



Kosovo Law Institute

PARDON IN KOSOVO

An analysis of the implementation of
pardon and conditional release



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1. Executive Summary

In Kosovo, pardon represents a decision of the President by which certain persons are fully or partially exempt from the enforcement of final court sentence, or replacing it with a more lenient sentence. After the entry into force of the Constitution of the Republic of Kosovo and promulgation of the Law on pardon in 2009, the President had the discretionary right to implement the instrument of pardon. The deficient and general law both regarding the criteria and procedures for pardon did not allow proper and merited application of the institute of pardon. Despite the created advantage, implementation of this institute has raised controversy related to scandalous cases of pardon in three years of implementation. So far, presidents have partially and fully pardoned over 236 years for 227 convicts, where only ten of them were women.

In 2010, President Fatmir Sejdiu had pardoned the convicted for Trafficking in Persons, flagrantly violating the Constitution and the Law on Pardon. Institute of pardon has undergone continuous depreciation, as until present, amongst pardoned, we have persons convicted of brutal murder, aggravated murder, organized crime, drug related offenses, rape, and embezzlement during tenure in office. It is a paradox that all these crimes, pardoned by the Presidents, were priorities of the war of state institutions against crimes that are most dangerous to society, and which were included in national strategies, such as, Strategies and National Action Plans 2009-2012 on Organized Crime, Corruption in 2009-2011, Against Narcotics 2009-2012, and Security Strategy for Kosovo.

The overwhelming part of the pardoned with similar criteria, respectively 67% of them, had previously been denied parole by the Conditional Release Panel. Ad hoc committees for pardon by failing to make fair assessment based on criteria and analyze the decisions of the Conditional Release Panel had suggested the pardon of recidivist convicts and of those with disciplinary violations. Pardon of these categories of recidivist convicts, is legally prohibited and constitutes a danger to society. These anomalies are partly to blame on the teams of the Kosovo Correctional Service who compile reports that are non-professional and lack key information.

Until present, the greatest beneficiaries of pardon are those convicted of murder and aggravated murder, where only in 2011, Acting President Jakup Krasniqi had pardoned 135 years of imprisonment to convicts from these categories. In cases of mass pardons for certain categories of crime, as has occurred, it would be preferable to apply the amnesty. Therefore, constitutional amendments must reflect the need to introduce amnesty as a constitutional category, as in other countries.

Another important institute of law is conditional release. Since the beginning of implementation of the institute, the door was opened for the convicts to buy freedom. Since 2007 until present, officials of the Conditional Release Panel have been subject to investigation and trial for corrupt practices in release of prisoners. Despite numerous media reports that suggest that these activities were performed within a group rather than

individually, the investigating authorities have failed to extend investigations in order to prosecute organized crime. Commencement of implementation of pardon has further hampered decision making of the Conditional Release Panel, since pardon has practically influenced that convicts are by default conditionally released.

Application of these institutes has always represented a challenge for their enforcement. In order for Kosovo to overcome challenges presented in the Progress Report for the past two years, it must strive to apply fair and with merit the institute of pardon. Thus, the President should initiate amendment of the Law on Pardon, which will specify the criteria, procedures, criminal offences, and above all to stop pardon of prisoners who were rejected by the Conditional Release Panel. Furthermore, the Constitution of the Republic of Kosovo should exclude the possibility of pardoning three months before the end of the mandate of the President, and exclude entirely the possibility of pardon for the acting President.

2. Introduction

Pardon represents a decision of the President or the government through which "certain person's name by name are exempted from prosecution, fully or partially exempted from enforcement of the sentence, their sentence is replaced with more lenient sentence or a suspended sentence,...".¹ Pardon is an institute of law which seeks to reward the convicts who have fulfilled their debt to society for the offences carried out. Furthermore, the institute of pardon is seen as a means to show mercy to convicts, and this was particularly shown to be an extremely important mechanism at times and places where the death penalty is applied. The purpose of imprisonment sentences² is presently more related to improving the behavior of convicts in order to achieve full re-socialization and reintegration of these persons. Consequently, the return of the convicts would have to present more benefits than problems for society in general. Thus, pardon as such should aim to build on these principles, serving the greater good.

Over the years concerns have been raised about the misuse of pardon from state officials whether by the President or other persons who are charged with this authority. Different cases show severe abuse of this instrument, which relate more with financial and political gain rather than sound application and fair and impartial treatment of all claims which are submitted by the convicts. In the United States of America (USA), the pardon of former President Richard Nixon for Watergate case had raised numerous controversies about the misuse of the mechanism of pardon. Controversial cases of pardon immediately raise debates on improvement of this institute as well as greater oversight of its implementation, both –in countries that apply this for more than a century as well as in other countries which have begun to implement it later.

By the year 2008, with completion of the international administration in Kosovo, despite the inclusion of provisions related to pardon in Criminal Code of Kosovo, other legal documents had not been developed, which had prevented the application of the institute of pardon. In 2008 when the Constitution of the Republic of Kosovo entered into force, institute of pardon was included as a competence of the President, which resulted in the adoption of the Law on Pardon as well as pardon of 62 prisoners on the occasion of the first anniversary of the country's independence on February 17th, 2009. The list of prisoners pardoned by the President, which included convicted of serious crimes, had raised many controversies about the purpose of implementing of the institute of pardon. Such practice of implementing the institute continued in every anniversary of independence, where each year there were cases among the most exclusive by serious nature of crimes that raised concerns of various bodies, media and public in general. Improper practice of implementation of pardon is yet another major dark spot for Kosovo in the last two Progress Reports of the European Commission.

¹ Ismet Salihu, *E drejta Penale: Pjesa e përgjithshme* (Prishtina: Fama University, 2008), Chapter VII: Amnesty and Pardon, p. 596.

² Law on Enforcement of Criminal Sanctions defines prisons as correctional institutions. *Law on Enforcement of Criminal Sanctions, Law no 03/L-191, Article 204*, Assembly of the Republic of Kosovo, 22 July 2010.

Seeing the violations that seem to have no end, Kosovo Law Institute (hereinafter, KLI) has decided to fully investigate and analyze the legal framework, its implementation practices and violations in three years of implementation. Moreover, this analysis includes specific recommendations that will improve the application of the institute of pardon. As this is the first report on the implementation of the institute of pardon, research and analysis also include the institute of conditional release in Kosovo. Besides its main goal, which is to provide solutions to the problem, the KLI has had the additional obligation to document the improper practices of the implementation of the institutes of pardon and conditional release in order to provide a comprehensive and analytical overview for all those who will conduct research in this area in the future.

2.1. Methodology

In order to compile a comprehensive and analytical report, KLI has used a mixed research methodology. Formulation of the problem was done as a result of numerous concerns raised by experts and institutional officials, media reports of abuses of the institute of pardon, and amendment of the Constitution and Law on the President. To be more as accurate as possible in identifying problems and proposing solutions to this knot, the relevant documents, which relate to the implementation of the institute of pardon, were collected and analyzed in detail. Moreover, qualitative interviews were conducted with local institutional officials and experts in the field of justice, particularly of the institute of pardon.

Initially, KLI analyzed the constitutional, legal and regulatory aspect of the institute of pardon and conditional release. KLI has analyzed the Constitution of the Republic of Kosovo, Law on the President of the Republic of Kosovo, Law on Pardon, Criminal Code, Law on Enforcement of Criminal Sanctions, Code of Juvenile Justice, Decree for Determining the Criteria for Granting Pardon to Convicts (hereinafter Decree for Criteria for Pardon) of 2009 and 2012, and Rules of Procedure governing the work of the Conditional Release Panel. In order to supplement the legal analysis, KLI has made an analysis of the Law of Pardon in Albania, the Constitution of Albania, and has conducted a preface research of the Law on Pardon in Croatia and the Croatian Constitution. Furthermore, the KLI consulted in detail the scientific literature of criminal law. KLI has made a specific research of the criteria for both pardon and conditional release analyzing their similarity in legal and practical aspect. To date, there has been no comprehensive analysis or report on the application of the institute of pardon in Kosovo, excluding media reports, thus, this report represents the first report of its kind in Kosovo.

Furthermore, KLI has analyzed other documents, such as Decree for Pardon for the three years 2009, 2010 and 2011, decisions of the Conditional Release Panel, decisions of relevant Courts, reports of multi-professional teams of Kosovo Correctional Service, and other relevant documents related to pardon. KLI has struggled to have full access to official documents, however, with greater insistence this obstacle was overcome. Minister of Justice has authorized the Correctional Service and the Conditional Release Panel to provide access to documentation in accordance with the law, which has facilitated the provision of some key information. The only data which was not obtained is the time that was pardoned for

convicts, where this was not specified in the decree. Reports obtained by the KLI were summarized in a database, which included all convicts pardoned by Presidents, criminal offences committed by these convicts, the time pardoned, the information if the pardoned convict was previously refused conditional release by the Panel, the reasons for refusal, the initiation date of serving of sentence and date of regular release, behavior of convicts during serving of the sentence in prisons, other crimes committed by the pardoned convicts, as well as other relevant information . The database was used to identify issues of concern relating to the implementation of these two institutes, with focus on institution of pardon.

After completing secondary research, the KLI has conducted in-depth interviews with institutional officials involved in implementing the institutes of pardon and conditional release. Interviews were made with certain officials involved in the Ad hoc Committees for Pardon, formed by the Presidents in previous years, officials of the Presidency, the Ministry of Justice officials, officials of the Kosovo Correctional Service, officials and members of the Conditional Release Panel, legal experts and officials of the Institution of the Ombudsman as well as representatives of civil society organizations for human rights. The interviews conducted were encoded so that issues and information derived from them are included in the report.

KLI has not encountered a standard model for regulating the institute of pardon, as different countries implement this institute in various forms, partly because of the model of state governance in these countries. Therefore, being unable to make direct comparison of practices, this study took into account certain practices that will best fit the case of Kosovo.

3. Institute of Pardon

The right of pardon is provided for in the Criminal Code, which entered into force in 2004, however, this authority has never been implemented until 2009 because the accompanying law which regulates the functioning of the institute of pardon, was not adopted.³ This of course presented a challenge for the authorities of the Kosovo Correctional Service as they lacked the benefits to stimulate good behavior of convicts and their speedy re-socialization. United Nations Mission in Kosovo (hereinafter UNMIK) had never attempted to create legal mechanisms for the realization of this right by convicts in Kosovo, despite local demand, in the absence of implementation of the institute of pardon, a different institute that was allowing conditional release of convicts was implemented from 2002. This has been the only way convicts could use as opportunity for release. It is understood that the institute of pardon and of conditional release are two independent institutes, and have no interconnection. Implementation of conditional release institute will be discussed in the following section of the report.

3.1. Legal basis in Kosovo

In Kosovo, as in a major part of the states, pardon is the competence of the President of the state. Pardon is foreseen in the Constitution of the Republic of Kosovo, more precisely in Article 84 covering the powers of the President, stating that the President "grants individual pardons in accordance with the law".⁴ Assembly of the Republic of Kosovo, on January 15th, 2009, in accordance with the Constitution of the Republic of Kosovo and the Law on the President, has promulgated the Law on Pardon, which specifies the implementation of the institute of pardon.⁵ Under this law, pardon means release of persons convicted by a final decision of the court for the criminal offense, which the President can authorize under his/hers extraordinary executive power.⁶ Convicts pardoned by the President, whose sentence imposed by the court is terminated, are released immediately or latest within 24 hours after delivery of the Presidential Decree to the appropriate correctional institution.⁷

Chapter X of the Criminal Code of Kosovo, namely Article 97, specifying exactly what pardon means and to whom this right is provided. Given that this code was drafted in 2003 and that the Law on pardon was adopted in 2009, there are contradictions between the law and code. The latter provides the possibility of release from criminal prosecution, which is not guaranteed by Law on pardon.⁸ Whereas other issues of full exemption, partial exemption

³ *Provisional Criminal Code of Kosovo*, UNMIK Regulation 2003/25, 6 July 2003.

⁴ *Constitution of the Republic of Kosovo, Article 84 on Competencies of the President, paragraph 29*, Assembly of the Republic of Kosovo, 17 February 2008.

⁵ *Law on Pardon, law no 03/L-101, Assembly of the Republic of Kosovo, 12 December 2008*.

⁶ *Ib idem*.

⁷ *Law on Enforcement of Criminal Sanctions, Law no 03/L-191, Article 204, Assembly of the Republic of Kosovo, 22 July 2010*.

⁸ *Law on Pardon, law no 03/L-101, Assembly of the Republic of Kosovo, 12 December 2008*. See also, *Provisional Criminal Code of Kosovo*, UNMIK Regulation 2003/25, 6th of July 2003.

and the replacement of punishment are also foreseen in the Law on Pardon.⁹ These two laws represent legal collision which creates practical problems in implementing the institute of pardon.

Presidents of the country have met the legal basis for implementation of pardon through the issuing of bylaws, namely Decree on Criteria and Procedures for the Pardon of Sentenced Persons (hereinafter: Decree on Criteria for Pardon). In 2009, President Fatmir Sejdiu had issued the Decree on the criteria for pardon which was in force for three years of implementation of pardon. This decree had further specified the procedures for implementation of pardon, necessary documents for assessing the requirements of the convicts, and the formation of an Ad hoc Committee for pardon.¹⁰ Seeing the need for further clarification of the procedures and criteria, President Atifete Jahjaga in 2012 issued a new Decree on the criteria for pardon.¹¹ Unlike the previous Decree, the present Decree on criteria for pardon, issued in 2012, has remedied the legal and procedural deficiencies of implementation of pardon.

In general, the Constitution, Law and other secondary legislation have failed to ensure proper application of pardon. One of the problems derived from the Constitution is the right of pardon from the Acting President. Although for a transitional period, the Acting President has the right to pardon as if he/she were President with full term. This case is presented practically on the occasion of pardons in 2011, where acting President pardoned almost twice more convicts compared to the President one year before.¹² Furthermore, the Constitution does not envisage restrictive circumstances for the period before the end of the mandate of the President, which in many instances represents a problematic period for implementing the right to pardon.

Despite setting the criteria for pardon, until the Decree on criteria for Pardon issued in 2012, the legal framework has failed to specify the representation on the Ad Hoc Committee for Pardon, which will make a professional assessment of each convicted person against the criteria. Consequently, these bodies as in 2010 were primarily political committees. Other issues of concern related to legal framework as regards pardon are related to criteria and procedures, which concerns are detailed in the following section.

3.1.1. Criteria

As in any other country where the institute of pardon is applied, in Kosovo this mechanism is enforced based on some principles. Principles for pardon in Kosovo are determined by the Law on pardon and supplemented by Decree of the President on the criteria for pardon. Pardon as an irregular mechanism is intended to reward only those convicted by a final

⁹ *Ib idem.*

¹⁰ *Decree on establishing the criteria for pardoning of convicts, Decree no DF 001-2009*, President of the Republic of Kosovo, 30th of January 2009.

¹¹ *Decree on criteria and procedures of pardon of convicts, Decree no 001-2012*, President of the Republic of Kosovo, 13th of January 2012.

¹² Note: In 2010, President Fatmir Sejdiu pardoned 62 convicts, whereas in 2011, Acting President Jakup Krasniqi pardoned 103 convicts. *Decree on pardon, Decree no 001-2010*, President of the Republic, 16 February 2010. See also, *Decree for pardon, Decree no 001-2011*, Office of the President, 14th of February 2011.

judicial decision which have shown tremendous character and behavior while serving the sentence, and certainly represents a human act of the President.¹³

In rendering a decision to pardon, the President shall consider the criteria listed in Article 5 of the Law on pardon. Not limited to, the basic criteria for pardon include:

- Severity of the crime,
- The risk for recidivism,
- Sincere repentance, and
- Appearance and character of respectful behavior.¹⁴

Decree on Criteria for Pardon of the President issued in 2009 did not explicitly offer anything more substantial than the criteria in the law. On the other hand, the Decree issued by President Atifete Jahjaga, which has replaced the old one, significantly improves the definition of criteria including: *compliance with the rules of socialization and reintegration; the impact of pardon to the injured party; specific humanitarian reason for pardon; duration of the served sentence; as well as meeting of the requirements of the correctional service.*¹⁵ Additional criteria and their specifications have given a more responsive dimension to implementation of pardon, thus marking the progress.

Law on pardon has expressly prohibited pardon for all persons convicted of criminal offenses punishable under Chapters XIII and XIV of the Criminal Code of Kosovo.¹⁶ These chapters relate to the commission of offenses against Kosovo and its inhabitants as well as crimes against international law.¹⁷ Offenses contained in chapter XIII, are of a particular importance as they deal with crimes related mainly to attacks against the legal order of Kosovo, including mainly offenses related to terrorism.¹⁸ On the other hand, Chapter XIV includes offenses against international law, which among other encompass genocide, crimes against humanity, war crimes that are contrary to international conventions, smuggling of migrants, trafficking in persons and offenses relating to international personnel.¹⁹

¹³ *Supra* note 5.

¹⁴ *Law on Pardon, law no 03/L-101, Chapter I, article 5 "Criteria for pardon",* Assembly of the Republic of Kosovo, 12 December 2008.

¹⁵ *Supra* note 11. See also, *supra* note 12.

¹⁶ *Law on Pardon, law no 03/L-101, Chapter I, Article 4 "Right to request pardon",* Assembly of the Republic of Kosovo, 12 December 2008.

¹⁷ *Criminal Code of Kosovo, Chapter XIII dhe XIV, Criminal Offences against Kosovo and its inhabitants and Criminal offences against International law,* 6 July 2003.

¹⁸ *Note:* Article 108 - Assault on legal order of Kosovo, Article 110 - Conduct of terrorist acts, Article 111 - assistance to carry out terrorist acts, Article 112 - Facilitating the commission of terrorism, Article 113 – Organization, support and participation in terrorist groups ; Article 114 – Unauthorized border or boundary crossing; Article 115 - Promotion of discord or intolerance of national, racial, religious or ethnic hatred. Chapter XIII: Criminal Offences against Kosovo and its inhabitants. *Criminal Code of Kosovo,* 6 July 2003.

¹⁹ *Note:* Article 116 - Genocide, Article 117 - Crimes against humanity, Article 118 - War Crimes in serious violation of the Geneva Conventions, Article 119 - War crimes as serious violations of the laws and customs applicable in international armed conflict , Article 120 - War Crimes in Serious Violation of Article 3 common to the Geneva Conventions, Article 121 - War crimes which pose a serious violation of the laws and customs applicable in armed conflicts not of an international character ; Article 122 - Attacks in armed conflicts of an international character against installations containing dangerous forces; Article 123 - Recruitment and registration of persons between the ages of fifteen and eighteen years in armed conflict, Article 124 - Use of tools or methods forbidden to war; Article 125 - Unreasonable delay of the repatriation of prisoners of war or civilians, Article 126 - Unlawful Appropriation of items from the dead or wounded in battlefield, Article 127 - Endangering the negotiators; Article 128 - Organization of groups to carry out genocide, crimes against humanity and war crimes; Article 129 – Command responsibility; Article 130 – Inciting aggressive war or armed conflict, Article 131 - Abuse of the international emblems, Article 132 - Hijacking of aircraft; Article 133 - Endangering the safety of civil

Pardon of prohibited offenses constitutes a flagrant violation of the Constitution of the Republic of Kosovo and the Law on Pardon. Decree on Criteria for Pardon issued in 2012 goes even further by stating that the Institution of the President shall undertake additional care for cases of *murders committed with severe cruelty, multiple murder, against children, pregnant women and violent sexual intercourse with juvenile*.²⁰ Submission of more stringent criteria in general, particularly for certain crimes which are very sensitive to society shows some progress as regards the legal aspect of pardon in Kosovo. Pardon is also prohibited for prisoners whose application was previously refused by the President. Exceptions may be made if new circumstances arise from the time of previous refusal of the application.

The current legal basis, excluding the Decree on criteria for Pardon issued in 2012, is very generalized and incomplete. Current criteria more favor subjective assessments, thus preventing equal treatment for each convicted person. On the other hand, legal shortcomings were observed mainly in the exclusion of the criteria which would prohibit the convicts refused by the Conditional Release Panel to seek pardon. Such practice will only enrich the institute of pardon so that pardon is granted with merit and fairly. Another problem of non specified criteria is the unlimited right of convicts to request pardon. Convicts in Kosovo, on the first day of serving the sentence, may address the President for pardon. In Albania, this right is acquired after convicts serve 1/3 of the sentence.

3.1.2. Procedure

Procedures for pardon are defined in the Law on Pardon and Presidential Decree on criteria for pardon. Procedures include the submission of applications for pardon, their review and decision. Although the law is quite general, the Decree for criteria for pardon of the President attempts to specify these procedures and process. Decree issued in 2009, except for specification of the necessary documentation to evaluate the cases and the creation of the Ad Hoc Committee for pardon, did not contain other elements defining pardon. Furthermore, such provisions did not secure transparency and accountability of the process of pardon. An improvement in this direction is observed with the issuance of the Decree in January 2012, where the profiles of the members of the Ad Hoc Committee for pardon are now defined. However, a concern still remains that yet again membership is not prohibited to representatives who come from politics. A progression towards transparency in decision making and evaluation of applications is made by the Decree issued in 2012, which requires that the composition of the Ad Hoc Committee for pardon is made public along with appropriate procedures and assessments of the Committee after the promulgation of Decree for pardon.

aviation; Article 134 - Endangering the Safety of Maritime Navigation, Article 135 - Endangering the Safety of Fixed Platforms Located on the Continental Shelf, Article 136 - Piracy; Article 137 - Establishment of slavery, slavery-like conditions and forced labor; Article 138 - The smuggling of migrants; Article 139 - Trafficking in Persons, Article 140 - Concealment of identification documents of victims of slavery or human trafficking; Article 141 - Endangering Internationally Protected Persons, Article 142 - Endangering United Nations and personnel associated with them; Article 143 - Taking of hostages; Article 144 - Unlawful acquisition, use, transfer and disposal of nuclear materials; Article 145 - Threatening to use or commit theft or robbery of nuclear material. Chapter XIV, Criminal Acts Against International Law. *Criminal Code of Kosovo*, 6 July 2003.

²⁰ *Supra* note 12.

One of the key problems of the legal framework is linked with lack of specification of deadlines for submission of applications, data collection, evaluation and decision on cases. Consequently, to the will of the President, the institutions must respond within a few days. Lack of specification of deadlines has each year caused panic and rush to complete reports on convicts. For example, for the pardons that are expected to occur by February 17, 2012, President Atifete Jahjaga has made the request for reports from the Kosovo Correctional Service on January 17th, 2012. Even her predecessors had done similarly. This in fact makes it impossible for the reports to be compiled in a professional manner, particularly in cases when 500 requests had to be handled within a week.²¹

Progress made in the Decree on criteria for pardon issued in 2012 does not meet one of the key criteria for ensuring complete transparency. Decree does not specify if the announcement of the list of pardoned shall contain data such as name, surname, date of birth, duration of sentence, the criminal offense for which he/she was convicted, the sentencing court, where the sentence is being served, and the portion of sentence pardoned. Current provisions do not foresee any element which should be presented in the Decree on pardon by the President, which in the past three years has served the Presidents to conceal the portion of the sentence that was pardoned for specific convicts.²² Publication of information about the pardoned time in a selectively manner raises doubts within the public and other convicts about fairness in the administration of pardon.

3.2. Improper practices of pardon

Pardon in Kosovo in itself contains the advantages as well as the other side of the coin, the disadvantages. While the Constitution and the legislation gives the President considerable power to pardon, the President can act quite easily so that pardon serves national interests and society in general. At the same time, such great power and minimum requirements for accountability and control, can easily be misused. Pardon was for the first time implemented in Republic of Kosovo on 17th of February 2009 by then President Fatmir Sejdiu. Operationalization of the institute of pardon until then was considered a challenge in itself, however, its implementation in the next three years added challenge of larger size by producing even violators of the Constitution and the Law of Pardon.

So far 227 prisoners are fully and partially pardoned by President Fatmir Sejdiu and the Acting President Krasniqi. In 2010, President Fatmir Sejdiu had pardoned persons convicted of trafficking in persons, which constitutes a flagrant violation of the Constitution and the Law on pardon, since pardon of this criminal offence is prohibited by law.²³ Besides this case, President Fatmir Sejdiu has also pardoned persons convicted of offenses of organized crime related to narcotics, cases of rape, as well as convicts and which were not

²¹ KLI interview with the members of the Presidential Ad hoc Committee for Pardon of years 2009, 2010 and 2011, December 2011 and January 2012.

²² Note: In last three years, Decrees on pardon did not specify the pardoned time for 32 of 227 pardoned. *Decree on pardon, Decree no002-2009*, Office of the President, 17 February 2009. See also, *Decree on pardon, Decree no 001-2010*, Presidnet of the Republic, 16 February 2010. Also, *Decree on pardon, Decree no001-2011*, Office of the President, 14 February 2011.

²³ *Law on Pardon, law no 03/L-101, Article 4 mbi "Right to request pardon", paragraph 5*, Assembly of the Republic of Kosovo, 12 December 2008.

recommended at all by his Commission for evaluation. On the other hand, the Acting President Krasniqi, who was in this position with all these powers in a six month transition period, pardoned more persons as well as more period of sentencing than President Sejdiu did each year. The list of pardoned by the Acting President includes recidivist convicts, as well as persons who committed aggravated murder, and those who have been convicted of misconduct in prison, and acts of corruption. All these pardons have raised dilemmas for unfair and non-merited assessments by the Presidents.

Drafters of the reports that “live” with offenders have recommended a number of prisoners not to be pardoned in any case. Correctional Service of Kosovo for the year 2009 and 2011 had recommended not to pardon 256 convicts. However, this did not prevent President Sejdiu and Acting President Krasniqi to pardon 10 convicts from this category.²⁴ Also, most of the pardoned convicts were previously refused by the Conditional Release Panel, where 151 out of 227 or 67% of pardoned were in this category.

Continuing violations have raised various concerns, where the pardon is now seen more as an opportunity for misuse than a means of promoting good behavior of convicts and soft hand of the state. Pardon of the convicts which is followed by many anomalies has not gone unnoticed by the European Commission, where Kosovo Progress Reports for 2010 and 2011 have raised this concern.²⁵ Improper implementation of pardon has only further aggravated the justice system in Kosovo by depreciating tried and sentenced crimes, violating the Constitution and laws, thus pardons were categorized as one of the darkest areas for two consecutive years in the Progress Report. Inception of the implementation of the institute of pardon unfortunately built an institute which was massively degraded by Presidents, violating the Constitution to pardon convicts.

3.2.1. Violation of the Constitution and the Law

The many freedoms and significant power of the President in implementation of pardon is limited in pardon of convicts who are categorized as exempted from pardon under Chapters XIII and XIV of the Criminal Code of Kosovo, which include Trafficking in Persons. Pardons of 16th of February 2010 by the President Fatmir Sejdiu achieved the pinnacle of violations, since the Ad Hoc Committee for pardon had suggested to the President to pardon a person convicted of Trafficking in Persons. The latter was previously refused to be conditionally released from the Conditional Release Panel because of the nature of the offense. Circumstances for refusal was the seriousness of the criminal offense, being considered as too damaging to the community, regional countries and the international community as a whole. Further description of the following was part of the reasoning of the judges of the Conditional Release Panel:

²⁴ Note: Official documents prepared with recommendations by the Kosovo Correctional Service for the years 2009 and 2011. In 2010, such recommendations were not made because of the request of then President Fatmir Sejdiu. In 2010, the reports were required to be submitted uncategorized and with no recommendations. KLI Interview with Resmi Hoxha, the Commissioner of Kosovo Correctional Service. Ministry of Justice, December 2011.

²⁵ *2010 Progress Report for Kosovo* (Brussels: European Commission, 9 November 2010), 11. Also, *the 2011 Progress Report for Kosovo* (Brussels: European Commission, 12 December 2011), 13.

“... [She] with the aim of personal gain, has forced the juvenile to have sexual intercourse with different clients. ”²⁶

Mercy of the President Fatmir Sejdiu, to pardon six months of the sentence of the person convicted of Trafficking in Persons, was contrary to Law on pardon. Consequently, the Constitution of the Republic of Kosovo, namely the Law on pardon, was violated.²⁷ Violations committed by the President are not procedural violations, they represent violations of the substantive law.²⁸ Pardon in contradiction with the Constitution and the law can be done only by those who may be ignorant of the legal field, otherwise such a violation should have been investigated to see what the financial or political benefits were. Given the composition of the Committee, which includes the President of the Supreme Court, Legal Advisor of the President, as well as the academic stature of the President in the field of law, such violations do not indicate that here we deal with lay persons in the legal field. Therefore, the case in question and other cases should certainly not go without a detailed investigation by State Prosecutor. On the contrary, absence of revelation of this scandalous case in violation of the Constitution creates legal uncertainty in the implementation of the institute of pardon.

3.2.2. Depreciation of crime

For three years, presidents have pardoned a total of 236 years for convicts. Many of these years were pardoned for convicts sentenced for serious crimes, cases that present the greatest challenge for the country's judicial system. In 2009, pardoned were convicted of triple murder, murder out of unscrupulous revenge, robbers who in prison had shown significant aggressiveness including assaulting correctional officers.²⁹ In coming years, the list of pardoned by President included recidivists, convicts that have consistently shown bad behavior in prison, convicts involved in smuggling weapons and many other cases. Pardon of the convicts has a significant impact on the justice system in general, particularly in the practice of sentences imposed by judges. Judges weigh the evidence in order to administer justice, and deliberating on sentence is one of their challenges to prove the reasonableness of the imposition of years of imprisonment.³⁰ Therefore, basis for punishment and pardon is the severity of the criminal offence. In normal circumstances, this criterion is determinative of the danger that crime poses to society. In Kosovo, the fight against corruption is one of the biggest challenges of this society. However, the lists of pardoned contain persons convicted of such offenses, including two convicted of embezzlement in official duty. Pardons of the prisoners until present show disregard for the circumstances as well as adequate assessment of the seriousness of crimes by the Ad Hoc Committee for pardon and the Presidents.

²⁶ *Decision to refuse the application for conditional release, PLK number 76/09*, Panel on conditional release, Ministry of Justice, June 2009.

²⁷ *Note*: Law on specifies that "A person convicted under Chapter XIII and XIV of the Criminal Code, [...] has no right to pardon," where "Trafficking in persons" is Article 139 in Chapter XIV Criminal Code. *Supra note 24*.

²⁸ KLI interview with legal experts, December 2011 and January 2012.

²⁹ KLI interview with officials of the Conditional Release Panel, the Ministry of Justice, January 2012.

³⁰ KLI interview with Mrs. Tonka Berishaj, Judge of District Court in Prishtina, January 2012.

In order to expressly analyze the pardoned cases, pardoned time, comparison between the years, and many other circumstances, the KLI has compared the 2010 and the 2011 pardons, which are also presented in a statistical table below.

Criminal offence	President Fatmir Sejdiu Pardons 2010					Acting President Jakup Krasniqi Pardons 2011				
	Offences		Months		Average	Offences		Months		Average
	Number	% from the total	Number	% from the total		Number	% from the total	Number	% from the total	
Murder	14	23%	162	38%	11.57	52	50%	1260	67%	25.71
Aggravated murder	2	3%	36	8%	18.00	11	11%	360	19%	32.73
Organized crime	3	5%	15	4%	7.50	0	0%	0	0%	0.00
Narcotics*	5	8%	21	5%	4.20	0	0%	0	0%	0.00
Trafficking in persons	1	2%	6	1%	6.00	0	0%	0	0%	0.00
Rape	1	2%	0	0%	0.00	0	0%	0	0%	0.00
Possession of weapons**	0	0%	0	0%	0.00	4	4%	18	1%	6.00
Supply of weapons***	0	0%	0	0%	0.00	2	2%	12	1%	6.00
Embezzlement in Office****	0	0%	0	0%	0.00	2	2%	3	0%	3.00
Misuse	1	2%	0	0%	0.00	1	1%	3	0%	3.00

Table 1 – Comparison of most serious criminal offences pardoned by President Fatmir Sejdiu in 2010 and Acting President Jakup Krasniqi in 2011

* Offences related to narcotics and psycho therapeutic substances

** Possession, control, or unauthorized use of weapons

*** Supply, transport, manufacturing, exchange or unauthorized sale of weapons

**** Embezzlement during official duty

In general, presidents have shown the soft hand of the state by pardoning so far 227 convicts. A individual analysis of pardons and comparison with the pardons from year to year, indicates substantial differences in the implementation of pardon, particularly if you compare pardons of President and Acting President. In 2011, when the opportunity came, Acting President Jakup Krasniqi, although in a position which could have not lasted longer than six months,³¹ was much more lenient than the President Fatmir Sejdiu. He had pardoned 103 convicts at once that were 41 more than a year ago. There are many elements in the pardons of Presidents to raise concern about depreciation of the institute of pardon, such as pardons for aggravated murder. Criteria established in law as well as the decree, as well as assessments of the Committee or Presidents were mostly beneficial for convicts sentenced for murder, including those for aggravated murder. In 2010, President Fatmir Sejdiu pardoned 14 convicted for murder and two convicted of aggravated murder, which constituted 26% of cases that were pardoned in 2010. In 2011, the Acting President Jakup Krasniqi had pardoned 63 convicted for murder and aggravated murder that was numerically higher than the total number of pardoned in 2010. To convicts for murder and aggravated murder, President Fatmir Sejdiu had pardoned in 2010 a total of 11.33 years, whereas the Acting President Jakup Krasniqi had pardoned 135 years or 86% of the pardoned time for convicts pardoned in 2011. Among pardoned convicted murderers there were persons involved in multiple murder, recidivists, and involved in very brutal murder. It does not mean that the number of pardoned convicts to be limited, but this does include pardon without merit. This is so because a large allocation of pardon only for murder is totally unacceptable as it affects the public trust in the justice system and the implementation of pardon by Presidents. Such practice of pardons of convicted murderers, particularly serious ones, sends a wrong message to judges, which may affect the mitigation of sentencing policy.

Differences in the implementation of pardon are observed in certain cases such as cases of persons sentenced for robbery and narcotics. In 2010, 45 months and 21 months were pardoned to convicts for robbery, respectively offences related to narcotics. A year later convicted for these crimes were not pardoned because they were estimated with recurrence risk.³² Diametrically opposed assessments for a short time are a problem which comes as a consequence of subjective appraisals of the members of Ad Hoc Committees for pardon and Presidents. At no moment were these latter estimates based on the seriousness of the offences which is best reflected in the State Strategies and Action Plans 2009-2012 on Organized Crime, Corruption 2009-2011, Against Narcotics in 2009-2012 and Security Strategy for Kosovo. Presidents' pardons for offenses such as trafficking in persons or Embezzlement during official duty, which comes under the acts of corruption, only support such a conclusion.

So far there was no logical interface between the implementation of pardon and justice system in the country. Prosecutorial and judicial systems are attempting, through investigation and punishment of the few cases of certain crimes, to prevent some of the

³¹ *Constitution of the Republic of Kosovo, Article 90 on "temporary absence of President", paragraph 3, Assembly of the Republic of Kosovo, 17 February 2008.*

³² IKD KLI interview with former members of the Presidential Ad hoc Committees on Pardon, December 2011 and January 2012.

negative phenomena. Consequently, the institution of the President should be aware that added care in enforcement of the power of pardon can assist institutions of the judiciary or in contrary it might interfere with achieving the goals of punishment and loss of public trust in the judiciary. Such a conclusion is presented in scientific literature on criminal law, stating that “unreasonable provision of a large scale amnesty and pardon may adversely affect the effect of judgments, the authority of courts, public opinion and attitude courts in determining the punishment and generally in the imposition of criminal sanctions”.³³ Every year, the public had a very negative reaction to the selections of the convicts for pardon by the Presidents.³⁴ Such trend of pardons may be considered unreasonable and as such would only contribute negatively in various aspects, and to the overall decline of public trust in the justice system in the country.

3.2.3. Pardon of previously refused for conditional release

In 2009, President Fatmir Sejdiu on the list of 62 pardoned, had included 48 convicts who were previously refused by the Conditional Release Panel. This trend of pardon had continued in 2010, where 44 out of 62 were previously refused conditional release. Enormous pardon of the previously refused for conditional release, did not pass without being noted in the European Commission Progress Report on Kosovo 2010.³⁵ Despite the fact that such phenomenon has questioned the whole process of evaluation of pardons, the Acting President Jakup Krasniqi continued the same practice where from 103 pardoned, 59 of them were refused by the Conditional Release Panel. Each year over half of the pardoned were refused to be conditionally released as shown in the table below.

PARDONED			
Year	Total number	Previously refused by the Conditional release Panel	%
2009	62	48	77%
2010	62	44	71%
2011	103	59	57%
TOTAL	227	151	67%

Table 2- Pardon of convicts previously refused by the Conditional Release Panel

These concerns come as the result of similar criteria for pardon and conditional release, for which the assessment is made by applying the double criteria. Criteria established in the Law on pardon are almost identical to the criteria set for conditional release in instructions that govern the work of the Conditional Release Panel. Both these institutes during the process of pardon and conditional release take into account the seriousness of the crime, sincere

³³ *Supra* note 1.

³⁴ “President is compassionate toward double murderers and drug dealers” *Mitrovicali News*, 21 February 2010. See <http://www.mitrovicali.com/?p=692> (last visited on 21 January 2012).

³⁵ *Supra* note 26.

repentance, the behavior of offenders, and the risk of recidivism.³⁶ Despite the fact that requirements of pardon and conditional release are largely similar, institute of pardon creates many more privileges for the convict than the conditional release. Therefore, increased attention is required in assessing convicts who seek pardon, because time pardoned by the President cannot be contested or there is no supervision for re-socialization and reintegration of convicts whose remaining sentence was pardoned. On the other hand, the conditionally released convict is under the supervision of the Probation Service within the Ministry of Justice,³⁷ and in certain cases even revocation of conditional release may occur,³⁸ a phenomenon that has rarely happened in practice.³⁹ Given these circumstances, the Ad Hoc Committee for Pardon of President must be extremely rigorous in evaluating all the arguments presented by the convict. Decisions of the Conditional Release Panel, which is populated by civil servants and professionals free from political interference, would contribute to avoiding cases of pardon for non deserving convicts. To date, members of the Ad hoc Committees for Pardon were negligent in handling requests since 67% of pardoned convicts were previously rejected by the Conditional Release panel. KLI has analyzed the legal similarity of the criteria of these two institutes which are presented in the table below.

Criteria in the Law on Pardon	Criteria of the Conditional Release Panel
Severity of crime	Severity of crime
Risk of recidivism	Previous criminal records
	Existence of a general danger for public
Sincere repentance	Attitude towards the victim of a convicted person
	Description of person convicted of crime
Appearance of respectable behavior and character	Behavior during imprisonment
	Psychiatric or psychological condition
	Social history and family contacts
	Plans of the convicted person after release
	Admission control and assistance of the Probation Service of Kosovo
	The prospect that a convicted person of foreign origin has the intention to return home
	Physical condition *

Table 3 – Similarity of criteria for pardon and conditional release

* This criterion in any way can be presented only as a mitigating factor for conditional release in cases where convicts have health problems.

³⁶ *Supra note 6. Also, Also, Ordinances with numbers PLK/2009/1 on amendment of UNMIK/CRP/2008/1 governing the work of the Conditional Release Panel, Ministry of Justice, June 1, 2009.*

³⁷ *Law on Enforcement of Criminal Sanctions, Law number 03/L-191, Article 218 on "conditional release", paragraph 3, Assembly of the Republic of Kosovo, July 22, 2010.*

³⁸ *Criminal Code of Kosovo, Article 81, "Revocation of conditional release", July 6, 2003.*

³⁹ KLI interview with Bedri Duraku, Coordinator of the Conditional Release Panel, January 2012.

Similar criteria of these two institutions and ways of their implementation in practice were only superficial. This is because the evaluations of the Ad Hoc Committee on Pardon and those of Conditional Release Panel differ in essence where on one side convicts are pardoned while on the other side they were not conditionally released. Basic changes in the assessment of these institutes, including the scandalous cases of pardon by Presidents for serious crimes committed in a cruel manner, show a subjective and extremely unreasonable evaluation by the Ad Hoc Committee for pardon. In order to avoid inequities arising from these recent assessments and given similar criteria that also apply for conditional release, the Ad Hoc Committee for Pardon in no way should suggest pardon for convicts who had previously been refused conditional release, which demonstrates that they have passed through a evaluation filter by judges.

Such different decisions between the two institutes raise dilemmas about objectivity in administration of justice or delivery of official documents for the same cases. Given the concerns raised by convicts, the concerns raised publicly in the media, and harsh criticism of the Progress Report of the European Commission, namely about these pardons, such pardon of convicts that were refused conditional release by the Panel should be a object of investigation by State Prosecutor in order to find out the truth. All these violations and controversies in the application of law in case of pardon and conditional release will be eliminated in the event that the Assembly of Kosovo adopts the new proposal for amendment of these rules that govern mutual decision by the Ad hoc Committee on Pardon and Conditional Release Panel. The drafters of the Draft Criminal Code, which is currently undergoing its review in the Assembly, have inserted a provision where if convicts were refused conditional release, they cannot be granted pardon.

3.2.4. Conflicting reports

In order to grant pardon, the President except for applications made by convicts, bases the decision on records and reports which are prepared by the Kosovo Correctional Service. Reports are prepared by teams consisting of: social worker, legal officer, psychologist, doctor, person responsible for security, professional training officer, employment officer, education officer, heads of programs and regimes for prisoners, and psychiatrists. The practice of compiling these reports shows that they were incomplete and not professional. Regarding deficiencies of the reports, in certain cases the documentation was not complete and some of the documents provided upon request of the Ad Hoc Committee on Pardon of the President did not contain the seal and other elements, raising suspicion that such documents are not official.⁴⁰ Suspicions are also based on cases where the criminal offence for which the convict was sentenced changes between the Conditional Release Panel and the Presidency. Conditional Release Panel had received a request for conditional release of convicts for the crime of unauthorized production of narcotics. In 2011, the same person requested pardon but in Presidency the convict is registered to have been convicted of another

⁴⁰ KLI interview with members of the Presidential Ad Hoc Committees on Pardon of 2009, 2010 and 2011, December 2011 and January 2012.

criminal offense, for which 3 months were pardoned. Thus, it is the same case with different settings.

Regarding the lack of professionalism, the prepared reports are general. In certain cases the reports submitted to the Ad Hoc Committee for Pardon of President are with positive recommendations. For these cases there are reports of internal teams of Correctional Service of Kosovo in terms of discipline and health conditions which say the opposite. Therefore, the final reports did not provide an objective evaluation of convicts while imprisoned. The same problem is raised as a concern to the Conditional Release Panel, where these contradictions were precisely encountered, and which in some cases were eliminated after the insistence of the Heads of Panels. For example, in 2010, the President had pardoned 12 months to a convicted murderer, after the Ad Hoc Committee had provided justification for pardon that the convict has had good behavior in prison, there is no risk for recidivism and because of repentance.⁴¹ The same person was rejected by the Conditional Release Panel because of bad behavior, namely for assaulting correctional officer while in prison and that the convict was a recidivist. Even in 2011 there had been pardon of the convicts who were previously refused by the Conditional Release Panel due to bad behavior during their time in prison.⁴² Pardon made by the President based on final reports prepared by the Kosovo Correctional Service creates doubt in the objective assessment of all convicts that are pardoned, if pardon is given on merit. This is also based on the experience of these similar reports from the Correctional Service, which were delivered to the Conditional Release Panel. In 2011, the Conditional Release Panel in one of its rulings had revealed to have received conflicting reports from Correctional Service of Kosovo teams. Despite the fact that a disciplinary sanction of ten days solitary confinement was imposed on the convict, Correctional Officer had not presented this; the officer even went further with the assessment he had concluded that it was this convict who had good behavior with staff and prisoners.⁴³ Heads of correctional institutions have failed to sanction such an anomaly even though the case was officially filed.⁴⁴ Such cases of abuse are not excluded from the Heads of the Kosovo Correctional Service; they are declared only as isolated cases and not as a phenomenon.⁴⁵

Conditional Release Panel from the beginning until now has often received similar reports where only the name of the convict was changed, where in 95% of cases the reports submitted are positive.⁴⁶ Concerns about the quality of reports stem from the fact that their drafters spend very little time and give the minimum to more objectively assess the situation of convicts. For example, psychologists hardly ever visit the convicts and prepare their reports based on other materials, which compromises the objectivity of the reports. Besides the report of the psychologist, unfounded reports on the real situation are presented by the doctors, whose reports are general. Such practice, of a very limited and non-professional access to preparation of reports makes it impossible to construct a real picture, taking into

⁴¹ *Note:* The President had made such a pardon in 2010. Presidential decree on pardon in 2010.

⁴² KLI interview with Bedri Duraku, Coordinator of the Conditional Release Panel, January 2012.

⁴³ *Decision to refuse the application for conditional release, PLK number 146/10*, Conditional Release Panel, Ministry of Justice, May 2011.

⁴⁴ KLI interview with Bedri Duraku, Coordinator of the Conditional Release Panel, January 2012..

⁴⁵ KLI interview with Resmi Hoxha, the Commissioner of Kosovo Correctional Service, Ministry of Justice, January 2012.

⁴⁶ KLI interview with Mrs. Tonka Berishaj, District Court judge in Prishtina as well as Chairperson of the Conditional Release Panel, January 2012.

consideration the specifics of each case including crimes committed by the convicts, their attitude towards crime and their behavior in prisons. Therefore, it is unacceptable that multi-professional teams of the Kosovo Correctional Service continue to hastily approach the drafting of the reports, since they in most cases are decisive for the decision for pardon or conditional release.

Concerns about all these reports and their authenticity so far could not be avoided. The reason for this is lack of effective control mechanisms that have not brought to accountability actors involved in the preparation of these reports.

Another concern for the Conditional Release Panel and the Ad Hoc Committee for Pardon appears to be categorization of convicts who are recommended by the Kosovo Correctional Service. The latter, without support specified in the law, has consistently made positive and negative recommendations for convicts who apply for pardon and conditional release.⁴⁷ In connection with the institute of pardon, the Kosovo Correctional Service had given its recommendations on partial and full pardon for convicts in 2009 and 2011. While in 2010, President Fatmir Sejdiu had specified in his request to the Correctional Service that files should come without the latter's recommendations. In continuation, the Correctional Service had suggested pardoning far more prisoners than the presidents had done.⁴⁸ Furthermore, the Kosovo Correctional Service had also specified in its suggestions the time which must be pardoned for each convict. The table below presents a statistical summary for suggestions of Kosovo Correctional Service in three years of implementation of pardon.

Categories recommended by the Kosovo Correctional Service	2009	2010	2011
Requests from convicts for pardon	586	683	452
Not recommended for pardon	123	*	133
Recommended for partial pardon	284	*	271
Recommendation for the pardon of the remainder of the sentence	123	*	48
Do not meet the legal conditions for pardon	56	*	/
Pardoned by the President	62	62	103

Table 4 – Recommendations for pardon of Kosovo Correctional Service

* In 2010, President Sejdiu had requested that the Kosovo Correctional Service does not categorize the convicts.

Recommendations by the Kosovo Correctional Service, unfounded in law and other regulatory acts are disturbing because of the subjective assessments. Such cases are presented in this report and they indicate that the evaluations of the Correctional Service teams can lead to erroneous and non-merited assessments in pardon and conditional release of convicts. If such evaluations were to be made by these teams, this should be initially regulated by legal acts, whereas avoidance of the problems presented and the trust in these recommendations will increase the capacity and professionalism within the Kosovo Correctional Service.

⁴⁷ Note: No legal document, including the Law on Pardon and the Presidential Decree on Criteria, does not specifically require recommendations for the convicts of the Kosovo Correctional Service. *Supra note 6. Also, Supra note 11.*

⁴⁸ See table number 4. KLI interview with Resmi Hoxha, the Commissioner of Kosovo Correctional Service, Ministry of Justice, December 2011.

3.2.5. Composition of committees

Institute of pardon other than being a privilege of the President, is the mechanism which requires high responsibility as a democratic state requires that pardons are made according to criteria, in order to avoid violations and injustices. Thus, the Law on pardon has further enhanced the creation of the institute of pardon, as required by the Constitution, by setting rules, although very incomplete, for the elimination of abuses of such an institute. The decree on Pardon provides criteria for establishing an Ad Hoc Committee for pardon by providing thorough assessment of all applications and where the President has the possibility to pardon only those convicts who deserve pardon. Therefore, the composition of the Ad Hoc Committee for Pardon plays a very important role throughout this process, as suggestions of its members dictate the decision of the President.

Despite constitutional provisions and the Law on the President, which specify that the President should not serve the interests of any particular political party,⁴⁹ Presidential Ad hoc Committees on Pardon were populated by people of certain parties. For example, in 2010, Ad Hoc Committee for Pardon of President Sejdiu was largely composed of persons coming from the Democratic League of Kosovo, as President Sejdiu at the same time held frozen his position as President of the LDK, which was later found to be a violation of the Constitution, for which he had resigned.⁵⁰ Independent members of this Committee have confirmed that in certain cases there were subjective assessments by party members which can be regarded as deliberate or with political background. For example, one of the pardoned convicts had shot the victim three times, whereas pardon was refused to a convict who had fired a gun but did not hit the victim. Anomalies of this type represent subjectivity in assessment, particularly in circumstances where political members easily over vote other members of the Committee. Consequently, all elements to be considered, such as criteria, reports, circumstances, and many other elements intended to ensure objectivity in the assessment of enacting of pardon will be deemed redundant since the composition of the committee is extremely politicized, and that with members who came from the President's party. In order to see the political composition of the Ad hoc Committee on Pardon in 2010 see table 5.

Name	Surname	Position	Institution	Connection with politics
Fejzullah	Hasani	President	Supreme Court	N/A
Arsim	Janova	Deputy Minister	Ministry of Justice	Appointed as Deputy Minister by LDK
Ismet	Beqiri	President	Assembly Committee on Human Rights	General Secretary of LDK

⁴⁹ Judgment, Case number KI 47/10, Naim Rrustemi and 31 other member of the Assembly of Kosovo Vs. His Excellency Fatmir Sejdiu, President of the Republic of Kosovo, reference number AG 43/10, Constitutional Court, September 28, 2010.

⁵⁰ Besim Abazi, "Kosovo: President Sejdiu resigns". *Voice of America*, 27 shtator 2010. See <http://www.voanews.com/albanian/news/albanian-sejdiu-kosova-resign-103854519.html> (last visited on 15 January 2012).

Ismet	Salihu	Academic expert in the relevant field		Previously served as adviser to the Government by AAK
Ejup	Sahiti	Academic expert in the relevant field		N/A
Ilaz	Pireva	Advisor	Presidency of the Republic of Kosovo	Influential member of the LDK
Korab	Sejdiu	Advisor	Presidency of the Republic of Kosovo	Member of the LDK
Xhafer	Tahiri	Director of Legal Department	Office of the President of the Republic of Kosovo	President of the youth forum of LDK

Table 5 – Members of the Presidential Ad Hoc Committee on Pardon, 2010

Exclude the representative of the judiciary and two academic experts, all members of the Ad Hoc Committee for pardon were from the ranks of the Democratic League of Kosovo. This Committee was faced with extremely generalized files and in some cases with significant lack of official documentation.⁵¹ Committee takes only a summary of the case whereas there is a need for additional request for access the complete case file of the convict or the specific documents. Similarly to members of the Conditional Release Panel, also members of the Ad Hoc Committee on Pardon emphasize that in certain cases they have encountered documentation which was lacking official or validated documents.⁵² Moreover, the Ad Hoc Committee for pardon has been presented with documents without translation, which has prevented a real assessment of the situation of convicts. Doubts about the accuracy of reports and documents presented by the competent authority of the Ministry of Justice, have compromised extremely realistic presentation of the situation of convicts. Despite the volume of work, considering that each year an average of 500 requests for pardon were submitted to the President by convicts, Committees have spent only five to ten days to review these cases.⁵³ Including all of the obstacles mentioned above and with an average of close to 100 files per day, it is clear that Ad Hoc Committee for pardon does not take proper time to conduct professional evaluations. Failure to pay proper attention to the presented case files shows that the Committee was not able to draw grounded conclusions. Therefore, the short period of time only deepens concerns about subjective versus objective assessment, which also depends from extremely professional composition of the Committee, complete case files, official confirmation of documentation, and sufficient time to consider all arguments presented based on law.

⁵¹ KLI interview with mr. Fejzullah Hasani, President of the Supreme Court, December 2011.

⁵² KLI interview with mr. Fejzullah Hasani, President of the Supreme Court of Kosovo, December 2011 and mr. Enver Peci, Head of the Kosovo Judicial Council, December 2011. Also, KLI interview with Bedri Duraku, Coordinator of the Conditional Release Panel, Ministry of Justice, December 2011.

⁵³ KLI interview with mr. Fejzullah Hasani, President of the Supreme Court of Kosovo, December 2011, and telephone communication with Mrs. Shqipe Ibraj Mala, deputy Ombudsperson, January 2012.

3.2.6. Pardon of non-pardonable

During the three years of implementation of the institute of pardon, Presidents have pardoned non pardonable convicts. The latter have not deserved pardon based on the legal criteria for pardon, including restrictions on various categories of criminal offenses. Such pardons are addressed below in chronological order. Whereas the table below shows the number of requests for pardon submitted by the convicts, the number of pardoned, pardoned time, and other relevant statistics.

	2009	2010	2011	Total	
Requests from convicts for pardon	586	683	452	1,721	Convicts
Number of pardoned convicts	62	62	103	227	Convicts
Pardoned months	537	424	1879	2,840	Months
Average of pardoned months /convicts	10.53	8.00	20.65	14.56	Months/ convicts
Pardoned months not specified	11	9	12	32	Cases
Pardoned months not specified	18%	15%	12%	14%	Cases

Table 6 – Pardons since implementation of Law on Pardon

Pardons in 2009

In 2009, President Fatmir Sejdiu has pardoned some grave cases involving crimes such as triple murder,⁵⁴ murder by unscrupulous revenge,⁵⁵ murder in joint perpetration, where the murder was committed with an axe,⁵⁶ robbery in joint perpetration.⁵⁷ Also in this year President Sejdiu had pardoned convicts with bad behavior,⁵⁸ and one, which was released after pardon, killed his pregnant wife.⁵⁹ This proves the failure of the Ad Hoc Committee of the President, not adhering to the criteria to assess the degree of recidivism.

In this year, convicted murderers were the recipients of most of the pardoned time, where 20 of them had received 290 months pardon, which represented about half of the time pardoned by the President. Among the pardoned by the President was also a vendetta murderer, who was pardoned 24 months. The table below specifies the pardons for each offense.

⁵⁴ Former President Mr. Fatmir Sejdiu had pardoned three years to a convict sentenced to 15 years for triple murder. Decree on Pardon 2009.

⁵⁵ Former President Mr. Fatmir Sejdiu had pardoned two years to a convict sentenced for murder by ruthless revenge. Decree on Pardon 2009.

⁵⁶ Former President Mr. Fatmir Sejdiu had pardoned six months to a convict, where the act of crime had been completed with an ax blow to the victim. Another convict was involved in the same offence, who was also pardoned by the President for one year. Decree on Pardon 2009.

⁵⁷ Former President Mr. Fatmir Sejdiu had pardoned one year and six months, thus the remainder of the sentence, to a convict imprisoned for robbery in co-perpetration, who also assaulted the correctional officer. Decree on Pardon 2009.

⁵⁸ Former President Mr. Fatmir Sejdiu had pardoned one year to a convict, for whom the Kosovo Correctional Service has an entire folder for his misconduct and for demolition of the prison by his side. Decree on Pardon 2009.

⁵⁹ Former President Mr. Fatmir Sejdiu had pardoned six months to a convict sentenced to five years and nine months for robbery, and who had 30 disciplinary violations in prison. Once the recidivist was released he committed another cruel crime, murdering his wife, who was pregnant. Decree on Pardon 2009.

Criminal offences	Number of cases		Pardoned months		Number of cases where remaining sentence was pardoned	
	Number	Percentage	Months	Percentage	Number	Percentage
Illegal possession of weapons ⁶⁰	3	5%	6	1%	2	18%
Narcotics ^{**61}	2	3%		0%	2	18%
Foreseen obligation	1	2%	6	1%		0%
Robbery	9	15%	72	13%		0%
Light bodily injury	1	2%		0%	1	9%
Control or use of weapons ⁶²	1	2%		0%	1	9%
Endangering public traffic	2	3%	14	3%		0%
Forest theft	1	2%	2	0%		0%
Aggravated theft	6	10%	14	3%	2	18%
Attempted aggravated theft	2	3%	3	1%	1	9%
Aggravated robbery	4	6%	48	9%		0%
Murder	17	27%	242	45%	1	9%
Aggravated murder	2	3%	24	4%		0%
Attempted murder	2	3%	15	3%		0%
Murder out of vendetta, illegal possession of weapons	1	2%	24	4%		0%
No report on the offence ⁶³	8	13%	67	12%	1	9%
TOTAL:	62	100%	537	100%	10	100%

Table 7 – Pardoned offences in 2009, including the time for each offence

The President has decreed pardon of those categorized in the group of 123 convicts for whom the Kosovo Correctional Service had not recommended pardon, with reason that they do not meet the conditions and do not deserve pardon. Among the 62 pardoned in 2009, President Sejdiu has pardoned 57 months to seven convicts in contradiction with all legal requirements and professional recommendations by the Kosovo Correctional Service.⁶⁴ Out of seven pardoned, four of them were convicted of robbery and aggravated robbery, while others for

⁶⁰ Unauthorized possession of weapons

⁶¹ Unauthorized purchase, possession, distribution and sale of dangerous narcotics and psychotropic substances

⁶² Unauthorized control, possession or use of weapons

⁶³ KLI has encountered difficulties in obtaining certain records of persons pardoned by the President.

⁶⁴ KLI interview with Resmi Hoxha, the Commissioner of Kosovo Correctional Service. Ministry of Justice, December 2011 and January 2012.

murder, aggravated murder, and narcotics. Three of these were recidivist offenders, which in no way deserve pardon due to a conflict with the requirements of pardon.⁶⁵

Another violation which is highlighted in subsequent years in the Progress Report of European Commission is the pardon of convicts who were refused conditional release by the Conditional Release Panel. In 2009, 77% of pardoned were refused conditional release. Since the criteria for implementation of both these institutes are almost identical, it is very disturbing fact that the implementation in practice is done with double criteria.

In 2009, for 11 pardoned or 18% of cases, the Decree of the President does not publicly specified period for which the convicts have been pardoned. The Decree contains only the fact that the remainder of the sentence was pardoned, for which no one from the public may know how long the remaining part for which the convict has received pardon is. In these cases, lack of transparency leaves room for suspicion that in these cases there may be manipulation about the period of pardon of convicts. Moreover, this action of selection of information for pardons of President Sejdiu was totally unnecessary. In fact, this case also represents the application of double standards. Excluding these 11 cases for which no data exists about the pardon period, for 52 other convicts, President Sejdiu in 2009 pardoned 44.75 years or 537 months.

Pardons in 2010

The most blatant case of pardon throughout the years was recorded in 2010. President Fatmir Sejdiu, violating the Constitution of the Republic of Kosovo and the Law on Pardon, whom he had decreed, pardoned a convicted of Trafficking in Persons. Pardon for this offence is prohibited by law, which includes offences from chapters XIII and XIV of the Criminal Code of Kosovo. This anti-constitutional pardon was made upon the recommendation of the Ad Hoc Committee for pardon. Aside of pardoning the convicted for trafficking in persons, President Sejdiu had pardoned convicts who had committed crimes related to organized crime, embezzlement, narcotics, rape as well as recidivist offenders.⁶⁶ The table below summarizes the offenses pardoned by the President as well as the pardoned period.

Criminal offence	Pardoned offences		Pardoned months		Remaining period
	Number	Percentage	Number	Percentage	
Murder	14	23%	162	38%	0%
Aggravated murder	2	3%	36	8%	0%
Robbery	5	8%	45	11%	0%

⁶⁵ Note: One of the criteria for pardon is also the risk of recidivism, which has already happened to these convicts. *Supra note 15.*

⁶⁶ Former President Sejdiu in 2009 as in 2010, pardoned with one year a convict who was a recidivist. Decree on pardon 2010.

Organized crime	3	5%	15	4%	1	11%
Narcotics⁶⁷	5	8%	21	5%		0%
Trafficking in persons	1	2%	6	1%		0%
Rape*	1	2%	0	0%	1	11%
Other⁶⁸	31	50%	139	33%	7	78%
TOTAL:	62	100%	424	100%	9	100%

Table 8 –Criminal offences and pardoned time in 2010

Even this year, President Fatmir Sejdiu has mostly rewarded those convicted of murder, respectively 16 of them in this category had received 198 months or 46% of the total pardoned time.

Despite the creation of the Ad Hoc Committee for pardon, President Sejdiu had also rendered decisions solely on its own. These actions include two cases where convicts were added to the list of 60 prisoners suggested by the Committee for pardon. Furthermore, the President went so far that for the two convicts he pardoned the remainder of the sentence. Another case where the President had ignored the Committee's recommendation was pardon of 24 months for a convict,⁶⁹ for whom the Committee had suggested only 12 months. The President had acted the same in respect to another convict⁷⁰ ., for whom Committee had suggested only 6 months, whereas the President had pardoned 8 months, what was the remainder of the convicts sentence. Circumvention of the evaluations of the Ad hoc Committee for pardon, regardless of its composition, which was essentially political, represents a disregard of fair and professional assessment of requests of convicts by the President of the Republic of Kosovo. Moreover, such behavior of the Institution of the President of the Republic of Kosovo threatens devaluation of the institution of pardon and creates injustice for those who considered that based on criteria established by law are more deserving for pardon than those pardoned by the President.

Violations of the Ad Hoc Committee for pardon have been multidimensional, since the Committee had suggested to the President for pardon convicts who had just started serving the sentence on the pretext that there is no risk for recidivism, that they had good behavior or that they were remorseful. It is completely unacceptable that a convict who has just begun to serve the sentence, is assessed so highly by the Committee so that the remainder of his/hers sentence is pardoned. Brief history of the convict prevents drawing accurate conclusions about the risk for recidivism or good behavior, since reports of the institutions of the Ministry of Justice cannot be sustainable.

⁶⁷ Offenses include: unauthorized purchase, possession, distribution and sale of dangerous narcotics and psychotropic substances and unauthorized distribution and sale of dangerous drugs and psychotropic substances.

⁶⁸ Others include: Aggravated Theft, Endangering public traffic, Grave offense against property, Attempted coercion, Grave bodily injury, Assistance after the commission of criminal offence, Serious cases of aggravated robbery, Possession of weapons, Causing general danger – arson, General danger, Grave bodily injury, Forest theft, Attempted Murder, Counterfeiting money, Fraud, Obstruction of an official person, and Embezzlement.

⁶⁹ Former President Sejdiu had pardoned 24 months to a prisoner convicted of aggravated murder. Decree on Pardon 2010.

⁷⁰ Former President Sejdiu had pardoned 8 months to a person convicted of the criminal offence of endangering traffic safety. Decree on Pardon 2010.

As in the previous year, the President had pardoned convicts that were refused by the Conditional Release Panel. From the list of pardoned, 44 convicts or 71% of the list were previously refused conditional release. Progress Report for 2010 had raised concerns for the evaluation of pardons to pardon based on the enormous pardon of previously refused convicts by the Conditional Release Panel. Unlike in 2009, President Fatmir Sejdiu had asked the Kosovo Correctional Service in 2010 not to categorize lists with recommendations.

Pardons in 2011

Acting President Jakup Krasniqi in 2011, decreed the majority of the pardons for convicts sentenced for murder and aggravated murder. The tradition established by his predecessor, President Fatmir Sejdiu to pardon convicted of serious crimes and recidivists was continued by Mr. Jakup Krasniqi. The latter has pardoned convicted of murder despite numerous disciplinary violations that the convict had while serving the sentence.⁷¹ In 2011, the Ad Hoc Committee for Pardon had failed to explore the history of convicted for murder of moment, as the same in 2001 had committed a crime of trafficking in persons, a case that reached statute of limitations under mysterious circumstances, whereas he had received pardon.⁷² Among the 103 pardoned, President showed compassion towards convicts sentenced for murder and kidnapping, moreover, the Decree did not indicate periods for which they had received pardon.⁷³

Acting President Jakup Krasniqi had pardoned 63 convicted for murder and aggravated murder, which accounted for 61% of the overall list. Apart from significantly greater numbers than previous years, worrying is the fact that convicted murderers were pardoned, which is highlighted in the Progress Report of the European Commission.⁷⁴ Besides these actions, of concern in 2011 was pardon of crimes of corruption. Furthermore, there are some certain cases where pardon was given to weapons smugglers and convicts who had assaulted official persons. The table below, which summarizes the pardoned offences and period, shows an enormous increase of pardoned time compared to previous years.

Criminal offences	Pardoned offences		Pardoned months		Remaining period	
Murder	52	50%	1260	67%	3	25%
Aggravated murder	11	11%	360	19%	0	0%
Attempted murder	8	8%	78	4%	3	25%

⁷¹ Acting President Jakup Krasniqi had pardoned the convict for murder, but had not specified how much time was pardoned, it was only indicated that the remainder of the sentence was pardoned. Decree on Pardon 2011.

⁷² The president had pardoned a convict, who was refused conditional release. His file was not explored sufficiently by the Ad Hoc Committee for pardon, since the same person in 2001 was involved in a court case for a crime of trafficking in persons, and which case reached statute of limitation under mysterious circumstances. KLI interview with officials of the Conditional Release Panel, Ministry of Justice, December 2011 and January 2012.

⁷³ Note: Note: KLI has researched a file of a convict, according to which it turns out that he was convicted by a judgment of the Supreme Court in 2005, with 13 years and 6 months imprisonment, whereas his scheduled release should have occurred on 17th of November 2014. For this case, the pardoned time is not specified. *Decision to refuse conditional release. CRP number 355/08*, Conditional Release Panel, November 2010.

⁷⁴ Kosovo Progress Report for 2011. European Commission.

Kidnapping, illegal possession of weapons	1	1%	36	2%	0	0%
Aggravated Theft	4	4%	18	1%	0	0%
Possession or use of weapons ⁷⁵	4	4%	18	1%	1	8%
Smuggling of weapons ⁷⁶	2	2%	12	1%	0	0%
Kidnapping	1	1%	12	1%	0	0%
Embezzlement in Office	2	2%	3	0%	1	8%
Abuse of official duty	1	1%	3	0%	0	0%
Assault on official person	1	1%	3	0%	0	0%
Other⁷⁷	16	16%	76	4%	4	33%
TOTAL:	103	100%	1879	100%	12	100%

Table 9 –Criminal offences and time pardoned in 2011

Acting President Jakup Krasniqi had pardoned three convicts who were not recommended for pardon by the Kosovo Correctional Service.⁷⁸ Also, as his predecessor, he continued to pardon convicts that were previously refused by the Conditional Release Panel. In this year, from 103 pardoned, 59 of them had been previously refused conditional release. Given that convicts in this category accounted for 57% of the list, it raises the concern of evaluation as in previous years.

3.3. The practice of pardon in Albania

Implementation of the institute of pardon as an exceptional mechanism through which state institutions intend to serve to the greater good, raises considerable debate particularly in countries that are mired in deep problems with the rule of law, such as Kosovo. In Albania, the pardon of convicts involved in the murder of police officers and those who projected pyramidal schemes led to the urgent need for amendment of the law which had allowed such easy release of the most dangerous criminals in society. Albania is not the only country in the region which has such problems, since all face certain challenges in the implementation of pardon. For example, in Bosnia and Herzegovina, in 2004, High Representative for Bosnia (international) was forced to rescind the Law on pardon approved by Parliament because it had major deficiencies. Deficiencies created possibility for misuse of the institute of pardon,

⁷⁵ Keeping in ownership, control, possession or use of weapons

⁷⁶ Supply, transportation, manufacturing, exchange or sale of weapons

⁷⁷ Others include: Attempted aggravated murder, Incitement for murder, Aiding and abetting murder, Endangering public traffic, Damage and destruction of monuments, Causing general danger, Fraud, Grave bodily injury, Participation in the group for murder, and Forest theft.

⁷⁸ Report of Kosovo Correctional Service for all Correctional Centers sent to the Presidency of Kosovo on the occasion of Pardon for 2011. The report contains negative recommendations or not to pardon convicts who do not fulfill legal requirements, due to recidivism and their behavior while in incarcerated. Kosovo Correctional Service. Ministry of Justice. January 2012.

as foreseen procedures were not adequate and that persons convicted of corruption were made ready to apply for pardon before the public was aware of the possibility of pardon.⁷⁹ Kosovo, just as the countries in the region, has a significant problem with the rule of law and deficient provisions of the Law on Pardon. Countries of the region, including Albania and Bosnia and Herzegovina, in order to address the problems faced during implementation and injustices of the Law on pardon, problems these similar to Kosovo, had fulfilled the legal provisions specifying in detail the application procedures and criteria of pardon, and were shown to be strict for convicted for crimes that gravely harm the society.

According to the Constitution of the Republic of Albania, the President exercises the right to pardon under the law that regulates and specifies the process.⁸⁰ Moreover, pardon in Albania is regulated under the Criminal Code and Law on pardon. Until July 2010, when the new Law on pardon was adopted, the President made pardons under the Law on pardon, which was adopted in 1981, amended in 1993, a law which contained only five articles that were inadequate to precise circumstances and ensure fair process of pardon.⁸¹ In 2009, the Ombudsman of the Republic of Albania had raised concerns about the existing law because it did not correspond to circumstances and changes which social and political system in the country had witnessed. Furthermore, the Ombudsman had raised concerns about the lack of consultation on proposals for pardon from actors who were close to the convicts and had significant knowledge about the socio-economic situation of the convicts, including Mayors, Ombudsman, NGO's, and Probation Service. Ombudsman's recommendations had included a request to specify all documents and criteria that must be completed by the convict who submits the request, including the deadline for response by the President, which shall be not later than six months upon receipt of the request. Law on pardon from 1st of July 2010, took into account almost all the recommendations of the Ombudsman, detailing all the obligations, limitations and other issues related to pardon, including the powers of each institution. The law is specific in that what is the reason for application of pardon, considering it as "... extraordinary act of human compassion, of individual nature, ..." and "Pardon of the sentence is given when it is deemed that the sentence being served has achieved the goal of education and reintegration of convict and further serving of the sentence contradicts the essence of justice". The law is quite sensitive to gender and juveniles by easing the criteria prescribed for women who care for young children as well as preventing the application of those sentenced for crimes such as "sexual or homosexual relations with minors", "Exploitation of prostitution in aggravated circumstances", and, among other "Trafficking in women".⁸² Under the law, those who can benefit from the pardon are those who have completed 1/3 of sentence, convicts who have managed to be educated and rehabilitated, or those who committed the crime when they were underage, as well as elderly convicts or those suffering from disease. Moreover, the law requires obtaining of comprehensive opinions by specifying

⁷⁹ *Report on media in Bosnia and Herzegovina of 27 November 2004* (Sarajevo: Office of the High Representative, 29 November 2004). See http://www.ohr.int/ohr-dept/presso/bh-media-rep/round-ups/print/?content_id=33631 (last visited on 22 January 2012).

⁸⁰ *Constitution of the Republic of Albania, Article 92, paragraph b*, the Assembly of the Republic of Albania, see <http://www.president.al/shqip/docs/KUSHTETUTAREPUBLIKES.pdf>.

⁸¹ "Drafting of a new law on pardon is recommended", No. K4/I4-2 Prot. No. Doc. 200900229/2 ", the Ombudsman, Republic of Albania, April 7, 2009. See. <http://www.avokatipopullit.gov.al/Rekomandime/Rek%2007042009.htm>.

⁸² *Law on Pardon, Law no 10 295*, Assembly of the Republic of Albania, 1 July 2010.

that opinion is also required from the judge and prosecutor of the case. One of the most contentious points of this law, which was the reason why the opposition was not supporting the law at that time, is significant involvement of the Ministry of Justice in gathering of all the information necessary for completing the case file, including providing feedback to the President of the Republic. In one form this represents a deep involvement of the Ministry of Justice in the process of pardon, which for the opposition was a violation of the Constitution and also undermines the role of President in this process, by marginalizing it to the extent that the signature of the President is a mere formality.

In April 2010, President Bamir Topi had issued a decree on pardon of sentence for 367 persons, which was significantly higher number than in previous years. This long list included persons who were convicted of serious crimes including murder of police officers, convicted for pyramid schemes, and many other persons, which did not pass without criticism from the media.⁸³ However, the issue of pardons decreed by the President of the Republic of Albania is not listed in any of the European Commission Progress Reports on Albania. In 2012, for the first time procedures foreseen in the new law will be applied, under which, until present, 1500 persons have applied for pardon.⁸⁴ Such high number of requests will put to test the entire process of evaluation and pardon.

⁸³ Madani, V. "Decree, Topi explains pardon of criminals: It is my legal right", *Standard*, 24 prill 2010. See <http://www.standard.al/standard/index.php/abi/5403.html> (last visited on 10 January 2012).

⁸⁴ "Halimi: 1500 convicts await pardon.", *Gazeta Start*, 27 December 2011. See <http://www.gazetastart.com/lajme/Aktualitet/47119/> (last visited on 10 January 2012).

4. Institute of Conditional Release

Another institute of law in Kosovo provides convicts of different criminal offenses with opportunities to enjoy freedom outside prison bars. In scientific criminal law literature, conditional release is considered a modern penal measure of great importance in the field of criminal law and criminal policy.⁸⁵ Through this institution the convicts are motivated to improve faster and be able to live normal life in freedom.⁸⁶ Institute of conditional release is a new institute of criminal law. For the first time it was introduced in England, in the second half of the nineteenth century, and later also in France. Adoption of this institute in legislation and practice of all European countries and many other countries around the world took place in the early twentieth century.⁸⁷ In Kosovo, unlike the institute of pardon, which has recently begun to be implemented, institute of conditional release has been implemented after the war in Kosovo, since 2002, under the authority of the United Nations Mission in Kosovo (UNMIK).

Scientific literature of the criminal law, states that conditional release is an instrument that gives the signal to convicts that with their improvement, they can be released from serving a prison sentence in its entirety before completing the sentence. Thus, it serves as inspiration and great incentive to offenders to be more active in their treatment of re-socialization not only within the correctional institution, but also outside, in freedom.

4.1. Legal basis

The legal basis for the organization and functioning of the Conditional Release Panel relies on Instructions that regulate the manner of its governance.⁸⁸ In addition, the activity of the Panel is based on the implementation of the provisions of the Criminal Code of Kosovo, Law on Enforcement of Criminal Sanctions⁸⁹ as well as Juvenile Justice Code.⁹⁰

Based on the Criminal Code of Kosovo, conditional release may be granted to the convicted person, whose behavior during detention was good and if there is reasonable grounds to believe that he/she would not commit a new criminal offense.⁹¹ Thus, conditional release seeks reintegration of the convicted person in society and prepares them to lead the life in a

⁸⁵ *Supra note 1.*

⁸⁶ *Ib idem.*

⁸⁷ Ismet Salihu, *E drejta Penale: Pjesa e përgjithshme* (Prishtinë: Universiteti Fama, 2008), Chapter VII: Amnesty and pardon, p. 542-543.

⁸⁸ Directives PLK/2009/1 for amendment and supplementation of instructions UNMIK/CRP/2008/1 governing the work of the Conditional Release Panel. June 1, 2009.

⁸⁹ Law on enforcement of criminal sanctions. Law no 03/L-101. August 2010.

⁹⁰ *Juvenile Justice Code. Code no 03/193*, Assembly of the Republic of Kosovo, August 2010.

⁹¹ *Criminal Code of Kosovo, Article 80, paragraph 1, Chapter VI: General provisions on enforcement of punishments*, 6 July 2003.

socially responsible way without committing criminal offenses. It also serves the purpose of protecting the society to prevent the commission of further criminal offenses.⁹²

Besides the convict, the request for conditional release may be submitted by the directors of correctional facilities, who can the case file to the Conditional Release Panel with the proposal of conditional release. Criminal Code of Kosovo provides the right to seek conditional release to convicts who served half of their sentence. They can be released from prison, provided that he/she would not commit other criminal offence before the expiration of the sentence. Also, this right belongs to persons convicted, who have served a third of their imprisonment sentence, but only when special circumstances of the convicted person show that he/she would not commit a new criminal offense. And the last category that may be conditionally released are the convicts that have served three-quarters of long-term imprisonment. Whereas, the Juvenile Justice Code provides the possibility of conditional release to juveniles sentenced with imprisonment, who have held at least one third (1/3) of the sentence.

Furthermore, for each conditional release, the Law on Enforcement of Criminal Sanctions, establishes the obligation of those who acquire this right, to sign after the conditional release, an agreement for supervision by the Probation Service of Kosovo. Criminal Code has also sanctioned cases when those conditionally released do not follow the conditions set out in the case of granting of this right, which results in revocation of conditional release..⁹³

Conditional release panel works in chambers of three members. Currently there are three such chambers, which consist of a professional judge and two lay judges who have knowledge and experience in psychology, criminology, psychiatry, pedagogy, sociology and other social sciences related to conditional release. They are always assisted by the Panel coordinator.⁹⁴ The model of implementation of conditional release institute in Kosovo is based on the English model, where the decision belongs to a judicial body.⁹⁵ There are no legal impediments for exercise of the activity of this body; however heads of the Kosovo Correctional Service have raised concerns about the composition of the Panel and the legal conception of decision-making body. Justification for this is that in these cases the judges are those who pass sentences and also approve conditional release.⁹⁶ Although steps have been taken to improve this institute, legal and practical implementation is still far from the Recommendations of the Committee of Ministers of the Council of Europe.⁹⁷ Therefore, it remains that these recommendations are reflected in the next initiatives to improve legislation and functioning of this mechanism.

⁹² Directives PLK/2009/1 for amendment and supplementation of instructions UNMIK/CRP/2008/1 governing the work of the Conditional Release Panel, Article 9. Chapter III "Conditions for conditional release", Ministry of Justice, 1 June 2009.

⁹³ Criminal Code of Kosovo, Article 81. Chapter VI: General Provisions for the Enforcement of Sentences, July 6, 2003.

⁹⁴ Law on Enforcement of Criminal Sanctions. Number 03/L-101 Law, Article 129, paragraph 1, Assembly of Kosovo, August 2010.

⁹⁵ KLI interview with Bedri Duraku, Coordinator of the Conditional Release Panel. Ministry of Justice, January 2012.

⁹⁶ "If a body imposes punishment, thus a judge sentences someone, another judge says, "so what if you have convicted him for 10 years, I will release him altogether", it is improper for the same person to try and release someone". Quotation from KLI interview with Mr. Resmi Hoxha, Commissioner of Kosovo Correctional Service. December 2011

⁹⁷ Recommendation Rec (2003) 22 of the Committee of Ministers to member states on conditional release, the Council of Europe, September 24, 2003.

4.1.1. Criteria and Procedures

Right to request conditional release rests with each person who is convicted by a final decision of the court.⁹⁸ The application for conditional release is acceptable under specific conditions which are provided in Chapter III, at paragraph 3, in the Instruction on governance of the Conditional Release Panel. These include criteria under which convicts in specific cases may have an admissible request only if they have served half, 1/3 or ¼ of the sentence, or in case of the juveniles, when they have served 1/3 of the sentence.⁹⁹

Criteria to assess whether the conditions for conditional release of the convict are met, are specified in the Instruction governing the work of the Conditional Release Panel¹⁰⁰ and they include:

- Severity of crime,
- Previous criminal history,
- Description of a person convicted of crime,
- Attitude of the convicted person towards the victim,
- Behavior during incarceration,
- Psychiatric or psychological condition,
- Physical condition,
- Social history and family contacts,
- Plans of the convicted person after release,
- Acceptance of control and assistance from Probation Service of Kosovo,
- The existence of a general risk to the public,
- The prospect that a convicted person of foreign origin has the intention to return home.

For evaluation of these criteria the Conditional Release Panel shall be supplied with case files and reports on convicts, which are prepared by multi-professional teams¹⁰¹ of the Kosovo Correctional Service. These reports must contain the following data: the adjudication of the convict, a report with detailed information about prior convictions, a complete information sheet completed by the legal officer of the prison or the prison director, report of the social workers of the prison, the report of medical staff, report of prison psychologist and psychiatrist, the ratio of correctional officers, including the history of incidents of convict, the

⁹⁸ A judgment is considered final when it is not subject to appeal or request for protection of legality. If someone is in prison, but there is no final judgment, the Panel is not competent to decide on the release; it is the competence of other instances, such as the pre-trial judge or a panel of three judges. In such cases it is advisable to consult with an attorney. Directives PLK/2009/1 for supplementation and amendment of the ordinances UNMIK/CRP/2008/1 governing the work of the Conditional Release Panel. June 1, 2009.

⁹⁹ Article 9. Paragraph 3. A request for conditional release is admissible only:

- a) for a convict sentenced with imprisonment; if he or she has served ½(half) of the sentence (Article 80.2 CCK);
 - b) for a convict sentenced with imprisonment; on special grounds: if he or she has served 1/3 (one third) of the sentence (Article 80.3 CCK);
 - c) for a convict serving long term imprisonment; if he or she has served ¾(three fourths) of the sentence (Article 80.4 CCK);
 - d) for a convict serving juvenile imprisonment; if he or she has served 1/3 (one third) of the sentence (Article 32.1 JJC).
- Directives PLK/2009/1 for supplementation and amendment of the ordinances UNMIK/CRP/2008/1 governing the work of the Conditional Release Panel. June 1, 2009.

¹⁰⁰ *Directives PLK/2009/1 for supplementation and amendment of the ordinances UNMIK/CRP/2008/1 governing the work of the Conditional Release Panel, Article 10. Chapter III. Conditions for conditional release*, Ministry of Justice, 1 June 2009.

¹⁰¹ *Law on enforcement of criminal sanctions, Law no 03/L-101, Article 128, paragraphs 4 and 5*, Assembly of the Republic of Kosovo, August 2010.

statement of the convict, the opinion of the director of the correctional institution and report on educational or vocational training held by the convict, the provision of employment opportunities after release from prison. The compilation of these reports, as noted in this analysis, is disputed regarding objectivity and authenticity by teams of Kosovo Correctional Service. 95% of the reports that are submitted to the Panel contain positive evaluations and recommendations to conditionally release the convicts.¹⁰² Panel may take three types of decisions within the scope of its authority: to accept the request, reject the request or defer the decision.¹⁰³ In cases where the request of the convicts for conditional release is not approved, the review cannot be scheduled earlier than three months, but not later than 24 months. Also, it is worth noting that the decisions of the Panel and its bodies are legally binding and cannot be appealed.¹⁰⁴

4.2. Implementation of the Institute of Conditional Release

As it was the only functional mechanism in place for freedom of the convicts, at least conditional, the Conditional Release Panel turned into one an address most sought after by the convicts. In the early implementation of the institute of conditional release in 2002, 18 convicts had applied for conditional release, where only two of them were refused. For each following year, the number of requests from convicts and also the approvals by the Conditional release Panel, increased.¹⁰⁵ Trend of the growth is presented in the table below

Conditional release			
Year	Request	Conditional release	Released/request
2002	18	16	89%
2003	60	22	37%
2004	182	73	40%
2005	127	52	41%
2006	301	139	46%
2007	405	186	46%
2008	379	133	35%
2009	462	68	15%
2010	520	109	21%
2011	431	87	20%
TOTAL:	2885	885	31%

Table 10 –Conditional releases and refusals

¹⁰² KLI interview with Mrs. Tonka Berishaj, District Court judge in Prishtina as well as Chairperson of the Conditional Release Panel, January 2012.

¹⁰³ Directives PLK/2009/1 for supplementation and amendment of the ordinances UNMIK/CRP/2008/1 governing the work of the Conditional Release Panel, Article 23. Chapter IV. Procedure., Ministry of Justice, 1 June 2009.

¹⁰⁴ *Ib idem.*

¹⁰⁵ Number of conditional release applications and has increased in each year. See Table 10.

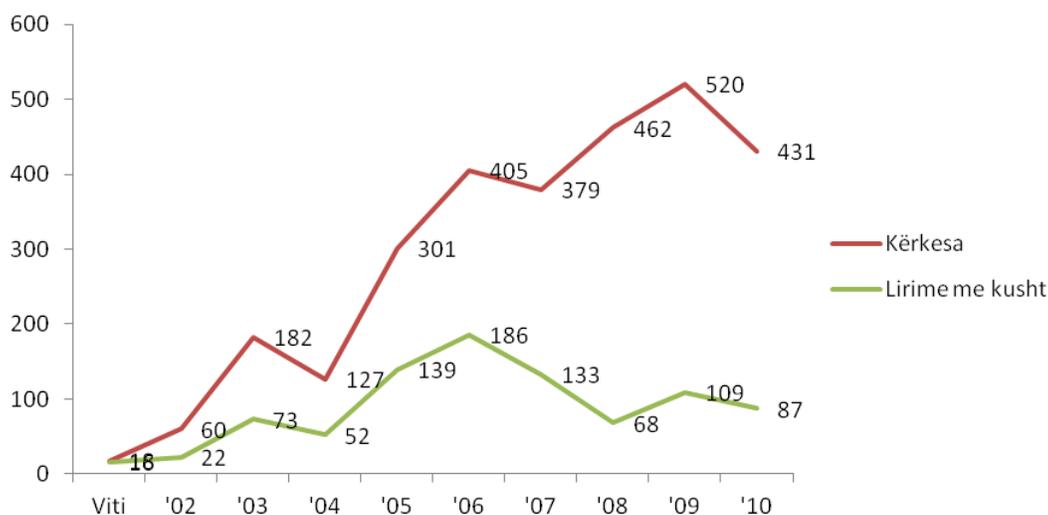


Figure 1 – Conditional release over the years

Increase of the number of applicants for conditional release over the years has exposed the Conditional Release Panel to many problems. Increased importance of this institute has also increased the possibility of its misuse. In fact, this also happened for years, where the conditional freedom granted by the judges of this panel was turned into a business, for which the convicts or their families had negotiated to buy it with money.¹⁰⁶

4.2.1 Corrupt Activities

The work of this panel in the past was marked by numerous legal violations and clear corrupt activities by its officials. Since the implementation of this institute, convicts and their families were constantly complaining that conditional release can only be gained through corruption of its officials.¹⁰⁷ After a series of public accusations in the media for years, investigators of the Kosovo Police and the of District Public Prosecution in Prishtina, had started investigations against then senior officials of the Ministry of Justice, and at the same time against one of the members of the Conditional Release Panel, Sokol Quse.¹⁰⁸ The latter, after investigations conducted for a variety of activities that were contrary to law, was later convicted for meddling with the freedom of convicts.¹⁰⁹ For release of convicted prisoners, their families had given substantial amounts of money, ranging from 10 to over 100,000

¹⁰⁶ “Lajm uncovers: Abuses with freedom in Lipjan Prison – Trading with freedom”; Newspaper article published on 31 May 2006, Gazeta “Lajm”, Prishtina, 2006.

¹⁰⁷ TV story aired on “Jeta në Kosovë”; RTK 2008. (story is accessible at this link <http://www.youtube.com/watch?v=dJwn1SuvOrk>)

¹⁰⁸ The issue of the Conditional Release Panel was raised as a topic by the daily newspaper Lajm, and the same newspaper has consistently followed the activities of the Panel including research articles published in the years 2005, 2006, 2007 and 2008.

¹⁰⁹ Judgment relating to corrupt activities of the convict Sokol Quse (last visited on: http://www.eulex-kosovo.eu/docs/justice/judgments/criminal-proceedings/SupremeC/01-11-SokolQuse/!%282011.04.05%29%20JUD%20-%20Sokol%20QUSE%20%28SC%29.ALB_redacted.pdf)

Euros.¹¹⁰ Chapter on uncovering the corrupt activities of the Conditional Release Panel cannot be closed with imprisonment of one of its officials, since the investigating authorities failed to investigate a series of accusations of corrupt activity that was made public. The protagonists of these public charges were never interviewed by the investigators.¹¹¹ Meddling with the freedom of convicts by the Conditional Release Panel resurfaced again a year ago, when in January of 2011, the Kosovo Police have arrested one of the lay judges of the Panel lay under suspicion of having taken bribes to free convicts.¹¹²

Case of 2011¹¹³

In January 2011, the Kosovo Police arrested a lay judge of the Conditional Release Panel on suspicion of having taken bribes to conditionally release convicts. Along with this judge, the Kosovo Police Unit for Investigation of Economic Crimes and Corruption in Peja, arrested two other suspects, who investigators believe unlawfully had enabled conditional release of convicts without fulfilling the legal requirements. Offenses for which these persons were charged were: abuse of official position or authority, receiving bribes, giving bribes. Arrest of these persons, was made after receiving information from the Dubrava prison in Istog that the Conditional Release Panel is taking bribes to release convicts without meeting the criteria. Kosovo Police was informed that in addition to judge, two other suspects had served as middlemen in finding families of those who are serving a prison sentence and then determined fixed sums of money for their release. Thus, the suspicion raised in this case reveals a structured group with separate roles with the aim of financial benefit had committed the offenses of receiving and giving bribes.¹¹⁴

Such cases and suspicion on linkage of actors to perform these acts of corruption, shows that these dealings could not possibly be performed by a single person. The case of Sokol Quse and the series of public charges should be treated seriously from the investigation and prosecution authorities in order to criminally prosecute and try all persons incriminated in the sale and purchase of conditional release.

Allegations of fraud and corruption cases in this Panel do not just end here. Senior officials of the Kosovo Correctional Service have addressed public accusations and official denunciations for investigation and prosecution of the officials of the Conditional Release Panel.¹¹⁵

Conditional release panel has released prisoners who by no means should have been conditionally released based on the criteria of this Panel. In certain cases, judges in the Panel have released criminal offenders, and have not released the assistant or co-perpetrator of the offence.¹¹⁶ For example, in 2008, the Conditional Release Panel had freed the person

¹¹⁰ *Ib idem.*

¹¹¹ Television show “Drejtësia në Kosovë”; broadcasted on RTK on 28th of February 2011 (last visited on 20 January 2012, <http://drejtesianekosove.com/>)

¹¹²“ Police arrested three men suspected of giving and receiving bribes Press Release, Office of Information; Kosovo Police, 18 January 2011.

¹¹³ *Ib idem.*

¹¹⁴ Article 274, Organized crime, “Term “structured group” means a group of three or more persons which is not randomly formed for the immediate commission of an offense and is not meant to have formally defined roles for its members, continuity of its membership or a developed structure”. Criminal Code of Kosovo. 6 April 2004.

¹¹⁵ Interview of the Commissioner of Kosovo Correctional Service, Mr. Resmi Hoxha, in the TV show “Drejtësia në Kosovë”; broadcasted on RTK on 28th of February 2011 (last visited on 20 January 2012, <http://drejtesianekosove.com/>)

¹¹⁶ KLI interview with mr. Resmi Hoxha, Commissioner of Kosovo Correctional Service, 30 December 2011.

convicted of rape, and had refused release of the co-perpetrator.¹¹⁷ The main suspicion about such a decision was based on corruption of officials of the Panel.¹¹⁸ Controversial decisions of the Conditional Release Panel, as a result of shopping with the freedom of convicts, were reflected in the dissatisfaction of persons who continue to serve sentences in prisons. Consequently, the Kosovo Correctional Service was often faced with problems in management of convicts, who had lost the trust of reaching their release without corrupting officials of the Panel.¹¹⁹ After raising these issues of concern, since June 21, 2009, EULEX monitors the work of the Conditional Release Panel, and also the Ombudsman and the Council for the Protection of Human Rights and Freedoms take part in monitoring.¹²⁰

In addition to monitoring by different mechanisms, the need of the restructuring of the Panel arose, which would result in higher transparency. Minister of Justice, Mr. Hajredin Kuçi due to raising of the issue of corruption in public¹²¹, suspended the entire Conditional Release Panel.¹²² The Panel was not functioning for a month, more specifically until 22nd of March 2011.¹²³ After the restructuring and reorganization of the work in the Panel, on April 19th, 2011, the first session was held. Because of raised suspicions, all of the decisions of the Panel, taken between 16th of October 2010 until 24th of February 2011, were reviewed.¹²⁴ From the review of 263 decisions of the Panel, the ad hoc committee formed by the Minister of Justice had not encountered any corrupting activity. On the other hand, the Ombudsman representatives had criticism for only one case where the person released had been convicted for the offense of aggravated robbery.¹²⁵

Suspension of the Conditional Release Panel was followed by the reorganization of the work of the Panel, including the publication of all decisions of the Panel. This should be highly appreciated, because the publication of decisions ensures transparency of this institution, which was always kept away from public eye and media.

Of all these reported cases it is noted that in addition to exercise of the responsibilities under existing laws, various officials, including judges of the Conditional Release Panel, in certain periods were incriminated for numerous corrupt activities. These information's and all other publicly addressed, necessarily oblige the investigating authorities of the police and prosecution, including the highest institution of the prosecution, State Prosecutor, to investigate everything that will shed light on transactions related to purchase of release from

¹¹⁷ Interview of a parent, who explains how the perpetrator of the criminal offence was released, while his son as the co-perpetrator was not released. In the interview he states that the reason why this had happened, was that the perpetrator had corrupted officials in order to obtain conditional release while he had refused to corrupt these officials. The interview was broadcasted on the television show "Jeta në Kosovë"; RTK 2008. See <http://www.youtube.com/watch?v=dJwn1SuvOrk>

¹¹⁸ Whereas the father of the juvenile had failed to release his son, despite the fact that his son was the co-perpetrator and not the perpetrator of the crime, but stated that he had not accepted to corrupt officials of the Conditional Release Panel.

¹¹⁹ KLI interview with Resmi Hoxha, the Commissioner of Kosovo Correctional Service, 30 December 2011.

¹²⁰ KLI interview with Mrs. Tonka Berishaj, District Court judge in Prishtina as well as Chairperson of the Conditional Release Panel, January 2012.

¹²¹ "Buying the freedom of conditional release", *Drejtësia në Kosovë*, 7 march 2011.

¹²² Minister of Justice, Mr. Hajredin Kuçi, on 24th of February of 2011 suspended the Conditional Release Panel. "Deputy Prime Minister and the Minister of Justice, Prof. Dr. Hajredin Kuçi, met with members of the Conditional Release Panel". Prishtina, 28th of February 2011. Ministry of Justice. (last visited on 29 January 2012 see <http://www.md-ks.org/?page=1,8,298>

¹²³ "Conditional Release Panel is re-functionalized", *Telegrafi*. See <http://www.telegrafi.com/lajme/rifunksionalizohet-paneli-per-lirim-me-kusht-2-13573.html> (last visited on 28th January 2012)

¹²⁴ Supra note 123.

¹²⁵ KLI interview with mr. Bedri Duraku, Conditional Release Panel Coordinator, January 2012.

prisons Kosovo. More specifically, since we are dealing with allegations of misuse of official duties and activities related to offenses relating to corruption, this body should be investigated by the Kosovo Special Prosecutor.

4.3. Impact of pardon on conditional release

The institute of pardon, first of all presents additional problems for the work of the Conditional Release Panel. Pardon of convicts, except legal aspect of the change of status of the convict, has also affected the decisions of the Panel, to conditionally release convicts. Initially, the pardon of the President has only served to change the status of the convict. For example, the person convicted to 15 years who has been pardoned by the President for three years, is considered by the Panel to be imprisoned for 12 years, thus directly affecting the calculation of the sentence in the request and conditional release. Despite the insistence of officials of the Panel, including Head of the Panel, Ms. Tonka Berishaj, that pardon does not have any greater impact than that envisaged by the law, decisions on cases prove otherwise. A large part of the convicts, who had received pardon, were later conditionally released by the Panel.¹²⁶ The convicted murders happened to be the biggest beneficiaries of the President's pardon and conditional release by the Panel. Such is the case of double murder convicts, who had been sentenced to six years imprisonment. Pardon of 12 months from the President had a direct impact on the calculation of his sentence and the right to apply and benefit from conditional release. Conditional Release Panel, partly under the influence of the pardon of the President, approved conditional release. Consequently, the convict after serving one third of the sentence was conditionally released and returned to society after a relatively short period of imprisonment. Thus, the institute of pardon implemented by the President has so far directly influenced the decisions of the Conditional Release Panel. Now the expectations of the convicts are that pardon by default means the provision of conditional release. In cases where the convicts pardoned by the President were previously refused conditional release, appeals were submitted.¹²⁷ Complaints of such convicts are based on the grounds that pardon by the President was not taken into consideration, where the convicts requested that pardon automatically should secure conditional release.

Institute of pardon and conditional release, although independent institutes, the fact that the criteria for pardon and conditional release are similar, must necessarily be interconnected. Mutual legal problems as well as practice of pardon and conditional release create the need to amend the provisions of relevant laws. In this way the solution of problems through legal acts would serve for both institutes to establish a good practice and legal right, that recipients of pardon and conditional release, to be based on merit and not like now, where a large part of pardon and conditional release is done in violation of the law. In order to eliminate the effects of pardon on the Panel's decision making, the judges of the chambers of the Panel should comply strictly with the criteria set by law and instructions governing its work. Thus, besides the fact that pardon automatically changes the status of convicted persons sentence, this

¹²⁶ KLI interview with officials and judges of the Conditional Release Panel, January 2010, January and December 2011 and January 2012.

¹²⁷ KLI interview with mr. Bedri Duraku, Conditional Release Panel Coordinator, January 2012.

should in no way be a factor to circumvent the foreseen legal requirements. Rather, it should be assessed and judged very carefully, in order not to repeat cases where convicts can benefit so much that for the murder they serve only 1/3 of sentence, by pardoning a portion of sentence and then providing conditional release. Also, another reason why pardons by the President should not affect the Panel's decision making, is the fact that in certain cases pardon can be used for political or national interests, as has happened and happens in many countries in the world¹²⁸, which could compromise the evaluation process of conditional release.

¹²⁸ The case of pardon of Mr. Lewis Libby, former White House official, by President Bush, which represents a case of pardon for political interests. Fitzgerald, P. "Bush commutes Libby's prison sentence". CNN Politics. 2 July 2007. See articles.cnn.com/2007-07-02/politics/libby.sentence_1_leëis-scooter-libby-valerie-plame-patrick-fitzgerald?_s=PM:POLITICS (last visited on 19 January 2012).

5. Amnesty

Unlike the implementation of two institutes analyzed in this report, pardon and conditional release, institute of amnesty in Kosovo was never after the war applied in practice. This right was granted to convicts since 2004 when relevant provisions of the Criminal Code of Kosovo entered into force. However, this was not enough for the prisoners during these years to enjoy the privilege to be covered by amnesty. For implementation of this institute, the institutions have not adopted the Law on Amnesty, just as they did with the Law for pardon, which was adopted later than planned.

The right to amnesty is contained in the same chapter of the Criminal Code, together with the right of pardon.¹²⁹ Pardon is guaranteed by the Constitution of the Republic of Kosovo, whereas amnesty is not a constitutional category.¹³⁰ This fact and the absence of the Law on amnesty have frequently created resentment among convicts, who had consistently protested and had held a hunger strike for the realization of this right.¹³¹ With the formation of the Committee for Constitutional amendments,¹³² Assembly of Kosovo was immediately faced with the reaction of prisoners. The possibility for constitutional changes provided to this Committee did not pass without the hunger strike by prisoners with the request that amnesty is introduced as a constitutional category. The executive had expressed willingness to address these requests of the prisoners and include the institute of amnesty in the Constitution, respectively during the current amendment to the Constitution. During that visit he had made to prisoners in strike, Deputy Prime Minister and Minister of Justice, Mr. Hajredin Kuçi, agreed with them, to ask from the President, Speaker of the Assembly, Chairman of Committee on Amendment of the Constitution, and all parliamentary political parties, that the amendments of the Constitution, include the institute of amnesty, followed by adoption of the Law on Amnesty.¹³³

Based on Article 96, paragraph 1, of the Criminal Code, act of amnesty grants exemption from prosecution, exemption from full or partial enforcement of the sentence, replacement of the sentence with a more lenient sentence or expunging of the sentence. While, in the same article, paragraph 2, states that the amnesty includes those offenses committed up to one day before its announcement, except when the amnesty specifies otherwise.¹³⁴ In scientific literature on criminal law, along with the statute of limitation, both amnesty and pardon lead

¹²⁹ Article 96, Amnesty. Chapter X: Amnesty and pardon. Criminal Code of Kosovo, April 6, 2004.

¹³⁰ Paragraph 29, "Declares individual pardons in accordance with law", Article 84 "Powers of the President"; Chapter V. President of the Republic of Kosovo; Constitution of the Republic of Kosovo; Assembly of the Republic of Kosovo.

¹³¹ "The prisoners went on hunger strike, seeking amnesty law". Albinfo. See <http://www.albinfo.ch/ch-ballkani/aktuale/t%C3%AB-burgosurit-hyn%C3%AB-n%C3%AB-grev%C3%AB-urie-k%C3%ABrkojn%C3%AB-ligj-p%C3%ABr-amnisti-24660> (last visited on 21 January 2012)

¹³² Commission for amending the Constitution of the Republic of Kosovo was formed on 22nd of April 2011. Legislative activity of the Assembly during 2011. See http://www.assembly-kosova.org/common/docs/Aktiviteti_legjislativ_i_Kuvendit_2011.pdf (last visited on 21 January 2012)

¹³³ "Minister Kuçi talked to strikers in Dubrava prison". Newspaper "Kosova Sot". See <http://www.kosova-sot.info/politike/kosove/ministri-kuci-bisedoi-me-grevistet-e-burgut-te-dubrades> (last visited on 28 December 2011).

¹³⁴ Article 96, Amnesty. Chapter X: Amnesty and pardon. Criminal Code of Kosovo, April 6, 2004.

to expunging of the sentence. Functioning of the institute of amnesty would lead to an additional mechanism for full or partial pardon or replacement of punishment.¹³⁵

Institute of amnesty is a specific act of the highest state authorities in the field of criminal jurisprudence, which entails changes in favor of convicts.¹³⁶ In the criminal law, the general part, Professor Ismet Salihu, states that the Law on Amnesty can determine the offenses for which amnesty is given (i.e., all offenses under paragraph 1 of Article 243). This law may also determine the penalty which is included under the amnesty (i.e., for all persons who are sentenced to imprisonment with ten years or more, one year is pardoned). Also, two conditions may be set – criminal offences and punishments. Amnesty can be granted for all offenses, whether officially prosecuted *ex officio* or privately.

Continuing violation of this right of prisoners to benefit from the institute of amnesty should be addressed by the heads of highest state institutions. The mandate of the Committee for Constitutional amendments should be expanded to include this category, so that the act of amnesty is introduced as a constitutional category, followed later by the Law on Amnesty. In this way, a very important institution of the criminal law would be functionalized, in order to allow prisoners in Kosovo to enjoy a right that is available for prisoners in all countries of the world.

¹³⁵“Amnesty and pardon”. Chapter VII, page 569. Ismet Salihu, “E drejta penale”. Pjesa e përgjithshme. 2008 October Prishtinë.

¹³⁶ “Amnesty and pardon”. Chapter VII, page 569. Ismet Salihu, “E drejta penale”. Pjesa e përgjithshme. 2008 October Prishtinë.

6. Main findings

KLI has found significant legal deficiencies as regards proper implementation of the institute of pardon, including conditional release. Despite the generalized laws, enforcement bodies of pardon and conditional release had failed to ensure fairness and justice for convicts. Following are the main findings of the paper:

Legal basis

Implementation of the right to pardon as the exclusive competence of the President started in 2009, after the entry into force of the Law on pardon, despite the existence of this right in the Criminal Code since 2004. KLI has found that there is a legal collision between the Criminal Code and Law on Pardon, where the first provides the possibility of exemption from criminal prosecution, which is not guaranteed by Law on pardon.

Overall, from 2009 until now the Constitution, Law and other bylaws have failed to ensure proper application of pardon. Constitution and other legal acts have so far failed to foresee the following: restrictive circumstances for the period before the end of the mandate of President; prohibit pardon for acting President; or to specify representation in Ad hoc Committee for pardon.

Criteria in the law on pardon are generalized and incomplete. Law on pardon expressly prohibits pardon for all persons convicted of offenses punishable under Chapters XIII and XIV of the Criminal Code of Kosovo. Current criteria have favored more subjective assessments, by disabling the same treatment for each convict. Unlike the previous decree, the Decree on criteria for Pardon issued in 2012 has significantly improved the definition of criteria and their specification, giving a more responsive dimension to enforcement of pardon. Decree foresees more stringent criteria in general, particularly for serious crimes.

Legal deficiencies remain as the main challenge of implementation of pardon, they were observed mainly in the exclusion criteria that would prohibit pardon of convicts refused by the Conditional Release Panel. Despite similar criteria for pardon and conditional release, 67% of pardoned had been previously refused conditional release. This concern was raised in the European Commission Progress Report on Kosovo. Non-linking of these institutes, for the decisions on these cases, represents an anomaly in the evaluation process.

Decree on criteria for pardon of 2012 has made progress towards transparency as the composition of the Ad hoc committee for pardon will be made public together with the relevant procedures and assessments after the promulgation of Decree on pardon. However, the legal acts still do not specify whether Decree on Pardon will contain the necessary information about the history and benefit of convicts, which in the past three years has served the Presidents to hide the time pardoned for convicts.

Major problems are encountered in not specifying the time limits. Convicts in Kosovo, on the first day of their imprisonment may address the President for pardon. In Albania, this right is acquired after convicts serve 1/3 of the sentence. Also, another problem is presented by not specifying deadlines for submission of applications, data collection and evaluation and decision on cases. In the past the Ad Hoc Committee on Pardon had handled 500 requests within a week, an enormous figure to be assessed properly and professionally.

Violation of the Constitution – President Fatmir Sejdiu on February 16th, 2010, upon the proposal of the Ad hoc committee for pardon, pardoned a person convicted of Trafficking in Persons. The latter was previously refused to be conditionally released from the Conditional Release Panel, because of the nature of the offense. Circumstance for refusal was the seriousness of the offense being considered as too damaging to the community, regional countries and the international community as a whole. Compassion of President Fatmir Sejdiu in pardoning six months to a convicted of Trafficking in Persons was contrary to Law on pardon. Consequently, the Constitution of the Republic of Kosovo, namely the Law on pardon, was violated. Violations committed by the president were not procedural violations but violations of the material law. Pardon in contradiction with the Constitution and the law can be achieved only by those who may be ignorant of the legal field, otherwise such a violation should have been investigated for financial or political benefits.

Depreciation of Crime – For three years, presidents have pardoned to convicts a total of 236 years. Many of these years have been pardoned for very serious crimes, which presents the greatest challenge for the judicial system of the country. In 2009, pardoned were convicted of triple murder, murder of unscrupulous revenge, robbers who in prison had shown significant aggressiveness, including assaulting correctional officers. In coming years, the list of the pardoned by the President had included recidivists, the convicted have consistently shown bad behavior in prison, convicted of smuggling of weapons, cases of corruption, and many other cases. Only in 2011, the convicted of murder and aggravated murder had been pardoned 135 years or 86% of the total time of pardon for that year. Pardon of convicts has a significant impact on the justice system in general, particularly in the practice of punishments imposed by judges. Judges weigh the evidence in order to administer justice, and deliberation on punishment is one of their challenges to prove the reasonableness of the imposition of years of imprisonment. This large allocation of pardon only for murder convicts is totally unacceptable because it affects the loss of public trust in the justice system and the implementation of pardon by Presidents. At no time these evaluations of Presidents were based on the dangerousness of criminal offences, which is best reflected in national strategies and policies.

Pardon of previously refused for conditional release – The presidents have for three years pardoned 151 prisoners, or 67% of the overall list, who were previously rejected by the Conditional Release Panel. Their enormous pardon has not gone unnoticed and was highlighted in the European Commission Progress Report on Kosovo in 2010. Despite the fact that such phenomenon has questioned the whole process of evaluation of pardons, the Acting President Jakup Krasniqi continued the same practice where from 103 pardoned, 59 of them were refused by the Conditional Release Panel. These concerns come as the result of

similar criteria for pardon and conditional release, for which the assessment is made by applying the double criteria. Such different decisions between these two institutes raise dilemmas about objectivity in administration of justice or delivery of official documents for the same cases. This problem would be avoided if the draft Criminal Code of Kosovo, which is currently under review in the Assembly, would approve the provision which prohibits pardon of previously refused by the Conditional Release Panel.

Conflicting reports – Case files and reports which are prepared by the Kosovo Correctional Service determine the final assessments for pardon. The practice of compiling these reports shows that they were incomplete and not professional. Regarding deficiency of the reports, in certain cases the documentation was not complete and some of the documents provided upon request to the Ad Hoc Committee for pardon had not contained the seal and other elements, raising suspicions that these documents, as such, were not official. Suspicions about this are based on the case where for the same convict the criminal offence changes before the Conditional Release Panel and the Presidency. If the Ad hoc Committee for pardon and Conditional Release Panel base their decisions solely on reports of Correctional Services, then 95% of convicts should be pardoned and conditionally released.

Recommendations of the Kosovo Correctional Service – Another concern of the Conditional Release Panel and the Ad Hoc Committee on pardon appears to be categorization of convicts who are recommended by the Kosovo Correctional Service. The latter, without specified basis in the law, consistently compiled positive and negative recommendations of convicts who apply for pardon and conditional release. In connection with the institute of pardon, the Kosovo Correctional Service had given its recommendations on whom to partially and totally pardon and who to not pardon for 2009 and 2011. Whereas in 2010, President Fatmir Sejdiu had specified in his request to the Correctional Service that case files should not contain latter's recommendations. Recommendations by the Kosovo Correctional Service, unfounded in law and other regulatory acts, are disturbing because of the subjective assessments.

Composition of Committees – Despite constitutional provisions and the Law on the President, which specify that the President should not serve the interests of any particular political party, Presidential Ad hoc Committees on Pardon were populated by persons coming from certain parties. For example, in 2010, Presidential Ad Hoc Committee on Pardon was largely composed of people from LDK, since President Sejdiu at the same time held frozen his position of President of the LDK. Independent members of this Committee have confirmed that in certain cases there were subjective assessments of party members which can be regarded as deliberate or with political background.

Pardon of the non pardonable – During three years of implementation of the institute of pardon, Presidents have pardoned non pardonable convicts. The latter have not deserved pardon based on the criteria of the Law on pardon, including restrictions on various categories of criminal offenses. In 2009, President Fatmir Sejdiu had pardoned blatant cases involving crimes committed such as: triple murder, murder by unscrupulous revenge, murder in co-perpetration. Also, in the same year, President Sejdiu had pardoned convicts, with bad behavior, and one of them, which was released soon after pardon, murdered his pregnant

wife. This proves the failure of the Ad Hoc Committee of the President, which did not adhere to the criteria of assessing the degree of recidivism. In 2010, President Fatmir Sejdiu had violated the Constitution of the Republic of Kosovo and the Law for pardon, by pardoning a convicted of Trafficking in Persons. Furthermore, President Sejdiu had pardoned convicts who had committed crimes related to organized crime, embezzlement, narcotics, rape, as well as recidivists. In 2011, the majority of the pardons of Acting President Jakup Krasniqi were of persons convicted of murder and aggravated murder. The tradition established by his predecessor, President Fatmir Sejdiu, to pardon convicted of serious crimes and recidivists was continued by Mr. Jakup Krasniqi. Besides these actions, the latter had pardoned convicted of the offense of corruption, weapons smugglers and persons who assaulted officials.

Institute of conditional release - The work of the Conditional Release Panel was in the past marked by numerous violations of law and clear corrupt activities by its officials. Since the implementation of the institute of conditional release, convicts and their families were constantly complaining that conditional release can only be gained through corruption of the Panel's officials. For meddling with the freedom of convicts, the investigating authorities have arrested and officials and judges of the Conditional Release Panel, where one of them is now serving his sentence. Arrest cases revealed a structured group who had acted jointly to release prisoners. Minister of Justice, Mr. Hajredin Kuçi, suspended the Conditional Release Panel in February 2011, and ordered review of the 263 decisions for conditional release. Now, EULEX, the Ombudsman and the Council for the Protection of Human Rights and Freedoms and oversee the work of this Panel.

The impact of pardon on conditional release – The institute of pardon, first of all presented additional problems for the work of the Conditional Release Panel. Pardon of convicts, aside of legal aspect of the change of status of convicts, has also affected the decisions of the Panel, to conditionally release convicts. A large part of the convicts, who had received pardon, were later conditionally released by the Panel. Now the expectations of the convicts are that pardon by default means the provision of conditional release. In cases where the convicts pardoned by the President were refused conditional release, official complaints of convicts to Conditional Release Panel, followed.

The rights to amnesty – In contrast to the implementation of two institutes analyzed in this report, namely pardon and conditional release, institute of amnesty was never applied in practice in post war Kosovo. This right was granted to prisoners since 2004, when relevant provisions of the Criminal Code of Kosovo entered into force. Amnesty is not a constitutional category, and therefore there is no Law on Amnesty. This fact and the absence of the Law on Amnesty, has frequently created resentment among the prisoners, who had consistently protested and had held a hunger strike for the realization of this right.

7. Recommendations

1. Amendment of the Constitution of the Republic of Kosovo should include restrictive circumstances in the following cases:
 - a. Three months before the mandate, the powers of President related to pardon shall be prohibited.
 - b. Acting President should not have powers of pardon.
 - c. Constitution of the Republic of Kosovo should include competence to implement the institute of amnesty, which must be followed by the adoption of the Law on amnesty.

2. Amendment of the Law on pardon needs to be initiated, reflecting on the following issues:
 - a. Convicts previously refused by the Conditional Release Panel shall not be eligible for pardon.
 - b. The law should avoid the collision that occurs with the Criminal Code of Kosovo. Lawmakers need to harmonize the Criminal Code, which is currently under review in the Assembly, and the Law on Pardon. Namely, it should be specified whether the President shall have the opportunity to exempt persons from criminal prosecution in the case of pardons.
 - c. Criteria for pardon must be defined so that scope of their interpretation is not extensive and confusing. Decree on Criteria for Pardon of the President issued in 2012 contains provisions which must be included in the law.
 - d. Presidential Decree on Pardon should contain specific information about: name, surname, date of birth, time of sentencing, the offense for which he/she was convicted, the sentencing court, where the sentence is being served, and time of pardon
 - e. The right of pardon should be available only to convicts who have served 1/3 of the sentence.
 - f. Deadlines for submission of applications, data collection, evaluation and decision on cases, should be specified. The whole process should last for 3 months, so there is enough time for the entire processes to be conducted professionally.

3. The Presidential Decree on the Criteria and Procedures for pardon should specify representation of members on the Ad hoc Committee for pardon, limiting members with political affiliation, so as to allow a professional evaluation process.

4. President of the Republic of Kosovo must exercise greater control over the Ad hoc Committee in order not to recommend pardon of convicts in contradiction with the Constitution and the Law on Pardon.
5. During the process of pardon, the President of the Republic of Kosovo should take into consideration serious criminal offences which appear to challenge the justice system to prosecute and adjudicate the same, so that there is no adverse impact on punitive policy.
6. President of the Republic of Kosovo, based on concerns raised in the Progress Report of the European Commission, on the pardon of previously refused for conditional release, should exercise greater care in assessing the requests coming from this category.
7. State Prosecutor should conduct an extensive and detailed investigation for pardons made in the past three years which constitute a violation of Constitution and the Law. Also, the highest prosecutorial body should investigate suspicious activity developed throughout the years in the Conditional Release Panel
8. Judges of the Conditional Release Panel should in no way be influenced by decisions on pardon of convicts. Conditional release should be granted only to convicts who meet the legal criteria.
9. Kosovo Correctional Service must build the capacity and professionalism of multi-professional teams that are responsible for preparing reports on convicts. Also, an effective control mechanism should be established, in order to eliminate compiling of conflicting reports.
10. Kosovo Correctional Service should prepare dossiers and the real situation of the prisoners without giving specific recommendations for pardon or conditional release.



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