nazmi Mustafi was arrested by EULEX police in April 2012. He was indicted for the criminal offence of requesting bribery from individuals under investigation by the SPRK in exchange for their release. He was found guilty together with three others for corruption and other related offences.<sup>46</sup> Furthermore, after the arrest and conviction of the head of Task Force a new head of the Task Force yet awaits appointment.

**National Coordinator on the Fight Against Corruption-State Prosecutor’s Office (2010):** In 2010 the State Prosecutor of Kosovo appointed a coordinator amongst state prosecutors to coordinate the current fight of the state prosecution on anti-corruption. In 2012 the coordinator appointed was confirmed following the requirements coming from the Visa Liberalisation Criteria for the Kosovo Prosecutorial Council (KPC) and the Office of the State Prosecutor.<sup>47</sup> The issued decision obliged the coordinator to report daily on their scope activities and report to the KPC Secretariat every Monday the activities of Prosecutorial System, the Office of the State Prosecutor and to the official for the processes of European Integration.<sup>48</sup> The Coordinator remains mainly involved in coordinating the reporting of the state prosecution office on the fight against corruption.

**National Council against Corruption ACC (2012):** With the aim to further enhance the efforts of Kosovo institutions in February 2012 the Kosovo President established another body to fight corruption i.e. the National Council against Corruption (ACC). However this body has not produced results as it has merely relegated its performance on reporting diminishing its coordination role, strengthening of the existing mechanisms on the fight against corruption nor initiating or enhancing laws to fight corruption in accordance to its mandate.<sup>49</sup> Therefore the Council that has been initially foreseen to strengthen the Kosovo institutions efficiency to fight corruption remains yet another

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<sup>41</sup> EULEX Press Release, “High Profile Crimes Focus of New Body”, 23 April, 2010, <http://www.eulex-kosovo.eu/en/news/000218.php>

<sup>42</sup> Kosovo Government Decision points 1, 2, 3, 4. See decision signed by Prime Minister Hashim Thaci on 26 February 2010 at [http://www.kryeministri-ks.net/repository/docs/Vendimet\\_e\\_Mbledhjes\\_se\\_110\\_-te\\_te\\_Qeverise\\_2010.pdf](http://www.kryeministri-ks.net/repository/docs/Vendimet_e_Mbledhjes_se_110_-te_te_Qeverise_2010.pdf)

<sup>43</sup> Ibid.

<sup>44</sup> Supra note at 40.

<sup>45</sup> Avni Zogiani, ÇOHU Organization, statement <http://lajme.shqipëria.com/lajme/artikull/iden/416288/titulli/Korrupsioni-krijohet-zyra-speciale-ne-Prokurorine-e-Kosoves>

<sup>46</sup> EULEX Press Release, “Summary of Justice Proceedings in May”, 11 June, 2013, <http://www.eulex-kosovo.eu/en/executive/00014.php>

<sup>47</sup> See decision at, <http://www.psh-ks.net/repository/docs/Nr.835.2012- Vendim .pdf vendim i 2012>

<sup>48</sup> Ibid.

<sup>49</sup> Amongst other the ACC should coordinate activities of the institutions members of the Council on prevention and fight against corruption; sets priorities and policies on implementation of the legal framework to fight corruption; coordinates the work of responsible institutions to strengthen existing mechanisms mandated to fight corruption and should aim to raise awareness of the public of the society on the anti-corruption efforts. See President’s Degree DKKK-001-2012 at, <http://gazetazyrtare.rks.gov.net/Documents/Dekret%20per%20Themelimin%20e%20K.K.Korrupsionit%20%28shqip%29.pdf>

mechanisms with weak results amongst many in Kosovo. Its weak results have been noted in the EC Progress Report for Kosovo 2013.<sup>50</sup>

**National Coordinator against Economic Crime (2013):** Despite the numerous institutions established with the aim to enhance the fight against corruption again in September 2013, under the initiative of the US Department of the Treasury, Kosovo's representatives of rule of law bodies have agreed to establish yet another body, the National Coordinator for Combating Economic Crimes that will be appointed from the ranks of prosecution.<sup>51</sup> A memorandum of understanding was signed amongst several institutions,<sup>52</sup> and for legal basis in creating another institution to fight corruption especially economic crimes, the Kosovo Prosecutorial Council Regulation was used. The Coordinator has yet to be appointed but again poses risks to cause overlapping with existing institutions including the SPRK and the Kosovo Financial Intelligence Unit with similar mandates.

**EULEX (2008):** The biggest EU mission on Rule of Law-EULEX-has been mandated as of 2008 to monitor, mentor and advise local authorities on rule of law issues with also exercising executive mandate regarding sensitive cases such as high-level corruption by state officials.<sup>53</sup> The cases of serious crimes are mainly handled by EULEX officials. The Visa Liberalisation Roadmap and the Feasibility study have required that Kosovo institutions to ensure continuous good cooperation with EULEX.<sup>54</sup>

However, the mission has been constantly criticized for failing to tackle corruption in the high levels. Its inability to fulfil high expectations by Kosovo society is due to various causes.<sup>55</sup> Amongst causes is also the intentional balancing of the mission to avoid high level corruption cases for the price of ensuring political stability. Potential investigations and indictments of central level government by EULEX could also risk causing institutional instability, inconvenient for EU, since a stable government system is needed for the process of dialogue between Kosovo and Serbia. This process is of utmost importance for the EU to ensure stability in the region.<sup>56</sup> Local prosecutors also believe that EULEX sometimes has intentionally avoided few high profile corruption cases backed by reporting of local citizens to EULEX as a more trusted institution, and even though there were evidences in the reports, EULEX did not undertake further investigation.<sup>57</sup> Besides the selection of cases, in some occasions the cases have been moved from one prosecutor to the other due to the high rotation system within the mission.<sup>58</sup> Despite major criticism, the mission has contributed to prevent local interferences to some extent in the institutions present.<sup>59</sup>

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<sup>50</sup> See page 13 of the EC Progress Report for Kosovo, 2013 at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/brochures/kosovo\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/kosovo_2013.pdf)

<sup>51</sup> Meeting of the Minister of Justice with the heads and representatives of the Judicial and Prosecutorial Council, Supreme Court, Police, Ministry of Finance, Anti Corruption Agency, Intelligence Agency, the Central Bank, the Financial Intelligence Unit and Gary Hyde, representative of U.S. Treasury, 23 shtator 2013, <http://www.md-ks.org/?page=1,8,1112>

<sup>52</sup> This memorandum was signed by the heads of the Ministry of Justice, the Kosovo Prosecutorial Council, the Kosovo Judicial Council, Ministry of Finance, Ministry of Internal Affairs, the Central Bank of Kosovo, Anti-Corruption Agency and the Kosovo Intelligence Agency. See at, <http://www.md-ks.org/?page=1,8,1169>

<sup>53</sup> See What is EULEX ? at, <http://www.eulex-kosovo.eu/en/info/whatisEulex.php>

<sup>54</sup> See, The Feasibility Study for a Stabilisation and Association Agreement between the EU and Kosovo at, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/ks\\_feasibility\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_feasibility_2012_en.pdf)

<sup>55</sup> KIPRED's report "A Comprehensive Analyses on EULEX: What's next?" [http://www.kipred.org/advCms/documents/56243\\_A\\_Comprehensive\\_Analysis\\_of\\_EULEX.pdf](http://www.kipred.org/advCms/documents/56243_A_Comprehensive_Analysis_of_EULEX.pdf)

<sup>56</sup> KIPRED interview with political analyst and reporter, 3 December, 2012.

<sup>57</sup> KIPRED interview with a local Prosecutor, 11 December, 2013.

<sup>58</sup> KIPRED Interview with EULEX Prosecutor, 3 December, 2013.

<sup>59</sup> KIPRED interview with customs official, 30 November, 2012.

The requests for the mission to end its mandate and submit the competencies to locals have increased lately. The Kosovo government has developed a strategy for the exit of this mission in 2014. On the other hand, EULEX officials think that their time in Kosovo as of 2008 has not been sufficient to enhance the capacities of the locals before their departure.<sup>60</sup> International prosecutors claim that local prosecutors still struggle to handle cases of high profile corruption or organised crime however their lack of efficacy in taking up these cases is also related to the work environment for the judicial staff that lack proper protection including of their families due to deficiencies of the legal framework.<sup>61</sup> Whilst the EU Rule of Law mission plans to extend its intervention in Kosovo beyond June 2014 through a similar mission but of a smaller scope and a different name, the fight against corruption continues to be stuck in a limbo without accountability justified by the continuous blame game in between local and international prosecutors as in times of the UNMIK rule of Kosovo. Even though SPRK local prosecutors have expressed their willingness to fight corruption often EULEX is used as a justification for their lack of initiatives contrary to the reasons of setting up an international led SPRK, EULEX prosecutors have become a shield for inefficiency of their local counterparts. Similarly, the EULEX prosecutors continue to express their doubts on the capacities of the local prosecutors, justifying the need for their existence.

## **b) SPRK vs USKOK**

By looking at Croatia as a country once part of the former Yugoslavia , regional proximity to Kosovo and similar legal and judicial tradition in the past, this policy paper looks at the lessons learned from such a process in order to contextually transfer that knowledge for Kosovo's further advancement in the EU integration processes. Although labelled as one of the most corrupt countries in the eve of joining EU,<sup>62</sup> Croatia managed to produce satisfactory results in its fight against corruption. As a young state, Croatia has struggled with corruption many years after its independence in 1991 and post-war period since 1995. The rest of the Western Balkans countries waiting to integrate into the European Union look at Croatia as a model to learn from in fulfilling the EU requirements. Additionally, EU countries itself often reiterate that countries such as Kosovo must take advantage of the lessons learned by Croatia during its path towards the EU.

Since Kosovo has defined the integration into EU among its main priorities, establishing an effective institutional and legal framework to deal with the issue of corruption is therefore essential. This is in line with the EU Acquis chapter 23 which states that a solid legal framework and reliable institutions are required to underpin a coherent policy of prevention and deterrence of corruption.<sup>63</sup>

Conditioned by the EU criteria, Croatia was observed to have made serious steps in its fight against corruption with the establishment by the Croatian Government in 2001 of the Bureau for Combating Corruption and Organized Crime (USKOK), part of the Office of the State Prosecutor. Similarly to Croatia, Kosovo institutions aiming integration in the EU have pushed for reforms including building of mechanisms and laws to fight corruption. Nevertheless, a ground-breaking case for Croatia's effective fight against corruption was their ability to also address high profile cases of state officials involved in corruption such as the indictment by USKOK and the conviction of the former Prime Minister Ivo Sanader, and other high-level officials.<sup>64</sup> In Kosovo high profile cases of corruption remain at a level of allegations with few other political figures charged but often coming

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<sup>60</sup> KIPRED interview with EULEX Prosecutor, 3 December, 2013.

<sup>61</sup> KIPRED interview with local Proecutor, 3 December, 2013

<sup>62</sup> "Survey: Croatia and Slovenia most corrupt in EU", EUObserver, 8 May, 2013,<http://euobserver.com/justice/120064>

<sup>63</sup> See Chapters of the Acquis at, <http://ec.europa.eu/enlargement/policy/conditions-membership/chapters-of-the-acquis/>

<sup>64</sup> A former vice president, a former top-level general, former chairman of the Croatian Chamber of Commerce and a presidential candidate Nadan Vidošević, former interior minister Ivica Kirin, etc.

from weaker political parties rather the ruling party that continues to guaranty immunity for most powerful political figures in the state. Often political pressure or keeping the political stability is quoted as main cause leading to low rates of indictments.<sup>65</sup>

USKOK model is an appropriate example to follow by the counterpart body in Kosovo, the Special Prosecution Office (SPRK) especially due to the results it has been able to offer in the Croatia's path to the EU. Although different countries have different models not necessarily a model that can work in a particular country will work in another country,<sup>66</sup> Kosovo can still draw some good practices from USKOK framework and operation and adopt where applicable the positive elements of this body within SPRK. A comparative approach among both bodies including of results, legal framework and capacities is elaborated further.

### a. Results

Six years after its establishment the SPRK work continues to be at unsatisfactory level. The State Prosecutors report shows that during 2012 this institution managed to resolve charges only against 491 individuals or 23.26% out of the total, while at the end of the year there were 76.26% cases (against 1620 individuals) charged however not resolved by end of 2012.<sup>67</sup> The 2013 Progress Report for Kosovo has also noted that the work of the special prosecution has slowed down while there is a lack of capacity and commitment to investigate crimes that fall under the jurisdiction of SPRK.<sup>68</sup>

Unlike the SPRK by 2012 USKOK achieved a conviction rate surpassing 95%, successfully prosecuting a former prime minister, a former vice president, a former top level general, and other high level officials.<sup>69</sup> As from the legal amendments that have strengthened the structure of USKOK from 2006-2012 USKOK managed to convict 2,185 individuals.<sup>70</sup> The USKOK also enhanced its effectiveness by the appointment of the new head Dinko Cvetan, an official known for its reputation for political independence. During its mandate numerous trainings for USKOK staff were conducted with foreign assistance through which USKOK prosecutors gained capacities in modern methods of investigations regarding corruption.

<b>Table.1.3: SPRK vs. USKOK</b>		
<b>Institution name</b>	<b>SPRK</b>	<b>USKOK</b>
<b>Annual budget</b>	593,650.00 €	Approximately 2.8 million €
<b>Competencies</b>	International lead	National lead
<b>Legal Framework</b>	No amending to its Law	Several amendments
<b>Criminal Offenses</b>	Including War Crimes	Excluding War Crimes
<b>Public Relations</b>	No PR Department	With PR Department
<b>Conviction Rate (2012)</b>	23.26% of cases	95% of cases

The quality and effectiveness of the prosecution work depends also to a high extent from the cooperation with the police and their performance. Although in terms of capacities Kosovo Police

<sup>65</sup> KIPRED interviews with MP's and local and international prosecutors, December 2013

<sup>66</sup> KIPRED interview with an EULEX Prosecutor, 3 December, 2013

<sup>67</sup> See page 9, report of the Republic of Kosovo's Office of the State Prosecutor annual report 2012 at, [http://www.psh-ks.net/repository/docs/Raporti\\_2012\\_Shqip.pdf](http://www.psh-ks.net/repository/docs/Raporti_2012_Shqip.pdf)

<sup>68</sup> See page 12, Kosovo 2013 Progress Report at, <http://www.euissuetracker.com/SiteCollectionDocuments/Kosovo%20Progress%20Report%202013.pdf>

<sup>69</sup> Case Study, Cleaning House: Croatia Mops Up High-Level Corruption, 2005-2012, Gabriel Kuris at, [http://www.princeton.edu/successfulsocieties/content/data/policy\\_note/PN\\_id226/Policy\\_Note\\_ID226.pdf](http://www.princeton.edu/successfulsocieties/content/data/policy_note/PN_id226/Policy_Note_ID226.pdf)

<sup>70</sup> Ibid.

generally remains rated satisfactory,<sup>71</sup> they risk to be politically interfered due to their appointment in the SPRK Anti-Corruption Task Force by the 2010 Prime Ministers decision (see analysis of the capacities). The 2013 Progress Report for Kosovo has also noted that the links between the political level and management of the police continue to be close.<sup>72</sup>

The lack of results by the SPRK is often stated to be the insufficient security for its staff. The EULEX officials state that the deficiencies remain with the SPRK law not foreseeing security for local prosecutors to the level foreseen for example for witness protection, local prosecutors claim that the prosecutors are provided with security and the police have enough capacities to act. However, the main problem remains with the risk assessment that should be done on case by case basis by the police depending on police availability and resources. Also even though the individual prosecutor is offered protection his family isn't, remaining an issue for serious concern.<sup>73</sup>

One of the factors that have impeded the capacity of the local prosecutors within the SPRK to act is exclusively internationally led investigations of war crimes and high profile corruption cases. Currently, SPRK EULEX prosecutors are planning to start involving more the local prosecutors by working together in mixed teams.<sup>74</sup> Even though a late intervention it is a move in the right direction as it has diminished the role of local prosecutors and for years not allowed to build the necessary capacities for Kosovo to handle high profile cases of corruption and organised crime. Until now SPRK remains under the lead of the EULEX head with cases of serious crimes handled by EULEX prosecutors. With the average 26% rate of performance by the SPRK in conviction, it remains unlikely that the SPRK mission will be successfully enforced.<sup>75</sup> Their performance hinders to a large extent the ability also of locals to take over on the serious cases<sup>76</sup> therefore it's necessary for the reforming of this mission to be accompanied with the strengthening of Kosovo institutions and transitioning towards of a more monitoring and reporting mission.<sup>77</sup> The potential changes should also aim a concentration of authority in the hands of SPRK enabling this institution to be the central body in the fight against corruption and other serious crimes whereas other institutions would assist the SPRK, similarly to the USKOK example.

#### **b. The Legal Framework of SPRK and USKOK: Similarities and differences**

The SPRK operates under the Law on Special Prosecution of the Republic of Kosovo,<sup>78</sup> and the jurisdiction of this Prosecution is in the whole territory of the Republic of Kosovo.<sup>79</sup> SPRK is vested with exclusive competencies to deal with a range of crimes on organised crime, terrorism, war crimes etc.<sup>80</sup> Additionally subsidiary competences can be exercised in cases where the criminal acts may endanger or have been endangering 'the functioning or stability of the State'...or 'the functioning or stability of public institutions,' including of corruption i.e. high profile cases.<sup>81</sup> Differently from

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<sup>71</sup> KIPRED interview with EULEX Prosecutor, 3 December, 2013

<sup>72</sup> See page 49, Kosovo 2013 Progress Report at, <http://www.euissuetracker.com/SiteCollectionDocuments/Kosovo%20Progress%20Report%202013.pdf>

<sup>73</sup> KIPRED interview with local Prosecutor, 11 December, 2013

<sup>74</sup> Ibid.

<sup>75</sup> KIPRED's report "A Comprehensive Analyses on EULEX: What's next?" [http://www.kipred.org/advCms/documents/56243\\_A\\_Comprehensive\\_Analysis\\_of\\_EULEX.pdf](http://www.kipred.org/advCms/documents/56243_A_Comprehensive_Analysis_of_EULEX.pdf)

<sup>76</sup> KIPRED interview with local prosecutor, 2013.

<sup>77</sup> KIPRED's report "A Comprehensive Analyses on EULEX: What's next?" [http://www.kipred.org/advCms/documents/56243\\_A\\_Comprehensive\\_Analysis\\_of\\_EULEX.pdf](http://www.kipred.org/advCms/documents/56243_A_Comprehensive_Analysis_of_EULEX.pdf)

<sup>78</sup> No.03/L-052, See at, [http://www.kuvendikosoves.org/common/docs/ligjet/2008\\_03-L052\\_en.pdf](http://www.kuvendikosoves.org/common/docs/ligjet/2008_03-L052_en.pdf)

<sup>79</sup> See at, <http://www.psh-ks.net/?page=2,16>

<sup>80</sup> See page 5, Law on SPRK at, [http://www.kuvendikosoves.org/common/docs/ligjet/2008\\_03-L052\\_en.pdf](http://www.kuvendikosoves.org/common/docs/ligjet/2008_03-L052_en.pdf)

<sup>81</sup> See Article 10.2 paragraph (d) of the SPRK law, at [http://www.kuvendikosoves.org/common/docs/ligjet/2008\\_03-L052\\_en.pdf](http://www.kuvendikosoves.org/common/docs/ligjet/2008_03-L052_en.pdf)

USKOK law in Croatia that has been amended several times,<sup>82</sup> the SPRK in Kosovo continues to operate with the same legal framework since its establishment in 2008. The law on the Special Prosecution in the current version allows main lead for EULEX prosecutors, related to cases that are prosecuted by Special Prosecutors i.e. exclusive jurisdiction.<sup>83</sup>

EULEX increased presence offer their prosecutors a privileged role in comparison to local prosecutors often undermining the full independence of local prosecutors that disables them to fully develop their capacities or exercise those especially in relation to serious crime cases.<sup>84</sup> On the other hand, the EU feasibility study for Kosovo on the Stabilisation Association Agreement requires that Kosovo should ensure during implementation of the court structure that the Special Prosecution, responsible for cases of organised crime, war crimes and corruption maintains its competencies and also actively supports the implementation of the mandate of EULEX, including of the Special Investigative Task Force.<sup>85</sup>

Recently, there have been attempts to amend the SPRK law particularly regarding the competencies of SPRK concerning serious crimes. The SPRK law still refers to the previous Criminal and Criminal Procedure Codes of 2003 without reflecting the new Codes that have entered into force in 2013. EULEX prosecutors have reported that some amending to the law were planned to be undertaken soon but it was unknown in what direction the amendments would end.<sup>86</sup> Kosovo Ministry of Justice stated to KIPRED that intentions to amend the law have been discussed however the process has yet to start.<sup>87</sup> EULEX prosecutors<sup>88</sup> claim that if any changes are to occur it's important that lead on fighting corruption remains to the SPRK.

When it comes to USKOK this institution build capacity and institutional partnership inside and outside Croatia becoming amongst most trusted institutions.<sup>89</sup> The formal structure and competencies of the USKOK were designed in a way to make this institution the leading state authority in the prevention and repression of corruption in Croatia.<sup>90</sup> Since establishment its legal authority has increased over time with assertive political willingness to also support the structure, human and budgetary needs of the office.<sup>91</sup> The first law for USKOK was passed in 2001 by the Croatian Parliament however due to limited political support the mandate of USKOK was not sufficiently strong. After the 2003 and 2005 amendments USKOK's powers and authority were

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<sup>82</sup> USKOK's Law for Office for the Suppression of Corruption and Organised Crime Act on the Office for the Suppression of Corruption and Organised Crime ([NN 76/09, 116/10,145/10, 57/11, 136/12](http://www.dorh.hr/Default.aspx?sec=608)) at, <http://www.dorh.hr/Default.aspx?sec=608>

<sup>83</sup> See Article 16, Transitional provisions at, [http://www.kuvendikosoves.org/common/docs/ligjet/2008\\_03-L052\\_en.pdf](http://www.kuvendikosoves.org/common/docs/ligjet/2008_03-L052_en.pdf)

<sup>84</sup> KIPRED's report "A Comprehensive Analyses on EULEX: What's next?" [http://www.kipred.org/advCms/documents/56243\\_A\\_Comprehensive\\_Analysis\\_of\\_EULEX.pdf](http://www.kipred.org/advCms/documents/56243_A_Comprehensive_Analysis_of_EULEX.pdf) and KIPRED interview with local prosecutor, December 2013.

<sup>85</sup> See page 7 and 8, Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo at, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/ks\\_feasibility\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_feasibility_2012_en.pdf)

<sup>86</sup> KIPRED interview with EULEX official, 3 December, 2013

<sup>87</sup> KIPRED e-mail exchange with Ministry of Justice official, January 2013.

<sup>88</sup> KIPRED interview with EULEX official, 3 December, 2013

<sup>89</sup> See the Case Study, Cleaning House: Croatia Mops Up High-Level Corruption, 2005-2012, Gabriel Kuris at, [http://www.princeton.edu/successfulsocieties/content/data/policy\\_note/PN\\_id226/Policy\\_Note\\_ID226.pdf](http://www.princeton.edu/successfulsocieties/content/data/policy_note/PN_id226/Policy_Note_ID226.pdf)

<sup>90</sup> See page 91, Specialised Anti-Corruption Institutions, Review of Models, Anti-Corruption Network for Eastern Europe and Central Asia, <http://www.oecd.org/corruption/acn/39971975.pdf>

<sup>91</sup> See more regarding USKOK at, <http://www.dorh.hr/Default.aspx?sec=53>

expanded.<sup>92</sup> The law amendments were kicked off in order to improve the cooperation and coordination between USKOK, the courts and the police clarifying also clearly the structure of this cooperation.<sup>93</sup>

These new amendments provided USKOK prosecutors to have more powers amongst other prosecutorial services including the authority to use special methods of investigation such as undercover, sting operations, and telecommunications surveillance. Moreover, the crimes USKOK could deal with increased and other bodies were obliged to assist USKOK in its investigations. For example USKOK was allowed to inspect personal financial data and business operations and to freeze assets after judicial approval.<sup>94</sup> With the 2005 amendments an international cooperation and joint investigations department was established to supplement USKOK's other functional departments such as prosecution, research and documentation.<sup>95</sup>

When it comes to the capacities of USKOK and SPRK, the legal framework of USKOK describes the structure of this body while in the SPRK law the structure of the body is not clearly defined blurred by complex legal and structural terminology that is exclusively drafted to match the responsibilities of international prosecutors with less mention of local capacity and responsibility. While the list of crimes is listed in the SPRK law, the responsible departments are not clearly stated and the enlisting in the structure of other competent bodies that should work under the authority of the SPRK are not mentioned.<sup>96</sup> Although the SPRK has an organizational structure its coordination and cooperation with other institutions is not clearly defined as in the case of USKOK. This weakness has been also confirmed by EULEX prosecutors that are of the view that all corruption should be handled and processed exclusively by the SPRK.<sup>97</sup>

With the amendments to the law on Courts<sup>98</sup> and the Criminal Code<sup>99</sup> the legal framework of SPRK has been improved but its scope continues to be dispersed in more than one law. The Head of USKOK, offers to the Croatian Attorney General regular monthly reports as it is under the supervision of that office. USKOK is further authorised to conduct all criminal investigation on its own meaning that in practice USKOK prosecutors request information directly from other ministries especially from internal control departments.<sup>100</sup> The communication is in written expect the cases of coordinating directly on regular basis with the crime-detection police and tax administration. All these bodies are responsible to directly deliver and execute to the prosecutors of USKOK. This is explicitly mentioned in the law on USKOK that these institutions should offer extended assistance and deliver directly information to USKOK.<sup>101</sup> If the information requested is

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<sup>92</sup> See the Case Study, Cleaning House: Croatia Mops Up High-Level Corruption, 2005-2012 , Gabriel Kuris at, [http://www.princeton.edu/successfulsocieties/content/data/policy\\_note/PN\\_id226/Policy\\_Note\\_ID226.pdf](http://www.princeton.edu/successfulsocieties/content/data/policy_note/PN_id226/Policy_Note_ID226.pdf)

<sup>93</sup> See page 91, Specialised Anti-Corruption Institutions, Review of Models, Anti-Corruption Network for Eastern Europe and Central Asia, <http://www.oecd.org/corruption/acn/39971975.pdf>

<sup>94</sup> Case Study, Cleaning House: Croatia Mops Up High-Level Corruption, 2005-2012 , Gabriel Kuris at, [http://www.princeton.edu/successfulsocieties/content/data/policy\\_note/PN\\_id226/Policy\\_Note\\_ID226.pdf](http://www.princeton.edu/successfulsocieties/content/data/policy_note/PN_id226/Policy_Note_ID226.pdf)

<sup>95</sup> Ibid.

<sup>96</sup> See the Law on SPRK at, [http://www.kuvendikosoves.org/common/docs/ligjet/2008\\_03-L052\\_en.pdf](http://www.kuvendikosoves.org/common/docs/ligjet/2008_03-L052_en.pdf) and Law on USKOK at, [http://narodne-novine.nn.hr/clanci/sluzbeni/2009\\_07\\_76\\_1834.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2009_07_76_1834.html)

<sup>97</sup> KIPRED interviews with EULEX prosecutors, SPRK, December 2013.

<sup>98</sup> See the Law at, <http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20amend%20the%20law%20on%20courts.pdf>

<sup>99</sup> See the Law at, <http://www.kuvendikosoves.org/common/docs/ligjet/129%20Law%20on%20amending%20%20the%20criminal%20code%20of%20Kosovo.pdf>

<sup>100</sup> See Anti-Corruption Network for Transition Economies, 6<sup>th</sup> General Meeting, 30-31 May 2005, Istanbul Presentations from Session 2 on Specialised Anti-Corruption Institutions at <http://www.oecd.org/corruption/acn/aboutthenetwork/37330595.pdf>

<sup>101</sup> Ibid.



delayed by the institutions is considered a heavy violation of working or official duties. Differently, Kosovo international prosecutors do praise the work and cooperation with the police however other institutions even when directly addressed in writing have delayed answers to the prosecutors.<sup>102</sup> Lack of clear structure on the departments, cooperation and on-going exclusive competencies of the EULEX international prosecutors makes this structure quite opposite from what the USKOK law foresees.

Unlike USKOK, SPRK has its exclusive mandate to deal with war crimes as well. Due to their sensitive nature the cases of war crimes undertaken by SPRK have usually been followed with protests and objections from Kosovar citizens due to the majority indicted cases coming from the Albanian community in particular the former Kosovo Liberation Army (KLA) commanders and members. Interestingly, similar civic reactions have not occurred once the same indicted persons were charged for corruption related affairs showing the societal willingness and support for EULEX to fight corruption.<sup>103</sup> The inclusion of war crimes in SPRK scope has predominantly led the SPRK dealing with war crime cases whilst decreasing their capacities to tackle corruption and organized crime cases. A possible solution to the foreseen amendments of the SPRK law should carefully examine the possibility of separating the scope of mandate, human and budgetary resources of the Office. Providing organised crime and corruption the necessary attention it deserves could also enhance the capacities and effectiveness of Kosovo institutions to fight high profile corruption cases linked also to organised crime networks.

### c. Capacities

By February 2010, the SPRK operated with an average of six EULEX special prosecutors and six local special prosecutors. After February 2010, another ten local special prosecutors were appointed, as well as one as deputy head as foreseen in the Law on SPRK. By June 2011, the SPRK consisted of 11 international prosecutors, ten Kosovo prosecutors and support staff (including five financial experts in the Anti-Corruption Task Force).<sup>104</sup> Among the major challenges of the SPRK is the interest of the prosecutors to apply for the vacant positions. According to EULEX in general there has been a lack of competent prosecutors and a decline in the quality of staff.<sup>105</sup> When SPRK issued a call for some vacant positions for prosecutors in order to balance the number of local staff with those of EULEX foreseen by the SPRK law, no one applied for the positions. These positions were filled only after the State Prosecutor organised mobile teams in different regions in order to recruit and appoint the positions to the SPRK.<sup>106</sup> An overall observation is that prosecutors feel intimidated due to the sensitivity of the position and on-going attacks against prosecutors by the media, while KPC and KJC have done little to stand in the defence of the work of prosecutors. An issue of concern is also the leak of on-going investigations and evidences in the public.<sup>107</sup>

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<sup>102</sup> KIPRED interviews with EULEX prosecutors, December 2013.

<sup>103</sup> Fatmir Limaj a former KLA Commander is indicted for organized crime and other corruption related offences in the Ministry of Transport and Post Telecommunication (MTPT) case. The case is on-going. See, <http://www.eulex-kosovo.eu/en/pressreleases/0372.php>. In September 2013 Limaj was acquitted of war crimes and related offences in the "Klecka" case. See, <http://www.eulex-kosovo.eu/en/pressreleases/0485.php>. See, <http://www.eulex-kosovo.eu/en/pressreleases/0509.php>

<sup>104</sup> Kosovo: Time for EULEX to Prioritize War Crimes, Amnesty International at, <http://www.amnesty.org/en/library/asset/EUR70/004/2012/en/3090bbe1-6da2-43af-9415-ac06fa3a54a2/eur700042012en.pdf>, pg. 23 and 24

<sup>105</sup> KIPRED interview with EULEX Prosecutor, 3 December, 2013

<sup>106</sup> KIPRED interview with EULEX Prosecutor, 3 December, 2013

<sup>107</sup> KIPRED Interview with EULEX Prosecutor, 3 December, 2013

Concerning USKOK, at the initial set-up this institution remained under-resourced leading to an ineffective response. This changed only four years after with decisive political support with USKOK being granted new legal powers and new leadership. A positive trend practiced by USKOK is the continuous investments in building the professional capacities of the prosecutors that were offered training programs in and outside of Croatia.<sup>108</sup> In the initial phase of set up of USKOK there was a decreased interest of experts working on bookkeeping, criminology, taxation to be part of the USKOK structure due to the low salaries offered. Differently Croatia offered a few hundred Euros better salaries for USKOK prosecutors, also attracting prosecutors in the office.<sup>109</sup> Similarly the SPRK also offers better salaries to local special prosecutors in comparison to prosecutors at other levels however the salaries don't seem stimulating the local prosecutors for the job. Local special prosecutors mention security of their families and of their own as their main concern and media interferences in their work.<sup>110</sup>

Parts of the USKOK structure by law are six departments: the Department of Research and Documentation, Department for Corruption Prevention and Public Relations, Department of Prosecutors, Department for international cooperation and joint investigations, Secretariat and Ancillary services.<sup>111</sup> Except specialised prosecutors there are specialized criminal judges situated in the four largest county courts in Croatia, in Zagreb, Rijeka, Split, and Osijek, and are responsible for adjudicating corruption and organized crime cases. The cases receive high priority in the justice system.<sup>112</sup> In line with USKOK's outreach the SPRK could also establish branches in main Kosovo regions in order to a bigger outreach and the capacity to deal with local and regional cases when needed.

With an explicitly offered structure USKOK also consists of the Department for Corruption Prevention and Public Relations. Differently the SPRK continues to work on anti-corruption cases through an Anti-Corruption Task Force that also consists of appointed police investigators based on a 2010 decision of the Kosovo Prime Minister interfering directly in the independence of the prosecution services.<sup>113</sup> The Task Force has also in its structure five experts experienced in tax matters and crimes related to corruption.<sup>114</sup> The USKOK has an entire machinery of police officers part of the structure in accordance to the law known as the USKOK Police (PUSKOK) whilst the Kosovo Anti-Corruption Task Force depends on the willingness of the Ministry of Internal Affairs and Kosovo Police to appoint officers to the Task Force. Currently this number has approximately 30 police officers that do not fall under the recruitment and management process by the SPRK.<sup>115</sup> The local special prosecutors have also noted this as a major deficiency with their work relying on appointed police officers by the government with the former foreseen judicial police in the 2003 Criminal Code completely being cut off by the current criminal code.<sup>116</sup> In the past there were few cases where investigation involving the political elite was not appropriately handled by the police

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<sup>108</sup> See more regarding USKOK at, <http://www.dorh.hr/Default.aspx?sec=53>

<sup>109</sup> Supra note at 86.

<sup>110</sup> KIPRED source, local prosecutor.

<sup>111</sup> See Croatian Parliament Decision to Promulgate Office for Combating Corruption and Organized Crime, at, [http://narodne-novine.nn.hr/clanci/sluzbeni/2009\\_07\\_76\\_1834.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2009_07_76_1834.html)

<sup>112</sup> "Corruption in Croatia", Global Security, <http://www.globalsecurity.org/military/world/europe/hr-corruption.htm>

<sup>113</sup> See page 20 of KIPRED Report, 'Strengthening of Rule of Law in Kosovo: Confiscation of Illegally Obtained Property' at, [http://www.kipred.org/advCms/documents/98577\\_Confiscation\\_of\\_illegally\\_obtained\\_property.pdf](http://www.kipred.org/advCms/documents/98577_Confiscation_of_illegally_obtained_property.pdf)

<sup>114</sup> Kosovo Government Decision of 26 February, 2010, [http://www.kryeministri-ks.net/repository/docs/Vendimet\\_e\\_Mbledhjes\\_se\\_110\\_-te\\_te\\_Qeverise\\_2010.pdf](http://www.kryeministri-ks.net/repository/docs/Vendimet_e_Mbledhjes_se_110_-te_te_Qeverise_2010.pdf)

<sup>115</sup> Kosovo Government Decision of 26 February, 2010, [http://www.kryeministri-ks.net/repository/docs/Vendimet\\_e\\_Mbledhjes\\_se\\_110\\_-te\\_te\\_Qeverise\\_2010.pdf](http://www.kryeministri-ks.net/repository/docs/Vendimet_e_Mbledhjes_se_110_-te_te_Qeverise_2010.pdf)

<sup>116</sup> KIPRED interview with a local Prosecutor, 11 December, 2013

officer in charge of the case.<sup>117</sup> Therefore in order to strengthen the performance of the work of the SPRK an option should be considered to amend the SPRK law to foresee a unit of police officers under the recruitment and management structure of the SPRK.

The SPRK work is often hindered by lack of coordination with the other law institutions in Kosovo. Stated in Article 6 of the SPRK law<sup>118</sup> that all institutions must report to SPRK there were cases of few institutions that were not willing to do so or act in a timely manner delaying the investigations. For example a special prosecutor was obliged to threaten an auditor that it will send the police to comply with her written request for information. The office was delaying the answer for days.<sup>119</sup> In the case of Croatia, to lower such barriers the USKOK law offers clear reporting structures by also establishing memorandums of understanding with relevant ministries and agencies to establish controlled means of access to their databases. This has enabled USKOK to exercise its special powers of inspection of financial data without violating citizens' privacy.

The USKOK's Department for Corruption Prevention counts in the Public Relations office foreseen by the law. The similar is not with the SPRK law that is also followed by the lack of transparency of the SPRK.<sup>120</sup> On the other hand the SPRK local and international prosecutors undergo high pressure from the media with cases under investigation often leaking evidence to the media. If particular case was under investigation one special prosecutor was written about eight weeks in a row in one particular media.<sup>121</sup> Either the SPRK or the state prosecution services in this case don't come to the defence of the cases especially due to the risks of being accused of pressuring media. Potential solutions could be found in Kosovo Prosecutorial Council and Kosovo Judicial Council to issue strong statements condemning the leaks and the pressure on judicial staff.<sup>122</sup> However, political willingness and support of political leadership is necessary as evidence is often leaked in the media by particular individuals in power under investigation.<sup>123</sup>

On the other hand, USKOK managed to build good relations with the media stating that strong media relations are essential to build public trust since the media could inform public opinion regarding their activities and to strengthen public opinion. This was achieved through meetings with journalists in order to explain how USKOK works, answers to public inquires, updates to USKOK's website and participation of prosecutors in media training to improve their skills in answering media queries without endangering casework. Something similar was done in relations with NGO's as well.<sup>124</sup> The SPRK continues to be locked away from media without regular press conferences and don't offer no longer special prosecution reports as of 2011.

Another good example coming from USKOK is the Department of Research and Documentation, a branch that SPRK in Kosovo lacks. The SPRK may do research for its own needs however such a department is not foreseen in the law. Furthermore, within this department USKOK establishes and maintains a database that can serve as a source of knowledge in the process of criminal offenses,

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<sup>117</sup> KIPRED source, local prosecutors.

<sup>118</sup> Law on the Special Prosecution Office of the Republic of Kosovo at, [http://www.kuvendikosoves.org/common/docs/ligjet/2008\\_03-L052\\_en.pdf](http://www.kuvendikosoves.org/common/docs/ligjet/2008_03-L052_en.pdf)

<sup>119</sup> KIPRED interview with British EULEX Prosecutor, December, 2013

<sup>120</sup> See page 3 of FOL movement Policy Brief, The Impact of Government Decisions in the Fight Against Corruption 2010-2011 at, [http://levizjafol.org/images/uploads/files/Policy\\_Brief\\_-\\_The\\_Impact\\_of\\_Government\\_Decisions\\_in\\_the\\_Fight\\_Against\\_Corruption-2.pdf](http://levizjafol.org/images/uploads/files/Policy_Brief_-_The_Impact_of_Government_Decisions_in_the_Fight_Against_Corruption-2.pdf)

<sup>121</sup> KIPRED interview with EULEX Prosecutor, 3 December, 2013

<sup>122</sup> KIPRED Interview with EULEX Prosecutors, 3 December, 2013

<sup>123</sup> Supra note at 116.

<sup>124</sup> Case Study, Cleaning House: Croatia Mops Up High-Level Corruption, 2005-2012, Gabriel Kuris at, [http://www.princeton.edu/successfulsocieties/content/data/policy\\_note/PN\\_id226/Policy\\_Note\\_ID226.pdf](http://www.princeton.edu/successfulsocieties/content/data/policy_note/PN_id226/Policy_Note_ID226.pdf)

tracking of cases and reporting.<sup>125</sup> The SPRK and other rule of law bodies in Kosovo such as the KJC and KPC are still struggling to develop a joint database in tracking their work. A reliable track of cases is essential for an effective fight against corruption. In its report of 2012 the European Court of Auditors<sup>126</sup> has also stated that the lack of such database, particularly in between police and prosecutors, is a major shortcoming affecting the cooperation in between rule of law institutions.

### **c) CONCLUSIONS AND RECOMMENDATIONS**

Six years after declaring independence, Kosovo continues to be evaluated as a highly corrupt country. Besides local and international reports stating the similar, Kosovo citizens share the same impression regarding the corruption level. While corruption is widespread in the main institution of the country its high presence in the judiciary is of a high concern.

Kosovo will not be able to move towards European Union without ensuring an effective fight against corruption since it stands among the top requirements of the EU. A stronger coordination among the rule of law bodies with concrete political willingness to strengthen the existing mechanisms such as the SPRK with sufficient mandate including structure of reporting and coordination as well as budget would help the increase of the effectiveness in the overall fight against corruption. Moreover, a successful fight against corruption cannot be ensured as long as the government issues statements that the rule of law is among their top priorities while on the other hand continues to allocate 2,17% of annual budget for its main rule of law bodies.

The establishment of numerous bodies to fight corruption have caused an overlap in mandates, inefficiency, increased lack of accountability and decreased conviction rates. It seems to be a continuous tactics of the government to create and appoint new Coordinators or Task-forces as soon as EU pressure increases. This continuous to hinder the already existing laws and mechanisms in implementation, outsourcing the budget in different directions whilst the results on the fight against corruption as unresolved cases are transferred from year to year. In addition, while the criminal charges have increased at the overall state prosecutor's level, the number of unsolved cases remains worrisome mainly dealing with petty crime corruption cases shifting attention from high profile cases.

Simplifying the role and responsibility of each institution with appointed lead institutions in the fight against corruption is the momentum that Kosovo should not miss. Moreover the on-going reforms on the current mandate of EULEX combined with a strong conditionality by the EU towards the Kosovo institutions should also include the transfer of competencies of the rule of law bodies to local structures, hand in hand with increasing of their capacities.

Finally, Kosovo can use lessons and practices from other countries that have successfully fought corruption such as Croatia. Bureau for Combating Corruption and Organized Crime has been analysed as a model for Kosovo to use and potentially adapt to the Kosovo Special Prosecution Office mandate. In addition, a reforming of SPRK scope is needed for this Prosecution to increase its effectiveness. Furthermore, to eliminate the possibility of a decrease in the capacities of SPRK prosecutors to tackle corruption and organized crime, a separation of war crimes from SPRK is necessary in order to give the organized crime and in this case corruption the attention it deserves.

In line with USKOK's scope the reformed SPRK should be the leading authority in the country particularly in dealing with cases of corruption and organized crime with a clear set structure of own

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<sup>125</sup> Croatian Parliament Decision to Promulgate Office for Combating Corruption and Organized Crime, [http://narodne-novine.nn.hr/clanci/sluzbeni/2009\\_07\\_76\\_1834.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2009_07_76_1834.html), Article 14, 2nd.

<sup>126</sup> See page 18, European Court of Auditors 2012, Special report No 18 at, <http://eca.europa.eu/portal/pls/portal/docs/1/17766744.PDF>

police officers, special prosecutors and experts. Furthermore, benefiting from USKOK's good practices, SPRK in Kosovo must increase its transparency through the strengthening of its public relations.

KIPRED proposes the following recommendations for improving fight against corruption and organized crime as well as increasing efficiency of the SPRK:

- **Strengthen legislation for SPRK** – Using the example of Croatia's Law on USKOK amend the Law on SPRK to include a clear mandate for Kosovo special prosecutors, draft a unique legal framework by including the structure and composition of the SPRK with clear-cut management and organisational structure of who reports to who; The SPRK role on corruption and fight against organised crime should be defined as leadby including unlimited access to all levels of information required for high profile cases of investigations; and full protection should be offered to special prosecutors and their families.
- The investigations and indictments by the SPRK should also be handled by special judges or a special chamber as in the case of USKOK; and the SPRK law should establish the SPRK police as in the model of USKOK police under the direct recruitment and management structure of the SPRK. The reporting and monitoring on tracking the case management from investigation, indictment, verdict and final court judgements should be collected by the SPRK and published on regular basis. This law should therefore clarify the existing overlapping dispositions in the Criminal Code of Kosovo, Criminal Procedure Code, and the Law on Regular Courts. .
- **Double the funding for SPRK** - The Government of Kosovo should double the funds for SPRK to €1,120,000.00 (from current €593,000.00) based on the Croatia's model of using €0.62 per capita on anti-corruption and fight against organized crime. Kosovo currently allocates only €0.32 per capita in these efforts.
- **Abolish ineffective institutional bodies:** The National Anti-Corruption Council of the Office of the President; Special Anti-Corruption Task Forces and/or Divisions; and National Coordinator on Anti-Corruption within the State Prosecutor's Office. The abolishment of these mechanisms should be followed by full political, legal and financial support to strengthen the overall mandate of SPRK which should have the leading role on anti-corruption and fighting organized crime.
- **Introduce a joint EULEX/Kosovo prosecutor SPRK co-chairs:** in order to ensure more Kosovo ownership over fight against corruption and organized crime, the SPRK should jointly led by two chairs- a Kosovo national prosecutor and an EULEX prosecutor for a limited 2 year timeframe. After two years, the SPRK should be fully chaired by Kosovo prosecutors.
- **The SPRK Kosovo chair requirements:** the Kosovo national prosecutor, the co-chair of SPRK, should enjoy excellent reputation, a minimum 10 years of work in special prosecution office, independence from political affiliation, and an excellent track record.