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**Kosovo Law Institute**

**SEEKING A WAY TO**

**FIGHT CORRUPTION:  
Between two fires,  
persecution and failure**

***(Analysis and recommendations regarding the implementation   
of the Action Plan for Fighting Corruption)***

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**ABOUT KLI**Kosovo Law Institute (KLI), is a   
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and non-profit of public policy,   
and specialized ideal in the justice sector

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**ABBREVIATIONS:**

ACA Anti-Corruption Agency  
EU European Union  
KLI Kosovo Law Institute  
KPC Kosovo Prosecutorial Council   
KJC Kosovo Judicial Council  
BC Basic Court  
BP Basic Prosecution  
SPRK Special Prosecution of the Republic of Kosovo  
SP State Prosecutor  
Action Plan Action Plan to Increase the Efficiency of Prosecutorial System in  
 Fighting Corruption

# EXECUTIVE SUMMARY:

Fighting corruption in Kosovo remains an absolute priority announced in a letter from all relevant institutions that have a mandate to prevent and fight corruption. However, concrete results are constantly lacking, especially in fighting high-level corruption.

Finding itself in an unenviable position with constant criticism for the lack of results in fighting corruption, Kosovo Prosecutorial Council, on November 4, 2013, has approved the Action Plan to Increase the Efficiency of Prosecutorial System in Fighting Corruption. KLI has constantly monitored and assessed the implementation of this plan.KLI findings show that even 20 months after the entry into force of this plan, the prosecutorial system has not managed to reduce the number of unsolved corruption cases. The efficiency of the prosecutorial system, institutions and other law enforcement agencies in Kosovo in the field of fighting corruption remains low, therefore, there are no concrete results yet in fighting corruption in Kosovo, especially high-level corruption.

With the entry into force of the Action Plan, on November 4, 2013, prosecution offices have had at work 516 unsolved cases with 1,682 persons, while on June 30, 2015 have remained 589unsolved cases with 1,706 persons. Based on the number of unsolved cases on November 4, 2013 (516 cases with 1,682 persons) and the number of cases received during the Action Plan until June 30, 2015 (716 cases with 1,441 persons), results that prosecution offices had 1,232 cases with 3,123 persons. Of this total number, prosecution offices have managed to solve 688 cases or 56 % of them with 1,598 persons or 51 % of them. From a total of 1,598 persons against whom cases have been solved in general, prosecutors have filed indictments against 780 persons, while against 818 persons have dismissed criminal charges or terminated investigations.

KLI has consistently analyzed the performance of each prosecution office. It remains a concern the performance of both prosecution offices BP in Pristina and SPRK. The last one, has exclusive competence in fighting high level corruption. The analysis shows that 7 prosecutors engaged on corruption cases in SPRK was supposed to solve all together, within a year, 154 cases of corruption, while for 20 months from the entry into force of the Action Plan, all together have solved only 34 corruption cases with 186 persons, resulting that in percentage this prosecution office has managed to solve only 13.27 percent of cases on annual oriented norm defined for each prosecutor.

The performance of this prosecution office in general turns out to be poor, based also on the annual work report of SP for 2014, as SPRK has solved  78 cases and has received 152 new cases during a year. According to the annual oriented norm for prosecutors, during one year this prosecution office should have solved 264 cases in relation to the number of 12 prosecutors who have worked on cases and it turns out that SPRK has implemented only 29.54 percent of the annual working norm. Unlike SPRK, the prosecution alike, which operates in Croatia, with almost the same competences as SPRK, from 283 filed indictments in Croatian courts has managed to protect 95 percent of them, by receiving 252 conviction judgments based on these indictments filed in 2012.

Based on these results and the method of solving corruption cases in general, KLI assesses that prosecutorial system has held hostage a large number of citizens, who are registered in criminal records as suspects, and whose cases are kept in a drawer for ages. . Prosecutorial system has consistently violated the fundamental rights and freedoms of defendants in the proceedings, by not treating such cases within a reasonable time and within the legal deadlines. The fact that over half of persons are kept unjustly in the criminal record for years, is an evidence that this is a form of persecution against these persons and selective justice.

KLI assesses that prosecutorial system is located between two fires, the need to demonstrate results that are performing the legal obligations, by pursuing various persons against whom initiate cases and do spectacle and their failure to fulfill the mission. All this is based on the fact that there are many initiated procedures and legal actions, but which end after many years with failed epilogue. Meanwhile, there are no concrete results in fighting high-level corruption, constant criticism of local and international factor.

In this situation, the justice system continues to seek the way to fight corruption, while the actions taken so far in the implementation of the Strategies and Action Plans have proved more effort to demonstrate their presence rather than actually fighting corruption, by proving with evidence before the court.

During the monitoring of the implementation of the Action Plan to fight corruption, KLI has found that there is still no categorization of corruption cases that must be pursued and that are the priorities of this system. At the same time, this is also a requirement of international partners towards fulfilling the criteria for visa liberalization and the Stabilization and Association Agreement. In this regard, KLI has used its expertise to recommend an Action Plan, through which will be set out clear obligations, the categorization of corruption cases will be done and the requirements of international partners will be addressed.

The lack of results in fighting corruption is clearly stated in the 2014 Progress Report for Kosovo, where it is said that the implementation of the Strategy and the Action Plan against corruption has failed to generate effective results because of weak political support. The lack of political willingness to fight corruption, the lack of the efficient and effective coordination and cooperation between agencies, executive institutions and independent institutions in preventing and fighting corruption, directly affects to the lack of results in combating corruption in Kosovo.

In 2013 KPC has established and functionalized the Tracking Mechanism for the harmonization of statistical reports regarding characteristic criminal offenses, including corruption offenses. This mechanism aims to coordinate the activities between the State Prosecutor, Courts, the Police, ACA, and other law enforcement agencies in Kosovo in the harmonization of statistical reports. Since the functioning of this mechanism KPC has approved the annual reports for 2013 and 2014, including comparative analytical report for 2013 and 2014, related to these criminal offenses.

In order to handle corruption cases in a more professional and efficient way, the Office of the Chief State Prosecutor and EULEX Chief Prosecutor, in 2014, have adopted the Administrative Instruction by which it is determined that all cases of the high-level corruption, will be treated by the Special Prosecution of the Republic of Kosovo. This instruction was distributed to all institutions and agencies which cooperate with the State Prosecutor. In 2013, Prosecutorial Council and the Judicial Council have appointed coordinators in all basic prosecutions and courts in Kosovo, as contact points in order to prioritize these cases.

The National Anti-Corruption Council was established by the President of the Republic, and despite meetings and ongoing efforts to coordinate activities with the main actors who have a mandate to prevent and combat corruption, its impact it is not noticed yet in practice with concrete results besides systematically monitoring to ensure a harmonized and effective approach in the fight against corruption.[[1]](#footnote-2)

Despite the adoption of policies and undertaking a variety of activities by these institutions and the prioritization of cases, the results have been limited, with very few cases of corruption which resulted with a final court decision. The perception about corruption in Kosovo, remains to be prevalent in many areas, where public procurement remains one of the main challenges and a serious problem that must be addressed urgently. Meanwhile, as never before citizens’ trust in the justice system has marked the sharpest decrease.

# Implementation of the Action Plan for Fighting Corruption

On November 4, 2013, Kosovo Prosecutorial Council (KPC), has approved the Action Plan to Increase the Efficiency of Prosecutorial System in Fighting Corruption (hereinafter the Action Plan).

From the entry into force of this plan, Kosovo Law Institute (KLI) in accordance with the Memorandum of Cooperation with KPC has been monitoring and assessing the implementation of the Action Plan. Up to this phase, KLI has published five reports, as a result of monitoring and assessing the implementation of this plan, including the findings, assessments and concrete recommendations.[[2]](#footnote-3)

KLI findings indicate that prosecutorial system has not managed to reduce the number of unsolved cases of corruption. The efficiency of the prosecutorial system, institutions and other law enforcement agencies in Kosovo in the field of fighting corruption remains low, therefore there are no concrete results yet in the fight against corruption in Kosovo, especially high-level corruption.

With the entry into force of the Action Plan, on November 4, 2013, prosecutions have had 516 unsolved cases with 1,682 persons, while on June 30, 2015 have remained 589 unsolved cases with 1,706 persons. Based on the number of unsolved cases on November 4, 2013 (516 cases with 1,682 persons) and the number of cases received during the Action Plan until June 30, 2015 (716 cases with 1,441 persons), results that prosecutions have had 1,232 cases with 3,123 persons. Of this total prosecutors have managed to solve 688 cases or 56 % of them with 1,598 persons or 51 % of them. Of the total of 1,598 persons against whom cases have been solved in general, prosecutors have filed indictments against 780 persons:

* **Against 621 persons have filed indictments after investigations,**
* **Against 103 persons have filed direct indictments,**
* **Against 56 persons have proposed the imposition of punitive order,**
* **Against 383 persons have dismissed the criminal charges;**
* **Against 435 persons have terminated investigations.**

Based on these results and the method of solving cases, KLI assesses that prosecutorial system has held hostage a large number of citizens, who are registered in criminal records as suspects, and whose cases are kept in a drawer for ages. Prosecutorial system has consistently violated the fundamental rights and freedoms of defendants in the proceedings, by not treating such cases within a reasonable time and within the legal deadlines by the Criminal Code and Criminal Procedure Code.

Also, from the entry into force of the Action Plan, from 688 solved cases with 1598 persons, prosecutors have issued decisions to dismiss the criminal charges and have terminated the investigations for 818 persons or about 50% of persons against whom cases have been solved. This is a proof that these persons unjustly and in some cases contrary to the law are held in criminal records of prosecutions as suspects for corruption. KLI assesses that this is a form of prosecution against these persons and selective justice because the solution of their cases has lasted for years, while the same one's have not held responsibility despite the criminal charge filed against them. It should be noted the unfair practice of the efforts for fighting high-level corruption build in Kosovo, where the prosecution authorities in cooperation with the police have taken legal actions to arrest and detention senior state officials, in certain cases and have filed indictments, but that in the end have resulted with failures. Undertaking investigative actions as the arrest, detention and unfounded in law and unfair detention, is considered as prosecution against certain individuals and selective justice by justice institutions.

From the entry into force of the Action Plan, KPC had taken decision in accordance with Article 4 of the Action Plan, to increase the number of prosecutors who will deal with corruption cases from 10 prosecutors as they were before entry into force of the Action Plan, in over 40 prosecutors.

Based on this statistic it is noted that despite the fact that these cases are considered as cases with priority under Article 4 of the Action Plan, in practice it is not implemented, in all prosecutions. Meanwhile, there are prosecutions that have managed to fulfill one of the obligations of the Action Plan for solving cases registered until November 4, 2013 as BP in Gjilan and BP in Peja which have solved 100% of these cases, BP in Prizren 90%, BP in Gjakova 82%, BP in Ferizaj 74% and BP in Mitrovica 62%, concerning remains the treatment of corruption cases in BP in Pristina and in SPRK.

While in SPRK, there are 7 prosecutors engaged in treating corruption cases, the number of solved cases by this prosecution from the entry into force of the Action Plan on November 4, 2013 until June 30, 2015, is 34 cases with 186 persons. SPRK on November 4, 2013 has had 35 unsolved cases with 232 persons, while during the Action Plan until June 30, 2015 has received 39 new cases with 159 persons, which results that there were a total of 74 cases with 391 persons. Of them have managed to solve 34 cases with 186 persons, while have remained unsolved 48 cases with 233 persons.

KLI has analyzed the fulfillment of obligations of SPRK prosecutors, towards the oriented norms set by the KPC for completing cases. KPC’s Directive for defining orientation annual norm for SPRK prosecutors, has determined that every prosecutor of this prosecution office must solve 2 cases per month and 22 cases per annually. . Based on these obligations, it results that 7 prosecutors assigned on corruption cases in SPRK were supposed to solve all along, within one year 154 corruption cases, while for 20 months from the entry into force of the Action Plan together they have solved only 34 corruption cases with 186 persons, which results that this prosecution in percentage has managed to solve only 13.27 percent of cases of orientation annual norm defined for each prosecutor.[[3]](#footnote-4)

Also, the annual work report of State Prosecutor for 2014, adopted by KPC, presents the lack of results in SPRK and the low norm of treating and solving cases in this prosecution. During 2014, this prosecution has solved a total of 78 cases, while during the same year has received 152 new cases. Referring orientation annual norm defined for SPRK prosecutors, than it appears that this prosecution office, annually should have completed 264 cases in relation to the number of 12 prosecutors who have exercised function in this prosecution office during 2014, which shows that SPRK has conducted annual norm of work for only 29.54 percent. Unlike SPRK, the prosecution alike, which operates in Croatia, with almost the same competences as SPRK, (excluding the cases of war crimes, with which they do not deal) has an excellent performance in fighting criminality. In 2012, the Special Prosecution against Organized Crime and Corruption in Croatia (USKOK) of 283 filed indictments presented in Croatian courts has managed to protect 95 percent of them, by receiving 252 conviction judgments of the filed indictments.[[4]](#footnote-5)

BP in Pristina, has engaged 13 prosecutors in the Serious Crime Department and 24 prosecutors in General Department who treat corruption cases. From the entry into force of the Action Plan until June 30, 2015, this prosecution has solved 176 cases with 366 persons.

Based on orientation norms defined for prosecutors of Serious Crime Department (66 cases per month) and prosecutors of General Department (253 cases per month), and the total number of solved cases by BP in Pristina for 20 months, 176 cases in total with 366 persons, it results for the performance of these prosecutors to be very weak.[[5]](#footnote-6)

KLI assesses that in general this is a poor performance of prosecutors in solving corruption cases, considering that almost half of them have remained unsolved and for over half of them **criminal charges were dismissed or investigations were terminated.**

KLI has consistently addressed in 5 periodic reports the concerns regarding the method of solving cases, where more than half of them are dismissed or terminated cases. This fact proves that there are serious problems in treating these cases, either to the applicants of corruption cases or to prosecutors. KLI assesses that it is the last time when KPC in cooperation with other institutions and law enforcement agencies in Kosovo to address this issue and to find the reasons where the problems lie, to the poor quality of the filing of criminal charges or to prosecutors, who do not use enough the procedural remedies provided by law regarding the detailed investigation of the suspicions presented in criminal charges regarding corruption cases. This would enable to clarify the situation and problems and help in drafting adequate criminal policies for fighting corruption.

## Identification of corruption cases

Article 5 of the Action Plan obliges BP’s and SPRK to make sure to identify corruption cases and their allocation according to case competence and the data of receipt of criminal reports..

Prosecution offices based on this plan have failed to do the categorization of these cases during the identification of corruption cases and their allocation to prosecutors based on their specialization, experience and expertise. Also, during the monitoring of corruption cases, KLI has noted cases in practice where there is not followed and implemented the Directive on defining senior level corruption signed by the Chief State Prosecutor and the Chief Prosecutor of EULEX prosecutors.[[6]](#footnote-7)

Lack of categorization of corruption cases, division and their treatment by SPRK prosecutors and prosecutors with experience, expertise and specialized in corruption cases has a direct impact also on the lack of efficiency and quality of work of the State Prosecutor.

As a result of monitoring, KLI has identified that at the end of the first half of 2015 (on June 30 ), seven BP’s and SPRK have 589 unsolved cases with 1706 persons. Of them BP in Pristina, has 367 unsolved cases with 1073 persons, which in percentage turns out that over 60 percent of all corruption cases in Kosovo are treated by this. Meanwhile, SPRK has 48 unsolved cases with 233 persons.

KLI assesses that perception and lack of public confidence regarding the effectiveness and justice institutions will in fighting corruption undoubtedly affects the fact that also nearly two years after the entry into force of the Action Plan, there are corruption cases that have not been solved yet and they are dating from 2001. This performance has undoubtedly affected to continually fall the confidence of citizens in the justice system.[[7]](#footnote-8)

Based on the data published by the fifth report of KLI, results that in prosecutions there are 222 unsolved cases with 838 persons involved, dating from previous years, from 2001 to 2013. For more details, see Table 1.

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Unsolved cases with persons (November 4, 2013- December 31, 2013) | 2001 | | 2004 | | 2006 | | 2007 | | 2008 | | 2009 | | 2010 | | | 2011 | | | 2012 | | | 2013 | | | Total: | | |
| Cases | Persons | Cases | Persons | Cases | Persons | Cases | Persons | Cases | Persons | Cases | Persons | | Cases | Persons | | Cases | Persons | | Cases | Persons | | Cases | Persons | | Cases | Persons | |
| SPRK |  |  |  |  |  |  |  |  |  |  |  |  | | 7 | 25 | | 5 | 27 | | 3 | 25 | | 8 | 40 | | 23 | 117 | |
| Pristina | 1 | 1 | 1 | 1 | 4 | 14 | 8 | 30 | 15 | 41 | 2 | 2 | | 13 | 42 | | 20 | 105 | | 32 | 111 | | 59 | 264 | | 155 | 611 | |
| Prizren |  |  |  |  |  |  |  |  |  |  | 1 | 4 | |  |  | |  |  | |  |  | | 2 | 2 | | 3 | 6 | |
| Peja |  |  |  |  |  |  |  |  |  |  |  |  | | 1 | 1 | |  |  | |  |  | | 3 | 11 | | 4 | 12 | |
| Gjilan |  |  |  |  |  |  |  |  |  |  |  |  | |  |  | |  |  | |  |  | |  |  | |  |  | |
| Mitrovica |  |  |  |  |  |  |  |  |  |  | 1 | 2 | | 1 | 2 | | 4 | 4 | | 8 | 20 | | 9 | 22 | | 23 | 50 | |
| Ferizaj |  |  | 1 | 4 |  |  | 1 | 2 |  |  |  |  | | 2 | 4 | |  |  | | 1 | 4 | | 6 | 21 | | 11 | 35 | |
| Gjakova |  |  |  |  |  |  |  |  |  |  |  |  | |  |  | |  |  | | 1 | 2 | | 2 | 5 | | 3 | 7 | |
| Total: | 1 | 1 | 2 | 5 | 4 | 14 | 9 | 32 | 15 | 41 | 4 | 8 | | 24 | 74 | | 29 | 136 | | 45 | 162 | | 89 | 365 | | 222 | 838 | |

**Table 1. Unsolved cases with persons from November 4, 2013 until December 31, 2013**

If we refer to the provisions of the Criminal Code of Kosovo, the statutory limitation of criminal prosecution has expired to a specific number of these old cases from 2001 and onwards, so at all cases that have reached the statutory limitation period prosecutions must issue a decision to dismiss criminal charges or charges received from other sources, in accordance with the Article 82 of the Criminal Procedure Code.[[8]](#footnote-9)

Some of prosecutions, especially BP in Pristina and SPRK have failed to implement the article 5 of the Action Plan, by not treating old cases dating from 2001 to 2013[[9]](#footnote-10). The fact that even in 2015, there are cases that are not solved yet by the prosecutions and cases dating from the years 2001 to 2013, proves that prosecutors and prosecutions have not examined seriously the Action Plan. Also, KPC has not established an effective and efficient mechanism, and did not use the competences defined by the law and by the Action Plan to ensure that the prosecutions will fulfill the obligations arising from the Action Plan related to corruption. Moreover, KPC has completely failed to hold accountable all those who have failed to fulfill the obligations of the Action Plan.[[10]](#footnote-11)

## Responsibilities of Chief Prosecutors according the Action Plan

According to the Action Plan, Chief Prosecutors of all prosecution offices are obliged to monitor and ensure the implementation of the obligations arising from this plan. 20 months after the entry into force of the Action Plan, some of BPs and SPRK have not yet managed to solve the priority cases, which are registered until November 4, 2013. Until this date prosecutions have registered 516 unsolved cases with 1632 persons, and until June 30, 2015 prosecutors have managed to solve cases to 937 persons or 57% of them. The large number of corruption cases, some of which date from 2001, shows that prosecutors and Chief Prosecutors have not fulfilled their obligations under the Action Plan.

## Deadlines for the implementation of the Action Plan

The article 8 of the Action Plan has provided that Chief Prosecutors must report to the relevant commission of KPC (the Anti-Corruption National Coordinator), on a monthly basis regarding the implementation of the obligations arising from the Action Plan. Moreover, the article 8 has determined that until June 2014, KPC must make at least three assessments of the implementation of this plan, including the final assessments of the overall implementation of the Action Plan.

KPC has never made such an assessment, besides receiving written reports related to cases of corruption presented at Council meetings by the Anti-Corruption National Coordinator from the Office of the Chief State Prosecutor.

Also after 20 months after the entry into force of the Action Plan, KPC has not made any analysis and verification on cases of corruption.

## Fighting high-level corruption

The fifth published report of KLI, on fighting corruption in Kosovo, according to data provided by KPC, confirmed that fighting high-level corruption in Kosovo is still based only in declarations to fight this level of corruption. The majority of cases belongs to low level corruption, while in those cases where are involved high state officials, prosecutors have dismissed criminal charges or terminated investigations to the most of them.

Since the entry into force of the Action Plan, the State Prosecutor had treated very limited cases where were involved high state officials, including MPs, ministers or other high positions. Also, the majority of those cases handled by the Prosecution offices are related to the non-declaration or false declaration of assets, cases which were filed by ACA.

From the entry into force of the Action Plan there is still no proven case where a high state official has been convicted by a final judgment by the courts or any case where were confiscated the assets obtained through criminal activities relating to corruption to any high official, which is an obligation arising from the article 7, paragraph 3, of the Action Plan. Based on the statistical data analyzed by KPC on the profile persons against whom cases have been solved, it was shown that in the most cases where were involved high state officials, the criminal charges were dismissed or investigations were terminated, while to only a small number of them were filed indictments.[[11]](#footnote-12)

It should be emphasized the practice built in Kosovo regarding the efforts to fight high-level corruption, where the law enforcement authorities in cooperation with the police have taken legal actions to arrest and detention high state officials, in certain cases were also filed indictments, but in the end they failed.[[12]](#footnote-13) KLI has consistently raised the public debate about these groundless and unjust actions which at the end have rooted the personality of certain individuals who were found not guilty, but were judged in public as corrupted persons. KLI estimates that the undertaking of investigative actions must be based on law and in a high degree of professionalism and the authorization for arresting and detention of suspects should be done only when there are reasonable and well grounded suspicions. On the contrary, based on numerous cases in which were made spectacles of arrest and were filed indictments, which have resulted in failures, KLI considers these cases as persecutions against these individuals and selective justice by judicial institutions.

## The effectiveness of judiciary in handling corruption cases

From June 2015 KLI has started monitoring corruption cases at BCs and their branches throughout Kosovo. KLI monitors in accordance with positive legislation have developed a unique methodology of monitoring and investigation of corruption cases in the courts. At first, monitors conducted interviews with all chairmen of BCs, who were notified with the KLI's project to monitor the hearings of corruption cases.

Court Presidents have cooperated closely with KLI monitors, by expressing their willingness to provide full access for monitoring in accordance with the law, and they have also provided the schedule of hearings on cases of corruption. The monitoring of court hearings has started from July 1, 2015 to August 11, 2015 and were monitored 34 court hearings (including 20 cases of corruption) in BC in Pristina (4 cases), BC in Prizren (2 cases), BC in Ferizaj (3 cases), BC in Gjilan (2 cases), BC in Peja (3 cases), BC in Gjakova (5 cases) and Branch of Kaçanik in BC Ferizaj (1 case). So far, in these 20 monitored cases and 34 hearings results that were announced 3 first instance judgments, two judgment of conviction and one acquittal. KLI is continuing to monitor all of the hearings of corruption cases on a daily basis and at the same time the team of legal advisers is analyzing materials provided by monitoring these hearings. So far as a result of the monitoring was shown that the findings are related to the legal deadlines violations by the courts in treating these cases. After completing the legal analysis relating with monitored corruption cases KLI will prepare a report with its findings and recommendations.

# Recommendations:

In order to fulfill the legal mandate of the institutions of justice and addressing and meeting the obligations of Kosovo arising from two very important processes in the way of European integration, regarding Visa Liberalization and the Stabilization and Association Agreement between Kosovo and EU, KLI issues these recommendations for the institutions of justice:

## Recommendations for Kosovo Prosecutorial Council:

1. In order to fulfill the legal mandate of the institutions of justice and addressing and meeting the obligations arising from the aforementioned two processes, based on the findings and assessments of KLI, is recommended for KLI to analyze the implementation of the existing plan, to change and meet as needed.
2. KLI has consistently offer the statement for the results of each prosecution and KPC is recommended to change and meet the Action Plan with obligations, strict and practical terms, for addressing and solving corruption cases in each prosecution.
3. KPC is recommended to do a more efficient and effective monitoring and supervision in all BP’s and SPRK regarding the treatment of corruption cases.
4. KPC in cooperation with KJC, institutions and other law enforcement should have a more proactive role in the establishment of cooperation, communication and coordination in corruption cases.
5. KPC is recommended to make an overall assessment of the implementation of obligations arising from the Action Plan and the same one should be completed in areas where there are obstacles to its implementation; particular attention should be paid to the quality of criminal charges dismissed and cases where the investigations are terminated, in order to solve this problem and to enable the creation of adequate policies for fighting corruption.
6. While meeting and changing the Action Plan, KPC is recommended to do **the categorization of levels of corruption in Prosecutions;**
7. SPRK and BP’s, based on actual cases and new cases received after the entry into force of the Action Plan must do the categorization of all cases of corruption in Prosecution, according to the Action Plan;
8. **Category 1** is recommended to include the corruption cases that fall within the competence of SPRK, which should have absolute priority. In this category should enter cases where suspected of committing the criminal offense of corruption are officials who perform higher functions, as defined in the Administrative Directive on defining senior level corruption signed by the Chief State Prosecutor and the Chief Prosecutor of EULEX prosecutors;
9. **Category 2** of corruption cases is recommended to include all cases where the monetary value of misuse exceeds 100.000 Euros and these cases should be treated with absolute priority.
10. **Category 3** of corruption cases is recommended to include all cases that have been filed before 2013, and where should be assigned a deadline of a maximum one year within which the same are completed.
11. For all corruption cases identified in Prosecutions is recommended to continue to be treated with priority by all prosecutors that have these cases.
12. KPC is recommended to prepare a special form through which will be identified and registered cases based on categories and which form will be updated on regular monthly basis.
13. KPC is recommended to prepare forms which will be included in the database, in which will be recorded the solved cases, including the positions of persons against whom cases have been solved (if the criminal charges were dismissed, investigations were terminated or indictments are filed) in order to enable accurate identification of the results of the fight against corruption.
14. For corruption cases included in **category 1 and 2**, is recommended to be treated by the prosecutors with experience and with urgency in relation to other corruption cases.
15. It is recommended to identify cases related to public procurement and the same to be treated by prosecutors with experience and anti-corruption experts in SPRK, in close coordination of activities and actions between the prosecutor of the case with the police and other independent and specialized agencies, in the treatment of these cases;
16. For prosecutors who treat corruption cases included in **category 1 and 2**, is recommended to closely cooperate and coordinate activities in all phases of criminal proceedings with the Kosovo Police, Anti-Corruption Agency and other law enforcement agencies and institutions in Kosovo.
17. KPC is recommended to make a comprehensive assessment of the implementation of the Action Plan by the end of 2015.
18. Chief State Prosecutor is recommended to appoint a prosecutor from the Office of the Chief State Prosecutor, who will be authorized to follow the print and visual media, portals and any other information, which can be considered as a base for initiating corruption cases according to official duty.

## Recommendations for Kosovo Judicial Council

1. KJC is recommended to draft an Action Plan, which corresponds to the implementation of the decision to courts to treat corruption cases with priority. It is recommended for this plan to include the identification and registration of all corruption cases and their allocation based on the age of cases (in order to avoid the possibility of statutory limitation of cases) and based on the importance of cases (high-level corruption cases must be priorities).
2. Considering that the largest number of cases of corruption filed by SPRK are in Basic Court of Pristina, and the unusually large number of indictments filed in this Court by BP in Pristina, namely the filing of indictments to 197 persons from the entry into force of the Action Plan, KLI recommends KJC and BC in Pristina, to increase the number of judges in this court, who deal with cases of the same level corruption with the number of cases filed by these two prosecutions.
3. KJC is recommended to monitor the practical implementation of its decision, to treat corruption cases with priority in all courts of Kosovo, particularly in BC of Pristina.

## Specific recommendations for BP in Pristina and SPRK:

From the entry into force of the Action Plan on November 4, 2013, KLI has monitored constantly the work of BP in Pristina and SPRK. It resulted that BP in Pristina possesses over 60 percent of all cases of corruption in Kosovo, while SPRK handles the most complex and sensitive cases related to corruption cases, including those of high level corruption. In order to increase the efficiency and effectiveness of these two prosecutions in fighting corruption, KLI issues the following recommendations:

1. BP in Pristina and SPRK have faced consistently with problems of the failure to recruit prosecutors for vacancies announced by these two prosecutions. KLI considers that KPC must urgently address this matter to ensure the efficient and effective functioning of these two prosecutions.
2. BP in Pristina and SPRK are recommended to draft Action Plans with the aim of identifying and registering all cases of corruption in these prosecutions in an internal and accessible database and only for internal needs of these prosecutions.
3. It is recommended for the Action Plan to be a detailed plan, which will include all cases that were allocated to the courts, and for each case must be included details such as the date of receipt of the criminal charge, the date of the ruling to initiate investigations, the date of filing the indictments, the information on requests for sequestration or confiscation of property acquired by criminal offenses in the indictment, the date of the initial hearing and the number of all hearings.
4. The Chief Prosecutor of BP in Pristina is recommended to establish a Commission with authority and responsibility to analyze and treat with an absolute priority all cases of corruption in this prosecution, filed from 2001 until 2013. We suggest that the purpose of this Commission must be treating these cases that are considered as “old” in order to assess whether there are cases to which the period of statutory limitation for criminal prosecution has expired or if in these cases are not found elements of criminal acts, then these must be dismissed.
5. In cases referred by the Commission, in which it is estimated that are found elements of the criminal offenses for which must undertake investigative actions in order to discover these cases, the Chief Prosecutor is recommended to allocate these cases to prosecutors who are obliged to treat with priority filed cases dating from 2001 until the end of 2013, by setting strict deadlines for their completion.
6. It is recommended for the Action Plan to develop a system of the surveillance and monitoring the work of prosecutors for all cases dating from 2001 to 2013, and to increase the control related to the actions taken by prosecutors in these cases.
7. SPRK and BP in Pristina must improve the communication and coordination with BC in Pristina in order to find possibilities of increasing cooperation for treating with priority and without delays the corruption cases filed by these two prosecutions in the Court.
8. It is recommended for the Action Plan to foresee the registration of all actions and activities taken by the prosecutor for every case of corruption;
9. For every case of corruption related to public procurement or complicated and complex cases of corruption, it is recommended to require the assistance and expertise of anti-corruption experts in SPRK;
10. It is recommended for the Action Plan to make the evaluation of corruption cases initiated by own initiative and based on the official duty, to see how many cases have ended up with the indictment and how many of them were dismissed or investigations were terminated.
11. It is recommended to discuss and evaluate the Action Plan in the panel of prosecutors at least once a month. It is recommended to prepare a written report regarding the obstacles and achievements in the implementation of this plan in order to address them urgently and to have an efficient implementation of this plan.
12. It is recommended for the Action Plan to foresee the evaluation of the implementation of the plan regarding the results and objectives implemented during three phases, and the third phase of the final evaluation is recommended to be implemented until June 31, 2016.
13. It is recommended to draft written reports for each phase of the evaluation, where will be identified the method of solving cases, the number of persons to whom criminal charges have been dismissed, the number of persons to whom investigations were terminated, the number of persons to whom were filed indictments, the number of persons convicted by a judgment of the first instance, the number of acquitted persons, and the number of the requests for sequestration and confiscation of assets.
14. The Chief Prosecutors of SPRK and BP in Pristina must establish a commission to evaluate at least 50 cases of dismissed criminal charges, which will serve to analyze the quality of these criminal charges.

1. Progress Report for Kosovo for 2014. Page 15. [↑](#footnote-ref-2)
2. **Research methology:** KLI is the only organization that monitors and assesses closely the implementation of Action Plan, from the entry into force on November 4, 2013 and further. As a result of this monitoring. KLI until now has published five (5) periodic reports. This is the sixth (6) publication, which has on focus the analysis of the Action Plan and provide concrete recommendations for drafting a new efficient and effective plan in fighting corruption. To compile this report, KLI has used a mixed methodology of research. The basis for the compilation of this report are KLI previous reports and their comprehensive approach, in which are interviewed all, including the National Anti-Corruption Coordinator, Chief Prosecutors and Administrators of Prosecutions about the implementation of the Action Plan. KLI has used the database for corruption cases, provided by KPC as well as the ongoing interviews conducted for more than 18 months with all headers of prosecutions. The database was used to identify the concerning issues relating to the implementation of the Action Plan, respectively related to solving corruption cases, the method of solving or not solving these corruption cases by prosecutors. As usually, in order to identify more accurately the problems and to offer recommendations for solutions of problems in combating corruption, namely in the efficient and effective implementation of the Action Plan, KLI has gathered and analyzed in details the relevant national and international documents, which are related to the fight against corruption in Kosovo. [↑](#footnote-ref-3)
3. **Note:** Profiled prosecutors in corruption cases, not infrequently, are charged with solving cases of other nature within the competencies of SPRK. However, the poor performance of these prosecutors is also evidenced by the low percentage of fulfillment of the annual oriented norm of SPRK, according to the Annual Work Report of SP for 2014. [↑](#footnote-ref-4)
4. KLI assesses again that working conditions and stimulation that take prosecutors in SPRK is much larger than the one that prosecutors of other prosecutions take, so in this direction, this state investment is made to produce results in fighting crime, which SPRK has in its own competences. As a comparison, KLI brings you the results of the prosecution alike in fighting corruption, which operates in Croatia. Special Prosecution against Organized Crime and Corruption in Croatia (USKOK) unlike SPRK has an excellent performance in fighting crime. In 2012, USKOK of 283 filed indictments and presented in Croatian courts has managed to protect 95 of them, by declaring 252 punitive judgments for these indictments. This testifies about the efficiency and quality of USKOK work in investigating and prosecuting high profiles. While, SPRK was founded and functionalized by the Law on Special Prosecution of the Republic of Kosovo in 2008. [↑](#footnote-ref-5)
5. ***Note:*** KLI has not been able to calculate the average of solved cases by prosecutors of BP in Pristina due to the lack of statistics on how many cases were solved by the prosecutors of the Serious Crime Department and how many of the General Department because the oriented norms of these prosecutors of both departments are very departments. [↑](#footnote-ref-6)
6. ***Note:*** Lately BP in Gjilan has filed an indictment against the Chief State Prosecutor of BP in Gjakova Mrs. ShpresaBakija. According to the Administrative Instruction of the Chief State Prosecutor and EULEX Chief Prosecutor, cases initiated against Chief Prosecutors must be treated by SPRK. [↑](#footnote-ref-7)
7. ***Note:*** In the period from November 2014 to March 2015, prosecutorial system has marked the lowest point of almost all times of public trust in the work of the prosecution by only 17% (only in 2010 was lower, 15.1%). Also, the judiciary makes no exception to the decreasing level of satisfaction with its work. The percentage of Kosovars who are satisfied with the work of Kosovo's courts has decreased from 17.2% in March 2015. While in November 2014, the satisfaction with judiciary was 22.8%. "Public Pulse 9" (Pristina: UNDP, April 2015), p.2 [↑](#footnote-ref-8)
8. ***Note***: In the previous published reports KLI has repeatedly addressed the findings of the monitoring of corruption cases in which prosecutors have violated the provisions of the Criminal Procedure Code, namely the Article 82. [↑](#footnote-ref-9)
9. ***Note***: In the Table 1 are intentionally presented old cases until 2013, where are involved 22 unsolved cases with 838 persons, while at the end of the first half of 2015 (June 30) BPs and SPRK have had 589 unsolved cases with 1706 persons. [↑](#footnote-ref-10)
10. .***Note***: From the entry into force of the Action Plan, KPC has approved constantly monitoring reports of KLI, in which were identified a series of violations and non-compliances of the Action Plan. Considering continuous failures, especially the non-compliance of the Tracking Mechanism, in February 2014 KPC has created a commission to identify cases of corruption. The commission has found major violations of all personnel and prosecutors, who had failed to meet obligations arising by the Tracking Mechanism. KPC has taken a decision to discipline all those responsible persons for the identified violations, but such a thing has never happened until now. [↑](#footnote-ref-11)
11. Musliu B. and Nimoni G. "Corruption in Kosovo 5: *Comprehensive assessment report on the effectiveness of the prosecutorial system in implementing the Action Plan on corruption cases*", page 58, published on June 25, 2015, Pristina. [↑](#footnote-ref-12)
12. ***Note:*** KLI recalls that there were efforts of the judicial authorities in Kosovo, which in front of the public opinion and media, have made arrests, have filed indictments against high state officials, but which in the end have resulted in failure. There are known such cases as the case of: the Central Bank Governor, Mr. Hashim Rexhepi, Kosovo Airport case, the case of former Adviser of the Minister of Finance and Kosovo Customs Director, Mr. Lulzim Rafuna, the case known as Collector in the Municipality of Pristina etc. [↑](#footnote-ref-13)