



# PROSECUTION AND SPECIAL COURT OF THE REPUBLIC OF KOSOVO

Analysis of policies and laws regarding political influence in the justice system, lack of results in combating criminality and the need to establish a Prosecution office and Special Court with an exclusive and limited mandate in the fight against corruption and organized crime in the Republic of Kosovo



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## ABOUT THE PROJECT

Kosovo Law Institute is implementing the Project “Empowering the rule of law in Kosovo”, which aims to strengthen the rule of law in Kosovo, in order to increase accountability and transparency, including an independent, efficient and effective judiciary. This project is supported by the British Embassy in Pristina and National Endowment for Democracy (NED).

Views expressed in this report are those of the authors, they are not necessarily donor attitudes.

## ABOUT KLI

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

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August 2017

Pristina, Republic of Kosovo

Supported by:



British Embassy  
Pristina



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**Table of contents:**

1. Executive summary .....	4
2. The problem in combating corruption and organized crime.....	8
3. Legislation and mechanisms for combating corruption and organized crime.....	11
4. Local assessments on combating corruption and organized crime .....	13
5. International assessments on combating corruption and organized crime .....	14
6. The case of Macedonia .....	16
a. Responsibility of Special Prosecution's office leader in Macedonia.....	18
b. The results of the Special Prosecution's work in Macedonia for one year .....	19
7. Lessons from Macedonia .....	20
8. Solution for Kosovo .....	21
9. Special Prosecution office and Court for combating corruption and organized crime.....	22

## **1. Executive summary**

### *Context*

There was no lack of rhetoric in combating corruption by all the leaders of independent institutions and agencies in the Republic of Kosovo. However, corruption is endemic and Kosovo suffers from a lack of will to combat corruption. The only will to combat corruption successfully, have remained paper's policies. The Assembly of Kosovo, Government, Prosecutorial Council, Judicial Council and Kosovo Police have constantly been engaged for these policies on paper. Nor there was no lack of procedural actions to offer spectacle to citizens and international factor, in order to create the impression of the true fight against corruption and organized crime. Investigations and indictments have been filed, which fail mainly due to unprofessionalism and directives in handling cases. Pursued corruption mainly belongs to low-profile, eventually medium, which more than 60% of indictments fail in courts. Over the last three years have been filed indictments of high-profile, which in more than 90% of cases have failed to be proven. Most of them have failed during the initial stage. This proves that most of these investigative cases or indictments have been deliberately initiated or persecuted, or to build permanent amnesty for these officials. Judges are not treating corruption cases with seriousness and absolute priority as they have been announced. Legal deadlines are constantly violated, while in cases of punishments, judges are compassionate to the corrupt, especially when it comes to ministers, who even though they are found guilty, are sentenced with suspended sentence.

Despite the proclamation of a fight for seizure and confiscation of assets, it results that there are no results for the confiscation of the property gained by criminal offenses of corruption.

Extreme politicization of independent institutions such as the police, prosecutorial and judicial system, is serving as a perfect tool for cultivating the culture of impunity of senior state officials, stakeholders within prosecutorial and judicial system, and at the same time is serving to promote these offenders. Recruitment, promotion and selection of the stakeholders of these important institutions cannot be done without the practical intervention of the policy hand, which takes care that key positions are guided by people with controversial integrity and completely manageable. Undoubtedly, amongst police, prosecutors and judges, there are such with integrity and professionalism, who work honestly, but who are not shown do not come to terms within this influential political system.

Republic of Kosovo has adopted adequate legislation to combat organized crime and corruption. Kosovo does not suffer from lack of institutions. In the institutional architecture for combating corruption and organized crime, many institutions and independent agencies have been established intentionally, in order for the responsibility to be distributed and so no can be held responsible for not fighting corruption and organized crime, something that is constantly happening in Kosovo.

Since the end of the war, especially since the declaration of independence, the Republic of Kosovo has benefited hundreds of millions euros of assistance and support from the United States of America, European Union (EU) and other donors to improve the rule of law, respectively the justice system in Kosovo. Police officers, prosecutors and judges have benefited from specialized trainings, trainings, seminars, workshops, local and international conferences on drafting, developing and implementing legislation and policies in the fight against organized crime and corruption. However, no concrete results are being seen.

The extreme political impact and the lack of concrete results have seriously violated the integrity of justice system, which has led to the loss of public and citizens confidence, regarding the rule of law, respectively for the justice system in Kosovo, with which only about 15% of citizens are satisfied.

Due to non-fighting of corruption and organized crime, the citizens of Kosovo remain the only ones in Europe isolated, without a right of visa-free travel to EU countries.

### *Solution for Kosovo*

KLI estimates that in this situation, which is often hopelessly seen, it is necessary to create a Special Prosecution and Court, as wholly independent institutions, with a limited mandate, with recruited staff by the international community, respectively the United States and Great Britain. Further on this solution for Kosovo, KLI offers a similar model of these institutions, such as Macedonia.

The Macedonian model proves that in fragile democracies where the culture of impunity has been installed over the years or decades, building a network or clans of interest in the political, economic, business, nepotism, politicization of independent institutions such as police, Prosecution and courts, etc., the intervention and interference of the international factor is essential, including the expression of the will of the broad political spectrum, for depoliticizing the police, the prosecution and the judiciary.

Respectively, intervention is a precondition for re-establishing in the first-place democratization of its own public and state institutions, and good governance through depoliticizing the police, prosecution and courts.

The establishment of a new mechanism, completely apolitical in practice, based on the criteria below, would have the effect of installing, within the justice system, also the principle of competition between the institutions of investigation, prosecution and adjudication of corruption and organized crime cases, including control and supervision of these institutions.

For this solution, it is needed the amendment of the Constitution regarding the establishment of a Special Prosecution office and Court, based on Macedonia's modalities. Such an agreement should have consensus and full support of the largest political parties in Kosovo.

The competencies and responsibilities of this Special Prosecution and Court shall not under any circumstances interfere with the competencies and responsibilities of the Special Court in The Hague established by the Assembly of Kosovo.

The establishment of the Prosecutor's Office and the Special Court should be limited to a certain time and for certain criminal offenses that are of interest to the State of Kosovo, and these two institutions should have full independence from the actual institutions of the KJC, KPC, PA and supremacy to SPRK.

The competencies of this prosecution and the court will be only the criminal offenses that enter within these chapters: Chapter XXIV Organized Crime, Chapter XXXIV Official Corruption and Criminal Offenses against Official duty and Chapter XXXII – Criminal Offenses against the administration of justice and public administration.

The Prosecution should have the right to take over its competence at any stage of the proceedings, cases that have started or are in work by the Basic Prosecutions or the SPRK.

The Prosecution will have a judicial police which will act exclusively under the orders of the Prosecution's Office and there will be no legal obligations to the structure or management of the Kosovo Police.

The KLI strongly believes that the creation of this Prosecution and Special Court will not be a budget burden, because these institutions within a short period of time based on the results expected to achieve, will multiply the budget more than their funding. On the contrary, these institutions will be profitable for the state budget and the citizens of the Republic of Kosovo, through the return to the state coffer, which is benefited through criminal corruption activities.

### ***Principles for the Establishment of the Prosecution and the Special Court for Combating Corruption and Organized Crime***

The establishment of the Prosecution and the Special Court should be based on these principles: Specific criteria and procedures regarding the appointment process of the Chief Prosecutor of Prosecution and the President of the Court and the recruitment of prosecutors and judges;

Verification of the past of candidates applying for the position of Chief Prosecutor, President of the Court, Prosecutors, and Judges, verification that will be based on international standards that ensure full verification of the personal and professional integrity of the candidates. Each prosecutor of the Prosecution will have in disposition two or three investigating officers available to work under the orders of the prosecutor. Assigned investigative officers will pass through the verification process. Each judge will have at least two professional associates and one legal officer.

The recruitment process and appointment for prosecutors and judges to be led exclusively by the international factor, respectively by the United States and Great Britain. The Prosecution and the Court for their work and cases shall have no obligation to report to the KPC, the KJC or the Office of the Chief State Prosecutor;

The timely jurisdiction of the prosecution's office is limited within five years of its establishment to finalize and present the indictments in court, with possibility of continuation depending on the results.

The international factor, in co-operation with the political parties, to appoint a temporary commission composed of local and international, with which the prosecution and the court will report. Reporting should be regular on a six-monthly and annual basis. Reporting should be related to the results. Kosovo Assembly should allocate sufficient budget for the functioning of the prosecution and the court. Prosecutors and judges should have adequate state protection so that they exercise their competencies and responsibilities in an independent and impartial manner.

## **2. The problem in combating corruption and organized crime**

There was no lack of rhetoric in combating corruption by all the leaders of independent institutions and agencies in the Republic of Kosovo. However, corruption is endemic and Kosovo suffers from a lack of will to combat corruption. The only will to combat corruption successfully, have remained paper's policies. The Assembly of Kosovo, Government, Prosecutorial Council, Judicial Council and Kosovo Police continuously address in public an empty rhetoric, by promoting strong policies to combat corruption, which policies never end with concrete results. Despite the proclamation of a fight for seizure and confiscation of assets, it results that there are no results for the confiscation of the property gained by criminal offenses of corruption.

Since the end of the war, especially since the declaration of independence, the Republic of Kosovo has benefited hundreds of millions euros of assistance and support from the United States of America, European Union (EU) and other donors to improve the rule of law, respectively the justice system in Kosovo.

State law enforcement officials in Kosovo have benefited from specialized trainings, trainings, seminars, workshops, local and international conferences on drafting, developing and implementing legislation and policies in the fight against organized crime and corruption. Institutions that have benefited most from international partners are Kosovo Police, prosecutorial and judicial system. Extremely large number of police officials, prosecutors and judges have been trained and have participated in specialized programs organized whether by the US Government, EU or various donors in the fight against organized crime and corruption.

Despite the investment, support and assistance provided by international partners in building and developing independent institutions such as Kosovo Police, State Prosecutor, Courts, Prosecutorial Council and Judicial Council, the same institutions, despite the fact that by constitution and by the law they are independent, in practice the same are influenced and submissive towards politics. Reporting of legal violations by media, NGOs, citizens regarding institutional corruption and internal corruption in police, prosecutorial and judicial system is selective, and in many cases criminal prosecution does not even begin, although it happens in front of prosecutors eyes and within the institution. The culture of impunity has become an unwritten rule. Lack of control and accountability within these institutions has created intangible figures, where the law is not applied in relation to them even in cases where corruption is obvious and it is impossible to hide it from the media and the public.

Extreme politicization of independent institutions such as the police, prosecutorial and judicial system, is serving as a perfect tool for cultivating the culture of impunity of senior state officials, stakeholders within prosecutorial and judicial system, and at the same time is serving to promote these offenders. Recruitment, promotion and selection of the stakeholders of these important institutions cannot be done without the practical intervention of the policy hand, which takes care that key positions are

guided by people with controversial integrity and completely manageable. Undoubtedly, amongst police, prosecutors and judges, there are such with integrity and professionalism, who work honestly, but who are not shown do not come to terms within this influential political system.

Based on Constitution and the law, same institutions are obliged to investigate, prosecute and judge perpetrators of offenses independently, impartially and fairly. The practice, up to now, has proven in tens or hundreds of cases that these justice institutions apply selective and persecutory justice towards political opponents or various interest groups. Meanwhile in cases where there is a suspicion of high-level corruption, prosecution office and the police have not proved the courage to initiate criminal investigation proceedings. Cases of public interest involving billions of euros misgivings, are still unexplained to the public and here are the most important processes in the country such as: privatization process in general, the process of appointing stakeholders of the highest institutions in the country, including the stakeholders of justice and security institutions, the daily publication of corrupt affairs of senior state officials, stakeholders of judicial system, prosecutorial and Kosovo Police, the loss of international disputes in Arbitration, political appointments in public enterprises and independent boards, the Pronto affair, etc.

In many of these cases, State Prosecutor did not have the courage to initiate criminal proceedings. Moreover in those cases where investigations have been initiated, cases have been closed and senior state officials were illegally amnestied, where in some cases, prosecutors have amnestied the ministers for corruption, with the justification that they enjoy immunity from prosecution.

Meanwhile in those cases when these criminal proceedings begin, over 90 percent of cases fail in the early stages of the criminal proceedings, such as at the initial hearing or at the later stages of the criminal proceedings. Despite the fact that in all local and international reports is systematically emphasized the high level of corruption in Kosovo, the results in this war almost do not exist at all.

In the most serious cases of organized crime and high level corruption, the legal deadlines set by the Criminal Procedure Code are constantly violated. The Stenta case, even one year after the indictment, is still in the intitial hearing stage. The Ukë Rugova case, although more than a year has passed since filing the indictment, this case is also still in the intitial hearing stage. According to the Criminal Procedure Code, there is a deadline of 30 days for the appointment and termination of the initial hearing from the time the indictment was filed. The same luck have also the cases involving Azem Syla and others. Since October 2016, when the indictment was filed, the case is still in the initial phase of the court, violating all legal deadlines.

The case of Naser Osmani and others, since 17 March 2016, when the initial hearing was held, has not yet completed the second hearing. Even in this case the legal deadline has been violated by the court.

In all cases where there were indictments for senior positions as deputies, ministers, mayors, chairmen of the Procurement Review Body, board members, family members of state leaders, were almost all unanimously closed and the accused individuals have been released from criminal liability.

Reports of internal corruption within Kosovo Police and prosecutorial system during 2015, 2016 and 2017, were added to the lack of results in the fight against corruption. These institutions which by Constitution and Law are mandated to investigate and prosecute criminality, unfortunately, the same one become subject to violation of the law and misuse of official duty, respectively corruption offenses. Even in these cases, prosecution is lacking, further cultivating the culture of impunity.

The extreme political impact and the lack of concrete results have seriously violated the State Prosecutor's integrity in exercising constitutional and legal functions. State Prosecutor's lack of will and courage, and the extreme politicization of this institution has led to the loss of public and citizens confidence, regarding the rule of law, respectively for the justice system in Kosovo, with which only about 15% of citizens are satisfied.

The level of governance in all central, local, and independent agencies continues to remain a concern as related to corruptive occurrences. A large number of these officials continue to face investigative and judicial proceedings. KLI findings prove that most of these investigative cases or indictments have been deliberately initiated or persecuted, or to build permanent amnesty for these officials. In this regard, prosecutors file unsustainable indictments in the courts to announce innocent the accused individuals, in order not to have the same opportunity to be prosecuted for the same offences, because of the principle of *res judicata*. Just as the fight against corruption and organized crime, good governance in Kosovo, continues to be proclaimed through empty rhetoric

Lately, on June 11, 2017, early parliamentary elections were held in Kosovo. As a result of these elections, the Coalition PAN (PDK-AAK-NISMA) had assured 39 seats in the Kosovo Assembly. The Political Party Self-determination had won 32 MPs, LDK-AKR-Alternative Coalition has assured 29 MPs and 20 positions have been assured by parties from the non-majority community in Kosovo.

After the certification of voters' results and before the beginning of the establishment of Kosovo Assembly, charges and counter charges have began between political parties in Kosovo, accusing certain individuals for participating in organized crime, corruption, terrorism and committing political offenses after the war. This fight between political parties now it's transformed into a practice, almost always during pre-election campaign and constitution of central institutions in Kosovo.

Political parties, the establishment of Government or initiation of negotiations on establishing the government, relate it to the clarification or withdrawal of criminal reports filed by opposing political entities.

Despite constitutional and legal obligation, State Prosecutor did not take any measures to initiate criminal proceedings or to invite these individuals to give statements and to begin solving these cases.

Moreover, the first steps in the establishment of public institutions, for the purpose of good governance, seem strange, assuming that within the coalition PAN there are individuals accused for corruption and organized crime. The leaders of this coalition are daily seen in public, conducting negotiations for establishing institutions with former MPs also accused for corruption and organized crime.

Failing to fight organized crime and corruption is one of the criteria that has not been met by Kosovo in terms of visa liberalization. Kosovo has not find a path to combat these phenomena due to the capture of justice system by politics. The citizens of Kosovo remain the only ones in Europe without a right of visa-free travel to EU countries.

### **3. Legislation and mechanisms for combating corruption and organized crime**

Legislation related to criminal justice adopted in the Republic of Kosovo is in harmony with international practices and standards. In order to advance this legislation, Kosovo in 2012 adopted the Criminal Code and the Criminal Procedure Code of Kosovo, which entered into force on January 1, 2013. These codes have replaced the Provisional Criminal Codes that had entered into force in 2004, at the time of UNMIK.

In 2013 Kosovo Assembly also adopted the Law on Extended Powers for Confiscation of Assets Acquired by Criminal Offence. This law defines enhanced powers for the confiscation of assets acquired by individuals who have committed a criminal offense, when the procedures set out in the Criminal Procedure Code are not sufficient. Provisions of this law are applied to property acquired by individuals who have committed a criminal offense foreseen with the Criminal Code of the Republic of Kosovo.

In addition to these laws, Kosovo Assembly in 2010 adopted the Laws on Judicial Council, Prosecutorial Council, Courts and State Prosecutor. Laws on Judicial Council and Prosecutorial Council entered into force on January 1, 2011, when these councils were established as independent, with competence and responsibility to manage and administer the judicial and prosecutorial system. On January 1, 2011 entered into force the Law on Courts and State Prosecutor, with the aim of providing financial security for judges and prosecutors, regarding the salaries for judges and prosecutors. With these legal provisions, the salaries of judges and prosecutors increased to a level that is acceptable and dignified for Kosovar reality, always comparing with the overall level of salaries in the country.

On January 1, 2013 entered into force the Law on Courts and the Law on State Prosecutor. With the entry into force of these laws, the structure of courts and prosecution offices in Kosovo has changed, establishing so seven Basic Courts (first instance), where each court has its own branches, the Court of Appeal (second instance

court) and the Supreme Court. The same structure was also applied for State Prosecutor, which was divided into seven Basic Prosecution offices, Appellate Prosecution office and Office of Chief State Prosecutor. Exceptionally, the Special Prosecution office of the Republic of Kosovo, established in 2007 by UNMIK as Kosovo Special Prosecutor's office, in 2008, with the Law on Special Prosecution office of the Republic of Kosovo was established as a permanent and specialized prosecutorial body which operates within the State Prosecutor of Kosovo. This prosecution office has a mandate and jurisdiction throughout the territory of Kosovo, to investigate and prosecute perpetrators of criminal offenses set by law, with special (exclusive) and complementary powers.

Before starting the main trial, SPRK has the power to take over the cases that fall within its special competence and that have been investigated or prosecuted by the competent authorities in accordance with the applicable law.

Since 2008, SPRK has consisted of local prosecutors and international prosecutors of EULEX. By 2014, the position of SPRK Chief Prosecutor has been reserved for international prosecutors coming from EULEX. From April 2014, with the adoption of the Law on Amending and Supplementing Laws related to the mandate of the European Union Rule of Law Mission in Kosovo, it was stipulated that the position of SPRK Chief Prosecutor will be exercised by a local prosecutor.

Since the declaration of independence in 2008, Kosovo has adopted adequate legislation to combat organized crime and corruption, has undertaken justice reforms to ensure the independence and impartiality of the prosecutorial and judicial system in Kosovo, to conduct criminal prosecution and fair trial, impartial and based on the highest international practices and standards, including the obligation to directly implement the practice of the European Court of Human Rights.

Kosovo does not suffer from lack of institutions for fighting corruption. Contrary, trying to proclaim fight against corruption, many mechanisms have been created in Kosovo in order to create a fog and no one to be held responsible for failures. In this regard, it has built many mechanisms to investigate, prosecute and judge perpetrators of these criminal offenses, including Basic Prosecution offices, SPRK, Police, Police Task Force of 30 anti-corruption investigative police officers, Task Force against corruption within SPRK, Units on Combating Corruption and Economic Crimes within the Basic Prosecution office in Pristina, National Coordinator for Combating Corruption appointed by the Office of the Chief State Prosecutor, the Anti-Corruption Agency, the National Coordinator for Combating Economic Crimes within Kosovo Prosecutorial Council as well as the National Anti-Corruption Council established by the Office of Republic's President, as an inter-institutional coordination mechanism.

Despite the adoption of an adequate legal framework and the construction of a numerous number of local and international (EULEX) mechanisms for combating organized crime and corruption, concrete results are still lacking. Kosovo is still

looking for a path to combat organized crime and corruption. Non-combating of organized crime and corruption has built as a standard the culture of impunity and the promotion of offenders.

#### 4. Local assessments on combating corruption and organized crime

Since 2013, Kosovo Law Institute (KLI) systematically monitors the prosecutorial and judicial system in dealing with corruption cases. KLI findings conclude that despite the adopted policies and the expression of declarative will by the judicial and prosecutorial system in combating corruption, concrete results in combating it, especially high-profile corruption, are still missing.

2016 has continued with spectacles, press releases and statistics war against corruption. State Prosecutor during this year, in over 60% of corruption cases, has dismissed criminal reports or terminated investigations.

During last year, KLI has monitored 1505 court hearings in 383 cases of corruption involving 989 accused, in all Basic Courts in Kosovo. In over 60% of corruption cases, indictments fail in court, because they are not being proven and protected by prosecutors. In high profile cases, this percentage goes to over 90%.



Efforts to fight corruption through indictments are more likely to be seen as a justification to the public and the international factor that corruption in Kosovo is being fought. KLI's research has found that in many high-profile cases, prosecution office has filed indictments that have been dismissed or rejected by the court in certain cases since the first hearing or even at later stages of court proceedings, such as the cases against Enver Hasani, Pal Lekaj, Lutfi Haziri, Agim Bahtiri, Shpresa Bakija, etc.

KLI findings prove that most of these investigative cases or indictments have been deliberately initiated or persecuted, or to build permanent amnesty for these officials. In this regard, prosecutors file unsustainable indictments in the courts to announce innocent the accused individuals, in order not to have the same opportunity to be prosecuted for the same offences, because of the principle of *res judicata*.

In cases where there is no fight against corruption, then there is promotion. The Office of the Chief State Prosecutor, has continued to give appreciation for merit in promoting the prosecutorial system and promote in duty, prosecutors identified as violators of the law.

## **5. International assessments on combating corruption and organized crime**

### *a) Progress Report on Kosovo for 2016*

Kosovo is at an early stage/has some level of preparation in the fight against corruption. Kosovo has strengthened its institutional capacities to fight corruption and organised crime, with the establishment of multi-disciplinary investigative teams, the set-up of a tracking mechanism for high level corruption and organised crime cases, as well as the fostering of serious crime department of basic courts. This has led to an increased number of high-level cases being investigated and prosecuted. However, corruption remains prevalent in many areas and continues to be a very serious problem. A stronger political will to tackle this in a comprehensive manner is necessary.

Kosovo is at an early stage in the fight against organised crime. The number of investigations and final convictions remains low. Gaps in the legislation remain and enforcement needs to be improved in particular for money laundering, confiscation and seizure of assets, and financial investigation. Undue influence over investigations and the lack of strategic political commitment hamper the fight against organised crime. Kosovo continued its efforts to fight terrorism, but still faces challenges in this area.

Kosovo is at an early stage/has some level of preparation in the fight against corruption. Good progress has been achieved over the past year. With the establishment of a multi-disciplinary investigative team, headed by the Special Prosecution Office and the introduction of a tracking mechanism for high-profile corruption and organised crime cases, Kosovo has fulfilled two of last year's recommendations. This has led to an increased number of high-level cases being investigated and prosecuted. However, Kosovo must continue to strengthen its track

record in the fight against corruption and organised crime. Corruption remains prevalent in many areas and continues to be a very serious problem. The political will to tackle this in a comprehensive and strategic manner needs to be improved. The efficiency of investigations continues to be hampered by political influence.

*b) Progress Report on Kosovo for 2015*

Kosovo is at an early stage of preparations in the fight against corruption. A comprehensive and strategic approach is necessary to ensure real results in fighting the endemic corruption in Kosovo. A track record of successful prosecution and convictions remains to be established. The rare investigations into high-level corruption have so far not resulted in final convictions.

Kosovo is at an early stage of preparations in the fight against organised crime. Some progress has been made in inter-institutional cooperation and information exchange among law enforcement agencies on investigations. However, the number of investigations and final convictions remain low. Asset confiscation is rarely applied. The focus on strategies and action plans should not obscure the need for real results in fighting endemic organised crime in Kosovo. Kosovo has stepped up its efforts to fight terrorism, but continues to face challenges related to radicalisation.

Kosovo is at an early stage in the fight against corruption. Some progress has been achieved over the past year, notably in improved cooperation between the Anti-corruption Agency and the prosecution, and in requiring officials to declare property and gifts. However, overall progress has been limited and strong political will and commitment is needed to tackle this phenomenon properly. A comprehensive and strategic approach is necessary to ensure real results in fighting endemic corruption in Kosovo. A track record of successful prosecution and convictions would represent real progress.

*c) Progress Report on Kosovo for 2014*

Kosovo has made limited progress and is at an early stage in the fight against corruption. Even though Kosovo judicial and prosecutorial councils prioritised corruption cases there is no track record of convictions. Corruption remains prevalent in many areas, including in public procurement, and continues to be a serious problem that needs to be addressed urgently. Real political commitment is needed to translate efforts into actual results in the fight against corruption. There also needs to be further strengthening of interinstitutional cooperation. The judiciary needs to be enabled to fight this phenomenon effectively. At the same time prosecutors and judges need to demonstrate more accountability by handling cases more efficiently and delivering results. Kosovo has taken some steps to improve the fight against organised crime. It has continued to improve its legislative framework, notably by adopting implementing legislation on money laundering. The investigative capacity of the police is generally good. Cooperation with EULEX has intensified and is assessed as very good. The number of drug-related crime investigations has gone up and some

human trafficking groups have been dismantled. Kosovo is at an early stage of delivering results in the fight against organised crime, which continues to be a serious challenge.

d) *US Department of State's Human Rights Report for 2016 on Kosovo*

Endemic corruption in the governmental and private sector and the lack of punishment for corruption offenses remained a major concern of human rights.

The government took measures to prosecute and sentence officials who commit abuses in security services or elsewhere in the Government. Many in opposition, civil society and the media thought that senior officials were involved in corruption without being punished.

The law foresees criminal sentences for corruption by officials, but the government did not implement the law efficiently and corruption remained a serious problem. Lack of effective judicial oversight and overall weakness in the rule of law contributed to this problem.

State Department Human Rights Report for 2015 and 2014 are almost the same, emphasizing endemic corruption in government, culture of impunity, and lack of results in combating corruption.

## **6. The case of Macedonia**

The Progress Report of the European Commission for Macedonia for 2016, among other things, has concluded that this country in the combat against corruption has a level of preparation (initial stage). The institutional and legislative framework has been built over the last decade. Corruption remains a key problem in many areas and continues to be a serious problem. Political interventions in addressing corruption cases are evident. Particularly in high-level cases.

In September 2015, Macedonia established the Public Prosecutor (hereinafter: The Special Prosecution Office)<sup>1</sup>, mandated and competent in prosecuting suspicions regarding the abuse of official duty.<sup>2</sup> The establishment of this prosecution was preceded by the publication of the content of illegal recordings in early 2015, by the opposition leader in Macedonia Zoran Zaev, currently Prime Minister of Macedonia. The opposition in Macedonia through the publication of these wiretappings has revealed that the Macedonian government has spied dozens of thousands of its citizens without judicial decisions.

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<sup>1</sup> *Note:* The name of this Prosecution has been made the same as the name of the Public Prosecutor in power. Therefore, to be clear that in this paper is spoken about the new Public Prosecutor, in the continuation of the work, will be referred to as the Special Prosecution instead of the Public Prosecutor.

<sup>2</sup> Law no. 159 for the Public Prosecutor for the prosecution of criminal offenses related to and resulting from the content of illegal prosecution of communications. Approved on 15 September 2015. (See link <http://www.slvesnik.com.mk/Issues/926832067f424aa58316bdc8d5809295.pdf>)

The publication of the wiretapping has caused protests in Macedonia between opposition supporters and the position in Macedonia. Major divisions between the position and the opposition in Macedonia have been overcome after political negotiations mediated by US Ambassador to Macedonia Jess Baily and European Union Enlargement Commissioner Johannes Hahn. As a result of these negotiations, an agreement was reached for the establishment of the Special Prosecutor's Office, where consent was given by the largest political parties in Macedonia.

The establishment of the Special Prosecution Office was also preceded by the general perception of the public that in Macedonia the judiciary, prosecution and police are influenced by politics, and that the prosecution has no will and willingness to investigate and prosecute senior state officials.

Negotiations on the establishment of the Special Prosecution Office were conducted through political negotiations between the largest political parties in Macedonia and mediated by special mediator Peter Vanhoutte. The purpose of these negotiations was to establish this Special Prosecution office, which would be politically independent and professional in exercising the functions and responsibilities defined by law.

In this regard, the political parties and the international factor involved in this process, to achieve this goal, focused on two directions, the drafting of the Law on Special Prosecution including the mandate of this prosecution, the manner of selecting special prosecutors, the reporting of this prosecution, Identification and selection of special prosecutors with adequate integrity and professional experience.

The adoption of this law by the Macedonian Parliament has determined that the Special Prosecution Office is not a constitutional category. The Constitution<sup>3</sup>, the Law on Public<sup>4</sup> Prosecutor and the Law on the Council of Public Prosecutors in Macedonia define procedures and rules regarding the process of proposal, and the appointment of the public prosecutor<sup>5</sup>. In order to ensure the independence of the Special Prosecution Office, the process of appointing special prosecutors is regulated in another way. Article 3 of the Law on Special Prosecution for the Prosecution of Criminal Offenses, which deals with and results from the content of the unlawful conduct of communications (Law) has determined that the election of special

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<sup>3</sup> Article 126 of the Constitution of Macedonia, at:

[http://www.siofa.gov.mk/data/file/ustav\\_ustavni\\_amandmani\\_al.pdf](http://www.siofa.gov.mk/data/file/ustav_ustavni_amandmani_al.pdf)

<sup>4</sup> Articles 40 and 41 of the Law on Public Prosecutor, Official Gazette of the Republic of Macedonia, no. 150, dated 12.12.2007, at: [http://jorm.gov.mk/wp-content/uploads/2016/03/Javnoto\\_obvinitelstvo\\_150\\_12122007.pdf](http://jorm.gov.mk/wp-content/uploads/2016/03/Javnoto_obvinitelstvo_150_12122007.pdf)

Law on Amending the Law on Public Prosecutor, Official Gazette of the Republic of Macedonia, no. 111, dated September 3, 2008, at: [http://jorm.gov.mk/wp-content/uploads/2016/03/I\\_Zakon\\_za\\_Javno\\_obvinitelstvo\\_111\\_03092008.pdf](http://jorm.gov.mk/wp-content/uploads/2016/03/I_Zakon_za_Javno_obvinitelstvo_111_03092008.pdf):

[http://jorm.gov.mk/wp-content/uploads/2016/03/I\\_Zakon\\_za\\_Javno\\_obvinitelstvo\\_111\\_03092008.pdf](http://jorm.gov.mk/wp-content/uploads/2016/03/I_Zakon_za_Javno_obvinitelstvo_111_03092008.pdf)

<sup>5</sup> Note: According to the Law on Public Prosecution, the Public Prosecution Office in Macedonia is organized at the following levels: Basic Prosecutor; The High Prosecutor and the Public Prosecutor. The Basic Prosecutor acts before the Basic Court, the High Prosecutor before the Appellate Court and the Public Prosecutor of R.M. Before the Supreme Court of Macedonia.

prosecutors will be made on the proposal of the Election Issues Committee Prior consent of the four political parties with the largest number of MPs in the Macedonian Parliament.

This law also sets out that with the proposal of the Committee on Election and Appointment Issues of the Assembly of the Republic of Macedonia, with the prior consent of the four political parties with the highest number of MPs in the Assembly of the Republic of Macedonia, the Council, with the proposal of the Assembly of the Republic of Macedonia, without announcing the public vacancy announcement, elects the Public Prosecutor with a mandate of 4 years with the right of re-election.

The Assembly shall determine the candidate for a Special Prosecutor by a two-thirds majority, including a majority of the votes of the deputies belonging to the non-majority communities, and shall submit it to the Council of Public Prosecutors of the Republic of Macedonia (" Council "). The Council will elect the Special Prosecutor in a session in which at least 2/3 of the total number of members are present.

Importance of ensuring the independence of this prosecution is devoted to the autonomy of the Special Prosecutor, who leads the Special Prosecution Office. The Law has foreseen that with the work of the Special Prosecution Office the Special Prosecutor will independently conduct the work and duties of the Prosecutor, as well as the responses for the timely and qualitative performance of the prosecution.<sup>6</sup>

The Special Prosecutor has full autonomy in the investigation and prosecution of criminal offenses pertaining to and resulting from the content of unauthorized communications prosecution. No public prosecutor of the Public Prosecutor's Office of the Republic of Macedonia, including the Public Prosecutor of the Republic of Macedonia, may influence his work or seek reports on the cases of the Special Prosecutor or Special Prosecutors within the Special Prosecution Office.

In the extended Collegiums of the Public Prosecutor's Office of the Republic of Macedonia, no Special Prosecutor and special prosecutors of Special Prosecution are present and there are no issues under the jurisdiction of the Special Prosecution. The highest public prosecutor cannot initiate a petition for referral to a particular case or criminal case of the Special Prosecution Office. The Public Prosecutor of the Republic of Macedonia or another public prosecutor cannot undertake investigations and prosecutions for cases that fall within the competence of the Special Prosecution Office or his / her written consent.

*a. Responsibility of Special Prosecution's office leader in Macedonia*

The Special Prosecutor will be responsible for his / her work before the Assembly of the Republic of Macedonia and before the Council of Public Prosecutors. The Public Prosecutor shall submit report every six months to his or her activities, including a description of progress in any investigation or prosecution undertaken by the Special

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<sup>6</sup> Article paragraph 1 of the Law

Prosecutor. Such a report may omit material which, according to the Special Prosecutor, should be kept confidential, but will provide relevant information to justify the costs. The Special Prosecutor will be professionally responsible for professional and legal actions during his / her work before the Council of Public Prosecutors.

Following the adoption of the Law, on 15 September 2015, the Macedonian Public Prosecutors Council elected Katica Janeva as Special Prosecutor. At the beginning of October 2015, the same council had selected five special prosecutors proposed by the Special Prosecutor Janeva, while on 5 November 2015, the same Council on the Special Prosecutor's Proposal also elected seven new special prosecutors, sending a total number of 12 prosecutors to the Special Prosecution Office.

*b. The results of the Special Prosecution's work in Macedonia for one year*

On June 29<sup>th</sup>, 2017, at the media conference, Macedonia's Special Prosecutor, Katica Janeva, announced the submission of 17 new indictments against 94 legal persons and seven legal entities, in addition to the three accusations filed in advance. "The Special Prosecution is working for only 10 months. Indictments are the result of the work of the Special Prosecution team to create conditions for the rule of law and ensuring the equality of Macedonian citizens before the law and the Constitution". "Today or July 1 does not change anything that this institution will continue its work. This institution will continue to undo justice," Janeva told reporters.

Special Prosecution of Macedonia also requested the detention measure for 18 accused, including former Macedonian Prime Minister Nikola Gruevski, his chief of staff, Martin Protuger, the former secretary-general of the Government, Kiril Bozinovski, as well as former ministers Mile Janakieskin, Gordana Jankuloska and Elizabeth Kamceska. Also detention was requested for former senior officials of the Directorate for Security and Counter-Intelligence, as well as municipal leaders. The court in these cases had set a house arrest measure for the above-mentioned officials, including the seizure of passports.

Former Prime Minister and current leader of VMRO-DPMNE, Nikola Gruevski is accused by the Special Prosecution for four different issues, including the "Titanic" case for electoral abuse; Case "TNT" for demolition of "Fiat Canovskit-Kosomos" facility; The case "trajectory" for the construction of highways; As well as the "Tanku" case, to supply Mercedes's 580,000 Euros. Former Prime Minister Gruevski is also being investigated by the Special Prosecution for money laundering in the tens of millions of euros.

Special Prosecution of Macedonia has broken the myth that there are intangible persons in this state and has changed the culture of impunity for a short period of 12 to 18 months, marking results through effective and effective combat, exercising functions independently and without influence from politics.

The political system built for decades and years in this country, which has managed to have overall control and exert influence on the police, prosecution, courts, economics, business and other areas of interest has been shattered and almost the main leaders in this state are already subject of investigation and criminal prosecution by the Special Prosecution.

Meanwhile, the depoliticization and decriminalization of the justice system has begun. In 2017, after the constitution of the Assembly of the Republic of Macedonia, in order to de-politicize the Public Prosecutor's Office of Macedonia, this state has begun the procedures for dismissal of the current public prosecutor, Marko Zvrlevski<sup>7</sup>, who had served as a puppet of power by not implementing Constitutional and legal obligations to prosecute perpetrators of criminal offenses. The Macedonian Parliament on August 17, 2017, with 64 votes in favor and no counter had dismissed the Public Prosecutor of Macedonia <sup>8</sup>

**The largest political party in Macedonia after the dismissal of the Public Prosecutor stated that “with the dismissal of the prosecutor, justice reforms begin”.**

Zvrlevski dismissal, LSDM described it as the first step towards reforms in the judicial system. Petre Shilegov said the new state prosecutor will be elected on the basis of professional criteria and not based on party connections. “Marko Zvrlevski dismissal marks the beginning of judicial reforms, which will bring justice to everyone. This is the first step of beginning the functioning of an independent and professional judicial system. The procedure for re-election of the new prosecutor, as I know, should begin, but nevertheless based on the procedures, I do not believe we can manage to elect it before local elections.”

## **7. Lessons from Macedonia**

Combating organized crime and high-level corruption in both Macedonia and Kosovo has been and remains a requirement of the international factor as a prerequisite for integration into the European Union. Kosovo in 2016 has signed the Stabilization Assistance Agreement (SAA) with the European Union. Meanwhile, the SAA between the EU and Macedonia entered into force in 2004. In 2005, the Council of Europe had allowed Macedonia candidate status. In 2009, the European Commission recommended to the European Council to open accession negotiations with Macedonia. Macedonia had stumbled on its path towards European integration, while in 2015 the European Commission had stated that it was ready to extend the recommendation for opening conditionality negotiations to implement the Przhinos

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<sup>7</sup> “Marko Zvrlevski: Macedonia's 'Puppet' Prosecutor Faces Dismissal ”- Marko Zvrlevski: Macedonia's "puppet" prosecutor faces dismissal. Balkaninsight.com January 8, 2017. (See link <http://www.balkaninsight.com/en/article/marko-zvrlevski-macedonia-s-puppet-prosecutor-faces-dismissal-06-07-2017-1>)

<sup>8</sup> <http://ina-online.net/lajmi-fundit-64-vota-pro-dhe-asnje-kunder-shkarkohet-kryeprokurori-zvrlevski/>

Agreement and to make substantive progress in implementing the urgent priority reform adopted in 2015.

Urgent priority reforms were specific requirements of the European Commission for Macedonia, which required that this country take urgent steps to address issues falling within the rule of law and respect for human rights and freedoms. Among the most priority issues included de-politicization of the appointment and promotion of prosecutors and judges in Macedonia, disciplining and dismissing judges who interfere with the independence of the judiciary, to ensure the professionalism of the Judicial Council in practice and not just in theory, and other issues that would also ensure the independence of judges and prosecutors in Macedonia.

While Macedonia has benefited from visa liberalization, Kosovo remains the last country in Europe that has not yet met the criteria to benefit the free movement of its citizens in the European Union. Still as criteria remains combat of organized crime and corruption and the ratification of the Demarcation Agreement with Montenegro.

## **8. Solution for Kosovo**

Despite the fact that the SPRK in Kosovo operates since 2008, this prosecution has not proved to be ready and has will to exercise its competencies and responsibilities according to the Constitution and the Law.

Since 2008 to 2014, EULEX international prosecutors at SPRK had exclusive mandate to deal with the most complicated and complex cases in Kosovo. Even so, in 2017, Kosovo is synonymous with a state where the rule of law is lacking, and where the culture of impunity in the cases of high-level corruption is a standard of living. Corruptors and law violators are constantly promoted and transformed into a "model of success" for achievement in Kosovo.

From 2014, competences reserved for EULEX in prosecuting and judging the most serious, complicated and complex cases in Kosovo have been transferred to local prosecutors and judges, except for cases involving EULEX prosecutors and international judges before 2014. Exceptionally, EULEX prosecutors and international judges in 2017 can also take new cases at work, in exceptional circumstances, which in practice happens very rarely.

Since the transfer of competencies to locals in 2014, suspicions of organized crime and high-level corruption have been reported in Kosovo. In cases involving high political figures, interest groups, or people from powerful business groups, the Prosecution did not have the will and did not find the courage to exercise the constitutional and legal competences and responsibilities to initiate criminal proceedings in these cases.

The reports of local and international organizations monitoring the justice system in Kosovo have consistently reported on the extreme politicization of the judicial and prosecutorial system in Kosovo. European Commission Progress Reports on Kosovo,

US Department of State Reports, conclusions of subgroups of SAA-related meetings between the European Commission and Kosovo conclude the lack of results in the combat against organized crime and high-level corruption in Kosovo, the politicization of Independent institutions, including the justice system, installation of a culture of impunity, etc.

Public in Kosovo, the media, NGOs, citizens, civil servants, state administration in those cases when dealing with corruption phenomena in Kosovo do not have a reliable address to report the same. Installing the culture of impunity has increased the lack of confidence that these occurrences report to competent institutions to treat these cases independently, impartially and professionally.

KLI estimates that in this situation, which is often hopelessly seen, it is necessary to create a Special Prosecution and Court, as wholly independent institutions, with a limited mandate, with recruited staff by the international community, respectively the United States and Great Britain. Further on this solution for Kosovo, KLI offers a similar model of these institutions, such as Macedonia.

## **9. Special Prosecution office and Court for combating corruption and organized crime**

The Macedonian model proves that in fragile democracies where the culture of impunity has been installed over the years or decades, building a network or clans of interest in the political, economic, business, nepotism, politicization of independent institutions such as police, Prosecution and courts, etc., the intervention and interference of the international factor is essential, including the expression of the will of the broad political spectrum, for depoliticizing the police, the prosecution and the judiciary.

Respectively, intervention is a precondition for re-establishing in the first-place democratization of its own public and state institutions, and good governance through depoliticizing the police, prosecution and courts.

In this regard, KLI but also the international factor in Kosovo is already convinced of the lack of results in the combat against organized crime and corruption, the continued policy interventions in the independent work of the police, the prosecution and the judiciary, the lack of will and courage of the police and the prosecution in addressing high-level corruption cases when they affected the interests of political power, politicization of independent institutions, scandals in the Kosovo Police, prosecutorial and judicial system.

As a result of systematic monitoring and researching of corruption and organized crime cases, KLI has found that the current mechanisms of investigation, prosecution and adjudication are not efficient, independent and professional in handling these issues.

The establishment of a new mechanism, completely apolitical in practice, based on the criteria below, would have the effect of installing, within the justice system, also the principle of competition between the institutions of investigation, prosecution and adjudication of corruption and organized crime cases, including control and supervision of these institutions.

**In this regard, KLI recommends:**

With the support of the international factor led by the United States and Great Britain, assisted by the European Union, open the public debate that the legislature and the future government of Kosovo have priority over the rule of law in Kosovo.

Review and implement in practice the amendment of the Constitution regarding the establishment of a Special Prosecution office and Court, based on Macedonia's modalities. Such an agreement should have consensus and full support of the largest political parties in Kosovo.

The competencies and responsibilities of this Special Prosecution and Court shall not under any circumstances interfere with the competencies and responsibilities of the Special Court in The Hague established by the Assembly of Kosovo.

The establishment of the Special Prosecution and Court should be limited to a certain time and for certain criminal offenses that are of interest to the State of Kosovo, and these two institutions should have full independence from the actual institutions of the KJC, KPC, PA and supremacy to SPRK.

The KLI strongly believes that the creation of this Special Prosecution and Court will not be a burden for the budget, because these institutions within a year, based on the results expected to achieve, will multiply the budget more than their funding. On the contrary, these institutions will be profitable for the state budget and the citizens of the Republic of Kosovo through the return of the state budget to the state, which is benefited through criminal and corrupt activities.

**Competences of the Prosecutin office and Court:**

The competencies of this prosecution and the court will be only the criminal offenses that enter within these following chapters:

- Chapter XXIV Organized Crime,
- Chapter XXXIV Official Corruption and Criminal Offenses against Official duty,
- Chapter XXXII - Criminal Offenses against the administration of justice and public administration.

The Prosecution should have the right to take over its competence at any stage of the proceedings, cases that have started or are in work by the Basic Prosecutions or the SPRK.

The Prosecution will have a judicial police which will act exclusively under the orders of the Prosecution's Office and there will be no legal obligations to the structure or management of the Kosovo Police.

**The establishment of the Special Prosecution and Court should be based on the following principles:**

Specific criteria and procedures regarding the appointment process of the Chief Prosecutor of the Prosecution and the President of the Court;

Specific criteria and procedures regarding the recruitment of prosecutors and judges;

Verification of the past of candidates applying for the position of Chief Prosecutor, President of the Court, prosecutors and judges;

Verification of the past will be based on international standards that ensure full verification of the personal and professional integrity of the candidates,

Each prosecutor of the prosecution's office will have at least two or three investigating police officers available that will work under the orders of the prosecutor;

Assigned investigative police officers will pass through the verification process;

Each judge will have at least two associates / professionals and one legal officer;

The recruitment and appointment process for prosecutors and judges to be led exclusively by the international factor, respectively by the United States and Great Britain.

The Prosecution and the Court for their work and cases shall have no obligation to report to the KPC, the KJC or the Office of the Chief State Prosecutor;

The timely jurisdiction of the prosecution's office to be limited within three years of its establishment to finalize and file indictments in court.

The international factor, in co-operation with the political parties, will assign a temporary commission composed by local and international, near which the prosecution and the court will report. Reporting should be regular on a six-monthly and annual basis. Reporting should be related to the results.

Kosovo Assembly to allocate sufficient budget for the functioning of the prosecution and the court.

Prosecutors and judges to have adequate state protection so that they exercise their competencies and responsibilities in an independent and impartial manner.

On the following table, KLI also recommends the composition of the Special Prosecution office and Court.

**COMPOSITION OF SPECIAL PROSECUTION AND COURT**

<b>Position</b>	<b>Number</b>
<b>Prosecutor in the Special Prosecution office</b>	10
<b>Supporting staff</b>	30
<b>Special Prosecutor in the Appellate Prosecution</b>	3
<b>Supporting staff</b>	9
<b>Judge in the Special Court</b>	18
<b>Supporting staff</b>	36
<b>Judge in the Appellate Special Court</b>	6
<b>Supporting staff</b>	18
<b>Judicial Police Officer (police investigator)</b>	30