



Kosovo Law Institute

Corruption in Kosovo:

**Evaluation Report on Efficiency of the Prosecutorial System in
Implementing the Action Plan on Corruption Cases**

Prishtina, March 2014

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About KLI

KLI, Kosovo Law Institute, is a non-governmental not for profit public policy organization, a think-tank specialized in the justice sector.

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I. SUMMARY ABOUT THE IMPLEMENTATION OF THE ACTION PLAN

Kosovo Prosecutorial Council in the implementation of the *Strategic Plan for inter - institutional cooperation in combating organized crime and corruption*, on **November 4, 2013**, issued an **Action Plan** to increase the efficiency of the prosecutorial system in combating corruption. This Action Plan has presented in detail the obligations of prosecutions and expectations of KPC in terms of increasing the efficiency in resolution of corruption cases. On **December 27, 2013**, KPC has entered into a **Memorandum of Cooperation** with *Kosovo Law Institute*. Since then, the KLI has monitored the prosecutorial system in the implementation of the Action Plan, where part of this cooperation is the present report with findings by the KLI.

This Action Plan is not a comprehensive plan to combat corruption, but has nevertheless been necessary to issue such a plan which aimed to highlight the shortcomings of the prosecutorial system in this area, with the objective to increase the performance of prosecutors and achieve concrete results in combating corruption,¹ **to clarify the real situation, identify and remedy problems in the prosecutorial system**, related to resolution of these cases. Consequently, the implementation of the Action Plan has already borne fruit before and already we have a more complete picture of the situation than ever before, and we have evidence of all pending cases, data on the time of receipt of cases, the jurisdiction under which they are, who are the applicants, and many other details.

For the first time the performance of chief prosecutors and prosecutors who deal with cases of corruption will be directly linked with **disciplinary measures**. Identification of problems and shortcomings in the system has already started, as also the establishment of the **Commission for monitoring and verification of data**, which has done a great job in the field and their findings were very disturbing in terms of quality of data. The extremely professional and independent work of the Commission resulted in alarming findings, where among the various factors that have contributed to this situation are: *the lack of regulation on the internal organization of the prosecution, absence of reporting of criminal charges by prosecutors, absence of criminal charges in the case file, lack of reporting by prosecutors on actions - decisions to resolve the case*, and other factors. KPC in the Decision approved on February 25, 2014, clearly requested accountability by the Chief Prosecutors regarding these findings, and now it remains to be seen whether this decision of the Council will be implemented by the Chiefs of Basic Prosecutions and the Deputy Prosecutor of the SPRK, and whether we shall have disciplinary proceedings for these shortcomings, something we have not seen so far.

¹ Achievement of concrete results in combating corruption in Kosovo are basic criteria in two important processes through which Kosovo is undergoing; the process of visa liberalization and Stabilization and Association Agreement between Kosovo and the EU.

Based on the data from prosecutorial system, since the entry into force, prosecutions, except **Basic Prosecution in Pristina**, showed increased efficiency in resolution of cases. Compared to November 4, 2013, in general, today we have **8.8 % fewer cases** pending and **11 % less persons under investigation**, cases which are under investigation. In majority of cases resolved during this period, criminal charges for **56.7 %** of persons in these cases were refused or terminated. During this period, **indictments against 127 persons** were issued. According to the latest data (February 19, 2014), prosecutions are working on **475 investigation cases involving 1,500 persons** (known as PP), and in the information gathering stage **255 cases with 585 persons** (known as PPN).

Based on the monitoring of the action plan, we concluded that the same plan is not treated as a matter of absolute priority in all prosecutions. This can be seen based on the results achieved, which can be proven by statistics presented in this report, for each BP and SPRK.

The Action Plan has clarified the obligations of prosecutions, where some of these obligations are not met. Cases that have reached the **statute of limitation** were found in BP in Pristina, Ferizaj, Prizren and Mitrovica. None of the Chief Prosecutors of the BP in question **have reported to the KPC** or to the National Coordinator, despite the obligation specified in Article 3, paragraph 2 of the Action Plan. Throughout Kosovo there are 40 prosecutors to deal with cases of corruption. **We do not have a unique practice of allocating cases** to the prosecutors based on engagement of prosecutors in these cases. While the Special Prosecutor of the Republic of Kosovo and BP, cases of corruption have been allocated to some prosecutors of the Department of Serious Crimes, in BP in Peja only ne prosecutor is engaged. Regarding the implementation of the legal provisions relating to the seizure and confiscation of proceeds of a criminal offense, under article 7.3 of the Action Plan, Chief Prosecutors state that **there were no major cases of seizure and confiscation** of proceeds of crime. The exception is the Chief Prosecutor of the BP Pristina, who stated that in three cases after the entry into force of the Action Plan, these provisions were implemented. BP's and SPRK had regular meetings with the Kosovo Police but **had no meeting with the Anti-Corruption Agency**, which is also the second higher presenter of the pending cases. Also, the implementation of article 8.2 of the Action Plan, to report on the progress of the implementation of the plan is not respected by the Chief Prosecutors and National Coordinator against Corruption. Also, so far, the National Coordinator should have held nine press conferences, but only two of them were held. Irregular reporting on progress and also the small number of press conferences was influenced by statistical discrepancy of cases of corruption, for which the State Prosecutor has established a Committee on Oversight and Verification of data. **Five experts against corruption of the SPRK** who have been available to BP were invited **only in one case** by BP Gjilan.

Engagement of the KPC, National Coordinator, Commission, Chief Prosecutors, and the rest of the system, shows that the system has the capacity and can do more work if there is the will and accountability mechanisms are efficiently placed. By initiating disciplining procedures, the efficiency of the system will only increase and become more professional.

KLI will continue to monitor the implementation of the action plan and measures to be taken by the KPC regarding failures or achievements.

II. CONTEXT

After 1999, the inhabitants of Kosovo and state/public assets experienced large scale robbery by criminal groups, where there was no dividing line between crime, politics and decision-makers in institutions and public enterprises. Already, the word Kosovo has become the synonym for the word “corruption” and “organized crime”. Besides the various challenges that have contributed to such an environment with a high level of impunity, a large part of the blame is on the prosecution, with particular emphasis on international prosecutors, who had exclusive jurisdiction to investigate and prosecute crimes of such profiles. Major processes, such as the declaration of independence and the transfer of powers from internationals to locals, until the completion of internationally supervised independence, had overshadowed a very important priority for the country, which was to strengthen the rule of law.

To date, Kosovo has made progress in terms of the legal framework and the establishment and strengthening of institutions. One of the key issues in the fight against corruption is also the criminalization of certain acts which are considered to contribute towards corruption. With the entry into force of the new Criminal Code of the Republic of Kosovo on January 1, 2013, progress was achieved in terms of clearer classification of offenses that are considered corruptive acts. The new Criminal Code of Kosovo with separate chapters governs offenses against official corruption and criminal offenses against official duty. The impact of criminal offenses of corruption is different; some damages are not as important as damages arising from some offenses that have very high impact on society. In order to classify such acts, which in the jargon of policymakers are designated as “high-level corruption”, the State Prosecutor, Chief Prosecutor of EULEX, and the Chief Prosecutor of SPRK, have adopted an instruction to do such a classification.² Seizure is one of the most powerful tools in combating serious crime, including corruption. In January 2013, the Law on extended powers for confiscation of assets acquired by

² Criminal offenses which are considered as high-level corruption under Directive issued on November 13, 2013 by the State Prosecutor are: Entering into harmful contracts, aggravated by bribery (Article 291, paragraph 2), unreasonable giving of gifts (Article 316), escape of persons deprived of liberty, aggravated by bribery (Article 405, paragraph 2), facilitating the escape of persons deprived of liberty, aggravated by bribery (Article 406, paragraph 2), misuse of official position or authority (Article 422), appropriation in office (Article 425), fraud in office (Article 426), unauthorized use of property (Article 427), receiving bribes (Article 429), giving bribes to foreign public official (Article 430), exercise of influence (Article 431), issuance of unlawful judgments (Article 432), unlawful collection and payment (Article 435), unlawful acquisition of property in case of search or enforcement of a court decision (Article 436).

criminal offence entered into force, in order to provide better opportunities for the confiscation of property and wealth acquired unlawfully.³

One of the problems in the justice system is the statute of limitation of cases. For example, the Basic Court of Peja, a case which involves taking and giving bribes, where the case for the first offense is close to statute of limitation, and for the second it has already passed.⁴ Other than cases where the statute of limitations due to omission of taking legal action, it happens that statute of limitations passes immediately after the case reaches the court. The President of the Basic Court in Pristina says that there are times when the offense was committed ten years ago, and the case has been submitted to the court by the prosecution only four or five months before reaching the statute of limitations from the time when the offense was committed.⁵

Lack of inter- institutional cooperation has brought additional problems. In its annual report in 2012, ACA has criticized the competent prosecutions that have dismissed criminal charges without inviting officials of this agency to defend the criminal charges submitted by them, while EULEX prosecutors have invited officials that have prepared criminal charges during first phase of investigations and subsequent proceedings.⁶

Inaccurate statistics have always been a challenge to analyze the current situation in terms of quality of work and efficiency of prosecutions but also issuing recommendations for improving the situation. The statistics presented in the Action Plan have not been accurate. Respective institutions, such as prosecution, police, courts and the Anti-Corruption Agency, did not have unified data regarding the level of corruption at the country level. There have been various corruption figures reported by police, prosecutors and courts, whereas different data is published by various non-governmental organizations that monitor the performance of these institutions in the fight against corruption.⁷ Tracking mechanism will be of a great assistance in this regard, to avoid inconsistencies and to digitize the process of case-flow management.

³ LAW no. 04/L-140 For Enhanced Competencies for confiscation of proceeds of crime. Under this law, the prosecutor has the right to require the initiation of proceedings of confiscation if the requirements of Articles 6, 7 and 8 of this Law are met. Prosecutor within 30 days from when the judgment has become final requests confiscation of property while he must provide convincing evidence that legal requirements are met to seek confiscation of unlawfully acquired property.

⁴ See in more detail Gazeta Jeta në Kosovë, accessed on March 9, 2014 at <http://gazetajnk.com/?cid=1,1018,7699>, <http://gazetajnk.com/?cid=1,1027,728>

⁵ Invited to a television debate on Radio Television of Kosovo on February 28, 2013 to discuss the justice system in the country, the President of the Basic Court in Pristina, Mr. Hamdi Ibrahim. See in more detail the debate from the 50th minute on <http://www.youtube.com/watch?v=DW82Dz4Er2A&list=PLRrFsdYF5HhLiP8depviBBGzR7xftD-E>

⁶ See the Annual Report of the Anti-Corruption Agency for 2012, p. 15.

⁷ See reports of FOL Movement, “Corruption Monitor”, the Annual Report for 2012, “Corruption Monitor”, the first half of 2013 and the Platform of Anti – Corruption Statistics, where different data is included from those reported by the State Prosecutor.

<http://levizjafol.org/platforma-statistikave-anti-korrupsion>

Appointment of National Coordinator after the entry into force of the Action Plan is not a novelty in the prosecutorial system. In 2010, National Coordinator for corruption cases was appointed. From 2010 to 2013, the National Coordinator had presented two short (summary) reports, which in content were reports with basic statistics. Despite this engagement, during this period issue of inaccurate statistics, statute of limitation of cases, as well as the capacity of the perpetrators were not addressed, where these issues were addressed only after the entry onto force of the Action Plan.

The main problem in the country is impunity of the “big fishes”. If we see successes of the prosecution, the Task Force against corruption within SPRK, major and successful/partially successful cases, these have been the case of the Permanent Secretary of the Ministry of Health, the group consisting of a judge, lawyer and forensic expert, where confiscation of property within and outside Kosovo was included. Whereas, cases where the prosecution authorities have conducted a spectacle without producing results and have shown lack of professionalism, being even considered as cases of persecution, were the case of the Governor of the Central Bank of Kosovo, Director of the Airport, Director of Post and Telecommunications of Kosovo, Director of Kosovo Customs, and so on.

Consequently, the investigation and prosecution of corruption in Kosovo was done only for petty offenses, sending a message to everyone that in this country, the law is applied selectively. Consequently, prosecution bodies in any case when they fail to perform their duties in prosecuting crimes, they serve in the function of crime, and do not to protect the interests of the state and the citizens.

CASES IN INVESTIGATION PHASE

III. CASES IN INVESTIGATION PHASE

a. TREND OF PENDING CASES

On November 4, 2014, Kosovo Prosecutorial Council (hereinafter KPC) has approved the Action Plan for increasing the efficiency of the prosecutorial system in combating corruption (hereinafter Action Plan). Kosovo Law Institute (hereinafter KLI), based on data received from the Performance Review Unit of the Prosecutions (hereinafter PRU) in late February/early March 2014, has issued the following statistics. Due to the entry of a lot of data in the database, the KLI states that the margin of error can be up to 2 %. The following table is intended to reflect the trend in the volume of work in the prosecutions on three specific dates; on the day when data were taken as basis for the Action Plan (October 1, 2013), the day when the Action Plan entered into effect (November 4, 2013), and the day when we had the latest data entered in the database (February 19, 2014). Because of the uncertainty in previous reports by the prosecutorial system or civil society reports, KLI has not gone further in time to analyze this trend.

PROSECUTION	1-X-13		4-XI-13		19-II-14	
	Persons	Cases	Persons	Cases	Persons	Cases
SPRK	229	34	227	33	192	32
BP Ferizaj	81	33	126	37	77	37
BP Gjakovë	64	26	64	26	28	14
BP Gjilan	65	22	81	23	47	17
BP Mitrovica	129	61	141	63	128	56
BP Pejë	52	35	85	37	60	21
BP Pristina	756	231	787	233	827	243
BP Prizren	173	69	174	69	141	55
Total:	1,549	511	1,685	521	1,500	475
The difference in the number of cases pending from November 4, 2013 to date:					-11%	-8.8%

Table 1 - Trend of pending cases

Based on this table, we see that on **November 4, 2013**, the Special Prosecution of the Republic of Kosovo (hereinafter SPRK) and Basic Prosecutions (hereinafter BP) were working on 521 pending cases with 1,685 persons. By comparing these figures with those dated October 1, 2013, we see a trend of an increase of pending cases. Whereas, following the implementation of the Action Plan after November 4, 2013 until February 19, 2014, for three and a half months, the number of pending cases has decreased by **8.8 %**, which has resulted in reduction of **11 %** of the persons under investigation. All prosecutions, except BP Pristina, have managed to reduce the number of pending cases and the persons involved in them. In BP Pristina, the number of pending cases in this period increased by 4.3 %, while of persons involved in these cases by 5.1 %. According to this trend, this is the prosecution which requires greater attention by the National Coordinator to coordinate the activities and supervision of the implementation of the Action Plan (hereinafter, the National Coordinator) and KPC.

The increased attention of the KPC and National Coordinator regarding the implementation of the Action Plan, a greater engagement of Chief Prosecutors, engagement of a higher number of prosecutors in corruption cases, and other elements have certainly influenced the speedier resolution of cases. However, we should examine the unwillingness of BP prosecutors to engage SPRK experts against corruption, who according to the Action Plan will be accessible to all anti-corruption prosecutors. The greater use of available resources would certainly affect even more the increase in efficiency.

From November 4, 2013 until February 19, 2014, 98 new investigations, involving 193 persons, were initiated in Kosovo prosecutorial system.

PROSECUTION	PERSONS	CASES
SPRK	34	6
BP Ferizaj	16	11
BP Gjakovë	10	6
BP Gjilan	21	18
BP Mitrovica	12	8
BP Prizren	15	11
BP Pejë	25	17
BP Pristina	60	21
Total:	193	98

b. DATA ENTRY IN THE TRACKING MECHANISM DATABASE

In continuation, the prosecution system was faced with problems regarding the accuracy of statistical data. One of the greatest achievements of the prosecutorial system is the creation of inter - institutional tracking mechanism for the harmonization of statistics for characteristic criminal offenses (tracking mechanism for harmonization of statistics), which records all the data regarding characteristic criminal offenses, which also includes corruption offenses. Despite this initiative, the Action Plan did not contain the correct number of statistical data. The table below reflects the statistical discrepancies regarding corruption cases.

	SITUATION BY THE ACTION PLAN <i>The number of cases under the Action Plan, article 2, estimation of the number of cases of corruption in the investigative phase in Prosecutions</i>		SITUATION BY THE TRACKING MECHANISM <i>According to the database compiled by the KLI based on data obtained from PRU, cases where criminal charges were accepted until September 30, 2013, which were not resolved on that date, and are registered in the database before October 1, 2013</i>		CASES NOT REGISTERED ON TIME <i>According to the database compiled by the KLI based on data obtained from PRU, cases where criminal charges were accepted until September 30, 2013, which were not resolved on that date, and are registered in the database after September 30, 2013</i>		REAL SITUATION <i>According to the database compiled by the KLI based on data obtained from PRU, cases where criminal charges were accepted until September 30, 2013, which were not resolved on that date, and are registered in the database before and after October 1 2013</i>	
	Persons	Cases	Persons	Cases	Persons	Cases	Persons	Cases
SPRK	190	33	202	33	27	1	229	34
BP Ferizaj	73	30	73	30	8	3	81	33
BP Gjakovë	64	26	62	25	2	1	64	26
BP Gjilan	42	17	50	17	15	5	65	22
BP Mitrovica	107	56	109	51	20	10	129	61
BP Pejë	53	33	43	30	9	5	52	35
BP Pristina	714	218	577	193	179	38	756	231
BP Prizren	153	69	150	66	23	3	173	69
	1,396	482	1,266	446	283	66	1,549	511

The issue of accurate information and statistics has always been a problem in terms of policy making and accurate information to the KPC and other stakeholders in terms of efficiency and other issues. In reporting to the Chief Prosecutor of Appeals and National Coordinator regarding the implementation of the Action Plan at the KPC meeting held on January 24, 2014, members of the KPC had a many uncertainties, because the data presented were not the same data which the Chief Prosecutors of BP or members of KPC had. Consequently, the State Prosecutor who is the Chairman of the KPC, requested to reconcile these data until the next meeting of the

KPC.⁸ Based on this, a Commission for oversight and verification of data was established, which has worked on data verification and harmonization of these data in the existing mechanism for harmonization of statistics. This Commission has verified all cases in all prosecutions and submitted to the KPC a detailed report on all the identified deficiencies regarding the accuracy of the reporting of prosecutions in the Tracking Mechanism for the harmonization of statistics. This report, which was approved by the KPC, will be a good base to hold accountable all those persons within the prosecutorial system for failure in the performance of their duties. So far, we have not encountered any disciplinary proceedings initiated concerning the findings of the report, which are extremely disturbing.

Below are some of the findings outlined in the Report of the Commission for oversight and verification of data, sent from BP and SPRK regarding the implementation of the plan for increase of the efficiency of the prosecutorial system in combating corruption, entered into protocol on March 5, 2014 (see pages 19-20).

“The Commission, during the verification of the data has identified deficiencies that could affect the quality of statistical data:

- Lack of regulation on internal organization of the prosecution;
- Lack of identification of this type of criminal charges in the relevant registers by the heads of registry office as well as their labeling
- Absence of reporting of all criminal charges by prosecutors
- Bad administration of the criminal charges case files (sorting of documents chronologically , their binding, ...)
- Reporting of actions/decisions for this group of criminal acts by incompetent officials (legal secretaries)
- Non-use of receipt stamp in all cases received through prosecution
- Direct acceptance of criminal charges by prosecutor bypassing the procedures of the registry office (absence of their registration)
- Unsatisfactory level of cooperation of prosecutors with officials of the registry office – administration
- Non-reporting (completed form) of action - decisions for resolution of these cases by prosecutors
- The transfer of the case from the PPN to PP register (no special report to close the case and transfer of the same in the PP register)
- The problem with finding case files from the PPN register that were transferred to PP register, the same are entered in the case files of PP register
- Absence of the criminal charges and other documents in the case file for some cases that were sent to competence (no documents in the case file)
- Taking of cases by EULEX prosecutors and reservation of numbers in the register, by not providing necessary information to the authorized officer of the registry office for registration of the same

⁸ Minutes of the 61st meeting of the Kosovo Prosecutorial Council, held on January 24, 2014, Pristina.

- Registration of cases accepted in competence (date of receipt?)
- Placing several criminal charges with different criminal offenses and different persons in one case file
- Absence of decisions on merging or separation of procedure for certain cases
- Criminal charges accepted by the prosecution, but not recorded in the appropriate register
- The filing of criminal charges by two more persons when the issue is about the same persons and the same offenses
- Case file does not contain criminal charges (some of the files)
- Sending of cases by ACA to the SP and then from SP to competent prosecutions as a result of the MC between ACA and SP”

c. CASES PENDING IN THE PROSECUTORIAL SYSTEM, BY THE APPLICANT AND PROSECUTION

The following table is designed to reflect who are the applicants of the pending criminal charges, and which prosecutors are competent to deal with these cases. Often the applicants have been extremely concerned because they did not have accurate information about the actions that were undertaken in their cases. One of the most vocal institutions has been the Anti-Corruption Agency (hereinafter ACA).

Applicant	SPRK	BP Ferizaj	BP Gjakovë	BP Gjilan	BP Mitrovica	BP Prizren	BP Pejë	BP Pristina	Total number
Not identified								3	3
ACA	30	16	6	7	8	25	4	257	353
KTA								2	2
Kosovo Customs	9	4						3	16
EULEX	26				1			9	36
KPI				1	19	5		7	32
KP	81	50	14	31	84	81	53	336	730
Citizen	43		6	2	13	13	1	24	102
Injured party	2	5	2	6	1	6		82	104
Municipal administration body	1	1				2			4
Kosovo Property Agency						1			1
Accepted in competence						2			2
Property owner, injured OP					2	6		57	65
Kosovo Forestry Agency		1						2	3
Prosecutor own initiative							2	45	47
Grand Total	192	77	28	47	128	141	60	827	1500

Prosecutorial system has not yet resolved cases involving 1,500 persons, including cases involving 353 of these persons that were initiated by the ACA. These statistics make it clear that ACA has rightly raised concerns about the lack of efficiency of the prosecutorial system to resolve cases brought by this Agency. Otherwise disturbing is the number of pending cases which are initiated

by citizens, injured parties, property owners and injured OP, which together make up cases with 271 persons, or 18.1 % of all persons in pending cases.

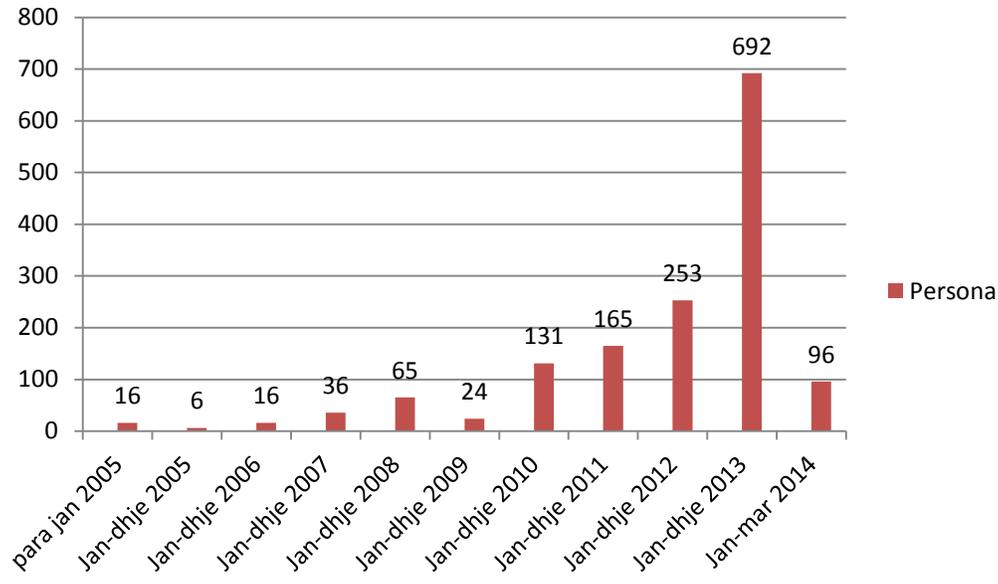
Criminal offence	Number of persons	Number of cases
Unlawful collection and payment	126	4
Bribery	20	11
Forgery of official documents	68	17
Misuse of official position or authority	1117	354
Accepting bribes	24	15
Fraud in Office	16	9
Appropriation in office	61	24
Exercise of influence	6	3
Misuse of economic authorizations	17	7
Misuse of official information	1	
Conflict of Interest	1	1
Entering into harmful contract	4	2
Non-reporting or false reporting of assets or income, gifts, or other benefits	22	22
Issuing unlawful judicial decisions	7	4
Unauthorized use of property	2	1
Participation in or organization of organized criminal group	6	
Disclosure of official secret	2	1
Total:	1500	475

d. CASES PENDING IN YEARS

It is extremely important that the public and the prosecutorial system are fully aware as to the timing of received cases that are pending. The table below represents how old are pending cases (statistics are by persons) and the applicant.

	Before Jan 2005	Jan - Dec 2005	Jan- Dec 2006	Jan- Dec 2007	Jan- Dec 2008	Jan- Dec 2009	Jan- Dec 2010	Jan- Dec 2011	Jan- Dec 2012	Jan- Dec 2013	Jan- Mar 2014
Not identified	0	0	0	0	0	0	0	1	0	2	0
ACA	0	0	0	6	16	0	30	27	102	143	29
KTA	0	0	0	0	0	0	2	0	0	0	0
Kosovo Customs	4	0	0	0	0	0	0	0	0	9	3
EULEX	0	0	0	0	0	0	12	12	1	11	0
KPI	0	0	0	0	0	0	0	1	10	18	3
KP	7	0	11	21	26	13	61	46	88	411	46
Citizen	3	0	0	0	0	2	10	25	28	30	4
Injured party	0	6	1	7	1	1	11	11	7	53	6
Municipal administration body	0	0	0	0	0	0	0	1	1	2	0
Kosovo Property Agency	0	0	0	0	0	0	0	0	0	1	0
Accepted in competence	0	0	0	0	0	0	0	0	0	2	0
Property owner, injured OP	2	0	4	2	22	7	5	0	16	2	5
Kosovo Forestry Agency	0	0	0	0	0	1	0	0	0	2	0
Prosecutor own initiative	0	0	0	0	0	0	0	41	0	6	0
Total during period	16	6	16	36	65	24	131	165	253	692	96
Cumulative total	16	22	38	74	139	163	294	459	712	1404	1500

According to these data, Kosovo Customs has submitted cases involving four persons before January 2005, which have not yet been resolved. There are a total of 294 persons, whose cases were initiated before January 2011 and which are still pending. Moreover, many old cases are in risk to reach absolute statute of limitation.



The chart above shows the number of persons involved in cases which are pending before prosecutions, according to the period when the criminal charges were filed. This indicates that majority of the pending cases were initiated after 2011. However, deeply disturbing are cases submitted before this year, because they are cases that are older than three years, where it becomes more and more difficult to successfully prosecute and bring these cases to trial.

e. RESOLUTION OF CASES AFTER NOVEMBER 4, 2013

The table below reflects the effectiveness of prosecutions in solving cases. From November 4, 2013 until February 19, 2014, prosecutions have accepted cases involving 193 persons. While in the same period, cases involving 379 persons were resolved. The table below gives an overview of the efficiency of each prosecution office.

	Direct charges	Charges after investigations	Refusal	Termination	Punitive order	Total:
SPRK		13	5	51		69
BP Ferizaj	2	12	13	1	37	65
BP Gjakovë		36	7	3		46
BP Gjilan		18	14	23		55
BP Mitrovica	2	1	23	1		27
BP Prizren	2	10	27	9		48
BP Pejë	4	15	6	24		49
BP Pristina		12	4	4		20
Total:	10	117	99	116	37	379

Cases that involved 56.7 % of persons [from the total number of persons in cases resolved] were resolved with refusal or termination of investigation. In the case of refusal, criminal charges were filed by:

Applicant	Persons
ACA	20
Injured party	10
KPI	1
KP	53
Citizen	3
Property owner, injured OP	12
Total	99

From this table it appears that the Kosovo Police (hereinafter KP) should pay more attention to how they draft criminal charges, given the high level of refusal of criminal charges filed by KP. ACA also should reflect on this.

CASES IN INFORMATION GATHERING PHASE

IV. CASES IN INFORMATION GATHERING PHASE

a. PERSONS INVOLVED IN PENDING CASES ON NOVEMBER 4, 2013

Kosovo Prosecution Offices had in work (in the process of gathering information) on November 4, 2013, 285 cases with 641 persons, which have been pending. These cases are presented by the applicant (submitter of the information).

Applicant	Number of persons	Number of cases
Kosovo Property Agency	4	1
ACA	88	29
KTA	4	1
Auditor General	4	1
Kosovo Forestry Agency	9	2
Injured party	140	55
Kosovo Customs	3	1
Accepted in competence	2	1
EULEX	7	2
KPI	21	12
Municipal administration body	1	1
KP	275	139
Prosecutor own initiative	11	10
Citizen	44	19
Property owner, injured OP	28	11
Total	641	285

From these and other cases that were received later, Prosecutions have managed to resolve 30 cases with 56 persons, as follows.

Applicant	Number of persons	Number of cases
ACA	9	2
Injured party	5	5
Accepted in competence	2	1
KPI	7	3
KP	11	10
Prosecutor own initiative	4	3
Citizen	18	6
Total	56	30

b. PENDING CASES FEBRUARY 2014

In late February 2014, the prosecutions in Kosovo in the information gathering stage had 255 pending cases with 585 persons. The table below presents pending cases by applicants:

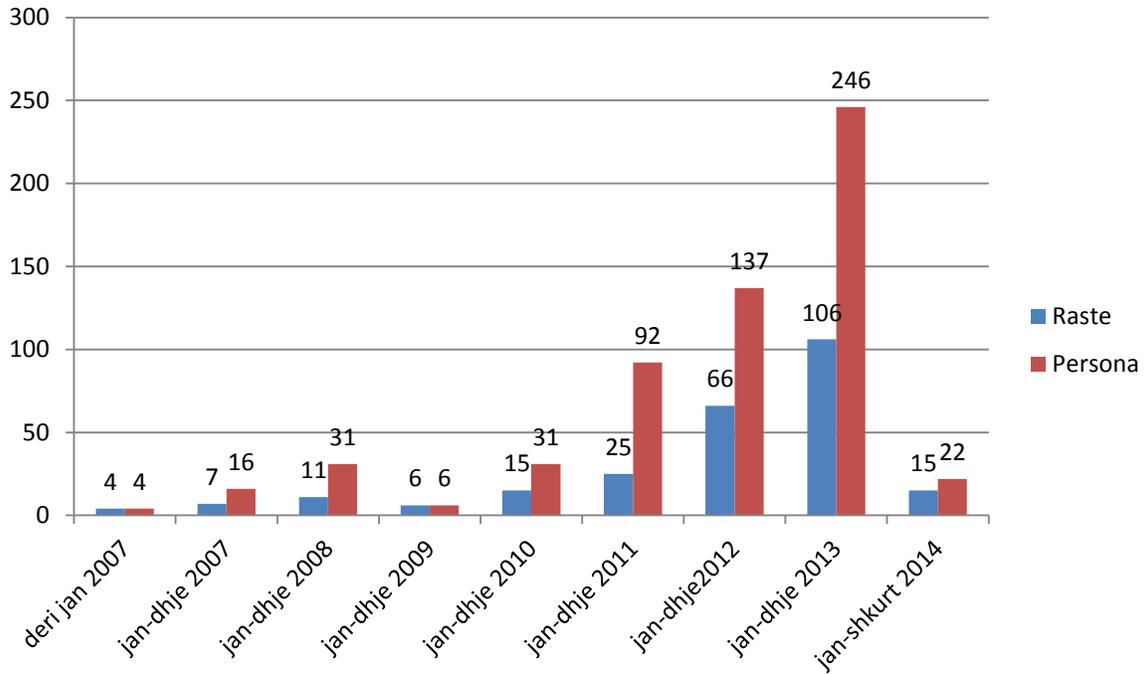
Applicant	Number of persons	Number of cases
Kosovo Property Agency	4	1
ACA	79	27
KTA	4	1
Auditor General	4	1
Kosovo Forestry Agency	9	2
Injured party	135	50
Kosovo Customs	3	1
EULEX	7	2
KPI	14	9
Municipal administration body	1	1
KP	264	129
Prosecutor own initiative	7	7
Citizen	26	13
Property owner, injured OP	28	11
Grand Total	585	255

The majority of these cases are found in BP Pristina, while other prosecutions have smaller numbers. The table below presents the situation with other prosecutions:

Prosecution	Number of persons	Number of cases
SPRK	37	17
BP Ferizaj	37	26
BP Gjakovë	17	11
BP Gjilan	1	1
BP Mitrovica	40	22
BP Pejë	38	17
BP Pristina	402	154
BP Prizren	13	7
Grand Total	585	255

c. AGE OF THE PENDING CASES

Cases in the information gathering phase, which are currently pending, were received by the Kosovo prosecutorial system during the following periods:



As you can see above we have a large number of cases and persons, where these cases were initiated much earlier, i.e., in periods prior to 2011.

[FULFILLMENT OF
OBLIGATIONS
FROM THE
ACTION PLAN]

]

V. FULFILLMENT OF THE OBLIGATIONS FROM THE ACTION PLAN

The Action Plan has clearly defined obligations of the BP and SPRK regarding deadlines for performing tasks within the plan as well as specific responsibilities. In this regard, the KLI has set indicators for the measurement of the Action Plan implementation by all stakeholders involved. The KLI research finds that none of the Chief Prosecutors of the BP, in which there were cases of statute of limitation after the effective date of the Action Plan, have not reported to the KPC, despite the obligation specified in Article 3, paragraph 2 of this plan. KLI has identified cases of statute of limitation in BP Pristina, Ferizaj, Prizren and Mitrovica, which were not reported to the KPC. Such reports are not even reported to the National Anti-Corruption Coordinator.

Other obligation, which has foreseen the identification of cases and their classification based on the competence specified in Article 5.2 of the Action Plan, has been reported as fulfilled by all Chief Prosecutors. All Chief Prosecutors have stated that there were no cases that were not reported in criminal charges registers under Article 5.2 of the Action Plan.

Other obligation to assign cases with absolute priority and to classify them according to the capacity of the perpetrators, according to the statements of Chief Prosecutors was met. KLI finds that there is no unique practice of assignment of cases in prosecution offices, in terms of involvement of prosecutors in these cases. While in the SPRK and BP, cases of corruption have been allocated to some prosecutors from the Serious Crime Department, in BP Peja, the Chief Prosecutor has assigned cases of corruption only to one prosecutor from the Department of Serious Crimes. Meanwhile, the National Coordinator stated that there are 40 prosecutors involved in resolving corruption cases.

Regarding the implementation of the legal provisions relating to the seizure and confiscation of proceeds of a criminal offense, under Article 7.3 of the Action Plan, Chief Prosecutors state that there were no major cases of the seizure and confiscation of assets. The exception is the Chief Prosecutor of BP Pristina, who stated that these provisions were implemented in three cases after the entry into force of the Action Plan.

KLI finds that Article 7.1 of the Action Plan, which obliges the Chief Prosecutors to hold regular meetings with KP, ACA and other institutions, was partially implemented. Chief Prosecutors have said they have held regular meetings with KP, but worrying is the fact that there is no meeting held with officials of the ACA, despite the fact that ACA is the second highest applicant of pending corruption cases.

KLI finds that the implementation of Article 8. 2 of the Action Plan, to report on the progress of the implementation of the plan has not been respected by the Chief Prosecutors and National Coordinator against Corruption. National Anti-Corruption Coordinator stated that in January

2014 all Chief Prosecutors reported in writing. While, the deadline for regular monthly reporting to the National Coordinator has not been respected by the Chief Prosecutors. The same deadline for reporting to the KPC by the National Coordinator was not respected, same as Chief Prosecutors. In this regard statistical discrepancy has of corruption cases has influenced this, for which the State Prosecutor has established a Commission on Oversight and Verification of these cases.

KLI finds that Article 10.1 of the Action Plan is minimally used by prosecutors. Five anti – corruption experts of the SPRK offered to Basic Prosecutions were invited only in one case by the Basic Prosecution in Gjilan. In this case, 2 experts were invited to assist prosecutors, whereas other prosecutions have never invited them.

KLI finds that Article 13.1 of the Action Plan related to communicating with the public had stagnated. Obligations arising from the Action Plan in this regard oblige the National Coordinator to inform the public every two weeks about the implementation of this plan. Such a thing has not happened. Action Plan took effect on November 4, 2013, and the National Coordinator has so far held two conferences (the first conference was held on January 21, 2014, while the second conference was held on March 14, 2014). The reason for this, according to the National Coordinator, is the inconsistency of statistics with the tracking mechanism, which resulted after meeting of the KPC, for which State Prosecutor has taken a decision to establish the Commission for Oversight and Data Verification, whose work has lasted more than 15 days, and while awaiting for the final report of this commission, the communication with the public was delayed.

KLI finds that in terms of measures for non-compliance of the Action Plan, up to the time of reporting, no measure was initiated or imposed by the Chief Prosecutors. National Coordinator stated that in the KPC meeting held on February 25, 2014, the Commission for Oversight and Verification of Data presented the report, which highlighted certain shortcomings. State Prosecutor has recommended that all prosecutions where there were shortcomings, and they can be attributed to negligence, or lack of will of workers to apply the decisions of the KPC, to initiate disciplinary proceedings against them, otherwise KPC will initiate disciplinary proceedings against the Chief Prosecutors. So far there is no report on any action in this regard.

OBLIGATION	DEADLINE	RESPONSIBLE	COMMENT
Separate report with reasoning for each case that has reached statute of limitations (<i>Article 3.2 of the AP</i>)	<i>As soon as possible</i>	<u>Respective prosecution (Chief prosecutor) reports to the KPC</u>	
SPRK	National Coordinator: There is no report/information for such case. Deputy Chief Prosecutor: There were no cases of statute of limitations.		
BP Pristina	National Coordinator: There is no report/information for such case. Chief Prosecutor: There were no cases of statute of limitations.		
BP Prizren	National Coordinator: There is no report/information for such case. Chief Prosecutor: There were no cases of statute of limitations.		
BP Pejë	National Coordinator: There is no report/information for such case. Chief Prosecutor: There were no cases of statute of limitations.		
BP Gjakovë	National Coordinator: There is no report/information for such case Chief Prosecutor: There were no such cases.		
BP Ferizaj	National Coordinator: There is no report/information for such case. Chief Prosecutor: There was a case of statute of limitation, which was transferred from Pristina, but the special report is not yet prepared.		
BP Mitrovicë	National Coordinator: There is no report/information for such case. Chief Prosecutor: Cases from the northern side of Mitrovica have reached statute of limitations and the Council has been notified.		
BP Gjiilan	National Coordinator: There is no report/information for such case. Chief Prosecutor: There were no cases.		
Plan for identification of cases and their assignment by competence (<i>Article 5.1 AP</i>)	<i>As soon as possible after the entry into force of the AP</i>	<u>Chief Prosecutors of relevant prosecutions and SPRK</u>	
SPRK	National Coordinator: Collegiums were held to resolve corruption cases. Deputy Chief Prosecutor: It was done.		
BP Pristina	National Coordinator: Collegiums were held to resolve corruption cases. Chief Prosecutor: It was done.		
BP Prizren	National Coordinator: Collegiums were held to resolve corruption cases. Chief Prosecutor: Cases were allocated as per the order and in every collegium corruption cases were discussed.		
BP Pejë	National Coordinator: Collegiums were held to resolve corruption cases. Chief Prosecutor: Cases were identifier, one prosecutor deals with corruption cases and cases have been sent to her.		

BP Gjakovë	National Coordinator: Collegiums were held to resolve corruption cases Chief Prosecutor: During the transfer of cases assignments were made, and cases were resolved based on the priority.		
BP Ferizaj	National Coordinator: Collegiums were held to resolve corruption cases Chief Prosecutor: Identification and allocation was done immediately.		
BP Mitrovica	National Coordinator: Collegiums were held to resolve corruption cases. Chief Prosecutor: Identification and allocation was done immediately with prosecutors		
BP Gjilan	National Coordinator: Collegiums were held to resolve corruption cases. Chief Prosecutor: Collegiums were held, every month we meet with different sectors, with investigators of serious crimes.		
Identification of cases that may have not been reported in the criminal charges register (<i>Article 5 2 AP</i>)	<i>As soon as possible</i>	<u>Chief Prosecutors of relevant prosecutions and SPRK</u>	
SPRK	National Coordinator: Initially, verification was done by the Prosecutions, and later Commission for oversight and verification of data was formed (with the decision of the Chief Prosecutor) Deputy Chief Prosecutor: There were no such cases.		
BP Pristina	National Coordinator: Initially, verification was done by the Prosecutions, and later Commission for oversight and verification of data was formed (with the decision of the Chief Prosecutor) Chief Prosecutor: There were no such cases.		
BP Prizren	National Coordinator: Initially, verification was done by the Prosecutions, and later Commission for oversight and verification of data was formed (with the decision of the Chief Prosecutor) Chief Prosecutor: There were no unregistered cases; we have a very good management of registers.		
BP Pejë	National Coordinator: Initially, verification was done by the Prosecutions, and later Commission for oversight and verification of data was formed (with the decision of the Chief Prosecutor) Chief Prosecutor: There were no unregistered cases.		
BP Gjakovë	National Coordinator: Initially, verification was done by the Prosecutions, and later Commission for oversight and verification of data was formed (with the decision of the Chief Prosecutor) Chief Prosecutor: There were no such cases, all were registered.		
BP Ferizaj	National Coordinator: Initially, verification was done by the Prosecutions, and later Commission for oversight and verification of data was formed (with the decision of the Chief Prosecutor) Chief Prosecutor: All identifications were done.		

BP Mitrovica	National Coordinator: Initially, verification was done by the Prosecutions, and later Commission for oversight and verification of data was formed (with the decision of the Chief Prosecutor) Chief Prosecutor: No such cases.		
BP Gjilan	National Coordinator: Initially, verification was done by the Prosecutions, and later Commission for oversight and verification of data was formed (with the decision of the Chief Prosecutor) Chief Prosecutor: There were no such cases, aside of some minor statistical discrepancies which were amended on time.		
Assignment of cases with absolute priority and assigned by the capacity of perpetrators (<i>Article 6 .3 AP</i>) (<i>how many prosecutors were engaged before and after AP</i>)	<i>As soon as possible</i>	<u>Chief Prosecutors and prosecutors of respective prosecutions</u>	
SPRK	National Coordinator: Certainly cases are due to AD for definition of high -level corruption, prosecutors did not assign. Deputy Chief Prosecutor: Cases of corruption are treated with priority, but their assignment by the capacity of the perpetrator was not done because we do not have many cases of corruption. Two prosecutors were engaged, and now there are seven.		
BP Pristina	National Coordinator: All prosecutors Chief Prosecutor: Prioritization was done according to the capacity of the perpetrators; all prosecutors of the Serious Crimes Department are engaged.		
BP Prizren	National Coordinator: All prosecutors Chief Prosecutor: The prosecutor of the case considers which case should be a priority. With time, before the signing of the Action Plan, corruption cases have been designated as priority cases and six prosecutors of serious crimes handled them, therefore there are no additional prosecutors after the Action Plan.		
BP Pejë	National Coordinator: Only one prosecutor engaged Chief Prosecutor: Only one of the four prosecutors of the Serious Crimes Department deals with corruption cases.		
BP Gjakovë	National Coordinator: All prosecutors Chief Prosecutor There have not been many serious cases, but that all are being worked on in parallel, two of the serious crimes prosecutors deal with these cases.		
BP Ferizaj	National Coordinator: All prosecutors Chief Prosecutor: Cases that we had are of a previous date, prioritizing was done based on the capacity of the offenders and the amount.		
BP Mitrovica	National Coordinator: All prosecutors Chief Prosecutor: Two prosecutors in the Serious Crimes Department have dealt and continue to deal with cases of corruption.		

BP Gjilan	National Coordinator: All prosecutors Chief Prosecutor: Assignment of cases with absolute priority was made, cases were identified according to the amount and perpetrators, and after the entry into force of the Directive to define high -level corruption, and this Directive is being implemented. All prosecutors are engaged.		
Implementation of legal provisions relating to seizure and confiscation of proceeds of a criminal offense (<i>Article 7.3 of the AP</i>)	<i>At all times</i>	<u>Chief prosecutors and prosecutors of respective prosecutions</u>	
SPRK	Deputy Chief Prosecutor: Were not implemented.		
BP Pristina	Chief Prosecutor: Were implemented in three cases.		
BP Prizren	Chief Prosecutor: Regarding property and other goods there were no seizures, but there were confiscations in two cases, in one case the amount of counterfeited money and another drug quantity.		
BP Pejë	Chief Prosecutor: No seizure.		
BP Gjakovë	Chief Prosecutor: In two cases of bribery, ex officio was requested to seize material benefit, the amount they have received, but there were no cases of freezing assets.		
BP Ferizaj	Chief Prosecutor: So far in cases of corruption, there was no great value, there was no request for seizure and confiscation of the material benefit.		
BP Mitrovica	Chief Prosecutor: These provisions are implemented.		
BP Gjilan	Chief Prosecutor: This provision was not used, from now on we will pay more attention to this.		
Regular meetings with KP, ACA and other institutions (<i>Article 7.1</i>)	<i>At all times</i>	<u>Chief Prosecutor of the respective prosecution</u>	National Coordinator: I have had meetings with chief prosecutors , but not with ACA
SPRK	Deputy Chief prosecutor: We have had meetings with the KP, with TAK, and other institutions, however, there has been no meeting with ACA.		
BP Pristina	Chief Prosecutor: We had meetings with KP but not with ACA.		
BP Prizren	Chief Prosecutor: Regular meetings with various police units, meetings of the Chief prosecutor with prosecutors, and review of cases.		
BP Pejë	Chief Prosecutor: We never had a meeting with ACA, while with the police yes.		
BP Gjakovë	Chief Prosecutor: All cases are led by me, prosecutors are assigned only at the stage of criminal charges. Prosecutors who have had cases contacted with ACA, while with the KP there are regular meetings.		
BP Ferizaj	Chief Prosecutor: We had meetings with relevant institutions.		
BP Mitrovica	Chief Prosecutor: With Kosovo police we have regular meetings, while with other institutions rarely.		
BP Gjilan	Chief Prosecutor: Regular monthly meetings with investigators.		

Mandatory reporting on the progress of the plan (<i>Article 8. 2 AP</i>)	<i>Every month</i>	<u>Chief Prosecutor of the respective prosecution to the KPC Commission for coordination of the corruption cases (National Coordinator)</u>	
SPRK	National Coordinator: January 2014, reporting under the action plan, in writing. Deputy Chief Prosecutor: It was done.		
BP Pristina	National Coordinator: January 2014, reporting under the action plan, in writing. Chief Prosecutor: Regular reporting was done.		
BP Prizren	National Coordinator: Chief Prosecutor Hoxha has reported once on 24 January 2014 on the progress of implementation of the AP, informing on assignment of cases and the methodology of work, where every week there are collegium meetings on information about the implementation of the AP. Chief Prosecutor: We do regular reporting, also reporting to the Prosecutorial Council but also report whenever requested by the National Coordinator.		
BP Pejë	National Coordinator: January 2014, reporting under the action plan, in writing. Chief Prosecutor: We have reported regularly to the National Coordinator.		
BP Gjakovë	National Coordinator: January 2014, reporting under the action plan, in writing. Chief Prosecutor: They are all in tabular, where each case is registered, at each stage.		
BP Ferizaj	National Coordinator: January 2014, reporting under the action plan, in writing. Chief Prosecutor: Upon request reports were submitted. Data are in database, and updated continuously.		
BP Mitrovica	National Coordinator: January 2014, reporting under the action plan, in writing. Chief Prosecutor: There have been regular monthly reports, along with general reporting; also separately corruption cases were reported.		
BP Gjilan	National Coordinator: January 2014, reporting under the action plan, in writing. Chief Prosecutor: We have reported as required by the Coordinator.		
Two previous evaluation of the AP (<i>Article 8. 3 and 8.4 AP</i>)	1. <i>In the first week of January 2014</i> 2. <i>In the first week of April 2014</i>	<u>Kosovo Prosecutorial Council</u>	National Coordinator: Chief Prosecutors have reported at the KPC meeting held on January 24, 2014. As a result, the decision was taken by the State Prosecutor to establish the Commission for oversight and verification, which has reported at the KPC meeting, held on February 25, 2014.
Overall evaluation of the AP (<i>Article 8.5 of the AP</i>)	<i>30 June 2014</i>	<u>Kosovo Prosecutorial Council</u>	

Five Anti – Corruption experts of the SPRK will assist the BP related to cases foreseen in AP (<i>Article 10. 1 of the AP</i>)	<i>At all times of implementation of the AP</i>	<u>SPRK Experts will assist the Chief Prosecutors and Prosecutors of the BP</u>	
BP Pristina	National Coordinator: Was not notified. Chief Prosecutor: Experts were not invited.		
BP Prizren	National Coordinator: Was not notified. Chief Prosecutor: We did not have any case where we requested their expertise, but they will be used in the future.		
BP Pejë	National Coordinator: Was not notified. Chief Prosecutor: We did not invite them; we do not have their contact details.		
BP Gjakovë	National Coordinator: Was not notified Chief Prosecutor: We did not have such case; we do not have very serious cases.		
BP Ferizaj	National Coordinator: Was not notified. Chief Prosecutor: SPRK experts were not engaged, but they are considered a in one case, while for another case decision is pending.		
BP Mitrovica	National Coordinator: Was not notified. Chief Prosecutor: Experts were not used.		
BP Gjilan	LP: Was not notified. Chief Prosecutor: Only once we engaged two experts.		
Administrative support is required for BP and SPRK (<i>Article 12 of the AP</i>)	<i>At all times of implementation of the AP</i>	<u>KPC Secretariat</u>	National Coordinator: There were complaints about the lack of time to compile statistics/Commission for oversight and verification data has visited into each prosecution office
Administrative support is required for BP and SPRK (<i>Article 12 of the AP</i>)	<i>At all times of implementation of the AP</i>	<u>Performance Review Unit of the Prosecutions</u>	National Coordinator: There were complaints about the lack of time to compile statistics/Commission for oversight and verification data has visited into each prosecution office
Communication with the public (<i>Article 13.1 of the AP</i>)	<i>Every two weeks</i>	<u>Kosovo Prosecutorial Council</u>	National Coordinator: Because after the meeting of the KPC there were discrepancies identified between statistics and the tracking mechanism, then the decision of the State Prosecutor was to form the Commission for Oversight and Verification of data, whose work took more than 15 days, and awaiting for the final report of this commission, communication with the media has been delayed

<p>Signature of the Memorandum of Cooperation (Article 13 . 2 AP)</p>	<p><i>At the beginning of the implementation of the Action Plan</i></p>	<p><u>KPC and interested NGO</u></p>	<p>Memorandum of Cooperation was signed between the KPC and the NGO “Kosovo Law Institute” on December 27, 2013, in Pristina.</p>
<p>Disciplinary action for failure to implement the AP</p>	<p><i>At all times</i></p>	<p><u>KPC</u></p>	<p>National Coordinator: In the KPC meeting held on February 25, 2014, the Commission for Oversight and Verification of Data presented the report, which highlighted certain shortcomings. State Prosecutor has recommended that all prosecutions where there were shortcomings, and they can be attributed to negligence, or lack of will of workers to apply the decisions of the KPC, to initiate disciplinary proceedings against them, otherwise KPC will initiate disciplinary proceedings against the Chief Prosecutors.</p>

COMMENTARY ON THE ACTS

VI. COMMENTARY ON THE ACTS

a. BASIC PROSECUTION IN PRISTINA:

Specific findings:

KLI finds two separate occasions of decisions contrary to the provisions of the Criminal Code of the Republic of Kosovo.

1. Case 3825/13-IIPR dated June 7, 2013, with the criminal charge number 01-1652/13 submitted by the ACA. Indictment of ordering punitive measure issued on July 2, 2013 for the crime of “Non-reporting or false reporting of assets, income, gifts, or other benefit”.
2. Case 4266/13-IIPR on June 27, 2013 with the criminal charge number 01-1646/13 submitted by ACA. Indictment of ordering punitive measure issued on July 12, 2013 for the crime of “Non-reporting or false reporting of assets, income, gifts, or other benefit”.

In both cases, prosecutors have decided against the provisions of the Criminal Code of the Republic of Kosovo, namely the imposition of the punitive order is made inconsistent with the punishment prescribed for the offense under article 437 – “Non-reporting or false reporting of assets, income, gifts, or other benefits.”⁹. Under this provision, the punishment may be imposed is cumulative with the fine and with imprisonment, and not with punitive orders as it has been requested from prosecutors in these cases.

3. Basic Prosecution in Pristina, respectively the Department for Serious Crimes, in the ruling PP. No. 1061-3/2009, dated 10.10.2013, has terminated the investigation against a defendant.

The ruling against the defendant XX terminated investigation for two offenses, criminal offense “Tax Evasion” under Article 249, paragraph 1 and paragraph 2 of the CCK and “Abuse of authority in the economy” from Article 236 paragraph 1 of the CCK,

⁹ See the Criminal Code of Kosovo, **Article 437 – “Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations”**

1. Any person, obligated by law to file a declaration of property, income, gifts, other material benefits or financial obligations, who fails to do so, shall be punished by a fine or by imprisonment of up to three (3) years. The offense in paragraph 1 of this Article is deemed committed when the deadline for filing the declaration has passed and no report has been filed.

2. Any person, obligated by law to file a declaration of property, income, gifts, other material benefits or financial obligations, who falsifies or omits data or required information on the required declaration shall be punished by a fine and imprisonment of six (6) months to five (5) years.

3. The value of the non-reported or the falsely reported property, income, gifts, or other material benefits shall be confiscated.

according Article 158, paragraph 1, subparagraph 1.4 of the CPCK. Reasoning for the termination of the investigation against the defendant XX was related to the Law on Amnesty. According to the reasoning of the prosecutor, it results that these two offenses are included in the amnesty and that the defendant XX has fulfilled the conditions to benefit from the amnesty.

KLI: The decision to terminate the investigation of such offenses was contrary to the Law on Amnesty No. 04/L-209. Law on Amnesty has clearly listed offenses that can be amnestied and includes these two offenses for which the defendant XX has benefited from the amnesty under the decision of the Prosecutor. The law clearly states that these two offenses can be amnestied only if they are committed with the intent of committing a criminal offense of calling for resistance.¹⁰ Therefore, in no case these two offenses could be amnestied without committing a criminal act of calling for resistance, therefore the KLI is of the opinion that amnesty of two criminal offenses for the defendant XX by the Basic Prosecution in Pristina is done in complete contradiction to the Law on Amnesty. The reasons for the amnesty of these two offenses contrary to the Law on Amnesty should be investigated by the mechanisms of Kosovo Prosecutorial Council because in no way it can be said that a prosecutor from the Basic Prosecution Office in Pristina, respectively, from the Serious Crime Department, could do such a mistake to grant amnesty to an offense that is not amnestied by the Law on Amnesty. KLI requests investigation of this case and other cases in which the Law on Amnesty is applied, to identify any violation of the provisions of this law by officials.

CASES OF STATUTE OF LIMITATION IN THE BASIC PROSECUTION IN PRISTINA:

Statute of limitation of cases after the entry into force of the Action Plan:

1. PP case with number 296/2001, dated 29 November 2013. Termination of investigation, Basic Prosecution in Pristina, Department for Serious Crimes.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

¹⁰ See the Law on Amnesty Law, Article 1.2.8. Call for resistance (Article 319) except in cases when commission of this criminal offense has resulted in commission of another criminal offense. The perpetrators of the following criminal offenses below committed with the purpose of committing the criminal offence of call for resistance, are also granted amnesty from criminal prosecution and execution of punishment: **1.2.8.1. Misuse of economic authorizations (Article 236, paragraph 1., subparagraphs 1.1; 1.2; 1.3 and 1.4); 1.2.8.2. Prohibited trade (Article 246); 1.2.8.3. Tax evasion (Article 249);** and other offenses.

Statute of limitation of cases before the entry into force of the Action Plan:

2. PP case with number 309-1/2006 dated 19 June 2013. Termination of investigation, Basic Prosecution in Pristina, Department for Serious Crimes.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

b. BASIC PROSECUTION IN GJILAN:

Statute of limitation of cases in the Basic Prosecution in Gjilan:***Statute of limitation of cases before the entry into force of the Action Plan:******Decision for dismissal of criminal charge/relative statute of limitation of prosecution:***

1. Case PP / I.no. 63/2013, dated March 13, 2013. Decision for dismissal of criminal charges due to relative statute of limitation of prosecution for the criminal offense of misuse of official position or authority under Article 339 of the CCK. Basic Prosecution in Gjilan. Department for Serious Crimes.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

Decision for dismissal of criminal charge/statute of limitation of prosecution from the PPN cases register:

2. Case PPN/I with number 76/2013, dated April 30, 2013. Official note for statute of limitation of prosecution for the criminal offense of abuse of official position or authority from Article 422 paragraph 1 of the CCK, because no investigative action was taken.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

Termination of investigation/relative statute of limitation of prosecution:

1. Case PP/I with the number 199/2013, dated 19 September 2013. Decision for dismissal of criminal charges due to relative statute of limitation of prosecution for the criminal offense of misuse of official position or authority under Article 339 of the CCK.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

2. Case PP.I.136/2013 dated October 16, 2013. Decision to terminate the investigations because of statute of limitation of prosecution against two persons. Firstly because of the statute of limitation of prosecution for the offense of abuse of official position or authority of Article 442 paragraph 1 of the CCK, and the second offense because of the misuse of authorizations in the economy, under Article 290, paragraph 1, sub - paragraph 1.2 of the CCK.
3. *KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.*

c. BASIC PROSECUTION IN PRIZREN:

Statute of limitation of cases in the Basic Prosecution in Prizren:

Statute of limitation of cases after the entry into force of the Action Plan:

Decision for dismissal of criminal charge/statute of limitation of prosecution:

1. Case PP with number 275/2013 dated December 3, 2013. Decision for dismissal of criminal charges because of the statute of limitation of prosecution for the criminal offense of misuse of official position or authority from Article 339 paragraph 3 of the CCK.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

2. Case PP with number 253/2013 dated January 20, 2014. Decision for dismissal of criminal charges because of the statute of limitation of prosecution under the provisions of Article 107, paragraph 8 in conjunction with Article 106 paragraph 1.4 and 1.5 of the CCK. For criminal offenses of misuse of official duty under Article 339, paragraph 2, taking bribery from Article 343 paragraph 2 and the issuing unlawful judgments under Article 346 of the CCK.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

d. BASIC PROSECUTION IN FERIZAJ:

Statute of limitation of cases in the Basic Prosecution in Ferizaj:***Statute of limitation of cases after the entry into force of the Action Plan:***

1. Case PP/I with number 1361-05/12 dated November 29, 2013. Decision for dismissal of criminal charges because of statute of limitation of prosecution. Department for Serious Crimes.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

e. BASIC PROSECUTION IN MITROVICA:

Statute of limitation of cases in the Basic Prosecution in Mitrovica:***Statute of limitation of cases after the entry into force of the Action Plan:***

1. Case PP/II with number 270/2009 dated November 21, 2013. Decision for dismissal of criminal charges because of statute of limitation of prosecution. General Department.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

2. Case PP/II with number 20/2011 dated December 27, 2013. Decision for dismissal of criminal charges because of statute of limitation of prosecution. Department of Serious Crimes.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

3. Case PP/II with number 514/2012 dated February 19, 2014. Decision for dismissal of criminal charges due to the relative statute of limitation of prosecution. General Department.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

4. Case PP/II with number 140/2010 dated January 31, 2014. Decision for dismissal of criminal charges due to the relative statute of limitation of prosecution. Department for Serious Crimes.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

5. Case PP/II with number 1697/2009 dated February 14, 2014. Decision for dismissal of criminal charges because of statute of limitation of prosecution. General Department.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

6. Case PP with number 740/2008 dated February 13, 2014. Decision for dismissal of criminal due to absolute statute of limitation of prosecution. General Department.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

7. Case PP/II with number 621/09 dated February 12, 2014. Decision for dismissal of criminal charges because of statute of limitation of prosecution. Department for Serious Crimes.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

8. Case PP/I with number 218/2013 dated February 11, 2014. Decision for dismissal of criminal charges because of statute of limitation of prosecution. Department for Serious Crimes.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

9. Case PP/I with number 127/2013 dated February 11, 2014. Decision for dismissal of criminal charges because of statute of limitation of prosecution. Department for Serious Crimes.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

10. Case PP/I with number 11/2013 dated February 11, 2014. Decision for dismissal of criminal charges because of statute of limitation of prosecution. Department for Serious Crimes.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

11. Case PP/II with number 41/2013 dated February 11, 2014. Decision for dismissal of criminal charges because of statute of limitation of prosecution. Department for Serious Crimes.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

1. Case PP/II with number 1500/2009 dated February 6, 2014. Decision for dismissal of criminal charges because of statute of limitation of prosecution. General Department.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

12. Case PPN/II-53/2011 with number, dated November 14, 2014. Decision for dismissal of criminal charges because of statute of limitation of prosecution. General Department.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

Statute of limitation of cases before the entry into force of the Action Plan:

1. Case PP/II with number 271/2009 dated March 15, 2013. Decision for dismissal of criminal charges because of statute of limitation of prosecution . General Department.

KLI: No special report has been prepared for this case for the KPC based on obligations arising from the Action Plan.

VII. RECOMMENDATIONS

Based on the findings of this report, Kosovo Law Institute provides the following recommendations:

1. Prosecutorial system, media and civil society should pay specific attention on the corruption cases which are defined as high level corruption, taking into account that these cases are the most important ones in order to achieve greater success in fight against corruption.
2. Chief Prosecutors and prosecutors who deal with corruption cases should address the obligations which derive from the Action Plan. These obligations should be absolute priority for these prosecutors, with special focus on issues where we have observed lack of competence:
 - a. Drafting special reports, which would provide reasoning for each case which has reached the statutory limitation for criminal prosecution
 - b. Monthly reporting on implementation of the Action Plan to the National Coordinator against Corruption
 - c. Holding regular meetings with officials from KAA and other agencies
 - d. Utilizing Sequestration and Confiscation measures
3. National Coordinator against Corruption should:
 - a. Place special focus on Basic Prosecution Office Prishtina due to the large number of cases and the profile of people involved in those cases
 - b. Obtain information only from the internal mechanism for collection of information, the mechanism established by the Prosecutorial Performance Assessment Unit
 - c. Deliver tasks on time as it is required by the Action Plan to issue biweekly public report. Further, improve the quality of the report which should contain more information and analysis. For instance, the reports should contain information on cases which have already reached the statutory limitation on criminal prosecution, cases dismissed, the value of sequestered assets, value of the damages caused in cases in which the prosecutors raise charges, and so on. The press releases should be standardized, which would allow for media and public to easily track the progress on fight against corruption.
4. KPC and Office of the Disciplinary Prosecutor should cooperate closely in undertaking disciplinary measures with regard to:
 - a. Cases of corruption which have been solved by breaching the law (cases identified by KLI and others)

- b. Findings of the Commission on Supervision and Verification of the Data on Corruption Cases.
 - c. Cases of prosecutors who have failed to solve corruption cases for many years.
5. Basic Prosecution Office Peja should engage all Serious Crimes Department Prosecutors in solving corruption cases.

Prosecutors should be more active in initiating cases against corruption, as since November 4, 2013 until now, they have not initiated any single case against corruption through their own initiative.