



Anti-Corruption
WEEK
9-14 DECEMBER 2018



VETTING WITHOUT AN ALTERNATIVE



Analysis of the “seizure” of the Police,
Prosecution and Judiciary
by politics and interest groups in Kosovo

#KLI **#GLPS** **#ÇOHU** **#INPO**
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Pristina, december 2018

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“This project was financed through a grant by the American Embassy in Pristina. Opinions, finding and concussions or recommendations expressed here are the Authors and do not necessarily represent the opinion of the State Department”.

Design: Anymate

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I. Introduction

The justice system in Kosovo from the end of the war in 1999 has faced problems and challenges by other powers. The first attempt in Kosovo to clear the justice system from judges and prosecutors with contested integrity was made shortly after the Declaration of Independence of the Republic of Kosovo on 17 February 2008. The judicial and prosecutorial system underwent an appointment and reappointment process for judges and prosecutors. This process of reappointment and appointment included vetting in which judges and prosecutors were evaluated and recommended for appointment on merit basis, including personal integrity and professional experience. According to the Independent Judicial and Prosecutorial Committee, with a composition of international counterparts, at the end of this process of verification, appointed 334 persons of whom 274 were judges and 60 prosecutors.¹

From 2010 until now, the justice system, including Police, Prosecution and the Judiciary were involved in many legal breaches and scandals of great magnitude, of which have decreased the public trust in these institutions. The prosecution system in many segments has failed to prosecute perpetrators, especially when it comes to high profile cases. Senior state officials as political representatives, not in formal terms are directly influencing the recruitment of judges and prosecutors as well as in appointing key positions in the justice system. This has meant that the justice system has judges and prosecutors, especially in leadership, who have close connections or are directly "punished" by politicians assigned to senior state positions.

National and international reports on the citizen's opinion polls on trust and credibility of judicial and prosecutorial institutions are among the lowest. Regarding the confidence of citizens that these institutions are involved in corruption, they stated that the judiciary and prosecutorial system have a high percentage of involvement in corruption.² Above 25% of citizens believe that the police are also involved in corruption.³

The state is seized, whereas corruption in Kosovo is considered endemic. These are the findings from many of the relevant international reports, including the European Commission Progress Report and the US State Department Report.

One of the explanations of state seizure is the extreme politicization of public institutions, especially the judiciary, prosecution and police. The leaders of justice institutions are

¹ "Report on the work of IJPC". Independent Judicial and Prosecutorial Committee. 29 October 2010. Page 2.

² "Public Pulse IV". June 2018. USAID&UNDP. According to this report only 31.2% are satisfied with the work of the courts. Even less satisfied with the work of prosecutors, respectively only 29.9%. More than half of the citizens surveyed believe the decisions of the judiciary are not independent, or only 43.6% believe that they are independent. Regarding corruption, citizens believe that the judiciary is largely involved in corruption. According to the survey, in October 2016 it results that 49.3% of citizens believed that the judiciary was involved in corruption, in the same period after one year (in October 2017), 24.9% of citizens believed that the judiciary was involved in corruption, April 2018, this percentage has increased, where 38.6% of citizens believe the judiciary is involved in corruption.

³ "Public Pulse IV". June 2018. USAID&UNDP. According to this report, for the police, citizens believe that they are less involved in corruption than the judiciary. According to the survey, in October 2016 it turns out that 21.1% of citizens believed that the police were involved in corruption, in the same period after one year (in October 2017) 14.9% of citizens believed that the police were involved in corruption, April 2018 this percentage has increased, with 25.7% of citizens believing that police are involved in corruption.

associated with accused high-profile politicians, greatly diminishing the confidence of citizens, that their cases are treated on the basis of law.⁴

On the other hand, impunity for corruption, especially high-profile, proves to be a complete amnesty to corrupt politicians. KLI has raised concerns about the phenomenon of amnesty of high-profile officials, to whom indictments are intentionally filed without the support of evidence and evidence that is quashed in Court, thereby creating eternal immunity for not being prosecuted for the same offenses.

In Kosovo prisons, no high-profile official is serving an effective jail sentence because of the final verdict on corruption. Lack of respect for the rule of law, high level corruption and rapid enrichment of senior officials, high unemployment rate, lack of foreign investment, low credibility of citizens in justice institutions, proves that the justice system heavily influenced by politics and interest groups, coexist with criminal and corrupt activities, by not prosecuting and adjudicating them.

Despite the numerous investments to build and advance the integrity of the justice system in Kosovo, the situation created over the years can only be changed through vetting, which should include the police, the prosecution and the judiciary. The vetting process is essential in starting to implement a profound justice reform because an independent and impartial justice system affects the rule of law and rule of law in Kosovo. The Republic of Kosovo cannot aim to respect the rule of law without the involvement of the police, the prosecution and the judiciary in a thorough vetting process, which would remove the police, prosecutors and judges who are close to politics, have served in the name of political interest and interest groups, have shown poor performance during the exercise of their duties, have created unexplained wealth etc. A thorough vetting process should have the consensus of all political parties and should be prepared and guided exclusively by international partners such as the United States of America, Great Britain and Germany.

⁴ “*Private meetings of accused officials with heads of the judicial system*”. Koha.net. 19 September 2018. (Follow link <https://www.koha.net/video/118115/takimet-private-te-zyrtareve-te-akuzuar-me-kreret-e-sistemit-te-drejtise/>).

II. Integrity of the Justice and Security Institutions

An indisputable justice system is a fundamental and necessary institute to ensure compliance between democracy and the rule of law. Even when all other defences fail, a judicial system with integrity is the main guarantee against every violation or abuse of fundamental rights and freedoms. In order to secure a judiciary with integrity there must be commitment and it is a task in which to invest a lot of energy, skills and experience.⁵

The Bangalore Principles regarding judicial behaviour have determined the values upon which an independent, impartial and just judiciary should be based. One of the Bangalore principles on court behaviour is the integrity of the judiciary. Integrity is the attribute of honesty and justice, so the main component is honesty and judicial morality. A judge at all times must act honestly, not only in the performance of official duties and in the manner appropriate to the judicial profession. He must have good virtues, good conduct, and convey security to the public. Here integrity is absolute. In the judiciary, integrity is more than a virtue, integrity is a necessity.⁶

While international standards and principles, integrity as a value, give a sense of the state of mind based on the moral principles of justice and honesty, to Kosovo institutions and certain individuals who lead with the main institutions of the justice system, unfortunately public opinion continues to understand them as synonymous with negative phenomena such as "corruption", "nepotism", "threat" or "illegality".

Although the international community in cooperation with civil society since the post-war have invested in many aspects that the justice and security sector increases the integrity of justice institutions, unfortunately the reality is rather different. The justice system in Kosovo is still unable to accept and implement integrity values such as honesty and justice

Countries like Kosovo, which go through the transition phase of state - building, should create a safer and more reliable system. In Kosovo, practice has shown that real legal uncertainty has become a standard, law enforcement is not applied equally to all citizens, and this is affecting public confidence in justice institutions to be at the lowest possible level. This is confirmed by national and international research on the credibility of citizens in the justice system.

Continued failures in the justice and security sector have created legal and physical insecurity for the citizens as well as for honest officials who exercise functions in the institutions of the Republic of Kosovo who are persecuted in legal ways, using politics and interest groups the justice system and security for personal interests. This has greatly reduced the level of integrity of the justice and security system in Kosovo, transforming these institutions into unbelievable mechanisms to provide security and justice.

III. Seizure of justice and security institutions – analysis of concrete cases

Civil Society Organizations, which monitor the justice system in Kosovo, have identified, investigated and analysed cases and phenomena that have occurred in recent years in Kosovo,

⁵ C.G. Weeramantry, Chair of Judicial Integrity Group

⁶ Bangalore Principles (regarding judicial behaviour)

listing a large number of cases that prove the failures of justice institutions and security in the implementation of constitutional and legal obligations in the protection of the rule of law principles, thus proving the low level of integrity of individuals in these justice and security institutions.

Public in Kosovo, NGO's, citizens, civil servants, and state administration, in cases where they face the phenomena of corruption in Kosovo do not have a reliable address in order to report such cases. By installing a culture of impunity has increased the lack of confidence that these occurrences can be reported to the competent institution that these cases will be treated in a independent, impartial and professional manner.⁷

Below are some of the cases that are considered most representative in terms of failures that prove the integrity of individuals in justice and security institutions, who should be held accountable and removed from the system indefinitely.

Undoubtedly one of the most scandalous cases, which have exposed the interventions and influences from outside and within the justice system, is the case of Special Prosecutor Elez Blakaj. This case testifies to political interference and executive powers from outside as well as internal interventions of Chief State Prosecutor Alexander Lumezi in addressing the veterans' case as well as the "Pronto" affair.

1) Blakaj case: Political and Chief State Prosecutors interference in the veterans and pronto case

The State Prosecutor according to the Constitution has legal responsibility for the prosecution of persons whom are suspected of criminal offences. This is the body that has the primary mandate to fight criminality, in an independent, impartial and fair manner.⁸

Elez Blakaj, prosecutor in SPRK, on 13 August 2018 handed in his resignation.⁹ Whereas on 16 August 2018, through a letter posted on social media "Facebook", informed the public opinion that on 11 July 2018, he handed an indictment for the infamous case known as "Veterans", in the office of the Chief Prosecutor of the SPRK, Reshat Millaku.¹⁰

After the publication of the first letter, there were numerous reactions that included accusations against the personality and professionalism of prosecutor Blakaj, which forced him to present another letter on 20 August 2018, also presenting a role as a whistle-blower.

⁷ "Political interference in the politicized prosecutorial system, alarm for the need for vetting of police, prosecution and courts". Kosovo Law Institute. 30 August 2018. (Follow link <http://kli-ks.org/nderhyrjet-politike-ne-sistemin-e-politizuar-prokurorial-alarm-per-nevojen-e-vetingut-ne-polici-prokurori-dhe-gjykata/>)

⁸ Constitution of the Republic of Kosovo. Article 109.

⁹ "Due to threats, Special Prosecutor Elex Blakaj hands in his resignation". Koha.net. 15 August 2018. (Follow link <https://www.koha.net/arberi/111200/per-shkak-te-kercenimeve-jep-doreheqje-prokurori-special-elez-blakaj/>)

¹⁰ Special prosecutor, Elez Blakaj, during his resignation, confirms that from 11 July the filed indictment was handed to Chief Prosecutor, Reshat Millaku". Oath for Justice. 16 August 2018. (Follow link <https://betimiperdrejtesi.com/prokurori-special-elez-blakaj-ne-doreheqjen-e-tij-konfirmon-se-nga-11-korriku-aktakuzen-e-ngritur-ia-ka-dorezuar-kryeprokurorit-special-reshat-millaku/>)

Prosecutor Blakaj, this time, in public, presented the threats and pressures he had from the time he started handling the "Veterans" case.¹¹

Blakaj, in the interview with "Oath for Justice", stated that in every investigation involving high profiles, Chief State Prosecutor Aleksandër Lumezi, required explanations, even when high-profile people were simply summoned as witnesses.¹² Blakaj's resignation and the reasons for this resignation caused numerous reactions from the public, including reactions from civil society, local and international institutions.

KLI considered that the resignation of prosecutor Blakaj, showed the security and functioning situation of the prosecutorial system, in which it is intimidated by politics and interest groups that prevent independent investigations.¹³

The American Embassy in Kosovo regarded Blakaj's resignation as very discouraging.¹⁴ American Ambassador in Kosovo, Greg Delawie, named it sad day when prosecutor Blakaj handed in his resignation.¹⁵ Simultaneously, Delawie, at a lecture before students of the Law Faculty, stated that the "Veterans" case, which was being investigated by Blakaj, had received threats from inside and outside of the justice system.¹⁶

The Office of the European Union in Kosovo also expressed its concerns about interference within the justice system, after Blakaj's resignation. "Statements made by some politicians and prosecutors in Kosovo, risk key principles of the rule of law. Furthermore, they send discouraging signals to all legal officials that treat sensitive and important cases."¹⁷

KPC on 22 August 2018, through a press release, stated that this institution is engaging the State Prosecutor to act independently and impartially. In this statement KPC, although called

¹¹ "Elez Blakaj speaks out, says that he was threatened from veterans, mentioned the pressure from Chief State Prosecutor Aleksandër Lumezi for the KLA veterans and the case known as "Pronto". Oath for Justice. 20 August 2018. (Follow link <https://betimiperdrejtesi.com/flet-elez-blakaj-thote-se-kishte-kercenime-nga-veteranet-permend-presionin-e-kryeprokurori-aleksander-lumezi-per-veteranet-e-uck-se-dhe-rastin-pronto/>)

¹² "What does Blakaj say regarding the threats coming from the Chief Prosecutor Lumezi, Prime Minister Haradinaj and others? (Video)". Oath for Justice. September 12, 2018. (Follow link <https://betimiperdrejtesi.com/cfare-thote-blakaj-per-kercenimet-nga-kryeprokurori-lumezi-kryeministri-haradinaj-dhe-te-tjeret-video/>)

¹³ "Political interference in the politicized prosecutorial system, alarm for the need for vetting of police, prosecution and courts". Kosovo Law Institute. 30 August 2018. (Follow link <http://kli-ks.org/nderhyrjet-politike-ne-sistemin-e-politizuar-prokurorial-alarm-per-nevojen-e-vingut-ne-polici-prokurori-dhe-gjykata/>) Page 4.

¹⁴ "American Embassy concerning about the resignation of Special Prosecutor: A very discouraging case". KlanKosova.tv. 15 August 2018 (Follow link <http://klankosova.tv/ambasada-amerikane-per-doreheqjen-e-prokurorit-special-rast-shume-dekurajues/>)

¹⁵ Reaction of American Ambassador Greg Delawie via social media Facebook. 15 August 2018. (Follow link <https://www.facebook.com/kosovo.usembassy/posts/2663396183686520>)

¹⁶ "American ambassador says that KLI had no more than 15 thousand soldiers, says that there was pressure, and intimidation against Elez Blakaj". Oath for Justice. 31 August 2018. (Follow link <https://betimiperdrejtesi.com/ambasadori-amerikan-thote-se-uck-ja-skishte-me-shume-se-15-mije-ushtare-thote-se-pati-presion-dhe-frikesim-ndaj-prokurorit-blakaj/>)

¹⁷ Reaction from the Office of the EU in Pristina on the Blakaj case. August 22, 2018. (Follow link <https://www.facebook.com/610960288923231/posts/statement-by-the-eu-office-in-kosovoeu-special-representativethe-eu-is-closely-f/2059258884093357/>)

upon to protect and secure the independence of the prosecutorial system, also stated that this body will have no compromise on any prosecutor in case of failure to perform their duties.¹⁸

The Prosecutors Association, headed by the Chief Prosecutor of the Appellate Prosecution, Haxhi Dërguti, who is called upon to protect the interest of prosecutors, on the contrary, did not defend prosecutor Blakaj. “Up until now, no prosecutor in the Kosovo prosecutorial system, including former prosecutor Blakaj, did not express any concerns, whether threats of influence in his independent and impartial work from anyone. Therefore, public statements about alleged threats and influences within the prosecutorial system are to cover his or her personal interests or anyone else” said the response¹⁹.

The Chief State Prosecutors Office also highlighted that this Office, never received information that prosecutor Blakaj was ever threatened regarding the “Veterans” case²⁰.

Furthermore, the Chief State Prosecutor Aleksandër Lumezi, at an interview with portal “Gazeta Express”, called Blakaj an unprofessional prosecutor, coward, a failure and a low profile prosecutor.²¹ Such statements, Chief State Prosecutor Lumezi was contradictory, due to the fact that several days earlier the same gave positive assessments about Prosecutor Blakaj, by stating that “he did not resign because of threats because he was a decisive prosecutor, incorruptible and brave”²². Therefore, after Blakaj told his reasons for his resignation, Lumezi’s stand also changed.

The Kosovo Prime Minister, Ramush Haradinaj also used offensive language. In an interview on the show “Interactive”, he called former Prosecutor Blakaj “chicken thief and a chicken”. Also, he said that “a fugitive in Bllaca and Stankovec, cannot estimate the correct number of veterans”, of which Blakaj conducted intensive investigations for numerous months.²³

In Blakaj's interview with the "Oath for Justice", among other things, he had said that Haradinaj's manner of co-operation with the prosecution was unacceptable, as according to

¹⁸ “KPC discusses behind closed doors former SPRK prosecutor, Elez Blakaj”. Oath for Justice. September 7, 2018. (Follow link <https://betimiperdrejtesi.com/kpk-e-diskuton-me-dyer-te-mbyllura-doreheqjen-e-ish-prokurorit-te-psrk-se-elez-blakaj/>)

¹⁹ “Prosecutors Association: Blakaj never expressed any threats”. Evropaelire.org (Follow link <https://www.evropaelire.org/a/29449560.html>)

²⁰ “Chief State Prosecutor talks about the threats made resigned prosecutor, Elez Blakaj”. Koha.net. August 15, 2018. (Follow link <https://www.koha.net/arberi/111282/kryeprokurori-i-shtetit-tregon-per-kercenimet-ndaj-prokurorit-te-dorehequr-elez-blakaj/>)

²¹ “Exclusive, Aleksandër Lumezi speaks: Elez Blakaj is a coward, failed prosecutor and unprofessional”. Gazetaexpress.com. August 20, 2018. (Follow link <https://www.gazetaexpress.com/lajme/ekskluzive-flet-aleksander-lumezi-elez-blakaj-eshte-frikacak-prokuror-i-deshtuar-dhe-joprofesional-568679/?archive=1>)

²² “Investigations have not started yet, Lumezi says that Blakaj did not leave because of threats”. Gazetaexpress.com. August 16, 2018. (Follow link <https://www.gazetaexpress.com/lajme/ende-pa-nisur-hetimet-lumezi-thote-se-blakaj-nuk-iku-nga-kercenimet-567639/?archive=1>)

²³ “Haradinaj calls Blakaj a thief and a chicken - “A fugitive in Bllaca cannot evaluate the veterans”. Koha.net. August 21, 2018. (Follow link <https://www.koha.net/video/112385/haradinaj-e-quan-blakajn-hajn-e-pishpirik-smund-te-vleresoje-veteranet-i-ikuri-ne-bllace/>)

him, the request for the prosecutor to report to the prime minister about the investigation is in contradiction with the constitutional regulation of Kosovo, which separates the powers.²⁴

The spirit of threats to Blakaj had gone too far. The AAK MP, Shkumbin Demalijaj, in an interview with public television RTK, called Blakaj a "criminal", "deserter", "thief", "idiot" and "hooligan". He had said that if the state does not prosecute Blakaj in Kosovo and judge him, according to him for the "blackmail" he has made public, then he will pursue it privately.²⁵

Despite such statements, the State Prosecutor did not see it reasonable to investigate MP Demalijaj's charges against prosecutor Blakaj. Only after the reaction of civil society and with 11 days delay, the Basic Prosecution in Pristina had decided to react. Upon the request of this prosecution, after the 28 September 2018 hearing, the Basic Court in Pristina had imposed 30 days of detention on Demalijaj²⁶. Following the appeal to this decision, the Appellate Court on 4 October 2018 replaced the detention order with domestic detention.²⁷ The veteran indictment was then formally filed in court by Special Prosecutor Afrim Shefkiu.

2) Deportation of six Turkish nationals from Kosovo

One of the cases, which have sparked public debate not only on the country level but also on international mechanisms, is the deportation of six Turkish citizens from Kosovo. This case, for which initiated and still on-going parliamentary investigations on the responsibility of senior state officials and justice institutions, security and intelligence has been evaluated as scandalous due to deportation, which has affected the violation of human rights and freedoms, essentially contesting the elements of the rule of law of the Republic of Kosovo.

On 29 March 2018, Turkish citizens were arrested and deported, Cihan Ozkan, Kahraman Demirez, Hasan Husein Günakan, Mustafa Erdem, Osman Karakaya and Yusuf Karabina, of who according to Turkish authorities were suspected members of the "FETO" organisation of Fetullah Gulen, whom is accused that he organised the 2016 coup in Turkey against the Recep Tayyip Erdogan government. They were deported from Kosovo, despite the fact that they had valid residence permits issued by the Republic of Kosovo, but later the MIA had revoked residence permits for Turkish arrested citizens.²⁸

Regarding the deportation of Turkish nationals, apart from non-governmental organizations in Kosovo that had criticized and condemned the approach and manner of dealing with this

²⁴“*How did Prime Minister Haradinaj interfere in investigations of prosecutor Elez Blakaj? (Video)*”. Oath for Justice. 12 September 2018. (Follow link <https://betimiperdrejtesi.com/si-nderhyri-kryeministri-haradinaj-n-hetimet-e-prokurorit-elez-blakaj-video/>)

²⁵ “*Demalijaj threatens Elez Blakaj: He is a deserter, thief, idiot and hooligan..., I will deal with him privately*”. Telegrafi.com. September 17, 2018. (Follow link <https://telegrafi.com/demalijaj-sulmon-rende-elez-blakaj-ai-eshte-dezertor-hajn-idiot-rrugac-do-te-merrem-privatisht-me-te/>)

²⁶ “*One month of detention for MP Shkumbin Demalijaj*”. Oath for Justice. September 28, 2018. (Follow link <https://betimiperdrejtesi.com/nje-muaj-paraburgim-edhe-ndaj-deputetit-shkumbin-demalijaj/>)

²⁷ “*MP Shkumbin Demalijaj released from detention, he is given house arrest*”. Oath for Justice. October 4, 2018. (Follow link <https://betimiperdrejtesi.com/deputeti-shkumbin-demalijaj-lirohet-nga-paraburgimi-i-caktohet-masa-e-arrestit-shtepiak/>)

²⁸ “*Deported Turks had residential permits (DOCUMENT)*”. KlanKosova.tv. March 29, 2018. (Follow link <http://klankosova.tv/turqit-e-ekstraduar-kishin-leje-qendrimi-dokument/>)

case by local institutions, there was also reaction from the most renowned organizations in the protection of human rights and freedoms. According to "Amnesty International," Turkish prisons are not safe, especially for the accused Gulenists. In the Human Rights Watch report, "torture and ill-treatment under police control in Turkey has become a widespread problem".²⁹ This organization stated that the arrest of Turkish nationals in Kosovo has shown a silent disregard for human rights and the rule of law. "In addition to suspicious arrest, six people have been sent to a state where they face a serious risk of torture. The President of Kosovo, the Prime Minister and the Speaker of Parliament, who declare that they had no knowledge of this operation, should seek a full investigation and explain how this all happened³⁰.

There were also reactions from representatives of the EU, the US Embassy in Kosovo and other local and international institutions.

The European Union through a statement stated that "the arrest and deportation of six legally resident citizens in Kosovo raises questions about respecting the due process of justice".³¹ "Rule of law is a fundamental principle of the European Union. In accordance with the determination to build a free and democratic future as defined in the Stabilization and Association Agreement, all actions of Kosovo's local institutions are related to respecting the rule of law and the promotion of universal rights and fundamental freedoms of human beings. Arbitrary procedures regarding arrest, detention or asylum are against these principles, "the statement said.³²

"Following closely the events of yesterday. Transparency and engagement in the proper process and the rule of law are vital" wrote US Ambassador Greg Delawie in his response via social network "Twitter".³³

There were also reactions from the Ombudsman through an issued press release. "This is considered to be one of the most serious violations of protection from ill-treatment, humiliation, inhuman and degrading treatment, which is Article 3 of the European Convention. The European Convention on Human Rights and Fundamental Freedoms and its Protocols explicitly specifies the procedural guarantees regarding the deportation of foreigners. Within the meaning of Article 3, Article 6, Article 8 and Article 13 of the ECHR, as well as the Basic Principle of Non-Return under the 1951 Refugee Convention,

²⁹ *Turkey's Puppet: How Erdogan's Anti-Gulenist Campaign Is Roiling Kosovo*. Pulitzercenter.org. September 12, 2018. (Follow link <https://pulitzercenter.org/reporting/turkeys-puppet-hoë-erdogans-anti-gulenist-campaign-roiling-kosovo>)

³⁰ *Human Rights Watch: Arrest of Turkish nationals in Kosovo a callous disregard for Human Rights*. March 30, 2018. (Follow link <https://turkeypurge.com/human-rights-ëatch-arrest-turkish-nationals-kosovo-callous-disregard-human-rights>)

³¹ *EU reacts: Deportation of Turks puts into question respect for due process*. Telegrafi.com. April 3, 2018. (Follow link <https://telegrafi.com/reagon-deportimi-turqve-ve-ne-pikepyetje-respektimin-e-procesit-ligjor/>)

³² Ibid

³³ *U.S. AMBASSADOR COMMENTS ON ARREST OF TURKISH NATIONALS*. Rtklive.com. March 30, 2018. (Follow link <https://www.rtklive.com/en/neës-single.php?ID=11197>)

responsibility lies with the competent state authorities regarding the created situation”, it was the statement by the Ombudsman.³⁴

Regarding this issue, the families of the deported Turks also reacted. They, apart from statements made, recently reacted via of official alternatives. The families of the six Turkish nationals have filed a lawsuit against the Kosovo Government and are preparing the files for initiating criminal procedures. This news was confirmed by Urim Vokshi, lawyer of one of the six families of the Turkish nationals deported from Kosovo.³⁵

On the other hand, with a decision rendered recently, Pristina's Basic Court has declared two of the six Turkish nationals detained and deported on 29 March of this year safe for the country.³⁶

Whereas, on 4 April 2018, the Kosovo Assembly adopted the resolution for the formation of the Investigation Committee, which will investigate the issue of deportation of six Turkish nationals from Kosovo. This commission has started interviewing all persons who are considered responsible for this issue.

Until now the following have been interviewed, respectively Main-head Miradije Kelmendi together with her team³⁷, police officials of the Pristina International Airport “Adem Jashari”,³⁸ Shpend Maxhuni, whom at the time the deportation of 6 Turkish citizens was General Director of the Kosovo Police³⁹, minister of Infrastructure Pal Lekaj⁴⁰, Ismail Berisha, former Director of the Civil Aviation Department and Bahri Nuredini, Director of Agency for Air Navigation Services.⁴¹ Whereas at the meeting on 26 November 2018, Investigation Committee had on their agenda to interview President Hashim Thaçi, Prime Minister Ramush

³⁴ “Kosovo: Parliament investigates the deportation of six Turkish nationals”. Dw.com. April 5, 2018. (Follow link <https://www.dw.com/sq/kosov%C3%AB-parlamenti-heton-deportimin-e-gjasht%C3%AB-shtetasve-turq/a-43267347>)

³⁵ “Lawsuit is raised against those responsible for the deportation of Turkish nationals”. Telegrafi.com. April 7, 2018. (Follow link <https://telegrafi.com/ngritet-padi-ndaj-pergjegjesve-per-debimin-e-shtetasve-turq/>)

³⁶ “Court decides that some of the deported Turkish nationals were no threat to Kosovo”. Koha.net. November 14, 2018. (Follow link <https://www.koha.net/arberi/128931/gjykata-vendos-se-disa-prej-turqve-te-debuar-nuk-perbenin-rrezik-per-kosoven/>)

³⁷ “For the deportation of the Turkish nationals, senior state officials are being interviewed”. Telegrafi.com. October 18, 2018. (Follow link <https://telegrafi.com/per-debimin-e-shtetasve-turq-po-intervistohen-zyrtare-te-larte-shteterore/>)

³⁸ “Airport police are being interviewed for the deportation of “Gulenists””. Telegrafi.com. October 29, 2018. (Follow link <https://telegrafi.com/intervistohen-policet-e-aeropotit-per-depertimin-e-gylenisteve/>)

³⁹ “Shpend Maxhuni will also be interviewed regarding the deportation of the Gulenists”. Telegrafi.com. October 29, 2018. (Follow link <https://telegrafi.com/edhe-shpend-maxhuni-te-intervistohet-rreth-deportimit-te-gylenisteve/>)

⁴⁰ “Lekaj is interviewed about the deportation of Turkish nationals, says that the Turkish party abused the permit to fly. Telegrafi.com. November 21, 2018. (Follow link <https://telegrafi.com/lekaj-intervistohet-per-debimin-e-shtetasve-turq-thote-se-kompania-turke-keqperdori-lejen-e-fluturimit/>)

⁴¹ “Deportation of Turkish nationals, Berisha: We were not informed about the nature of the flight”. Telegrafi.com. November 21, 2018. (Follow link <https://telegrafi.com/deportimi-shtetasve-turq-berisha-nuk-kemi-qene-te-informuar-per-natyren-e-fluturimit/>)

Haradinaj and General Secretary of Internal Affairs, Lulzim Ejupi, however none of these interviews have taken place.⁴²

On November 30, 2018, the Investigative Committee interviewed Prime Minister Ramush Haradinaj, who said that the deportation of Turkish nationals was very fast, because it could have gone differently through the stages provided by the law, and the other issue is that he has not informed about it⁴³. Regarding his non-disclosure, as the law foresees for such events, he said he had requested the dismissal of the KIA director, Driton Gashi, as well as Minister of Internal Affairs, Flamur Sefaj.⁴⁴

On the other hand, the chairman of this committee, MP Xhelal Sveçla, made it known that until now they have found deficiencies and identified legal violations.⁴⁵ He stated that they are aiming to identifying those responsible for this case. According to him, up until now they still do not know from where the order of deportation came from for the six Turkish nationals but said that he believes that they are going towards identification.⁴⁶

3) Government decision for the increase in salary and the prolonging of investigations from prosecution

At the meeting of 20 December 2017, the Government of the Republic of Kosovo had made a decision to increase salaries. Decision no. 4/20 of the Government was related to raising the economic well-being of a category of government cabinet positions, including raising the salary of the prime minister, vice prime ministers, ministers, advisers, and a category of civil servants. Through this decision almost the salaries of the aforementioned positions have almost doubled.

This decision exceeds the competencies set forth by the Law and the Rules of Procedure of the Government, which in no provision of the latter defines the competencies and responsibilities of the Government for the determination of salaries or compensation for the Prime Minister or Ministers.⁴⁷

Pursuant to the Constitution and applicable law in Kosovo, competent to decide on salaries of senior public officials in Kosovo, especially for the position of the Prime Minister and

⁴² “*Investigative Committee about the deportation of the Turks holds a meeting, on the agenda, interviews with heads of State*”. Telegrafi.com. November 26, 2018. (Follow link <https://telegrafi.com/komisioni-hetimor-per-debimin-e-turqve-mban-mbledhje-ne-rend-dite-intervistimi-krereve-shteteror/>)

⁴³ “*Deportation on six Turkish nationals from Kosovo, Haradinaj talks about the details of that day*”. Telegrafi.com. November 30, 2018. (Follow link <https://telegrafi.com/debimi-gjashte-shtetasve-turq-nga-kosova-haradinaj-tregon-ne-detaje-ngjarjet-e-asaj-dite/>)

⁴⁴ “*Haradinaj: I was informed late about the deportation of the Turkish nationals*”. Telegrafi.com. 30 November 2018. (Follow link <https://telegrafi.com/haradinaj-per-deportimin-e-turqve-u-informova-vonese/>)

⁴⁵ “*Investigative Committee identified legal violations on the deportation of the six Turkish nationals*”. Telegrafi.com. November 12, 2018. (Follow link <https://telegrafi.com/komisioni-hetimor-evidenton-shkeljelgijore-ne-deportimin-e-gjashte-shtetasve-turq/>)

⁴⁶ “*Sveçla: It is still unclear from where the order came from for the deportation of six Turkish nationals*”. Telegrafi.com. November 15, 2018. (Follow link <https://telegrafi.com/svecla-ende-nuk-eshte-e-qarte-se-nga-ka-ardhur-urdhri-per-deportim-te-gjashte-shtetasve-turq/>)

⁴⁷ “*The Prime Minister’s illegal game with salaries*”. Kosovo Law Institute (Follow link <http://kli-ks.org/loja-e-kunderligjshme-e-kryeministrit-me-pagat/>)

Ministers is the Kosovo Assembly. Therefore, this decision is unlawful and direct arbitrary interference with the competences of the Assembly of Kosovo.⁴⁸

On 29 January 2018, the Anti-Corruption Agency, in its opinion, considered the decision no. 4/20 of the Government of the Republic of Kosovo illegal. "Therefore, through this Opinion, ACA recommends that the decision be returned for review by using other legal means that do not conflict with the Law on Prevention of Conflict of Interest and other relevant legislation in force."⁴⁹

In addition to increasing unlawful salaries, the Government did not respect the legal opinion of the Anti-Corruption Agency. On the same day, on 29 January 2018, thirty deputies of the Kosovo Assembly requested the Constitutional Court to assess the constitutionality of the government's decision to increase salaries. "The unlawful and unfair decision to increase the salaries, on behalf of the members of our parliamentary group and with the support of three other opposition MPs, today I have also sent to the Constitutional Court," wrote MP Albulena Haxhiu, via social network "Facebook".⁵⁰

Whereas, on 31 January 2018, Kosovo Prime Minister Ramush Haradinaj temporarily withdrew from the decision to increase salaries for the cabinet. "The AAK's decision regarding salary levelling, I consider unsustainable and politically influenced. For this decision we have delivered a clear message, and this is known to the public. However, after the request of 30 members of the Assembly of Kosovo for the constitutional review of the salary-levelling decision, taken on 20 December by the Government of Kosovo, I have decided temporarily, up to a Constitutional Court decision, to request the suspension of this decision" declared Haradinaj.⁵¹

He stated that after this, it is concerning for the Kosovo executive that this suspension will affect judges and prosecutors. "My concern and that of the Government is that this suspension affects judges and prosecutors more, taking into account that their salary is directly connected with the decision on the levelling of salaries", said the Prime minister.⁵²

Such an approach is in contradiction with international practices and standards, which the Republic of Kosovo is also, part of. KLI reiterates that wages and compensation of judges and prosecutors are part of a legal category and for the same illegal practices from executive powers cannot be created, where the increase in salary for judges and prosecutors is based on the volition of the executive, through ad hoc decisions.⁵³

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Reaction from the President of the Committee for Legislation from VV, Mrs. Albulena Haxhiu, via social network facebook.com. January 29, 2018. (Follow link <https://www.facebook.com/hapeporten/posts/1732825913454859>)

⁵¹ "Prime minister *Haradinaj temporarily suspends the decision to increase the salaries*" Oath for Justice. 31 January 2018. (Follow link <https://betimiperdrejtesi.com/kryeministri-haradinaj-pezellon-perkohesisht-vendimin-per-rritjen-e-pagave/>)

⁵² Ibid

⁵³ "*The Prime Minister's illegal game with salaries*". Kosovo Law Institute. (Follow link <http://kli-ks.org/loja-e-kunderligjshme-e-kryeministrit-me-pagat/>)

On 11 June 2018, the Constitutional Court rendered a decision regarding the request of the 30 MP's on the review of the illegal decision taken by Government. According to the Constitutional Court, the Government decision taken on 20 December 2017, is not in contradiction with the Constitution of the Republic of Kosovo.⁵⁴

The Constitutional Court decision has raised numerous reactions from the public and those familiar with legal issues. KLI also reacted to this decision, evaluating it as unfair and ungrounded, a decision for which the judges of the Constitutional Court also had a conflict of interest, because the increase of salaries also affected the judges of this court.

The Constitutional Court through this decision legitimized the executive and the policy of its act. By this step, the Constitutional Court has "transformed" executive power into the legislator, while the legislative power was quietly silenced in terms of public wages, forcing in the future always the Law on Budget to leave an open prospect for potential increases in salaries through arbitrary government decisions. Moreover, in the present case, the Court was not aware at all that there is no law on wages and that its guidance to the Government to enforce the law constitutes hypocrisy and de-recognition of the chain of Kosovo legal infrastructure in the field of salaries.⁵⁵

Regarding the Government decision, respectively that of the Constitutional Court, there were numerous reactions from political parties in Kosovo, above all from the opposition. "This Government Decision for the increase of salaries is illegal and anti-constitutional, I am surprised with the Constitutional Court decision, this decision is in contradiction with the law on public finance and the law on the annual budget for 2018", said Avdullah Hoti, head of the LDK parliamentary group.⁵⁶

Meanwhile "Lëvizja Vetëvendosje" submitted to the Basic Prosecution of Pristina the criminal report for what, according to them, constitutes an unjust and unlawful decision of the Government of Kosovo.⁵⁷ The criminal report is already in the SPRK and there is still no information available to the public if this Prosecution Office has acted towards the investigation and prosecution of the criminal offense of conflict of interest, for which KACA has warned that it will be consumed in case this decision applies, which has happened in practice.

For the salary issue, there was no dissent from the opposition alone. Three ministers, Bedri Hamza, Abelard Tahiri and Besim Beqaj have refused to increase their salary. They had not

⁵⁴ "The Constitutional Court does not find any violations with the Prime Minister's decision to increase salaries" Oath for Justice. June 11, 2018. (Follow link <https://betimiperdrejtesi.com/gjykata-kushtetuese-nuk-gjen-shkelje-ne-vendimin-e-kryeministrit-haradinaj-per-rritjen-e-pagave/>)

⁵⁵ "The Constitutional Court's ruling on the payroll of the executive has presumed the constitutionality of the arbitrary decision of the government". Kosovo Law Institute". (Follow link <http://kli-ks.org/aktgjykimi-i-gjykates-kushtetuese-per-vendimin-e-pagave-te-pushtetareve-ka-prezumuar-kushtetutshmerine-e-vendimit-arbitrar-te-qeverise-2/>)

⁵⁶ "Hoti: The Government decision for the increase in salaries is illegal and anti-Constitutional (Video)"/ "Telegrafi.com". June 14, 2018 (Follow link <https://telegrafi.com/hoti-vendim-qeverise-per-rritjen-e-pagave-joligjor-dhe-jokushtetues-video/>)

⁵⁷ "Vetëvendosje submitted to Prosecution criminal charges for the increase in salaries". Telegrafi.com. June 28, 2018. (Follow link <https://telegrafi.com/vetevendosje-dorezoi-ne-prokurori-kallezimin-penal-per-rritjen-e-pagave/>)

processed the payroll in the Ministry of Public Administration; therefore, their wages remain as they were.⁵⁸

The rendering of such decision as was the case of the increase of salary from the Government, it is evaluated that there is sufficient negative influence in specific fields but also in the advancement of the state in general.

Finally, while the mentality of the executive power, which through unlawful decisions creates privileges for the rulers and creates legal uncertainty in the public sector payroll system, especially among judges and prosecutors, proves that the established logic of interfering and degrading the judicial power is continuing.⁵⁹

4) Police Failure: Theft from Evidence Chamber

One of the biggest scandals that have involved the Kosovo Police was the theft from the Evidence Chamber in this institution. Twice from the Police Evidence Chamber, once in Pristina and once in Peja there was a theft of several evidences, whereas the cases are still unresolved. These scandals have greatly diminished the credibility of the Kosovo Police as one of the most trusted public institutions in the Republic of Kosovo.

4.1. Theft from the Evidence Chamber at the Directorate of Organised Crime in Police

Between 24 and 25 April 2009, the evidence chamber at the Directorate of Organised Crime at the Kosovo Police, in Pristina, was breached and from there 47.627 kg heroin; 3828.50 euro; 520 Indian rupees; 6.500.000 Turkish Lira; 5000 Romanian lej; 950 Albanian lek; and a black bag with dimensions 70 x 35cm, of which is believed to be the item where all the items were stolen were stored. Apart from these, from the evidence chamber of the DOCP, key testimonies seized from on-going investigations have been stolen.⁶⁰

On 28 April 2009, the decision to initiate investigations was initiated, initially against three defendants, but later the prosecution and the police extended the investigation to a total of 13 defendants.⁶¹

On 19 July 2010, upon the request of the Prosecutor's Office, the Supreme Court of Kosovo decided to continue the investigation to January 27, 2011.⁶²

However, even these prolonged deadlines did not yield any results. On 13 December 2010 the prosecutor's office decided to suspend the investigation into this matter. "I suspend the

⁵⁸ "Exclusive: Not only Bedri Hamza, three other Ministers refuse an increase in salary". Gazeta Express. June 30, 2018. (Follow link <https://www.gazetaexpress.com/lajme/ekskluzive-pos-bedri-hamzes-edhe-tre-ministra-refuzojne-pagen-me-rritje-553859/?archive=1>)

⁵⁹ "KLI: The Law on Salaries in the Public Sector is an interference in justice, creates legal uncertainty and creates a conglomerate in the public sector payroll system". Kosovo Law Institute. October 3, 2018. (Follow link <http://kli-ks.org/ikd-ligji-per-pagat-ne-sektorin-publik-paraqet-nderhyrje-ne-drejttesi-krijon-pasiguri-juridike-dhe-krijon-konglomerat-ne-sistemin-e-pagave-ne-sektorin-publik/>)

⁶⁰ "Exclusive: Shpend Maxhuni's brother in law, Florim Maloku together with Fadil Syleviq and 11 others were suspects for the theft of the evidence chamber at DOCP (Document)". Pa rrotlla. October 23, 2018 (Follow link <https://www.parrotlla.net/ekskluzive-dhendri-i-shpend-maxhuni-florim-maloku-bashke-me-fadil-syleviqin-dhe-11-te-tjere-ishin-te-dyshuar-per-vjedhje-ne-dhomen-e-deshmive-te-dkko-s-dokument/>)

⁶¹ Ibid

⁶² Ibid

investigation against the defendants mentioned in the criminal case PPS 153/2009, as of December 13, 2010," said the prosecutor's decision⁶³.

After the failure of the Kosovo authorities in shedding light on this case, EULEX investigators took this case however they also did not solve the case, which was then referred to as "spectacular theft".⁶⁴

Sources from inside the Kosovo Police have said that this case of theft from the evidence chamber in Pristina can never be solved, since the police never received correct evidence from the crime scene because there are no major elements of finding authors such as fingerprints, initial photographs, and other details.⁶⁵

On the other hand, General Director of Kosovo Police, Rashit Qalaj, in an interview given to "Oath for Justice" said that due to the large number of police officers and the Kosovo Police as an organization, such cases may occur. "It is a fact that the theft in the evidence chamber has damaged the Kosovo Police, it has harmed the country in general, since it was a very sensitive case, which in the public is highly debated, and caused damage to the country. I know that this case has been investigated by EULEX colleagues and is now transferred to local prosecutors and I believe that this case will be investigated continuously, we should investigate it with priority, since the country is heavily damaged by such an incident," stated Rashit Qalaj.⁶⁶

KPI since 2007, more than two years prior to the theft from the evidence chamber, published a report, where it states that regardless of the fact that this chamber has restricted access and in no means necessary can unauthorised personnel can enter, students from colleges such as "Fama" and "AAB" are entering the forensics lab without protocol, since some police officials give lectures at the said colleges during the same time.⁶⁷

4.2. Theft from the Police Evidence Chamber in Peja

Not many years after the so-called spectacular theft in the Kosovo Police Evidence Chamber in Pristina, another region was affected by theft of similar magnitude.

At the evidence chamber of the Peja Police station, approximately 25kg in gold was stolen and regardless of the reactions from investigators and police, faster than the last time, this case still remains unsolved. "This happened in a very professional manner. There is no damage to the evidence chamber and there are no finger prints. I do not think that they could have taken such a large amount for such a short time, rather they took it time after time", stated Jetullah Aliu, Director of the Department for Investigations at the Kosovo Police

⁶³ *This is how the evidence chamber had items stolen from Kosovo Police*". Drenica press. October 31, 2015. (Follow link <https://drenicapress.info/ja-se-si-u-vodh-dhoma-e-deshmive-ne-policine-e-kosoves/>)

⁶⁴ "EULEX fails regarding the case at the Police". Kosova Haber. April 24, 2012. (Follow link <http://www.kosovahaber.net/?page=1,12,12205>)

⁶⁵ "The case of theft at the police station was destroyed by police". Telegrafi.com. June 12, 2012 (Follow link <https://telegrafi.com/rastin-e-vjedhjes-ne-polici-e-shkaterroi-policial/>)

⁶⁶ "What does Qalaj say about the scandals that occurred at the Police station about the theft of the evidence chamber and other scandals? (Video)". Oath for Justice. November 14, 2018 (Follow link <https://betimiperdrejtesi.com/cfare-thote-qalaj-per-skandalet-ne-polici-si-vjedhja-ne-dhomen-e-deshmive-dhe-te-tjera-skandale-video/>)

⁶⁷ "Run Police!". Cohu. December 6, 2012. (Follow link <http://preportr.cohu.org/sq/hulumtime/lkni-policia-85>)

Inspectorate. Therefore, according to him, all the responsibility befalls on the competent personnel.⁶⁸

However, not only gold is suspected to have been stolen; investigations are awaiting to show that there are other things missing. In the chamber there were approximately 100 thousand euro but they were not taken.⁶⁹

Four persons were arrested on suspicion that they carried out this criminal offence in a very professional manner. They are police officials, between them, a major, two lieutenants and a police officer.⁷⁰

Regardless of the fact that KPI made it known that investigations are on-going until light is shed on the whole case, more than six years have passed and there is nothing concrete in this regard.

5. Intentions to amnesty the son of the KIA Head Shpend Maxhuni

On 12 October 2018, during a routine patrol, Kosovo Police stopped a vehicle that was driven by Shpetim Maxhuni, son to Shpend Maxhuni, Head of the Kosovo Intelligence Agency and former General Director of the Kosovo Police.

According to the police report, while Shpetim Maxhuni was driving a car, that belonged to his grandfather, Enver, they found a gun “Zastava” with one cartridge with four bullets and one knife.⁷¹

The Kosovo police on 20 October 2018, issued a press release that explained that in the car, together with the son of Mr. Maxhuni, whom was the driver of the car, there were two other people in the car and apart from the fact that they found weapons they also found a rolled cigarette that according to suspicions of the prosecution office is of narcotic substance of marihuana.⁷² “During the search of the vehicle, at one part of the vehicle a knife was found and a rolled cigarette, that is suspected to be narcotic substance and a grinder that is still being investigated”, the press release stated. The suspect (A.K.) according to the police stated that the rolled cigarette found in the vehicle and the grinder was his. Whereas the suspect (R.M) according to the police stated that the weapon was his and that he forgot it in the car and it does not belong to suspect (Sh. M).⁷³

The Prosecution Office in Pristina, in two separate occasions gave different statements regarding this case. Initially Prosecutor Ibrahim Berisha, stated that this Prosecution Office accepted a criminal report in which the son of Shpend Maxhuni was a suspect. “Yesterday

⁶⁸ “*Theft without any traces*”. Telegrafi. June 3, 2012 (Follow link <https://telegrafi.com/vjedhja-pa-gjurme/>)

⁶⁹ “*Suspect of theft of gold on house arrest*”. Telegrafi. June 3, 2012 (See <https://telegrafi.com/te-dyshuarit-per-vjedhjen-e-arit-ne-arrest-shtepiak/>)

⁷⁰ “*Gold is stolen in Peja, 4 police officers in handcuffs*”. Info arkiva. (Follow link <http://www.arkivalajmeve.com/Vidhet-ari-ne-Peje-ne-pranga-4-police.1047245205/>)

⁷¹ “*Shpend Maxhuni’s son was armed “to the teeth” the moment of arrest (Exclusive document on the opening of the case)*”. Gazeta Blic. October 2018 (Follow link <https://gazetablic.com/djali-i-shpend-maxhunit-ishte-i-armatosur-deri-ne-dhembe-ne-momentin-e-arrestimit-dokumenti-ekskluziv-me-rastin-e-hapjes-se-rastit/>)

⁷² “*Police explain the case where the son of KIA head, Shpend Maxhuni was involved in*”. Lajmi.com. October 2, 2018. (Follow link <http://lajmi.net/policia-sqaron-rastin-ku-eshte-perfshire-djali-i-shefit-te-aki-se-shpend-maxhuni/>)

⁷³ Ibid

afternoon we received a criminal report. I was at a meeting, but the police informed us via the telephone. I know that the criminal report was submitted...as you can see the name of his son is on it and a cousin”, stated Berisha, talking about Shpend Maxhuni, head of KIA.⁷⁴

Prosecutor Berisha added that together with Chief Prosecutor Imer Beka, they immediately were interested about the case and requested that whoever has violated the law to be brought before justice bodies.⁷⁵

On the same day, a different statement was given. Berisha stated that in the vehicle that was driven by Maxhuni’s son, allegedly the weapon was not his. According to him, the weapon was his cousins Rinor Maxhuni, whereas the drugs in the cigarette belonged to the third person.⁷⁶

Chief State Prosecutor, Aleksandër Lumezi, on a television show on RTK, while the investigation was still on-going by the Basic Prosecution Office in Pristina, stated that the suspected substance of narcotics did not belong to Shpend Maxhuni’s son. “It is still unknown what actions were taken, or if they committed a criminal offence. According to police information, the drugs did not belong to the son of the KIA director, nor was the weapon was found in the possession of the son of the KIA director”, stated Lumezi in a debate.⁷⁷

After being published in local media regarding the suspicion that the son of the KIA Head was involved in a criminal case, KPI initiated proceedings against four police officers. “Traces” of what police officers looked at the case of “Maxhuni” on the system are evidence that the Kosovo Police Inspectorate aims to collect in order to hand them over to Prosecution against officials that might be the “source of information” that was published initially to “Koha Ditore” then to other media outlets.⁷⁸

Suspected police had their telephones confiscated, whereas KPI has requested the IT Department to confirm who from the police entered the system to control the “history” of Shpëtim Maxhuni. Another angle that the police are looking at are the camera’s inside the building.⁷⁹

It was made knowledgeable that police official Afrim Karaxha was suspended from work. KIP after several weeks of investigations recommended to the General Director of the

⁷⁴ “Criminal charges filed against Shpend Maxhuni’s son, he is caught with drugs and weapons”. Telegrafi. October 20, 2018 (Follow link <https://telegrafi.com/kallezim-penal-ndaj-djalit-te-shpend-maxhunit-kapet-droge-e-arme/>)

⁷⁵ <https://telegrafi.com/kallezim-penal-ndaj-djalit-te-shpend-maxhunit-kapet-droge-e-arme/>

⁷⁶ “Prosecution tries to defend the son of the Head of KIA, the drugs and weapons were left to Shpend Maxhuni’s cousins” Gazeta Express. October 20, 2018. (Follow link <https://www.gazetaexpress.com/lajme/prokuroria-tenton-ta-shfajesoje-djalin-e-shefit-te-aki-se-armen-e-drogen-ja-lene-kusheririt-te-shpend-maxhunit-587164/>)

⁷⁷ “Excuses ‘with yogurt’ from Aleksandër Lumezi about Shpend Maxhuni’s son”. Bota sot. October 26, 2018 (See” <https://www.botasot.info/aktuale-lajme/971503/arsyetimi-me-kos-i-aleksander-lumezit-per-djalin-e-shpend-maxhunit/>)

⁷⁸ “Four police officers investigated on suspicion of giving media details of criminal case of Shpend Maxhuni’s son” Koha.net. 25 October 2018 (Follow link <https://www.koha.net/arberi/124880/hetohen-kater-police-medyshimin-se-zbuluan-per-media-detajet-e-rastit-penal-te-djalit-te-shpend-maxhunit/>)

⁷⁹ Ibid

Kosovo Police, Rashit Qalaj, to suspend this police officer due to the suspicion that he released sensitive information to the media. Director Qalaj, with his signature on the recommendation, made his suspension effective immediately.⁸⁰

This best demonstrates that these issues tend to maximally remain out of the attention of the media and citizens in general. And if it they come out and consequently face justice, then practice has shown that “the strong” is amnestied by the justice system. “We as KLI systematically monitor all cases in the Kosovo judiciary and based on systematic findings it turns out that “the strong”, in this case, politicians and senior state officials are all completely amnestied by the justice system. This amnesty does not only involve politicians and officials, but also their family members”, said Betim Musliu from KLI for TV Dukagjini.⁸¹

Musliu mentioned cases of the children of senior officials, that according to him, the justice system is bending over backwards to amnesty them. “In this case, is the example of the sons of Adem Grabovci, nearly in the same situation of the offence committed they were sentenced with lenient sentences whereas other citizens for the same criminal offences were given harsher sentences. The same is happening with the case involving the son of Shpend Maxhuni. This proves 1 million exercises that are conducted by the justice system in order to amnesty in every form possible or to make it incredibly impossible to touch politicians and their family members”.⁸²

6. The justice and security system helpless in the face of domestic violence cases

Although more than 19 years have passed from the time when Kosovo left the war, domestic violence still remains a challenge for justice and security authorities in Kosovo. Just up until July 2018, Kosovo Police confirmed that there have been 751 cases of domestic violence.⁸³

In Kosovo, as occurs in many cases, there is a good legal basis in coordination with international standards for the protection from domestic violence, yet the biggest problem is the implementation of them by responsible institutions.⁸⁴

Although the current legislation provides detailed descriptions of the roles and responsibilities of a structure of institutions and organizations for the protection of victims of domestic violence, the implementation of these provisions has proved to be challenging for various reasons.⁸⁵

⁸⁰ “Police officer Karaxha is suspended, on the suspicion that he informed “Koha Ditore” about the son of the KIA head”. Koha.net. November 27, 2018. (Follow link <https://www.koha.net/arberi/131114/suspendohet-polici-karaxha-me-dyshimin-se-informoi-kohen-ditore-per-djalin-e-shefit-te-aki-se/>)

⁸¹ “Daddy’s boys”, a justice system that is subjected to politics (Video)”. Telegrafi. October 22, 2018 (Follow link <https://telegrafi.com/djemte-e-babes-nje-sistem-drejtewise-qe-nenshtrohet-politikes-video/>)

⁸² Ibid

⁸³ “Approximately 800 cases of domestic violence this year”. Zëri. August 2017 (Follow link <http://zeri.info/kronika/212238/rreth-800-raste-te-dhunes-ne-familje-kete-vit/>)

⁸⁴ UNICEF. “Qualitative Research on Social Norms around Gender-Based Violence and the Physical Punishment of Children in Kosovo”. July 2016. Page 22.

⁸⁵ Ibid

Although many cases have been reported to the Kosovo Police, history has shown that those who reported have suffered the consequences for which they have reported, even resulting in death. Such stories have made citizens trust in the security bodies very low in cases of domestic violence.⁸⁶

In another case, in the former Municipal Court of Mitrovica, the prosecutor did not investigate the police criminal report of a father whom was said to abuse his children with a cane. The prosecutor did not prosecute the alleged perpetrator of the violence because the files had not been completed by the police, lacking a medical report that could show bodily injuries. Although the police did not provide sufficient evidence, the prosecution had to carry out its obligations. A police official commented that prosecutors and judges have also often ignored reports of domestic violence cases.⁸⁷

According to the Kosovo Women's Network survey, prosecutors, in addition to failing to enforce family protection legislation, they have also incorrectly implemented it. Judges and prosecutors have often failed to properly implement the legislation.⁸⁸

Such cases and many other cases also show how the justice system has been challenged and where there has been stagnation in this regard. Despite the large number of these cases, however, there are two cases that significantly show the confrontation of victims of domestic violence not only with the perpetrator but also with the justice system.

6.1. Case of Valbona Marku

On 7 August 2018, at the front door of the Marku family in Brekoc in Gjakovës, Pjetër Nrecaj, murdered his wife Valbona Marku and his nine-year-old daughter K.N.

Valbona Marku, wife and mother, continuously reported to government bodies about the domestic violence committed by her husband, however the state failed to provide security to her and her 9-year-old daughter.

Chief Prosecutor of Gjakova, Ali Selimaj had asserted that prosecution was informed about the reports of the deceased regarding her husband's intimidation, even hours before her murder. He also confirmed that Pjetër Nrecaj, was also previously held in remand for intimidating his wife for a period of 30 days.⁸⁹

On the other hand, the Kosovo Police Inspectorate has initiated preliminary investigations at the Regional Directorate of the Gjakova Police regarding this case and has recommended the

⁸⁶ Ibid. Page 49.

⁸⁷ RGGK. "Security starts at home". 2008. Page 106.

⁸⁸ Ibid. Page 85.

⁸⁹ "Threats that were made by Pjetër Ndrecaj to his wife were found, before she was murdered". Gazeta Express. August 8, 2018. (Follow link <https://www.gazetaexpress.com/lajme/zbulohet-kercenimi-qe-ia-kishte-bere-gruas-pjeter-marku-para-se-ta-vriste-565532/?archive=1>)

suspension of three officials whom have neglected and not carried out their duties, until the completion of the investigation of this case.⁹⁰

No longer than two months, the Basic Prosecution Office in Gjakova, on 26 September 2018, raised an indictment against Pjetër Ndrecaj, charging him with criminal offence of “serious murder” and “holding in possession and control or unauthorised possession of arms”⁹¹ Whereas on 2 November 2018, after the accused plead guilty for the criminal offences charged upon him, the Basic Court in Gjakova sentenced him to 24 years imprisonment.⁹²

6.2. Case of Diana Kastrati

It was a morning in May of 2011 when Diana Kastrati left her house to go to the Faculty of Medicine, where she studied, however not far from her house the road was blocked by her ex-husband, who shot her with a gun and left her to die.⁹³

She had previously requested protection orders from the former Pristina Municipal Court, as her former husband threatened and continuously stalked her. Three weeks later he has shot her with a weapon on her way to lectures.⁹⁴

Immediately after committing this offence, the suspect Adnan Jashari, fled from Kosovo to Spain, in a country that still does not recognise the independence of Kosovo, thus exploiting the lack of cooperation agreements between the Kosovo and Spanish authorities, for the chance to be extradited to Kosovo.⁹⁵

Regarding this case, officials from the Ministry of Justice stated that they received information that Adnan Jashari was localised in the state of Spain and on the basis of this information the MoJ submitted two requests for his extradition, however regardless of this they have not received any information regarding the status of their requests.⁹⁶

On 17 April 2012, the family members of the deceased, submitted before the Constitutional Court, with the claim that the Municipal Court in Pristina did not act according to Law no.

⁹⁰ “Police are being investigated for negligence towards the case”. RTV 21. September 5, 2018 (Follow link <http://rtv21.tv/inspektoriati-poligor-nis-hetimet-ndaj-policeve-per-rastin-e-vrasjes-se-dyfishte-ne-gjakove/>)

© RTV21.tv <http://rtv21.tv/inspektoriati-poligor-nis-hetimet-ndaj-policeve-per-rastin-e-vrasjes-se-dyfishte-ne-gjakove/>

⁹¹ “Indictment raised for the murder of former wife and daughter in Gjakova” Oath for Justice. 27 September 2018 (Follow link <https://betimiperdrejtesi.com/ngritet-aktakuze-per-vrasjen-e-ish-bashkeshortes-dhe-vajzes-ne-gjakove/>)

⁹² “Sentenced to 24 years imprisonment for double murder in Gjakova”. Oath for Justice. November 2, 2018. (Follow link <https://betimiperdrejtesi.com/denohet-me-24-vite-burgim-i-akuzuari-per-vrasjen-e-dyfishte-ne-gjakove/>)

⁹³ “7 years since the murder of Diana Kastrati, her father demands the extradition and sentencing of her killer” Zëri. June 28, 2018. (Follow link <http://zeri.info/kronika/205132/7-vjet-nga-vrasja-e-diana-kastratit-babai-i-saj-kerkon-ekstradimin-dhe-denimin-e-vrasesit/>)

⁹⁴ “Vicious Cycle: The abuse of women in Kosovo and Albania Syndrome”. Telegrafi. November 8, 2017 (Follow link <https://telegrafi.com/cikel-eger-sindroma-e-abuzimit-te-grave-ne-kosove-dhe-shqiperi/>)

⁹⁵ “7 years since the murder of Diana Kastrati, her father demands the extradition and sentencing of her killer” Zëri. June 28, 2018. (Follow link <http://zeri.info/kronika/205132/7-vjet-nga-vrasja-e-diana-kastratit-babai-i-saj-kerkon-ekstradimin-dhe-denimin-e-vrasesit/>)

⁹⁶ Ibid

03/ L-182 on Protection against Domestic Violence. Consequently, the violation is not a consequence of a court decision, but of the inaction of the Municipal Court in Pristina.⁹⁷

Whereas, on 26 February 2013, the Constitutional Court ruled that there had been a violation of the right to life, foreseen by Article 25 of the Constitution and Article 2 of the ECHR; and there has been a violation of the right to legal remedies provided by Articles 32 and 54 of the Constitution and Article 13 of the ECHR.⁹⁸

Consequently, with regards to the inaction of the judge of the then Pristina Municipal Court, KJC notified that disciplinary measures were taken against the judge regarding his misconduct.

IV. Inefficiency of the justice system in dealing with cases

According to the 2018 Progress Report of the European Commission for Kosovo, the judiciary is still subject to political influence. It even says that the administration of justice remains slow and ineffective.⁹⁹

Kosovo is at an early stage in the fight against corruption and has made some progress with regard to the on-going history of investigating and prosecuting cases of corruption and organized crime at a high level, including final sentences.¹⁰⁰

Progress has been made on the preliminary seizure of assets, even though final confiscation remains low.¹⁰¹

Corruption is widespread and remains a matter of concern. Joint efforts are needed to tackle this problem comprehensively and strategically.¹⁰²

Corruption continues to be a concern for Kosovo society. The Transparency International (TPK) Corruption Perception Indicator showed a positive trend of +3 points over the last two years (2016 and 2017). However, according to the Public Pulse Data, with regard to large-scale corruption, the overall percentage of citizens who perceive this type of corruption is present in various institutions (31% in April 2018, compared with 20% in October 2017).¹⁰³

The perception of the prevalence of corruption in the various institutions of Kosovo ranges from the lowest values of 24.5% (international organizations) to the highest ones 39% (customs). The biggest changes in citizen perceptions of corruption are observed in institutions such as customs (39% in April 2018, compared with 23% in October 2017), courts (39% in April 2018, compared with 25% in October 2017) banks (27% in April 2018, compared to 13% in October 2017) and international organizations (24.5% in April 2018, compared with 11% in October 2017). Although percentages have increased in general for the Kosovo Police (26% in April 2018, compared to 15% in October 2017), it still remains

⁹⁷ Decision of the Constitutional Court of Kosovo (case KI41/12). February 26, 2013.

⁹⁸ Ibid

⁹⁹ European Commission. *"Kosovo Report 2018"*. April 2018. Page 4.

¹⁰⁰ Ibid

¹⁰¹ Ibid

¹⁰² Ibid

¹⁰³ UNDP. *"Public Pulse XIV"*. June 2018. Page 12.

one of the institutions with the lowest rates of perceived corruption perception on a large scale.¹⁰⁴

Regarding the efficiency of the judiciary in relation to the number of judges, the 2018 Progress Report for Kosovo has produced an interesting comparison with the European average on this issue.

In 2017, Kosovo recruited 52 new judges, thus increasing the general number of judges to 403, after a period of resignations, pensions and low recruitment in the past years. Twenty-one new prosecutors were decreed in January 2018, thus increasing the general number of prosecutors to 198. Now there are 22.6 judges and 11.1 prosecutors per 100 000 residents. According to CEPEJ the European average is 21 judges and 11 prosecutors per 100 000 residents.¹⁰⁵

This implies that there is no longer any reason to complain that there is a low number of judges and prosecutors for the administration and resolution of cases.

The efficiency of the judiciary is largely hampered by shortcomings in criminal legislation. Many provisions in the Criminal Procedure Code are extremely complicated and formalistic, not allowing solid and successful prosecution. They must be amended and completed (for example, the deadline for investigations foreseen by law).¹⁰⁶

In addition, the weak capacity and poor commitment of some judges to manage court proceedings, to sanction the parties that cause delays and to ensure the presence of all parties in the hearings lead to numerous adjournments of hearings and prolonged criminal proceedings.¹⁰⁷

These aspects, and the tendency of the Court of Appeals to send cases for review to Basic Courts contribute to an average prolonged resolution deadline (the average time from the raised indictment to the final decision). These procedural delays, combined with the preference for detention, against other security measures, have led to cases with very long periods of detention.¹⁰⁸

Court organisation and resource allocation remains to the court presidents and chief prosecutors of prosecution offices. Where appropriate, judges and prosecutors may be temporarily transferred. This has been proven to be an effective tool to support courts and prosecution offices with a shortage of staff. The number of legal staff assisting judges and prosecutors is considered insufficient.¹⁰⁹

Pursuant to the Constitution, the judiciary is independent; however, the judiciary has not always provided due process. According to the European Commission, NGO's and the Ombudsman, court administration was slow and did not request accountability from judicial

¹⁰⁴ Ibid

¹⁰⁵ European Commission. "Kosovo Report 2018". April 2018. Page 17.

¹⁰⁶ Ibid

¹⁰⁷ European Commission. "Kosovo Report 2018". April 2018. Page 17– 18.

¹⁰⁸ Ibid. Page 18

¹⁰⁹ Ibid

officials. Judicial structures were subject to political interference with questionable appointments and unclear mandates. Efficiency in the resolution of cases has improved over the years; however, courts are loaded with unresolved cases.¹¹⁰

The main human rights problems in Kosovo during 2017 were attacks on journalists; violence against displaced persons; endemic corruption of the government; lack of judicial independence, including process failures and selective implementation of judgments; and violence against members of ethnic minorities and members of the LGBTI community.¹¹¹

1. Treatment of high-profile corruption cases

While all national and international reports conclude that corruption in Kosovo is endemic and the justice system is caught by politics, in practice, there are attempts to deceive citizens and the international community that there is a fight against corruption from the justice system. In this regard, KLI as a result of systematic monitoring of the judicial and prosecutorial system has reported its constant findings on indictments raised without basis, without evidence against high profile officials, that in large amounts, these cases fail at the initial hearing. The prosecution and raised indictments against high profile people, for which there have been constant reports in the media and civil society about their involvement in violating the law or corruptive activities, is “sold” as a constant success of the State Prosecutor in the fight against high profile corruption. On the other hand, the failure of over 90% of these cases in the courts has built up a new State Prosecutor's Office in the direction of raising charges against the judiciary, for which they say, judges are deliberately failing such cases.¹¹² Such a failure enables high-profile officials to be amnestied and not prosecuted for the same criminal offenses for which they have once been released from the court.

There are cases where prosecutors allegedly spend two years investigating a case before, they raise an indictment and withdraw at the initial hearing. Such action taken by prosecution make it more suspicious the fact that they withdraw from the case especially when the persons involved are high profile officials.

Within a short period of time, prosecutor Feti Tunuzliu from the Basic Prosecution Office in Pristina withdrew from two indictments concerning two high profile officials. One week before the former head of KIS was to be appointed to that position he was accused by the Basic Prosecution Office for abuse of official position. However, Tunuzliu withdrew from the indictment.¹¹³

¹¹⁰ U.S. Department of State. “Kosovo 2017 Human Rights Report”. 2018. Page 10.

¹¹¹ Ibid. Page 1.

¹¹² “Chief State Prosecutor Lumezi, confirms KLI criticism: “If prosecutors are raising ungrounded indictments and without evidence, we must go home and take full responsibility” (VIDEO)”. Oath for Justice. September 4, 2018 (Follow link <https://betimiperdrejtesi.com/kryeprokurori-lumezi-konfirmon-kritikat-e-ikd-se-nese-prokuroret-jane-duke-ngritur-aktakuza-pa-baze-dhe-pa-prova-na-me-shku-ne-shtepi-dhe-na-me-marr-pergjegjesi-video/>)

¹¹³ *Prosecutor Tunuzliu a week prior to the appointment of KIA Head, withdraws from the indictment against Driton Gash for “abuse of official position”*. Oath for Justice. February 8, 2017 (Follow link <https://betimiperdrejtesi.com/prokurori-feti-tunuzliu-nje-jave-para-emerimit-te-shefit-te-aki-se-terhiqet-nga-aktakuza-kunder-driton-gashit-per-keqperdorim-te-pozites-zyrtare/>)

The same prosecutor during the initial hearing withdrew from the indictment that was raised against the then head of the Kosovo Agency for medicinal products and equipment, Jeton Shala.¹¹⁴ Shala was made clear by the media that he was a person whom had family ties with the prime minister of that time, Isa Mustafa.

Presented below are the most representative cases of which prosecutors have raised indictments and have failed to be tried in court. The treatment of these cases has shown violation of deadlines prescribed by the Criminal Procedure Code, by constantly violating the rights of defendants in criminal proceedings.

1.1) Enver Hasani, former President of the Kosovo Constitutional Court

On 14 April 2015, an indictment was raised against Enver Hasani, former President of the Constitutional Court. On the same day, Special Prosecutors Office of the Republic of Kosovo (SPRK) rendered a decision for the initiation of investigations against the same. While on 13 January 2016, SPRK raised the indictment at the Basic Prosecution Office in Pristina, against Enver Hasani for the criminal offence “abuse of official position or authority” and “falsifying official documents”.

Enver Hasani was charged regarding the decision of the Constitutional Court on the Decree of the President on the extension of the mandate of three international judges. According to this indictment, at the time when Hasani was the President of the Constitutional Court, he was charged with having named Robert Coelan’s name even though the latter did not take part in the consideration of this issue, as it was about extending his mandate.

Characteristic of this case is the frequent replacement of prosecutors, respectively this case from the beginning to the end, was treated by three SPRK prosecutors: Blerim Isufaj, Drita Hajdari and Abdurrahim Islami.

At the initial hearing held on 8 September 2016, Enver Hasani, before the trial panel, stated that the case against him "is the ordinary revenge of Chief State Prosecutor Aleksandër Lumezi and his chiefs, because the Constitutional Court overturned the election process of Chief Prosecutor Lumezi".¹¹⁵

The SPRK indictment did not even reach initial hearing, since due to the lack of evidence; it was dismissed by the Court of Appeals.¹¹⁶ The Supreme Court as the final judicial instance confirmed Hasani’s innocence by rejecting the request for the protection of legality submitted by prosecution as ungrounded, against the decision of the Court of Appeals.¹¹⁷

¹¹⁴ “*The prosecution silently withdraws from the indictment against the head of KAMP*”. Telegrafi. June 11, 2017 (Follow link <https://telegrafi.com/prokuroria-ne-heshtje-terhiqet-nga-aktakuza-ndaj-kreut-te-akpm-se/>)

¹¹⁵ “*Enver Hasani: This indictment is revenge committed by Chief State Prosecutor Aleksandër Lumezi*”. Oath for Justice. September 8, 2016 (Follow link <http://betimiperdrejtesi.com/enver-hasani-kjo-aktakuze-eshte-hakmarrje-e-kryeprokurorit-aleksander-lumezi/>)

¹¹⁶ “*The indictment against former President of the Constitutional Court, Enver Hasani, is dismissed*”. Oath for Justice. January 10, 2017 (Follow link <https://betimiperdrejtesi.com/hudhet-aktakuza-ndaj-ish-kryetarit-te-gjykates-kushtetuese-enver-hasani/>)

¹¹⁷ “*The Supreme Court declares the innocence of Enver Hasani*”. Koha net. April 4, 2017 (Follow link <https://www.koha.net/arberi/10045/supremja-e-shpall-te-pafajshem-enver-hasanin/>)

1.2) Enver Hasani, former Rector of the University of Pristina

On 25 July 2012, Kosovo Police filed criminal charges against Enver Hasani, Albert Rakipi and Hakif Veliu, regarding suspicions of misappropriation at the University of Pristina.

On 9 January 2014, Basic Prosecutors Office in Pristina rendered a decision for the initiation of investigations against Albert Rakipi and Hakif Veliu. This case was investigated by a team of EULEX prosecutors and Basic Prosecutors Office in Pristina.

EULEX, on 12 August 2014 transferred this case to the Basic Prosecution Office in Pristina. BP in Pristina on 21 November 2014 transferred this case to SPRK. Drita Hajdari, prosecutor at this prosecution office, on 14 April 2015, rendered a decision to extend the investigations, including Enver Hasani as former Rector of UP.

During that time, a competition was held for the Chief State Prosecutor, where the Constitutional Court headed by Enver Hasani had overturned the process of electing the Chief State Prosecutor in which Alexander Lumezi was elected. At that time, some KPC members had developed a "public war" with the Constitutional Court on the process of electing the Chief Prosecutor. As the Constitutional Court had opened the way for the decree of Chief Prosecutor Lumezi, on the same day on 14 April 2015, the SPRK issued two decisions to initiate investigations against Enver Hasani.

One case concerns him when he was President of the Constitutional Court and the other about his time as Rector of UP. In the latter, the indictment against Enver Hasani was raised on 31 July 2015 for the criminal offence of corruption.

According to the indictment, Enver Hasani was accused that in the capacity as Rector of UP, Haki Veliu in the capacity as Head of Procurement in UP and Albert Rakip in the capacity of the Director of the Institute for International Studies (ISN), with the purpose of obtaining unlawful property gains for this Institute, forged the original contract regarding the translation of several books from English into Albanian and had drafted a new contract using the same protocol number from the original contract. According to the original contract, its value was 500,000 euro, i.e. the price for 1000 words was 12.65 euros stipulated in article 17, while in the new contract according to prosecution, this part was changed to 1000 characters for 12.56 euros.

After several court hearings, the Basic Court in Pristina, on 18 October 2017, announced that Hasani was guilty and sentenced him to 1 year imprisonment, a sentence that will not be executed if in the period of two years he does not commit any criminal offence. Hakif Veliu and Albert Rakipi were sentenced to six months of imprisonment. However, their sentence of imprisonment can be replaced with a fine from 10 thousand euro.¹¹⁸

¹¹⁸ "Enver Hasani is given a conditional sentence of imprisonment and is obligated to return to UP over 70 thousand euros (Video)". Oath for Justice. October 18, 2017. (Follow link <https://betimiperdrejtesi.com/enver-hasani-denohet-me-burgim-me-kusht-dhe-obligohet-tia-ktheje-up-se-mbi-70-mije->

After a year since the decision rendered by first instance, the Court of Appeals, in May 2018 changed the Basic Court's decision by acquitting Enver Hasani of charges. According to the decision of the second instance, SPRK did not prove that he committed the criminal offence that he was charged with, meanwhile the decision was also changed for the others that were charged, since the Basic Court sentenced them to 6 month of effective imprisonment, whilst the Court of Appeal taking into account Prosecutions appeal, sentenced them to 1 year of effective imprisonment.¹¹⁹

Enver Hasani, at the interview given for "Oath for Justice", stated that "the bosses of Chief State Prosecutor Lumezi" hinting towards the President of Kosovo Hashim Thaçi, Deputy Prime Minister and Minister of External Affairs Bexhet Pacolli, "ordered the indictment in order to eliminate me from the political scene".¹²⁰

The final judgement on Hasani's innocence regarding this case was affirmed by the Supreme Court. This Court refused the Request for Protection of Legality filed by the State Prosecutor, even though the judgement against Hakif Velu and Albert Rakipi, the Supreme Court returned for consideration, by annulling the judgement of the Court of Appeals.¹²¹

1.3) Sali Mekaj, former President of the Court of Appeals

On 31 May 2016, the SPRK filed an indictment with the Basic Court in Pristina, against the former President of the Court of Appeal and a member of the KJC, Salih Mekaj, for the criminal offense of "abuse of official position or authority".

According to the indictment, Salih Mekaj, in his capacity as an official person (President of the Kosovo Court of Appeal), has used his official duty and authority in order to gain the benefit to himself and to other persons.

The indictment states that Mekaj promised defendant Vlora Gorani that he will be committed to the review of the main trial in two cases, as well as the legal re-qualification of the criminal offenses, from the most serious offenses to the lightest ones, so that the two defendants in those cases be released from detention.

Prosecution alleges that the defendant Mekaj, for this purpose requested from the judge of one case to assign the judicial review regarding that case in contradiction to the Decision rendered by the Kosovo Appeals Court.

euro/)<https://betimiperdrejtesi.com/enver-hasani-denohet-me-burgim-me-kusht-dhe-obligohet-tia-ktheje-up-se-mbi-70-mije-euro/>

¹¹⁹ "Court of Appeals acquits the charges of corruption for the former rector of UP, Enver Hasani". Oath for Justice. May 15, 2018. (Follow link <https://betimiperdrejtesi.com/apeli-e-liron-nga-akuzat-per-korrupsion-ish-rektorin-e-up-se-enver-hasani/>)

¹²⁰ "Enver Hasani says that Lumezi's bosses ordered the elimination of his presence in the political scene". Oath for Justice. 16 May 2018 (Follow link <https://betimiperdrejtesi.com/enver-hasani-thote-se-shefat-e-lumezit-urdheruan-eliminimin-e-tij-nga-skena-politike/>)

¹²¹ "The Supreme Court affirms Hasani's innocence, he says that the Prosecutor prosecuted him unlawfully". Koha.net. November 2, 2018. (Follow link <https://www.koha.net/arberi/126585/supremja-verteton-pafajesine-e-hasanit-sa-ishte-rektor-ky-thote-se-prokurori-e-ndoqi-pa-te-drejte/>)

Meanwhile according to the indictment, the defendant Vlora Gorani intentionally pushed Salih Mekaj to commit the criminal offence with the purpose that through him to save the setting of the judicial review and then to wait for the legal re-qualification of criminal offences for the defendant Metor Seferaj and another defendant in another case. Through this manner, they can reach the freedom of these two persons from detention.

The initial SPRK indictment until the final decision against Mekaj and the others, had many changes made to it, this for the fact that in the controlling phase, part of the indictment charged Mekaj with “abuse of official position”, in which the Court of Appeals dismissed. Meanwhile, prosecutor Drita Hajdari, during the judicial review re-qualified the criminal offence against Mekaj from “abuse of official position” to “trading in influence”.

This judicial process was a flagged case for visa liberalisation but was held far from the public eyes due to the decision of the judge to have closed hearings and not allow the media and public during the sessions.

The Court on 28 May 2018 issued a judgment acquitting the accused of all charges.¹²² Following the SPRK appeal, the Court of Appeal had definitively acquitted the accused of all charges.¹²³

1.4) Shpresa Bakija, former Chief Prosecutor of the Prosecution Office in Gjakova

Another high-profile case, where prosecution failed to submit the indictment in a manner in which the court can render a decision for a conviction, was the case of former Chief Prosecutor to the Baic Prosecution Office in Gjakova, Shpresa Bakija.

She was accused by the Baic Prosecution Office in Gjilan for three criminal offences “abuse of official position or authority”, “disclosing official secrets” and “infringing privacy in correspondence and computer databases”.

Allegedly in June 2017, Bakija, in the capacity of an official officer, without authorisation, disclosed official secrets to another person. According to prosecution she did this intentionally in order to bring material benefit illegally, or to cause damage to another person, the injured party Xhemile Karakushi.

According to the provision in the indictment, the defendant did this in a way that lawyer Gëzim Baloku gave the message tabulates (SMS) secured within case PPN.5/2012 gained through undercover measures, of which the same subsequently conveyed to the unauthorized person, in the present case, the other defendant Arben Arifi, in compensation of 250 euros.

The latter opens the messages with private content and hands it over to the other person, the brother and the uncle of the injured party by letter of recommendation in Switzerland. He

¹²²“Former President of the Court of Appeals, Salih Mekaj is acquitted of all charges (Video)”. Oath for Justice. May 28, 2018 (Follow link <https://betimiperdrejtesi.com/ish-kryetari-i-apelit-salih-mekaj-lirohet-nga-te-gjitha-akuzat/>)

¹²³ “Court of Appeals confirms the innocence of its former president, Salih Mekaj and three others”. Oath for Justice. November 23, 2018 (Follow link <https://betimiperdrejtesi.com/gjykata-e-apelit-verteton-pafajesine-e-ish-kryetarit-te-saj-salih-mekaj-dhe-tre-te-tjereve/>)

also sends them to the Basic Court in Gjilan, for the purpose of their use in connection with a court decision, although it has been known that this evidence has nothing to do with the concrete case. In this case it was alleged that the integrity of the injured party was seriously damaged and seriously affected.

After the main trial, the Basic Court in Gjilan, in June 2016, in the absence of evidence, found the former Chief Prosecutor Bakija to be innocent, and the Court of Appeal upheld such a decision in November 2016, case had eventually acquitted Bakija from corruption allegations.

Along with her, the accused for the criminal offense " infringing privacy in correspondence and computer databases" was Arben Arifi, but to him the Basic Court in Gjilan had received a refusal judgment, on the grounds that the criminal offense in question reached relative prescription.¹²⁴

1.5) Mazllum Baraliu, former Rector of University of Prizren

The Basic Court of Prizren on October 22, 2015, received an indictment filed by the Basic Prosecution of Prizren against Mazllum Baraliu, Adem Sallauka and Halim Haziraj charging them with the criminal offense "abusing official position or authority".

According to the indictment, the accused, while working at the University of Prizren "Ukshin Hoti" (UPZ) violated the rights of the injured party, Enver Sopjani, whom they terminated the employment relationship despite having valid contract issued by UPZ.

The indictment states that Sopjani had valid contract from 10.06.2011 until 09.06.2014, working as Vice Rector of UPZ, but unilaterally, with the decision issued by the Rector of that time Mazllum Baraliu and signed by Adem Sallauka and Halim Haziraj, Sopjani's employment contract was terminated in October 2011.

After six sessions of the main trial, the Basic Court of Prizren, on November 15, 2016, acquitted of the charge the former Rector Baraliu and Sallakua, while judgement of conviction was issued only against Halim Haziraj sentencing him with a suspended punishment of two years of imprisonment.¹²⁵

After appeals to the Court of Appeals, this court acquitted Haziraj as well, whereas it affirmed the judgement of acquittal of the Basic Court regarding Baraliu and Sallauka.¹²⁶

¹²⁴ "Court of Appeals affirms the Basic Court of Gjilan decision, acquits all charges against former Chief Prosecutor Shpresa Bakija". Oath for Justice. November 2, 2016 (Follow link <https://betimiperdrejtesi.com/apeli-verteton-aktgjykimin-e-gjykates-themelore-ne-gjilan-liron-nga-te-gjitha-akuzat-ish-kryeprokuroren-shpresa-bakija/>)

¹²⁵ "Mazllum Baraliu acquitted of abusing official position charges". Oath for Justice November 16, 2016 (Follow link <https://betimiperdrejtesi.com/mazllum-baraliu-lirohet-nga-akuza-per-keqperdorim-te-detyres-zyrtare/>)

¹²⁶ "The Court of Appeals affirms the innocence of former Rector of the University of Prizren, Mazllum Baraliu". Oath for Justice. May 23, 2017. (Follow link <https://betimiperdrejtesi.com/apeli-verteton-pafajesine-ndaj-ish-rektorit-te-universitetit-te-prizrenit-mazllum-baraliu/?fbclid=IwAR1k1KD7G39R5z-E-Itw7e9zbzWKDNHi3dT8zLhyCXjSacDT2O-CVYJVqEU>)

1.6) Nuhi Uka, former President of the Basic Court of Pristina

Nuhi Uka has faced justice system regarding three different cases, being charged of “organized crime”, “abusing official position or authority” and “issuing unlawful judicial decisions”.

The former President of the Basic Court of Pristina has thrown behind an indictment that has been heavy on him for a long period of time. By a judgement of the Court of Appeals he was found not guilty of “issuing unlawful judicial decisions” related to state properties.¹²⁷

The case regarding which he was found not guilty is related to state properties that had been illegally alienated. Their value according to the Court was 60 million Euro. Regarding this case he was sentenced by the first instance with a suspended punishment of two years of imprisonment. However, the Court of Appeals modified the judgement of the Basic Court by finding him not guilty.¹²⁸

Uka, was found not guilty by the Basic Court of Prizren about another case related to suspicions of wrongdoing regarding certain properties in Pristina.

The indictment of the Special Prosecution charged Nuhi Uka for criminal offenses such as abusing official position, fraud and organized crime. He was accused of using his influence in the former Municipal Court of Pristina, where he used to be President, enabling his friend to illegally acquire a property in Pristina.

Further, he was accused of having used his wife’s family members to transfer the ownership to his son. In this case, Sanije Muqolli and Fehmi Havolli a geodesic expert at the Directorate of Cadaster at the Municipality of Pristina, who were also acquitted of charges, were accused along with Uka. Meanwhile, with this verdict were sentenced with a suspended punishment imprisonment Mirafete Hashani – Bislimi, Kadrije Hashani, Kimete Hashani – Ukaj, Hilmije Miftari and Ibadete Hashani – Cakaj.¹²⁹

This case was finished by a final judgement of the Court of Appeals that affirmed the judgement of the first instance.¹³⁰

Another case in which Uka was acquitted of charge is the case regarding which he was accused that acting as the President of the Municipal Court of Pristina had committed the criminal offense “obstruction of evidence or official proceedings”.

¹²⁷ “Court of Appeals finds Nuhi Uka not guilty regarding one of four cases related to corruption”. Zëri. May 27, 2016 (Follow link <http://zeri.info/kronika/91925/apeli-shpall-te-pafajshem-nuhi-uken-per-nje-nga-kater-rastet-e-korrupsionit/>)

¹²⁸ Ibid

¹²⁹ “The former President of the Municipal Court of Pristina acquitted of charges”. Oath for Justice. October 21, 2016. (Follow link <https://betimiperdrejtesi.com/lirohet-nga-akuzat-ish-kryetari-i-gjykates-komunale-ne-prishtine-nuhi-uka/>)

¹³⁰ “The Court of Appeals affirms the judgement against Nuhi Uka and others, accused of organized crime and corruption”. Oath for Justice. April 18, 2018. (Follow link https://betimiperdrejtesi.com/apeli-verteton-aktgjykimin-ndaj-nuhi-ukes-dhe-te-tjereve-te-akuzuar-per-krim-te-organizuar-dhe-korrupsion/?fbclid=IwAR3zsK5Tl0FpD_sFeWv3jz0JxaUDxnLXAt5mc2LiNQ35iDUXEJovawC6fRo)

The judgement of the first instance had been affirmed by the Court of Appeals in September 2016.¹³¹

This way, by court decisions, three court proceedings regarding which the State Prosecutor charged Uka with various criminal offenses, were terminated.

Nuhi Uka has also been charged regarding the case “Toka”, where 22 persons including Azem Sylja, former Member of the Assembly from Kosovo Democratic Party, were accused of suspicions of wrongdoing regarding several properties in Çagllavica.

Uka and others are accused that in collaboration, by criminal activities, have deprived Kosovo’s social properties, including forging official decisions and documents, fraud and other corruption offenses.

In this trial, Uka, as the President of the Municipal Court of Pristina, was charged with criminal offenses of “organized crime”, “abusing official position or authority”, “fraud in office”, “accepting bribes” and “issuing unlawful judicial decisions”.

This case is still in process, but initially because of Uka’s health condition, it was ordered the severance of proceedings. Whereas, on September 28, 2018, he died and thus the proceedings against him were terminated.¹³²

1.7) Shaban Buza, Rektor i Universitetit të Gjakovës

Without going through the fact – finding stage, the Basic Court of Gjakova had dismissed the indictment against Shaban Buza, Rector of the University of Gjakova “Fehmi Agani”.

This court, on September 2017, appraised that the Basic Prosecution of Gjakova had not provided enough evidence to schedule the main trial.¹³³

Only one month later, it was the Court of Appeals that affirmed the judgement of the first instance, by which the indictment of the Prosecution was dismissed and the proceedings against Buza were terminated.¹³⁴

According to the indictment of the Prosecution, Shaban Buza was accused that in the period from October 9, 2015 until September 13, 2016, acting as Rector of the University of Gjakova “Fehmi Agani”, with the intent to obtain an unlawful material benefit for himself,

¹³¹ “The Court of Appeals affirms the innocence of Nuhi Uka, regarding former state properties”. Info sot. September 10, 2016 (Follow link http://infosot.com/apeli-verteton-pafajesine-e-nuhi-ukes-ne-lidhje-ish-pronat-shoqerore/?amp_markup=1)

¹³² “Case “Toka”, Ilaz Sylja flees, severance of proceedings ordered against him and the others who were not present in the court session”. Oath for Justice. September 3, 2018 (Follow link <https://betimiperdrejtesi.com/rasti-toka-arratiset-ilaz-sylja-vecohet-procedura-ndaj-tij-dhe-te-tjereve-qe-munguan-ne-seance/>)

¹³³ “The Rector of the University of Gjakova pleads not guilty (Video)”. Oath for Justice. July 17, 2017 (Follow link <https://betimiperdrejtesi.com/deklarohet-i-pafajshem-rektori-i-universitetit-te-gjakoves/>)

¹³⁴ “Court of Appeals affirms the dismissal of indictment regarding the case of the Rector of the University of Gjakova, Shaban Buza”. Oath for Justice. October, 10 2017 (Follow link <https://betimiperdrejtesi.com/apeli-verteton-hudhjen-e-aktakuzes-ne-rastin-e-rektorit-te-universitetit-te-gjakoves-shaban-buza/>)

and to cause harm to the university, has abused his official position by surpassing his official powers.

He was accused that after the inspection by the Inspectorate of Education it was found that professors were employed unlawfully, without notarized documentation, with no certified documentation of diplomas issued outside Kosovo and assistant professors who surpassed the anticipated age by law were employed.

1.8) Hysni Hoxha, former Chairman of Procurement Review Body

Hysni Hoxha former President of the Procurement Review Body (PRB), this year “won” against three charges that accused him of criminal offenses regarding the abuse of official position.

This year, in January, the Basic Court of Pristina issued a rejection judgement on him and officials of KEK, Emin Tmava, Hanefi Hajdini, Driton Pruthi, Muhamet Selmani, Njazi Thaçi, and the PRB expert Azem Duraku, accused for corruption. This decision was issued after the EULEX Prosecutor Paul Flynn decided to waive of prosecution against them due to lack of evidence.

According to this indictment, Hoxha and others were accused of influencing to announce as winners of the KEK’s tender of millions, two companies that allegedly have applied using falsified documents, thus causing harm to KEK.

On another occasion, Hoxha, although initially convicted by the first instance for “abuse of official position”, he was found not guilty by the second instance.

Following the judgement of the Basic Court of Prishtina, of December 23, 2016, according to which Hoxha was sentenced to three years of effective imprisonment, the defense filed an appeal and the Court of Appeals decided to waive the punishment of Hoxha on the grounds that he did not commit the criminal offense for which he was sentenced from the first instance.

In this case, the Special Prosecution of the Republic of Kosovo charged Hysni Hoxha with the criminal offense of “abusing official duty”, since acting as the President of the PRB, with the intent to obtain an unlawful material benefit for himself, he surpassed his legal powers. According to the indictment, Hoxha on October 3 and 9, 2014 had acted in violation of the provisions of the Public Procurement Law.

Specifically, this indictment was filed based on the appeals of consortiums “Caraglio SRL” and “NTSh Electra” against the decision of the contracting authority KOSTT regarding the procurement activity “Installation of Measuring Groups at the Border between KOSTT (KEK) and OSSh”, although regarding this appeal, competent to issue a decision according to the Prosecution was the Review Panel of the PRB, that consisted of 5 members. The value of this procurement activity was 2,327,240.19 Euro.

Hoxha managed to waive another indictment of the Special Prosecution, charging him once more of the criminal offense of “abusing official position”.

This is related to the indictment filed against him, against the review expert of PRB Hysni Muhadri, against the owner of the company “Conex” Veton Fetahu and against the external accountant of the company Arsim Robelli.

After the end of the main trial, the Basic Court of Pristina issued a judgement acquitting Hoxha and the accused Muhadri and Robelli, on the grounds that it was not proven that they committed criminal offenses charged by the Prosecution. Whereas, Fetahu had previously agreed to plead guilty regarding criminal offenses he was charged with.

The indictment of the Special Prosecution of the Republic of Kosovo (SPRK) states that Hysni Hoxha and Hysni Muhadri in collaboration, committed the criminal offense of “abusing official position or authority”.

According to the indictment, this offense, the abovementioned defendants have performed in June 2013, when Hoxha acted as Chairman of the PBR and at the same time as Chairman of the Procurement Review Panel, while Muhadri acted as review expert of the PBR.

According to the first enactment clause, two defendants, with direct intent, have surpassed their official powers, obtaining material benefit in the amount of 1,799,759.54 Euro, for the construction company “Conex Group”, owned by Valon Fetahu.

In this case, the economic operator “NN Beni Construction & Jaha Company SHPK” in Viti had filed an appeal regarding the procurement activity “Construction of business premises in Qyteza Pejton”. Hoxha as Chairman of PRB although informed by the Tax Administration of Kosovo (TAK) about some unfavourable data regarding “Conex Group”, hid those data from two other panelists, even though those data were crucial.¹³⁵

1.9) Shyqyri Haxha, former Chairman of the Post and Telecom of Kosovo

On the list of high profile officials accused of corruption offenses but who already have a final judgement of acquittal is also the former Chairman of PTK, Shyqyri Haxha.

The Basic Prosecution of Pristina charged Haxha of the criminal offense of “abusing official position”, while on November 4, 2016, the Basic Court of Pristina, in absence of evidence, found him not guilty.¹³⁶

The first instance judgement was affirmed by the Court of Appeals, thus acquitting Haxha from the allegations.¹³⁷

According to the indictment filed in November 2014, Shyqyri Haxha was charged because during the years 2009 – 2011 acting as Chairman of PTK implemented the Resolution of the Board of Directors, covering the lease expenses for the staff of PTK living outside of

¹³⁵ “*Spectacles and failures of indictments and trials of corruption during 2017*”. Oath for Justice. January, 6 2018 (Follow link <https://betimiperdrejtesi.com/spektaklet-dhe-deshtimet-e-aktakuzave-dhe-gjykimeve-per-korrupsion-gjate-vitit-2017/>)

¹³⁶ “*Former Chairman of PTK, Shyqyri Haxha is found not guilty*”. Oath for Justice. November, 4 2017 (Follow link <https://betimiperdrejtesi.com/shpallet-i-pafajshem-ish-kryeshefi-i-ptk-se-shyqyri-haxha/>)

¹³⁷ Ibid

Kosovo. Thus, according to the indictment, he had unlawfully benefited from the payment of rent and other charges, in the amount of 2,000 Euro each month, or 53,000 Euro in total.

“It was an expected decision, but it still is welcomed when it comes out of an institution. It was all a misunderstanding”, Haxha said, after being found not guilty.¹³⁸

1.10) Driton Gashi, former Director of Kosovo Intelligence Agency

Prosecutor Feti Tunuzliu did not take more than two weeks to change his mind regarding the indictment filed against the Permanent Secretary of the Ministry of Internal Affairs, Driton Gashi.

The indictment against the aforementioned was filed by Tunuzliu on May 2016, whereas at the initial hearing on December 27, 2016, regarding which “The Oath for Justice” has reported¹³⁹, neither the prosecutor, nor the defendant Gashi, were present.

The initial hearing was held on January 18, 2017, where the Prosecutor presented the indictment as a valid one in front of the Basic Court of Pristina. Meanwhile, after only 13 days, on the 1st of February, prosecutor Tunuzliu notified the presiding trial judge, Arben Hoti, that he wants to withdraw the indictment. In the statement of grounds, the Prosecutor has said that there is not enough evidence to support the grounded suspicion that Gashi had committed the criminal offense he was charged of according to the indictment.

“After the initial hearing, the Prosecutor by a submission has notified that in accordance with Article 52 of the Criminal Procedure Code has withdrawn the indictment and we have acted in accordance with the law by terminating the criminal proceedings”, Judge Hoti told “the Oath for Justice”.

Just one week after the withdrawal from the indictment, Driton Gashi was appointed as Director of the KIA.

The indictment was filed based on the criminal report submitted by the Head of Division of Civil Aviation Security within MIA, Luan Ismajli, against Driton Gashi, for abusing official position. Ismajli acted this way because, according to the indictment, Gashi by a decision, had transferred Ismajli from the position of the Secretary General at the MIA to another division, thus moving him to a lower level position.

¹³⁸ “Haxha: I knew I would be found not guilty”. Gazeta Express. November 4, 2016 (Follow link <https://www.gazetaexpress.com/lajme/haxha-e-dija-se-do-te-shpalleme-i-pafajshem-274838/?archive=1>)

¹³⁹ “Prosecutor Feti Tunuzliu a week prior the appointment of the Director of KIA, withdraws the indictment against Driton Gashi regarding the criminal offense “abusing official position”. Oath for Justice. February 8, 2017 (Follow link <https://betimiperdrejtesi.com/prokurori-feti-tunuzliu-nje-jave-para-emerimit-te-shefit-te-aki-se-terhiqet-nga-aktakuza-kunder-driton-gashit-per-keqperdorim-te-pozites-zyrtare/?fbclid=IwAR1fOGLZonmN1PxNammeUBC-NyV1qzmJwyGs67Inrp1xwD0MXkaqlarAVEE>)

V. The lack of practical accountability of judges and prosecutors

The judicial system and the prosecutorial system have adopted Code of Ethics and Professional Conduct for judges and prosecutors, the violation of which may result in their dismissal from duty. Monitoring the implementation and taking appropriate measures against judges and prosecutors has affected their improper conduct not being prosecuted and not being held accountable. Disciplinary procedures for judges and prosecutors are in effect, but their implementation in practice is followed by numerous problems. Initially, there is no adequate prosecution of judges and prosecutors, but even in cases where there is a procedure against them, there are delays, where the prosecution and imposition of measures has not been proven to be effective regarding the goal achievement.¹⁴⁰

1. Performance of judges and prosecutors

Up to now, most judges and prosecutors have passed the performance evaluation. The level of professionalism and competence, especially by prosecutors, is still a matter of concern; some have inadequate training, while some do not have the will to apply the training followed and to take full responsibility regarding their cases. There is still no effective system where judges and prosecutors are subject to an effective and systematic evaluation, based on clear criteria and where outcomes serve in their career path.¹⁴¹

1.1) Evaluation of the performance of judges by the KJC

The applicable law that regulates control and accountability in the court system for judges has provided the performance evaluation mechanism for judges and the mechanism of discipline of judges in cases when they act in violation of the Code of Ethics and Professional Conduct for Judges.

The KJC on August 30, 2016 approved Regulation no. 11/2016 on assessing the performance of judges. This regulation defines the procedures and performance evaluation criteria of judges of all levels in Kosovo.

The KJC also established on October 6, 2016 the Judicial Performance Evaluation Commission, which consists of 14 judges from all levels of the courts.

Despite the legal obligation, the KJC during 2016 did not evaluate the performance of any judge.

The Performance Evaluation of Judges by the Performance Evaluation Commission at the KJC started in 2017.

¹⁴⁰ European Commission. “*Kosovo Report 2018*”. April 2018. Strasbourg. Page 16.

¹⁴¹ Ibid

In 2017, a performance evaluation of 66 judges was conducted, of which 2 with initial – term of office, whereas 1/3 of judges with permanent – term of office. Respectively, 54 randomly selected judges and 10 others who applied for promotion.¹⁴²

During 2017, the performance evaluation of judges was completed as planned by the KJC and the Performance Evaluation Commission.¹⁴³

After the performance evaluation, the Performance Evaluation Commission, for 2 judges with permanent – term of office, recommended the measure of attending professional training in terms of drafting judicial decisions, while for 2 judges with an initial – term of office recommended the measure of compulsory training for case management.¹⁴⁴

On 27 December 2017, the KJC issued a decision regarding judges to be subject to performance evaluation during 2018.¹⁴⁵ Based on this decision, during 2018 it is expected that the KJC will perform a performance evaluation for 63 judges.

The performance evaluation process of 63 judges is pending and at the end of this year the Performance Evaluation Commission is expected to produce a final report.

It is expected that this year like the previous years that some judges will be required to attend some sort of training whereas the remaining judges will pass the process successfully.

Although the very beginning of this process represents a relative progression in this regard, the meritorious evaluation of judges, respectively the goal achievement of this process, cannot be said to have been achieved.

1.2) Performance evaluation of prosecutors by the KPC

The Law on Supplement Amendment of the Law on the KPC, in Article 14 / b, has defined the establishment of the Commission for Performance Evaluation of Prosecutors. This commission consists of experienced prosecutors and with high professional and personal integrity.

KPC on 29 August 2011, approved the Regulation on the Performance Evaluation of Prosecutors. This regulation defined the procedures and criteria of performance evaluation of prosecutors.

The KPC also on 24 October 2013, approved a new regulation regarding the performance evaluation of prosecutors. Through this regulation, KPC had defined the purpose that through it to make evaluation and improvement of the performance of prosecutors, determining the

¹⁴² KLI interview via e-mail with Mr. Astrit Hoti, Director of the Legal Department of the KJC Secretariat. January 29, 2018.

¹⁴³ Ibid

¹⁴⁴ KLI interview via e-mail with Mr. Astrit Hoti, Director of the Legal Department of the KJC Secretariat. January 30, 2018.

¹⁴⁵ Decision nr. 369/2017. (Follow link <http://www.gjyqesori-rks.org/GetDocument/7672>)

way of conducting the evaluation and establishing a Commission for the Performance Evaluation of Prosecutors.

Article 4 of this regulation also defined the period of performance evaluation for prosecutors. Thus, prosecutors with initial mandate are evaluated twice within three years, while prosecutors with a permanent mandate are evaluated every three years. This regulation also defined the obligation that KPC for three years to evaluate all prosecutors serving in the prosecutorial system.

The Performance Evaluation Commission in 2016 had carried out a performance evaluation to 22 prosecutors with permanent mandate and 20 prosecutors with initial mandate. The process of performance evaluation was not fully completed within this year and the performance evaluation for a number of prosecutors that had to be completed in 2016 was carried in 2017.

In 2017, the Commission on Performance Evaluation of Prosecutors has evaluated the performance of 61 prosecutors as well as 22 prosecutors within the inherited processes in 2017.

However, the Commission on Performance Evaluation of Prosecutors has not recommended to the KPC any measure to be imposed on evaluated prosecutors.

However, according to the KPC, the performance plan for 2018 planned the performance evaluation of 67 prosecutors.

KPC planned that during 2018 to conduct the performance evaluation for 67 prosecutors, divided into five (5) groups within the evaluation process.

So far (27 November 2018), only 3 processes have been carried out involving 11 prosecutors (i.e. 33 with permanent mandate) and a process with 12 prosecutors. By the end of the year, final process (process 5) will be finalized, in which for the first time 22 prosecutors with initial mandate will be evaluated.

So far, performance evaluation has been conducted on 167 prosecutors.

The number of prosecutors in the beginning of 2017 was 171 prosecutors, by the end of 2017 there were 177 prosecutors, while the current number of prosecutors is 191 prosecutors.

Based on KLI findings, the process of performance evaluation conducted by the prosecutorial system has been prolonged over the years, accompanied with a non-commitment to achieve the goal of the performance evaluation.

Despite this, based on the fact that during 2017 the Performance Evaluation Commission did not recommend to the KPC any measure against any prosecutor, who has been evaluated for performance, the impression is that this is more a formal process than meritorious.

2. Disciplining of judges and prosecutors

The largest complaints in the justice system continue to be raised concerning the misconduct of judges and prosecutors in dealing with cases. While each year there are over 500

complaints which are submitted at the Office of the Disciplinary Counsel against judges and prosecutors with claims of misconduct, at the end the ODC, manage to send a symbolic number of these submissions to the Disciplinary Committee of the KJC and KPC. It is paradoxical that all concerns of citizens, organizations that monitor the justice system and relevant international reports to raise criticism for numerous violations of judges and prosecutors in dealing with cases while at the same time to have a symbolic number of cases that the ODC reaches to certify and send them to the Disciplinary Committees. This proves that even the ODC, for which the Assembly of Kosovo has already decided to quench as a special institution due to failures, has consistently amnestied judges and prosecutors from disciplinary prosecution. In this situation, the accountability of judges and prosecutors has remained an unaddressed issue in an efficient and effective way through the mechanisms established within the judicial and prosecutorial system.

Below are the statistical data of respective KJC and KPC Disciplinary Committees for treating disciplinary cases concerning judges and prosecutors.

1.1) Disciplinary Committee of the KJC

In 2017, the Disciplinary Committee of the KJC and KJC imposed the following disciplinary measures against judges:

- 1 decision – Disciplinary proceeding is ceased due to the prescription of the claim of improper conduct;
- 2 decisions – Reprimand;
- 1 decision – Reprimand with guidance for undertaking corrective actions
- 8 decisions – Release from Disciplinary Responsibility
- 1 decision – Temporary suspension;
- 1 decision – Reduction of salary for 3 months, 30% of monthly salary;
- 1 decision – Reduction of salary for 6 months, 30% of monthly salary;
- 1 decision – Reduction of salary for 4 months, 25% of monthly salary; and
- 1 decision – The Office of the Disciplinary Counsel report is dismissed as unauthorized.

In 2018, the Disciplinary Committee of the KJC and the KJC imposed the following disciplinary measures against judges:

- 2 decisions – Reduction of salary for 6 months, 50% of monthly salary;
- 1 decision – Reduction of salary for 3 months, 20% of monthly salary.

Pursuant to this statistical data, with the exception of one case where a judge was suspended until the criminal proceedings are finalised, the other cases, the most serious measure is the reduction of salary for one judge.

In this regard, so far, there is no a single case of imposing a more serious measure, such as a demotion or dismissal of a judge as a result of his disciplinary violations.

1.2) Disciplinary Committee of the KPC

Disciplinary Committee of the KPC during 2017 rendered the following decisions:

- 7 decisions – Cease of disciplinary procedure;
- 2 decisions – Refusal of request for suspension / resigned from prosecutor's duty after disciplinary review had been scheduled;
- 1 decision – Reduction of salary for 3 months, 30% of monthly salary;
- 1 decision – Reduction of salary for 6 months, 20% of monthly salary;
- 1 decision – Reduction of salary for 3 months, 20% of monthly salary;
- 1 decision – Suspension without payment.

Disciplinary Committee of the KPC during 2018 rendered the following decisions:

- 2 decisions – Cease of disciplinary procedure;
- 1 decision – Reprimand with an order to take corrective actions;
- 1 decision – Refusal of the final report;
- 1 decision – Suspension without payment;
- 1 decision – Demotion (from the department for minors, to the general department).

From these statistical data, it is evident that during 2017 and 2018 there was only one case when a prosecutor was demoted, while at the KPC there was never a case when a Prosecutor was dismissed because of his disciplinary violations.

1.3) Court Presidents reporting to the KJC

Based on the Law on Kosovo Judicial Council, the Presidents of Basic Courts on an annual basis send a report to the KJC on the success of the implementation of the previous annual plan for case management. Likewise, according to the law, the President of the Basic Court sends to the KJC a quarterly written report, that addresses the work of the Court, identifies any problems the Court faces, and proposes remedial steps to address such problems.

Regarding 2017, the Presidents of all Basic Courts and the President of the Appeal Court reported and defended the 2016 Annual Report before KJC.

With the exception of the President of the Basic Court in Peja, all the Presidents of the Basic Courts reported and defended their work before the KJC for the first quarter of 2017.

But for the second quarter, third and fourth quarters, the Presidents of the Basic Courts did not report and defend their quarterly reports before the KJC.¹⁴⁶

The same can be said about 2018. This year, the President of the Supreme Court and the Court of Appeal have reported before KJC members on the work of these courts during 2017.

¹⁴⁶ Some of the Presidents of Court have submitted their reports in writing for each quarter, but they have not been invited by the KJC to report before it.

KLI interview via email with Mr. Astrit Hoti, Director of the Legal Department of the KJC Secretariat, December 8, 2017.

While for the same period of time, as well as for the first three months of this year, all the Presidents of the Basic Courts have reported. While for the second and third quarters of this year, the Presidents of the Basic Courts did not report before members of the KJC.

1.4) Chief Prosecutors reporting to the KPC

The KPC on 29 December 2015, approved the Regulation on the Internal Organization and Functioning of the State Prosecutor.

Article 9 of this regulation defines the responsibilities of the Chief Prosecutor in relation to the KPC. While, Article 9, point 1.4 obliges the Chief Prosecutors to submit to the KPC on a quarterly basis a written report on the work of the prosecution, difficulties and proposing measures related to the improvement of prosecution performance.

Based on KLI findings, it is evident that there was a lack of KPC initiative, to seek or invite the Chief Prosecutors of Prosecution Offices to report before the KPC, failing to meet legal obligations to ensure accountability.

In 2017, the chief prosecutors reported on the work of the prosecution's offices for period of January-March and April-June. However, they did not report before KPC with regards to the period of July - September and October - December 2017.

Despite the fact that the reporting of Chief Prosecutors during 2017 was half done and not in compliance with the law, the situation is even worse with regards to 2018. Thus far (27 November 2018) no Chief Prosecutors of the Basic Prosecution Offices have reported before the KPC members.

VI. Civil protests for vetting in the justice system¹⁴⁷

As a result of public threats made to the resigned prosecutor Elez Blakaj and political interference in the judiciary, a group of Kosovo citizens and civil society activists had organized a protest on August 22, 2018 in Pristina with the motto "Dismiss the Chief State Prosecutor, Vetting for the judiciary". According to the organizers of this protest, the reason for the protest was related to the fact that it is now clear that the prosecution is in the service of politics. Even if there is a prosecutor such as Elez Blakaj who has the will to fight corruption, they will be hampered by Chief State Prosecutor Aleksander Lumezi and Prime Minister Ramush Haradinaj. The citizens of the Republic in such circumstances should be in charge of his civic responsibilities and duties. Now, it is a duty to dismiss Chief State Prosecutor Lumezi and start the vetting process for the Kosovo judiciary. The protest organized on August 22, 2018, was attended by thousands of citizens in Kosovo.

¹⁴⁷ "Political interferences in the politicized prosecutorial system, alarm on the need for vetting in the police, the prosecution and the court". Kosovo Law Institute. August 30, 2018. (See the link <http://kli-ks.org/nderhyrjet-politike-ne-sistemin-e-politizuar-prokurorial-alarm-per-nevojen-e-vingut-ne-polici-prokurori-dhe-gjykata/>)

Regarding the situation in the justice system in Kosovo, threats against Prosecutor Blakaj and policy interventions in the justice system, had also made the European Union Office in Kosovo react. In the statement of this office issued on 22 August 2018, the European Union's position was expressed that “the independence and autonomy of the judiciary, including the prosecution, is of crucial importance in this context and should be ensured”. The European Union has called on everyone to refrain from any possible attack on the rule of law institutions, including any personal or defamatory comments on individual prosecutors or judges. “Statements of some Kosovo politicians and prosecutors in this regard undermine the main principles of the rule of law. Moreover, they also send discouraging signals to all judicial officials dealing with sensitive and important cases”.

The organizers of the #Protestoj initiative have again held civil protests on August 29, 2018, in which thousands of citizens participated, with requests for independent justice, for dismissal of Chief Prosecutor Aleksander Lumezi, for vetting of the judiciary as well as requesting that lists of KLA veterans to be cleaned and to return the dignity of the true veterans.

The protest was supported by 14 civil society organizations, which supported the protest organized by the group of citizens for the dismissal of Chief State Prosecutor Aleksander Lumezi, saying that the former Special Prosecutor Elez Blakaj's letter sent a signalled the low integrity of the justice system, in particular the state prosecution, with political interferences, blackmail and threats.

“After the resignation of former Special Prosecutor, Elez Blakaj, we as civil society organizations fully support the protest organized by the group of citizens for the dismissal of the Chief State Prosecutor, Alexander Lumezi. Mr. Blakaj signals the weak integrity of the justice system, in particular the state prosecution in the face of political interference, blackmails and threats, which also come from the Chief State Prosecutor”, the announcement states. Among other things, civil society organizations have said that the interference of Chief State Prosecutor Lumezi to avoid confronting high political figures with the justice process is alarming for the justice in Kosovo.

“The resignation of Chief Prosecutor, Lumezi, would increase citizens' confidence in independent justice, therefore we support the civic protest, and we demand that besides its dismissal the vetting process in the justice system should begin as in all the countries of the region”, it was highlighted in the notification. The announcement states that these organizations strongly believe that only an independent justice system with integrity and immunity from political interference can guarantee the rule of law, which is a prerequisite for the functioning of a democratic state.

The protest ended on 12 September 2018 by the organizational group of citizens on the grounds that they did not see the potential for massive protest.

VII. Vetting without an alternative for judges, prosecutors, and police officers

Despite the fact that the architecture of justice institutions and positive legislation in the Republic of Kosovo has not been lacking, in practice, concrete results were lacking in fighting crime, providing legal certainty and treating cases in a reasonable time, fairly, impartially and independently.

Unfortunately, the transfer of powers from the international justice institutions to the locals has been followed by a great degradation of these institutions, political seizure of all institutions and key positions in the justice system. In this way, the main culprit remains to be politics, whom has achieved their goal, by the seizure of justice institutions including the recruitment process and the appointment of key positions in the judicial and prosecutorial system.

The treatment of the cases elaborated in this report, which includes high profiles, show that the justice system has not proven the will to exercise its powers and responsibilities on the basis of the Constitution and the positive legislation, on the contrary served as an amnesty of the unlawful and criminal activities of high profile officials. The Republic of Kosovo continues to remain synonymous of a state where the rule of law is lacking, and where the culture of impunity for high profile cases is a standard of living. The corrupt and perpetrators of the law are constantly promoted and are transformed into a “model of success” for achievement in Kosovo.

Reports of local and international organizations that monitor the justice system in Kosovo, have consistently reported on extreme politicization of the judicial and prosecutorial system in Kosovo. European Commission Progress Reports on Kosovo, US Department of State Reports, conclusions of the subgroups of the meetings related to SAA between the European Commission and Kosovo conclude the lack of results in the fight against organized crime and high-level corruption in Kosovo, the politicization of independent institutions, including the justice system, installing a culture of impunity, etc.

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

KLI as the only NGO that systematically monitors the justice system, in its reports has exposed the problems which the justice system faces in Kosovo, with lack of efficiency, accountability, transparency, internal corruption and lack of public confidence. In this regard, a vetting process is uncompromising and the only way of depoliticizing the justice system in Kosovo. Citizens and the public do not have the luxury to endure the violation of their rights and freedoms by a system which instead of the division of justice has become into a greatest violator of the rights and freedoms of the citizen.

In this created situation, which is hopeless, it is indispensable for Kosovo to start with concrete actions towards the vetting process in the Police, Prosecution and the Court. Through this process citizens should be assured that vetting will be done in independent, fair and impartial way. The integrity of the whole process would be guaranteed if it is implemented under the leadership of friendly states that have supported building the state of Kosovo over the years such as the United States, Great Britain and Germany.