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FIGHTING CORRUPTION WITHOUT JUDICIAL CONTROL

(PERSECUTION AND AMNESTY LEGITIMIZED IN THE
NAME OF CORRUPTION)



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ABOUT KLI

KLI, Kosovo Law Institute, is non-governmental and non-profit organization on public policy, a specialized think tank for the justice sector.

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I. Executive summary

The Criminal Procedure Code provides the state prosecutor with discretion regarding the initiation of investigation or prosecution of the criminal offense. Kosovo Law Institute during the process of monitoring cases of corruption but also characteristic criminal offenses found that a large number of cases reported to either the police or prosecutor belonging to the preliminary phase or the phase of investigation into criminal proceedings are closed by the prosecution without judicial control.

In the last three years (2015, 2016, 2017) 889 cases with 1553 persons were closed in the preliminary procedure without going through judicial control. While, during the same period, the State Prosecutor closed cases of preliminary and criminal investigations against 1794 persons reported on allegations of criminal offence of corruption. Of them, prosecutors have dismissed criminal reports against 1006 persons; while against 788 person's investigations have been ceased.

Judicial control in the cases of ceased investigations and dismissal of criminal reports based on the law in Kosovo is non-existent. The prosecutor notifies the court only in terms of the ceasing of the investigation, while the judge has no control or competence to assess whether the prosecutor's decision is based on the law, and if the facts and evidence gathered are sufficient to proceed with the case at trial. In cases of dismissal of the criminal report, the court does not receive any notification regarding the closure of the case. Against the decision of the state prosecutor, no appeal can be filed either by the applicant of the criminal report or the injured party from the criminal offense.

Moreover, the Criminal Procedure Code does not allow a private lawsuit or a subsidiary lawsuit, since the criminal code does not foresee any criminal offense, which is prosecuted under private charge. Applicable legislation in Kosovo does not allow a complaint from the prosecutor's decisions in cases of dismissal of the criminal report or cease of investigations. In this regard, the prosecutor's decision to close the cases at this stage of criminal proceedings is final.

Such an approach built by the Criminal Procedure Code contradicts the Constitution of Kosovo, as well as with international documents that guarantee and promote human rights and freedoms.

According to the European Convention on Human Rights and the practice of the European Court of Human Rights, the right to appeal and the right of access to court enters within the framework of human rights and fundamental freedoms. The Constitution of Kosovo guarantees that fundamental human rights and freedoms are inseparable, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo. Everyone has the right to judicial protection in case of violation or denial of any rights guaranteed by this Constitution or by law, as well as the right to effective legal remedies if it is found that such a right has been violated.

Access to public documents in some institutions of the justice system remains a challenge. While, during 2017, Kosovo courts have noted an increase in access to public documents, the State Prosecutor has continued with the almost hermetic closure and with no cooperation with non-governmental organizations regarding corruption cases. From 15 requests for access to public documents made to the Chief State Prosecutor, they have only allowed access to one request.

Kosovo courts, according to indictments filed by Kosovo prosecutorial system, during the years 2015, 2016 and 2017 have rendered decisions against 639 persons accused of corruption. The courts have rendered decisions of release from criminal responsibility for 331 persons, whilst rendered guilty verdicts for 308 persons.

The Basic Prosecution of Pristina, has proved to be the most efficient prosecution office in defending their indictments and resulting in the sentencing of the accused, where 87 persons were sentenced with violation of the criminal offence of corruption and being sentenced to three years. Basic Prosecution in Ferizaj with 64 sentenced, Prizren with 56 sentenced, Peja with 42 sentenced, Gjakova with 32 sentenced, Mitrovica with 25 sentenced, Gjilan with 13 sentenced.

Whereas, the Special Prosecution Office of the Republic of Kosovo, as a specialized prosecution and with the mandate for investigating and prosecuting high-level corruption during 2015, 2016 and 2017, has shown the result only in defending their indictments and sentencing of only three persons for corruption. This means that on average, one sentenced every year.

KLI monitors, from 1 January to 31 December 2017, monitored 1279 case hearings on corruption. Of the 1297 hearings monitored by KLI, courts held 874 court hearings, while 423 court hearings were postponed for various reasons. Respectively, during 2017, 67% of hearings were held and 33% of hearings concerning corruption cases were postponed. Due to the absence of judges, 52 court hearings have been postponed, while due to the absence of the prosecutor, 64 court hearings have been postponed, while 124 court hearings have been postponed due to the absence of the accused.

The KLI findings from the practical monitoring of cases and of decisions rendered by the court prove that prosecutions have serious problems in prosecuting corruption cases in the courts. Of the 343 persons charged with criminal offense of corruption, in 2017, the courts against 172 persons have rendered decisions that released the accused from criminal responsibility, or in 50% of the cases the courts did not find that the accused committed the criminal offense of corruption or due to the statutory limitation. Out of 343 accused persons, KLI findings from practical monitoring show that only 56 persons were sentenced to imprisonment, or only 16% of the accused persons. While 72 accused persons were given a suspended sentence or 20%. During the year, courts have imposed sentences of a fine for 43 persons, or 13%.

In these cases of corruption in which the verdict was announced, all profiles of the accused persons were included. Of them, 147 people belong to low profile, 183 people middle profile and 13 people belong to high profile.

II. Methodology

In order to compile a more comprehensive and analytical report on dealing with cases of corruption from the prosecutorial and judicial system, KLI, has used mixed research methodology. This is because the prosecutorial and judicial system still faces problems in unifying the data. Therefore, the investigation of the handling of corruption cases by the prosecutorial and judicial system is based on direct monitoring of the performance of prosecutions and courts in law enforcement, policies and action plans for treating corruption cases with priority.

KLI, based on the legal obligations and action plans has established a clear indicator for measuring progress in their implementation by the prosecutorial and the judicial system. Monitoring includes cases of corruption in seven Basic Prosecution Offices, Special Prosecution Office of the Republic of Kosovo, seven Basic Courts and their Branches. In the focus of the monitoring were the activities of the Supervisory Committees of the Councils on Corruption cases, the State Prosecution, the Kosovo Prosecutorial Council and the Kosovo Judicial Council in implementing policies and action plans. KLI also provided statistical data from the Prosecution Performance Review Unit and the Statistics Department of the Judicial Council and collected individual data throughout the monitoring process across all prosecutions and courts.

The reports provided by the KLI are summarized in a database that included all corruption cases and persons involved in these cases at all stages of criminal proceedings in the prosecutorial system and the judicial system.

The database was used to identify the most worrying issues related to the implementation of the legal obligations and the obligations of the action plans, respectively related to the solution, the way of resolving and the non-resolution of corruption cases by prosecutors and judges. Through statistics, KLI has analysed several aspects that have been presented and commented through tables and graphics, including all the specifics of corruption cases for each prosecution office and court, for every submitter of corruption cases, backlog of denounced corruption cases and the manner of resolution for each case.

For the purpose of this report KLI has treated the lack of judicial control on cases of preliminary and criminal investigations conducted by the prosecution offices and police. This lack of judicial control has been monitored by KLI since 2013 through monitoring of judicial acts rendered by prosecution, where such decisions include decisions for the dismissal of criminal charges and decisions for ceasing criminal investigations. As a result of KLI monitoring, over 600 cases of

preliminary investigations were initiated by ODC against prosecutors and against a number of prosecutors many disciplinary measures were imposed by the Disciplinary Committee.

This report does not include the research and analysis of legal acts due to the inaccessibility of KLI in these prosecutorial acts. It is worth mentioning that KLI has built a practice of co-operation since 2013 with all Prosecutions, which have provided prosecutorial acts, which were repeatedly requested in accordance with the provisions of the Law on Access to Public Documents and the Law on Protection of Personal Data. The refusal to provide these prosecutorial acts proves the maximal efforts of these prosecution offices to avoid monitoring, transparency and public accountability regarding the handling of corruption cases. KLI through the rights guaranteed by the applicable legislation on securing prosecutorial legal acts will gather such information through legal channels.

KLI researchers, from 1 January to 31 December 2017, monitored 1297 court hearings, involving 357 cases of corruption with 1027 people. KLI has created clear indicators to analyse many aspects of treating corruption cases throughout all stages of criminal proceedings, including from raising criminal report until the first-instance verdict issued by the courts.

KLI has continuously monitored the activities of the Supervisory Committees on corruption cases of KPC and KJC, Basic Prosecution Offices, Special Prosecution Office of the Republic of Kosovo, Basic Courts, Prosecutorial Council and Kosovo Judicial Council. KLI has held in-depth interviews with all stakeholders of the judiciary and prosecution, based on indicators defined in conjunction with legal obligations and obligations deriving from the action plans.

In order to be precise in identifying problems and proposing recommendation for resolving problems in fighting corruption, respectively the efficient and effective implementation of legal obligations and obligations deriving from action plans, KLI has analysed the legal basis as well as analysed in detail the relevant national and international documents, that relate to fighting corruption in Kosovo. Respectively for this report, the analysis is focused on judicial control on preliminary and criminal investigation phases, against the practices of the European Court of Human Rights that are implemented in the Republic of Kosovo.

III. Transparency and accountability of the judicial and prosecutorial system in fighting corruption

Failure to implement the legal obligations and policies adopted by the two Councils strengthens the findings of the KLI and assessments deriving from domestic and international reports on the lack of will of the judicial and prosecutorial system to be transparent and accountable to the public. Failure to fulfil obligations proves that the law in Kosovo does not apply the same to all. In cases where high officials fail to fulfil their obligations and responsibilities, the culture of impunity continues to be cultivated.¹

KLI in the systematic monitoring of the justice system during 2017 has made a total of 374 requests for access to official documents, including courts, prosecutions, Kosovo Judicial Council, Kosovo Prosecutorial Council and other institutions.

In the Kosovo courts, KLI has submitted a total of 113 requests, out of which it has received 15 negative responses, 82 positive responses and 16 requests did not receive an answer. 104 requests for access to public documents were submitted to the Prosecution Offices, out of which 36 were negative, 14 positive responses and in 54 requests KLI did not receive an answer.

In the Kosovo Judicial Council, KLI has made a total of 14 requests out of which four responses were negative, six positive requests and four requests did not receive an answer.

In the Kosovo Prosecutorial Council, KLI has made a total of 22 requests, out of which six responses were negative, six requests were positive and in 10 requests no response was received. During 2017, KLI addressed to the Chief State Prosecutor 15 requests for access to public documents, while receiving only one positive response, while in 14 requests did not receive any response at all.

KLI during 2017 has filed a total of 268 requests for access to public documents only in the judicial and prosecutorial system. Out of 268 requests, KLI has received a positive response to 109 requests, with courts responding positively and increasing transparency with 82 positive responses. KLI in 159 requests did not receive any response or received negative responses, where prosecutions lead with 90 cases, without including 14 unanswered requests addressed to the Chief State Prosecutor.

KPC on 31 May 2016 has adopted the Regulation on Public Communication.² Its purpose is to regulate the way of communication is handled between the prosecutorial system and the public.

¹ Miftaraj E. and Musliu B. "The sea of corruption in Kosovo: catching small fish, while big fish go free". March 2017. Page 15. See the link at: <http://kli-ks.org/wp-content/uploads/2017/04/1.1.-Raporti-i-Korrupsionit-IKD-28.03.2017-Compressed.pdf>

² Regulation no. 06/2016 on Public Communication approved by the Kosovo Prosecutorial Council on 31 May 2016. See the link at: <http://kpk-rks.org/legjislacionii/196/rregulloret2016/196>, last accessed on 21 September 2016.

KPC through this regulation proclaims the transparency of the prosecutorial system in relation to the public, as it obliges the KPC and the SP to provide timely information on matters of interest to the public. Also, this regulation defines disciplinary responsibility for all prosecutorial system officials for non-compliance with the provisions of this regulation.

While the Chief State Prosecutor in the concept document presented to the KPC during the candidacy for Chief State Prosecutor stated that "transparency in the State Prosecution should be raised to a higher level in order to promote the work of prosecutors. Increasing transparency should be done through communication between prosecution offices with the media and the public, always respecting the Law on Protection of Personal Data and the Law on Access to Public Documents, and by maintaining the confidentiality of cases in order not to damage investigations and the rights and freedoms of the defendant in the proceedings."³

Also, the Chief State Prosecutor stated that "since civil society, non-governmental organizations and the media are being attentive to the prosecutorial system and as such, the observer and the integrity measurement that the prosecutorial system itself reflects, the KLI has signed memorandum of understanding with organizations responsible for independent monitoring of the prosecutorial system. These memorandums were signed in accordance with the law on public information on disclosure of information held by the State Prosecutor in order to increase the transparency, efficiency and accountability of the State Prosecutor."

KLI estimates that these statements and their public words have remained promises only, and that the same institutions that have adopted the policy and have publicly promised to increase transparency and accountability are continuous violators of these principles.

Institution	No. of requests	Negative	Positive	Without answer
Courts	113	15	82	16
Prosecutions	104	36	14	54
KJC	14	4	6	4
KPC	22	6	6	10
State Prosecutor	15	0	1	14
Total	268	61	109	98

Table 1 – KLI's requests for access to public documents in public institutions⁴

³ Concept document of Chief State Prosecutor, Aleksander Lumezi, page 7. See the link at: http://www.psh-ks.net/repository/docs/koncept_dokumenti_janar_2015_7_MAJ.pdf

⁴ Source: KLI data from systematic monitoring of the justice system in the Republic of Kosovo. Kosovo Law Institute.

LACK OF JUDICIAL CONTROL ON PRELIMINARY INVESTIGATIONS AND CRIMINAL INVESTIGATIONS

IV. Judicial control during police investigation and investigation phase

Since 2013 KLI has systematically monitored Kosovo Police, State Prosecutor and Courts in treatment of various cases, with a focus on criminal offenses of corruption and other criminal offenses. KLI during the calendar year monitors about 3,000 court hearings in criminal matters. All monitored hearings are reported on the "Oath for Justice" website.⁵

As of 2013, as a result of the systematic monitoring of the justice system in treating corruption cases, KLI has published **13** periodic reports and **two** bulletins, including findings from the practice, research and analysis of these cases. The focus of research and analysis has been the implementation of the provisions of the Criminal Code and the Criminal Procedure Code in treating with cases, including compliance of legal deadlines and respect for the rights and freedoms of defendants in criminal proceedings, initial actions or preliminary and criminal procedures.

In contemporary states, which are based on the values of guaranteeing and promoting human rights, criminal procedure codes are a guarantee against arbitrary enforcement of criminal laws. They are designed to live up to the rights of suspects and defendants in criminal cases for fair, impartial and independent trial in all phases of preliminary and criminal proceedings, starting with initial contact with the police continuing during the arrest phase, investigation, imposing sentence and legal remedy. The neglect of such proceedings may result in a violation of the rights to a fair process of defendants, protected by Article 6 of the European Convention on Human Rights and Fundamental Freedoms and Article 14 of the International Covenant on Civil and Political Rights. The international instruments in question are directly applicable in Kosovo.⁶

Criminal justice in any country, regardless of what system they implement in practice, Anglo-Saxon or Continental, prosecutors are the main agents in the administration of justice, therefore, in exercising their powers and responsibilities, they must respect and protect human dignity and should promote human rights, contributing to ensuring fair processes and the smooth functioning of the criminal justice system. Prosecutors also play a key role in protecting society from the culture of impunity and function as guardians of the judiciary.⁷

According to the Criminal Procedure Code in Kosovo, criminal procedure recognizes five participants in a criminal procedure: **the defendant, the injured party, the judge, the state prosecutor and the police**. The Criminal Procedure Code defines four phases of criminal

⁵ "Oath for Justice" Portal. www.betimiperdrejtesi.com

⁶ Review of the Implementation of the New Criminal Procedure Code in Kosovo, June 2016, Organization for Security and Co-operation in Europe, Mission in Kosovo, page 7, at: <https://www.osce.org/sq/kosovo/243981?download=true>

⁷ Special Rapporteur Report on the Independence of Judges and Lawyers (A / HRC / 20/19) paragraph 93.

proceedings such as: **the investigation phase, the phase of raising the indictment and the declaration, the phase of the judicial review and the legal remedy phase.** The Criminal Procedure Code has determined that criminal proceedings may be preceded by initial police actions or the gathering of information as defined in Article 84 of the Code.

In Kosovo, the Criminal Procedure Code, to the state prosecutor offers discretion regarding the initiation of investigation or prosecution of the criminal offense. Article 158, paragraph 1.6, defines that the prosecutor may cease the investigation if it is clear from the evidence gathered that *there are circumstances which exclude the prosecution.* The state prosecutor has the discretion to not initiate prosecution in cases where there is insufficient evidence to justify the indictment, but also should enforce this discretion to comply with European law.

The Kosovo Constitution guarantees and promotes human rights. Article 22 of the Constitution defines the European Convention on Human Rights as a fundamental part of the rule of law in Kosovo. Article 53 of the Constitution defines that human rights and fundamental freedoms guaranteed by the Constitution are interpreted in accordance with the court decisions of the European Court of Human Rights. Respect of human rights is also enshrined in the Criminal Procedure Code. Articles 192 and 441 define that the European Convention on Human Rights and the decisions of the European Court of Human Rights are the basis for the presentation of extraordinary legal remedy by the defendants and the accused.

Judicial control at the phase of preliminary investigations

KLI during the process of monitoring corruption cases and other characteristic criminal offenses has found that a large number of cases reported to the police or prosecution belonging to the preliminary phase are closed to the police or prosecution without judicial control.

Only during 2015, 151 cases were closed against 336 persons in the preliminary procedure without judicial control; in 2016, 274 cases were closed against 457 persons, whereas in 2017 this trend is increased to 464 cases against 760 persons.

Respectively from 2015 to the end of 2017, the prosecution and police closed 889 cases against 1553 people.

Corruption cases PPN – State Prosecutor						
Year	Total cases		Closed cases		Cases remained unclosed	
	R	P	R	P	R	P
2015	550	1187	151	336	399	851
2016	974	1658	274	457	700	1201
2017	1059	1844	464	760	595	1084
Total			889	1553		

Table 2- Cases in the gathering information phase⁸

Judicial control in the criminal investigation phase

Approximately the same situation arises as to the dismissal of criminal reports and the cease of investigations by the State Prosecutor. From the data in the table below, it turns out that during 2015; the State Prosecutor closed cases against 472 persons, whereas criminal reports were dismissed against 191 persons, while against 281 persons investigations were ceased. In 2016, the number of closed cases without judicial control has increased in cases against 737 persons, where against 480 persons criminal reports have been dismissed, whereas against 257 persons the investigations were ceased. While in 2017, cases closed in the prosecution without judicial control were evidenced against 585 persons, where criminal reports were dismissed against 335 persons, while against 250 persons investigations were dismissed.

From 2015 until the end of 2017, the State Prosecutor closed cases against 1794 people reported regarding the suspicions of criminal corruption offenses. Against 1006 persons, criminal reports were dismissed, while against 788 persons investigations were ceased.

⁸ Source: Tracking Mechanism for Harmonization of Statistical Reports, Kosovo Prosecutorial Council.

Corruption cases PP – State Prosecutor						
Year	Persons resolved	Dismissal of criminal report	Cease of investigation	Total closed cases	Indictment	Another manner
2015	919	191	281	472	443	4
2016	1164	480	257	737	426	1
2017	902	335	250	585	314	3
Total	2985	1006	788	1794	1183	8

Table 3 - Cases of criminal reports in prosecution⁹

The Criminal Procedure Code in Kosovo foresees judicial control at the phase of raising the indictment and the declaration, the phase of the judicial review and the legal remedy phase. This code does not provide judicial control even in the investigation phase and in the initial actions or otherwise known as preliminary procedure.

According to the code, the police are given autonomy in the early phases of investigations so that together with the prosecutor to identify and investigate criminal offenses, which initial actions, are regulated by articles 69-77 of the Code. All police actions at this stage of the procedure pass only through supervision and control of the prosecutor.

The criminal investigation phase is regulated the same. According to the code, the State Prosecutor with a ruling starts investigations. The ruling defines the person against whom the investigation is to be conducted, the time of initiation of the investigation, the description of the offense which indicates the elements of the criminal offense, the legal denomination of the criminal offense, the circumstances and the facts justifying the reasonable suspicion of the criminal offense, undercover measures and technical surveillance or investigations are authorized and evidence with the data collected up to that moment. A copy of the ruling to initiate the investigation is sent to the Pre-Trial Judge.

The role of the judge at this stage of the criminal proceedings is mainly based on the approval of state prosecutor's requests regarding temporary control and seizure. Exceptionally, Article 110 of the Code defines situations when the control is implemented even without a court order.

According to the Criminal Procedure Code, the State Prosecutor ceases the investigation whenever it proves that there is no reasonable doubt as to the evidence gathered that the concrete person has

⁹ Source: Tracking Mechanism for Harmonization of Statistical Reports, Kosovo Prosecutorial Council.

committed such criminal offense, the act committed is not a criminal offense that is prosecuted ex officio; the statutory limitation period has expired; criminal offense is involved in pardon or amnesty, there are other circumstances that exclude prosecution.

The state prosecutor notifies the pre-trial judge for the ceasing of the investigation without delay. Judicial control in the cases of cease of investigations and dismissal of criminal reports based on the law in Kosovo does not exist at all. The prosecutor notifies the court only in terms of the ceasing of the investigation, while the judge has no control or competence to assess whether the prosecutor's decision is based on the law, and if the facts and evidence gathered are sufficient to proceed with the case at trial. Against the decision of the state prosecutor, no appeal can be filed either by the submitter of the criminal report or the injured party from the criminal offense.

Also, the judge has no competence and responsibility to assess whether the prosecutor has exhausted all opportunities to investigate, gathered information or gathered evidence to send the case to the court. The judge also has no competence and responsibility in this phase of the procedure to assess the respect of the rights and freedoms of persons subject to criminal proceedings.

Moreover, the Criminal Procedure Code does not allow either private or subsidiary lawsuit, since the Criminal Code does not foresee any criminal offense, which is prosecuted under private charge. Applicable legislation in Kosovo does not allow an appeal on the prosecutor's decisions in cases of dismissal of the criminal report or cease of investigations. In this regard, the decision of the prosecutor to close the cases at this stage of criminal proceedings is final and cannot be appealed. The judge at this stage of the proceedings does not have explicit obligations to protect the rights of the parties.

Article 84 paragraph 1 of the Code defines that if the state prosecutor has a grounded suspicion that a criminal offense has been committed from Article 90 of this Code, has been committed or soon will be committed, he may authorize or request from a pre-trial judge to authorize undercover and technical surveillance and investigation measures in accordance with Articles 86-100 of this Code.

With the new Criminal Procedure Code, the role of the judge is described as the guarantor of the rights, the supervisor of the courtroom, and the judge of the law and the facts. All of these are roles, which are complementary to the position of the court as independent and impartial, as required by Article 2 of the Code. The judge has explicit obligations to protect the rights of the parties. While this is regulated in the last three stages of criminal proceedings, the same is not valid and is not regulated even in the preliminary and criminal investigation stage.

The Criminal Procedure Code, has allowed that the state prosecutor during the exercising of their function during investigations and prosecution of cases to have discretionary power. According to the Handbook published by the United Nations Office on Drugs and Crime and the International Association on Principles of Prosecutors Concerning the Status and Role of Prosecutors, in countries where prosecutors are engaged in discretionary functions, it is required by law, rules or regulations published to determine principles that enhance a fair and consistent approach to decision-making in the investigation or criminal prosecution process, including clear rules and procedures regarding the investigative cease institute.

According to this manual in states where the principle of prosecutor's discretion applies, prosecutors should avoid situations and prosecute when this does not serve the public interest. In each individual case, special attention should also be paid to the interest of the victim of crime, the suspected perpetrator and the public interest in general, so that the decisions rendered is fair. The wrong decision to investigate or the wrong decision not to investigate affects public confidence in the justice system.¹⁰

Also, this manual has set principles regarding the role of Prosecutors at the investigation stage. Under these principles, prosecutors should not initiate or continue criminal prosecution, or should undertake any attempt to stop criminal proceedings when it is seen that there is insufficient evidence to provide for independent investigations. The use of the prosecutor's discretion in systems that apply this principle should be exercised independently and without any political influence.

a. Principle of opportunity vs. Principle of legality

Kosovo with the Provisional Criminal and Criminal Procedure Codes adopted at the time of UNMIK had a "quasi-accusatory" or "hybrid" system, where the court held some of its inquisitorial powers but that the prosecutor and defence attorney had apparent wider roles.

With amendments to the Criminal Code and the Criminal Procedure Code that entered into force in 2013, the role of the judge is more passive and the same exercises his powers only to protect the rights of the parties to the proceedings and to adjudicate. The police, though not a party, have been authorized to be more efficient in gathering evidence during the initial police investigation. The prosecutor has more effective powers to investigate, such as the power to order disclosure of financial data in some complex cases.¹¹

¹⁰ Manual published by the United Nations Office on Drugs and Crime and the International Association on Principles of Prosecutors on the Status and Role of Prosecutors.

¹¹ Guide to the Criminal Procedure Code and Criminal Procedure Code (2013) page 19 at: http://oaks.org/repository/docs/Udhezues_i_Kodit_te_Procedures_Penale_976264.pdf

States through criminal legislation are characterised by the application of the **principle of opportunity** or the **principle of legality**. This depends largely on the extent to which the prosecution has discretion about decision-making to investigate a case and prioritizing other factors to make a decision to investigate how much evidence is available.¹²

The principle of opportunity means a legal system where there is discretion regarding the investigation or prosecution of a criminal offense. This is also known as "*impartiality*" or "*impartial justice*". This principle is different from the principle of legality in which the prosecutor has no discretion and must investigate and prosecute criminal activities, regardless of the facts. *Kosovo with the code changes that entered into force in 2013 has embraced the principle of opportunity*. In the Criminal Procedure Code, the state prosecutor is granted discretion in certain circumstances regarding the initiation of investigation or prosecution of the criminal offense.¹³

The principle of legality defines that any case in which there is sufficient evidence and in which there are no legal obstacles to investigate is to be sent to the court. The role of the Prosecutor in states that apply the principle of legality is limited to legal assessment and if there is sufficient evidence against the defendant.

The principle of legality is mainly the tradition of the continental system (France, Netherlands, Germany, Italy, Spain, etc.) where law enforcement agencies in practice are not given any discretion in the investigation or criminal prosecution, while the same are obliged to apply strictly law. This is best argued by the authors Ashworth and Redmayne, who point out that "if the administration of criminal justice produces unfair results, it is within the competence of the legislative body to supplement or amend the laws and not the power of prosecutors to develop their own policies."¹⁴

The Criminal Procedure Code in Kosovo embracing the principle of opportunity has built an inquisitor system, based on the Anglo-Saxon tradition used in the United States and Great Britain. While the inquisitor system is based on practice, where the opposing parties in the proceedings collect facts, arguments, evidence and present them to the judge who decides and shares justice, respectively the judge has the role of the guarantor of the rights, the supervisor of the courtroom and the court law and fact. However, in Kosovo, according to the applicable law, this principle applies in practice only, starting from the second phase of criminal proceedings, respectively filing an indictment in court. The oversight role of judge, including the guarantee of the rights of persons subject to crime procedures or victims, does not apply in practice in the lack of legal provisions at the investigation stage and at the initial stage, in addition to the control and seizure requirements.

¹² Dr. Despina Kyprianou-Comparative Analysis of Prosecutorial Systems (Part II): Role of prosecutorial service in investigation, prosecutorial principles and policies

¹³ Guide for the Criminal Procedure Code and Criminal Procedure Code (2013) page 14 at: http://oak-ks.org/repository/docs/Udhezues_i_Kodit_te_Procedures_Penale_976264.pdf

¹⁴ Ashworth, A. and Redmayne, M., Criminal Process, Oxford: Oxford University Press, 2005, p. 147.

b. Analysis of practical cases by the KLI and the ECHR practices

In the framework of the implementation of the Strategic Plan for Inter-Institutional Cooperation in fighting Organised Crime and Corruption, the KPC on November 4, 2013 issued the Action Plan for Increasing the Efficiency of the Prosecutorial System in Fighting Corruption. For the monitoring and independent evaluation of the implementation of this Action Plan, KPC on December 27, 2013, signed a Memorandum of Understanding with KLI. From that date, KLI has monitored the prosecutorial system in the implementation of this plan, which on March 28, 2014 published its first monitoring and evaluation report for the implementation of this plan. The external monitoring report by KLI was also approved by the KPC itself, taking over the implementation of the recommendations.¹⁵

KLI since 2014, based on the Law on Access to Public Documents and the Law on Protection of Personal Data, has systematically filed requests for access on public documents to the Special Prosecution Office and Basic Prosecution Offices in Kosovo. Requests for access to official documents have been addressed in terms of cases related to rulings for dismissal of criminal reports, rulings for cease of investigations and raised indictments that have passed in judicial review.

KLI during the analysis of prosecutorial legal acts have identified prescribed cases and violations of legal deadlines for deciding on corruption cases. The violation of the provisions of the Criminal Procedure Code results in violations of human rights by keeping citizens as subjects in criminal records of prosecution in cases when there is no basis against them to conduct criminal investigations.

KLI findings show that the cases are closed despite the fact that there was evidence to proceed to further stages of the criminal procedure. In all these closed cases with the decision rendered by the prosecutor, the criminal reports submitter, whether the police, ACA, victims of crime or the injured party have no legal right to submit appeals against the prosecutor's decisions either within the hierarchy of the prosecutorial system or the right to access to the court, respectively the right to appeal before court.

The restriction of the right to appeal to prosecutorial decisions, in particular the restriction of the right to appeal by the victims of crime but also to the injured party, is also in contradiction with the practice of the European Court of Human Rights, which according to Article 53 of the

¹⁵ Note: At the Kosovo Prosecutorial Council meeting held on 25 April 2014, members of the KPC have discussed and approved the published report of the KLI "Corruption in Kosovo" Evaluation Report on the efficiency of the prosecutorial system in implementing the plan Action on Corruption cases "which, in addition to findings and evaluations, has made concrete recommendations for the effective implementation of the Action Plan for Increasing the Efficiency of the Prosecutorial System in Fighting Corruption. (see - <http://psh-ks.net/?page=1,8,557>).

Constitution of Kosovo, stipulates that human rights and fundamental freedoms guaranteed by the Constitution are interpreted in accordance with the judicial decisions of the European Court of Human Rights.

The European Court of Human Rights in the case of *Célice v. France* - 14166/09, and *Josseume v. France* - 39243/10, Verdicts 8.3.2012 [Section V] has found violations of human rights and freedoms concerning the restriction of the right of appeal and access to court.

In the Celice case, the applicant's car was captured through the radar in 2008, passing the foreseen speed by 1 kilometre per hour. The applicant had accepted the traffic fine with an order to pay the standard penalty. In the *Josseume* case, the applicants are a father and son. A parking fine was imposed on a car registered in the name of the son while the owner of the car was the father. In the two above-mentioned cases the applicants paid fines and filed a complaint to the prosecutor's office. Their complaints were dismissed by the prosecution as inadmissible.

According to Article 6, paragraph 1 of the European Convention on Human Rights, the right to a court, where access to a court is an aspect of this right is not an absolute right and is subject to the limitations allowed, in particular when determining conditions for admissibility of the appeal. However, such limitations cannot exclude or reduce the person's access in such a way or to such an extent that it is in violation of the right of access to a court. In these cases the legitimate aim should be pursued and there is a proportional link between the available remedy and the goal to be achieved.

Pursuant to the Criminal Procedure Code in France, the prosecution is responsible for verifying the admissibility of the appeals against the imposed fines and has three options: to dismiss the procedure, to refer the case to the competent court or when the complainant did not give sufficient reasons to inform complainant of inadmissibility.

In the case of Celice, the Prosecution Office considered that the complaint was inadmissible. According to the European Court of Human Rights, the prosecutor's office making such an assessment regarding the inadmissibility of the complaint has acted *ultra vires* (beyond competence-excess of competence). Therefore, despite the complainant's opposition, the fine was considered to be paid and the prosecution closed the case, denying the complainant's right of access to court, contrary to the right protected by Article 6 (1) of the Convention. Moreover, in September 2010, the French Constitutional Council found that when the prosecuting authorities declared inadmissible a request for exemption from a standard fine after the deposit was paid and when this declaration had the effect of converting the deposit into a fine, the inability to appeal against such a decision before the community judge was incompatible with "*the right to an effective judicial remedy*".

In the Josseaume case, the Criminal Procedure Code in France foresees that an admissible application suspended the execution of the order to pay the fine and the prosecution was required to immediately inform the Treasury. The fact that the execution procedure of the order to pay the fine had continued in the Treasury, the prosecution considered the applicants' request as inadmissible. Except the fact that the decision on inadmissibility should have been based on a ground other than those foreseen in the Criminal Procedure Code, because the request contained reasoning and was accompanied by notice, the prosecution had failed to inform the complainant that the request had been dismissed. Thus, the prosecution, acting ultra vires, decided on the basis of the application and thus deprived the applicants of their right to be heard by a judge. Thus, the essence of the applicants' right to access to court was limited.

KLI for the first time after more than three years of co-operation with the Prosecution Offices received negative responses from Chief Prosecutor of the Special Prosecution Office of the Republic of Kosovo and some of the Chief Prosecutors of Basic Prosecutions who did not cooperate to provide prosecutorial acts for the purpose of monitoring and analysing compliance with legal deadlines by prosecutors in corruption cases. Through this closure of the Prosecutor's Office, their leaders have witnessed a lack of will to increase transparency and public accountability through monitoring by external actors of civil society. Moreover, through this form of monitoring and professional analysis of the KLI findings, it has directly impacted on increasing the accountability of prosecutors, a fact confirmed continuously by the heads of the Disciplinary Prosecutor Office and other actors of the prosecutorial and judicial system.¹⁶

Admission and submission of these legal acts by the prosecution offices to KLI's monitors was done by eliminating all personal data from these legal acts. KLI has analysed issues of interest in these legal acts, which relate to the compliance of decisions with legal provisions, always maintaining the highest professional standards and not commenting on the discretion of prosecutors and the subjective assessment of their decision-making in certain cases.

The lack of transparency of the State Prosecutor in providing access to prosecutorial documents related to cases of dismissal of criminal reports and cease of investigations by prosecutors is an extreme effective and possibility mean of amnestying prosecutors that could potentially close cases in violation with the law and practical remedy to promote the culture of impunity.¹⁷

¹⁶ *Note:* The Office of the Disciplinary Prosecutor based on the findings and assessments of the KLI initiated over 500 cases against prosecutors and judges due to violations of the law in respect of legal time limits in dealing with corruption cases. A number of these cases have been completed in the Disciplinary Commissions and measures have been imposed on certain prosecutors, while a large number have been sent for evaluation to the Performance Evaluation Commission. The DPO leaders have consistently confirmed that as a result of KLI findings and assessments in addressing corruption cases has been directly influenced in increasing the transparency and accountability of prosecutors and judges in tackling corruption cases.

¹⁷ *Note:* KLI has reported concrete cases of violation of law by prosecutors in case of case settlement. Illegal cases identified by the KLI have been annulled by the Chief State Prosecutor, whereas preliminary prosecutions have been

Lack of judicial control and transparency also limits the human rights and freedoms of citizens, property owners and victims of crime from criminal corruptive offenses. Moreover, the new Criminal Procedure Code does not allow a private lawsuit or a subsidiary lawsuit. The main reason for this is that the new Criminal Code does not foresee any criminal offense, which is prosecuted under private charge. However, many people consider that the private charge or subsidiary charge represents an important guarantee for the victim. Although there is some truth in this, it does not release the prosecution from the obligation to investigate and prosecute the crime.¹⁸

To balance the loss of the right to file a private lawsuit, the rights of the victims have been significantly strengthened in the new Code of Criminal Procedure. Under Article 62, the injured party has a number of rights, such as the right to be treated with respect, to be notified, to participate in the proceedings and to be compensated. Article 63 instructs that the injured party may be represented in criminal proceedings by a member of the Bar of Advocates. In addition to the member of Bar of Advocates, the injured party may be represented by the victim's defender and the injured party himself. In addition, the voice of the injured party in the procedure has been strengthened in some other articles. There are many examples. Pursuant to Article 217, the injured party may request the state prosecutor to provide the evidence that is in Kosovo or to require relevant evidence outside Kosovo. The injured party may take part in interrogation in the pre-trial procedure, statement in the pre-trial procedure and special investigative opportunity. To clarify the damage suffered and the amount of compensation, according to Article 218, the injured party may file a statement for damages.¹⁹

However, all these rights can only be practiced in the last three stages of the criminal proceedings, and the same cannot be applied in the pre-trial procedure and during the criminal investigation stage and in cases where prosecutors make decisions to dismiss criminal reports or cease investigations.

Furthermore, the State Prosecutor does not apply a unique policy regarding the publication of prosecutorial decisions regarding decisions to dismiss criminal reports and decisions to cease investigations. In cases when it comes to the promotion of the prosecutorial system or of individuals within the system, the State Prosecutor publishes the same ones on the official website of the State Prosecutor, as is the case with the publication of the decision to dismiss the criminal report case in the case of allegations of manipulation of the bar exam of the Chief State Prosecutor Aleksander Lumezi. The ruling on this case, which has been completed in record time and which

initiated against the prosecutor who has acted in violation of the law, which were subsequently closed without judicial control and instead of the opposite happened, there was promotion within the prosecutorial system.

¹⁸ Guide to Criminal Procedure Code and Criminal Procedure Code (2013) page 24 at: http://oak-ks.org/repository/docs/Udhezues_i_Kodit_te_Procedures_Penale_976264.pdf

¹⁹ Guide for Criminal Procedure Code and Criminal Procedure Code (2013) page 24 at: http://oak-ks.org/repository/docs/Udhezues_i_Kodit_te_Procedures_Penale_976264.pdf

will be discussed below, is published on the State Prosecutor's website. While in other cases of rulings for the dismissal of criminal reports or rulings for cease of investigations, the State Prosecutor refuses to publish them, even though they are required in accordance with the Law on Access to Public Documents and the Law on Protection of Personal Data. The State Prosecutor's justification for these refusals is that in these cases, whenever there is evidence or new evidence, the investigation may resume and this may damage the parties. The KLI estimates that in these cases, apart from having a selective application of the law, we are dealing with the State Prosecutor's defence for prosecutors who potentially could be violators of the law or perpetrator of a criminal offense when deciding on cases of dismissal criminal reports or cease of investigations.

As a result of systematic monitoring, KLI conducted a thorough legal analysis of the handling of corruption cases by prosecutors who did not pass through judicial control, including decisions to dismiss criminal reports and decisions to cease investigations. Only in the last three years KLI has analysed 514 cases of corruption dealt with by prosecutors. For cases deployed in 2015²⁰, 108 cases were analysed, for 2016²¹ 253 cases were analysed and for 2017²² were analysed 155 cases of corruption.

KLI out of 514 cases monitored randomly selected 100 cases, which serve as a sample of legal analysis, for the implementation of legal deadlines, submitters/complainants of criminal reports and respect for the right to appeal.

c. Analysis of practical cases monitored and researched by KLI

Case 1: “Evaporation” of the house

Case of Basic Prosecution in Pristina with no PP.II. Nr. 6573/2017, was closed with the Ruling for the dismissal of the criminal report. In this case, citizens of Kosovo through the lawyer had filed a criminal lawsuit against four suspects, three of whom were Kosovo citizens and an official in the former Municipal Court in Pristina for criminal offenses: falsifying documents, legalization of

²⁰ Note: KLI has analyzed 25 cases of corruption in the periodic report published in April 2015. Musliu B. and Nimoni G. "Corruption in Kosovo 4: Periodic Assessment Report on the Efficiency of the Prosecutorial System in Implementing the Action Plan on Corruption Cases", (Pristina: Kosovo Law Institute, April 2015).

Note: The KLI analyzed 25 corruption cases in the periodic report published in June 2015. Musliu B. and Nimoni G. "Corruption in Kosovo 5: Periodic Assessment Report on the Efficiency of the Prosecutorial System in Implementing Action Plan on Corruption Cases", (Pristina: Kosovo Law Institute, June 2015). Note: KLI has analyzed 57 cases of corruption in the periodic report published in June 2015. Miftaraj E. and Musliu B. "Fighting corruption, priority on paper", (Pristina: Kosovo Law Institute, December 2015).

²¹ Note: KLI has analyzed 104 cases of corruption in the periodical report published in April 2016. Miftaraj E. and Musliu B. "Corruption in Kosovo: Fighting or Promoting Corruption", (Pristina: Kosovo Law Institute, April 2016). Note: KLI has analyzed 149 corruption cases in the periodical report published in October 2016. Miftaraj E. and Musliu B. "Rhetoric in Fighting Corruption", (Pristina: Kosovo Law Institute, October 2016).

²² Note: KLI has analyzed 154 corruption cases in the periodic report published in March 2017. Miftaraj E. and Musliu B. "The Sea of Corruption in Kosovo", (Pristina: Kosovo Law Institute, March 2017).

false content, falsifying official documents. According to the criminal report, through the falsified authorizations the suspects for the purpose of acquiring the property had illegally occupied the property of the complainants of the criminal report, legalizing the sales contracts through the former Municipal Court in Pristina.

The injured party in this case belongs to the Roma community and the same live in the Federal Republic of Germany. According to the criminal report, the injured party after a long stay in Germany when they returned to their property found an Albanian family who had ruined the old house and had built a new house. The applicants of criminal report submitted to the State Prosecutor 25 evidences, including falsified authorizations, real estate purchase contracts, notarized documents, notaries and lawyers statements in Germany, and other documents raising based suspicions for criminal offenses in criminal report.

Despite this, the prosecutor in the Basic Prosecution in Pristina rendered a decision for the dismissal of criminal report for co-perpetration of criminal offense "falsifying documents" from article 398 par. 2 of CCRK, "legalization of false content" Article 403 paragraph 1 of the CCRK and the "falsifying official documents" from Article 434 par. 1 of the CCRK. The prosecutor in the reasoning of his decision emphasizes that this criminal report should have been dismissed due to the relative prescription of criminal offenses.

The Prosecution office claims that the alleged criminal offenses were committed on 29 February 2012, they are punishable for up to 3 years and according to Article 106 paragraph 1, item 1.4, criminal prosecution should not be initiated when more than 5 years for criminal offenses punishable by up to 3 years have passed, the criminal report was made after more than 5 years and that the relative prescription had reached before the criminal report was filed. The Prosecution is referred to the provisions of Criminal Procedure Code, while the offenses were committed in 2012 and did not stop the continuation of the criminal offense.

Even though the rights of the injured party in the procedure have been strengthened by the Criminal Procedure Code, the State Prosecutor in this case has almost ignored them altogether. The State Prosecutor apparently did not take any action to provide the evidence in Kosovo or to seek relevant evidence which is outside Kosovo to reveal the truth and establish justice.

In the present case, the lack of legal provisions in the Criminal Procedure Code to appeal against the decision of the state prosecutor, limited the right of Kosovo citizens to the right to appeal and the right to access to a court that contradicts the principles guaranteed by the Constitution and the practice of the European Court of Human Rights.

Case 2. "Evaporation" of the apartment

The party H.Q. as a Kosovo Energy Corporation (KEK) employee, in 1992, from the latter, a 54 m² apartment was allocated to the Ulpiana neighborhood in Pristina. This apartment was used by the same until 2012, when it was violently removed by the Kosovo Property Agency. After leaving the apartment, he went to the Kosovo Police where he presented his case. Following the investigation, the provision of evidence and questioning of some suspects, the Kosovo Police on 22 July 2016 had filed a criminal report with case number 2016 EC 200 against six persons because they co-perpetrated and committed criminal offenses, "Abuse of Official Position or Authority," "Legalization of False Content," and "Falsifying Documents".

Persons against whom the police had raised the criminal reports were in the positions of the Director of the Legal Office at KEK, the Head of Property Services at KEK, the legal officer at KEK, the manager of staff administration and salaries in KEK, the social housing registry officer in the Public Housing Enterprise in Pristina and a lawyer.

According to the Police criminal report, these persons have accepted the contract, "*Ugovor o korisnicima stanar putem zakupa nr.prot 3650*", for the apartment located in Ulpiana, property of KEK, as true even though they knew, possibly knew and should have known that the same was forged.

Consequently, they have misled the Kosovo Property Agency for issuing a decision in favour of person with initials Z.G., a decision which resulted with violent expulsion of the former user, H.Q., and his family from the apartment in question. Also, according to the report, the mentioned persons concerned were aware that Z.G. possesses another KEK apartment and have hidden the facts that KEK does not have a protocol book where KEK's housing contracts are registered, reasoning that allegedly these books were taken by former Serbian officials who were working until during the war.

The Police criminal report, which was evidenced in Prosecution with no. 132/16, the Basic Prosecution in Pristina had dismissed on 30 November 2017. On the other hand, the Basic Prosecution in Pristina has initiated investigations against H.Q., in the direction of the criminal offense "False Statements".

The cease of the investigations against the persons who were in the police criminal report and the initiation of investigations against him, the party stated that he understood from a response that he received from the Office of the Disciplinary Counsel on March 5, 2018, where he also complained for delays of the case with number 132/16.

Even in this case, the lack of legal provisions in the Criminal Procedure Code to submit an appeal against the state prosecutor's decision has limited the right of Kosovo citizens to the right to appeal and the right to access to a court that is inconsistent with the principles guaranteed by the Constitution and the practice of the European Court of Human Rights.

Case 3. Manipulated file

The file of the State Prosecutor's Bar Examination, Aleksander Lumezi, appeared on 18 October 2017, the day that the former rector of the Pristina University, Enver Hasani was sentenced to one year conditional imprisonment for the criminal offense of Fraud in Office. Shortly before the announcement of the verdict, Hasani electronically accused State Chief Prosecutor Aleksander Lumezi of having falsified the bar exam.

The Head of the Serious Crimes Department in the Basic Prosecution of Pristina, Kujtim Munishi, a member of the Committee for tracking media daily and verifying allegations of reports on organized crime and corruption cases, had authorized the Kosovo Police to collect information regarding the suspicion that the offense "falsification of the official document" was committed by Article 434, paragraph 1 of the Criminal Code of the Republic of Kosovo (CCRK).

Prosecutor Kujtim Munishi, the preliminary investigation which he has conducted, has limited exclusively to the criminal offense of "falsifying of official document" from Article 434, paragraph 1 of the Criminal Code, which may only be committed by the responsible persons who have been authorized as official persons at the Provincial Secretariat of Kosovo Judiciary. Prosecutor Munishi did not authorize investigations related to the suspicion of committing the offense defined by paragraph 2 of Article 434 of CPC2, where the suspect in public was Chief Prosecutor Lumezi.

Prosecutor Kujtim Munishi closed this case in the record time of 21 days and in the end decided by a ruling that after analysing the case files, material evidence, witness hearing, the bar examination file of his chief, Aleksander Lumezi, who was suspected of being manipulated and forged, with no evidence proved to be such. In addition to this material (substantial) defect that relates to the manner of conducting preliminary investigations, subject and object (lawfulness of Aleksander Lumezi's bar certificate), which did not exist during all the time of conducted preliminary investigations, this investigation also has one the particularity that relates to the qualities (statute) of the person who conducted the investigation, i.e. the prosecutor Kujtim Munishi and the fast rise in career in violation of the law by the Chief Prosecutor Lumezi itself.²³

²³ The Manipulated File of Chief State Prosecutor, Aleksander Lumezi, at: <http://kli-ks.org/wp-content/uploads/2017/11/02.-Analysis-law-extract-Lumez-21.11.2017-1.pdf>

The manner in which this case was run, for the public raises many doubts and questions, to which Prosecutor Munishi has not given any answer. Judicial practice proves that in such cases, when allegations of forged documents are suspected, in addition to evidences, minutes, decisive role in revealing the truth lies in the expertise of allegedly manipulated documents. The prosecutor ignored this legal obligation completely, prejudging the case. The same has never requested the graphology expertise of the alleged documents regarding the basic suspicions of manipulated files.

Prosecutor Munishi in the ruling writes that they have submitted requests for access to documents regarding the appointment of prosecutors and judges to UNMIK and the OSCE. The same, without accepting any response, has issued the aforementioned ruling for the dismissal of the criminal report. This in court practice is unprecedented sometimes, leaving space to raise doubts that the purpose in this case was the quick closing of the case and not the revealing of the truth.

In the ruling to dismiss criminal report as above, Prosecutor Munishi has authorized the Kosovo Police to seize the original files pertaining to the bar exam files in the Kosovo Archives and the Ministry of Justice. In this ruling there is no mention of whether the seized files were taken in accordance with Article 112 of the Code of Criminal Procedure. This article stipulates that items that can be temporarily seized are items that may be evidence during a criminal procedure, objects or property that have enabled the commission of a criminal offense, or items that are considered material gains obtained by committing a criminal offense and for which the law foresees seizure. The seized files were taken without a court decision. 5. The seized files were held for more than five days, without a court decision. According to the Criminal Procedure Code, items, property, evidence or money may be subject to temporary restraint on a state prosecutor's order that lasts no more than five days if authorized police officers learn about the item, property, evidence or money such as during legal control or arrest. According to the Criminal Procedure Code, the state prosecutor requests a court order from the pre-trial judge. This does not appear in the ruling that happened, so there was never a court decision.

The prosecutor has questioned witnesses or accepted documents directly from the Republic of Serbia, failing to comply with the obligations deriving from the Law on International Legal Cooperation in Criminal Matters.

All actions taken by the State Prosecutor have been undertaken without going through judicial control, respectively the whole case was exclusively treated by the Prosecutor of the case.

d. Denied right of legal remedy

According to Article 6 (1) of the ECHR, every person has the right to "fair trial ..." in the determination of civil rights and obligations or of any criminal charge.²⁴ This implies that a proper degree of 'equality of weapons' should be made available to all persons before a court. Whereas Article 14 (3) (d) of the International Covenant on Civil and Political Rights guarantees a similar right to the determination of criminal charges.²⁵ According to the Kosovo Constitution, these two international documents are directly applicable in Kosovo and have supremacy over the laws of the Republic of Kosovo. Moreover, Article 53 of the Constitution stipulates that human rights and fundamental freedoms guaranteed by the Constitution are interpreted in accordance with ECHR decisions. This provision obliges courts in Kosovo to be guided by the court practices of the ECHR.

The Constitution of Kosovo guarantees that fundamental human rights and freedoms are inseparable, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo. The Republic of Kosovo protects and guarantees the fundamental human rights and freedoms provided for in this Constitution. Everyone has a duty to respect the human rights and fundamental freedoms of others. The fundamental rights and freedoms set forth in the Constitution also apply to legal persons, as far as they are applicable.²⁶

Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated.²⁷

The right to own property is guaranteed. Use of property is regulated by law in accordance with the public interest.²⁸ The Kosovo Constitution also guarantees the right to legal remedies. Each person has the right to use remedies against judicial and administrative decisions that violate his / her rights or interests in the manner prescribed by law.

KLI during the monitoring of practical cases and analysing the decisions of prosecutors regarding the dismissal of criminal reports and decisions for cease of investigations has encountered a considerable number of closed cases filed by citizens, injured parties or property owners. In all these cases, the complainants have been denied the right to appeal the decisions to dismiss criminal reports or decisions to cease the investigations received by the State Prosecutor. In the cases

²⁴ Article 6 of the European Convention on Human Rights, available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf.

²⁵ International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations, available at: <https://treaties.un.org/doc/publication/unts/volume%20999/volume999-1-14668-english.pdf>.

²⁶ Article 21 of the Constitution of the Republic of Kosovo.

²⁷ Article 54 of the Constitution of the Republic of Kosovo, [Judicial Protection of Rights].

²⁸ Article 46 of the Constitution of the Republic of Kosovo, [Protection of Property].

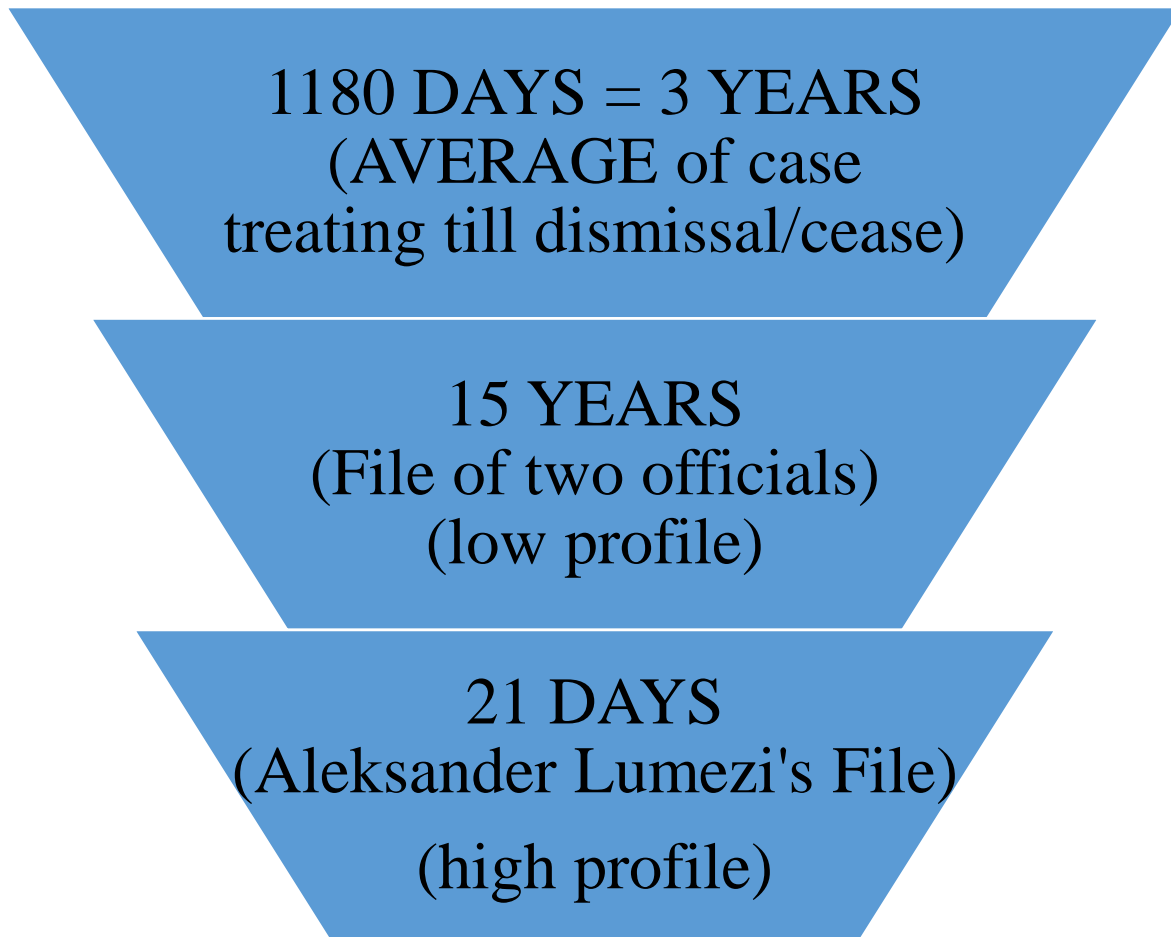
presented by the citizens of Kosovo, KLI also entered the cases when property right was violated, as a right guaranteed by the Constitution.

e. Treating cases in preliminary and investigative procedure – 100 cases analysed by KLI

From the analysis of 100 cases of corruption closed by the Prosecutor's Office by a decision to cease the investigation or the decision to dismiss the criminal report, it appears that the average duration of treatment of these 100 cases of corruption since raise of criminal reports until the dismissal of criminal report or cease of the investigation is 1,180 days or nearly three years. The corruption case that was dealt with in record time, has taken 21 days from the admission of the criminal report to the dismissal of the criminal report.²⁹ Meanwhile, the corruption case that lasted the longest to deal with took 5415 days or 15 years.

The case that was resolved in record time in circumstances of the efficiency of the prosecutorial system results to be the case of preliminary investigations regarding the suspicions of the forged file of Aleksander Lumezi's bar exam, which as Chief State Prosecutor, belongs to the high profile. The case file of Aleksander Lumezi was raised on 25 October 2017 and closed after 21 days, respectively on 14 November 2017. While the case against two low-profile officials was raised on October 10, 2001 and closed after 5415 days or nearly 15 years.

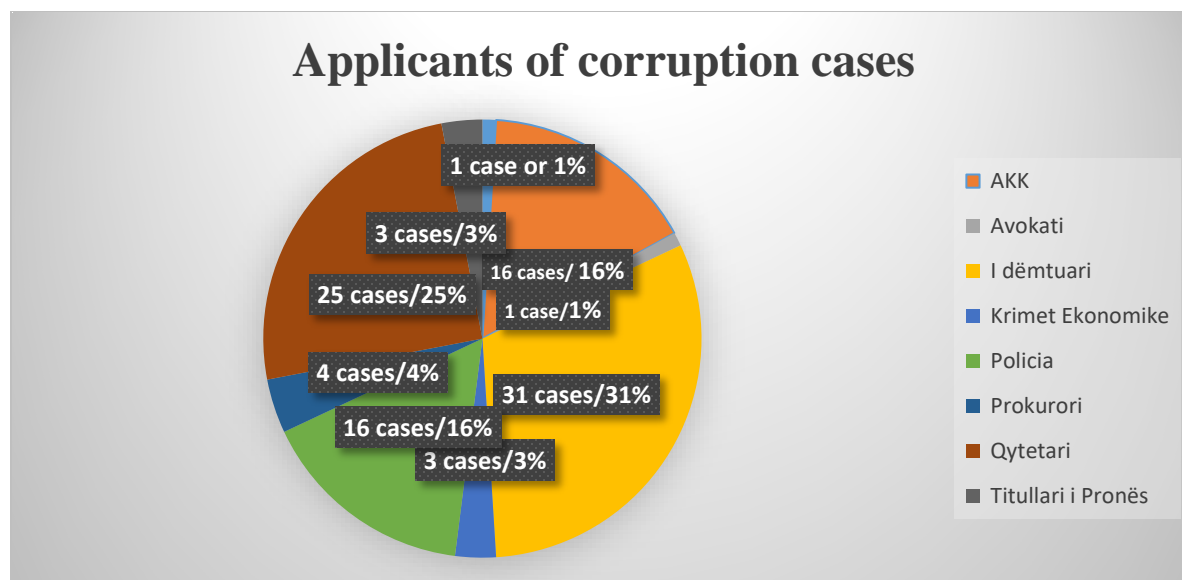
²⁹ Decision on the dismissal of criminal report in the case of Chief State Prosecutor Aleksander Lumezi.



Graphic 1 – The average time of case treating in 100 cases analysed by KLI.

Out of the 100 criminal reports filed by the complainants of criminal reports, 95 of them have been dismissed, and in 5 of them the prosecutors have taken the decision to initiate investigations, but later prosecutors have taken the decision to cease the investigation.

In the 100 cases analysed by KLI, it results that 31 complainants of criminal reports are the injured parties, followed by 25 cases filed by the citizens, 16 cases by ACA, 16 cases by the Police, 4 cases by the prosecutor with own-initiative, out of 3 cases are the Economic Crime Unit of the Police and the Property Owners and from 1 case have submitted TAK and the Lawyer.



Graphic 2 – Applicants of corruption cases in 100 cases analysed by KLI.

f. Comparative analysis of corruption cases – preliminary phase (2015, 2016,

KLI expresses concern with the large number of corruption cases initiated without basis and untreated for years and decades by the prosecutorial system. KLI's findings based on systematic monitoring show a persistent persecution of a large number of citizens who have been held for decades in criminal evidences as suspects without any reasonable and grounded suspicion.

The comparative analysis of the last three years (2015, 2016, 2017) prove that hundreds of citizens have been persecuted for years, holding them as a result of preliminary investigations, without any judicial control and without any legal remedy for appealing to this injustice.

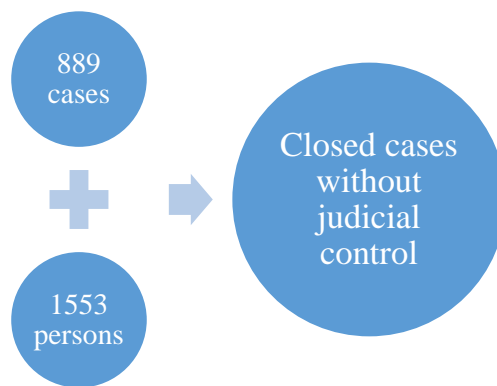
Only in the last three years, the State Prosecutor has closed 889 cases with 1553 people, without any judicial control. In these cases, based on the on-going reports of the KLI, it turns out that prosecutors on one side have unfairly persecuted citizens, holding them for decades as suspected persons in criminal records and on the other side have closed cases in which there was prove and evidence by amnestying the corrupt, all this thanks to the lack of judicial control in these cases and the lack of efficiency of accountability mechanisms.³⁰

³⁰ Note: "From what we have analyzed, those cases that go to court proceedings, even if not resolved, are more satisfied than those cases that are not sent to court at all and are closed to the prosecution. At least the court sees everything because it is made public." Discussion of focus group members with representatives of local and international institutions held at the KLI on March 22, 2018, regarding the lack of judicial control in criminal cases that appear in the pre-trial procedure and in the investigation phase. Part of the focus group were representatives from the judiciary, police, lawyer, lawyers, civil society, representatives from the US Embassy, etc. Meanwhile, with the prosecutor, a discussion was held after the focus group was held.

At the State Prosecution at the end of 2017, 595 unsolved cases of corruption remained with 1084 people, which are in the preliminary procedure or at the stage of gathering information. During 2017, the State Prosecutor closed 464 such cases against the 760 persons involved. In relation to the previous year 2016, the State Prosecutor has shown efficacy in dealing with these cases. While in 2016, 274 cases were closed with 457 persons, in 2017 this number increased in the treatment of 464 cases with 760 persons. Beginning of 2018, 595 cases with 1084 persons remained unresolved in the State Prosecution.

Corruption cases PPN – State Prosecutor						
Year	Total cases at work during the year		Cases closed during the year		Remaining unresolved cases at the end of the year	
	Cases	Persons	Cases	Persons	Cases	Persons
2015	550	1187	151	336	399	851
2016	974	1658	274	457	700	1201
2017	1059	1844	464	760	595	1084
Total			889	1553		

Table 4 – Cases of corruption at the preliminary phase in the last three years (2015, 2016, 2017).



Graphic 3 – Number of cases and persons closed without judicial control in the last three years (2015, 2016, 2017).

a) Corruption cases in preliminary procedure in 2017 and the manner of resolution

The treatment of initiated cases and their closure in the preliminary procedure, as explained in this document, is a concern for the violation of human rights and fundamental freedoms and also

concerns for the decisions of prosecutors who, in the absence of control, potentially amnesty perpetrators of criminal corruption offenses.

KLI has analysed the treatment of these cases in 2017, where it results that the State Prosecutor had 1059 cases with 1844 in the preliminary procedure. During this year, the State Prosecutor closed 464 cases against 760 persons, whereas at the end of 2017 595 cases with 1084 remained unsolved. The largest number of corruption cases in the preliminary procedure during this time period was at BP in Pristina, with 636 cases with 1097 persons, whereas the smallest number was in BP in Gjilan, with 8 cases with 14 persons. During this period, BP in Pristina closed 306 cases with 486 persons, BP in Gjakova closed 39 cases with 63 persons, SPRK closed 13 cases with 25 persons, etc.

The largest number of unresolved cases at the end of 2015 remained in BP in Pristina, with 330 cases with 611 persons, followed by SPRK with 61 cases with 156 persons, while BP in Gjilan has only three cases unresolved with 7 persons and BP in Prizren with only 4 cases with 5 persons. Furthermore, see the table below.

PROSECUTIONS		Total cases in year 2017		Cases closed during year 2017		Remained unresolved cases, at the end of year 2017	
		R	P	R	P	R	P
1	SPECIAL	74	181	13	25	61	156
2	PRISTINA	636	1097	306	486	330	611
3	PRIZREN	9	13	5	8	4	5
4	PEJA	116	197	79	149	37	48
5	GJILAN	8	14	5	7	3	7
6	MITROVICA	73	103	4	4	69	99
7	FERIZAJ	77	128	13	18	64	110
8	GJAKOVA	66	111	39	63	27	48
Total		1059	1844	464	760	595	1084

Table 5 – Treating corruption cases at the phase of gathering information in the preliminary procedure in 2017³¹

³¹ Source: Tracking mechanism for harmonization of statistical reports. Kosovo Prosecutorial Council.

b) Criminal reports in preliminary and criminal proceedings in 2017 and the manner of resolution

Concerns on the treatment of cases without judicial control are evident even in the phase of treating criminal reports and cases of criminal investigations. Only in 2017, the State Prosecutor has resolved corruption cases against 902 people of this category. Out of these against 585 people, prosecutors have closed cases by dismissing criminal reports against 335 people, while ceased investigations against 250 people. During this year, the State Prosecutor raised indictments against 314 persons, while against three persons have resolved the cases in another manner.

BP in Prishtina during 2017 has dismissed criminal reports against 232 persons and has ceased investigations against 122 persons, and has raised indictment against 122 persons. During 2017, the SPRK has dismissed criminal reports against 2 persons and ceased investigations against 35 persons, and raised indictments against 18 persons.

PROSECUTION 2017		Persons resolved	Dismiss of criminal reports	Cease of investigation	Total closed cases	Indictment	Other manner
1	SPECIAL	55	2	35	37	18	
2	PRISHTINË	476	232	122	354	122	
3	PRIZREN	22	1	12	13	8	1
4	PEJË	68	33	10	43	25	
5	GJILAN	80	30	17	47	33	
6	MITROVICË	82	15	7	22	60	
7	FERIZAJ	66	2	33	35	28	2
8	GJAKOVË	53	20	14	34	19	
Total		902	335	250	585	314	3

Table 6 – Treatment of criminal reports cases of corruption in preliminary and criminally procedure³²

³² Source: Tracking mechanism for harmonization of statistical reports. Kosovo Prosecutorial Council.

c) The manner of resolving raised indictments presented in the Court during 2017

During 2017, cases were resolved against 169 persons charged with criminal offense of corruption in all Kosovo courts. In the cases against 169 charged persons, the courts have released 81 charged whereas against 88 persons have imposed punitive verdicts. In these cases, Kosovo's courts against 23 people dismissed the indictment before the main trial, 38 people were acquitted, and against 20 people the indictment was rejected. To the 88 accused, the courts have rendered a guilty verdict/ruling.

During 2017, the courts did not convict any accused by SPRK. Three people accused from this prosecution office, the indictment was dismissed before the main trial. The most efficient prosecution during 2017 was BP in Pristina, with sentencing verdicts for 42 persons, followed by BP in Peja with sentencing verdicts against 18 persons. BP in Gjilan in 2017, has received only one convicted verdict with a convicted person.

PROSECUTION 2017		Indictment was dismissed before main trial	The accused was released	The indictment was refused	Total closed cases	The accused was announced guilty	Number of persons for whom the Court has taken a decision regarding the accusatory Acts
1	SPECIAL	3			3		3
2	PRISTINA	10	23	14	47	42	89
3	PRIZREN		7		7	8	15
4	PEJA	5	1		6	18	24
5	GJILAN	2			2	1	3
6	MITROVICA	1	4		5	5	10
7	FERIZAJ		1	6	7	9	16
8	GJAKOVA	2	2		4	5	9
Total		23	38	20	81	88	169

Table 7 – The manner of resolving indictments in Basic Court 2017³³

³³ Source: Tracking mechanism for harmonization of statistical reports. Kosovo Prosecutorial Council.

d) Unjustified withdrawal of prosecutors from the indictments and lack of judicial control

Apart from a complete lack of control over the preliminary investigations and criminal investigations phase by the Police and Prosecution Office, the lack of practical control is noticed even at a more advanced stage in the criminal procedure. KLI has systematically monitored the treating of corruption cases in the courts and has noted a phenomenon expressed by prosecutors to withdraw from indictments. Due to the role of the judge in criminal proceedings - the role of the arbitrator exclusively - in cases when prosecutors withdraw from indictments, criminal proceeding is ceased. In these cases even if the prosecutor's decision to withdraw from the indictment is unfounded, the judge cannot take any action. This phenomenon of the prosecution's withdrawal from indictments is mainly expressed in high profile cases.

Among the cases monitored by the KLI, is highlighted the case of the then Kosovo Intelligence Agency chief Driton Gashi.³⁴ Prosecutor Feti Tunuzliu did not even have two weeks to complain about the indictment raised against the Permanent Secretary of the Ministry of Internal Affairs, Driton Gashi. The Indictment against the latter was raised by Tunuzliu in May 2016, while at the initial hearing on 27 December 2016, for which he had reported "Oath for Justice", neither the prosecutor, nor the defendant Gashi, had filed. The initial hearing was held on 18 January 2017, where the prosecutor had raised the indictment as stable before the Basic Court in Pristina. Meanwhile, after only 13 days, on 1 February, prosecutor Tunuzliu informed a presiding judge, Arben Hoti, that he wanted to withdraw from the indictment. In the justification, the prosecutor has said that there is not enough evidence to support the grounded suspicion that Gashi had committed the criminal offense with which he was charged. Just one week after the withdrawal from the indictment, which was confirmed by Judge Hoti, Driton Gashi was appointed to the KIA. The indictment was filed based on the criminal charges initiated by the Head of Division for Civil Aviation Security within MIA, Luan Ismajli, against Driton Gashi, for abuse of official position. Ismajli did this because, according to the indictment, Gashi from the position of the Secretary General at the Ministry of Internal Affairs, with a decision, had transferred Ismajli to another division, thus lowering the position.

This was only one of the most representative cases of the prosecutor's withdrawal from the indictment, without new proof and evidences, but who stated that he was not convinced that the criminal offense was committed within a short period of time. In this case, no accountability mechanism has been seen, that has taken concrete actions to hold this prosecutor responsible. KLI estimates that in these cases, the prosecutor's raising or withdrawal from the indictment has been

³⁴ <http://oathforjustice.com/prosecutor-feti-tunuzliu-a-jweek-before-appointing-chief-of-kia-that-withdraws-from-indictment-against-driton-gashit-for-abuse-of-official-duty/> ([http://betimiperdrejtesi.com/prokurori-feti-tunuzliu-nje-jave-para-emerimit-te-shefit-te-aki-se-terhiqet-nga-aktakuza-kunder-driton-gashit-per-keqperdorim-te-official-position /](http://betimiperdrejtesi.com/prokurori-feti-tunuzliu-nje-jave-para-emerimit-te-shefit-te-aki-se-terhiqet-nga-aktakuza-kunder-driton-gashit-per-keqperdorim-te-official-position/))

done intentionally and at the same time he has publicly demanded responsibility from the accountability mechanisms. KLI has reported on dozens of such cases in which prosecutors have withdrawn the indictments, at different phases, without proof or new evidence, which would change the factual situation from the raising of the indictment.³⁵

V. Options for control on preliminary investigations and criminal investigations

KLI findings from the systematic monitoring and the theoretical, legal and practical analysis of the lack of judicial control in the criminal and preliminary investigations phase were discussed with important actors of local law enforcement institutions and international representatives, respectively legal specialists of the US Embassy in Kosovo.

For discussing these findings, KLI has held a focus³⁶ group with representatives from the justice system, civil society and legal specialist from the US Embassy.

KLI's systematic findings of the lack of control at the preliminary and criminal investigations phase and the need to ensure control over these investigations were unanimously confirmed by all focus group members.

Focus group members - legal and law enforcement professionals - have argued in many individual cases of abuse of legal powers by the police and prosecutors when initiating and closing cases without grounds. The persecution and amnesty of various individuals has been elaborated in detail, affecting on one hand the drastic violation of human rights and on the other, by amnestying the potential perpetrators of criminal offenses. This situation is aggravated when no legal remedy exists to appeal against these decisions to initiate cases or to close cases. As explained above, in these cases the right of the victim, the injured parties and the criminal offenders are denied. To eliminate this essential shortcoming in the criminal procedure and to ensure control over the police and prosecution at the phase of preliminary investigations and criminal investigations, focus group members discussed four options:

³⁵ Moreover, for all similar cases of prosecution of indictments, visit the website of the "Oath for Justice" portal - "www.oathforjustice.com"

³⁶ *Note:* KLI on March 22, 2018 held a focus group with representatives of local and international institutions regarding the lack of judicial control in criminal cases that appear in the pre-trial procedure and in the investigation phase. Part of the focus group were representatives from the judiciary, police, lawyer, lawyers, civil society, representatives from the US Embassy, etc. Meanwhile, with the prosecutor, a discussion was held after the focus group representatives from the US Embassy, etc. Meanwhile, with the prosecutor, a discussion was held after the focus group was held

- The option of judicial control, which means the court reviews any dismissal of the criminal report or cease of the investigation;
- The option of control within the prosecutorial system through the degree, which means the Appellate Prosecution reviews any dismissal of the criminal report or cease of investigations; and
- The option of restoring the law institutes that were previously in the Criminal Code which means the return of the subsidiary plaintiff and the private plaintiff.
- The option of increasing the transparency and accountability of the prosecution through internal control mechanisms.

Despite providing some options to provide control over preliminary investigations and criminal investigations, all focus group members agreed that they should have control either through prosecution within the prosecutorial system or through judicial control. The proposal for judicial control over preliminary investigations and criminal investigations justifying the citizen's right of access to court was favoured as the key proposal within the focus group.

During the discussion of the favoured proposal for judicial control, the focus group members highlighted concrete cases in which they were abused by the police and the prosecution with a lack of control. *"In one case several people were arrested. The police informed us that the case was in phase of gathering information and there was no ruling to initiate investigations. Then, regarding this case, where there was a deprivation of liberty, we were told that they were not arrested but only interrogated."* In this regard, regulation within the prosecutorial system or regulation within the same institution is not an adequate solution. In this regard, the most acceptable solution, which coincides with the practice of the European Court of Human Rights would be through judicial control.

Through judicial control in these investigative phases (preliminary and criminal), the possibility of implementing the principle of equality of arms would also be created, a principle which is proclaimed by the European Convention. *"Kosovo traditionally has a continental system, meanwhile elements of judicial practice have been introduced. Now, we cannot say that Kosovo has a continental system, or a system based on judicial practice. The prosecution is a state body, it represents the state, but how can it be assumed that the court cannot be involved in this process when it is the only independent body that needs control and to ensure the equality of arms in criminal proceedings"*.

In many cases, criminal offenders are challenged and persecuted because of the arbitrary decision-making of prosecutors at the investigation stage. There are cases when the investigator strongly argues the commission of a criminal offense, especially in high profile cases, but prosecutors close them, arguing that there is insufficient grounds for further investigation and raising of indictment. In these cases there is everything that proves the opposite, but the prosecutor's decision closes

every door and there is no address to complain. *"From what we have analysed, those cases that go to court proceedings, even if not resolved, are more satisfied than those cases that are not sent to court and closed in the prosecution's office. At least the court sees everything because it is made public. "*

Focus group members have estimated that if the citizens of the Republic of Kosovo would have access to appeal to the Strasbourg Court, the state of Kosovo would pay a huge cost of the state budget, as it occurs with other states.

While control within the prosecutorial system was a little supported option, with the justification that the fragile functioning of the prosecutorial system could affect the abuse of the prosecution's legal power by which it could be abused with the rights of citizens and consequently, access to the court would not yet exist, this basic right guaranteed by the Constitution of the Republic of Kosovo, which guarantees the implementation of practice of the European Court of Human Rights.

Many of the focus group members also supported the idea of returning the private plaintiff and subsidiary plaintiff to the Criminal Procedure Code.

Among the options discussed was the creation and strengthening of the mechanisms of control of performance and discipline in the prosecutorial system.

Focus group members stated that the Ministry of Justice is in the process of reviewing the Criminal Procedure Code and that the working group is looking for a solution to address this issue to provide a control system for cases of preliminary investigations and criminal investigations.

VI. Results of fighting corruption in the prosecutorial system 2015-2017 (visa liberalisation)

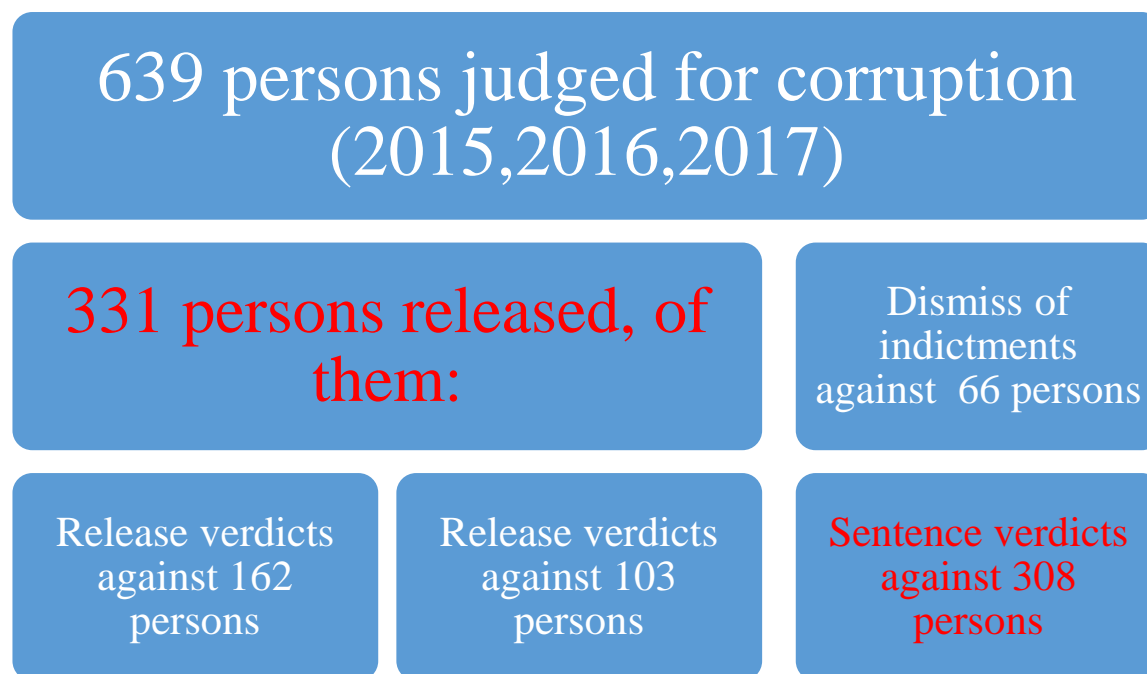
KPC on 1 December 2015, adopted the Strategic Plan (2016-2018) and the Action Plan for Increasing the Efficiency of the Prosecutorial System in Fighting Corruption and Economic Crimes, including Seizure and Confiscation of Illegal Wealth (hereinafter: Strategic Plan). This Strategic Plan has defined several goals such as: reducing of unsolved cases, increasing efficiency in resolving new cases, increasing the level of cooperation with institutions, capacity building through specialized training, accountability and transparency.

KLI findings show that the KPC has continued to express the will to fight corruption through policies, whereas in practice it is proved that the same policies are not implemented. Mechanisms established to fulfil obligations or monitor the implementation of plans have not taken these plans and obligations seriously. KPC so far has not taken any action against anyone to hold responsible

or accountable for failures in the implementation of fighting corruption policies even though there have been such promises.³⁷

The findings from the systematic monitoring conducted by KLI in cases of corruption are also confirmed by the reports adopted by KPC for the characteristic criminal offenses that derive from the tracking mechanism.

Kosovo courts, according to indictments filed by the Kosovo prosecutorial system, during the years 2015, 2016 and 2017 have decided on corruption cases against 639 persons. Out of this number, courts have rendered decisions against 331 persons, through which all persons charged with criminal responsibility for committing corruptive offenses have been released. Respectively, against 66 persons, the courts have dismissed the indictments at the main trial, against 162 persons; the courts have rendered decisions of acquittal, while against 103 persons the courts have rendered refusal decisions. Kosovo Courts, during 2015, 2016 and 2017, have given sentencing judgements against 308 persons.

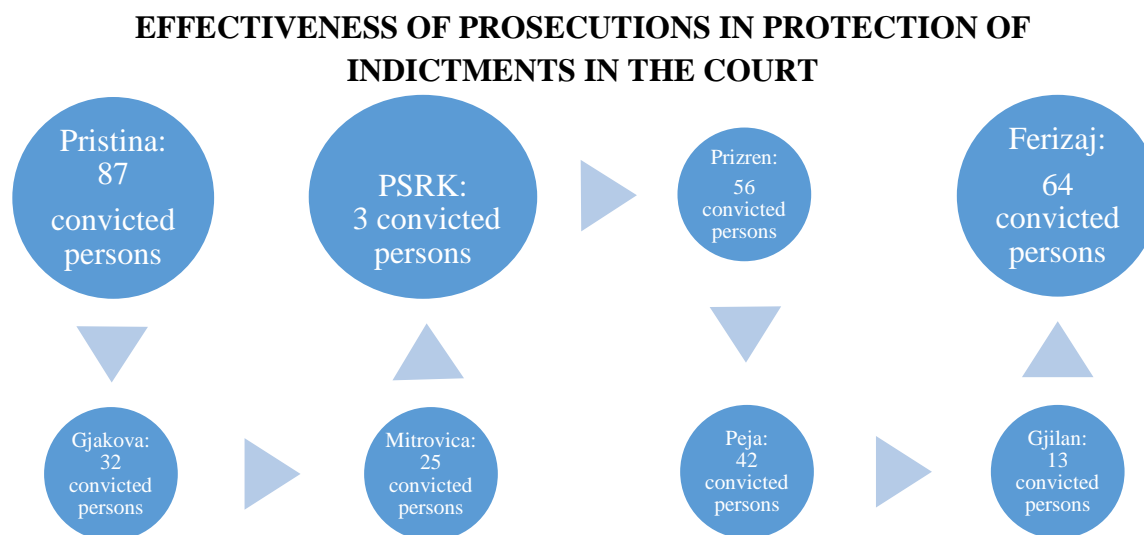


Graphic 4 – Number of persons judged and types of verdicts in corruption cases in the last three years (2015, 2016, 2017) according to KPC tracking mechanism.

³⁷ *Note:* Chief State Prosecutor Aleksander Lumezi, in all meetings of the Kosovo Prosecutorial Council, where he reported on prosecution performance in dealing with corruption cases, has sought and promised that all prosecutors, prosecutors and prosecutors will be held accountable who fail to handle corruption cases.

EFFECTIVENESS OF PROSECUTORS IN DEFENDING OF INDICTMENTS IN THE COURT

The most effective Prosecution Office in defending their indictments and the conviction of the accused has emerged BP in Pristina with 87 sentenced persons for corruption offenses for the last three years (2015, 2016, 2017). BP in Ferizaj with 64 convicts, Prizren with 56 convictions, Peja with 42 convictions, Gjakova with 32 convictions, Mitrovica with 25 convictions, Gjilan with 13 convicts, SPRK with 3 convictions. Furthermore, see the following graph and the performance of each prosecutor.



Graphic 5 – Efficiency of Prosecutions in protection of indictments in courts in the last three years (2015, 2016, 2017) according to KPC Tracking Mechanism.

Special Prosecution of the Republic of Kosovo

Kosovo Courts during 2015, 2016 and 2017 have decided on indictments filed by SPRK against 18 persons. Of which, the courts against 15 persons have closed the cases, where for 10 of the accused the courts dismissed the indictment at the main trial, the indictment was refused against 5 of the accused, whereas against 3 accused persons received a sentencing verdict.

Result: For three years, as a result of SPRK's work, only three persons were convicted for criminal offense of corruption.

Basic Prosecution in Pristina

The Kosovo courts during the years 2015, 2016 and 2017 have decided on indictments filed by BP in Pristina against 214 persons. Out of which, the courts against 127 persons have closed cases where the courts have dismissed the indictment against 33 defendants at the main trial, against 42 defendants was taken release verdict and an indictment against 52 defendants was rejected, while 87 accused, the court has announced a sentencing verdict.

Result: For three years, as a result of BP's work in Pristina, 87 people were convicted for criminal offense of corruption

Basic Prosecution in Prizren

Kosovo Courts during 2015, 2016 and 2017 have decided on indictments filed by BP in Prizren against 132 persons. Of which, the courts against 76 persons have closed the cases, where against one of the defendants the courts dismissed the indictment at the main trial, against 58 defendants was taken the release verdict and an indictment against 17 defendants was rejected, while 56 accused persons, the court has rendered a sentencing verdict.

Result: For three years, as a result of BP's work in Prizren, 56 people have been convicted for criminal offense of corruption

Basic Prosecution in Ferizaj

Kosovo Courts during 2015, 2016 and 2017 have decided on indictments filed by BP in Ferizaj to 101 persons. Of which, the courts against 37 persons have closed cases where the courts have dismissed the indictment at the main trial against 2 defendants, and against 17 defendants was taken release verdict and an indictment was rejected against 18 defendants, while for 64 accused persons, the court has rendered a sentencing verdict.

Result: For three years, as a result of the work of BP in Ferizaj, 64 persons were convicted for criminal offense of corruption

Basic Prosecution in Gjilan

Kosovo Courts during the years 2015, 2016 and 2017 have decided on indictments filed by BP in Gjilan to 18 persons. Of which, the courts against 5 persons have closed the cases, whereby the courts have dismissed the indictment at the main trial against 2 defendants, against three defendants was taken release verdict, while for 13 persons accused, the court rendered a sentencing verdict.

Result: For three years, as a result of KP's work in Gjilan, 13 persons were convicted for criminal offense of corruption

Basic Prosecution in Peja

Kosovo Courts during the years 2015, 2016 and 2017 have decided on indictments filed by BP in Peja to 60 persons. Of which, the courts against 18 persons have closed cases where the courts have dismissed the indictment against the 5 defendants at the main trial, whereas against 13 defendants was taken release verdict, whereas for 42 defendants the court has rendered a sentencing verdict.

Result: For three years, as a result of BP's work in Peja, 42 people have been convicted for criminal offense of corruption

Basic Prosecution in Mitrovica

Kosovo Courts during 2015, 2016 and 2017 have decided on indictments filed by BP in Mitrovica against 46 persons. Out of which, the courts against 21 persons have closed the cases, where against the 11 accused the courts dismissed the indictment at the main trial, against 8 persons was taken release verdict, against the 2 defendants the court has taken a refusal verdict while for 25 accused persons; the court has rendered a sentencing verdict.

Result: For three years, as a result of BP work in Mitrovica, 25 people have been convicted for criminal offense of corruption.

Basic Prosecution in Gjakova

The Kosovo courts during the years 2015, 2016 and 2017 have decided on indictments filed by BP in Gjakova against 50 persons. Out of which, the courts against 18 persons have closed the cases, where against 21 was taken a release verdict, against 9 accused the court has taken a refusal verdict while for 32 accused persons; the court has rendered a sentencing verdict.

Result: For three years, as a result of BP work in Gjakova, 32 persons have been convicted for criminal offense of corruption.

PROSECUTION 2015/2016/2017		The indictment was dismissed before the Judicial Review	The accused was RELEASED	The indictment was REFUSED	Total closed cases	Total closed cases in %	The accused was announced guilty	The accused was announced guilty in %	Number of Persons for whom the Court has taken a decision regarding the accusatory Acts
1	SPECIAL	10		5	15	83%	3	17%	18
2	PRISTINA	33	42	52	127	59%	87	41%	214
3	PRIZREN	1	58	17	76	57%	56	43%	132
4	PEJA	5	13		18	30%	42	70%	60
5	GJILAN	2	3		5	28%	13	72%	18
6	MITROVICA	11	8	2	21	46%	25	54%	46
7	FERIZAJ	2	17	18	37	58%	64	42%	101
8	GJAKOVA	0	21	9	32	64%	18	36%	50
Total		66	162	103	331	52%	308	48%	639

Table 6 – Persons judged for corruption in the last three years (2015, 2016, 2017).³⁸

³⁸ Source: Tracking Mechanism for Specific Criminal Offenses. Kosovo Prosecutorial Council.

VII. Monitoring hearings of corruption cases by KLI in 2017

KLI since June 2015, monitors corruption cases in all Basic Courts of the Republic of Kosovo. The KLI monitoring team, from June 2015, has continuously visited on a regular basis all the Courts and Presidents of the Basic Courts to monitor closely each and every court case related to the criminal offenses of corruption. The monitoring included the process of identifying cases of corruption at work, scheduling and case allocation, information at what stage of the proceedings these cases are in the courts and their reporting to the public on a daily basis through the website.³⁹

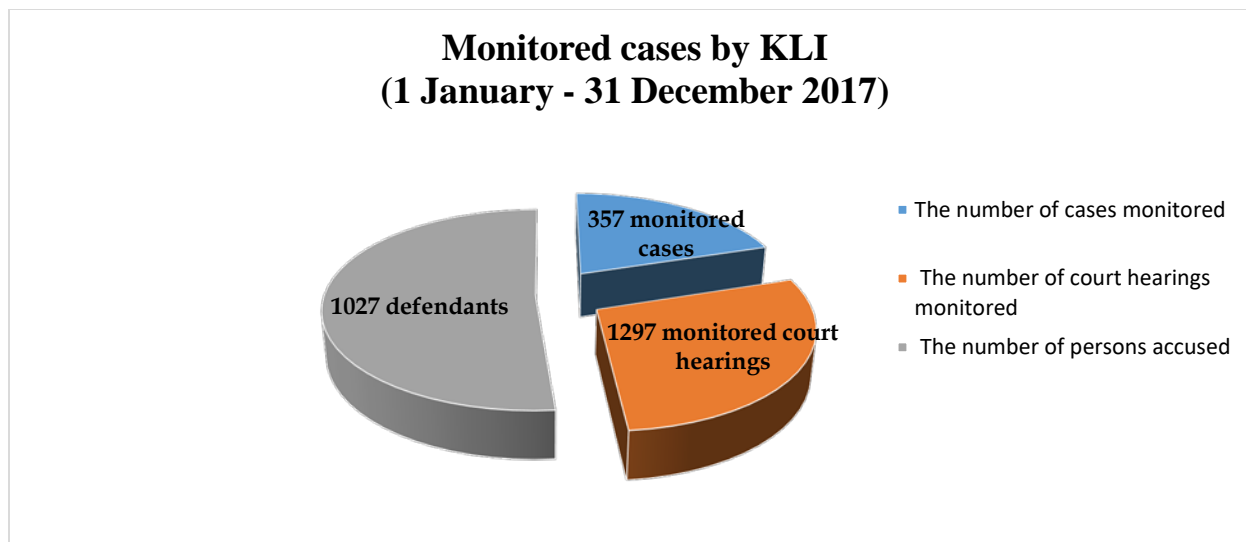
Challenges in identifying corruption cases and ensuring the timing of court hearings have been and remain constant for KLI monitors.⁴⁰ However, from now on, KLI expects these challenges to be overcome in practice as the KJC and KLI have formalized co-operation through the signing of a Memorandum of Understanding⁴¹, which will facilitate the access of KLI monitoring to the courts, communication, co-operation and coordination.

KLI monitors, from 1 January to 31 December 2017, monitored 1297 court hearings, including 357 cases of corruption with 1027 people. See table below.

³⁹ KLI in cooperation with Public Radio Television jointly produce a specialized program for the rule of law field "Oath for Justice". In addition, the portal "Oath for Justice" has been developed, in which, in addition to the research, analysis and debates that take place in the program, KDI monitoring reports on all cases of corruption are also published on an updated basis. Reporting is done in the special section of the portal, which is located on this link <http://betimiperdrejtesi.com/lajme/>

⁴⁰ BC do not yet have an efficient and effective system of updating the database on the timetable for holding hearings in general and in particular on corruption cases. Initially, the KLI has established communication through the Chairpersons of the Judges and then through the spokespersons of these courts, who have informed the KLI monitors on the scheduling of court hearings on corruption cases. However, this practice did not work in the best way because the spokespersons have sent incomplete and inaccurate information on the schedule of hearings to the KLI monitors, which has caused problems for their monitoring. This communication has progressed every day, but there are still practical problems associated with the timetable of hearings in corruption cases. In view of these challenges, KLI, using positive legislation to have access to all necessary information about these cases, has signed with KJC a Memorandum of Understanding, which provides a better access, communication, collaboration and coordination among the monitors of the KLI and the KJC, respectively at all levels of the Courts and Heads.

⁴¹ The Memorandum of Understanding between the KJC and the KLI was unanimously approved by all members of the KJC at the meeting held on 6 April 2016, and was signed between the KJC and KLI directors on 7 April 2016 in Pristina, April 7, 2016.



Graphic 6 – Corruption cases monitored by KLI (1 January – 31 December 2017).

In 2016, out of 1505 hearings scheduled corruption cases, 1139 hearings were held and 366 were postponed. Respectively, during 2016, 78% of hearings were held, while 22% of hearings were postponed.⁴²

BC in Pristina, leads with the largest number of hearings on corruption cases. Out of 1297 hearings in all Kosovo courts, only 698 hearings or 55% of all hearings have been assigned to the Court in Pristina in all Kosovo courts. During 2017, this court out of 698 hearings, only 447 were held and 251 court hearings were postponed. As a matter of fact, 36% of hearings have been postponed for various reasons by this court.

BC in Prizren during 2017 had scheduled 166 hearings, out of which 127 have been held and 39 hearings have been postponed. BC in Gjilan during this period had scheduled 172 hearings, of which 113 are held and 59 hearings have been postponed. Furthermore, see the table below.

⁴² Miftaraj E. and Musliu B., *The Sea of Corruption in Kosovo: Small Fishes Caught, the big are left free*, March 2017, p. 90, at: <http://kli-ks.org/ep-content/uploads/2017/04/1.1.-Raporti-i-Korrupsionit-IKD-28.03.2017-Compressed.pdf>

Hearings scheduled for corruption cases (January-December 2017)	Hearings held	% Hearings held	Hearings postponed	% Hearings postponed	Total of scheduled hearings
Pristina	447	64%	251	36%	698
Prizren	127	77%	39	23%	166
Peja	59	69%	27	31%	86
Gjilan	113	77%	59	23%	172
Mitrovica	44	70%	19	30%	63
Ferizaj	37	74%	13	26%	50
Gjakova	47	76%	15	24%	62
Total	874	67%	423	33%	1297

Table 7 – Monitored court cases in the period from 1 January to 31 December 2017.

During the hearings monitored by KLI during this reporting period, various irregularities have been identified.

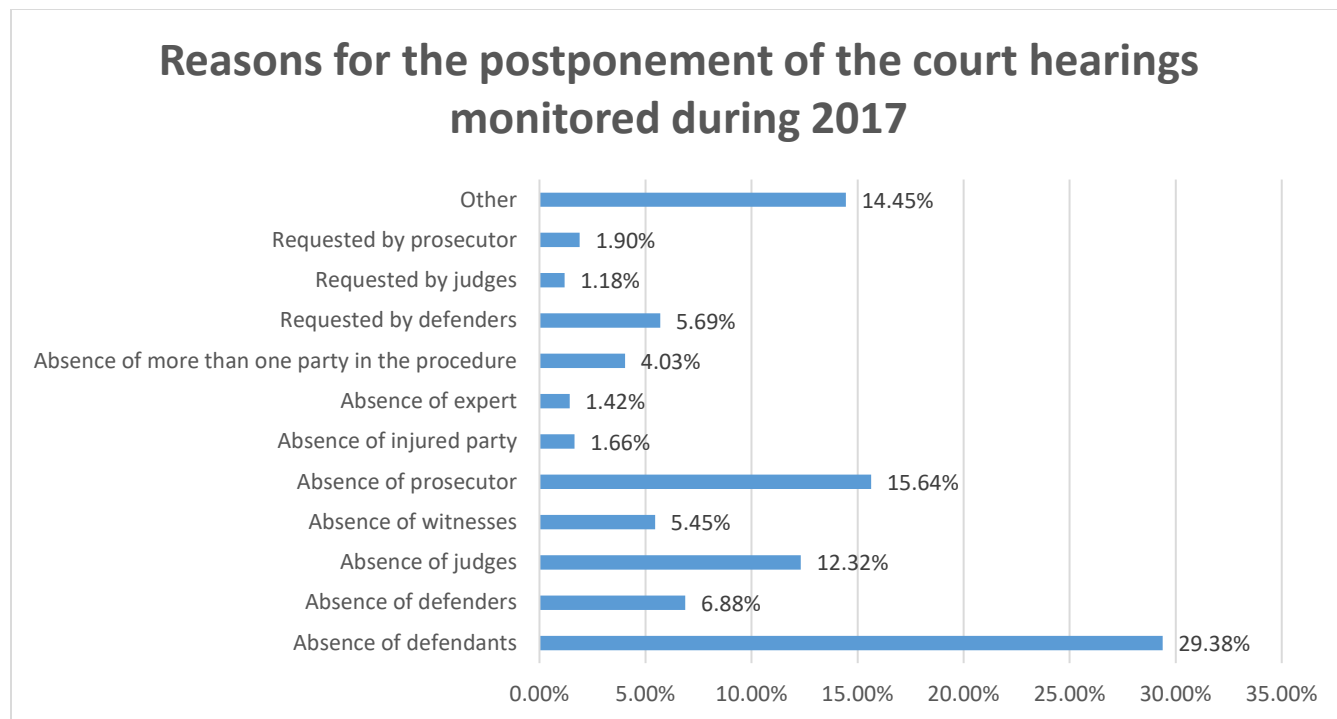
Out of 1297 monitored hearings, 875 of them were held; meanwhile 422⁴³ of them were postponed due to failure to meet the legal conditions for holding hearings. The table below shows the common reasons why 423 hearings were postponed:

⁴³ Clarification: 35 hearings were postponed during January, 38 hearings were postponed during February, 38 hearings were postponed during March, 37 hearings were postponed during April, 48 hearings were postponed during the month of May, 43 hearings were postponed during June, 38 hearings were postponed during July, 16 hearings were postponed during August, 36 sessions were postponed during September, 41 sessions were postponed during October, 29 sessions were postponed during November and 23 sessions were postponed during December.

Reasons for postponing hearings monitored during the reporting period (January -June 2017)	Reasons for postponing hearings monitored during the reporting period (January -June 2017)												
	Absence of defendants	Absence of defenders	Absence of judges	Absence of witnesses	Absence of prosecutor	Absence of the injured party	Absence of the expert	Absence of more than one party in the procedure	Upon request of the defenders	Upon request of the judge	Upon request of the prosecutor	Other	Total
Pristina	76	11	29	15	44	1	2	12	14	2	5	40	251
Prizren	15	2	7	2	2	0	2	0	4	1	1	3	39
Peja	1	5	3	1	10	1	1	0	0	2	1	2	27
Gjilan	17	5	11	3	4	1	0	2	3	0	0	12	58
Mitrovica	7	4	0	1	4	1	0	1	0	0	0	1	19
Ferizaj	4	1	2	1	1	0	0	1	0	0	1	2	13
Gjakova	4	1	0	0	1	3	1	1	3	0	0	1	15
Total	124	29	52	23	66	7	6	17	24	5	8	61	423

Table 8 – The reasons of postponed hearings of the corruption cases monitored during 2017.

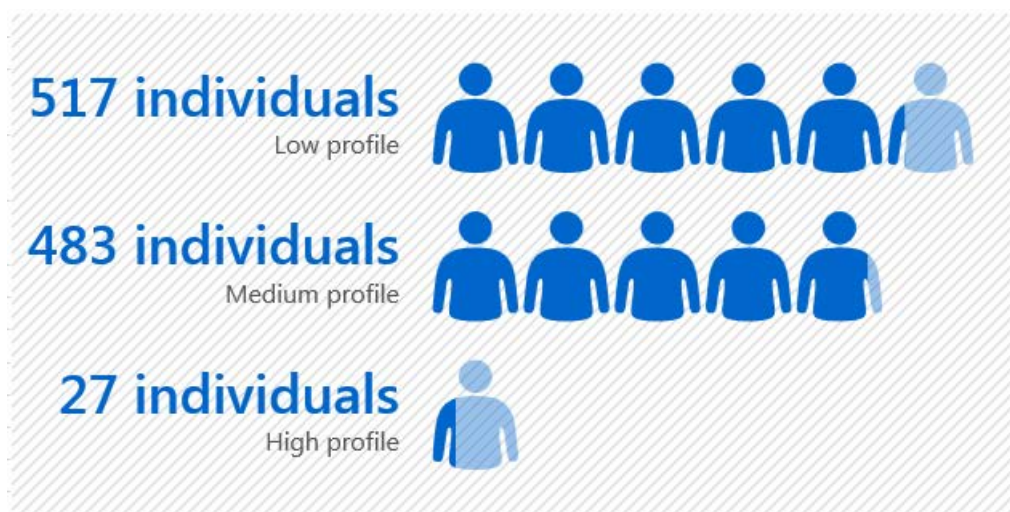
Expressed in percentage, it appears that the largest number of hearings have been postponed due to the absence of the accused, due to the lack of a prosecutor and due to the lack of judges. KLI, according to the graph below brings the percentage of reasons for postponing 422 hearings.



Graphic 7 - Reasons of postponed hearings of corruption cases monitored during 2017

a. The profile of persons accused with corruption cases monitored by KLI in 2017

The profile of 1027 persons accused in these 357 corruption cases monitored by KLI during this reporting period (*January-December 2017*) is mainly low and medium and a limited number of accused persons are of high profile.



Graphic 8 - Profile of 1027⁴⁴ accused persons for criminal offenses of corruption in Basic Courts during the reporting period (*January-December 2017*)

⁴⁴ Clarification: Thirteen accused persons, who belong to a secondary profile, are involved in more than one case.

High profile of accused persons for criminal offenses of corruption in January-December 2017	Pristina	Prizren	Peja	Gjilan	Mitrovica	Ferizaj	Gjakova	Total:
Court President	1							1
Municipality Mayor	3 ⁴⁵	1	2	5 ⁴⁶	1		1	13
Deputies	3							3
Ministers	6							6
Permanent Secretary in the Ministry	1 ⁴⁷							1
Chairman of PRO	1 ⁴⁸							1
Rector in the University	1 ⁴⁹						1	2

Table 9 – High profile of accused persons for criminal offenses of corruption in January-December 2017.

I. The policy of punishment in corruption cases monitored by KLI during 2017

b. Decisions rendered in corruption cases during 2017

During 2017, KLI monitored and reported on 179⁵⁰ decisions rendered by the Basic Courts of the Republic of Kosovo, against 343 persons involved in corruption cases. From the data obtained, it results that judges mainly apply mild punitive policies to the perpetrators of corruption offenses. The table below presents the imposed sentences by the judges in these 179 verdicts on corruption cases:

⁴⁵ Clarification: The person accused in the capacity of the mayor of Skenderaj municipality is also involved in another case.

⁴⁶ Clarification: The accused person in the capacity of the mayor of Klllokot municipality is also involved in four other cases.

⁴⁷ Clarification: The person accused in the capacity of the Permanent Secretary of the Ministry is also involved in another case.

⁴⁸ Clarification: The person accused in the capacity of PRO chairman is also involved in two other cases.

⁴⁹ Clarification: The accused person in the capacity of the Rector of the University is also involved in another case in the capacity of the President of the Constitutional Court.

⁵⁰ Clarification: Unlike previous reports, this report has made the calculation of all announced judgments that were monitored by the KLI, including cases returned for retrial.

Imprisonment		Conditional sentence		Fine		Acquittal	Refusal	Dismissal of indictment
Persons	Month	Persons	Month	Persons	Amount in euro	Persons	Persons	Persons
56 ⁵¹	773	72 ⁵²	757	43	210,300	114	31 ⁵³	27 ⁵⁴

Table 10 – Cases of verdicts monitored by KLI.

KLI findings from the practical monitoring of case decisions rendered by court rulings prove that prosecutions have serious problems in defending corruption cases in the courts. Of the 343 persons charged with criminal offence of corruption, in 2017, the courts against 172 persons have rendered rulings that acquitted the accused from criminal responsibility, or in 50% of the cases the courts did not find that the accused committed criminal corruption offenses or due to the statutory limitation.

Out of 343 accused persons, KLI findings from practical monitoring show that only 56 persons were given sentence of imprisonment, or only 16% of the accused persons. While 72 accused persons were convicted with a suspended sentence or 20% of them. Courts during the year have imposed a fine on 43 persons, or 13% of them.

Imprisonment sentences:

The KLI findings, from the monitoring process of corruption cases show that in cases against 343 persons against whom a ruling was issued in 2017, 56 persons have been sentenced to imprisonment for a total of seven hundred and seventy-three (773) months or sixty-four (64) years and five (5) months for all sentenced persons.

Out of the 56 persons sentenced with imprisonment, two persons were sentenced to three months in an effective imprisonment, one person was sentenced to four months of effective imprisonment,

⁵¹ *Clarification:* Out of the 56 persons sentenced with imprisonment, 24 of them are the same who have also received a fine of up to 80,400 euros.

⁵² *Clarification:* Of the 72 persons conditionally sentenced, 26 of them are the same who have also received a fine of up to 54,565 euros.

⁵³ *Clarification:* One of the 31 persons against whom was announced release verdict in the first case, is the same that for the second case a release verdict has been announced against him.

⁵⁴ One of the 27 persons against whom was announced release verdict in the first case, is the same that for the second case against him was announced sentence verdict and conditional sentence of 12 months.

three persons⁵⁵ were sentenced to five months imprisonment, seventeen⁵⁶ were sentenced to six months imprisonment, four⁵⁷ were sentenced to 7 months imprisonment, nine⁵⁸ were sentenced to 8 months imprisonment, one person was sentenced to 10 months imprisonment, eight⁵⁹ were sentenced to 12 months imprisonment, one person was sentenced to 18 months one person was sentenced to 24⁶⁰ months in imprisonment, one person was sentenced to 32⁶¹ months imprisonment, two⁶² were sentenced to 36 months in an effective imprisonment, one person was sentenced to 38 months imprisonment, three⁶³ were sentenced to 48 months imprisonment, one person was sentenced to 54⁶⁴ months imprisonment and one person was sentenced to 58 months imprisonment.

Conditional sentences:

Judges against 72 persons have imposed conditional sentences of 757 months. Of them, a person⁶⁵ was sentenced with condition to a probationary of 2 months, four were sentenced with condition for a term of 3 months each, four were sentenced with condition for a term of 5 months each, twenty-four persons⁶⁶ were sentenced with condition in duration of 6 months each, two persons were sentenced with a conditional sentence of 7 months each, four⁶⁷ were sentenced with a suspended sentence of 8 months each, one person was sentenced with condition for a term of 10 months, a person was sentenced with condition for a term of time of 11 months, sixteen persons⁶⁸ were sentenced with condition for a term of 12 months each, one person was sentenced with

⁵⁵ *Clarification:* Two out of three persons sentenced to 5 months each are the same who have also received a fine of 800 euros in total.

⁵⁶ *Clarification:* Of the 17 sentenced persons with a term of 6 months each, 3 of them are the same who have also received a fine in the amount of 2,700 euros.

⁵⁷ *Clarification:* Out of 4 persons sentenced to 7 months each, three of them are the same who have also received a fine with a total of 9,100 euros.

⁵⁸ *Clarification:* Out of the nine persons sentenced with imprisonment in the duration of 8 months each, 5 of them are the same who have also received a fine with a total amount of 13,500 euros.

⁵⁹ *Clarification:* Of the 8 persons sentenced to 12 months' imprisonment, four of them are the same who have also received a fine with a total of 10,800 euros.

⁶⁰ *Clarification:* A person sentenced to 24 months imprisonment is the same who has also received a fine of up to 25,000 euros in total.

⁶¹ *Clarification:* A person sentenced to 32 months of imprisonment is the same who has also received a fine in total of 10,000 euros.

⁶² *Clarification:* One of two persons sentenced with an effective imprisonment of 36 months is the same one who was fined a fine of 1,000 euros.

⁶³ *Clarification:* Three persons sentenced with an effective imprisonment of 48 months are the same who have also received a fine of up to 7,000 euros.

⁶⁴ *Clarification:* A person sentenced to 54 months imprisonment is the same who has also received a fine of 500 euros in total.

⁶⁵ *Clarification:* A sentenced person for a term of 2 months is the same person to whom was imposed a fine of 150 euros.

⁶⁶ *Clarification:* Of the 24 sentenced persons in duration of 6 months each, 10 of them are the same who have also received a fine with a total of 16,215 euros.

⁶⁷ *Clarification:* Of the 4 persons sentenced with condition in duration of 8 months each, 2 of them are the same who have also received a fine in the amount of 800 euros.

⁶⁸ *Clarification:* Of the 16 persons sentenced with condition in duration of 12 months each, 10 of them are the same who have also received a fine in the amount of 28,400 euros.

condition to 14 months, five⁶⁹ were sentenced with condition for a term of 18 months each, nine persons⁷⁰ were sentenced with condition for a term of 24 months each.

Fine sentence:

The judges against 43 persons have imposed a fine of 210,300 euros. Of them, one person was fined in the amount of 100 euro, one person was fined in the amount of 200 euro, two persons were fined in the amount of 300 euros, one person was fined in value of 400 euro, one person was fined in the amount of 700 euros, four persons were fined in the amount of 1,000 euros, one person was fined 1,100 euros, two persons were fined in the amount of 1,200 euros, three persons were fined in the amount of 1,500 euros, seven persons were fined in the amount of 2,000 euros, one person was fined in the amount of 2,400 euros, two persons were fined in value from 2,500 euros, a person was fined in the amount of 3,000 euros, four people were fined in the amount of 3,600 euros, two people were fined in value from 4,000 euros, a person was fined 4,500 euros, one person was fined in the amount of 5,000 euros, two people were fined in the amount of 10,000 euros, six people were fined in value from 20,000 euros.

Failed indictments:

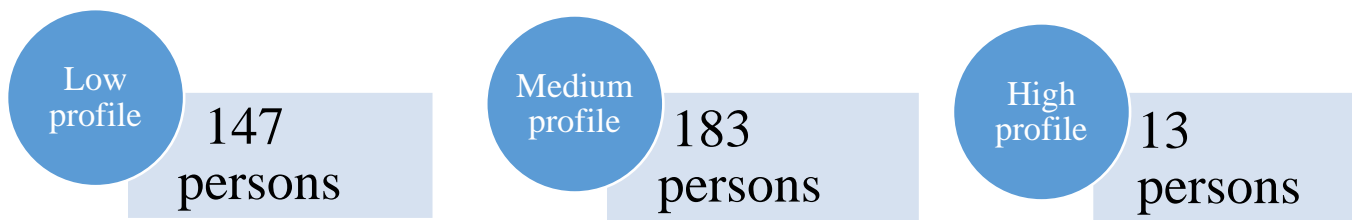
Judges against 115 persons have imposed a sentence of acquittal; while against 31 persons have imposed a refusal verdict. Meanwhile, the judges against 27 people have dismissed the indictments.

c. Profile of persons sentenced for corruption by courts during 2017

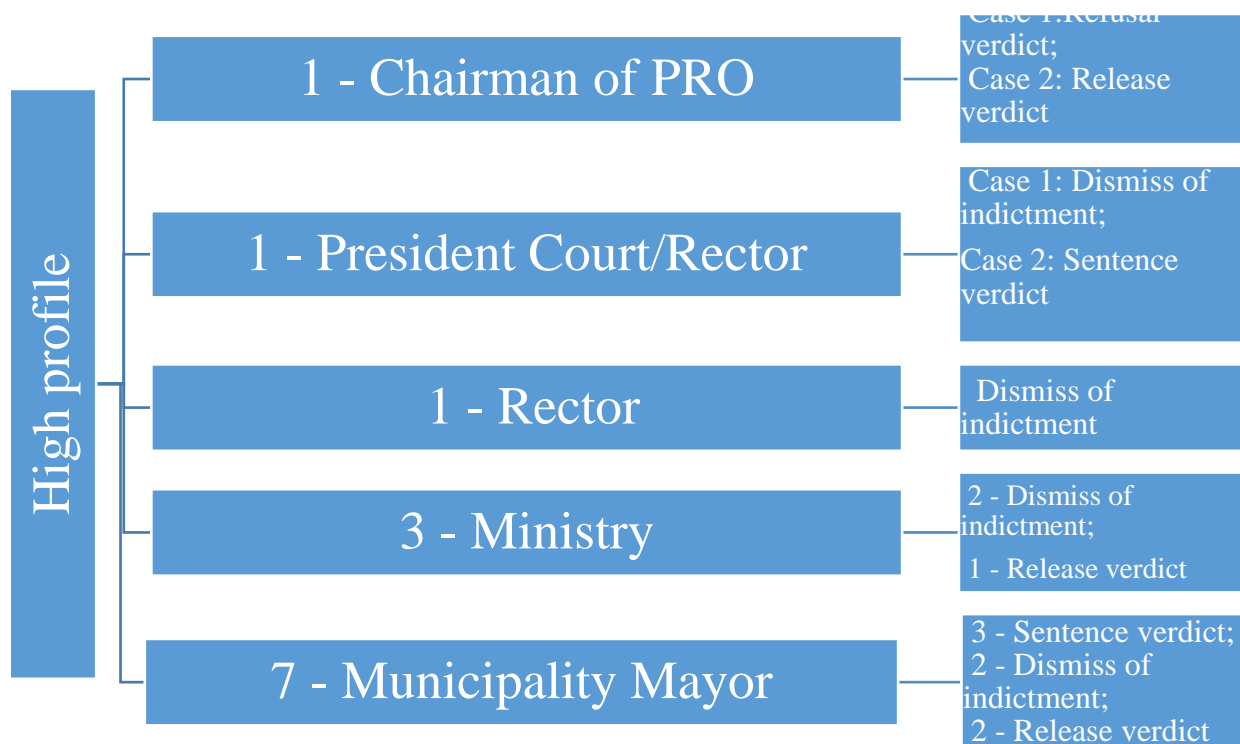
In these cases of corruption in which the verdict was announced, all profiles of the accused persons were included. Of them, 147 people belong to low profile, 183 people middle profile and 13 people belong to high profile.

⁶⁹ *Clarification:* Of the 5 persons sentenced with condition in 18 months each, one of them is the one who also received a fine in the amount of 1,000 euros.

⁷⁰ *Clarification:* Of the 9 persons sentenced with condition in duration of 24 months each, two of them are the same who have also received a fine of up to 8,000 euros.



Graphic 9- Profile of persons charged for criminal cases of corruption, for which a verdict was announced in the Basic Court during the reporting period (January-December 2017)



Graphic 10 – High profile of persons charged with criminal offenses of corruption, for which a verdict was announced in the Basic Courts during the reporting period (January-December 2017)

KLI without wanting to comment on the merits of decision-making in corruption cases expresses the concern that the punitive policy enforced by judges in corruption cases is not sending a clear message to potential perpetrators of these criminal offenses. Such punitive practice, imposing soft imprisonment sentences or conditional sentence and fine, conveys a negative message to citizens and the public. Likewise, these soft punishments imposed cannot achieve their purpose for which sentence has been imposed, whether it is of a punitive to those who have been found guilty of having committed corruption offenses, or preventive character, which is intended to send clear messages to persons who may be subject of the commission of corruption offenses.

VIII. Selecting targets of top cases (visa liberalisation)

In September 2014, prosecutorial system of Kosovo had presented the Strategic Plan for Inter-Institutional Cooperation between the State Prosecutor and law enforcement agencies in Kosovo in fighting organized crime and corruption, as well as the Standard Action Procedures (SAP) for the Selection of Targets of Serious Crimes.⁷¹

The SAP objective is to prevent, detect, investigate and prosecute more serious offenses by coordinating and harmonizing the actions of competent authorities. The purpose of this mechanism was to assignment of 50 most serious cases in the justice system in Kosovo, which will be treated urgently by all law enforcement agencies. One of the criteria for applying the target selection is that other seriously suspected offenses and that criminal investigations require a joint effort of two or more public institutions to be able to arrest suspects, prohibit criminal activity, seizure and confiscation of crime benefits. For the purpose of monitoring the case-by-case cases under the SAP, the KPC had built the electronic database where all target cases were registered, which data base is updated with information regarding any actions taken by the relevant institutions in the investigation, prosecution and adjudication of these cases.

In the position of the Coordinator regarding the selection of serious crime targets, Reshat Millaku is appointed Chief Prosecutor of the SPRK. Whereas, the KJC has appointed judge Agim Maliqi as a coordinator of the judicial system for cases proceeded by the Prosecution as a result of serious crimes targets. Judge Maliqi is a judge at the Supreme Court of Kosovo, and at the same time the Commissioner for Interception in the Kosovo Judicial Council.

The European Union in 2016 had asked for establishing a consolidated register to record data on target cases and final court decisions.

Since the establishment of this mechanism till now, 39 cases have been registered on this database, out of which 4 cases are in preliminary investigation procedure, 27 cases are in court proceedings, respectively prosecution has raised indictments in these cases. Whilst, four cases have been completed in court and have been finalized.

Completed cases by final verdict

Case Prosecutor:⁷² This case ended with a final verdict where prosecutor Vahide Badivuku was sentenced with a three-year verdict sentence and a fine of 5000,00 euros, as well as a sentencing

⁷¹ Miftaraj, E and Musliu B. *"Fighting Corruption-Rhetoric in fighting Corruption"*. Kosovo Law Institute, October 2016. Page 29. See the link at: <http://kli-ks.org/ep-content/uploads/2016/10/1.-Retorika-ne-luftimin-e-korrupsionit27.10.2016.pdf>

⁷² Note: The sentenced person is former Prosecutor of the Basic Prosecution in Mitrovica, Vahide Badivuku.

verdict for an accused sentence with imprisonment of one year of 6 months, a sentence verdict for an accused, fine of 3000,00 euros.

Case Lawyer 1 and Lawyer 2: This case ended with a sentencing verdict, a fine of 3000,00 € and for **two** other offenses release verdict.

Case Suhareka, a refusal verdict for **five** accused as the State Prosecutor withdrew from the charge.

Case-Kllokoti, sentenced verdict for a criminal offense - a 10-month conditional sentence with a period of two-year verification, and a release verdict **for two** criminal offenses.

Cases in court proceedings

In this register there are identified 28 cases, in which the State Prosecutor has raised an indictment and are in these stages of the court proceedings:

In one case, an initial hearing was scheduled (**case Lawyer 3**). Three cases are in the stage of reviewing the objections by the Appeal Court. (*Cases, APELI⁷³, INSPECTOR, and STENTA⁷⁴*). In two cases, the request for dismissal of the indictment was rejected and the judicial review is expected: *TRANSPORTATOR and FERONIKELI*. A partially final case, dismiss of the indictment for two defendants, while the hearing for two other defendants is still being continued *AUTHORITY/ PROJECT*.

Thirteen cases are in the phase of judicial review (*SAFETY, CRYSTAL, OBLIGATION, CONSTRUCTION, KEDS, MOH II, PRO I, UP, KLLOKOTI II, DEMI, RENTAL, HIB and FAN*).

Cases completed in the first instance

Case - CONTRACT. In this case, is announced a sentencing verdict for **two** persons with one to six months of imprisonment and the **other** for ten months imprisonment, an release verdict for **an** accused, a refusal verdict for **two** accused.

⁷³ Miftaraj E. and Musliu B. "The sea of corruption in Kosovo: *catching Small fish, while big fish go free*". March 2017. Page 36, at: <http://kli-ks.org/ep-content/uploads/2017/04/1.1.-Raporti-i-Korrupsionit-IKD-28.03.2017-Compressed.pdf>

⁷⁴ Miftaraj E. and Musliu B. "The sea of corruption in Kosovo: *catching small fish, while big fish go free*". March 2017. Page 34, at: <http://kli-ks.org/ep-content/uploads/2017/04/1.1.-Raporti-i-Korrupsionit-IKD-28.03.2017-Compressed.pdf>

Case MATRIX- M. In this case, the court announced a sentencing verdict for **two** persons, one sentence of five years imprisonment and a fine of €5000, **the other** with three years and six months of imprisonment and €2000 fine and has taken the release verdict for **six** accused.

IX. Confiscation of property gained through corruption monitored by KLI

KLI during this period monitored the activities of prosecutors and judges in implementing legal provisions related to the freezing, seizure and confiscation of property gained with criminal offense of Corruption. Of the 255 corruption cases monitored in all Basic Courts, KLI has found that prosecutors in very rare cases apply in practice legal provisions dealing with seizure or confiscation requirements against perpetrators of criminal corruption offenses.

The Chief State Prosecutor on 14 January 2014 issued an Instruction⁷⁵ on the actions of prosecutors in the implementation of legal provisions regarding seizure and confiscation of property gained with criminal offense. KLI monitors, during the process of monitoring corruption cases have found only a limited number of cases when prosecutors have presented requests for seizure or confiscation of assets, in indictments filed before the courts for corruption as follows:

➤ BC in FERIZAJ:

KLI during this reporting period has monitored 20 cases of corruption at BC in Ferizaj. In these 20 cases, KLI monitors have identified only **6 cases** where the prosecutor has filed a request for seizure or confiscation. The following are the concrete cases:

- **PKR.no.12/15:** Kosovo passport, Yugoslav passport, notebook, phone numbers, contracts and authorization between the company “El–Abrar”, etc;
- **PKR.no.22/17:** A banknote value 50 euros, two bank notes value 20 euros and a banknote value 10 euros
- A banknote value 50 euros, two banknotes value 20 euro and a banknote value 10 euro;
- **PKR.no.157/16:** Two vehicles;
- **PKR.no.42/17:** The money in the amount of 12,570 euros, 100 dollars, 100 Swiss francs, two pistols with a 6.35 mm calibre and a hand grenade
- **PKR.no.75/17:** Permanently confiscating the banknote in the amount of 10 euros;
- **PKR.no.194/17:** Two cans with 25 litres of oil.

⁷⁵ Instruction no. 26/2014 of 14 January 2014, regarding the actions of prosecutors in the implementation of the legal provisions for the seizure and confiscation of the material gained with criminal offenses. Chief State Prosecutor. (See link http://www.psh-ks.net/repository/docs/Nr.26.2014-Udhezim_lidhur_me_veprimet_e_prokuroreve_lidhur_me_sendet_e_sekuestruara.pdf)

➤ **BC in GJILAN:**

KLI during this reporting period has monitored 55 cases of corruption at BC in Gjilan. In these 55 cases, KLI monitors have identified only **7 cases** where prosecutors have filed requests for seizure or confiscation. The following are the concrete cases:

- **PKR.no.34/17:** Banknotes in the amount of 50 euros;
- **PKR.no.185/16:** Banknotes in the amount of 20 euros;
- **PKR.no.157/16:** Request for seizure of two vehicles;
- **PKR.no.94/17:** Money in the amount of 500 euros;
- **PKR.no.111/16:** A banknote in the amount of 20 € two banknotes in the amount of €10 and a banknote in the amount of €5
- **PKR.no.10/17:** Money in the amount of 500 euros;
- **PKR.no.46/17:** Banknotes in the amount of 20 francs.

➤ **BC in MITROVICA:**

KLI during this reporting period has monitored 27 cases of corruption at BC in Mitrovica. In these 27 cases, KLI monitors have identified only **4 cases**, where prosecutors have filed requests for seizure or confiscation. The following are the concrete cases:

- **P.no.60/16:** Confiscation of money amounting to 250 euros;
- **P.no.23/17:** Banknotes in the amount of 100 euros;
- **P.no 328/13:** Request for seizure: Plumb 17.428 kg./ 9465 plates x 37,479 kg;
- **P.no 67/15:** "LM" type of cigarettes in 49 packages, 2 "CZ" 9 mm calibre shooters, 5 cartridges and the other "Zastava" with 60 bullets.

➤ **BC in PRISTINA:**

KLI during this reporting period has monitored 179 cases of corruption at BC in Pristina. In these 179 cases, KLI monitors have identified only **15 cases** where prosecutors have filed requests for seizure or confiscation. The following are the concrete cases:

- **PKR.no. 341/15:** Against the Defendant I.H SPRK has proposed: - CONFISCATION of the Audi Q7 vehicle, with license plates 01-900FG, produced in 2008 in the amount of € 37,000.00, the VW Golf car with license plate 01-326-FP, produced in 2009 in the amount of €12,500 and another VW Golf car with license plate 01-421-FL, produced in 2009, in the amount of €16,800.00 and the money in the amount of €11,000.00, as a material gained by committing criminal offenses; - Against Defendant Skender Canolli CONFISCATION of VW Passat brand vehicle with license plate 01-714-FL, produced in 2008, in the amount of 20.000,00 € money in the amount of 10.560,00 Swiss francs, US \$ 2,600.00 and 1.880,00 € as a material gained by committing criminal offenses; - Against the defendant Mërgim Shala CONFISCATION of the apartment in the neighbourhood "Kalabria"

Lamela 2, 2nd floor, apartment no. 07 with surface of 76.3m², in the amount of € 38.150,00; as property gained by committing criminal offenses; as well as ARMs: by the defendant Ismet Haliti-Pistol of the CZ.99 brand of calibre 9mm with no. 121623 with a cartridge without bullets and by the defendant Skender Canolli-Pistol of the 9mm Calibre Broving brand, with a cartridge with eight bullets and a Carabine Rifle with serial number 85269, Crvena Zastava- Kragujevac production, 8x57mm calibre, and twenty-two bullets of this rifle.

Seized items:

Items seized from the defendant I.H: a. €11,000.00 (eleven thousand euros), 22 banknotes €500; VW "Golf" car, produced in 2009, black metallic, with registration plates 01-326-FP, ID no. EVEZZZ1KZP453134, registered in the name of I.H; VW "Golf" car, produced in 2009, ash, metal, with registration plates 01-421-FL, ID no. EVEZZZ1KZ9E578466, registered in the name of F. (son of the defendant I.H); Audi Q7, in black with registration plates 01-900-FG, identification number EAUZZZ4L69D025641, produced in 2008, registered on behalf of A.P, where the investigation revealed that the factual owner of this vehicle is the defendant I.H.

Items seized from the defendant S.C - 10,560CHF (ten thousand five hundred and sixty Swiss francs) - 1,880 €(one thousand eight hundred and eighty euros), - \$ 2,600 USD (two thousand and six hundred US dollars); VE "Passat" car, black metallic, with registration number 01-714-FL, produced in 2008, ID no. WVWZZZ3CZ9E520573, registered on behalf of L.C (the son of the defendant S.C)

Property seized by defendant M.Sh. apartment no. 8 with a surface of 76.3m², 1st entrance, 2nd floor in the neighbourhood of Calabria;

- **PKR.no. 305/16:** Computers;
- **PKR.no. 688/15:** Seizure of cans with oil derivatives;
- **PKR.no.303/16:** Temporary receipt of: Contract VR.nr.5687 / 1997 dated 28.01.1990, contract of sale of the real estate of the 20.03.2012;
- **PKR.no. 27/17:** Temporary seizure of items;
- **PKR.no.722/14:** Temporary seizure of items;
- **PKR.no.642/15:** Confiscation of: apartment in Klina, surface of 36 m², two storey house in surface of 209 m², agricultural land with surface of 1182 m² + two parcel land, business premises with surface of 39.86 m², apartment of 97.30 m², parcel land in Ulqin area of 308 m², another plot of 171 m² in Ulcinj, branded vehicle AUDI A6, financial means on behalf of sale of two business premises purchased by Kole Puka under contracts placed in case files in value of 63 thousand euros;
- **PKR.no.352/16:** Temporary Seizure of Items; Confiscation of a vehicle (truck);
- **PKR.no.24/17:** Temporary seizure of items;
- **PKR.no.411/16:** Confiscation a "Beretta" type pistol along with a magazine and 14 bullets;

- **PKR.no.201/14:** Confiscation of the items mentioned in the indictment of the Basic Prosecution of Pristina;
- **PKR.no. 160/17:** Confiscation of falsified assets and documents;
- **PKR.no.94/17:** Banknotes in the amount of 50 euros;
- **PKR.no.376/16:** Three vehicles;
- **PKR.no.194/15:** Weapons, ammunition, dust substance that resembles with the cocaine and weapon magazine.

BC in PRIZREN:

KLI during this reporting period monitored 33 cases of corruption at BC in Prizren. In these 33 cases, KLI monitors have identified **2 cases**, where the prosecutor has filed a request for seizure or confiscation. The following are the concrete cases:

- **P.no.192/16:** Two banknotes in the amount of 50 euros;
- **P.no.28/17:** Artificial fertilizer in the amount of 28 tons and 125 bags of 50 kg weight

➤ **BC in GJAKOVA:**

KLI during this reporting period has monitored 20 cases of corruption at BC in Gjakova. In these 20 cases, KLI monitors have identified **2 cases**, where prosecutors have filed request for seizure or confiscation. The following are the concrete cases:

- **P.no.60/16:** Confiscation of the diploma and seizure of the diploma certificate;
- **P.no.100/17:** Money in the amount of 7,800 euros and 134,753.71 euros.

➤ **BC in PEJA:**

KLI during this reporting period has monitored 23 cases of corruption at BC in Peja. In these 23 cases, KLI monitors have identified only **1 case** where prosecutors have filed request for seizure or confiscation. The following is a concrete case:

- **P.no.64/17:** Banknote in the amount of 100 euro.

X. Recommendations

- The Ministry of Justice, during the process of amending the Criminal Procedure Code, to address the right of legal remedy and access to court in cases of dismissal of criminal reports and decisions related to the cease of investigations by the applicants of criminal reports, victims of crime and the injured parties.
- The Ministry of Justice during the process of amending the Criminal Procedure Code to address the legal deadlines regarding the treating of cases in the preliminary procedure, and treating these cases within the legal deadlines by the State Prosecutor, building the same practice as the criminal reports and special reports.
- The Ministry of Justice, during the process of amending of the Criminal Procedure Code, to increase the transparency of the judicial and prosecutorial system in providing access to public documents in cases that are closed in the early stages of the criminal procedure either through the decision to dismiss the criminal report or through decision on the cease of the investigation.
- The Ministry of Justice, during the process of amending the Criminal Procedure Code, to revise the return of the private plaintiff and the subsidiary plaintiff.
- The Ministry of Justice, in treating with the aforementioned topics, take into account the obligations deriving from the Constitution of Kosovo and the practice of the European Court of Human Rights.
- The Kosovo Judicial Council and the Supreme Court either through the Justice Academy or other available mechanisms to provide training to judges on punitive policy, taking as orientation document the Guidelines on Punitive Policies adopted by the Supreme Court on 15 February 2018.
- The Judicial Council and the Prosecutorial Council to urgently address the practice built in courts and prosecutions regarding postponement of hearings in cases of corruption due to the absence of judges and prosecutors.
- Court Presidents and Chief Prosecutors of Basic Prosecutions and Special Prosecution Office to increase the level of co-operation and coordination and to avoid postponement of hearings due to the absence of judges and prosecutors.

- Court presidents to instruct the judges to take measures that the Criminal Procedure Code allows, against the parties to criminal proceedings, including prosecutors, witnesses, lawyers, experts who without reason do not participate in corruption hearings.
- Kosovo Prosecutorial Council, to undertake measures and oblige the Chief State Prosecutor and Chief Prosecutors of Basic Prosecutions, the Chief Prosecutor of the Special Prosecution and state prosecutors to provide access to public documents and cooperate with the public and the media in compliance with legal obligations.
- Kosovo Prosecutorial Council to establish a working group and to evaluate the work of the Special Prosecution Office of the Republic of Kosovo and the Basic Prosecution Office in Gjilan due to the lack of results in the fight against corruption.