Kosovo HAS (NOT) high profile corruption
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ABOUT KLI
KLI, Kosovo Law Institute, is a non-governmental and non-profit organization of public policy, a think tank specialized in the justice sector.

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### Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>BC</td>
<td>Basic Court</td>
</tr>
<tr>
<td>KLI</td>
<td>Kosovo Law Institute</td>
</tr>
<tr>
<td>KJC</td>
<td>Kosovo Judicial Council</td>
</tr>
<tr>
<td>KPC</td>
<td>Kosovo Prosecutorial Council</td>
</tr>
<tr>
<td>PCCK</td>
<td>Provisional Criminal Code of Kosovo</td>
</tr>
<tr>
<td>CPCRK</td>
<td>Criminal Procedure Code of the Republic of Kosovo</td>
</tr>
<tr>
<td>CCRK</td>
<td>Criminal Code of the Republic of Kosovo</td>
</tr>
<tr>
<td>NCCRK</td>
<td>New Criminal Code of the Republic of Kosovo</td>
</tr>
<tr>
<td>LDA</td>
<td>Law on declaration of assets</td>
</tr>
<tr>
<td>LK</td>
<td>Law on Courts</td>
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<tr>
<td>LKJC</td>
<td>Law on Kosovo Judicial Council</td>
</tr>
<tr>
<td>LKPC</td>
<td>Law on Kosovo Prosecutorial Council</td>
</tr>
<tr>
<td>LSP</td>
<td>Law on State Prosecutor</td>
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<td>BP</td>
<td>Basic Prosecution</td>
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</tbody>
</table>
I. Executive summary

No final judgment has been announced imposing effective imprisonment for high–profile corruption offences. Senior public officials continue to be amnestied of a based-on investigation and professional prosecution, as well as fair, impartial and independent judgments that would result in effective imprisonment sentences.

Prosecutions and Courts have their commodity by basing their fight against corruption only against low profile and rarely they fight high-profile corruption. Prosecution offices in the year 2019, have had in work corruption cases involving 854 accused individuals, out of whom 443 low profile individuals, 357 medium profile individuals and 54 individuals are of high – profile.

Sequestration and confiscation of assets obtained unlawfully through corruption criminal offences still remains taboo and, in this regard, there is no result shown by the prosecutorial and judicial system. Prosecutors work based on the logic of filing indictments, but not also on identifying assets that are obtained unlawfully, thus submitting motions to sequestrate and confiscate assets.

Special Prosecution same as in the previous years (2016, 2017, 2018), also in the year 2019 maintains the trend of avoiding responsibility in handling corruption cases. This prosecution since January 1 until September 30, 2019 has not filed any indictment against high profile individuals regarding corruption offenses. Prosecutors within this prosecution office are not specialized in specific fields. Prosecutors in the SPRK continue to handle different cases of several fields all in the same time, such as cases of organized crime, corruption, war crimes, money laundering, murder, trafficking etc. The lack of specialization of prosecutors and the distribution of corruption cases and economic crimes to a large number of prosecutors within SPRK is a tendency and a policy of this prosecution to distribute the responsibility and accountability.

Sentencing policy in corruption cases still remains a challenge to all the judges in all Kosovo’s courts. The judicial system is unable to implement unique sentencing policy and ones that are in accordance with the spirit and purpose of the Criminal Code of Kosovo. During this reporting period, the largest number of sentences imposed by the courts are suspended punishments and punishments of a fine, then come the imprisonment punishments. However, in the year 2019, different from the previous years, for the first time, imprisonment punishments imposed by courts in Kosovo have increased.

The lack of judicial control in preliminary investigations phase still remains one of the most distinctive forms that shows persecution in investigating and prosecuting citizens or officials that are subject of criminal reports. KLI has identified this problem, still unaddressed, of conducting investigations by the police and prosecution, without an effective control of the judiciary, which enables to continue to persecute people, that cause violations of human rights and freedoms.
II. Corruption cases handled by the prosecutorial system

SP during the reporting period January – September 2019, has had in total 553 cases in work with 1289 individuals involved in corruption offences. Out of these cases, SP from previous years has inherited 274 corruption cases with 725 individuals involved, while during the reporting period has received at work 279 new corruption cases, with 564 individuals involved. (See table)

a) Investigations by the prosecutorial system in corruption cases

Table 1 – Corruption cases handled by the prosecutorial system during nine-month period of 2019.

<table>
<thead>
<tr>
<th>Prosecution office</th>
<th>Unsolved cases in the beginning</th>
<th>Individuals whose cases have remained unsolved in the beginning</th>
<th>Accepted cases – new (including severance of proceedings)</th>
<th>Suspects whose cases are accepted in work and suspects with extension of investigations</th>
<th>Total in work</th>
<th>Total individuals whose cases are in work</th>
<th>Unsolved cases and cases delegated to competence</th>
<th>Solved cases</th>
<th>Individuals whose cases are solved</th>
<th>Cases unsolved at the end</th>
<th>Individuals whose cases have remained unsolved at the end</th>
</tr>
</thead>
<tbody>
<tr>
<td>SPRK</td>
<td>17</td>
<td>93</td>
<td>12</td>
<td>70</td>
<td>29</td>
<td>163</td>
<td>2</td>
<td>13</td>
<td>27</td>
<td>150</td>
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</tr>
<tr>
<td>Pristina</td>
<td>110</td>
<td>355</td>
<td>99</td>
<td>177</td>
<td>209</td>
<td>532</td>
<td>106</td>
<td>195</td>
<td>103</td>
<td>337</td>
<td></td>
</tr>
<tr>
<td>Prizren</td>
<td>28</td>
<td>63</td>
<td>72</td>
<td>162</td>
<td>100</td>
<td>225</td>
<td>54</td>
<td>112</td>
<td>46</td>
<td>113</td>
<td></td>
</tr>
<tr>
<td>Peja</td>
<td>6</td>
<td>15</td>
<td>12</td>
<td>12</td>
<td>18</td>
<td>27</td>
<td>12</td>
<td>19</td>
<td>7</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Gjilan</td>
<td>8</td>
<td>19</td>
<td>29</td>
<td>42</td>
<td>37</td>
<td>61</td>
<td>29</td>
<td>47</td>
<td>8</td>
<td>14</td>
<td></td>
</tr>
<tr>
<td>Mitrovica</td>
<td>68</td>
<td>102</td>
<td>24</td>
<td>42</td>
<td>92</td>
<td>144</td>
<td>21</td>
<td>39</td>
<td>71</td>
<td>105</td>
<td></td>
</tr>
<tr>
<td>Ferizaj</td>
<td>22</td>
<td>63</td>
<td>14</td>
<td>20</td>
<td>36</td>
<td>83</td>
<td>21</td>
<td>33</td>
<td>15</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>Gjakova</td>
<td>15</td>
<td>15</td>
<td>17</td>
<td>39</td>
<td>32</td>
<td>54</td>
<td>18</td>
<td>25</td>
<td>14</td>
<td>29</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>274</td>
<td>725</td>
<td>279</td>
<td>564</td>
<td>553</td>
<td>1289</td>
<td>263</td>
<td>483</td>
<td>291</td>
<td>806</td>
<td></td>
</tr>
</tbody>
</table>

SP during this reporting period has solved 263 corruption cases against 483 involved individuals, respectively this institution has managed to solve 16 cases less than it has received, while it has solved corruption cases for 81 individuals less than it has received during the same period of time.

At the end of this reporting period, the SP had 291 cases left in work with 806 individuals involved in corruption offences. The largest number of cases solved during this period belongs to the Basic Prosecution in Pristina, with 106 cases and 195 individuals, while SPRK has solved only 2 cases with 13 individuals, whereas has currently in work 27 cases with 150 individuals.
Manner of solving corruption cases by SP

SP during this reporting period has resolved corruption cases against 483 individuals, where against 216 individuals the criminal reports were dismissed, against 116 individuals the investigations were terminated, meanwhile against 147 individuals the indictments were filed. In percentage turns out that SP against 69% individuals has closed cases, while against 31% of individuals has filed indictments. (See table)

<table>
<thead>
<tr>
<th>Prosecution office</th>
<th>Total individuals</th>
<th>Criminal report was dismissed</th>
<th>Measures for psychiatric treatment</th>
<th>The investigation is terminated</th>
<th>Indictment for punitive order</th>
<th>Direct indictment was filed</th>
<th>Indictment filed after conducting investigations</th>
<th>Other manner (joint procedure)</th>
</tr>
</thead>
<tbody>
<tr>
<td>SPRK</td>
<td>13</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pristina</td>
<td>195</td>
<td>72</td>
<td>1</td>
<td>61</td>
<td>1</td>
<td>1</td>
<td>59</td>
<td></td>
</tr>
<tr>
<td>Prizren</td>
<td>112</td>
<td>67</td>
<td>17</td>
<td></td>
<td></td>
<td></td>
<td>27</td>
<td>1</td>
</tr>
<tr>
<td>Peja</td>
<td>19</td>
<td>5</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td></td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Gjilan</td>
<td>47</td>
<td>26</td>
<td>8</td>
<td>3</td>
<td>1</td>
<td></td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Mitrovica</td>
<td>39</td>
<td>20</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td></td>
<td>15</td>
<td>2</td>
</tr>
<tr>
<td>Ferizaj</td>
<td>33</td>
<td>19</td>
<td>6</td>
<td>1</td>
<td></td>
<td>1</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>Gjakova</td>
<td>25</td>
<td>7</td>
<td>7</td>
<td></td>
<td></td>
<td></td>
<td>11</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>483</td>
<td>216</td>
<td>116</td>
<td>1</td>
<td>7</td>
<td>139</td>
<td>3</td>
<td></td>
</tr>
</tbody>
</table>

Table 3 – Manner of solving corruption cases in prosecutorial system.

SPRK during this reporting period has terminated investigations against 13 individuals, whereas it has not dismissed criminal report or file any indictment.
b) Preliminary investigation of corruption by the prosecutorial system

SP started the year 2019 with 597 corruption cases with 1065 individuals involved in the preliminary procedure. While during the reporting period SP has received 314 new cases with 601 individuals involved, which in total means that the Prosecution office during this year, until the end of September has had a total of 911 cases in work, involving 1666 involved.

During this reporting period, the Prosecution office closed 310 cases with 539 individuals, while in work, there were still unsolved 601 cases with 1127 individuals. (See table)

> Table 4 – Initiation of cases for preliminary investigations in prosecutorial system.

<table>
<thead>
<tr>
<th>Prosecution office</th>
<th>Unclosed – unsolved information at the beginning</th>
<th>Individuals whose cases have remained unsolved at the beginning</th>
<th>Received – new information</th>
<th>Suspects whose cases have been received in work and suspects with extension of the investigation</th>
<th>Total cases – information in work</th>
<th>Total individuals whose cases are in work</th>
<th>Finished information – closed</th>
<th>Individuals regarding whom information are closed</th>
<th>Unclosed – unsolved information at the end</th>
<th>Individuals whose cases have remained unsolved at the end</th>
</tr>
</thead>
<tbody>
<tr>
<td>SPRK</td>
<td>31</td>
<td>96</td>
<td>32</td>
<td>75</td>
<td>63</td>
<td>171</td>
<td>18</td>
<td>50</td>
<td>45</td>
<td>121</td>
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<tr>
<td>Pristina</td>
<td>375</td>
<td>636</td>
<td>137</td>
<td>230</td>
<td>512</td>
<td>866</td>
<td>184</td>
<td>311</td>
<td>328</td>
<td>555</td>
</tr>
<tr>
<td>Prizren</td>
<td>21</td>
<td>35</td>
<td>42</td>
<td>82</td>
<td>63</td>
<td>117</td>
<td>31</td>
<td>56</td>
<td>32</td>
<td>61</td>
</tr>
<tr>
<td>Peja</td>
<td>20</td>
<td>45</td>
<td>65</td>
<td>132</td>
<td>85</td>
<td>177</td>
<td>42</td>
<td>69</td>
<td>43</td>
<td>108</td>
</tr>
<tr>
<td>Gjilan</td>
<td>1</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>4</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Mitrovica</td>
<td>67</td>
<td>107</td>
<td>7</td>
<td>35</td>
<td>74</td>
<td>142</td>
<td>5</td>
<td>5</td>
<td>69</td>
<td>137</td>
</tr>
<tr>
<td>Ferizaj</td>
<td>53</td>
<td>100</td>
<td>12</td>
<td>13</td>
<td>65</td>
<td>113</td>
<td>20</td>
<td>34</td>
<td>45</td>
<td>79</td>
</tr>
<tr>
<td>Gjakova</td>
<td>30</td>
<td>46</td>
<td>18</td>
<td>30</td>
<td>48</td>
<td>76</td>
<td>10</td>
<td>14</td>
<td>38</td>
<td>62</td>
</tr>
<tr>
<td>Total</td>
<td>597</td>
<td>1065</td>
<td>314</td>
<td>601</td>
<td>911</td>
<td>1666</td>
<td>310</td>
<td>539</td>
<td>601</td>
<td>1127</td>
</tr>
</tbody>
</table>

c) Filing of indictments for corruption and the profile of defendants

KLI has continued to monitor and analyze the profile of perpetrators of corruption offences based on information published by the SP on the official website of the State Prosecutor, regarding indictments against perpetrators of corruption offences during the period January – November 2019.

During this reporting period, SP has published special announcements for filing of 29
indictments for corruption offences, against 60 individuals.

The profile of the individuals indicted include police officers, municipal officials, Vehicle Registration Center Administration officials, businessmen and other individuals, mainly low-level. Whereas, for 12 individuals there is no information on which profile they belong to. However, only one indictment filed during this reporting period include a high-profile individual – the Mayor of Klina Municipality, Zenun Elezaj.

According to the indictments filed by prosecution offices, only in some of them there is information regarding the amount of the damage caused, meanwhile there is no information whether they have filed requests for sequestration or confiscation of property acquired through criminal offence.

According to published data, it turns out that the most efficient prosecution office during this period is BP in Prizren with 18 indictments against 26 individuals. Further, SPRK has filed 3 indictment against 14 individuals, BP in Peja has filed 3 indictments against 7 individuals, BP in Ferizaj has filed 2 indictments against 4 individuals, BP in Gjilan has filed 1 indictment against 6 individuals, BP in Gjakova has filed 1 indictment against 2 individuals and BP in Mitrovica has filed 1 indictment 1 individual. *(See chart)*

![Chart 3 – Number of indictments filed by prosecution offices and the number of defendants.](chart)

According to the monitoring of SP’s reports, it turns out that this institution does not always send special announcements on the filing of indictments for corruption offences, but only in certain cases, such as those mentioned above.

Moreover, there are cases when SP does not report at all the filing of a corruption indictment, such as the indictment of BP in Pristina in April this year, against the police officer Jeton Menxhiqi, for the criminal offence “abusing official position or authority”.

9
III. Performance of the Special Prosecution in the fight against corruption

The Special Prosecution of the Republic of Kosovo established on 2007 from UNMIK as the Office of Special Prosecutor of Kosovo, in the year 2008 based on the Law for Special Prosecution of the Republic of Kosovo is established as a permanent and specialized prosecutorial organ that acts within the State Prosecutor. This prosecution has a mandate and jurisdiction in the whole territory of the Republic of Kosovo, in investigating and prosecuting perpetrators of criminal offences provided by the law, where special (exclusive) and complimentary competencies are part of it.

SPRK started the year 2018 with 18 corruption cases inherited from the previous years with 66 individuals involved. During this reporting period (January 1 – September 30, 2019) this prosecution has admitted 15 new cases with 77 individuals involved. SPRK during this reporting period has solved 5 corruption cases with 20 individuals involved. Out of 20 individuals that are subject of criminal proceedings in SPRK, against 13 of them the investigations were terminated and against 7 others the case has been solved in other ways, respectively based on the practice installed from this prosecution, cases against these individual haves been sent in competence to the other competent Basic Prosecutions.

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Cases</td>
<td>Individuals</td>
<td>Cases</td>
<td>Individuals</td>
<td>Cases</td>
<td>Individuals</td>
</tr>
<tr>
<td>SPRK</td>
<td>18</td>
<td>66</td>
<td>15</td>
<td>77</td>
<td>5</td>
</tr>
</tbody>
</table>

Table 8 – Corruption cases handled by PSRK during the nine-month period of 2019.

The Government and the Assembly of Kosovo in order to achieve specific results in fighting organized crime, high level corruption, Money laundering criminal offenses and financing terrorism, war crimes and serios criminal offences, at the end of the year 2018, has approved the new Law on Courts \(^1\). Through this law, was decided to change the internal organization of the Basic Court in Pristina and the Court of Appeals, through the establishment of the Special Department for Cases in Competence of Special Prosecution of the Republic of Kosovo, all over the territory of the Republic of Kosovo.

\(^1\) Law No. 06/L-054, on Courts, Official Gazette of the Republic of Kosovo, No 22, December 18, 2018.
Kosovo Judicial Council in accordance with the obligations deriving from the Law on Courts during the second part of the year 2019 was able to complete the process of recruitment, as well as to functionalize these two departments in the Basic Court in Pristina and the Court of Appeals.

Based on the law, these two departments have competence and responsibility to adjudicate all criminal offences initiated by the SPRK, part of which are also criminal offenses of corruption.

Since the functionalization of the special department in the Basic Court in Pristina, SPRK during 2019 (January 1 – September 30) has not filed any indictment against high profile individuals regarding corruption offenses. On the other hand, as for the cases adjudicated in the Special Department, there is a new indictment filled form the SPRK for corruption offenses, but not against high profile individuals, as well as there are cases that are being handled in this Department, that are cases transferred from the Serious Crimes Department.

Even though the Law on SPRK has provided that this prosecution office has the right to exercise complementary powers in handling corruption cases, in the last four years in the same way this institution is avoiding exercising such power.

This is affirmed with the fact that SPRK “uses so little the exercise of complementary powers while handling corruption cases. While this prosecution office in the year 2016 had received 12 corruption cases, in the year 2017 has received only four new cases, whereas in the year 2018 has received six new corruption cases.”

If SPRK continues with this trend of avoiding responsibility while handling corruption cases, including high profile corruption, then even the establishment of special departments within the Basic Court in Pristina and the Court of Appeals, will lose its purpose and meaning regarding which were established in the first place.

Another distinctive of SPRK is the fact that prosecutors within this prosecution is related to the fact that prosecutors in this prosecution office are not specialized in specific fields, including the specialization in corruption cases and economic crimes. Prosecutors in the SPRK continue to handle different cases of several fields all in the same time. Now it is a practice that SPRK prosecutors in the same time investigate cases of organized crime, corruption, war crimes, Money laundering, murder, trafficking etc.

Such approach of prosecutorial system and the SPRK directly affects the distribution of responsibility to all prosecutors and the reduction of efficiency at work.

SPRK at the end of this reporting period has 27 corruption cases unsolved with 150 individuals involved.

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Kosovo Police still remains the largest submitter of corruption cases also in SPRK, with 68 cases, then come the citizens with 29 cases and with 30 cases received in competence from the Basic Prosecutions in Kosovo.

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Individuals</td>
<td>Individuals</td>
<td>Individuals</td>
<td>Individuals</td>
<td>Individuals</td>
</tr>
<tr>
<td>Anti Corruption Agency</td>
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<td>1</td>
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<td>1</td>
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</tr>
<tr>
<td>Kosovo Police</td>
<td>9</td>
<td>24</td>
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<td>1</td>
</tr>
<tr>
<td>Citizen</td>
<td>31</td>
<td>15</td>
<td>9</td>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>Prosecutor with self initiative</td>
<td>12</td>
<td></td>
<td>12</td>
<td></td>
<td>12</td>
</tr>
<tr>
<td>Received in competence</td>
<td>9</td>
<td>25</td>
<td>4</td>
<td>4</td>
<td>30</td>
</tr>
<tr>
<td>Kosovo Customs</td>
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<td>EULEX</td>
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<td>6</td>
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<tr>
<td>Total:</td>
<td>66</td>
<td>77</td>
<td>20</td>
<td>13</td>
<td>7</td>
</tr>
</tbody>
</table>

Table 9 – Corruption cases handled by SPRK based on the submitters for the nine-month period of 2019.

Similar situation can be found in the cases registered as PPN. SPRK at the beginning of the year 2019 had inherited 33 cases with 39 individuals from prior years, while during the reporting period has received 55 cases with 138 individuals involved. From 1 January until September 30, 2019, SPRK has solved 51 cases with 134 individuals, where against 48 individuals the investigations have been closed, in no case was filed an indictment and against 86 individuals, cases were solved in another manner.

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
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Table 10 – Preliminary corruption cases handled by SPRK during the nine-month period of 2019.

The largest number of reporting cases PPN in the SPRK come from citizens, against 55 individuals, then comes the Kosovo Police with cases against 25 individuals.
Table 11 – Preliminary corruption cases handled by SPRK based on submitters during the nine-month period of 2019.

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IV. Sentencing policy of corruption cases based on the Tracking Mechanism – KJC

Sentencing policy in corruption cases remains still low, which is mostly based on imposing suspended punishments and punishments of a fine. KLI assesses that such sentences do not achieve its purpose, considering that the corruption phenomenon remains to be seen as the cancer of society, economic development and European perspective.

Sentencing policy based on a comparative analysis of the first nine months of 2018 and 2019, results that in the first nine months of 2019 have been solved 37 less cases that in the first nine months of the year 2018. (See chart)
Different from the year 2018, in the year 2019 imprisonment punishments have increased, whereas suspended punishments, punishments of a fine and judgments of acquittal have decreased. (See chart)
V. Monitoring of corruption cases by KLI

KLI researchers from January 1 until November 30, 2019 have monitored 908 court hearings, of 296 corruption cases involving 854 individuals. (See the chart below).

![Chart 6 – Corruption cases monitored by KLI (January 1 – November 30, 2019).](chart6)

a) Special analysis of corruption cases
In these 296 cases of corruption monitored by KLI during the period January 1 – November 30, 2019, are involved all profiles of the defendants. Out of 854 defendants, 443 belong to low profile, 357 belong to medium profile and 54\(^3\) belong to high profile. (See chart)

![Chart 10 – Profile of the defendants in corruption cases (January – November 2019).](image)

b) Sentencing policy in corruption cases

KLI assesses that the sentencing policy in corruption cases is still soft. During this reporting period, KLI has reported of 138 judgments announced by the Basic Courts in the Republic of Kosovo in corruption cases, against 249 individuals involved in corruption cases. Out of those, 219\(^4\) individuals are accused of several corruption offenses, whereas 30 of them are involved in these cases, but are charged with non-corruptive offenses.

In these cases of corruption in which the judgment was announced, all profiles of the accused individuals were included. Out of these, 74 individuals belong to low profile, 118 medium profile and 27 individuals belong to high profile. (See chart)

![Chart 12 - Profile of accused individuals for corruption criminal offences, against whom a judgment was](image)

\(^3\) Clarification: The profile data for senior officials have been calculated based on the Instruction of the Chief State Prosecutor, when a corruption offense will be considered high-level, divided by the position and value of the damage caused (November 3, 2016)

\(^4\) Clarification: Of 170 accused individuals for corruption offenses, against whom during this reporting period a judgment was announced from the first instance, 2 of them are involved in more than one case.
announced by a Basic Court, during the reporting period (January - November 2019).

Part of high profile individuals against whom the Basic Courts have announced judgments are: former MP Naser Osmani (judgment of acquittal), former Mayor of Klloko't Sasha Mirko'qi (judgment of acquittal in three cases), former Minister of Health Ferid Agani (judgment of conviction – 30 months of effective imprisonment), former Mayor of Skenderaj Municipality Sami Lushtaku (judgment of acquittal), former PRB Head Hysni Hoxha (judgment of acquittal), former Mayor of Kline Municipality Sokol Bashota (judgment of conviction – six months of suspended imprisonment and 1000 euros of fine). Because of the large amount of the damage that is allegedly caused by committing criminal offenses, as high profile are lined also officials of the Kosovar Privatization Agency (KPA) Melita Ymeraga, Adrian Kelmendi, Bahri Shabani, Shkëlzen Lluka and Naim Avdiu (judgment of acquittal),
former secretary of the Ministry of Health Gani Shabani (judgment of acquittal – 24 months of effective imprisonment), former secretary of Ministry of Health, Ilir Tolaj and the other four defendants, as officials of this ministry, Arbenita Pajaziti, Hajrullah Fejza, Zenel Kuqi e Bekim Fusha (judgment of acquittal for each of them), former Director of KEK Arben Gjukaj (judgment of acquittal), the official of KEK Azem Duraku (judgment of acquittal), former Director of procurement in KEK Driton Pruthi (judgment of acquittal), businessman Esat Tahiri (judgment of acquittal), KFOR contractors on cigarette import (judgment of conviction – 24 months of suspended imprisonment each).

KLI without commenting the merits of decision making on these corruption cases, expresses its concern that the sentencing policy that is implemented by judges in corruption cases is not sending a clear message to the potential perpetrators of such criminal offences. These soft punishments imposed cannot reach their purpose for which the punishment is imposed either the purpose of punitive character, against those who were found guilty of committing criminal offenses, or preventive character, that makes unable to send a clear message to individuals who may be subject of committing criminal offenses of corruption.

VI. Handling of corruption cases by the Court of Appeals

Within the systematic monitoring of the judicial system in Kosovo, the KLI during the year 2019, has also monitored the Court of Appeals.

For this reporting period (January 1 - November 30, 2019), KLI’s monitors have monitored a total of 212 hearings held at the Court of Appeals, of which 33 were corruption cases with a total of 63 defendants charged with criminal offences of corruptive nature, whereas, other monitored hearings were related to other criminal offences.

Out of these 33 monitored hearings, only one was adjourned due to the request of the defense attorney of a defendant, whereas the small number of public hearings held in the Court of Appeals for corruption cases, reflects better also the soft sentencing policy that the courts in Kosovo implement in corruption cases.
This is because the law itself, in particular paragraph 1 of Article 390 of the Criminal Procedure Code of the Republic of Kosovo enables the Court of Appeals to hold public hearings only in cases when the sentences imposed by the first instance are of effective imprisonment, and such a thing is rare in corruption cases in Kosovo.

As in the past, neither during this year, there was not announced even one judgment of conviction with effective imprisonment for any of the accused of high-profile regarding corruption cases.

Furthermore, the Court of Appeals during this period has annulled a first instance judgment, which in a high-profile case had imposed sentence with three years effective imprisonment for corruption and returned this case to retrial. Whereas the Court of Appeals returned also the case of former Mayor of Klinë, Sokol Bashota, who was convicted by the first instance court with six months of suspended imprisonment and 1000 euro fine for Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial.

Otherwise, during this period, the Court of Appeals has decided regarding the appeals of the parties even in some of high-profile cases.

- On May 30, 2019, the Court of Appeals had finally acquitted from charges of corruption acting Deputy Prime Minister, Fatmir Limaj, the acting Minister of Trade and Industry, Endrit Shala, and three other accused in the MTPT case, Shpëtim Telaku, Nexhat Krasniqi and Florim Zuka. The second instance rejected the appeal of the Special Prosecution of the Republic of Kosovo (SPRK), which, because of allegations that the judgment of the Basic Court was involved with the violations, demanded that the case be returned in retrial.

- Limaj and others in this case were charged of organized crime related to the criminal offences of “Abusing official position or authority”, “Accepting Bribes”, “Giving bribes”, “Abuse of authorizations in economy” and “Non declaration of money received for campaign”.

For this case, the first indictment was filed on December 5, 2012, the second indictment on February 19, 2014, whereas the consolidated indictment was filed by the SPRK on September 28, 2015, by which the two previous indictments of MTPT 1 and MTPT 2 cases were attached.

Regarding this indictment, the Basic Court in Pristina issued a judgment of acquittal for all the accused on November 24, 2017, while the Court of Appeals had more than a year to decide on the appeal of the SPRK against the judgment of the Basic Court.

- Less than that, the Court of Appeals needed to annul a judgment of conviction announced in a high – profile case, such as the “Ferronikeli” case, where charged for corruption is the former Mayor of Lipjan, Shukri Buja, as well as the accused Nebih Zeqiri, Halit Gashi, Magbule Sadiku, Fahri Retkoceri, Hasim Vishesella, Edmond Rehxhepi, Driton Avdiu, Burim Kodra and Bajram Rizani.
Criminal offences by which the accused are charged in this case are, “Abusing official position”, “Illegal construction works”, “Giving bribes”, “Accepting Bribes”, and “Trading in influence”.

This case, which is also targeted for visa liberalization, was one of the rare cases where courts in Kosovo have imposed effective imprisonment sentences for the accused of high profile, such as Buja in this case.

However, the judgment of the Basic Court issued on November 5, 2018, which sentenced Buja with three years’ imprisonment for corruption, was annulled by the Court of Appeals on June 12, 2019, because, as stated in the Court of Appeals’ decision, the judgment of the Basic Court was involved with essential violations of the procedural provisions.

Except Buja, the first instance found guilty for abusing official position, the other accused in this case, Nebih Zeqiri, who was sentenced with two years and six months imprisonment, Halit Gashi with six months’ imprisonment, Edmond Rexhepi with six months’ imprisonment, Bajram Rizani with six months’ imprisonment, while Hasim Vishesella was found guilty of accepting bribes and sentenced with five months’ imprisonment.

Whereas, Magbule Sadiku, Burim Kodra and Driton Avdiu were acquitted from charges, while against businessman Fahri Retkoceri, was rendered a judgment of acquittal for the criminal offence illegal construction works, whereas a rejection judgment due to statutory limitation was rendered for the criminal offence of giving bribes.

- On August 26, 2019, the Court of Appeals finally acquitted from charges for corruption the former director of the Kosovo Accreditation Agency (KAA), Basri Muja, the former head of the State Council of Quality (SCQ), Ferdije Zhushi - Etemi and Armend Muja.

In this case, which is also targeted for visa liberalization, the Court of Appeals affirmed the judgment of the BC in Pristina, which on January 29, 2019, acquitted from some points of charges Basri and Armend Muja and Ferdije Zhushi-Etemi, whereas for some other counts of the indictment had rendered a rejection judgment.

- The Court of Appeals, on March 28, 2019, sentenced with effective imprisonment, former deputy of the Kosovo Assembly, Etem Arifi. Arifi, who was sentenced from the first instance with two years suspended imprisonment for the criminal offence of Fraud with subsidies, the Court of Appeals imposed harsher sentence, by convicting him with effective imprisonment of a year and three months.

Also, the second instance imposed a harsher sentence to the other accused in this case, Bajram Gashi, imposing him a punishment of one-year effective imprisonment, unlike the first instance who sentenced Gashi with two years of suspended imprisonment for the criminal offence of Fraud with Subsidies.

The second instance court obliged both the accused to compensate the damage caused to Ministry of Labor and Social Welfare (MLSW) in the amount of 22,900 euros whereas the Office of the Prime Minister in the amount of 2,749 euros.

Also, the Court of Appeals annulled the judgment of the Basic Court regarding the criminal offence of Trading in Influence for which MP Arifi was acquitted from the
charges from the first instance, returning the case in retrial. However, this judgment of the Court of Appeals was annulled by the Supreme Court and the case was returned to reinstatement, after the Supreme Court found that the same judge who had decided regarding the appeals at the confirmation stage of the indictment had also attended the college that had rendered the judgment in this case. Even after the case was returned to reinstatement, a new trial panel of the Court of Appeals rendered the same judgment in this case, convicting former MP Arifi and the defendant Gashi regarding the criminal offence Fraud with subsidy, while Arifi’s case regarding the criminal offence trading in influence returned to retrial.

On October 22, 2019 the Court of Appeals annulled the judgment of the Basic Court in Peja and returned the case to retrial regarding the offence Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial, for the former Mayor of Klina Municipality, Sokol Bashota and former Deputy Mayor of this Municipality, Enver Berisha. Based on the decision of the Court of Appeals, the first instance court in its judgment did not present reasoning for each count of the judgment, has not sustained the proof of the contradictory evidence and the reasons on which it is grounded when establishing the existence of the criminal offence. According to the Court of Appeals, the first instance judgment was rendered in violation of the essential provisions of criminal proceedings, that have affected the wrong affirmation and incomplete factual situation, therefore it is obliged to return the case to retrial again.

During this period, the second instance had high profile cases also in the stage of affirmation of the indictment.

- The Court of Appeals rejected the appeals of the defendants and affirmed the indictments in th cases of former Mayor of Gjakova, Pal Lekaj, former Mayor of Gjilan, Qemajl Mustafa, former Mayor of Suhareka Municipality, Sali Asllanaj, as well as Mayor of Istog Municipality, Haki Rugova.
- The indictment against the former Mayor of Municipality of Drenas, Nexhat Demaku, remained in force, but this happened because previously the Court of Appeals had once returned in reinstatement the judgment of the Basic Court.
- Also, on August of this year, the Court of Appeals rejected the appeals of the accused and let in force the case known as “Veterans”, where accused for corruption are Nuredin Lushtaku, Sadik Halitjahja, Shkumbin Demaliaj, Qelë Gashi, Shukri Buja, Ahmet Daku, Rrustem Berisha, Faik Fazliu, Smajl Elezaj, Fadil Shurdhaj and Xhavit Jashari.
- Whereas, in a rare case, the Court of Appeals had annulled the judgment of the Basic Court in Pristina which had dismissed the indictment against former chiefs of Kosovo Telecom, Agron Mustafa, Ejup Qerimi and Rexhë Gjonbalaj, instructing the first instance that in this case shall proceed to adjudicate the accused.

In other cases, where are not involved the accused of high profile, the Court of Appeals, decided for the second time regarding the appeals of parties in the case known as “Contract”, where charged of fraud in office are Hakif Veliu and Albert
Rakipi.
The first time, the Court of Appeals had decided for this case on May 2, 2018, in which Veliu and Rakipi were sentenced with one year effective imprisonment for the criminal offense of “fraud in office”, unlike the first instance which adjudicated two of the accused with six months of imprisonment with the possibility of replacing it with a punishment of a fine from 10 thousand euros, each separately. However, this case was returned in reinstatement by the Supreme Court, but on April 16, 2019, the Court of Appeals again rendered the same judgment as the first time, so Veliu and Rakipi were sentenced again with one-year effective imprisonment. In this case was included also the former Rector of the University of Pristina, Enver Hasani, but he was acquitted by the Court of Appeals on May 2018, a decision which was then affirmed by the Supreme Court.

- On January 31, 2019, the Court of Appeals returned in retrial the case of the former judge of the Basic Court in Peja, Branch in Deçan, Safete Tolaj, her son, Fisnik Tolaj, and police officer, Granit Shehaj, since according to the Court of Appeals, the judgment of the Basic Court is involved in a substantial violation of the essential provisions of the criminal proceedings. According to the Court of Appeals’ decision, as to the rejected part which relates only to the criminal offence of “Unauthorized ownership, control or possession of weapons” for the accused Fisnik Tolaj, the judgment was affirmed. Former Judge Tolaj and the accused Shehaj, on July 13, of 2018 were found not guilty on all counts of the indictment, while Fisnik Tolaj was sentenced with a unique sentence of four years and six months of imprisonment after being found guilty for two criminal offences, “trading in influence” and “falsifying the document”. This case is targeted for visa liberalization.
- During this period, the second instance affirmed the judgments of acquittal in the case of members of the Procurement Review Body (PRB), Tefik Sylejmani and Ekrem Salihu, who were charged of abusing official position or authority. The second instance court rejected the appeal filed by the Basic Prosecution in Pristina, which had requested from the Court of Appeals to find the accused guilty or to return the case in retrial.
- Also, the judgments of acquittal of the first instance were also affirmed by the Court of Appeals in the case of former Director of the Youth and Sports Palace, Bajram Uka, Inspector of Kosovo Tax Administration (KTA), Violeta Januzi and Head of the Procurement Office at the Regional Hospital “Dr. Sami Haxhibeqiri”, in Mitrovica, Zylfije Halili. All of them were accused of having committed the criminal offence of “abusing official position or authority”.
- Affirmation of the first instance judgment, but this time judgment of conviction, the Court of Appeals rendered in the case of the Director of Regional Hospital “Isa Grezda” in Gjakova, Ahmet Asllani and five others charged regarding a tender for the supply with uniforms of this hospital. In this case, with six months of suspended imprisonment for the criminal offense “abusing official position or authority”, were sentenced Asllani and the other accused, Adnan Brovina, for trading in influence was sentenced Skender Ndrecaj and Mirlinda Mullahasani and Mentor Bytyqi for the
criminal offence of falsifying of official document. Also for official document forgery, **Kumrije Kameri** was sentenced with three months of suspended imprisonment, if within a year she does not commit another criminal offence. Sentences against these defendants will not be executed if the accused do not commit other criminal offences during the verification period of one year when the judgment becomes final.

Whereas, it was ordered the severance of proceedings against the accused of un-loyal economic activity, **Mirlinda Shehu-Kaqi** and **Flamur Zeneli**, because against these two was reached the relative statutory limitation of criminal prosecution.

- The sentences imposed by the first instance, the Court of Appeals also affirmed against **Nexhmi Ejupi**, who was accused that had attempted to give 50 euros bribe to the police officers, and also in another case, two other police officers, **Arben Shala** and **Tafa Murseli**, who were charged that had received 100 euros to not initiate a criminal case.
- Also, the Court of Appeals affirmed the sentence against the former Director of the Department of Urology at the University Clinical Center of Kosovo (UCKK), **Rexhep Kasumaj**. Kasumaj was sentenced for accepting bribes with nine months of effective imprisonment and a fine of 2000 euros.
- On October 4, 2019, the Court of Appeals affirmed the effective imprisonment sentence against the former official of the Kosovar Privatization Agency, **Taulant Tahirosylaj**. Thus, the Court of Appeals rejected the defendant’s appeal submitted against the judgment of the Basic Court in Pristina, which on June 6, 2019, found him guilty of abusing official position or authority and sentenced him to 10 months of imprisonment.

The Court of Appeals was shown “mercifully” in two cases where a large number of police officers were involved.

- For 15 out of the 20 Kosovo Police officers, sentenced by the Basic Court in Prizren on May 2019 for accepting bribes, the Court of Appeals, on January 2018 reduced their sentences. The accused that benefited from this reduction of sentences were **Shemsi Demolli**, **Safet Veliu**, **Naser Rama**, **Ivica Djokic**, **Ismail Azemi**, **Blerim Zyllaj**, **Bekim Zogaj**, **Qerim Beqiri**, **Azem Goxhufi**, **Sasha Nedeljekovic**, **Shaban Gerguri**, **Lulzim Gashi**, **Shefki Zeka**, **Muhamed Buzhala** and **Alush Elshani**. Whereas, the second instance court had decided to reject the appeals of the accused **Ardian Rrecaj**, **Shemsi Zejnullahu**, **Aziz Krasniqi**, **Nuhi Zogaj** and **Afrim Rafuna**.
- On March 2019, the Court of Appeals halved the sentences of a punishment of a fine to former officials of Kosovo Police **Neshat Avdaj**, **Driton Bajrami**, **Myzafer Sylejmani** and **Binak Bytyqi**, sentenced by the first instance for accepting bribes.
- Further, in other cases decided by the Court of Appeals during the first nine months of 2019, can also be found the case of the inspector of municipality of Kamenica, **Sadullah Dërmaku**, who was twice found guilty by the first instance, but early on, the judgments are annulled by the Court of Appeals and the case is currently being
handled by the Basic Court in Gjilan for the third time.

- The Court of Appeals had also returned to retrial, the case of former director of Education in the municipality of Mitrovica, **Ajmane Barani** who previously was found not guilty by the Basic Court in Mitrovica.
- On November 6, 2019, the Court of Appeals had decided to annul the judgment of the first instance court, which had acquitted of charges of abusing official position or authority the officials of Pristina Municipality, **Shiqeri Spahiu, Ramush Thaqi and Doruntina Peqani**. This case, part of which was sentenced from the first instance court **Naim Dushku** for the criminal offence fraud, the Court of Appeals returned to retrial because it assessed the appeals of the prosecution as grounded regarding the erroneous and incomplete determination of the factual situation.
- After having passed more than 10 years since the prosecution alleged that the former board member of the Regional Water Company “Hidrodrini”, in Peja, **Elez Hajdaraj**, had committed the criminal offence of misappropriation in office, the Court of Appeals has concluded that this offence has already reached the statutory limitation period. Because of this, on May 17, 2019, the Court of Appeals decided to reject the charge for this offense against Hajdaraj, while the second instance also rejected the appeal of the Basic Prosecution in Peja regarding the other criminal offence of which Hajdaraj was charged, the one of Intimidation during criminal proceedings, thus acquitting the accused of this charge.
- The Court of Appeals has finally acquitted from charges of abusing official position, the former procurement official of the Regional Garbage Company (RGC) “Pastërtia” in Ferizaj **Ilir Beqiri**. The special thing of these two cases, of Elez Hajdaraj and Ilir Beqiri, is that the Court of Appeals had to decide three times in each of them.

VII. Handling of corruption cases by the Supreme Court

Kosovo Law Institute, during 2019, has also monitored the Supreme Court, where the latter has decided in several corruption cases, including high-profile officials.

Considering that the Supreme Court does not schedule public hearings unless in cases when the Court of Appeals amends the acquittal judgment of the Basic Court and replaces it with a judgment of conviction, as well as in cases of imposing maximum sentences or life sentences, the monitoring of the Supreme Court has been more focused on analyzing decisions and legal opinions issued by this court.

In at least five cases that KLI has monitored during this period, it is proven that the Supreme Court found violations committed by the lower instances of the judiciary in favor of the accused for corruption, but since it’s legally impossible for this court to return such to retrial, the Supreme Court had only found the aforementioned violations.

This situation happens considering Article 438, paragraph 2 of the Criminal Procedure Code of the Republic of Kosovo, which provides that if the Supreme Court of Kosovo finds that a
request for protection of legality filed to the disadvantage of the defendant is well-founded, it shall only determine that the law was violated but shall not interfere in the final decision.

- On January 21, 2019 the Supreme Court panel of judges consisting of Valdete Daka, Nesrin Lushta and Agim Maliqi rendered a judgment by which found that the judgment of the BC in Prisitna and the one of the Court of Appeals, in the case of former Mayor of Obiliq Municipality, Mehmet Krasniqi, regarding the acquittal, was rendered in violation of essential procedural provisions. Whereas, regarding the other part of the aforementioned judgments, the Supreme Court rejected the request for protection of legality filed by the State Prosecutor as ungrounded.

On May 2017, the BC in Pristina, because of the lack of evidence acquitted of charges of abusing official position, former Mayor of Obiliq municipality Mehmet Krasniqi and other municipal officials Xhatit Krasniqi, Haki Raqi, Nazmi Gashi, Ramadan Hashani, Bajram Paloji, Azem Spanca and Altin Prengi, whereas Hasnije Dushi was acquitted of charge fraud in office.

Meanwhile, against the accused of fraud, Emir Sopjani and Sami Kadriu, the court rendered a judgment of conviction, imposing them a sentence of 1 year and 6 months of suspended imprisonment each, whereas Bujar Alidema and Shpend Kelmendi were sentenced to 2 years of suspended imprisonment and 4,000 euros fine and Basri Kqiku was sentenced to 1 year of suspended imprisonment and 3,000 euros fine. This decision was later affirmed by the Court of Appeals too.

The State Prosecutor filed a request for protection of legality to the Supreme Court, claiming that judgments of the lower instances were rendered in violation, because of the substantial violations of the provisions of the criminal procedure and because of the violations of the criminal law.

By partially approving this request of the State Prosecutor, the Supreme Court found that there are substantial violations of the provisions of the criminal procedure and in this particular case this is found since there are given some unclear reasons regarding the decisive fact, especially regarding the will of the convicts on committing criminal offences for which they were acquitted of charges.

Considering that the violations of the first instance court and the second instance one, were in favor of the defendants, the Supreme Court was able to only find these violations and was unable to return the case to retrial.

The Supreme Court, on April 1, 2019, also found a violations in the case known as “Realtor”, where former Director of Economic Crimes in the Kosovo Police, Emin Beqiri, was accused of abusing official position or authority, obstruction of evidence and failure to report criminal acts or their perpetrators, while Rrahim Hashimi was charged with trading in influence and fraud.

BC in Pristina, in June 2018, rejected the appeals of the accused persons who had sought the dismissal of the indictment. Following the appeals made by the defendants in the Court of Appeals, the latter dismissed the charge and terminated the criminal proceedings against the accused Beqiri and returned to reinstatement the case against the accused Hashimi. Upon reinstatement, the first instance had again confirmed the
indictment for Hashimi, but, after the appeal of his defense counsel, the Court of Appeals terminated the criminal proceedings for the criminal offence of trading in influence and rejected the defense’s appeal for the criminal offence of fraud.

Against these decisions, the State Prosecutor filed a request for protection of legality because of the essential violations of the provisions of criminal procedure and because of the violation of criminal law, with the proposal that the Supreme Court find that the decisions of the Court of Appeals of Kosovo contain violations of provisions of criminal procedure and violations of criminal law, or required the case be returned for reinstatement.

This request of the State Prosecutor was approved as grounded by the Supreme Court panel composed of Judges Agim Maliqi, Valdete Daka and Rasim Rasimi, according to whom, with all the evidence submitted by the prosecution, which is consistent with one another, the Court of Appeals erroneously concluded that there was no evidence to involve Emin Beqiri in the criminal offences for which he has been charged.

According to the Supreme Court, the second instance court taking the role of the first instance has failed to establish whether or not the defendants’ guilt and the truthfulness of the evidence presented by the prosecution have been established or assessed, even assessing the evidence itself, although among these evidence there was evidence which supported a well-grounded suspicion that they had committed the offences for which they were charged.

On June 5, 2019, the Supreme Court, namely the panel composed of judges Agim Maliqi, Nesrin Lushta and Rasim Rasimi, ruled that the judgments of the BC in Pristina and the Court of Appeals in the case of the former President of the Court of Appeals, Salih Mekaj, was rendered in violation of the criminal law.

The Supreme Court found that the aforementioned violations regarding the accused Mekaj for the criminal offence of trading in influence and the accused Vlora Gorani, for the criminal offence incitement in trading in influence, whereas the request for protection of legality submitted by the State Prosecutor against these judgments, was rejected as unfounded, regarding to the defendants Vlora Gorani, Mentor Seferaj and Ali Seferaj in the part related to the defendants for the criminal offence of attempted giving bribery.

All of these defendants were acquitted of charges by the BC in Pristina in May 2018, and the judgment of acquittal was then affirmed by the Court of Appeals in October 2018.

According to the Supreme Court, the first and second instance in their judgments fairly and fully established the decisive facts of the specific case but with the acquittal of the accused, Mekaj and Gorani made the wrong conclusions about the existence of the criminal offence, which is a violation of criminal law because they applied the law which could not be applied because with the proper application of criminal law, according to the Supreme Court, Mekaj would have to be found guilty to the offence which is subject of the indictment.

Mekaj’s actions, according to the Supreme Court, based on the facts stated in the judgment, show trading in influence, considering that the reason for the conversations with Judge L.M. was Mekaj’s connection to Gorani, which did not exist earlier but
occurred after Gorani had gone to look into her husband’s case, who was accused of a criminal offence. According to the Supreme Court, without Gorani’s initiative, the defendant Mekaj did not start conversations with the judge, at least from the evidence it appears that these conversations have begun earlier.

In its decision, the Supreme emphasizes that the fact that Mekaj’s failure to succeed, does not alter the defendant’s criminal legal position, as provided by Article 431, par.1 of CCK.

Also in this case, since the violations had been committed in the advantage of the accused, the Supreme Court has only found the violations, without the possibility to return the case to retrial.

- In June 2019, the Supreme Court returned to reinstatement the case of former MP Etem Arifi, who is charged with criminal offences of subsidy fraud and trading in influence, as well as the accused Bajram Gashi, who was charged of subsidy fraud. The Supreme Court annulled the March 2019 decision by the Court of Appeals, which sentenced former MP Arifi and accused Gashi to effective imprisonment for the criminal offence of subsidy fraud, and was set for the case to be returned to retrial for the criminal offence of trading in influence.

According to the Supreme Court’s decision, the panel of the Court of Appeals that rendered the judgment in question, had a judge who had been part of the Court of Appeal’s Panel in the confirmation phase of the indictment, which is in violation to Article 39, paragraph 2 of the Code of Criminal Procedure, which provides, that a judge is excluded if he has participated in earlier proceedings in the same criminal case.

The Supreme Court of Kosovo also found violations in the case of acquittal from charges of receiving bribe of the inspector of the Independent Commission for Mines and Minerals (ICMM), Lulzim Çitaku. He was acquitted of such a charge by the BC in Peja, after which the Court of Appeals confirmed his innocence, but the Supreme Court found that the courts of first and second instance violated the criminal law, acting in favor of inspector Çitaku.

The Supreme Court made such a finding on July 11 this year, following a request for protection of legality filed by Prosecutor Sahide Gashi, following the Judgments of the Basic Court and the one of the Court of Appeals. According to the Supreme Court, the first and second instance courts in their judgments, with the acquittal of the defendant regarding the offence of accepting bribes, made erroneous conclusions about its existence and applied the law which could not applies because with the proper application of criminal law he would be found guilty of the criminal offence which was subject of the charge.

- The Supreme Court admitted as grounded the request for protection of legality filed by the Office of the Chief State Prosecutor in the case of the former Director of Urbanism in the Municipality of Gjilan, Valon Shefkiu, Chief of Construction Inspection, Milot Shkodra, Inspectors Baki Azemi and Bahrije Beqiri, as well as the accused of removing or damaging official stamps or marks, Abdyl Brestovci.

Except for the accused Azemi, all the other accused had been acquitted of charges by the Basic Court in Gjilan, a judgment which was then affirmed even by the Court of
Appeals. However, the panel of the Supreme Court, composed of Judges Valdete Daka, Agim Maliqi and Nesrin Lushta, found that the first and second instance court, when deciding regarding these defendants, had violated the law in favor of the accused.

Whereas, regarding the accused Baki Azemi, the Supreme Court has rejected as ungrounded the request for protection of the legality presented by his defense.

VIII. Conclusions

- Special Prosecution same as in the previous years (2016, 2017, 2018), also in the year 2019 maintains the trend of avoiding responsibility in handling corruption cases. This prosecution since January 1 until September 30, 2019 has not filed any indictment against high profile individuals regarding corruption offenses. Such an approach of the SPRK is losing the meaning and logic of the establishment of the Special Department within the Basic Court in Pristina and the Court of Appeals, regarding the request for specific results in the fight against organized crime and corruption.

- Another distinctive of SPRK is the fact that prosecutors in this prosecution office are not specialized in specific fields, including the specialization in corruption cases and economic crimes. Prosecutors in the SPRK continue to handle different cases of several fields all in the same time. Now it’s turned into practice that prosecutors within the SPRK at the same time handle cases of organized crime, corruption, war crimes, money laundering, murder, trafficking etc. The lack of specialization of prosecutors and the distribution of corruption cases and economic crimes to a large number of prosecutors within SPRK is a tendency and a policy of this prosecution to distribute the responsibility and accountability.

- Similar to the other years, prosecution offices continue to investigate and prosecute mainly low-profile officials. In this regard, prosecution offices have had in work corruption cases involving 412 low profile individuals, cases that have involved 310 medium profile individuals and cases that have 53 high-profile individuals involved.

- Sentencing policy in corruption cases still remains a challenge to all the judges in all Kosovo’s courts. The judicial system is unable to implement unique sentencing policy and ones that are in accordance with the spirit and purpose of the Criminal Code of Kosovo. During this reporting period, the largest number of sentences imposed by the courts are suspended punishments and punishments of a fine, then come the
imprisonment punishments. However, in the year 2019, different from the previous years, for the first time, imprisonment punishments imposed by courts in Kosovo have increased.

- The Kosovo Prosecutorial Council and the Kosovo Judicial Council have not yet proven that the mechanisms for evaluating the performance and discipline of prosecutors and judges are efficient and effective. KLI has specifically identified thousands of cases of prosecutors and judges, who have conducted continuous violations while handling corruption cases, for which only disciplinary proceedings have been initiated, but no adequate disciplinary measures have been taken to hold accountable law violators.

- The lack of judicial control in preliminary investigations phase still remains one of the most distinctive forms that shows persecution in investigating and prosecuting citizens or officials that are subject of criminal reports. KLI has identified this problem, still unaddressed, of conducting investigations by the police and prosecution, without an effective control of the judiciary. This phenomenon continues to persecute people, that cause violations of human rights and freedoms, keeping then unlawfully in criminal proceeding evidences and consequently without having the right to appeal in court. KLI has identified a large number of old cases that were reported for corruption, but still remain in the lockers of the prosecution offices.

IX. Recommendations

- When drafting indictments, the State Prosecutor should improve their quality and base them on facts, evidence, including their professional representation in court.

- The State Prosecutor must implement legal obligations regarding the identification of assets obtained through criminal offences and submit requests for sequestration and confiscation of assets obtained through criminal offences.

- The SPRK should exercise its legal mandate and take a leading role in investigating and prosecuting high – level corruption offences.

- Courts in Kosovo shall unify the sentencing policy, including the implementation of the Guidelines on the Sentencing Policy in corruption cases.