SENTENCING POLICY IN KOSOVO

(Analysis on the implementation of the Sentencing Policy Guidance by Kosovo Courts)
Author: Gzim Shala

Editors: Ehat Miftaraj, Betim Musliu dhe Yll Zekaj

No part of this material may be printed, copied, reproduced in any form, electronic or printed, or in any other form of reproduction without the permission of the Kosovo Law Institute.

IKD dhe ajo nuk pasqyron pikëpamjet e Byrosë së Narkotikëve Ndërkombëtar dhe Çështjeve të Zbatimit të Ligjit (INL) - Departamenti i Shtetit Amerikan dhe NED-it. The content of this publication is the exclusive responsibility of the Kosovo Law Institute - KLI and it does not reflect the views of the International Bureau of Narcotics and Law Enforcement Matters (INL) - the US State Department and NED.

About KLI

KLI, Kosovo Law Institute, is a nongovernmental and non-profit organization of public policy, a think tank specialized in the justice sector.

KLI
Str. Rrustem Statovci
Pristina
E: info@kli-ks.org
www.kli-ks.org

November 2019
Pristina, Republic of Kosovo
## Content

I. Executive Summary .......................................................................................... 5

II. Introduction ........................................................................................................ 8

III. Sentencing Guidelines .................................................................................... 10

IV. Methodology ..................................................................................................... 12

V. Sentencing policy in Kosovo ............................................................................. 15
   a. Introduction ........................................................................................................ 15
   b. General findings ................................................................................................ 16

VI. Sentencing policy in corruption cases ............................................................. 31
   a. Introduction ........................................................................................................ 31
   b. General findings ................................................................................................ 32
   c. Case-based analysis of corruption cases .......................................................... 44

VII. Sentencing policy in murder cases ................................................................. 103
   a. Introduction ....................................................................................................... 103
   b. General findings ............................................................................................... 103
   c. Case-based analysis of murder cases .............................................................. 115

VIII. Sentencing policy in terrorism cases ............................................................. 143
   a. Introduction ....................................................................................................... 143
   b. General findings ............................................................................................... 143
   c. Case-based analysis of terrorism cases .......................................................... 152

IX. Sentencing policy in weapons offenses ............................................................ 166
   a. Introduction ....................................................................................................... 166
   b. General findings ............................................................................................... 166
   c. Case-based analysis of weapons offenses ....................................................... 175

X. Sentencing policy in cases of criminal offenses adjudicated in the general departments ............................................................................................................ 190
   a. Introduction ....................................................................................................... 190
   b. General findings ............................................................................................... 190
   c. Case-based analysis of cases involving criminal offenses adjudicated in the general department ................................................................. 202

XI. Sentencing policy at the Appellate Court ....................................................... 244

XII. Recommendations .......................................................................................... 246
**Abbreviations**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>KFA</td>
<td>Kosovo Forensic Agency</td>
</tr>
<tr>
<td>DARD</td>
<td>Directorate of Agriculture and Rural Development</td>
</tr>
<tr>
<td>KAF</td>
<td>Kosovo Athletics Federation</td>
</tr>
<tr>
<td>KLI</td>
<td>Kosovo Law Institute</td>
</tr>
<tr>
<td>KEDS</td>
<td>Kosovo Electricity Distribution and Supply Company</td>
</tr>
<tr>
<td>KJC</td>
<td>Kosovo Judicial Council</td>
</tr>
<tr>
<td>CCRK</td>
<td>Criminal Code of the Republic of Kosovo</td>
</tr>
<tr>
<td>RWC</td>
<td>Regional Water Company</td>
</tr>
<tr>
<td>LRTS</td>
<td>Law on Road Traffic Safety.</td>
</tr>
<tr>
<td>MEST</td>
<td>Ministry of Education Science and Technology</td>
</tr>
<tr>
<td>MCYS</td>
<td>Ministry of Culture, Youth and Sport</td>
</tr>
<tr>
<td>MLSW</td>
<td>Ministry of Labor and Social Welfare</td>
</tr>
<tr>
<td>MTI</td>
<td>Ministry of Trade and Industry</td>
</tr>
<tr>
<td>UCCK</td>
<td>University Clinical Center of Kosovo</td>
</tr>
<tr>
<td>Guidelines</td>
<td>Sentencing Guidelines</td>
</tr>
</tbody>
</table>
I. Executive Summary

Sentencing policy in Kosovo has, for long time, been a subject to criticism by both NGO-s that monitor the justice system and international partners monitoring and supporting justice system in Kosovo. Likewise, it is not uncommon for the heads of the judicial and prosecutorial system themselves to publicly criticize the judicial system's sentencing practice.

A turning point in addressing the lack of uniform approach to sentencing and proper implementation of provisions of the Criminal Code and Criminal Procedure Code, was the initiative of the US Embassy to have the Supreme Court of the Republic of Kosovo adopt Sentencing Guidelines in Kosovo (hereinafter: Guidelines). These Guidelines were issued by the Supreme Court of the Republic of Kosovo on 15 February 2018 at the general meeting of this Court.

The Guidelines were referred to by various stakeholders within the justice system as a turning point with regard to unification of sentencing policy in the judicial system of the Republic of Kosovo, and in particular with regard to the type and severity of sentences in similar cases.

However, in order to assess the implementation of Guidelines in practice by the courts in Kosovo, related to sentencing, around 21 months after its adoption, KLI has produced a detailed report on the courts' approach to its practical application. KLI used a methodology developed by the Supreme Court in the Guidelines in order to get a clear picture on how Guidelines are implemented in practice.

In the 73 analyzed judgments that fall into different categories of criminal offenses which were decided by courts with judgments of conviction, KLI found that the Guidelines have had the same fate as many other adopted policies and documents, in the sense that they were not implemented in practice, but have remained a policy and document only in paper.

Initially, the data researched and analyzed in this report show two phenomena. The first one is that in principle there is no uniform practice in the judicial system of the Republic of Kosovo which would then be made more concrete depending on the specifics of a case. And the second one is that no part of the Guidelines has been implemented to a satisfactory level, which may otherwise be translated into virtually no implementation of the Guidelines in practice.

Furthermore, based on analyzed judgments it was observed that there is no consistency in the reasoning, which would be achieved by using very practical solutions of the Guidelines, that would enable courts to reach conclusions so that the sentence is well reasoned.

From the way in which judgments are reasoned in the part that determines the type and amount of punishment, in addition to non-application of Guidelines requirements, KLI finds that courts have already established some reasoning templates, which they apply in most judgments without adapting them to specifics of each case. This finding refutes the justification of stakeholders within the justice system that the divergences in sentencing exist because each case is specific, as the created templates were not affected by specifics of cases but by the approach taken by judges.
Because of such approach of judges, we found that the mitigating and aggravating factors, in the vast majority of analyzed judgments, were not applied in accordance with the requirements of the Guidelines and that there is a large number of ignored factors which the courts did not apply and for which they failed to provide reasoning as to why they did not represent mitigating or aggravating factors in a given case. Likewise, in each category there is a widespread phenomenon of what is referred to in the Guidelines as "double counting of factors". Furthermore, it was observed in the analyzed judgments that the issue of intrinsic assessment of aggravating and mitigating factors and weighing thereof is completely dead in practice. According to the Guidelines, these two issues are among the key issues in the sentencing policy. On the other hand, some of the solutions in Guidelines are almost never implemented, addressed or even mentioned in the analyzed judgments. If this phenomenon is found in almost all analyzed judgments, this means that, the judges are completely uninformed, have no interest, or lack sufficient knowledge to understand most of the Guidelines properly.

Unfortunately, in addition to the reasoning part there are also templates related to imposed sentence, especially on corruption cases. This is because out of 34 effective imprisonment and suspended sentences in corruption cases, a total of 23 contain imprisonment term of six months.

As to the volume of reasoning of judgments in the part determining the type and amount of sentence, courts in the vast majority of cases fail to provide an appropriate reasoning. In this case, by appropriate reasoning we mean a level of reasoning that would convince parties and the public as to why a particular sentence was imposed in a particular case. As to the factors applied, the mitigating factors applied are in complete disproportion to the aggravating ones. In all analyzed judgments, KLI found that courts applied 235 mitigating factors and only 75 aggravating factors. Moreover, KLI found that in a total of 32 cases, Courts did not apply any aggravating factors. The phenomenon of mere quoting of factors is very widespread in all categories.

As to the the goals of sentencing, KLI initially found that courts are unaware of certain number of goals set out in the Guidelines, as they did not even quote them in their judgments. On the other hand, the way these goals are applied is in complete contradiction to the Guidelines, as the attainment of the goals of sentence by imposing a particular sentence is taken by courts as a fact, and they fail to provide any reasoning as to how these goals of punishment are achieved.

The sentencing principles set out in the Guidelines are basically dead in practice.

Regarding the severity of punishments, the findings indicate that of all the categories analyzed in this chapter, the most lenient sentencing policy is in cases of corruption. Indeed, sentences in corruption cases were more lenient than those for cases tried in the General Department. Out of the total of sentences imposed in judgments analyzed in this report in the corruption chapter, courts have issued a total of 14 judgments with effective imprisonment. However, of these 14 sentences with effective imprisonment, courts have converted 9 of them
to fine, which implies that we have only 5 judgments with effective imprisonment, while 9 of them have been identified in the chapter of criminal offenses tried by the General Department.

In addition, another indication that speaks about leniency of the justice system in corruption cases is that out of 25 analyzed judgments, courts imposed accessory punishment in only one case while the same was not applied in 24 other judgments.
II. Introduction

Sentencing policy in Kosovo has long been a subject of various media criticism. All this criticism was made for certain cases in which the media have had a more specific interest. Differences from one case to another regarding the type and amount of punishment have been the main subject of criticism.

However, none of the stakeholders within the justice system ever gave any justification about cases reported in the media, under the pretext that every judge is independent in deciding a case, which also includes his or her discretion in deciding the type and amount of punishment.

On the other hand, although the KJC Performance Appraisal Committee analyzes randomly selected judgments of judges, so far the KJC has not made any announcement whether any measure has been imposed on any judge related to sentencing policy, within the judicial system of the Republic of Kosovo.

In this regard, the sentencing policy in the Republic of Kosovo has had no consistency. However, in absence of a relevant reference point, the criticism of sentencing policy itself was inconsistent.

A turning point in addressing all these problems was the adoption of the Sentencing Guidelines in Kosovo (hereinafter: the Guidelines) by the Supreme Court of the Republic of Kosovo. These Guidelines were issued by the Supreme Court of the Republic of Kosovo on 15 February 2018 at the general meeting of this Court. The Supreme Court issued these Guidelines based on Articles 22 and 23 of Law no. 03/L-199 in Courts. The Guidelines were adopted at this meeting by a majority vote.

Additionally, the adoption of Guidelines was regarded by various stakeholders within the justice system as turning point in terms of sentencing policy in the judicial system of the Republic of Kosovo, and in particular with regard to the large differences in the type and amount of sentences imposed in similar cases.

With regards to the Guidelines, its adoption was supported and continues to be supported by KLI.

However in order to assess whether the Guidelines really represent a turning point in the judicial system regarding sentencing policy, today after more than 16 months of their adoption, the KLI brings about a detailed report as to whether the Guidelines introduced a new policy in paper, or whether it found practical application in court judgments.

In this report, the KLI has analyzed implementation of the Guidelines in detail from a total of 73 judgments. These judgments are divided into categories, some of which are in the category of criminal offenses under the chapter of corruption, criminal offenses of murder, terrorism, weapons trafficking, criminal offenses tried in the general department and judgments of the Court of Appeal.
In order to correctly assess implementation of the Guidelines in these cases, the KLI has developed a specific methodology, which is fully in line with the methodology developed by the Guidelines.
III. Sentencing Guidelines

The Supreme Court of the Republic of Kosovo has approved the Sentencing Guidelines in 2018.¹ According to the Supreme Court the purpose of the Guidelines is to offer wider viewpoint of current laws and sentences, address problems that are often encountered and offer a uniform approach. Despite the fact that the Guidelines are not legally binding, according to the Supreme Court, the proposed principles and standards are useful tools for the court in assessing a range of individual factors of defendants and provide a framework for assessing sentencing decisions.

The Guidelines serves as a roadmap, a method for comprehensively addressing the relevant provisions of the Code, and a suggested format for gathering evidence for sentencing and compiling opinions. They also provide an indicative list of factors to be used by judges to mitigate and aggravate sentences; as well as an account of the gravity that such factors should have in the final sentence. If followed, these Guidelines will not only improve professionalism of courts, but will also improve human rights compliance in Kosovo courts in general.²

The Guidelines quote author Gabriel Hallevy, who says that “different judgments by courts in similar cases lead to a social culture where the de jure law enforcement differs from the de facto one. When one trial panel is extremely lenient with the perpetrator, while the other panel imposes harsh sentences within this mechanism which prevents perpetrators from repeating the offense, the panel's identity becomes a factor and perpetrators will favor being tried by one panel over the other.”

The Guidelines also quote a judgment of the Constitutional Court of the Republic of Kosovo, which determined that inconsistency in decisions constitutes a violation of the ECHR, expressly stating that: “Decisions taken by regular courts in matters of law that are completely the same and the inability and unwillingness to create a consistent case-law seriously violates the principle of legal certainty as one of the basic principles of the rule of law, therefore, there is no doubt that the decisions taken under such factors constitutes a violation of Article 6 of the ECHR and Article 31 of the Constitution (see: Case Beian v. Romania, 30658/05, 2007, ECHR”).

According to the Guidelines, another problem relates to the failure of courts to adequately articulate reasons for imposing a particular sentence. This includes both the process followed by the court and the reasoning behind the finding or existence of a specific mitigating or aggravating circumstance. As the Council of Europe points out, "courts in general have to emphasize concrete reasons for imposing sentences."

The Guidelines acknowledges that current sentencing practices also lead to reduced transparency, violate the principle of legality, and greatly contribute to the negative outlook for the judiciary. All these three factors further undermine the rule of law.

In order to address these problems, the Guidelines provide detailed explanations of the entire procedure to be followed by courts in determining the type and amount of punishment, which if followed would also address problems identified in the sentencing policy.

In this spirit, the Guidelines initially explain the procedural aspects of the sentencing policy. Subsequently, the Guidelines addressed the relevant sentencing principles, which explain the types of sentences, the purposes and principles of sentencing.

Furthermore, the Guidelines contains two separate and voluminous chapters as the backbone of this document, which provide detailed explanation of mitigating and aggravating factors, and categorize them into different categories. In this respect, the Guidelines are very specific and detailed, in that they explain the meaning of each circumstance, the factors to be considered when applying the same and the relevant questions that should be answered by the court when applying such circumstance. In terms of factors, the Guidelines also provide for detailed explanations of how the intrinsic importance of aggravating and mitigating factors is determined and how these two types of factors are weighed. The Guidelines also provide for concrete guidance on how courts should avoid duplicating factors, in the sense that if something does not constitute a circumstance it should not be used at all and that the same factors should not be used more than once in a single judgment.

The Guidelines also contain a chapter called "Implementation of Guidelines in practice", which provides instructions on how court should act in each case, providing for detailed explanations on calculation of the sentence.

The Guidelines also address application of alternative sentences, accessory punishments, alternative practices and review of cases by the appellate level.

According to the Guidelines, provision of adequate reasoning for the final sentence is of primary importance.

Finally, the Guidelines also contain Appendix 1, namely the sentence calculation grid table. This grid, sets forth standards for each case, as to what are the sentence ranges that can be used by courts when imposing a sentence. As to which box should be used to categorize every offense, the Guidelines provide for detailed explanations in the chapter called "Implementing Guidelines in practice".
IV. Methodology

The Kosovo Law Institute (KLI) is now in its sixth year of systematic monitoring of justice system in dealing with corruption cases. The KLI monitors cover all courts, branches of courts and prosecution offices in the Republic of Kosovo. They monitor court cases with special focus on corruption cases, other criminal, civil, administrative and commercial cases. In addition to this obligation, KLI monitors are focused on the implementation of legal obligations by the holders of judicial and prosecutorial functions and the support staff. Monitoring focuses on daily performance of courts and prosecution offices in implementing the law, policies and action plans adopted by the KJC and KPC. All findings from the monitoring process are collected at the KLI Center in Pristina, where the Institute's legal analysts conduct legal and practical research using the field data. This research methodology offers practical opportunities to identify problems and analyze all issues of interest to implementation of the law.

The present report presents the level of implementation of Guidelines in the judicial system of the Republic of Kosovo. All analyzed judgments date from February 15, 2018 and onwards, which corresponds to the date of adoption of the Guidelines.

As far as the present report is concerned, KLI has been extremely careful in stating that the analysis of judgments do not represent comments to court judgments. In this way, the entire methodology of analyzing a case is done according to the Guidelines themselves.

The present report is fully in line with the induction method, which implies that each case is analyzed separately, and the data extracted from these cases were used to compile a specific chapter, on the basis of which the final report was compiled. Finally, KLI has also applied the deductive method, in the sense that, KLI has generated assessments on sentencing policy in Kosovo based on overall findings.

In terms of analyzing the case, each case contains two parts: the judgment and the implementation of the Guidelines. In the part of the judgment, it describes the enacting clause of the judgment, the sentence for the offense for which the person was convicted as prescribed by the law, the sentence imposed, the mitigating and aggravating factors applied in the particular case, and the reasoning for the appropriateness of the sentence. All of these are descriptions taken from analyzed judgments. Whereas, in the part related to implementation of the Guidelines, judgments were analyzed to see if they were in line with the Guidelines in the part of appropriateness of the sentence, application of principles, mitigating and aggravating factors stated in the judgment, whether the factors were ignored and whether the method proposed in the Guidelines was used for calculation of the sentence.

On the appropriateness of the sentence, KLI has analyzed whether the court in the judgment referred to the four purposes of the sentence set out in the Guidelines. In this section, KLI also analyzed whether there is a reasoning of the court with regard to mentioned purposes, respectively, whether there is a reasoning regarding relation of the imposed sentence with the achievement of purposes of the sentence. In terms of application of principles, under the
Guidelines the sentencing principles should serve as guidance when imposing the sentence, and the same principles should be reasoned by special mitigating or aggravating factors. Thus, the KLI has analyzed these judgments, in this spirit to observe if the reasoning has been applied in such a way in court judgments.

As to the mitigating and aggravating factors set out in the judgment, the KLI has analyzed each circumstance used in relation to the Guidelines. The Guidelines determine the meaning of each circumstance, the factors to be considered when applying such factors, and the relevant questions that need to be answered by the court. All these aspects were analyzed in every judgment, by comparing the factors stated in judgments with the determinations set forth in the Guidelines.

As to the factors ignored in a concrete judgment, KLI has did not dwell in concrete cases as to what the court should have taken as a mitigating and aggravating factors. A measure of assessment of whether or not a circumstance has been ignored by the court in a judgment is whether the court has applied a particular circumstance or not, and if not, has the court given the reason why a given circumstance in the present case cannot serve as a mitigating or aggravating circumstance.

Whereas, in terms of the method used in the sentencing Guidelines for such determination, it is worth mentioning the method for qualifying a case as well as the method for determining the sentence ranges. Both of these aspects derive from the Guidelines. Initially, with regard to the qualification of a case in relation to Appendix 1 to the Guidelines, KLI initially looked at whether the court had determined the intrinsic importance of the aggravating and mitigating factors, and whether it had balanced those factors. If not, KLI, analyzed the factors indicated in a specific judgment, and then analyzed the guideline, namely the chapter "Implementation of Guidelines in practice", to determine which particular case qualified in which column of the annex. Thus, KLI only referred to the factors set out in the judgment and what the court should have or should not have taken into account was not seen as relevant in this report. This was done with the intention to avoid commenting judgments so that the report serves exclusively as an assessment of implementation of Guidelines in practice. Following qualification, KLI referred to Appendix 1 to the Guidelines, which sets out sentence ranges, and based on those ranges, it determined whether or not a sentence imposed in a specific judgment is within those ranges. Likewise, another issue worth noting in this case is that Appendix 1 to the Guidelines sets no ranges as to the fine. In this regard, by using the same logic as the one in Appendix 1 to the Guidelines, KLI has determined the ranges for a fine punishment, and also assessed whether or not a fine has been imposed within those ranges.

In terms of judgments issued in cases where there was a plea agreement, the Guidelines expressly states that “in order to facilitate plea agreement and speed up processing of the case, courts are strongly encouraged to reject plea agreements which are inadmissible and allow them to renegotiate for another plea agreement rather than impose a sentence outside the one proposed in the plea agreement thereby avoiding appeals and resolution of cases at the appellate level.” For this reason, even in such cases, KLI did not analyze plea agreements.
at all but only judgments, respectively the part of the verdict dealing with the determination of the type and amount of punishment.

Whereas, as far as the Court of Appeals is concerned, the Guidelines do not establish a specific method for cases in appellate proceedings, but only talks about the principles by which this court should be guided when dealing with judgments rendered by first instance courts. For this reason, the section on sentencing at the Court of Appeal was not built based on the same methodology as in the case of judgments rendered by first instance courts, but it only generally addresses findings of the 10 cases analyzed.

At the end of this report, KLI presented concrete recommendations related to findings of the present report.
V. Sentencing policy in Kosovo

a. Introduction

In this report, KLI analyzed a total of 73 judgments. Of these, 25 are judgments related to criminal offenses from the corruption chapter, 10 are judgments for the criminal offense of murder, four are judgments for the offenses of terrorism and those involving weapons, 20 are judgments for offenses tried in General Department and 10 judgments of the Court of Appeals.

In this section of the report, KLI will present the general findings for all categories, while in the following section, each category of judgments analyzed is divided into a separate chapter.

The overall KLI findings indicate that the Guideline has only remained a document in paper which is not applied in practice.

Initially, the following data show two phenomena. The first is that the judicial system of the Republic of Kosovo has no uniform practice in principle, which would then be made more concrete depending on specifics of a given case. The second is that no part of the Guidelines was implemented to a satisfactory level, which may otherwise be translated as the Guidelines are not fully implemented in practice.

Furthermore, the analyzed judgments show that there is no consistency of reasoning, so that by using the highly practical definitions in Guidelines the court could reach a certain conclusion and the sentence could be reasoned.

When analyzing cases in the present report, it will be noted that courts have created several templates which are applied in most judgments, without adapting them to specifics of each case. This finding refutes the reasoning of the actors within the justice system that the variations in punitive policy exist because each case is specific, as the templates created did not affect the specifics of the cases but the approach of the judges themselves.

Because of such approach of judges, analyzed judgments show a large number of ignored factors which courts did not apply and did not give any reason as to why they did not represent mitigating or aggravating factors in the concrete case, and there was a large number of double counting of factors.

Likewise, the analyzed judgments show that the issue of intrinsic evaluation of aggravating and mitigating factors and weighing thereof is completely dead in practice. According to the Guidelines, these two issues are among the key issues in the sentencing policy.

Unfortunately, apart from the reasoning, templates were also observed in the imposing of the sentence, especially in corruption cases. This is because of 34 sentences of effective imprisonment and suspended sentence in corruption cases, a total of 23 contain the amount of six months of imprisonment.
Likewise, some of the definitions in the Guidelines are almost never implemented, addressed or mentioned in the analyzed judgments. If this phenomenon is found in almost all analyzed judgments, then it could be translated as judges are completely uninformed about a big part of the Guidelines.

Another issue that needs to be clarified in this section and which applies to both the overall findings and to each chapter separately is the issue of sentencing ranges set out in appendix 1 of the Guidelines. With regards to sentencing ranges, we must first consider the methodology outlined above, as to how KLI assessed whether or not a sentence is within those ranges. The methodology is based solely on the Guidelines determinations, for establishing findings in the present report, and was not used to comment judgments or to assume the role of judgments evaluator. The assessment was only conducted against the Guidelines. In this respect, when the qualification of an imposed sentence in the annex to the Guidelines is made, the qualification is made only on the basis of what courts have applied in judgments and then the ranges were determined. The KLI did not state in any case that this mitigating or aggravating circumstance should have been applied in the present case. With regard to ignored factors, the meaning of this issue is addressed in the methodology part of the present report. However, beyond the methodology of the present report, in no case can we say that despite inconsistency of judgments, the sentence is within ranges, implying that the sentence is fair and reasonable. If the principles and rules set out in the Guidelines were to be applied, in relation to appendix 1 to the guide, the qualification within the columns would change, and this would imply other ranges, and consequently other data. However, KLI did not assess this part, and it remains to be done by the KJC Performance Evaluation Committee.

b. General findings

In these 73 judgments, courts imposed a total of 136 sentences. Of all these punishments, the most frequently used sentence is imprisonment followed by a suspended sentence. In terms of prison sentences in the corruption chapter, there is a total of 14 sentences. However, of these 14 sentences, nine were subsequently converted to fines. This implies that in all these cases of corruption, we only had five effective prison sentences. Whereas, there are nine prison sentences in the General Department, which means that in general, courts were tougher on sentencing criminal offenses tried in the General Department than criminal offenses from the corruption chapter. We also have to consider the fact that 25 judgments were analyzed from the corruption field, while five lesser judgments, respectively 20 were analyzed for criminal offenses tried in the General Department.
<table>
<thead>
<tr>
<th>Types of sentences</th>
<th>Corruption</th>
<th>Murder</th>
<th>General Department</th>
<th>Weapons Trafficking</th>
<th>Terrorism</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suspended Sentence</td>
<td>21</td>
<td>0</td>
<td>11</td>
<td>0</td>
<td>1</td>
<td>33</td>
</tr>
<tr>
<td>Imprisonment</td>
<td>14</td>
<td>20</td>
<td>8</td>
<td>16</td>
<td>21</td>
<td>79</td>
</tr>
<tr>
<td>Fine</td>
<td>10</td>
<td>1</td>
<td>14</td>
<td>8</td>
<td>3</td>
<td>36</td>
</tr>
<tr>
<td>Total</td>
<td>45</td>
<td>21</td>
<td>33(^3)</td>
<td>24</td>
<td>25</td>
<td>148</td>
</tr>
</tbody>
</table>

\(^3\) 34 convictions in total, including judicial admonition.

Table 1 - Types of sentences imposed in all categories.
<table>
<thead>
<tr>
<th>The amount of fines</th>
<th>Corruption</th>
<th>Murder</th>
<th>General Department</th>
<th>Weapons Trafficking</th>
<th>Terrorism</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>200 Euros.</td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>300 Euros.</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>400 Euros.</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>500 Euros.</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>600 Euros.</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>700 Euros.</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>1000 Euros.</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>1500 Euros.</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>1800 Euros.</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>2000 Euros.</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>2500 Euros.</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>3000 Euros.</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>3600 Euros.</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>4000 Euros.</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>5000 Euros.</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>7000 Euros.</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>2</td>
</tr>
</tbody>
</table>

Table 2 - Amount of imposed fine sentences.

With regards to application of factors, in all judgments analyzed in the present report, the court applied 310 factors. However, what is noticeable is the large disproportion of mitigating factors in relation to aggravating factors. Of the 310 factors applied, 235 are mitigating, and only 75 are aggravating.
<table>
<thead>
<tr>
<th>Number of mitigating factors applied</th>
<th>Corruption</th>
<th>Murder</th>
<th>General Department</th>
<th>Weapons Trafficking</th>
<th>Terrorism</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>No mitigating factors</td>
<td>1 case</td>
<td>2 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>3 cases</td>
</tr>
<tr>
<td>1 aggravating factor</td>
<td>0 cases</td>
<td>0 cases</td>
<td>3 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>3 cases</td>
</tr>
<tr>
<td>2 aggravating factors</td>
<td>2 cases</td>
<td>3 cases</td>
<td>1 case</td>
<td>0 cases</td>
<td>0 cases</td>
<td>6 cases</td>
</tr>
<tr>
<td>3 aggravating factors</td>
<td>5 cases</td>
<td>1 case</td>
<td>6 cases</td>
<td>2 cases</td>
<td>0 cases</td>
<td>14 cases</td>
</tr>
<tr>
<td>4 aggravating factors</td>
<td>8 cases</td>
<td>2 cases</td>
<td>4 cases</td>
<td>2 cases</td>
<td>2 cases</td>
<td>18 cases</td>
</tr>
<tr>
<td>5 aggravating factors</td>
<td>7 cases</td>
<td>2 cases</td>
<td>5 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>14 cases</td>
</tr>
<tr>
<td>6 aggravating factors</td>
<td>2 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>2 cases</td>
</tr>
<tr>
<td>7 aggravating factors</td>
<td>0 cases</td>
<td>0 cases</td>
<td>1 case</td>
<td>0 cases</td>
<td>1 case</td>
<td>2 cases</td>
</tr>
<tr>
<td>11 aggravating factors</td>
<td>0 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>1 case</td>
<td>1 case</td>
</tr>
</tbody>
</table>

Table 3 – Number of factors applied in cases of sentences.
In terms of severity of imprisonment sentences, which include both effective imprisonment and fines, the lowest sentence is two months of imprisonment, while the highest sentence is life imprisonment, which is imposed in a murder case. Whereas, the most frequent punishment imposed is six months of imprisonment. This sentence has been imposed in a total of 30 cases, 23 of which are within the corruption chapter.

<table>
<thead>
<tr>
<th>Amount of sentences</th>
<th>Corruption</th>
<th>Murder</th>
<th>General Department</th>
<th>Weapons Trafficking</th>
<th>Terrorism</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 months</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>3 months</td>
<td>4</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>4 months</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>6 months</td>
<td>23</td>
<td>0</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td>31</td>
</tr>
<tr>
<td>8 months</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>9 months</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>12 months</td>
<td>1</td>
<td>4</td>
<td>1</td>
<td>6</td>
<td>1</td>
<td>13</td>
</tr>
<tr>
<td>150 days</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>180 days</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>1 year and 6 months</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>2 years</td>
<td>0</td>
<td>2</td>
<td>4</td>
<td>2</td>
<td>3</td>
<td>11</td>
</tr>
<tr>
<td>2 years and 4 months</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>2 years and 8 months</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2 years and 6 months</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>3 years</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>3 years and 6 months</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>----------------</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>4 years</td>
<td></td>
<td></td>
<td>2</td>
<td></td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>4 years and 3 months</td>
<td></td>
<td>1</td>
<td>0</td>
<td></td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>4 years and 6 months</td>
<td></td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>5 years</td>
<td></td>
<td>1</td>
<td>0</td>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>5 years and 6 months</td>
<td></td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>9 years</td>
<td></td>
<td>0</td>
<td>0</td>
<td></td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>9 years and 6 months</td>
<td></td>
<td>1</td>
<td>0</td>
<td></td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>12 years</td>
<td></td>
<td>2</td>
<td>0</td>
<td></td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>13 years</td>
<td></td>
<td>1</td>
<td>0</td>
<td></td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>14 years and 6 months</td>
<td></td>
<td>1</td>
<td>0</td>
<td></td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>19 years and 6 months</td>
<td></td>
<td>1</td>
<td>0</td>
<td></td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>20 years</td>
<td></td>
<td>1</td>
<td>0</td>
<td></td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>21 years</td>
<td></td>
<td>1</td>
<td>0</td>
<td></td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>23 years</td>
<td></td>
<td>1</td>
<td>0</td>
<td></td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>25 years</td>
<td></td>
<td>1</td>
<td>0</td>
<td></td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Life imprisonment</td>
<td></td>
<td>1</td>
<td>0</td>
<td></td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

**Table 4 - Amount of imposed imprisonment sentences.**

In terms of fine punishment, findings show that there is a variety of sentences in terms of amount of fines. The most common fine imposed in all cases is a fine of 1,800 Euros, imposed in five cases.
### Factors

<table>
<thead>
<tr>
<th>Factors</th>
<th>Corruption</th>
<th>Murder</th>
<th>General Department</th>
<th>Weapons Trafficking</th>
<th>Terrorism</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mitigating factors:</td>
<td>98</td>
<td>27</td>
<td>70</td>
<td>14</td>
<td>26</td>
<td>235</td>
</tr>
<tr>
<td>Aggravating factors</td>
<td>25</td>
<td>26</td>
<td>12</td>
<td>8</td>
<td>4</td>
<td>75</td>
</tr>
<tr>
<td>Total</td>
<td>123</td>
<td>53</td>
<td>82</td>
<td>22</td>
<td>30</td>
<td>310</td>
</tr>
</tbody>
</table>

Table 5 - Mitigating and aggravating factors applied in judgments.

Regarding the application of aggravating factors, the courts most often applied four mitigating factors, where such number of mitigating factors was used in a total of 18 cases. In three cases, courts did not use any mitigating factors, while the largest number of mitigating factors are in a terrorism case, in which a total of 11 mitigating factors were applied.
<table>
<thead>
<tr>
<th>Number of mitigating factors applied</th>
<th>Corruption</th>
<th>Murder</th>
<th>General Department</th>
<th>Weapons Trafficking</th>
<th>Terrorism</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>No mitigating factors</td>
<td>1 case</td>
<td>2 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>3 cases</td>
</tr>
<tr>
<td>1 aggravating factor</td>
<td>0 cases</td>
<td>0 cases</td>
<td>2 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>2 cases</td>
</tr>
<tr>
<td>2 aggravating factors</td>
<td>2 cases</td>
<td>3 cases</td>
<td>1 case</td>
<td>0 cases</td>
<td>0 cases</td>
<td>6 cases</td>
</tr>
<tr>
<td>3 aggravating factors</td>
<td>5 cases</td>
<td>1 case</td>
<td>6 cases</td>
<td>2 cases</td>
<td>0 cases</td>
<td>14 cases</td>
</tr>
<tr>
<td>4 aggravating factors</td>
<td>8 cases</td>
<td>2 cases</td>
<td>4 cases</td>
<td>2 cases</td>
<td>2 cases</td>
<td>18 cases</td>
</tr>
<tr>
<td>5 aggravating factors</td>
<td>7 cases</td>
<td>2 cases</td>
<td>5 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>14 cases</td>
</tr>
<tr>
<td>6 aggravating factors</td>
<td>2 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>2 cases</td>
</tr>
<tr>
<td>7 aggravating factors</td>
<td>0 cases</td>
<td>0 cases</td>
<td>1 case</td>
<td>0 cases</td>
<td>1 case</td>
<td>2 cases</td>
</tr>
<tr>
<td>11 aggravating factors</td>
<td>0 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>1 case</td>
<td>1 case</td>
</tr>
</tbody>
</table>

**Table 6 - Mitigating factors applied in cases for all categories.**

In terms of application of aggravating factors, the characteristic is that over half of all first instance judgments are convictions, which were issued without applying any aggravating factor. Thus, the total number of judgments in which no mitigating factors are applied is 32.
Whereas, there are 10 judgments with only one aggravating factor, and 11 judgments with two aggravating factors. The highest number of aggravating factors was applied in a murder case, where a total of nine aggravating factors were applied.

<table>
<thead>
<tr>
<th>Number of aggravating factors applied</th>
<th>Corruption</th>
<th>Murder</th>
<th>General Department</th>
<th>Weapons Trafficking</th>
<th>Terrorism</th>
<th>Terrorism</th>
</tr>
</thead>
<tbody>
<tr>
<td>No aggravating factors</td>
<td>15 cases</td>
<td>1 case</td>
<td>12 cases</td>
<td>2 cases</td>
<td>1 case</td>
<td>31 cases</td>
</tr>
<tr>
<td>1 aggravating factor</td>
<td>3 cases</td>
<td>2 cases</td>
<td>5 cases</td>
<td>1 case</td>
<td>2 cases</td>
<td>13 cases</td>
</tr>
<tr>
<td>2 aggravating factors</td>
<td>2 cases</td>
<td>4 cases</td>
<td>2 cases</td>
<td>0 cases</td>
<td>1 case</td>
<td>9 cases</td>
</tr>
<tr>
<td>3 aggravating factors</td>
<td>3 cases</td>
<td>1 case</td>
<td>1 case</td>
<td>0 cases</td>
<td>0 cases</td>
<td>5 cases</td>
</tr>
<tr>
<td>4 aggravating factors</td>
<td>1 case</td>
<td>1 case</td>
<td>0 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>2 cases</td>
</tr>
<tr>
<td>5 aggravating factors</td>
<td>1 case</td>
<td>0 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>1 case</td>
</tr>
<tr>
<td>7 aggravating factors</td>
<td>0 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>1 case</td>
<td>0 cases</td>
<td>1 case</td>
</tr>
<tr>
<td>9 aggravating factors</td>
<td>0 cases</td>
<td>1 case</td>
<td>0 cases</td>
<td>0 cases</td>
<td>0 cases</td>
<td>1 case</td>
</tr>
</tbody>
</table>

Table 7 - Aggravating factors applied in cases for all categories.

Compared to the Guidelines, the most serious problem is the way these factors are applied. In this regard, the KLI analysis finds that only 37 factors were applied as per the requirements of the Guidelines, while the same has not been done in 272 other factors. In this respect, in addition to other issues, the Guidelines place greater emphasis on factors, whether mitigating or aggravating, and on determining the criteria for using them. In this respect, based on this finding of the report, we can conclude that as far as the application and reasoning of the factors are concerned, the Guidelines is merely a document in paper but which finds no practical application in the vast majority of cases.
Another problematic issue is the number of factors ignored in these judgments, which were not taken as either mitigating or aggravating factors, and the court did not provide any reasoning as to why they do not constitute mitigating or aggravating factors in concrete cases. In total, there were only two cases where no ignored factor was identified, while there were cases where 17, 18 and 19 ignored factors were identified. In 11 judgments, court ignored 10 factors.
<table>
<thead>
<tr>
<th>Ignored factors</th>
<th>Corruption</th>
<th>Murder</th>
<th>General Department</th>
<th>Weapons Trafficking</th>
<th>Terrorism</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 factors</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>1 factor</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>2 factors</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>3 factors</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>4 factors</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>5 factors</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>6 factors</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>7 factors</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>8 factors</td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>9 factors</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>10 factors</td>
<td>6</td>
<td>0</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>11</td>
</tr>
<tr>
<td>11 factors</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>12 factors</td>
<td>5</td>
<td>1</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>9</td>
</tr>
<tr>
<td>13 factors</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>14 factors</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>15 factors</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>16 factors</td>
<td>0</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>17 factors</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>18 factors</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>19 factors</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

*Table 9 - Factors ignored in judgments.*
There is another phenomenon of concern which according to the guideline qualifies as a double counting of factors. Based on the KLI analysis conducted based on the criteria set out in the Guidelines, courts have double counted factors in a total of 40 cases. Courts double counted factors in 32 judgments, in seven of them courts double counted two factors, while in a corruption case a total of three double counts were identified.

<table>
<thead>
<tr>
<th>Factors</th>
<th>Corruption</th>
<th>Murder</th>
<th>General Department</th>
<th>Weapons Trafficking</th>
<th>Terrorism</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Double count</td>
<td>10</td>
<td>7</td>
<td>11</td>
<td>1</td>
<td>3</td>
<td>32</td>
</tr>
<tr>
<td>2 Double counts</td>
<td>2</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>3 Double counts</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>13</td>
<td>7</td>
<td>14</td>
<td>1</td>
<td>5</td>
<td>40</td>
</tr>
</tbody>
</table>

Table 10 - Factors double counted in judgments.

Concerning the appropriateness of sentences, the KLI has identified a total of seven cases where courts have not dealt with nor reasoned the issue of the appropriateness of the sentence.

<table>
<thead>
<tr>
<th>Appropriateness of sentence in judgments</th>
<th>Corruption</th>
<th>Murder</th>
<th>General Department</th>
<th>Weapons Trafficking</th>
<th>Terrorism</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contain the part of the appropriateness of sentence</td>
<td>21</td>
<td>10</td>
<td>17</td>
<td>4</td>
<td>4</td>
<td>56</td>
</tr>
<tr>
<td>Do not contain the section on appropriateness of sentence</td>
<td>4</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>7</td>
</tr>
</tbody>
</table>

Table 11 – Appropriateness of sentence in judgments.

With regards to the four purposes of sentencing, which according to the Guidelines should apply in each case, KLI found that in a total of 13 judgments, courts did not apply any of the purposes of sentencing while all the purposes of sentencing were applied only in three cases.
Among the types of purposes of sentencing, specific/special deterrence was most commonly applied in 50 judgments, while the other purpose, victims and community, was applied in only three judgments.

<table>
<thead>
<tr>
<th>Purposes</th>
<th>Corruption</th>
<th>Murder</th>
<th>General Department</th>
<th>Weapons Trafficking</th>
<th>Terrorism</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 purposes</td>
<td>7</td>
<td>2</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>13</td>
</tr>
<tr>
<td>1 purpose</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>2 purposes</td>
<td>10</td>
<td>4</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>18</td>
</tr>
<tr>
<td>3 purposes</td>
<td>6</td>
<td>2</td>
<td>14</td>
<td>3</td>
<td>2</td>
<td>27</td>
</tr>
<tr>
<td>4 purposes</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
</tbody>
</table>

Table 12 - Purposes of sentences applied in judgments.

There was no insufficient application of Guidelines in practice even with respect to reasoning of purposes of sentencing applied in these judgments. Of all purposes applied in all judgments, courts only applied and reasoned purposes of sentencing, as required by the Guidelines, in six cases, whereas in the other cases, courts only cited purposes of sentencing, and took the fact that the imposition of a certain sentence will also achieve the stated purpose,
for granted. Moreover, most of judgments in this part are the same in nature, which is a data that establishes a template practice in terms of reasoning of judgments as to the type and amount of punishment.

<table>
<thead>
<tr>
<th>Reasoning of purposes</th>
<th>Corruption</th>
<th>Murder</th>
<th>General Department</th>
<th>Weapons Trafficking</th>
<th>Terrorism</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specific/special deterrence</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>General deterrence</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Victims and the community</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Judgment of Society, increased morality and obligation to respect the law</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>6</td>
</tr>
</tbody>
</table>

Table 14 - Reasoning of purposes applied in judgments.

Regarding principles of punishment in the way the determined in the Guidelines, such principles have not been applied in a total of 55 cases, while they were applied in only one judgment. In seven judgments, these principles were only partially applied. This way, this finding also speaks about the remaining dormant part of the Guidelines, which based on the KLI findings, was not applied in practice since its adoption.

<table>
<thead>
<tr>
<th>Implementation of principles</th>
<th>Corruption</th>
<th>Murder</th>
<th>General Department</th>
<th>Weapons Trafficking</th>
<th>Terrorism</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not implemented</td>
<td>22</td>
<td>8</td>
<td>18</td>
<td>3</td>
<td>4</td>
<td>55</td>
</tr>
<tr>
<td>Partially</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td>Fully</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

Table 15 - Implementation of sentencing principles under the Guidelines.
In the light of the explanation provided above (page 12), KLI identified a total of 26 cases where sentences were outside of ranges set out in Annex 1 to the Guidelines, while 37 sentences were within the ranges.

<table>
<thead>
<tr>
<th>Calculation of sentence level</th>
<th>Corruption</th>
<th>Murder</th>
<th>General Department</th>
<th>Weapons Trafficking</th>
<th>Terrorism</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outside of ranges</td>
<td>6</td>
<td>7</td>
<td>7</td>
<td>4</td>
<td>2</td>
<td>26</td>
</tr>
<tr>
<td>Within ranges</td>
<td>19</td>
<td>3</td>
<td>13</td>
<td>0</td>
<td>2</td>
<td>37</td>
</tr>
</tbody>
</table>

Table 16 - Calculation of the sentence level according to Guidelines.

A total of 40 individuals are involved in the 25 judgments analyzed, and a total of 45 convictions were imposed on them. Out of the 45 sentences, conditional sentence leads with a total of 21 convictions, followed by imprisonment sentence with 14 convictions and 10 fine sentences.
VI. Sentencing policy in corruption cases

a. Introduction

In this Chapter, KLI analyzed a total of 25 judgments on criminal offenses from the corruption chapter. All these judgments belong to the period following the adoption of the Guidelines.

Based on the methodology described at the beginning of this report, KLI analyzed whether judges, in these 25 judgments from the corruption chapter, implemented the requirements and standards set forth in the Guidelines in determining the type and the severity of the sentence. These 25 judgments include a total of 40 persons and 43 sentences were imposed against them.

KLI findings presented below show that the implementation of Guidelines in practice in corruption cases was not even closely implemented. Furthermore, as we will observe in this chapter, the sentencing policy in corruption judgments is a template one, as in most judgments there is repetition of the same factors, while the appropriateness of judgments is generally reasoned, and taken for granted. Data below indicate that sentencing principles outlined in the Guidelines are dormant in corruption cases. Therefore, if the Guidelines is used as a reference point for a lawful sentencing policy, we can conclude that the sentencing policy in the judicial system of the Republic of Kosovo in corruption cases is no less than arbitrary.

With regards to reasoning in judgments on imposing the type and the severity of sentence, based on the standards set forth in the Guidelines, parties and the public under no circumstance will be convinced as to why a certain sentence has been imposed in a concrete case.

If we say that the fight against corruption is done by delivering judgments with higher sentences, the following data indicate that the judicial system has not followed this principle, since in 25 cases with 40 persons, of 43 imposed sentences only five were with effective imprisonment, respectively 11.62% from the total.

However the data generated after the KLI analysis of these cases, indicate that the severity of sentence itself is a template, as in the vast majority of cases, the sentence of imprisonment (effective or suspended) is six months.

Therefore, what has been presented as progress and a concrete step towards improvement of sentencing policy within the justice system in the Republic of Kosovo by the adoption of the Guidelines, based on the findings of this report, was merely a good policy in letter but unimplemented in practice.
b. General findings

The 25 judgments analyzed in this chapter are for the offenses under Chapter 34 of the CCRK, namely the chapter "Official Corruption and Offenses against Official Duty". In these cases, judgments also contain sentences for other criminal offenses that do not belong to this category, but which were part of judgments in which defendants were also convicted of criminal offenses of corruption, and which were also analyzed in this section. 42/43

<table>
<thead>
<tr>
<th>Criminal offense</th>
<th>Number of sentences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abusing of official position or authority</td>
<td>14</td>
</tr>
<tr>
<td>Assistance in committing a criminal offense abuse of official position or authority</td>
<td>2</td>
</tr>
<tr>
<td>Falsifying official document</td>
<td>7</td>
</tr>
<tr>
<td>Giving bribes</td>
<td>7</td>
</tr>
<tr>
<td>Accepting bribes</td>
<td>4</td>
</tr>
<tr>
<td>Misappropriation in office</td>
<td>4</td>
</tr>
<tr>
<td>Trading in influence</td>
<td>2</td>
</tr>
<tr>
<td>Conflict of Interest</td>
<td>1</td>
</tr>
<tr>
<td>Legalization of false content</td>
<td>1</td>
</tr>
<tr>
<td>False statement under oath</td>
<td>1</td>
</tr>
</tbody>
</table>

Table 17 –Number of sentences according to criminal offenses.

These 25 judgments involve a total of 40 persons and 45 sentences were imposed against them.

Of the 45 imposed sentences, the suspended sentence is the most common with a total of 21 sentences, followed by imprisonment with 14 sentences and 10 fine sentences.
Although the number of imprisonment sentences imposed in total is 14, only five of them were effective imprisonment sentences, with the other nine converted into a fine. Of these five effective imprisonment sentences, three were with six months of effective imprisonment, one with nine months of effective imprisonment, and one with two years and six months of effective imprisonment. This implies that of the 25 cases analyzed, courts have imposed only 57 months of effective imprisonment in total.

Graphic 2 - Effective imprisonment sentences converted to fines.
Regarding the level of imprisonment (effective and suspended), they range from three months to two years and six months. One characteristic is that of 35 sentences, 23 or 67.64% are imprisonment sentences of six months.

**Graphic 3 – Severity of imprisonment sentences.**

When analyzing the nine fine sentences, there is a diversity in them, with a minimum of €200 and a maximum of €7,000.

**Graphic 4 – Amount of fine sentences.**
In the 25 corruption cases, courts imposed only one accessory punishment (prohibition of practicing the profession for a period of one year) while in the other 24 judgments courts did not impose this type of punishment.

In terms of the total number of aggravating and mitigating factors used in these cases, the number of mitigating factors is almost four times higher than the number of aggravating factors.

![Total number of factors used in 25 judgments](image)

**Graphic 5 – Total number of factors applied in 25 analyzed judgments.**

While, in separate cases, courts used two to six mitigating factors, in one case no mitigating factor was used.

<table>
<thead>
<tr>
<th>Number of mitigating factors applied</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>No mitigating factors</td>
<td>1 case</td>
</tr>
<tr>
<td>2 aggravating factors</td>
<td>2 cases</td>
</tr>
<tr>
<td>3 aggravating factors</td>
<td>5 cases</td>
</tr>
<tr>
<td>4 aggravating factors</td>
<td>8 cases</td>
</tr>
<tr>
<td>5 aggravating factors</td>
<td>7 cases</td>
</tr>
<tr>
<td>6 aggravating factors</td>
<td>2 cases</td>
</tr>
</tbody>
</table>

**Table 18 – Number of mitigating factors applied.**

The situation is concerning when it comes to the use of aggravating factors, as in 15 judgments courts did not use any aggravating circumstance, while the maximum of aggravating factors used is five (in one judgment).
In terms of the types of factors used, there are 36 types of factors that have been applied to the total number of analyzed judgments. In this regard, KLI found that some of the factors are mentioned in the vast majority of cases. Out of a total of 25 cases, KLI found that the absence of previous convictions was used as a mitigating circumstance in a total of 15 judgments, while the fact that the convict had a family and correct behavior during the proceedings was used as mitigating factor in 13 judgments. However there are 14 other factors, which in the 25 analyzed judgments, were used in only one case.

<table>
<thead>
<tr>
<th>Number of aggravating factors applied</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>No mitigating factors</td>
<td>15 cases</td>
</tr>
<tr>
<td>1 factor applied</td>
<td>3 cases</td>
</tr>
<tr>
<td>2 aggravating factors</td>
<td>2 cases</td>
</tr>
<tr>
<td>3 aggravating factors</td>
<td>3 cases</td>
</tr>
<tr>
<td>4 aggravating factors</td>
<td>1 case</td>
</tr>
<tr>
<td>5 aggravating factors</td>
<td>1 case</td>
</tr>
</tbody>
</table>

Table 19 – Number of aggravating factors applied.
<table>
<thead>
<tr>
<th>Type of factor</th>
<th>Number of cases in which the factor was applied</th>
</tr>
</thead>
<tbody>
<tr>
<td>No prior criminal convictions;</td>
<td>15</td>
</tr>
<tr>
<td>The fact that the convicted person has a family</td>
<td>13</td>
</tr>
<tr>
<td>Correct behavior during the proceedings</td>
<td>13</td>
</tr>
<tr>
<td>The entering of a guilty plea;</td>
<td>11</td>
</tr>
<tr>
<td>Remorse</td>
<td>7</td>
</tr>
<tr>
<td>Poor economic situation</td>
<td>6</td>
</tr>
<tr>
<td>High degree of intent</td>
<td>5</td>
</tr>
<tr>
<td>The convicted person provides for his family;</td>
<td>4</td>
</tr>
<tr>
<td>Promise not to commit such acts in the future</td>
<td>3</td>
</tr>
<tr>
<td>It's relatively young</td>
<td>3</td>
</tr>
<tr>
<td>Age</td>
<td>3</td>
</tr>
<tr>
<td>The conduct of the convicted person after the commission of the criminal offense</td>
<td>3</td>
</tr>
<tr>
<td>Elapse of long time since the commission of the criminal offense</td>
<td>3</td>
</tr>
<tr>
<td>The social risk of the offense</td>
<td>3</td>
</tr>
<tr>
<td>The intensity of the danger or damage to the protected value</td>
<td>3</td>
</tr>
<tr>
<td>Father of children</td>
<td>2</td>
</tr>
<tr>
<td>The conduct of the convicted person after the commission of the criminal offense</td>
<td>2</td>
</tr>
<tr>
<td>Personal circumstances and character of the person</td>
<td>2</td>
</tr>
<tr>
<td>High degree of participation of the accused</td>
<td>2</td>
</tr>
</tbody>
</table>
Compared to the Guidelines, the most serious problem is the way these factors are applied. Of the total of 123 factors used in all judgments, KLI analysis found that only 18 of them were applied and reasoned in accordance with the requirements of the Guidelines.
In terms of mitigating factors of 98 mitigating factors applied in these judgments, only nine of them were applied or reasoned in accordance with the requirements of the Guidelines.

Whereas, of the 25 aggravating factors applied in 25 judgments, KLI found that only nine of them were applied and implemented the in accordance with the requirements of the Guidelines.

39
Likewise, KLI found that courts did not give any reasoning as to the intrinsic importance of mitigating and aggravating factors.

Concerning the mitigating and aggravating factors mentioned in judgments, KLI found that there is a large number of mitigating and aggravating factors that were ignored by courts, namely were not applied and failed to provide a reasoning as to why they were not applied, while in only one case KLI did not identify any ignored factors.

Graphic 8 – Application and reasoning of aggravating factors in accordance with the requirements of the Guidelines.

Graphic 9 - Number of mitigating and aggravating factors ignored in judgments.
The phenomenon of what the Guideline refer to as "double counting of factors", which is prohibited under the Guidelines, appears to be a very common phenomenon also. From the analysis of the KLI to these 25 judgments, the phenomenon of double counting of factors is expressed in a total of 13 cases, where double counting of factors was noted in 10 of them, in two cases there are two double counted factors and in three cases there are three double counted factors.

Graphic 10 - The phenomenon of double counting of factors in judgments.

In terms of the appropriateness of the sentence, of the 25 judgments, four or 16% of them do not contain any reasoning on the appropriateness of the sentence.

Graphic 11 – Appropriateness sentences.
Regarding the application and reasoning of the four sentencing purposes, which according to the Guidelines should be applied and reasoned in every judgment, all four purposes were applied in only one case, three purposes were applied in six judgments, two in 10 judgments, one in one judgment, while in seven cases none of four purposes of sentencing was applied.

Graphic 12 – Number of the purposes of sentencing applied in judgments.

Further, with regard to the purposes of sentencing, specific/special deterrence and general deterrence are the most commonly applied purposes, while the “victims and community” purpose was applied in only one case.

Graphic 13 – Types of purposes of sentencing applied in judgments.
However, observing all these cases, it is concerning that there was only one case and only one of the purposes of sentencing was applied and reasoned in accordance with the requirements of the Guidelines, while all the rest were merely cited in general manner and without any reasoning.

The situation is no different with regard to application of the sentencing principles in accordance with the requirements of the Guidelines, where this has been applied fully in only one case, partly in two cases, and was not applied in a total of 22 cases.

Graphic 14 – Application and reasoning of sentencing purposes in accordance with the requirements of the Guidelines.

Graphic 15 – Application of principles in accordance with the requirements of the Guidelines.
Similarly, courts did not weigh mitigating and aggravating factors in any case when imposing a sentence, namely courts did not provide any reasoning in this regard as required by the Guidelines.

We have a surprising data when talking about whether the punishment imposed is within the ranges set out in Appendix 1 of the Guidelines. As explained in the methodology of the present report, KLI also analyzed whether the sentence imposed is within the ranges set by the Guidelines, comparing the Guidelines (implementation of the guideline in practice - pages 142 - 167) with the factors used in the reasoning of the judgment and the sentence imposed. Of the 25 analyzed judgments, in 19 cases it was observed that the sentence imposed was within the ranges set by the Guidelines, while six judgments were outside of these ranges.

![Sentencing ranges](image)

**Graphic 16 – Sentences imposed in accordance with the requirements of the Guidelines.**

c. Case-based analysis of corruption cases

1. **Case P.nr.79/2018** - Abusing official position or authority as in Article 422 par.1 of the CCRK

**Judgment**

According to the judgment of the Basic Court in Prizren – Department of Serious Crimes, the convicted person B.S. was found guilty for the criminal offense of “Abusing official position or authority.” This because, according to the judgment, from January 5, 2018 until
undetermined time period the convicted person in the capacity of an official person as a manager in the “D” Institution based in Prizren, using his official duty or authority exceeded his powers in order to gain material benefit for himself, causing damage to another person, by issuing a certificate of vocational training for facade-plastering to MJ, whereby he received 250 Euros from his father, without being accredited by the national qualification authority, whereby the Ministry of Education Science and Technology declared it invalid.

The sentence according to the CCRK: six (6) months to (five) 5 years

Imposed sentence: six (6) months of imprisonment, which was substituted with a fine of 2,800 Euros.

Mitigating factors:

1. The fact that he is a family man;
2. Poor health condition;
3. Promise not to commit such acts in the future;

Aggravating factors:

1. The social risk of the offense;

Appropriateness of the sentence:

The court held that the sentence imposed will achieve the purpose of the sentence.

Implementation of the Guidelines

Appropriateness of the sentence

The court failed to take into consideration any of the four purposes of sentencing set out in the Guidelines in this judgment, giving no reasoning for either one of them, but only taking for granted the fact that the sentence will achieve the purpose of the sentence. The judgment also fails to indicate what is the purpose of the sentence, which according to the court, will be achieved in this case.

Implementation of principles

The court has merely cited mitigating and aggravating factors in this case and failed to connect them to the principles that should be considered in determining a sentence, as provided by the Guidelines. However as to the principle of intensity of endangering or damaging the protected value and the circumstances in which the offense was committed, the court failed to set it as a principle of punishment and reason it with aggravating or mitigating factors, but merely uses it as an aggravating factor.
Mitigating and aggravating factors indicated in the judgment

As to the fact that the accused provides for his family, the Guidelines sets forth seven factors that the court should address and reason when determining this fact as a mitigating factor, which the court failed to do in this judgment. As to the health condition, there is no reasoning in the judgment that the convict is in poor health condition and the court has not justified why this circumstance could be taken as a mitigating factor. Furthermore, the family and health status are not two separate mitigating factors, but factors used to assess the mitigating factor of "personal circumstances and character of the convicted person", which implies that we have double counting of factors under the Guidelines in this case. The promise of the convicted person not to commit a criminal offense in the future is not indicated in the Guidelines as a mitigating factor. As to the social danger that was mentioned in the judgment as an aggravating factor according to the Guidelines this is not an aggravating factor, but it is a principle that the court should take into consideration when deciding on the type and amount of punishment. According to the Guidelines, in this case we are dealing with double counting of factors.

Mitigating and aggravating factors ignored by the judgment

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the degree of damage caused, abuse of authority or official position, violation of trust, (non) repentance, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, any prior criminal/noncriminal conduct of the convicted person, age of the defendant and (non) support by the victim.

The method of the Sentencing Guidelines

In the circumstances indicated therein the court failed to provide any justification as to the internal significance of any of the applicable factors and failed to provide reasoning as to assigning weight to the factors. For this reason, the calculation is quantitative, as in the present case there are three mitigating and one aggravating factors. According to the Guidelines, this would fall under the instances of “existence of at least two factors for reduced culpability and/or one or little aggravation,” which would qualify in column 5 under factors that justify maximum mitigation within the range. According to Appendix 1 of the Guidelines, part 2, point h, the sentence in this case should be from six months to one year and six months of imprisonment. Thus, the judgment in this case is within those ranges.

2. Case PKR.nr.453/201 - Abuse of official duty as in Article 422/Assistance in the commission of a criminal offense Abuse of official duty 422 par.1 in conjunction with Article 31 of the CCRK

Judgment

46
According to the judgment of the Basic Court in Prishtina - Serious Crimes Department, JR and AL, were found guilty, whereby the first defendant was convicted for the offense of "assisting in the commission of the criminal offense of abuse of official position" while the second accused for the offense of "abuse of official duty".

Because, according to the verdict, convicted XhR had intentionally assisted AF in committing the criminal offense by making the means to commit the criminal offense available on April 1, 2016, at approximately 1:30 pm, by following with his own car the customs officer who was sent to go from Prizren to Pristina to dispose 2880 perfumes "Paco Rabane 1 Million" banned product imported from China by N.TT.SH "Te Bashkimi" owned by BL. All this with the hope that the officer does not care about the process of complete disposal of goods.

While convicted AL, was found guilty after the court found that he committed the criminal offense of abuse of official position as he had not fulfilled his official duties with the intention of allowing another person to obtain material benefits, so that while the disposal process was ongoing he went towards Prizren with a van which contained goods that were not disposed. He was then stopped by the Customs Anti-Smuggling Unit on the road Prishtina-Fushe Kosova. All these actions were undertaken by him in the capacity of the employee of NP “Te Bashkimi”.

**Sentence according to the CCRK:** six (6) months to five (5) years of imprisonment

**Imposed sentence:**

For "abuse of official position or authority": six (6) months of imprisonment substituted with a fine of 3,600 Euros

For criminal offence of "abuse of official position or authority": six (6) months of imprisonment substituted with a fine of 2,500 Euros

**Mitigating factors:**

1. The entering of a guilty plea;

2. The fact that they were family providers;

3. Correct behavior during the proceedings;

**Aggravating factors**

None.

**Appropriateness of the sentence:**

Not mentioned in the judgment.

**Implementation of the Guidelines**
Appropriateness of the sentence

In view of the four purposes of the sentence that must be considered under the Guidelines in each judgment, the court failed to mention either one of these purposes, and did not say anything about the appropriateness of the sentence.

Implementation of principles

The court has merely cited mitigating and aggravating factors in this case and failed to connect them to the principles that should be considered in determining a sentence, as provided by the Guidelines.

Mitigating and aggravating factors indicated in the judgment

The court failed to provide any explanation for three of the mitigating factors mentioned in the judgment, but merely cited them. As to the entering of a guilty plea, the court addressed none of the requirements set forth in the Guidelines that should be applied in relation to this factor, which also determines the importance of this factor in a concrete case. The court also failed to address the four relevant questions for this factor as required by the Guidelines. As to the mitigating factor that the convicted person is a family person, the Guidelines sets forth seven factors that the court should address and reason in determining this factor as a mitigating factor, which the court failed to do in this judgment. As to the correct conduct of the defendant during the proceedings, according to the Guidelines, the court must address five relevant questions, which the court failed to do in this judgment.

Mitigating and aggravating factors ignored by the judgment

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the degree of damage caused, abuse of authority or official position, violation of trust, (non) repentance, (non) compensation for the loss or damage, any prior criminal/ noncriminal conduct of the convicted person, age of the defendant and (non) support by the victim.

The method of the Sentencing Guidelines

The court in this judgment cited only three mitigating and no aggravating factors, and gave no reasoning as to the intrinsic nature and weighing of the circumstances. For this reason, the calculation is quantitative. According to the Guidelines, this would fall under the instances of “existence of at least two factors for reduced culpability and/or one or little aggravation,” which would qualify in column 5 under factors that justify maximum mitigation within the range. According to Appendix 1 of the Guidelines, part 2, point h, the sentence in this case should be from six months to one year and six months of imprisonment. Thus the judgment in this case is within those ranges.
3. Case PKR.nr.194/17 - Abusing official position or authority as in Article 422 par.1 in conjunction with Article 28 of the CCRK

Judgment

According to the Judgment of the Basic Court in Gjilan - Serious Crimes Department, convicted N.Sh was found guilty of the criminal offense of "abuse of official position", as he was in the capacity of an expert in a contentious case, where he was assigned via a court order to carry out the expertise. He contacted the plaintiff AA, from whom he requested payment of the expertise, but without setting the amount. On 24 April 2017, he erroneously sends an SMS to B.J NLB Bank Director - branch in Gjilan which was the respondent in proceedings, saying "it is now up to you to pay me as per the agreement" and B.J. notifies the police so the offense remains in attempt.

The sentence under the CCRK: Punishable by six (6) months to five (5) years of imprisonment.

Imposed sentence: 180 days of suspended sentence and a probation period of one (1) year.

Mitigating factors:

1. The fact that the convict regularly responded to court summons;
2. The convicted person is a family person;
3. He is the father of four children;

Aggravating factors

1. The fact that the offense was committed by abusing official duty;

Appropriateness of the sentence:

There is no reasoning as to the appropriateness of the sentence.

Implementation of the Guidelines

Appropriateness of the sentence

In view of the four purposes of the sentence that must be considered under the Guidelines in each judgment, the court failed to mention either one of these purposes, and did not say anything about the appropriateness of the sentence.

Implementation of principles
The court has merely cited mitigating and aggravating factors in this case and failed to connect them to the principles that should be considered in determining a sentence, as provided by the Guidelines.

Mitigating and aggravating factors indicated in the judgment

According to the Guidelines, the fact that the convicted person has regularly responded to court summons may perhaps be taken as a fact for the existence of a factor of "general co-operation of the convicted person with the court, including voluntary surrender" or "voluntary co-operation of the convicted person in investigation or prosecution". However, it does not exist in the Guidelines as a separate circumstance. As to the other two factors, that the convict is a family man and the father of four children, according to the guideline, we are dealing with double counting of factors, rather than two separate factors. This case comes within personal factors and the character of the convicted person, for whose existence the court must take into account seven factors, none of which are reasoned in the judgment. Even with regards to aggravating factor that this criminal offense was committed by abusing official duty, we are dealing with double counting of factors, as abusing official duty in this case is an essential element of the criminal offense for which the defendant was convicted. In this judgment, the court failed to give any reason as to why this factor can be used as an aggravating factor. On the other hand, if we take into consideration this factor, according to the Guidelines, there are eight factors to consider for using this factor as an aggravating one, and in this judgment there is no reasoning for any of them.

Mitigating and aggravating factors ignored by the judgment

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the degree of damage caused, violation of trust, (non) repentance, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, any prior criminal/noncriminal conduct of the convicted person, age of the defendant and (lack of) support for the victim.

The method of the Sentencing Guidelines

The court in this judgment cited only three mitigating and one aggravating factors, and gave no reasoning as to the intrinsic nature and weighing of the factors, which implies that the calculation is quantitative. According to the Guidelines, this would fall under the instances of “existence of at least two factors for reduced culpability and/or one or little aggravation,” which in the Annex 1 of the Guidelines would qualify under factors that justify maximum mitigation within the range. According to Appendix 1 of the Guidelines, part 2, point h, the sentence in this case should be from six months to one year and six months of imprisonment, which in the concrete case is six months of suspended sentence. Accordingly, it means that in the present case, the sentence is within those ranges.
4. Case PKR.nr.53/2019 - Falsifying official document as in Article 434 par.1 of the CCRK

Judgment

According to the Judgment of the Basic Court in Prishtina - Serious Crimes Department, N.Sh, was convicted and found guilty of the criminal offense of "falsifying official document" Because according to the Judgment, in her capacity of Executive Director at the Center for Protection of Women and Children (CPWC), on September 1, 2014, she abused official authority by exceeding her powers and falsified the official document, so that without obtaining the authorization of the social worker in the CPWC, Xh.O placed a signature on her behalf in the final report relating to an agreement dated 1 September 2014, in an official letter concerning a donation by the German Embassy.

The sentence under the CCRK: punishable by six (6) months to five (5) years of imprisonment.

Imposed sentence: Sentence of 150 days of imprisonment, which on the consent of the convicted person was substituted with a fine of 3,000.00 Euros.

Mitigating factors:
1. Guilty plea;
2. The fact that the convicted person has a family;
3. The defendant had shown correct conduct during the trial;

Aggravating factors

None.

Appropriateness of the sentence:

Not mentioned in the judgment.

Implementation of the Guidelines

Appropriateness of the sentence

In view of the four purposes of the sentence that must be considered under the Guidelines in each judgment, the court failed to mention either one of these purposes, and did not say anything about the appropriateness of the sentence.
Implementation of principles

The court has merely cited mitigating and aggravating factors in this case and failed to connect them to the principles that should be considered in determining a sentence, as provided by the Guidelines.

Mitigating and aggravating factors indicated in the judgment

The court failed to provide any explanation for three of the mitigating factors mentioned in the judgment, but merely cited them. As to the entering of a guilty plea, the court addressed none of the requirements set forth in the Guidelines that should be applied in relation to this factor, which also determines the importance of this factor in a concrete case. The court also failed to address the four relevant questions for this factor as required by the Guidelines. As to the mitigating factor that the convicted person is a family person, the Guidelines sets forth seven factors that the court should address and reason in determining this factor as a mitigating factor, which the court failed to do in this judgment. As to the correct conduct of the defendant during the proceedings, according to the Guidelines, the court must address five relevant questions, which the court failed to do in this judgment.

Mitigating and aggravating factors ignored by the judgment

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the degree of damage caused, abuse of authority or official position, violation of trust, (non) repentance, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, any prior criminal/noncriminal conduct of the convicted person, age of the defendant and (non) support for the victim.

The method of the Sentencing Guidelines

The court in this judgment cited only three mitigating and no aggravating factors, and gave no reasoning as to the intrinsic nature and weighing of the factors, as well as reasoning for maximum mitigation within the range. According to the Guidelines, this would fall under the instances of “existence of at least two factors for reduced culpability and/or one or little aggravation,” and we are dealing with a case where factors justify maximum mitigation within the range. According to Appendix 1 of the Guidelines, part 2, under h, the sentence in this case should be from six months to one year and six months of imprisonment. In this case, the sentence was within the ranges.

5. Case PKR.nr.267/18 – Conflict of interest as in Article 424, par. 1 of the CCRK

Judgment

52
According to the Judgment of the Basic Court in Pristina - the Serious Crimes Department, the convict E.N, was found guilty after the court found that she had committed the criminal offense, "conflict of interest". This, because according to the judgment, the convicted person in the capacity of an official person - Secretary General in the Ministry of Trade and Industry, on 2 June 2014 acting in contradiction to legal provisions, took a decision whereby the financial means in the amount of 20.000,00 Euros, would be allocated for financial support of the NGO “Jakova Innovation Center” where She was a Director of the Board.

The sentence under the CCRK: *Punishable by fine or imprisonment of up to three (3) years.*

Imposed sentence: *a fine of 7.000,00 Euros which she will pay within 1 year.*

Mitigating factors:

1. The convicted person violated the law for the first time.

2. Correct behavior during the proceedings;

Aggravating factors

None.

Appropriateness of the sentence:

The court is satisfied that the sentence will achieve the purposes of punishment.

Implementation of the Guidelines

Appropriateness of the sentence

The fact that the sentence imposed will achieve the purpose of the sentence was taken for granted by the court, without mentioning and reasoning any of the four purposes of the sentencing which, according to the Guidelines, must be considered and reasoned in each judgment.

Implementation of principles

The court has merely cited mitigating and aggravating factors in this case and failed to connect them to the principles that should be considered in determining a sentence, as provided by the Guidelines.

Mitigating and aggravating factors indicated in the judgment

The court took only two factors as mitigating factors, while it failed to consider any factor as aggravating. As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this factor qualifies under other mitigating factors. Guidelines state that if the court assesses the lack of prior criminal convictions and mitigation can be
warranted, it will require finding of facts that support a conclusion of adherent behavior and likelihood of rehabilitation. This issue was not addressed at all in the judgment. While in terms of correct conduct, this is not mentioned at all in the Guidelines, but may be in fact a proof of the existence of other mitigating factors.

Mitigating and aggravating factors ignored by the judgment

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the degree of damage caused, abuse of authority or official position, violation of trust, personal circumstances and the character of convicted person, (non) repentance, (non) compensation for the loss or damage, conduct of the convicted person after the conflict, age of the defendant, elapse of time and (non) support for the the victim.

The method of the Sentencing Guidelines

The court in this judgment cited only three mitigating and no aggravating factors, and gave no reasoning as to the intrinsic nature and weighing of the circumstances. For this reason, the calculation is quantitative. In the present case, according to the Guidelines, it is about "the existence of at least two circumstances for mitigation of culpability or harm and no/or a little aggravation". According to Appendix 1 of the Guidelines, this is a case where factors justify maximum mitigation of sentence within the range. According to Appendix 1 of the Guidelines, part 1, point f, the imprisonment sentence in this case should be from one to eight months of imprisonment and the fine should be from 6250 to 12500 Euros, which means that the sentence imposed in this case is within these ranges.

6. Case P.nr.125/18 - Abusing official position or authority as in Article 422 par.1 of the CCRK

Judgment

According to the Judgment of the Basic Court in Mitrovica - Serious Crimes Department, N.A. was found guilty and convicted for the criminal offense of "abuse of official position or authority". According to the Judgment, on 13 May 2015 the convicted person in the capacity of civil employee in Bistrica e Shales, exceeded his powers by providing material benefits to another person. Without making preliminary verifications and contrary to Administrative Instruction No. 25/2013, the convicted person registered the NN person, who allegedly according to notes is a resident of the village of Rvatska, where officials of the registration center in Leposaviq found that there is no resident of this village by this name, and as a result of the Accused N.A, failed to check the old civil registries to determine whether the petitions submitted by the NN allegedly A.S. were accurate and original and went ahead and registered him in the birth register and issued a birth extract at the same time. He was also found guilty on count that on the same date, time and place as in the first count of the indictment, in the
capacity of a civil employee, falsified an official document by signing and stamping the birth extract issued on behalf of AS.

**The sentence under the CCRK:** Punishable by six (6) months to five (5) years of imprisonment;

**Imposed sentence:** six (6) months suspended sentence.

**Mitigating factors:**

1. The entering of a guilty plea;
2. Remorse.
3. The convicted person is poor;
4. The convicted person is a family man;

**Aggravating factors:**

None.

** Appropriateness of the sentence:**

The Court considers that the sentence imposed is adequate and that this sentence will achieve the aim of preventing other persons from committing such offenses and will have an impact in the convicted person in order to refrain from committing other criminal offences in the future.

**Implementation of the Guidelines**

** Appropriateness of the sentence**

The court in this judgment only mentioned two of the four purposes stipulated by the Guidelines that should be considered and reasoned in every judgment. Moreover, the judgment only cites these two purposes and does not indicate how they will be achieved.

**Implementation of principles**

The court has merely cited mitigating and aggravating factors in this case and failed to connect them to the principles that should be considered in determining a sentence, as provided by the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**

As to the entering of a guilty plea, the court did not address in the judgment any of the four relevant questions required by the Guidelines for this factor. The court also did not address any of the eight relevant questions pertaining to remorse shown by the convicted person. Therefore, according to the Guidelines, the failure of the court to justify these two factors
with facts and evidence leads to double counting of factors. As to the fact that the convicted person is poor, the court did not support this finding with any justification, but just merely cited it. Furthermore, it is strange how the court took this fact as a mitigating circumstance, since the judgment mentions that the convict is of medium economic situation. Whereas, as to the courts assessment that convicted person is a family person and this should be taken as a mitigating circumstance, it is not clarified in the judgment how such a finding came to be, given the seven factors which according to the guideline should be taken into account, the court failed to consider any of them. Moreover, family and financial status are not two separate factors, but are two factors that are used to consider the factor of convicted person's personality and character. For this reason, according to the Guidelines, there is double counting of factors in this case.

**Mitigating and aggravating factors ignored by the judgment**

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the degree of damage caused, abuse of authority or official position, violation of trust, (non) repentance, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, age of the defendant, elapse of time and (non) support for the victim.

**The method of the Sentencing Guidelines**

In this case the court failed to provide any justification as to the intrinsic significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the present case, there are four aggravating and no mitigating factors. In the present case, according to the Guidelines, it is about "the existence of at least two circumstances for mitigation of culpability or harm and no/or a little aggravation". In this case, based on appendix 1 of the Guidelines, part II, under h, the range of punishment is from six months to one year and six months, which means that the sentence is within the ranges set by the Guidelines.

**7. Case PKR.nr.333/17 - Abusing official position or authority as in Article 422, par.1 of the CCRK**

**Judgment**

Basic Court in Prishtinë - Serious Crimes Department, on October 1, 2018, found the defendant Q.Rr. Guilty after concluding that while exercising the position of Deputy Minister in the Ministry of Labor and Social Welfare (MLSW) of the Republic of Kosovo the convicted person in the capacity of an official person, while exercising his official position or authority exceeded the legal powers and with the intention to bring unlawful material gain to himself has acted in breach of official authorizations, so that during the period from June 2015 until January 2016 he used his official bank credit card issued by N. P.2, designated for official travel expenses abroad, to withdraw and spend funds thereby causing a damage in the
amount of EUR 12,363.40, for which there were no officially approved trips. The injured party restituted EUR 7,504.51 to MLSW while the remaining damage to the injured party is EUR 4,858.89.

The sentence under the CCRK: Punishable by six (6) months to five (5) years of imprisonment.

Imposed sentence: six (6) months of imprisonment, which on the consent of the convicted person was substituted with a fine of 3,000 Euros.

Mitigating factors:

1. No prior criminal convictions;
2. Acceptance and readiness to compensate the damaged party MPMS;

Aggravating factors:

1. The high degree of participation of the accused in the criminal offense given that he withdrew funds several times and the damage was of high level;
2. The purpose of the commission of crime, namely the purpose of acquiring material gain;
3. Intensity of endangerment or damage caused to the protected value, where the damaged party MLSW has suffered considerable material damage;
4. The high degree of intent by the accused, acting in violation of the applicable administrative instructions which regulate procedures of using official credit card;
5. Abuse of official position by the accused in committing the offense, abusing his position and official authority;

Appropriateness of the sentence:

The court held that the sentence imposed corresponds with the degree of social danger of the offenses for which the accused was found guilty, as well as to the degree of criminal responsibility of the accused and that the sentence imposed on him will achieve the purpose of punishment, respectively to prevent the perpetrator from committing future criminal offenses, rehabilitate him, prevent other persons from committing criminal offenses, compensate victims or the community for losses or damages caused by criminal offenses, and expresses social judgment for the criminal offense, promote morality and on the enforcement of the rule of law.

Implementation of the Guidelines

Appropriateness of the sentence
Although under the Guidelines there is room for more reasoning that could be considered for each purpose, in this case, the court took into account all four purposes which according to the Guidelines must be taken into account when issuing any judgment.

**Implementation of principles**

Except for the previous conduct of the convict, which the court did not take into account in this case, this judgment applied all principles, in the form that each of the principles set out in the Guideline were reasoned by the court in one of the factors set out in the CCRK and the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**

As with the appropriateness of the decision, there is still room for a more detailed reasoning of each factor used. Nonetheless it is important to note that in this judgment, the two mitigating factors and four aggravating factors were reasoned in such a way that clarified how the court came to such conclusion, which also contain the requirements of the Guidelines. However, according to the Guidelines, the fact that the accused abused his official position cannot be applied as an aggravating factor, as this is an element of the criminal offense for which the defendant was convicted. For this reason, according to the Guidelines, we have double counting of factors.

**Mitigating and aggravating factors ignored by the judgment**

There are a number of factors, both mitigating and aggravating, that the court failed to consider in its reasoning or to give a reasoning as to why those factors were not considered. The court failed to address the personal factors and character of convicted person, (non) repentance, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, any prior criminal/noncriminal conduct of the convicted person, age of the defendant and (lack of) support for the victim.

**The method of the Sentencing Guidelines**

Although the court did not take into account all the aggravating and mitigating factors in this case and did not provide the appropriate reasoning, the sentence imposed is not even remotely similar to what is set out in the appendix to the Guidelines. In this case, court gave no reasoning for weighing the aggravating and mitigating factors, but used five aggravating and two mitigating factors. According to the guideline, we are dealing with a case where "the total of aggravating factors exceeds significantly the total of mitigating factors", which according to the appendix is the case when factors justify maximum sentence within the range. According to Appendix 1 of the Guidelines, part 2, point h, the sentence in this case should be from four to five years of imprisonment, whereas e in the concrete case is six months. If the court would act according to appendix of the Guidelines, the sentence of imprisonment could not be converted into a fine, but the effective imprisonment sentence should have been imposed within these ranges.
8. Case P.nr.46/2016 Abuse of official position or authority as in Article 422 par.1 of the CCRK

Judgment

According to the judgment of the Basic Court in Mitrovica - Serious Crimes Department, AJ and BH were found guilty and convicted of the criminal offense of "Abuse of official position". Because, according to the judgment, in the capacity of loan analysts in the banking institution called "LESNA", branch in Mitrovica, in different periods during 2011, have signed contracts on behalf of the borrowers, which enabled entering into contracts for agricultural and farming loans, where the total value of the benefit of other persons amounts to 46,800 Euros.

The sentence under the CCRK: Punishable by six (6) months to five (5) years of imprisonment.

Imposed sentence:

AJ was sentenced to two (2) years and six (6) months of effective imprisonment;

BH, was sentenced to six (6) months of suspended sentence;

Mitigating factors:

For the convicted person A.J.:

1. He is married and father of two children;
2. Provides for his family;
3. No prior convictions;
4. Is relatively young;
5. Correct behavior during the proceedings;

For the convicted person B.H:

1. Is relatively young;
2. The convicted person has no prior criminal convictions;
3. Was a new staff in this institution;
4. He thought that with the references received from the first convict he would avoid criminal liability;
5. The consequences of this criminal offense are less than those of the first convict;
Aggravating factors

For the convicted person A.J.:
1. The degree of the damage caused;
2. High level of intent since he influenced loan recipients to obtain the loan without being present;

For the convicted person B.H:
None.

Appropriateness of the sentence:
No reasoning provided.

Implementation of the Guidelines
Appropriateness of the sentence
Although the guideline stipulates that in each judgment the court must consider and reason all four purposes of sentencing to determine the appropriateness of the sentence, the court gave no reasoning whatsoever in this judgment.

Implementation of principles
Only one principle was applied in this judgment, in relation to the degree of criminal liability is concerned. The court took this principle into account by reasoning it with particular aggravating factors, reasoning that the first convict influenced creditors to take a loan. The other five principles set out in the Guidelines were ignored by the court in this judgment.

Mitigating and aggravating factors indicated in the judgment
As to the first convict, the court double counted mitigating factors when determining that the convict is married, father of two children, and family provider, as all of these, according to the Guidelines, are a part of personal circumstances and character of the convict. Regarding the relatively young age, initially according to the guideline the "relatively young" age does not exist as a mitigating circumstance, while it is meaningless how this circumstance is considered as a mitigating factor for a convict who was 32 years of age at the time of sentencing. As to the correct conduct of the defendant during the proceedings, according to the Guidelines, the court must address five relevant questions, which the court failed to do in this judgment. With regard to the absence of past criminal convictions, according to the Guidelines, if this circumstance is applied the court should seek to find facts that support conclusion of the relevant conduct and the predispositions for rehabilitation, a fact not justified in this judgment. Regarding the two aggravating factors in relation to the first convict, the court provided sufficient reasoning for this finding.

Regarding the second convict, firstly it is unclear as to why in this case the correct conduct of this convict in court was not taken as a mitigating factor, since this was done in relation to the
first convict. The court acted similarly with the second convict, where it defined the relatively young age of the convict as a mitigating factor, even though he was 30 at the time of sentencing. Similarly to the first case the court determined that the convict is a first time offender. Whereas, the fact that the convict was a young employee in this institution, is not foreseen at all in the Guidelines as a mitigating factor, and the court gave no reasoning as to why this circumstance should be taken as a mitigating factor. Furthermore, it is extremely meaningless as to how the court took the fact that the convict intended to evade criminal responsibility as mitigating factor, when it determined that he assumed that the convict "thought that with the references obtained from the convict he would be able to evade criminal liability." As to the determination that consequences of the offense are lesser than those in the case of the first convict, the court made a distinction in criminal liability between the two convicts, and it remains unclear why this would be used as a mitigating factor. Whereas, in relation to the second convict, the court did not consider any aggravating factor.

Mitigating and aggravating factors ignored by the judgment

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the abuse of authority or official position, violation of trust, (non) repentance, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, elapse of time and (lack of) support for the victim.

The method of the Sentencing Guidelines

In the case of both convicts, the court did not provide any reasoning for weighing of factors, which suggests that the calculation of factors in this case is quantitative. As to the first convict, the court considered five mitigating and one aggravating factors. According to the Guidelines, this is case where there are few aggravating along with many mitigating factors. According to Appendix 1 of the Guidelines, this is a case where factors justify maximum mitigation of sentence within the range. According to part 2, point h of this appendix, the sentence in this case should be six months to one year and six months, which in this case is two years and six months, namely it is not within these ranges. The same situation is assessed related to the second convict, but in this case it means that for this convict, the sentence is within the ranges of the annex.

9. Case PKR.nr.111/2016 – Accepting bribes as in Article 343 par. 1 of the CCRK

Judgment

According to the judgment of the Basic Court in Gjilan - Serious Crimes Department, E.E was convicted for the offense of “Accepting bribes”. Because, according to the judgment, the convict in the capacity of an official person, that is, a doctor in the Regional Hospital in Gjilan, on May 22, 2012, in his office, requested material benefit for himself to perform an activity which he was not supposed to perform. The convict requested from the injured party
L.H. the amount of 10 Euros, for every specialist report issued by him, thus taking the total amount of 30 Euros from the injured party.

The sentence under the CCRK: Punishable by six (6) months to five (5) years of imprisonment.

Imposed sentence: 180 days of effective imprisonment and an accessory punishment of "Prohibition of practicing the profession" for one (1) year.

Mitigating factors:
None.

Aggravating factors:
1. Exploiting the difficult economic and social position of the injured party;
2. The degree of criminal liability;
3. Social risk;

Appropriateness of the sentence:
The court concluded that the sentence imposed on the accused taking into account the aforementioned factors is fair, in line with the gravity of the offense, the manner of its commission and the criminal liability of the convict. The court assessed that the sentencing will achieve the purpose of the sentence and rehabilitation, as well as prevent other persons from committing this criminal offense, social judgment, raise morale and strengthen the rule of law.

Implementation of the Guidelines

Appropriateness of the sentence
The court in this case has considered the three purposes of sentencing, and failed to take into account "victims and the community" as the purpose of sentencing, while the three purposes taken into consideration were not reasoned by the court at all, but only took them for granted.

Implementation of principles
None of the principles was applied in the way required by the Guidelines. In this judgment, two of the sentencing principles, the degree of criminal responsibility and the intensity of endangerment or damage to protected value (social risk), were used as aggravating factors rather than being considered as principles and linked with certain factors.

Mitigating and aggravating factors indicated in the judgment
Regarding the exploitation of the difficult economic-social position of the injured party, the court did not give any reasoning as to how it ascertained such finding fact as an aggravating factor and only mentioned it, giving no reasoning whatsoever. As to the degree of criminal
liability and social risk, according to the Guidelines, these principles by which the court is guided, rather than an aggravating circumstance. For this reason, according to the Guidelines, there is double counting of factors in this case.

Mitigating and aggravating factors ignored by the judgment

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the degree of damage caused, abuse of authority or official position, violation of trust, personal circumstances and the character of convicted person, (non) repentance, (non) compensation for the loss or damage, conduct of the convicted person after the conflict, criminal record age of the defendant, elapse of time and (lack of) support for the victim.

The method of the Sentencing Guidelines

In the circumstances indicated therein the court failed to provide any justification as to the intrinsic significance of any of the applicable factors and failed to provide reasoning as to assigning weight to the factors. For this reason, the calculation is quantitative. In the present case, there are three aggravating and no mitigating factors. While there is no reasoning, this according to Guidelines is the situation where we have "two or more factors of culpability or increased harm without any mitigating factor", which based on the annex to the Guidelines is qualified as a case where "factors justify maximum sentence within the range". According to Appendix 1 of the Guidelines, part 2, point h, the sentence in this case should be from four to five years of effective imprisonment, whereas in the concrete case is six months or 180 days.

10. Case P.nr.20/19 – Giving bribes as in Article 429 par. 1 of the CCRK

Judgment

According to the judgment of the Basic Court in Peja - Serious Crimes Department, Sh.I, was found guilty for the criminal offense of “Giving bribes”.

Because, according to the judgment, on February 19, 2019, at about 1:20 pm, in Peja, at the Customs Terminal, the convicted person offered material benefits to the official person with the intention of preventing him from performing his official duty. When the accused was notified by the traffic policeman that he committed a minor offense, the defendant initially pulled out a 20-euro bill, but then tells the traffic officer that that is too much. From there he went to the gas station where he broke the 20 Euro bill into one 10 and two 5 Euro bills, where he throws 5 Euros at each police officer on the ticket book, telling them not to write the fine and that he is treating them with coffee. Although the defendant was informed by police officers that he was committing a corruption act, he insisted that officers don’t write a fine, in which case the defendant was escorted to the police station.
The sentence under the CCRK: *Punishable by six (6) months to five (5) years of imprisonment.*

**Imposed sentence:** *Six months of suspended sentence and a probation period of one (1) year.*

**Mitigating factors:**

1. Guilty plea;
2. Correct conduct in court;
3. Deep remorse for the criminal offense;
4. No prior criminal convictions;

**Aggravating factors:**

None.

**Appropriateness of the sentence:**

The Court is deeply convinced that this sentence will achieve the purpose of the criminal sanction and will prevent the convict from committing other criminal offenses.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

The court here has only considered specific / special deterrence, as the purpose of the sentence, which it did not reason at all, while ignoring the other three purposes which a according to the Guidelines must be considered in each case.

**Implementation of principles**

The court has merely cited mitigating and aggravating factors in this case and failed to connect them to the principles that should be considered in determining a sentence, as provided by the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**

As to the entering of a guilty plea, the court did not address in the judgment any of the four relevant questions required by the Guidelines for this factor. The court also did not address any of the eight relevant questions pertaining to remorse shown by the convicted person. Therefore, according to the Guidelines, the failure of the court to justify these two factors with facts and evidence leads to double counting of factors. While in terms of correct conduct, this is not mentioned at all in the Guidelines, but may be in fact a proof of the existence of other mitigating factors. As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this factor qualifies under other mitigating circumstances. Guidelines state that if the court assesses the lack of prior criminal convictions and mitigation can be warranted, it will require finding of facts that support a conclusion of
adherent behavior and likelihood of rehabilitation. This issue was not addressed at all in the judgment.

**Mitigating and aggravating factors ignored by the judgment**

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the degree of damage caused, abuse of authority or official position, violation of trust, personal circumstances and the character of convicted person, (non) repentance, (non) compensation for the loss or damage, conduct of the convicted person after the conflict, age of the defendant, and (lack of) support for the the victim.

**The method of the Sentencing Guidelines**

In the circumstances indicated therein the court failed to provide any justification as to the intrinsic significance of any of the applicable factors and failed to provide reasoning as to assigning weight to the factors. Therefore, the enumeration of factors is considered quantitative. In the present judgment, there are four aggravating and no mitigating factors. According to the Guidelines, this would fall under the instances of “existence of at least two factors for reduced culpability and/or one or little aggravation,” which in the Annex 1 of the Guidelines would qualify under factors that justify maximum mitigation within the range “. According to Appendix 1 of the Guidelines, part 1, under f, the sentence in this case should be from one to eight months of imprisonment, which means that the sentence imposed in this case is within the range.

11. Case PKR.nr.335/18 – Giving bribes as in Article 429 par. 1 of the CCRK

**Judgment**

According to the judgment of the Basic Court in Prishtina - Serious Crimes Department, L.S, was found guilty for the criminal offense of “Giving bribes”.

This is because, according to the court, the convict on 7 November 2018, at around 8:30 am, at the Merdare border crossing, offered to bribe police officer M.P in such a way that while the police officer boarded the company's passenger bus “Barileva Turist”, to register passengers, the driver of this company namely the accused L.S. offered the passport to the police officer saying that “the vehicle registration is also in the passport “, so when the aforementioned police officer opened the passport, in the vehicle registration document the accused stuffed 10 Euros.

**The sentence under the CCRK:** fine and imprisonment of three (6) months to three (3) years.
**Imposed sentence:** 300 Euros fine.

**Mitigating factors:**

1. Guilty plea;
2. Personal circumstances and character of the convicted person;
3. Young age;
4. Cooperation with the court;
5. The conduct of the convicted person after the commission of the criminal offense;
6. No prior violations of law;

**Aggravating factors:**

1. High degree of intent;
2. The circumstances in which the criminal offense was committed;
3. The degree of the damage caused;

** Appropriateness of the sentence:**

The Court considers that the sentence imposed is commensurate with the criminal offense committed and is convinced that such a sentence would achieve the purpose of sentencing in terms of individual prevention measures to prevent the defendant from committing criminal offenses in the future, and to achieve the purpose of punishment in the sense of general prevention. The judge reasoned the mitigating and aggravating factors, as to how and why they influenced the level of sentence.

**Implementation of the Guidelines**

** Appropriateness of the sentence**

The court only considered two purposes of sentencing, which were not reasoned in a way that would make it easy to understand correctly as to how these two purposes would be achieved through such sentence, and did not consider the other two purposes (victims and community and social judgment, increase of morale strengthen the rule of law).

**Implementation of principles**

The court has merely cited mitigating and aggravating factors in this case and failed to connect them to the principles that should be considered in determining a sentence, as provided by the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**

Mitigating factors, such as a guilty plea, personal circumstances and the character of the convicted person, general cooperation with the court, and the fact that the convict never violated the law, are reasoned in this judgment in accordance with the requirements in the Guidelines, in a way that the court indicated what factors were taken into account when
considering these circumstances as mitigating factors. As to the behavior of the convict after committing the offense, this was not reasoned at all, in order to show what this behavior was, but was only mentioned. The problem is in the mitigating factor of "young age", as the convict was 32 at the time of sentencing, and this age was considered by the court to be "young age", which is not considered as such by the Guidelines. As to the aggravating factor of high degree of intent and the degree of harm caused, the court used and reasoned these circumstances as required by the Guidelines. The circumstances in which the offense was committed as a mitigating factor was not reasoned at all by the court, but merely quoted.

Mitigating and aggravating factors ignored by the judgment
None.

The method of the Sentencing Guidelines
The court in this judgment did not give any reasoning as to assigning weight to factors, which implies that the weighing of factors is quantitative. In this concrete case, we have six mitigating and three aggravating factors, which according to the Guidelines would fall under the instances of “overall combined mitigation factors (of any valid type) significantly greater than quantity of aggravation,” which would qualify under the factors justifying highest mitigation within the range. According to Appendix 1 of the Guidelines, part 1, point f, the imprisonment sentence in this case should be from one to eight months of imprisonment and the fine should be from 100 to 6,250 Euros, which means that the sentence imposed in this case is within the range.

12. Case PKR.nr.356/17 - Abusing official duty as in Article 422 par.1 of the CCRK

Judgment
According to the judgment of the Basic Court in Prishtina – Department of Serious Crimes, the convicted person B.B. was found guilty for the criminal offense of “Abusing official position.” Because, according to the court, on July 3, 2013 in Drenas, the convict in the capacity of an official person belonging to the staff of the Police Station in Drenas, with the intention of gaining material benefit for himself or another person, using his official duty or authority, exceeded his powers by taking 1200 Euros from the victim FI promising him that he will not serve the sentence for which he was convicted by the court.

The sentence according to the CCRK: six (6) months to five (5) years of imprisonment

Imposed sentence: Six (6) months of effective imprisonment.

Mitigating factors:
1. The fact that he is a family man;
2. He is first time offender;
3. Good conduct after the commission of the criminal offense
4. Elapse of long time since the commission of the criminal offense;
5. Correct behavior during the proceedings;

**Aggravating factors**

None.

**Appropriateness of the sentence:**

The Court held that the sentence imposed is commensurate with the seriousness of the offense, the conduct and circumstances of the offender, the degree of social danger and the offender's liability, and was convinced that such punishment corresponds to the seriousness of the offense, the conduct and the degree of the offense, criminal liability, and it will affect the re-socialization of the convict, raise morale and establish the obligation to comply with the law, and will also influence in preventing others from committing criminal offenses.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

The court in this case only mentioned three purposes of sentencing giving no reasoning for them. As to the purpose of “victims and the community”, the court failed to take this into account in this judgment.

**Implementation of principles**

The court in this decision, when reasoning the appropriateness of the sentence, quoted some of the principles of the sentence, but did not establish them as specified in the Guidelines, in such a way that they relate to particular factors, but merely quoted them.

**Mitigating and aggravating factors indicated in the judgment**

As to the fact that the convict is a family person, according to the Guidelines there are seven factors that the court must consider when indicating this as a mitigating factor, none of which was considered and reasoned in this judgment. As to no prior criminal record, according to the Guidelines, if the court finds no prior criminal record and mitigation can be warranted, it will require a finding of facts that corroborate a conclusion of respective conduct and likelihood of rehabilitation, which was not done in this judgment. In terms of conduct of the offender after the commission of the offense, two factors must be taken into account according to the Guidelines and the court must answer three questions, which was not done at all in the reasoning of this judgment. The guideline's definitions were not taken into account in terms of the mitigating factor of “elapse of long time since the commission of the offense”. While in terms of correct conduct during the trial, this was not mentioned as a factor at all in the Guidelines, but may be in fact a proof of the existence of other mitigating factors.
Mitigating and aggravating factors ignored by the judgment

There are a number of factors, both mitigating and aggravating, that the court failed to consider in its justification or to give a reasoning as to why those factors were not considered. The court did not consider at all the extent of the defendants' participation in the commission of the offense, the degree of intent, the extent of the damage caused, the abuse of power or official position, the violation of trust, (non) repentance for the commission of the offense, (non) remorse, (lack of) compensation for damage caused, if the victim was particularly vulnerable or sensitive, age of the victim and (lack of) support for the injured party.

The method of the Sentencing Guidelines

In this case the court failed to provide any reasoning as to the intrinsic significance of any of the applicable factors and failed to provide justification as to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the present judgment, there are five mitigating and no aggravating factors. According to the Guidelines, this would fall under the instances of “overall combined mitigation factors (of any valid type) significantly greater than quantity of aggravation,” which in the appendix is qualified as column 5, respectively factors justifying highest mitigation within the range. According to Appendix 1 of the Guidelines, part 2, under h, the sentence in this case should be from six months to one year and six months of imprisonment, which means that the sentence imposed in this case is within the range.

13. Case PKR.nr.47/19 – Giving bribes as in Article 429 par. 1 of the CCRK

Judgment

According to the judgment of the Basic Court in Prishtina – Department of Serious Crimes, the convicted person D.F. was found guilty for the criminal offense of “Giving bribes.” Because according to the judgment on 5 January 2019 while conducting border procedures at the border crossing point in at Merdare, the convict in his capacity of a bus driver in “Pollush Trans” Passenger Transportation Company, directly offered to the Border Police officer of the Republic of Kosovo bribes in the amount of 10 Euros which he had placed in the vehicle registration document. When the border police officer during the search asked him for clarification whether he forgot this money there, he said “not forgotten but that is coffee money for you” so that the official person acts in violation of his official duty, whereby the money was seized while the person was arrested by the Kosovo police.

The sentence under the CCRK: fine or imprisonment of up to three (3) years.

Imposed sentence: **700 Euros fine.**

Mitigating factors:
1. The entering of a guilty plea;

2. Deep remorse for the criminal offense.

3. Promise not to commit such acts in the future;

4. The court has no record that the convict had prior criminal history;

5. The fact that he is a family member and provider;

**Aggravating factors**

None.

**Appropriateness of the sentence:**

The court held that the sentence imposed is in accordance with criminal liability, and is convinced that such a sanction is in accordance with the social danger of incriminating actions of the accused and criminal liability, and that the sentence imposed will have an impact in re-education, re-socialization, and prevent the accused and other persons from committing future criminal offenses, thereby achieving the general and specific purpose of the sentence.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

The court in this case considered only two of the purposes of sentencing which were not reasoned at all, while the other two purposes (social judgment, morality and the enforcement of the rule of law and the victims and the community) were not considered and reasoned at all in this judgment.

**Mitigating and aggravating factors indicated in the judgment**

With regards to the guilty plea and remorse for committing the offense, the court provided a modest reasoning, while the reasoning was not given in full compliance with the requirements of the guideline. The court acted almost similarly when it used the circumstance that the convict was a family member as a mitigating factor, when it determined that he was a family provider, thereby neglecting and not reasoning the seven factors required to be taken into account by the Guidelines. As to no prior criminal record, according to the Guidelines, if the court finds no prior criminal record and mitigation can be warranted, it will require a finding of facts that corroborate a conclusion of respective conduct and likelihood of rehabilitation, which was not done in this judgment.

**Implementation of principles**
The court has merely cited mitigating and aggravating factors in this case and failed to connect them to the principles that should be considered in determining a sentence, as provided by the Guidelines.

**Mitigating and aggravating factors ignored by the judgment**

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the degree of damage caused, abuse of authority or official position, violation of trust, (non) compensation for the loss or damage, conduct of the convicted person, age of the defendant, and (lack of) support for the victim.

**The method of the Sentencing Guidelines**

The court in this judgment did not give any reasoning as to assigning weight to factors, which implies that the weighing of factors is quantitative. In this concrete case, we have four mitigating and no aggravating factors, which according to the Guidelines would fall under the instances of “plea agreement or guilty plea in early stages of the process with no or a little aggravation, which would qualify under the column for factors justifying highest mitigation within the range. According to Appendix 1 of the Guidelines, part 1, under f, the imprisonment sentence in this case should be from one to eight months of imprisonment and the fine should be from 100 to 6,250 Euros, which means that the sentence imposed in this case is within the range.

14. Case PKR.nr.343/18 – Giving bribes as in Article 429, par. 1 of the CCRK

**Judgment**

Basic Court in Prishtinë - Serious Crimes Department, on 24 January 2019, found the defendant B.R guilty for the criminal offence of “Giving bribes”. Because according to the Judgment, on November 1, 2018, at about 08:00, at the Merdare border crossing point, the convict directly bribed a police officer of the Republic of Kosovo AK, who boarded the bus of company "B." while it was coming from A. to Kosovo for control of passenger documents. During the kontroll the accused hands over his personal document to police officer A.K and, under the document, he stuffed a bill of 10 Euros. When the police officer asks what is this, the convict-driver addressed him with the words "It’s for a coffee from me", the police officer arrested the accused and reported the case, notifying the shift supervisor M.M.

**The sentence under the CCRK:** *Punishable by fine or imprisonment of up to three (3) years.*
**Imposed sentence:** Punishable by three (3) months of suspended sentence and a probation period of one (1) year.

**Mitigating factors:**

1. Correct conduct in court during the hearing;
2. Guilty plea;
3. Deep remorse for the criminal offense;
4. Promise not to commit such acts in the future;
5. His declarative sincerity;
6. The convicted person violated the law for the first time.

**Aggravating factors:**

None.

**Appropriateness of the sentence:**

The Court held that the sentence imposed was commensurate with the gravity of the offense, the conduct and circumstances of the perpetrator, the degree of social danger and the perpetrator’s liability, and was convinced that such punishment would have an impact in re-socialization and re-education of the perpetrator, as well as influence others not to commit crimes, promote morale and strengthen the obligation to comply with the law, which is also the general purpose of sentencing. According to the court, this sentence implies re-socialization of the accused by suspending the sentence. With this conviction, the perpetrator is seriously warned and informed that if he commits another criminal act, the suspended sentence will be executed for a certain period of time. The court partly reasons these circumstances and the purpose of the sentence.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

With regard to the purposes of sentencing, the court has considered only three of the four purposes which according to the Guidelines must be consider and reasoned in every judgment. The court gave a modest reasoning related to specific or special deterrence, only mentioning the other two. With regards to the purpose of “victims and the community”, this sentencing purpose was not considered and reasoned by the court at all.

**Implementation of principles**

The court in this decision, when reasoning the appropriateness of the sentence, quoted some of the principles of the sentence, but did not establish them as specified in the Guidelines, in such a way that they relate to particular factors, but merely quoted them.

**Mitigating and aggravating factors indicated in the judgment**
The court merely cited the factors and failed to give any reasoning of the factors used in this case. As to the entering of a guilty plea, the court did not address in the judgment any of the four relevant questions required by the Guidelines for this factor. The court also did not address any of the eight relevant questions pertaining to remorse shown by the convicted person. Therefore, according to the Guidelines, the failure of the court to reason these two factors with facts and evidence leads to double counting of factors. As to the correct conduct of the defendant during the proceedings, according to the Guidelines, the court must address five relevant questions, which the court failed to do in this judgment. The promise of the convicted person not to commit a criminal offense in the future is not indicated in the Guidelines as a mitigating factor. The situation is the same with regard to the other mitigating factors used in this judgment, "declared sincerity". In this case we observed double counting of factors by the court, since "declarative sincerity" is a necessary condition for the court to approve the guilty plea by the defendant. As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this factor qualifies under other mitigating factors. Guidelines state that if the court assesses the lack of prior criminal convictions and mitigation can be warranted, it will require finding of facts that support a conclusion of adherent behavior and likelihood of rehabilitation. This issue was not addressed at all in the judgment.

Mitigating and aggravating factors ignored by the judgment

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the degree of damage caused, abuse of authority or official position, violation of trust, personal circumstances and the character of convicted person, (non) repentance, (non) compensation for the loss or damage, conduct of the convicted person after the conflict, age of the defendant, and (lack of) support for the the victim.

The method of the Sentencing Guidelines

The court in this judgment did not give any reasoning as to assigning weight to factors, which implies that the weighing of factors is quantitative. In this concrete case, we have six mitigating and no aggravating factors, which according to the Guidelines would fall under the instances of “plea agreement or guilty plea in early stages of the process with no or a little aggravation, which would qualify under the column for factors justifying highest mitigation within the range. According to Appendix 1 of the Guidelines, part 1, under f, the imprisonment sentence in this case should be from one to eight months of imprisonment, which means that the sentence imposed in this case is within the range.

15. Case PKR.nr. 266/16 – Giving bribes as in Article 429 par. 1 of the CCRK
Judgment

On September 26, 2018, Basic Court in Prishtina - Serious Crimes Department, found the convicted N.A. guilty after concluding that on August 20, 2015, around 09:00, at the Merdare border crossing point, he directly offered to bribe the official in order to act in violation of his official duty. As a driver of the Tourist Agency "BT", was stopped by Sergeant BM, who was performing his official duty, at the exit booth where the checks and registrations of the necessary documents for border crossing are performed. He stuffed 10 Euro bill in the middle of the vehicle registration document as a bribe and for the purpose of facilitating border crossing.

The sentence under the CCRK: **Punishable by fine or imprisonment of up to three (3)**.

Imposed sentence: **two hundred (200) Euros fine**.

Mitigating factors:

Correct conduct in court during the main hearing;

Guilty plea;

No prior criminal convictions.

Aggravating factors:

None.

Appropriateness of the sentence:

The Court held that the sentence imposed was commensurate with the gravity of the offense, the conduct and circumstances of the perpetrator, the degree of social danger and the perpetrator's liability, and was convinced that such punishment would have an impact in re-socialization and re-education of the perpetrator, as well as influence others not to commit crimes, promote morale and strengthen the obligation to comply with the law.

Implementation of the Guidelines

Appropriateness of the sentence

With regard to the sentencing purposes, the court considered only three of the four purposes that should be considered and reasoned in each judgment according to the Guidelines, and the court failed to reason any of them, but only took them for granted. has quoted them. With regards to the purpose of “victims and the community”, this sentencing purpose was not considered and reasoned by the court at all.

Implementation of principles
The court in this decision, when reasoning the appropriateness of the sentence, quoted some of the principles of the sentence, but did not establish them as specified in the Guidelines, in such a way that they relate to particular factors, but merely quoted them.

**Mitigating and aggravating factors indicated in the judgment**

The court merely cited the factors and failed to give any reasoning of the factors used in this case. As to the guilty plea, according to the Guidelines there is a total of six factors that the court must consider, which were not mentioned in the reasoning of this judgment. As to the correct conduct of the defendant during the proceedings, according to the Guidelines, the court must address five relevant questions, which the court failed to do in this judgment. As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this factor qualifies under other mitigating factors. Guidelines state that if the court assesses the lack of prior criminal convictions and mitigation can be warranted, it will require finding of facts that support a conclusion of adherent behavior and likelihood of rehabilitation. This issue was not addressed at all in the judgment.

**Mitigating and aggravating factors ignored by the judgment**

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the degree of damage caused, abuse of authority or official position, violation of trust, personal circumstances and the character of convicted person, (non) repentance, (non) compensation for the loss or damage, conduct of the convicted person after the conflict, age of the defendant, elapse of time and (lack of) support for the victim.

**The method of the Sentencing Guidelines**

The court in this judgment did not give any reasoning as to assigning weight to factors, which implies that the weighing of factors is quantitative. In this concrete case, we have four mitigating and no aggravating factors, which according to the Guidelines would fall under the instances of “plea agreement or guilty plea in early stages of the process with no or a little aggravation, which would qualify under the column for factors justifying highest mitigation within the range. According to Appendix 1 of the Guidelines, part 1, under f, the imprisonment sentence in this case should be from one to eight months of imprisonment and the fine should be from 100 to 6,250 Euros, which means that the sentence imposed in this case is within the range.

**16. Case PKR.nr.83/18 – Accepting bribes as in Article 428 par. 1 subpar. 1 in conjunction with Article 31 of the CCRK**

**Judgment**

According to the judgment of the Basic Court in Prizren - Serious Crimes Department, A.T was convicted for the offense of “Accepting bribes”. According to the judgment, on 29
October 2014, near the restaurant "Giri" in Qafe te Duhles, in the capacity of forest guard in the Directorate of Agriculture and Rural Development in the Municipality of Suhareka, the convict directly requested money for himself, in order not to comply with their official duties. While the accused AT was on duty as a watchman at the Caraleva Economic Unit, he encountered F.Q cutting woods with a chain saw and requested that he follows him to the restaurant "Giri" in "Qafe e Duhles", as he needs to consult with other colleagues. Afterwards - as stated in the judgment - when they arrive in front of the restaurant, the accused N.B approaches him, saying "if he can give him money, they will not write the minutes but they will let him go". Thus, the injured party FQ pays 45 Euros to the accused N.B, who initially takes the money and consults the accused AT who was in the vehicle. The latter opens the vehicle window and throws the money and requests from 100 Euros from the injured party for not reporting the case to the court.

The sentence under the CCRK: *Punishable by six (6) months to five (5) years of imprisonment.*

**Imposed sentence:** six (6) months imprisonment and a 500 Euros fine.

**Mitigating factors:**

1. Personal circumstances;
2. Poor economic situation;
3. They are family providers;
4. Correct behavior at the trial;

**Aggravating factors:**

1. Degree of participation in the commission of the crime with direct intent;

**Appropriateness of the sentence:**

The Court considers that the sentence imposed will have the effect of punishment and that such punishment is commensurate with the offense committed and the personal circumstances of the convict.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

The court in this case has only held that this conviction will have its effect but failed to consider and justify all four purposes of the conviction which, according to the Guidelines, should be considered in each judgment.
Implementation of principles

In this judgment, court applied only one principle according to requirements of the guideline, that of the extent of the defendant's participation in the commission of the criminal offense, which he related to a particular factor and reasoned it. As to the other principles, in this case, they have not been applied and justified according to the requirements of the Guidelines.

Mitigating and aggravating factors indicated in the judgment

As to the first three mitigating factors (personal circumstances, the economic situation of the convicts and being family providers), the court has tripled the factors, as the economic situation and the family situation are facts that need to be established in order for the "personal factor" to be considered as a mitigating factor. Likewise, in order to take into account the family situation alone as a mitigating factor, the court, according to the guideline, must consider and justify seven factors, which it did not do in this judgment. As to the correct conduct of the defendant during the proceedings, according to the Guidelines, the court must address five relevant questions, which the court failed to do in this judgment. Whereas, regarding the aggravating factor of “the degree of participation in the offense committed with direct intent”, here too the court failed to give any reasoning. According to the KPPRK and the Guidelines, the degree of participation and the degree of intent are two separate aggravating factors, which the court cites in this judgment as a single factor. On the other hand, if it refers only to direct intent, here again we are dealing with double counting of circumstances, as direct intent is an essential element of the criminal offense for which the defendants have been convicted. According to the guideline, under this factor, the court should consider the individual contribution of each participant in relation to each other, which the court did not do but only quoted both defendants, which is not in line with the requirements of the Guidelines. Moreover, in this aggravating factor according the the Guidelines, the court must consider and reason six factors, and answer seven relevant questions, which the court failed to do in this judgment.

Mitigating and aggravating factors ignored by the judgment

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the degree of damage abuse of authority or official position, violation of trust, (non) repentance, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, any prior criminal/noncriminal conduct of the convicted person, age of the defendant e and (lack of) support for the victim.

The method of the Sentencing Guidelines

The court in this judgment did not give any reasoning as to intrinsic importance and assigning weight to factors, which implies that the weighing of factors is quantitative. In this concrete case, we have four mitigating and one aggravating factors, which according to the Guidelines would fall under the instances of “existence of at least two circumstances for reduced
culpability or damage and no/or little aggravation, which would qualify under the column for factors justifying highest mitigation within the range. According to Appendix 1 of the Guidelines, part 2, under f, the imprisonment sentence in this case should be from six months to one year and six months of imprisonment and the fine should be from 100 to 6,250 Euros, which means that the sentence imposed in this case is within the range.

17. Case PKR nr. 222/15 – Giving bribes as in Article 429 par. 1 of the CCRK

Judgment

According to the judgment of the Basic Court in Prishtina – Department of Serious Crimes, the convicted person N.E. was found guilty for the criminal offense of “Giving bribes.” Because, according to the court, on January 8, 2015, at the Merdare Border Crossing while driving a “Golf”, with the intent to do smuggling and have the police officer violate or not comply with his official duty, while presenting the documentation along with the car documents, B.Z offered the sum of 50 Euros to the officer saying that these are for you.

The sentence under the CCRK: fine or imprisonment of up to three (3) years.

Imposed sentence: 3,600 Euros fine.

Mitigating factors:

1. No prior criminal convictions.

2. Pre-conflict and post-conflict conduct of the convicted person;

3. Elapse of long time since the commission of the criminal offense;

4. Father of five and family provider;

Aggravating factors

1. High degree of intent;

2. Commission of the criminal offense with premeditation;

3. High degree of risk to protected values;

Appropriateness of the sentence:

The court held that the fine imposed is in line with the degree of criminal responsibility of the convict and will prevent him and other persons from committing other criminal offenses.

Implementation of the Guidelines
Appropriateness of the sentence

The court in this judgment cited only specific or special deterrence and general deterrence, and gave no reasoning for either one of them. As to the other two purposes (judgment of society, increased morality and the obligation to respect the law, and victims and the community), the court did not apply or justify these purposes of punishment.

Implementation of principles

The court has merely cited mitigating and aggravating factors in this case and failed to connect them to the principles that should be considered in determining a sentence, as provided by the Guidelines. As to the degree of criminal liability, this principle is quoted in the appropriateness of the sentence issued by this judgment, but it is not reasoned with special circumstances, as required by the Guidelines.

Mitigating and aggravating factors indicated in the judgment

As to no prior criminal record, according to the Guidelines, if the court finds no prior criminal record and mitigation can be warranted, it will require a finding of facts that corroborate a conclusion of respective conduct and likelihood of rehabilitation, which was not done in this judgment. As to the correct conduct of the defendant during the proceedings, according to the Guidelines, the court must address five relevant questions, which the court failed to do in this judgment. The court acted the same way in relation to seven factors that must be taken into consideration regarding the conduct of the convict before committing the offense. As to the elapse of time, the court does not provide any justification in the judgment. As to the mitigating circumstance that the convict is the father of five children and the family provider, the court in this case took into account only two of the seven factors that the guideline requires in these cases. As to the aggravating factors, the court did not provide any justification for the aggravating factor "high degree of intent". Concerning this factor, the court addressed only one relevant question, and omitted six other relevant questions and six factors. The court addressed defendant's premeditation as the only relevant question. However the court did not consider this at the level of the factor, but at the level of particular aggravating factor, which is double counting of factors. Concerning the high degree of endangerment of protected values, the court in this case only stated that it is a criminal offense against official duty, without taking into consideration the four factors that the Guidelines determine in relation to this factor.

Mitigating and aggravating factors ignored by the judgment

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the abuse of authority or official position, violation of trust, (non) repentance, (non) compensation for the loss or damage, age of the defendant, and (lack of) support for the victim.

The method of the Sentencing Guidelines
The court in this judgment did not give any reasoning as to assigning weight to factors, which implies that the weighing of factors is quantitative. In this case we have four mitigating and three aggravating factors, which according to the Guidelines would fall under the instances of “existence of minor aggravation along with multiple mitigating factors or mitigation (individual factor or combined factors) in greater quantity than aggravation,” which in the annex would qualify under the column of factors indicating higher mitigation than aggravation. According to Appendix 1 of the Guidelines, part 1, point f, the imprisonment sentence in this case should be from one to eight months of imprisonment and the fine should be from 6250 to 8333 Euros, which means that the sentence imposed in this case is within the range.

18. Case PKR.nr.327/18 – Accepting bribes as in Article 428 par. 1 of the CCRK

Judgment

According to the judgment of the Basic Court in Prishtina - Serious Crimes Department, the convict RK was found guilty because on July 6, 2018, at about 10:30 am, in his capacity of Director of Urology Department at UCCK, intentionally and with the purpose of gaining unlawful profit, requested and received 100 Euros in bribes from the injured BH so that his nephew F. H, is inserted in the surgery list in an expedited manner. Subsequently, based on the measures for simulation of a criminal offense of corruption, the injured party entered the Urology ward at the office of the defendant and handed over the requested money. The money was subsequently found in the convict's pocket and confiscated by the police investigator, and he was immediately arrested.

The sentence under the CCRK: fine and imprisonment of six (6) months to five (5) years.

Imposed sentence: nine (9) months of imprisonment and a 2,000.00 Euros of fine.

Mitigating factors:

1. Is elderly person about to retire;
2. No prior criminal history;
3. Plead guilty and has shown remorse;
4. Expressing sincere and real regret and remorse;

Aggravating factors

1. The intensity of danger or injury to the protected value.
2. Manner in which the criminal offense was committed;
3. High degree of intent;
4. Responsible action;

**Appropriateness of the sentence:**

The Court considers that the sentence imposed is commensurate with the seriousness and severity of the offense, and was convinced that the sentence will serve as both individual and general deterrence measure, preventing him from committing criminal offenses in the future. The court also estimates that this sentence will prevent the defendant and other potential perpetrators from committing such acts in the future.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

In terms of appropriateness of the sentence, the court took the achievement of individual and general purposes for granted, giving no reasoning on how that purpose will be achieved through this sentence. As to the other two purposes (judgment of society, increased morality and the obligation to respect the law, and victims and the community), the court failed to consider and reason these purposes of punishment.

**Implementation of principles**

The court has merely cited mitigating and aggravating factors in this case and failed to connect them to the principles that should be considered in determining a sentence, as provided by the Guidelines. However as to the two principles of sentencing the intensity of endangering or damaging the protected value and the circumstances in which the offense was committed, the court failed to set it as a principle of punishment and reason it with aggravating or mitigating factors, but merely uses it as an aggravating factor.

**Mitigating and aggravating factors indicated in the judgment**

As to the age of the defendant as a mitigating factor, the court in this case found that he was in before retirement, a determination not mentioned in the Guidelines. Furthermore, the court in this case did not take into account and failed to reason the nine factors which, according to the Guidelines, should be taken into account in this case. As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this factor qualifies under other mitigating factors. Guidelines state that if the court assesses the lack of prior criminal convictions and mitigation can be warranted, it will require finding of facts that support a conclusion of adherent behavior and likelihood of rehabilitation. This issue was not addressed at all in the judgment. As to repentance, the court in this case has double counted factors, since the guilty plea and the expressed remorse, according to the guideline, are part of the repentance, and not special and separate circumstances. Moreover, according to the guideline, remorse also has a particular link to the guilty plea, which the court did not differentiate in the reasoning of this judgment. Also, with regard to the guilty plea, the
Guidelines set out four factors that must be taken into account in any judgment when this circumstance is found as a mitigating factor, which the court did not do in this judgment. The court acted the same way with respect to seven factors that must be taken into account in the context of remorse. Regarding the level of damage to the protected value and the way the crime was carried out, in this case we have double counting of factors, as these Guidelines qualify as principles of sentencing, rather than special aggravating or mitigating factors. There is also a double counting of factors in the case where the court considered the high degree of intention and degree of criminal liability as aggravating factors as the degree of liability, according to the Guidelines, is a question relevant to the high degree of intention, not a special aggravating circumstance.

Mitigating and aggravating factors ignored by the judgment

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address, abuse of authority or official position, violation of trust, personal circumstances and the character of convicted person, (non) repentance, (non) compensation for the loss or damage, conduct of the convicted person after the conflict and (lack of) support for the the victim.

The method of the Sentencing Guidelines

The court in this judgment did not give any reasoning as to intrinsic importance and assigning weight to factors, which implies that the weighing of factors is quantitative. In this case, we have four mitigating and four aggravating factors, which according to the Guidelines is the case where “Aggravating and mitigating circumstances are equal and none prevail over the other”, which in the appendix qualifies in the starting column for weighing the sentence. According to Appendix 1 of the Guidelines, part 2, under f, the imprisonment sentence in this case should be two years and six months of imprisonment and the fine should be to 12500 Euros, which means that the judgment in this case is within the range.

19. Case PKR.nr.181/14 – Misappropriation in office as in Article 425 par. 1 in conjunction with Article 31 of the CCRK

Judgment

According to the judgment of the Basic Court in Prishtina - Serious Crimes Department B.F, I.F and P.K were convicted for the offense of “Misappropriation on office”. Because, according to the judgment, B.F. Warehouse Manager I.H. Seller acting in co-perpetration loaded goods, namely "Duel" laundry powder, more than indicated in the invoice. Meanwhile, on March 4 of the same year, they were both caught in the act of committing the crime, where the goods were returned to the warehouse. The total value they are alleged to have acquired through these criminal actions amounts to € 878.88. Whereas, the accused V.I for which the procedure was separated, in the capacity of the seller, sold the product “Duel”, which had been offered “for free” to the owner of the supermarket, in the value of 33.20
Euros, and no invoice was issued for the sale of these goods. The procedure against F.S was also divided. The convicted P.K, did not issue an invoice for the goods that came out of the warehouse thereby causing material damage to the company in question.

The sentence under the CCRK: fine and imprisonment of six (6) months to five (5) years.

Imposed sentence:

B.F: a fine of 1,000 Euros and a prison sentence of six months which was substituted with a fine of over 3,000 Euros - aggregated fine of 4,000 Euros.

I.H: a fine of 500 Euros and a prison sentence of four months which was substituted with a fine of 2,000 Euros – aggregated fine of 2,500 Euros.

P.K: a fine of 1,000 Euros and a prison sentence of six months which was substituted with a fine of 3,000 Euros – aggregated fine of 4,000 Euros.

Mitigating factors:

1. No prior criminal convictions.
2. Good conduct after the commission of the criminal offense
3. For convicts P.K and I.H, especially the fact that they are family persons and providers;
4. For B.F relatively young age;
5. Elapse of long time since the commission of the criminal offense;

Aggravating factors:

None.

Appropriateness of the sentence:

The Court has held that the sentence imposed is in line with the intensity of the social danger of the offenses committed and the degree of criminal liability, and will have an impact in both individual and general deterrence as well as on the strengthening of morale and civil discipline.

Implementation of the Guidelines

Appropriateness of the sentence

In terms of appropriateness of the sentence, the court took the achievement of individual and general purposes of strengthening the morale and discipline for granted, giving no reasoning on how that purpose will be achieved through this sentence. With regards to the purpose of “victims and the community”, this sentencing purpose was not considered and reasoned by the court at all.
Implementation of principles

The court has merely cited mitigating and aggravating factors in this case and failed to connect them to the principles that should be considered in determining a sentence, as provided by the Guidelines. As to the conduct of the defendant after the commission of the criminal offense, which is set out in the Guidelines as a principle, was used by the court only as an aggravating factor, without reasoning and correlating it with any particular factor.

Mitigating and aggravating factors indicated in the judgment

As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this factor qualifies under other mitigating factors. Guidelines state that if the court assesses the lack of prior criminal convictions and mitigation can be warranted, it will require finding of facts that support a conclusion of adherent behavior and likelihood of rehabilitation. This issue was not addressed at all in the judgment. Regarding the conduct of the convicts after the commission of the offense, according to the Guidelines, this is a principle and not a factor, which implies that the principle is used instead of a factor, which is a double counting of factors. As to the mitigating factor that the convicted person is a family person, the Guidelines set forth seven factors that the court should address and reason in determining this factor as a mitigating factor. In this case this requirement was not fulfilled, as the court took into account only one factor (that of family provider), while ignoring six other factors. In terms of the relatively young age, initially according to the Guidelines the "relatively young" age does not exist as a mitigating factor. In the present case, there are nine factors that must be considered and reasoned according to the Guidelines, which the court failed to do in this judgment. Furthermore, the convict at the time of the commission of the offense was over the age of 18. As to the elapse of time, the court does not provide any reasoning in this judgment.

Mitigating and aggravating factors ignored by the judgment

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the degree of damage caused, abuse of authority or official position, violation of trust, (non) repentance, (non) compensation for the loss or damage, and lack of (non) support for the victim.

The method of the Sentencing Guidelines

The court in this judgment did not give any reasoning as to intrinsic importance and assigning weight to factors, which implies that the weighing of factors is quantitative. In this concrete case, we have five mitigating and no aggravating factors, which according to the Guidelines would fall under the instances of “existence of at least two circumstances for reduced culpability or damage and no/or little aggravation, which would qualify under the column for factors justifying highest mitigation within the range. In this case according to Appendix 1 of the Guidelines, part 2, under h, the sentence in this case should be from six months to one
year and six months of imprisonment, and a fine in the amount of 100 to 6250 Euros. In the concrete case, the fine is within these ranges for the three convicts, and the sentence of imprisonment for the first and third convicts is also within this range. As to the second convict who, in this case, was sentenced to four months of imprisonment, the court did not give any reason as to why in this case the convict should receive mitigation based on Article 75 of the CCRK.

20. Case P.nr.121/18 – Misappropriation in office as in Article 425 par. 1 of the CCRK

Judgment

According to the judgment of the Basic Court in Mitrovica - Serious Crimes Department, AA, was found guilty of the offense of "misappropriation in office", because from January to March 2016, in the capacity of an official person, payment collector in the Regional Water Company "Mitrovica" in Mitrovica, with the aim of gaining illegal material benefit, misappropriated assets - money entrusted to him as a part of his duty. He misappropriated a part of funds collected from customers who paid their wetter bills. He misappropriated a total of 263.40 Euros. Consumers paid certain amounts to the convicted person, and he wrote down lower amounts in the daily turnover report.

The sentence under the CCRK: fine and imprisonment of six (6) months to five (5) years.

Imposed sentence: Six months of suspended sentence and a probation period of 2 years.

Mitigating factors:

1. Guilty plea;
2. Correct conduct in court;
3. Deep remorse for the criminal offense;
4. He paid for compensation of damage to the Regional Water Company;
5. The fact that he is a family man, the father of two children;

Aggravating factors:

None.

 Appropriateness of the sentence:

The court finds that the suspended sentence imposed on the convict is in full compliance with the degree of criminal liability and social risk for the offense for which the defendant is
charged. The court also estimates that this sentence will achieve the purpose of sentence thereby preventing the perpetrator and other persons from commission of such acts in the future.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

In terms of appropriateness of the sentence, the court took the achievement of individual and general purposes for granted, giving no reasoning on how that purpose will be achieved through this sentence. As to the other two purposes (judgment of society, increased morality and the obligation to respect the law, and victims and the community), the court failed to consider and reason these purposes of punishment.

**Implementation of principles**

The court has merely cited mitigating and aggravating factors in this case and failed to connect them to the principles that should be considered in determining a sentence, as provided by the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**

As to repentance, the court in this case has double counted factors, since the guilty plea and the expressed remorse, according to the guideline, are part of the repentance, and not special and separate circumstances. Moreover, according to the guideline, remorse also has a particular link to the guilty plea, which the court did not differentiate in the reasoning of this judgment. Also, with regard to the guilty plea, the Guidelines set out four factors that must be taken into account in any judgment when this circumstance is found as a mitigating factor, which the court did not do in this judgment. As to the correct conduct of the defendant during the proceedings, according to the Guidelines, the court must address five relevant questions, which the court failed to do in this judgment. As to compensation for damages, the Guidelines set determine seven relevant questions that the court must answer, which the court did not address in this judgment. As to the fact that the convicted person is a family person, the court in this case merely indicated the number of children and overlooked the other six factors set forth under the Guidelines.

**Mitigating and aggravating factors ignored by the judgment**

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the degree of damage caused, abuse of authority or official position, violation of trust, (non) repentance, post-conflict conduct of the convicted person, any prior criminal/noncriminal conduct of the convicted person, age of the defendant and (lack of) support for the victim.
The method of the Sentencing Guidelines

The court in this judgment did not give any reasoning as to intrinsic importance and assigning weight to factors, which implies that the weighing of factors is quantitative. In this concrete case, we have five mitigating and no aggravating factors, which according to the Guidelines would fall under the instances of “existence of at least two circumstances for reduced culpability or damage and no/or little aggravation, which would qualify under the column for factors justifying highest mitigation within the range. In this case according to Appendix 1 of the Guidelines, part 2, under h, the sentence in this case should be from six months to one year and six months of imprisonment, and a fine in the amount of 100 to 6250 Euros. In the present case, the sentence of imprisonment is within the range. Whereas, in this case, this offense contains two cumulative sentences, imprisonment and a fine. The latter was not imposed by the court in this case at all.

21. Case DKR. P.nr.111 / 2018 - Legalization of False Content as in Article 403 Par.2 related to Par.1 of CCRK, Falsification of Official Document as in Article 434 Par 1, Falsifying official document as in Article 431 Par.1 and False statement under oath as in Article 391 par.1 of CCRK

Judgment

According to the verdict of the Basic Court in Peja - Department for Serious Crimes, AK, Rr.M and BB were found guilty of criminal offenses "legalization of false content", "falsifying of official document" and "false statement under oath".

According to the verdict, the on June 12, 2014, the convicted person A.K was registered in the birth registers, presenting herself with falsified documents namely a document from primary school “Emin Duraku” in Sferka, the vaccination certificate issued by the former Health House in Klina dated 26 September 2000, in which documents the name A.K was deleted and replaced by L.K. The convicted person presented falsified document and mislead officials, as if AK died in 2006, and the defendant is the other twin child, while previously she was registered together with AK, and the data for L.K were misused by by the defendant A.K.

Whereas, the convicted person Rr.M, was found guilty, because on June 12, 2014, in the village of Sferka, in the civil status office, as an official person, entered false data in the official register and document. Being in the capacity of the civil registry official, used the falsified documents presented by the convict A.K, and entered them in the civil register of births, issuing a birth extract in the name of L.K rather than her own name.
Whereas, BB was found guilty, because on September 6, 2014, in the elementary school "Emin Duraku", in the village of Sferka, Klinë municipality, in his capacity of a school secretary, recorded false data about A.K in the official document, using falsified documents presented by the convict A.K, issuing a certificate claiming that L.K was a pupil of that school during 1997/1998 school year, even though he knew that she was not a pupil from that school.

Whereas, K.K and G.M were found guilty, because, on October 14, 2016, at the Basic Court in Peja, the Klina branch, in the capacity of witnesses gave false testimony, when they stated that the late A.K died on May 10, 2006, by natural causes, in the village of Pereqev, Municipality of Klina, where she was buried, so that the defendant A.K can use this certificate for getting an ID on behalf of L.K.

The sentence under the CCRK:

Legalization of false content: Punishable by three (3) months to five (5) years of imprisonment.

Falsifying official document: Punishable by six (6) months to five (5) years of imprisonment.

False statement under oath: Punishable by fine or imprisonment of up to three (3) years.

Imposed sentence:

A.K: Eight (8) months of suspended sentence and a probation period of one (1) year.

Rr.M: Six (6) months of suspended sentence and a probation period of one (1) year.

B.B: Six (6) months of suspended sentence and a probation period of one (1) year.

K.K: Three (3) months of suspended sentence and a probation period of one (1) year.

G.M: Three (3) months of suspended sentence and a probation period of one (1) year.

Mitigating factors:

1. Pre-conflict and post-conflict conduct of the convicted person;
2. The convicts have not been convicted before and have not committed any other criminal offenses;
3. They are family providers;
4. Very poor economic situation;
5. They pleaded guilty for offenses for which they were charged at the outset;
Aggravating factors:
None.

Appropriateness of the sentence:
The court concluded that the sentences imposed were commensurate with the degree of criminal responsibility of the accused, the social risk of the offenses committed and the degree of the consequence, making sure that the sentences imposed were balanced and weighted, and that they will serve the purpose of achieving the purpose of sentencing, so that both the perpetrators of these offenses and others will be deterred from committing such acts in the future.

Implementation of the Guidelines

Appropriateness of the sentence
In terms of appropriateness of the sentence, the court took the achievement of individual and general purposes for granted, giving no reasoning on how that purpose will be achieved through this sentence. As to the other two purposes (judgment of society, increased morality and the obligation to respect the law, and victims and the community), the court failed to consider and reason these purposes of punishment.

Implementation of principles
The court has merely cited mitigating and aggravating factors in this case and failed to connect them to the principles that should be considered in determining a sentence, as provided by the Guidelines. Two of the principles of sentencing (degree of criminal liability and intensity of endangering or damage to the protected value) have been quoted by the court as to under the appropriateness of the sentence, without relating them to any mitigating or aggravating factor and giving no reasoning for the two principles.

Mitigating and aggravating factors indicated in the judgment
In terms of the conduct of the accused after the conflict, the court did not provide any answer to the three relevant questions set out in the Guideline, while it is unclear as to what the court had in mind when citing the conduct of the accused before the commission of the criminal offense. In the concrete case, the fact that the convicts have no prior criminal record cannot be taken into account, as this circumstance has been cited by the court as a special mitigating factor. Regarding the mitigating factor that convicts had no prior criminal record, according to the Guidelines, this circumstance is qualified for other mitigating factors. Guidelines state that if the court assesses the lack of prior criminal convictions and mitigation can be warranted, it will require finding of facts that support a conclusion of adherent behavior and
likelihood of rehabilitation. This issue was not addressed at all in the judgment. As to the mitigating factor that the convicts are parents and family providers, the court in this case only cited the fact that they are family providers, overlooking the seven other factors specified by the Guidelines. Regarding the factor that the convicts are family providers, the court did not give any reasoning as to whether the convicts were the sole family providers. Regarding the poor economic situation, under the Guidelines this cannot be cited as a special mitigating factor, but is a factor in implementing the mitigating factor “personal circumstances and character of the convicted person”. Therefore, according to the Guidelines, in this case we have double counting of factors. As to the guilty plea, the court only indicated that the convicts pleaded guilty at the outset, an element that is a requirement under the Guidelines, overlooking the other three questions that must be answered in this case as required by the Guidelines.

Mitigating and aggravating factors ignored by the judgment

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the degree of damage caused, abuse of authority or official position, violation of trust, (non) repentance, (non) compensation for the loss or damage, age of the defendant, elapse of time and (lack of ) support for the victim.

The method of the Sentencing Guidelines

The court in this judgment did not give any reasoning as to intrinsic importance and assigning weight to factors, which implies that the weighing of factors is quantitative. In this concrete case, we have five mitigating and no aggravating factors, which according to the Guidelines would fall under the instances of “existence of at least two circumstances for reduced culpability or damage and no/or little aggravation, which would qualify under the column for factors justifying highest mitigation within the range. Regarding the criminal offense of legalization of false content, according to Annex 1 of Part 2, point c, the sentence in this case should be from three months to one year and three months, which means that the sentence falls within this range. Regarding the criminal offense of falsification of official document, according to Annex 1 of Part 2, point h, the sentence in this case should be from six months to one year and six months, which means that the sentence is within this range. Further, as to the criminal offense of false statement, according to Appendix 1 of the Guidelines, part 1, point f, the sentence should be from one month to eight months of imprisonment, which means that the sentence imposed in this case is within the range.

22. Case PKR.nr.111/17 Abuse of official position or authority as in Article 422 par.1 In conjunction with par. 2 sup par. 2.4 of the CCRK

Judgment
Basic Court in Prizren - Serious Crimes Department on April 25, 2018, found the convicted person I.B guilty, because over the period from August 2015 to December 2016, in the capacity of Director of Public Administration in the Municipality of Prizren, using his official duty or authority, exceeded his official authorizations by misusing public property in order to gain material benefit for others namely TV Opinon, TV Besa and TV Prizren in such a way that, without any tendering procedure, enters into and signs contracts for broadcasting of advertising spots related to online applications for the needs of the Municipality of Prizren, respectively of public administration. He entered into a contract for broadcasting with TV Opinon on 01 August 2015 to until 31 July 2016, in the amount of 300 Euros per month, with TV Besa from September 1, 2015, to August 1, 2016 in the amount of 250 Euros per month and with Prizren TV from April 1, 2016 with duration December 31, 2016 in the amount of 500 Euros per month. After the financial expertise it was observed that based on the supplier cards of the above three TV outlets for services of advertising spots related to online applications, all of them have exceeded the amounts provided for by signed contracts in the amount of 17.100 Euros.

The sentence under the CCRK: Punishable by six (6) months to five (5) years of imprisonment.

Imposed sentence: Six months of suspended sentence and a probation period of one (1) year.

Mitigating factors:

1. Correct conduct before the court;
2. Age of the convicted person;
3. Economic situation;
4. His education;
5. The convicted person violated the law for the first time;

Aggravating factors:

Manner in which the criminal offense was committed;

2. The gravity of the criminal offense;

 Appropriateness of the sentence:

The court held that the sentence imposed will achieve the purpose of the sentence, the sentence imposed corresponds to the degree of his criminal responsibility, and that the sentence would achieve the purpose of sentencing so that he will be more cautious in the future and to refrain from such actions. This punishment will be deterrent for other persons as well making them be more careful with their actions in the future.
Implementation of the Guidelines

Appropriateness of the sentence

In terms of appropriateness of the sentence, the court took the achievement of individual and general purposes for granted, giving no reasoning on how that purpose will be achieved through this sentence. As to the other two purposes (judgment of society, increased morality and the obligation to respect the law, and victims and the community), the court failed to consider and reason these purposes of punishment.

Implementation of principles

The court has merely cited mitigating and aggravating factors in this case and failed to connect them to the principles that should be considered in determining a sentence, as provided by the Guidelines. However as to the two principles of sentencing the intensity of endangering or damaging the protected value (gravity of the offense) and the circumstances in which the offense was committed, the court failed to set it as a principle of punishment and reason it with aggravating or mitigating factors, but merely uses it as an aggravating factor.

Mitigating and aggravating factors indicated in the judgment

As to the correct conduct of the defendant during the proceedings, according to the Guidelines, the court must address five relevant questions, which the court failed to do in this judgment. As to the age of the convicted person, the court did not provide any reasoning for this factor and failed to address any of the nine relevant questions set forth in the Guidelines. Moreover, it is not known from the reasoning of the judgment what the age of the convict was. On the other hand, with regard to the economic situation and education of the convict, the court in this case gives no reasoning but only quotes them. In this regard, according to the Guidelines, the economic situation and education of the convict are not special mitigating factors, but are factors used to assess the personal circumstances and character of the convict as mitigating factor, so in this case, we are dealing with double counting of factors. As to the fact that the convicted person violated the law, for the first time, according to the Guidelines, this factor qualifies under other mitigating factors. Guidelines state that if the court assesses the lack of prior criminal convictions and mitigation can be warranted, it will require finding of facts that support a conclusion of adherent behavior and likelihood of rehabilitation. This issue was not addressed at all in the judgment. As to the two aggravating factors used in this judgment, which are the gravity of the offense and the manner in which the offense was committed, as explained in the application of principles, in this judgment we are dealing with a double count of factors. This is because the gravity of the offense and the manner in which the offense is committed are principles of sentencing which must relate to particular mitigating or aggravating factor, rather than be used as mitigating or aggravating factors.

Mitigating and aggravating factors ignored by the judgment
There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the degree of damage caused, abuse of authority or official position, violation of trust, (non) repentance, (non) compensation for the loss or damage, elapse of time and (lack of) support for the victim.

The method of the Sentencing Guidelines

In this case the court failed to provide any reasoning as to the intrinsic significance of any of the applicable factors and failed to provide justification as to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the present judgment, there are 5 mitigating and 2 aggravating factors. According to the Guidelines this is a case that would fall under the instances of “existence of minor aggravation along with multiple mitigating factors or mitigation (individual factor or combined factors) in greater quantity than aggravation,” which in the annex would qualify under the column of factors indicating higher mitigation than aggravation. According to Appendix 1 of the Guidelines, part 2, under h, the sentence in this case should be from one year and six months to two years and six months of imprisonment, which means that the sentence imposed in this case is within the range.

23. Case PKR.nr.340/18 Abusing official position or authority as in Article 422 par.1 in conjunction with Article 31 of the CCRK

Judgment

Basic Court in Pristina - Serious Crimes Department, on September 26, 2018, found F.G and A.Sh guilty as charged, because according to the judgment F.G in the capacity of official in the Ministry of Culture, Youth and Sport, together with defendant A.Sh. as Secretary of the Athletics Federation of Kosovo, with the intention of gaining material benefit for themselves or the other in co-perpetration exceeded their authorizations. On 4 June 2015, the Ministry of Culture, Youth and Sports signed a memorandum to provide financial assistance to the Athletics and Sports Federation in the amount of € 6,522 which funds were earmarked for Club “R.” by K. for the conducting sports competitions in Belgium. Despite the fact that defendants were aware that the costs for this project were covered by a co-patriots they produced false reports using evidence of fictitious invoice expenses, in order not to return these funds to the Ministry of Culture and Sports by closing this project and leaving the amount of € 6,552 with the Athletics Federation of Kosovo.

The sentence under the CCRK: Punishable by six (6) months to five (5) years of imprisonment.

Imposed sentence:

F.G: for a period of 6 (six) months, which is substituted by a fine of EUR 3,000
A.Sh: for a period of 6 (six) months, which is substituted by a fine of EUR 3,000

**Mitigating factors:**

1. Plea agreement reached with the prosecutor;
2. Poor economic situation;
3. Deep remorse for the criminal offense;
4. The fact that no criminal proceedings of the same or similar nature is being conducted against them

**Aggravating factors:**

None.

**Appropriateness of the sentence:**

The court determined that the sentences are commensurate to the gravity of the criminal offense, the conduct and the degree of criminal liability of defendants, and that the sentences will have an impact in their resocialization, increase of morality and strengthen the obligation to respect the law. The sentences will also deter others from committing such criminal offenses and will achieve the purpose of punishment, and is convinced that defendants will not repeat offenses of such or similar nature in the future.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

In terms of appropriateness of the sentence, the court took the achievement of individual and general purposes of strengthening the morale and discipline for granted, giving no reasoning on how that purpose will be achieved through this sentence. With regards to the purpose of “victims and the community”, this sentencing purpose was not considered and reasoned by the court at all.

**Implementation of principles**

The court has merely cited mitigating and aggravating factors in this case and failed to connect them to the principles that should be considered in determining a sentence, as provided by the Guidelines. However as to the principle of intensity of endangering or damage to the protected value (the gravity of the criminal offense), the court failed to set this as a principle of sentencing and reason it with aggravating or mitigating factors, but uses this principle to reason the appropriateness of the sentence in a very generic manner and without any reasoning.
Mitigating and aggravating factors indicated in the judgment

In this judgment, the court uses the plea agreement as a mitigating factor. According to the Guidelines “this factor (plea of guilt) should not be confused with the plea agreement. They are completely different considerations”. Thus, in this case, the court used a mitigating factor which is not qualified as such in the Guidelines, what represents a double counting of factors. As to the fact that the convicted person is poor, the court did not support this finding with any justification, but just merely cited it. Furthermore, it is strange how the court took this fact as a mitigating circumstance, since the judgment mentions that the convict is of medium economic situation. As far as the expression of remorse is concerned, according to the Guidelines, this is not a mitigating factor at all, but a category that includes seven mitigating factors. Using the category as a factor in this case, according to the guideline, represents a double counting of factors. Regarding the fact that no other criminal proceedings are being conducted against the defendants, the reality is that even if another criminal procedure were in progress, this could not be taken into account either as a mitigating or aggravating factor. Past criminal record is relevant in this case rather than pending proceedings for which there is no final judgment yet. Thus, in this case, the court used a non-existing factor as mitigating factor, what under the Guidelines represents a double counting of factors. On the other hand, the court in this case says that it did not find any aggravating factor, while it cited one of them in the part of the appropriateness of the sentence, which is the degree of the defendants' criminal liability.

Mitigating and aggravating factors ignored by the judgment

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the degree of damage caused, abuse of authority or official position, violation of trust, (non) repentance, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, any prior criminal/noncriminal conduct of the convicted person, age of the defendant e and (lack of) support for the victim.

The method of the Sentencing Guidelines

In this case the court failed to provide any reasoning as to the intrinsic significance of any of the applicable factors and failed to provide justification as to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the present judgment, there are four mitigating and no aggravating factors. According to the Guidelines this is a case that would fall under the instances of “plea agreement or guilty plea in early stages of the process with no or a little aggravation”, which would qualify under the column 5 respectively factors justifying highest mitigation within the range. According to Appendix 1 of the Guidelines, part 2, under h, the sentence in this case should be from six months to one year and six months of imprisonment, which means that the sentence imposed in this case is within the range.
24. Case PKR.nr.36 / 2018 - Falsifying of an official document as in Article 434 Par.1 in conjunction with Article 31, Abuse of Official Position or Authority, Trading in influence as in Article 431 Par.1 of the CCPR

Judgment

According to the Judgment of the Basic Court in Gjakova - Serious Crimes Department, M.H, M.B, K.K, A.B, SN and AA, were found guilty of criminal offenses, "falsification of official documents", "abuse of official position” and trading in influence”.

According to the judgment, in December 2014 at the Hospital “Isa Grezda” in Gjakova, MM, in the capacity of Chairperson of the Commission, while M.B and KK, members of the Commission, the official document - the minutes with protocol number 3993/2 dated 24 December 2014, recorded false data verifying that full number of uniforms has arrived, confirming that under contract number 3191 from the operator N.Sh.EL- Ri Graphic Prishtina they received 438 complete personnel uniforms where in the total value of € 9855. Such documents constituted false data. Further, according to the Judgment, in December 2014 at the Hospital “Isa Grezda” in Gjakova, the convicted AB in the capacity of an official warehouse manager, abused his official duty exceeding his authorizations, and omitted fulfilling his official duties, with the intention of gaining benefit for himself and for other persons by causing damage to “Isa Grezda” Regional Hospital in Gjakova, in a way that the warehouse received uniforms from the contractor of the firm N.Sh “E” in a quantity that is less than that contracted namely 253 pair of white trousers, 240 white mantels and 78 white T-shirts without compiling any minutes for reception of uniforms. He did so after receiving verbal order from the S.N chief of nursery, where he received 198 pieces of white, blue, green and pink mantles, blue and 49 pieces of different trousers of different colors and 360 T-shirts of different colors. In December 2014 at the “Isa Grezda” Hospital in Gjakova, the convicted person, SN, in the capacity of Director of Nursery of the “Isa Grezda” Regional Hospital in Gjakova, directly received material benefit in a way that he exerts undue influence in the decision-making of official person - the warehouse manager A.B ordering him to accept uniforms from the contractor N.Sh. “E” in smaller quantity than the one contracted namely 253 pair of white pants, 240 white mantles, and 78 white T-shirts without compiling minutes for receiving the uniforms but did so based on a verbal order of the accused S.N. According to the Judgment, in December 2014 at the Hospital “Isa Grezda” in Gjakova, convict AA, in the official capacity of an Executive Director of the Hospital “Isa Grezda” in Gjakova abused his official duties exceeding his authorizations by failing to carry out his official duties for the purpose of gaining material benefit for himself and for other persons causing damage to Isa Grezda Regional Hospital in Gjakova, by signing payment in the capacity of Executive Director, for the contract of purchase of uniforms which were not delivered in quantities as indicated in the contract entered into between the N.Sh. “E” Prishtina, failing to verify through handover documents, the delivery of uniforms in the quantity of 438 in the total amount of € 9855.

The sentence under the CCRK:
Falsification of official documents and Abuse of official position or authority: Punishable by six (6) months to five (5) years of imprisonment.

Trading in influence: Punishable by fine or imprisonment of up to eight (8) years.

**Imposed sentence:**

M.M: Six (6) months of suspended sentence and a probation period of one (1) year;

M.B: Six (6) months of suspended sentence and a probation period of one (1) year;

K.K: Six (3) months of suspended sentence and a probation period of one (1) year;

A.B: Six (6) months of suspended sentence and a probation period of one (1) year;

S.N: Six (6) months of suspended sentence and a probation period of one (1) year;

A.A: Six (6) months of suspended sentence and a probation period of one (1) year;

**Mitigating factors:**

1. Conduct of convicts during criminal proceedings;

2. The fact that they are sole family providers and the first convict has two juvenile children;

3. The economic situation;

4. The elapse of time from the time the offense was committed;

**Aggravating factors:**

None.

**Appropriateness of the sentence:**

The court held that the suspended prison sentence provided that they do not commit any other criminal offense during the probation period, expects and is convinced that the sentences imposed were in harmony with the gravity of the offense, the degree of criminal responsibility of the accused and the sentences imposed will achieve the purpose of sentencing, which consists in deterring defendants and other persons from committing such acts in the future and express social judgment for the offense, strengthen the morale and the strengthen the obligation to respect the law.

**Implementation of the Guidelines**
Appropriateness of the sentence

In terms of appropriateness of the sentence, the court took the achievement of individual and general purposes of strengthening the morale and obligation to respect the law for granted, giving no reasoning on how that purpose will be achieved through this sentence. With regards to the purpose of “victims and the community”, this sentencing purpose was not considered and reasoned by the court at all.

Implementation of principles

The court has merely cited mitigating and aggravating factors in this case and failed to connect them to the principles that should be considered in determining a sentence, as provided by the Guidelines. However as to the principle of intensity of endangering or damage to the protected value (the gravity of the criminal offense), and the degree of criminal liability the court failed to set this as a principle of sentencing and reason it with aggravating or mitigating factors, but uses this principle to reason the appropriateness of the sentence in a very generic manner and without any reasoning.

Mitigating and aggravating factors indicated in the judgment

As to the correct conduct of the defendant during the proceedings, according to the Guidelines, the court must address five relevant questions, which the court failed to do in this judgment. With regards to family circumstances, the court in this case answered two of the seven relevant questions that are set out by the guide for this factor, overlooking the other five questions. As to the economic situation, the court in this judgment did not substantiate this in any evidence, and it cannot be understood from the judgment what the economic situation of the convicts was. Moreover, the economic situation and family circumstances, according to the Guidelines, are two factors that establish the personal circumstances and character of the convicted person, rather than two separate mitigating factors. For this reason, according to the Guidelines, we have double counting of factors. As to the elapse of time, the court does not provide any reasoning in this judgment. Furthermore, the court in the present case uses the same factors for all six defendants, who according to this judgment are sentenced with different sentences and for different criminal offenses, making no distinction, in terms of the use of factors, for either one of convicts.

Mitigating and aggravating factors ignored by the judgment

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the degree of damage caused, abuse of authority or official position, violation of trust, (non) repentance, (non) compensation for the loss or damage, any prior criminal/ noncriminal conduct of the convicted person, age of the defendant, elapse of time and (lack of) support for the victim.

The method of the Sentencing Guidelines
In this case the court failed to provide any reasoning as to the intrinsic significance of any of the applicable factors and failed to provide justification as to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the present judgment, there are four mitigating and no aggravating factors. According to the Guidelines, this would fall under the instances of “existence of at least two factors for reduced culpability and/or one or little aggravation,” which would qualify in column 5 under factors that justify maximum mitigation within the range. In terms of criminal offences of falsification of official documents and abuse of official position or authority, according to Appendix 1 of the Guidelines, part 2, under h, the sentence in this case should be from six months to one year and six months of imprisonment. In the present case, the sentence is within the ranges for the first, second, fourth and sixth convicts, while it is not within the ranges for the third convict. In terms of the criminal offense of trading in influence, according to appendix 1 of the Guidelines, part 1, point i, the sentence must be from one to three years of imprisonment. In the present case, with regard to the fifth accused, the sentence is not within this range, as the sentence against him was six months of suspended sentence. Consequently, if the sentence were to be imposed within these ranges, it would not be possible to impose the suspended sentence.

25. Case PKR.nr.49 / 19 "Giving bribes" "falsification of official documents" and "trading in influence" - CCRK

Judgment

According to the Judgment of the Basic Court in Pristina - Serious Crimes Department, the convict R.E. was found guilty for committing the criminal offense, "Giving bribes", falsification of official documents” and “Trading in influence”. Because according to the Judgment, during six month period January - February 2015, in his capacity of a professor of Gymnasium Gjergj Kastrioti Skenderbeu "in Gllogovc / Gllogovc, the convict accepted the offer of material benefit for the other in order in exchange of influencing other persons to commit an act contrary to his official duties. He influenced the officials of the school directorate of the Vocational school "Fehmi Lladrovci", in order to issue a diploma to the defendant E.F, from whom he received 800 Euros, as evidence that he finished secondary school, in order to use it for promotion in the KSF, thus committing the crime of "trading in influence".

Whereas, the judgment goes on to say that, during November 2014 in Gllogovc in the capacity of an official person the convicted person falsified the data in the school registry for students of the high school "Gjergj Kastrioti Skanderbeg", by entering falsified data in registers from 1993/94, 1994/94 and 1995/96 in the name of FM, to indicate that he was enrolled in a gymnasium of natural mathematics, thereby committing the offense of “falsifying an official document”.

99
Likewise, according to the judgment, during November 2014, in Gllogove/Glogovac, the convict paid a 200 Euro reward to the official M.Gj. a school secretary in “Gjergj Kastrioti Skënderbeu” gymnasium in order for him to issue falsified duplicate documents in violation of his official duties on behalf of the FM, thus committing the offense of "Giving bribery".

The sentence under the CCRK:

1. “Trading in influence” - punishable by fine or imprisonment of up to eight (8) years.
2. “Falsifying official documents” six (6) months to five (5) years of imprisonment.
3. “Giving bribes” - Punishable by fine or imprisonment of up to three (3) years.

Imposed sentence:

1. “Trading in influence" - one (1) year suspended sentence
2. “Falsification of official documents” - nine (9) months of suspended sentence
3. “Giving bribes” – six (6) months suspended sentence.

Mitigating factors:

1. The entering of a guilty plea;
2. The court has no record that the convict had prior criminal history;
3. The fact that he repented;
4. Promise not to commit other criminal offenses in the future;

Aggravating factors

None.

Appropriateness of the sentence:

The court in its decision is convinced that the purpose of the sentence will be achieved, as the convicted person has shown deep remorse for his actions and that the sentence imposed is justifiable and appropriate to the circumstances of the commission of the offense, its danger, serving to deter the perpetrator and others from committing future criminal offenses.

Implementation of the Guidelines

Appropriateness of the sentence
In terms of appropriateness of the sentence, the court took the achievement of individual and general purposes for granted, giving no reasoning on how that purpose will be achieved through this sentence. As to the other two purposes (judgment of society, increased morality and the obligation to respect the law, and victims and the community), the court failed to consider and reason these purposes of punishment.

**Implementation of principles**

The court has merely cited mitigating and aggravating factors in this case and failed to connect them to the principles that should be considered in determining a sentence, as provided by the Guidelines. As to the circumstances in which this criminal offense was committed, the court mentions them in the context of the sentence and does not relate them to any mitigating or aggravating factors nor does it use them as a mitigating or aggravating factors, but merely quotes them without giving any reasoning.

**Mitigating and aggravating factors indicated in the judgment**

As to repentance, the court in this case has double counted factors, since the guilty plea and the expressed remorse, according to the guideline, are part of the repentance, and not special and separate circumstances. Moreover, according to the guideline, remorse also has a particular link to the guilty plea, which the court did not differentiate in the reasoning of this judgment. Also, with regard to the guilty plea, the Guidelines set out four factors that must be taken into account in any judgment when this circumstance is found as a mitigating factor, which the court did not do in this judgment. As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this factor qualifies under other mitigating factors. Guidelines state that if the court assesses the lack of prior criminal convictions and mitigation can be warranted, it will require finding of facts that support a conclusion of adherent behavior and likelihood of rehabilitation. This issue was not addressed at all in the judgment. The promise of the convicted person not to commit criminal offenses in the future is not indicated in the Guidelines as a mitigating factor.

**Mitigating and aggravating factors ignored by the judgment**

There are a number of factors, both mitigating and aggravating, that the court failed to consider in the judgment or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the degree of damage caused, abuse of authority or official position, violation of trust, personal circumstances and the character of convicted person, (non) compensation for the loss or damage, conduct of the convicted person after the conflict, age of the defendant, elapse of time and (lack of) support for the the victim.

**The method of the Sentencing Guidelines**

Initially, the court stated that the judgment in this case was rendered based on Article 75 of the CCRK, which provides for mitigation of the sentence below the minimum required by law. As to the three conditions that must be met for application of Article 75, the Court has
not provided any explanation for either one of them. In this respect, even if there was potentially a guilty plea, again, according to the guideline, in this case there was no room for the application of Article 75. According to the Guidelines, “the substantial benefit of a guilty plea is based on the cost savings for the society in terms of time, money and emotional costs associated with testimony and victimization. Such benefits are diminished significantly as the trial begins. Therefore mitigation under Article 75 should not be available once the trials begins.” For this reason, since no explanation was provided about the intrinsic value of circumstances, nor of weighing of circumstances, the calculation in this case is quantitative. In the present case, we have four mitigating and one aggravating factors which according to the Guidelines, it is about "the existence of at least two factors for mitigation of culpability or harm and no/or a little aggravation". According to Appendix 1 of the Guidelines, this is a case where factors justify maximum mitigation of sentence within the range. With regard to the criminal offense of Trading in Influence, pursuant to Part 1, point 1 of this Annex, the sentence in this case should be from one year to three years of effective imprisonment, while in the present case the sentence is one year of suspended sentence. The applicability of the suspended sentence, according to the guideline, was not possible in this case, which leads to the conclusion that the sentence in this case was not determined within these standards. In terms of criminal offense of Falsifying official document, according to Appendix 1 of the Guidelines, part 2, under h, the sentence in this case should be from six months to one year and six months of imprisonment, which means that the sentence imposed in this case is within the range. As to the criminal offense of Giving bribes according to Appendix 1 of the Guidelines, part 1, point f, the sentence should be from one to eight months of imprisonment, which means that the sentence for this criminal offense is also within the range. However the sentence for all these offenses was a suspended sentence. Had the court acted in accordance with the standards of the guideline with regard to the criminal offense of Trading in Influence, it would not be possible for the court to impose a suspended sentence, but an effective prison sentence.
VII. Sentencing policy in murder cases

a. Introduction

In this Chapter, KLI analyzed a total of 10 judgments on weapons offenses. Based on the methodology described at the beginning of this report, KLI analyzed whether the judges, in these 10 judgments rendered in murder cases, implemented the requirements and standards set forth in the Guidelines in determining the type and the severity of the sentence. These 10 judgments include a total of 14 persons and 21 sentences were imposed against them.

KLI findings presented below show that the implementation of the Guidelines in practice in murder cases is unsatisfactory. What distinguishes this category from other categories is that the number of aggravating factors applied in these cases is relatively proportionate to the number of mitigating factors, while the number of factors identified as ignored in this chapter is higher. Just like in other chapters, if the Guidelines is used as a reference point for a lawful sentencing policy, then it implies that the sentencing policy of the judicial system in the Republic of Kosovo in murder offenses is no less than arbitrary.

With regards to reasoning in judgments on imposing the type and the severity of sentence, based on the standards set forth in the Guidelines, parties and the public under no circumstance will be convinced as to why a certain sentence has been imposed in a concrete case.

Therefore, what has been presented as progress and a concrete step towards the improvement of the sentencing policy within the justice system in the Republic of Kosovo by the adoption of the Guidelines, based on the findings of this report it is obvious that even in murder offenses the Guidelines has remained merely a policy in letter and unimplemented in practice.

b. General findings

The 10 judgments analyzed by KLI in this chapter are for the offense of aggravated murder and murder. In these cases, there are other sentences within the judgments for offenses other than murder and aggravated murder, but which are part of the judgments in which the defendants were sentenced of either one of these offenses. In this regard, analysis was conducted in all offenses that are part of these 10 judgments.
<table>
<thead>
<tr>
<th>Criminal offense</th>
<th>Number of sentences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aggravated murder</td>
<td>9</td>
</tr>
<tr>
<td>Murder</td>
<td>1</td>
</tr>
<tr>
<td>Attempted aggravated murder</td>
<td>1</td>
</tr>
<tr>
<td>Unauthorized ownership, control or possession of weapons</td>
<td>6</td>
</tr>
<tr>
<td>Participation in a brawl</td>
<td>1</td>
</tr>
<tr>
<td>Causing general risk</td>
<td>1</td>
</tr>
<tr>
<td>Assistance in committing the criminal offense</td>
<td>1</td>
</tr>
<tr>
<td>Provission of assistance after commission of the criminal offense</td>
<td>1</td>
</tr>
</tbody>
</table>

Table 20 – Number of sentences according to criminal offenses.

These 10 judgments involve a total of 14 persons and 21 sentences were imposed against them.

Of the 21 sentences, 20 are effective imprisonment, and one is fine.

[Diagram: Types of sentences imposed]

Imprisonment 95%

Fines - 5%

Graphic 17 – Types of imposed sentences.
Regarding the severity of imprisonment sentences, the most frequent and lowest sentence imposed is the one-year prison sentence, which was imposed in four cases, while the highest sentence is the sentence of life imprisonment, which is imposed in one case.

![Severity of imprisonment sentences](image)

**Graphic 18 – Severity of imprisonment sentences.**

A fine was imposed only in one case, which was in the amount of 500 Euros.

As to the number of factors used in these 10 judgments, the courts have applied a total of 53 factors, where the percentage of mitigating and aggravating factors is almost equivalent.

![Total number of factors applied in analyzed judgments](image)

**Graphic 19 – Total number of factors applied in analyzed judgments.**
In separate cases, courts used two to five mitigating factors, in two judgments no mitigating factor was used.

<table>
<thead>
<tr>
<th>Number of mitigating factors applied</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>No mitigating factors</td>
<td>2 cases</td>
</tr>
<tr>
<td>2 aggravating factors</td>
<td>3 cases</td>
</tr>
<tr>
<td>3 aggravating factors</td>
<td>1 case</td>
</tr>
<tr>
<td>4 aggravating factors</td>
<td>2 cases</td>
</tr>
<tr>
<td>5 aggravating factors</td>
<td>2 cases</td>
</tr>
</tbody>
</table>

Table 21 – Number of mitigating factors applied.

As to aggravating factors, the number of aggravating factors applied in a judgment ranges from one to nine aggravating factors applied, while in one case the court did not consider any aggravating factor.

<table>
<thead>
<tr>
<th>Number of aggravating factors applied</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>No aggravating factors</td>
<td>1 case</td>
</tr>
<tr>
<td>1 factor applied</td>
<td>2 cases</td>
</tr>
<tr>
<td>2 aggravating factors</td>
<td>4 cases</td>
</tr>
<tr>
<td>3 aggravating factors</td>
<td>1 case</td>
</tr>
<tr>
<td>4 aggravating factors</td>
<td>1 case</td>
</tr>
<tr>
<td>9 aggravating factors</td>
<td>1 case</td>
</tr>
</tbody>
</table>

Table 22 – Number of aggravating factors applied.

In terms of the type of factors used, in total, the courts in these 10 analyzed cases applied 35 different types of mitigating and aggravating factors. In fact, the factors most commonly referred to by the courts in these 10 judgments (four cases) is the one that does not exist in the guideline, which is the relatively young age.
<table>
<thead>
<tr>
<th>Type of factor</th>
<th>Number of cases in which the factor was applied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relatively young age</td>
<td>4</td>
</tr>
<tr>
<td>Was not previously convicted of any criminal offense</td>
<td>4</td>
</tr>
<tr>
<td>Damage caused by the crime to the families of the deceased who have been permanently deprived of the presence of their loved ones causing unrecoverable pain to their parents;</td>
<td>3</td>
</tr>
<tr>
<td>Time in which the criminal offense was committed</td>
<td>2</td>
</tr>
<tr>
<td>Reduced criminal liability</td>
<td>2</td>
</tr>
<tr>
<td>Remorse for the victim's family</td>
<td>2</td>
</tr>
<tr>
<td>Level of participation in commission of the criminal offense</td>
<td>2</td>
</tr>
<tr>
<td>Endangerment due to presence of other innocent people</td>
<td>2</td>
</tr>
<tr>
<td>Convict was previously convicted of two criminal offenses with final judgments</td>
<td>2</td>
</tr>
<tr>
<td>Pre-conflict and post-conflict conduct of the convicted person;</td>
<td>2</td>
</tr>
<tr>
<td>High degree of intent</td>
<td>2</td>
</tr>
<tr>
<td>The defendant plead guilty to the criminal offense;</td>
<td>2</td>
</tr>
<tr>
<td>Young age of the convicted persons;</td>
<td>2</td>
</tr>
<tr>
<td>The victim was particularly vulnerable</td>
<td>1</td>
</tr>
<tr>
<td>Family relationship of convict with the victim</td>
<td>1</td>
</tr>
<tr>
<td>The conduct of the convicted person after the commission of the criminal offense</td>
<td>1</td>
</tr>
<tr>
<td>The fact that the accused put the victim in a coerced position</td>
<td>1</td>
</tr>
<tr>
<td>Take advantage of the situation while a fellow villager was being buried in the village</td>
<td>1</td>
</tr>
<tr>
<td>The convict is a family man and his daughter was in the school class with the victim</td>
<td>1</td>
</tr>
<tr>
<td>Involvement of his daughter, as if she had been with her sitting in the back seat of the car</td>
<td>1</td>
</tr>
<tr>
<td>Attempts of the convict to redirect attention</td>
<td>1</td>
</tr>
<tr>
<td>The offense was committed in particularly aggravating factors and caused consequences for the victim's family and a sense of general security for the female gender;</td>
<td>1</td>
</tr>
<tr>
<td>An international arrest warrant was in force against the convict for six years but he avoided law enforcement authorities</td>
<td>1</td>
</tr>
<tr>
<td>The convicted person is a father of three children and following the death of his spouse he is the sole provider for his family;</td>
<td>1</td>
</tr>
<tr>
<td>The consequences of this criminal act, as his actions caused the death of the now deceased</td>
<td>1</td>
</tr>
<tr>
<td>The circumstances in which the criminal offense was committed, the fact that there was a dispute prior to the critical event about a debt which the accused did not acknowledge as his own and the fact that he was threatened and also a vehicle owned by his sister was taken away from him;</td>
<td>1</td>
</tr>
<tr>
<td>The convicted person almost fully admitted the commission of the criminal offense from</td>
<td>1</td>
</tr>
</tbody>
</table>
the beginning of the criminal proceedings, except for the circumstances that led to the crime;

<table>
<thead>
<tr>
<th>Factor</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>The criminal offense was committed in the late hours of the night while the victim was asleep.</td>
<td>1</td>
</tr>
<tr>
<td>Showed remorse;</td>
<td>1</td>
</tr>
<tr>
<td>Old age;</td>
<td>1</td>
</tr>
<tr>
<td>Number of victims</td>
<td>1</td>
</tr>
<tr>
<td>Correct behavior by the accused at all stages of the proceedings;</td>
<td>1</td>
</tr>
<tr>
<td>Constant provocation</td>
<td>1</td>
</tr>
<tr>
<td>Apology to the injured parties;</td>
<td>1</td>
</tr>
<tr>
<td>Kept a weapon without any strong reason and in a constant manner, causing potential danger.</td>
<td>1</td>
</tr>
</tbody>
</table>

**Graphic 23 – Total number of factors applied in analyzed judgments.**

As in other chapters, the application of mitigating and aggravating factors according to requirements set out in the Guidelines remains problematic. In this respect, with regard to the category of murder, the percentage of factors in which the requirements of the Guidelines are applied is higher than in some of other categories, although this number is still far from being sufficient.
In terms of mitigating factors, in total, only 19% of the mitigating factors used are applied and reasoned according to the requirements of the guideline.

Whereas, in terms of aggravating factors, the number of aggravating factors applied and reasoned according to the requirements of the Guidelines amount to almost half of the total, respectively 46%.
The number of factors ignored in these 10 judgments remains worrying. Only one case in which no mitigating factors was identified while in one case a total of 18 ignored factors were identified. In three judgments, the number of factors ignored is 16.

As to what the Guidelines define as double counting of factors, it is concerning that in 70% of analyzed judgments (seven judgments respectively) double counting of factors was identified,
whereas cases with more double counting of factors were not identified in this category of the judgments analyzed.

As to the appropriateness of the trial, the courts have addressed this issue in the 10 judgments analyzed in this chapter.

However with regards the application of sentencing purposes, courts have only in one case applied all the sentencing purposes, while in only two cases courts applied three of the sentencing purposes. From this data, one gets the impression that for this aspect a "template" of reasoning has been created.

### Graphic 24 – Number of the purposes of sentencing applied in judgments.

The most common purpose applied in these judgments is general deterrence, while in seven judgments the purpose of general deterrence was applied, social judgment, morality and strengthening the obligation to respect the law was applied in two cases, while the victims and the community purpose was not applied in one case.
In terms of the Guidelines, the fact that these purposes were not reasoned as required by the Guidelines is extremely worrying. Of all judgments in this chapter, KLI has found that in total, there were only in three cases in which the sentencing purpose was reasoned, while the rest were merely cited, giving no reasoning whatsoever. Even in this case, there is an impression of a “template” practice of reasoning of the sentence, namely the sentencing purposes.
Similarly, the situation is almost the same with regards to the application of principles as required by the Guidelines. From the analysis conducted by the KLI for the category of murder, it was found that in 80% of cases the sentencing principles were not applied at all, while in only 20% of cases the sentencing principles, were only partially applied according to the requirements of the Guidelines.

**Graphic 27 – Application of principles in accordance with the requirements of the Guidelines.**

Regarding the sentencing ranges set out in Annex 1 to the Guidelines, KLI analysis of this section indicates that 67% of judgments in this category did not comply with the Guidelines’ requirements.

**Graphic 28 – Sentences imposed in accordance with ranges in the Guidelines.**
c. Case-based analysis of murder cases

1. Case PKR.nr.83/18 – Aggravated murder as in article 179 par. 1 subpar. 1.4 and 1.12 of the CCRK

Judgment

According to the judgment of the Basic Court in Peja – Department for Serious Crimes, rendered on 25 April 2019, the convicted person N.P. was found guilty for the criminal offense of “Aggravated murder.” On 9 November 2015, from 13:44 until 15:19, in the Strelle Mountains, Municipality of Decan, at the place called “Kroni i Lajthise,” with intent and in a deceitful way, deprived the victim D.P. of her life, in such a way that while the victim was walking to work on the critical day, the convicted person approached her with his “Jeep” vehicle, took her and continued towards the mountains. When they arrived at the place “Kroni i Lajthise,” he deprived the victim of her life by hitting her twice in the head and leaving the crime scene. The victim’s body was found by some passers-by on 17 December 2015.

The punishment according to the CCRK: imprisonment of not less than ten (10) years or life long imprisonment

Imposed sentence: life long imprisonment

Mitigating factors:

None.

Aggravating factors

1. The convicted person murdered a woman in the mountains, who was defenseless and unable to call for help;

2. Familial relationship between the convicted person and the victim;

3. The post-conflict conduct of the convicted person;

4. The fact that the accused put the victim in a forced position;

5. Using the opportunity to commit the crime while there was a funeral of a fellow countryman in the village;

6. The convicted person has a family and his daughter went to the same class with the victim;

7. The use of his daughter as an alibi, alleging that she was with him and sitting in the back seat of his vehicle;

8. Attempts by the convicted person to disorient attention;
9. The criminal offense was committed in especially aggravating factors and caused consequences to the family of the victim and impacted the general sense of safety of women.

**Appropriateness of the sentence**

The court addressed and justified the especially aggravating factors and determined that life long imprisonment would achieve the purposes of punishment. In addition, according to the court, the sentence is proportionate to the degree of criminal liability and the intensity of danger or injury to the protected value. The court is convinced that the sentence will achieve the purpose of punishment to prevent other persons from committing criminal offenses.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

The appropriateness of this sentence is in accordance with the requirements of the Guidelines. Even though they are not technically listed as such, the court in this case addressed all the purposes of punishment provided by the Guidelines.

**Implementation of the principles**

While the court did address all the factors in this case and justified the factors that were not applied as to why they do not constitute mitigating or aggravating factors, the court in this judgment failed to connect these factors with the principles of punishment.

**Mitigating and aggravating factors indicated in the judgment**

As indicated above, the court in this judgment determined nine aggravating factors and no mitigating factors. The court in this judgment provided an appropriate justification on the evidence and the factual situation that establishes an aggravating factor. The interpretation of factors is also in compliance with the requirements of the Guidelines.

**Mitigating and aggravating factors ignored in the judgment**

None

**The method of the Sentencing Guidelines**

From the judgment it is understood that certain aggravating factors carried more weight than other factors. This is understandable since the court found no mitigating factors. Further, the court appropriately justified the factors that support the highest sentence within the limit. According to Appendix 1 of the Guidelines, part 7, point h, the range of imprisonment sentence is from twenty-two to twenty-five years of effective imprisonment. However, the court has provided an appropriate justification in support of its finding of especially aggravating factors and severe consequences, which according to the Guidelines justifies elevating the punishment into the range of a life long imprisonment sentence. Therefore, this judgment is in full compliance with the criteria set forth by the Guidelines.
2. Case PKR.nr.2/2016 – Aggravated murder as in article 147 par. 1 subpar. 4 of the PCCK

Judgment

According to the judgment of the Basic Court in Pristina – Department for Serious Crimes, rendered on 11 April 2019, the convicted person A.K. was found guilty for the murder of the victim M.C. On 25 April 2011, around 12:30, in front of the entrance of the “Sami Frasheri” High School, with direct intent, deprived the victim M.C. of his life and endangered the lives of the other convicted persons M.L. and M.C. as well as other passer-by students. On the same day, around 11:00, the convicted person had gotten into a fight with the victim M.L., and with the intent to settle matters for the fight, the convicted person took the minor person T.K. with him, whereas the convicted person M.L. took his cousins M.C. and M.C. After the conclusion of school classes, the convicted person and his brother T.K., who gave him a gun, type “Ekol Tuna”, started fighting with the victim and the other convicted persons M.L. and M.C., and while they were hitting each other with metal rods and wooden bats, the convicted person pulled the gun out of his pocket, and from a distance of 1-2 meters shot the victim M.C. on his chest cage. As a result of the dynamic action of the shell, the victim suffered injuries to vital parts of his body, which led to his death a few minutes later.

The punishment according to the PCCK: at least ten (10) years of imprisonment or long term imprisonment

Imposed sentence: 13 years

Mitigating factors:

1. The age of the convicted person at the time of the commission of the criminal offense (young);

2. No prior criminal convictions.

Aggravating factors:

None

Appropriateness of the sentence:

The court determined that the imposed sentence will meet the general and the specific purpose of punishment.

Implementation of the Guidelines

Appropriateness of the sentence
The court in this judgment failed to address the requirements of the Guidelines, according to which the court must address and justify the purposes of punishment in every judgment. The court merely states that the sentence will achieve the general and the specific purpose of punishment but fails to support it with any justification. The court did not address any of the purposes of punishment required by the Guidelines on the specific or special deterrence, general deterrence, victims and the community, and judgment of society, increased morality and the obligation to respect the law. So, as to the appropriateness of the sentence, the court merely indicates the general and the specific purpose but fails to justify what exactly the court meant by these two types of purposes which are not foreseen in the Guidelines.

**Implementation of the principles**

The court did not consider or justify any of the principles of punishment as required by the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**

The court in this judgment determined two mitigating factors, which were not applied in accordance with the Guidelines, and no aggravating factors. As to the age of the convicted person at the time of the commission of the criminal offense, the court did not provide any justification as to why the convicted person is young and what the court considers to constitute young age, because the convicted person was not under the age of 18 years at the time of the commission of the offense. The judgment does not provide any justification as to the weight assigned to this factor. As to the fact that the convicted person had no prior criminal convictions, we must bear in mind that this fact is not indicated as a mitigating factor in the CCRK. According to the Guidelines, this qualifies under the category of other mitigating factors. The Guidelines states that if court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. In the judgment in this case the court did not comply with this requirement of the Guidelines.

**Mitigating and aggravating factors ignored in the judgment**

There are a number of factors, both mitigating and aggravating, that the court failed to consider in its justification or to give reasoning as to why those factors were not considered. The court did not consider the degree of intent, the presence of actual or threatened violence in the commission of the criminal offense, whether the criminal offense was committed with particular cruelty, whether the criminal offense involved multiple victims, whether the victim of the criminal offense was particularly defenseless or vulnerable, the age of the victim, evidence of (non) provocation by the victim, general cooperation of the convicted person with the court, the personal circumstances and the character of the convicted person, remorse or lack of remorse by the convicted person, (non) repentance, (non) compensation for the loss or damage, post conflict conduct of the convicted person, (non) violation of court orders, elapse of time, and (non) support from the victim.
The method of the Sentencing Guidelines

The court did not determine any aggravating factors in this case therefore the court had no factors to weigh in this case. The court also failed to provide any justification on the internal significance of factors, which means that the calculation is quantitative. In this judgment, the court determined two mitigating and no aggravating factors. According to the Guidelines, this falls under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation.” According to Appendix 1 of the Guidelines, part 7, point g, the sentencing range is from ten to twelve years of effective imprisonment, which means that the sentence imposed in this case is not within the range, namely it is higher by one year.

3. Case PKR.nr.389/2015 – Aggravated murder as in article 179 par. 1 subpar. 1.5 of the CCRK

Judgment

According to the judgment of the Basic Court in Pristina – Department for Serious Crimes, rendered on 22 January 2019, the convicted person M.G. was found guilty for the criminal offense of “Aggravated murder.” According to the judgment, M.G. and the other accused person Sh.K., whom the court had found guilty only for the criminal offense of “Participation in a brawl,” went to the “Bon Vivant” bar to have coffee, but because they did not have a reservation, the security guard - the victim Rr.U. - told them to leave. In those moments, the accused Sh.K. gets into a verbal confrontation and starts to punch him, whereas the accused M.G., standing within the bar, knowing that the staff and other guests were present, pulled a “Crvena Zastava” gun out of his bag and pointed it towards the victim Rr.U., but the gun did not fire. He pulled the trigger again, but the gun again did not fire. Afterwards, the accused M.G. headed towards the exit of the bar. The victim Rr.U. went after him, with the accused Sh.K. following. The three of them start fighting in the terrace of the bar, and by endangering the life of the other persons who were present in the bar, M.G. deprives the victim of his life by shooting him with the gun, which caused him two wounds - one in the chest and the other in the right forearm, and as a result of massive bleeding from the injuries, the victim Rr.U. passed away in the UCCK, whereas the accused M.G. fled the crime scene but got arrested by the police not far from it.

The punishment according to the CCRK:

For the criminal offense of “aggravated murder”: not less than ten (10) years of imprisonment or life long imprisonment

For the criminal offense of “participation in a brawl”: fine or imprisonment of up to three (3) years

Imposed sentence:
For the criminal offense of “aggravated murder”: 21 years

For the criminal offense of “participation in a brawl”: 4 years and 3 months

**Mitigating factors:**

1. Diminished mental capacity;

2. Repentance/compassion for the family of the victim.

**Aggravating factors:**

1. High degree of participation in the criminal offense;

2. Endangering other innocent people;

3. The convicted person had two prior final criminal convictions.

**Appropriateness of the sentence**

The court determined that the imposed sentence is adequate and proportionate to the gravity of the criminal offense and the conduct and the degree of criminal liability of the accused, and believes that the sentence will reserialize them, increase morality and the obligation to respect the law, as well as prevent others from committing criminal offenses. The court is convinced that the sentences will achieve the purpose of punishment and the accused will not repeat or commit any other criminal offense.

**Anti-constitutionality and unlawfulness of the judgment**

The second accused person in this case was convicted of the criminal offense of “participation in a brawl,” which according to Article 190, paragraph 1 of the CCRK, is punishable by a fine or imprisonment of up to three years.

The court in this judgment referenced Article 190, paragraph 1 of the CCRK in imposing the sentence. The court did not reference any other articles that would justify imposing a higher sentence than the one provided under the CCRK. For this reason, the court in the judgment provided an arbitrary justification that is not supported by the law. The court stated that “in the actions of the accused Sh.K., the court determined his guilt for participation in a brawl, which was the cause that led to a more severe consequence that exceeded the intent of the perpetrator, therefore taking into account the circumstances in which the offense was committed, the motive, and the fact that the accused Sh.K. did not hesitate in causing the problem, the court determined that the accused Sh.K. is criminally liable for the more severe consequence, thus the court concluded that it is necessary to impose a more severe sentence on him to achieve the purpose of punishment.

KLI analyzed the entire judgment in this case, as well as the legal and constitutional provisions, to determine if there is any legal basis to support the sentence imposed by the
court. The analysis did not identify any legal norm in the constitutional or legal system of the Republic of Kosovo that would justify the court’s action.

For this reason, the sentence imposed by the court is in violation of constitutional and legal norms, which makes this judgment anti-constitutional and unlawful.

Article 33, paragraph 2 of the Constitution of the Republic of Kosovo provides that “no punishment for a criminal act shall exceed the penalty provided by law at the time the criminal act was committed.”

In addition to the Constitution of the Republic of Kosovo, the principle of legality is also a fundamental principle of the CCRK. Article 2 of the CCRK provides that: “1. Criminal offenses, criminal sanctions and measures of mandatory treatment are defined only by law. 2. No criminal sanction or measure of mandatory treatment may be imposed on a person for an act, if prior to the commission of the act, the law did not define the act as a criminal offense and did not provide a criminal sanction or measure of mandatory treatment for the act. 3. The definition of a criminal offense shall be strictly construed and interpretation by analogy shall not be permitted. In case of ambiguity, the definition of a criminal offense shall be interpreted in favor of the person against whom the criminal proceedings are ongoing.”

Criminal legislations of every country in the world set forth minimum and maximum punishments for criminal offenses, and not fixed punishments. It is the duty of the court to impose a sentence within these ranges that would achieve the purpose of punishment. The purpose of punishment shall under no circumstance be at the detriment of the principle of legality. The criminal offenses and the type and the severity of punishments are set forth by the law, not the court. Such acts lead to anarchy within the justice system and undermine legal certainty.

On the other hand, it is impossible to determine whether the judgment is in compliance with the Guidelines. The Guidelines is merely an explanation of legal provisions and does not address instances when a judgment is rendered in violation of the Constitution and the laws of the Republic of Kosovo.

**Appropriateness of the sentence**

The judgment addresses three of the four purposes of punishment provided by the Guidelines and fails to address the purpose of “victims and the community.” However, the court fails to provide any justification as to how the imposed sentences will achieve these purposes of punishment and takes for granted the fact that the sentence will achieve those purposes.

**Implementation of the principles**

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.
Mitigating and aggravating factors indicated in the judgment

As to the criminal offense of aggravated murder, the court considered diminished mental capacity and repentance/compassion for the family of the victim as mitigating factors. As to the mitigating factor of diminished mental capacity, the court did not provide any justification as to why this fact represents a mitigating factor. The court also did not provide any justification on the second mitigating factor of repentance and compassion for the family of the victim. As to the second factor, the Guidelines sets forth seven factors and eight relevant questions that the court shall address, which the court ignored in this case. As to the aggravating factors, the court determined three aggravating factors in the judgment: high degree of participation by the defendant in the criminal offense, endangering other innocent people who were present when the criminal offense was committed, and the fact that the convicted person had two prior final criminal convictions. As to the high degree of participation by the defendant in the criminal offense, the Guidelines sets forth seven relevant questions that the court shall address, which the court failed to do in this case. According to the Guidelines, there are five factors and six relevant questions that shall be addressed by the court as to this factor. In this regard, the court addressed only the factor of prior criminal convictions and ignored all the other factors and relevant questions that should be addressed and justified according to the Guidelines. As to the aggravating factor that the convicted person endangered other innocent people who were present when the criminal offense was committed, according to the Guidelines, the court in this case double counted factors. The accused person in this case was convicted for an aggravated form of murder for “depriving another person of his or her life and in doing so intentionally endangering the life of one or more other persons.” For this reason, the mere fact that this factor constituted an aggravated form of the offense, for which the CCRK provides a higher punishment, means that it shall not be applied as an aggravating factor too because it would lead to double counting.

Mitigating and aggravating factors ignored in the judgment

There are a number of factors, both mitigating and aggravating, that the court failed to consider in its justification or to give reasoning as to why those factors were not considered. The court did not consider the presence of actual or threatened violence in the commission of the criminal offense, whether the criminal offense was committed with particular cruelty, whether the criminal offense involved multiple victims, whether the victim of the criminal offense was particularly defenseless or vulnerable, the age of the victim, evidence of (non) provocation by the victim, the age of the defendant, general cooperation by the convicted person with the court, the extent of the damage, the personal circumstances and the character of the convicted person, remorse or lack of remorse by the convicted person, (non) compensation for the loss or damage, post conflict conduct of the convicted person, (non) violation of court orders, elapse of time, and (non) support from the victim.

The method of the Sentencing Guidelines

The court in this judgment determined three aggravating factors and two mitigating factors. Except for one mitigating factor, which the court determined to be a minor factor, the court
failed to provide any other justification as to the internal significance of these factors or to assigning weight to the circumstances. To this end, since there is no other reasoning, we may conclude that this case qualifies under the instances of factors indicating higher mitigation than aggravation. According to Appendix 1 of the Guidelines, part 7, point h, the sentence in this case should be from seventeen to twenty-two years of imprisonment, which means that the sentence imposed by the court is within the range set forth in the Appendix of the Guidelines.

4. Case PKR.nr.590/15 – Aggravated murder as in article 179 par. 1 subpar. 1.5 of the CCRK

Judgment

According to the judgment of the Basic Court in Pristina – Department for Serious Crimes, rendered on 27 November 2018, the convicted person B.B. was found guilty for the criminal offense of “Aggravated murder.” According to the judgment, on 14 February 2015, around 02:00, in the “Agoni” Restaurant, in the village of Banulla in Lipjan, after a dispute, in co-perpetration with the other convicted person B.B., who was found guilty for the criminal offense of assistance in the commission of a criminal offense, deprived the victim U.D. of his life. The convicted person B.B., in co-perpetration with the other convicted person, went to the victim and initially quarreled before assaulting the victim and the injured persons E.Q. and S.A. with solid objects. The victim used his weapon to prevent the assault, however, the convicted person B.B. pulled his gun and from a distance of approximately one meter shot four times in the direction of the victim U.D., who died in the crime scene as a result of the injuries.

The punishment according to the CCRK:

Aggravated murder: imprisonment of not less than ten (10) years or life long imprisonment

Unauthorized ownership, control or possession of weapons: fine of up to 7,500 EUR or imprisonment of up to five (5) years.

Imposed sentence:

For the first accused:

For aggravated murder: fourteen (14) years and six (6) months of imprisonment

For unauthorized ownership, control or possession of weapons: one (1) year of imprisonment

For assistance in the commission of a criminal offense: nine (9) years and six (6) months of imprisonment

For unauthorized ownership, control or possession of weapons: one (1) year of imprisonment
Mitigating factors:
1. Relatively young age;
2. Familial person;
3. No prior criminal convictions.

Aggravating factors for the first convicted person:
The consequences of the criminal offense, because his acts caused the death of the victim.

Aggravating factors for the second convicted person:
1. Assisted in the commission of the criminal offense.

Appropriateness of the sentence
The court determined that the imposed sentence is proportionate to the gravity of the criminal offense and the circumstances in which the offense was committed and corresponds to the degree of criminal liability and the intensity of the consequence. The court is convinced that the imposed sentence will achieve the purpose of punishment.

Implementation of the Guidelines
Appropriateness of the sentence
In this part, the court did not consider or justify any of the purposes of punishment as required by the Guidelines. The court merely cited some of the principles of punishment and failed to connect them to any aggravating or mitigating factors.

Implementation of the principles
The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

Mitigating and aggravating factors indicated in the judgment
As to the relatively young age of the convicted person, according to the Guidelines, the concept of “relatively young” age is not indicated as a mitigating factor. Further, it is incomprehensible as to how this fact was determined as a mitigating factor when both convicted persons were 37 years old. As to the fact that the convicted person is a familial person, the Guidelines sets forth seven factors that the court should address and justify, which the court failed to do in this judgment. As to the fact that the convicted persons violated the law for the first time, according to the Guidelines, this factor qualifies under other mitigating
factors. The Guidelines states that if court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed in the judgment. As to the aggravating factors for both convicted persons, according to the Guidelines, the court has double counted factors in both instances, because the consequence caused by the offense, respectively the assistance in the commission of the criminal offense are inherent elements of the criminal offenses for which the defendants were charged and convicted.

**Mitigating and aggravating factors ignored in the judgment**

There are a number of factors, both mitigating and aggravating, that the court failed to consider in its justification or to give reasoning as to why those factors were not considered. The court did not consider the degree of participation of the convicted person in the criminal offense, the degree of intent, the presence of actual or threatened violence in the commission of the criminal offense, whether the criminal offense was committed with particular cruelty, whether the criminal offense involved multiple victims, whether the victim of the criminal offense was particularly defenseless or vulnerable, the age of the victim, evidence of (non) provocation by the victim, general cooperation by the convicted person with the court, remorse or lack of remorse by the convicted person, (non) repentance, (non) compensation for the loss or damage, post conflict conduct of the convicted person, (non) violation of court orders, elapse of time and (non) support from the victim.

**The method of the Sentencing Guidelines**

In this judgment the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined three mitigating factors and one aggravating factor for both convicted persons, which according to the Guidelines would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” which would qualify under column 5, respectively the factors justifying highest mitigation within the limit. For the criminal offense of aggravated murder and assistance in aggravated murder, according to Appendix 1 of the Guidelines, part 7, point h, the sentence should be from ten to thirteen years of imprisonment, which means that the sentence imposed in this case is within the range as to the second convicted person, but not as to the first convicted person. For the criminal offense of unauthorized ownership, control or possession of weapons, according Appendix 1 of the Guidelines, part 1, point 7, the sentence should be from one month to one year of imprisonment, which means that the sentence imposed in this case is within the range.
Judgment

According to the judgment of the Basic Court in Peja – Department for Serious Crimes, rendered on 26 June 2018, the convicted person G.E. was found guilty for the criminal offense of “Aggravated murder,” because on 2 January 2010, around 22:45, in the “City Club” disco, with intent and for revenge motives, deprived of life the victim B.Sh. and endangered the lives of V.K., A.B. and a large number of other persons that were present. The convicted person, on the critical night, entered the disco with the intent to deprive V.K. of his life, who was very close to the victim B.Sh., whereby he fires one bullet at the chest of the victim causing his immediate death, whereas V.K. is also shot in the chest causing him grievous bodily injuries. As he leaves, the convicted person continues to fire in different directions, whereby he also hits the victim A.B., causing her bodily injuries. The convicted person G.E., for the injuries caused to the victims A.B., V.K., and H.B., was charged for three attempted aggravated murders, however, after the court requalified these criminal offenses, he was found guilty of the criminal offense of “causing general danger.”

The punishment according to the CCK/CCRK:

Aggravated murder: a punishment of imprisonment of not less than ten (10) years or life long imprisonment.

Causing general danger: imprisonment of one (1) to twelve (12) years.

Unauthorized ownership, control or possession of weapons: a fine of up to seven thousand and five hundred (7,500) EUR or by imprisonment of up to five (5) years.

Imposed sentence:

For the criminal offense of aggravated murder: twenty-five (25) years of imprisonment

For the criminal offense of causing general danger: five (5) years of imprisonment

For the criminal offense of unauthorized ownership, control or possession of weapons: one (1) year of imprisonment

Mitigating factors:

None

Aggravating factors

1. Endangering the lives of many persons;
2. There was an international wanted notice against the convicted person for six years because he evaded prosecuting authorities;

**Appropriateness of the sentence:**

The court considered that the imposed sentence would accomplish the purpose of the punishment and would prevent the perpetrator from committing such crimes in the future.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

The court in this judgment mentioned only the specific/special deterrence of the punishment by merely citing it and failed to render any justification as required under the Guidelines. The court did not even mention in its judgment the other three purposes of the punishment referenced in the Guidelines.

**Implementation of the principles**

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**

According to the Guidelines, the aggravating factor that the convicted person had endangered the lives of many persons constitutes a double count in this case. The endangering of other persons during the commission of the criminal offense is not an aggravating factor in this case, but an aggravated form of the criminal offense, for which the defendant was found guilty. With regards to the failure of the convicted person to cooperate with prosecuting authorities, this is a factual situation which establishes a certain factor. However, the court in this case failed to indicate which aggravating factor it establishes.

**Mitigating and aggravating factors ignored in the judgment**

There are a number of factors, both mitigating and aggravating, that the court failed to consider in its justification or to give a reasoning as to why those factors were not considered. The court did not consider the degree of intent, the presence of actual or threatened violence in the commission of the criminal offense, whether the criminal offense was committed with particular cruelty, whether the criminal offense involved multiple victims, whether the victim of the criminal offense was particularly defenseless or vulnerable, the age of the victim, evidence of (non) provocation by the victim, the age of the defendant, the extent of the damage, the personal circumstances and the character of the convicted person, remorse or lack of remorse by the convicted person, (non) compensation for the loss or damage, post
The method of the Sentencing Guidelines

In this case the court failed to provide any justification as to the internal significance of any of the applicable factors and failed to provide justification as to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined two aggravating factors and no mitigating factor, which according to the Guidelines would fall under the instances of “two or more aggravating factors and no mitigating factors,” which would qualify under the factors justifying highest sentence within the limit. According to Appendix 1 of the Guidelines, part 7, point 5, the sentence in this case should be from 18 to 20 years of imprisonment. If we use life long imprisonment analogously with long term imprisonment, if the latter is imposed, the court should provide a separate reasoning for “particularly aggravating factors” or for criminal offenses that “caused very severe consequences”, which the court failed to do in this case. As a result, this judgment is considered more severe than the standards set forth in the Guidelines.

6 Case PKR.nr.89/17 – Aggravated murder as in article 179 par. 1, subpar. 1.5 and 1.8 of the CCRK

Judgment

According to the judgment of the Basic Court in Mitrovica – Department for Serious Crimes, rendered on 20 June 2018, the convicted person M.B. was found guilty of the criminal offense of “aggravated murder,” because on 29 September 2015, around 16:30 in Skenderaj, near the bus station, with intent and because of revenge, deprived of life the victim V.G., because the victim had murdered B.B. The convicted person, in order to obtain revenge, shot in the direction of the victim, from a vehicle driven by an unidentified person, while the victim had been in his parked vehicle, causing him injuries to vital parts of the body. By these actions he also endangered the life of the co-passengers of the victim, N.G. and A.F., who suffered bodily injuries.

The punishment according to the CCRK

Aggravated murder: imprisonment of not less than ten (10) years or life long imprisonment

Unauthorized ownership, control or possession of weapons: a fine of up to seven thousand and five hundred (7,500) EUR or imprisonment of up to five (5) years.

Imposed sentence:

For aggravated murder: twenty (20) years of imprisonment
For unauthorized ownership, control or possession of weapons: \textit{two (2) years of imprisonment}

**Mitigating factors:**

1. The convicted person has no prior criminal convictions;

2. The convicted person is a father of three children and following the death of his spouse he is the sole provider for his family;

**Aggravating factors**

1. The high degree of intent to deprive the victim of his life, because following the murder of his brother by the victim, the defendant was persistent in taking revenge against the victim and had prepared for a long time and committed the crime with premeditation;

2. The offense includes two victims;

3. The victim was young, married, employed and had his life ahead;

4. The accused has caused great damages by this criminal offense because another person suffered permanent grievous bodily injuries.

**Appropriateness of the sentence:**

The court is convinced that the imposed sentence will achieve the purpose of the punishment to prevent the perpetrator from committing criminal offenses in the future and to rehabilitate the perpetrator, as well as to prevent other persons from committing criminal offenses.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

In this part, the court cites only two of the purposes of the punishment (specific and general deterrence). The court does not justify either of these purposes according to the requirements of the Guidelines in order to indicate how this punishment will achieve these two purposes. With regards to the other purposes, the court did not consider them at all and does not indicate them in this judgment.

**Implementation of the principles**

As to the aggravating factors, the court implemented the principles of punishment according to the requirements in the Guidelines by relating each principle to specific aggravating factors. However, the court failed to do this with regards to mitigating factors. The court addressed mitigating factors without relating them to the principles of punishment.

**Mitigating and aggravating factors indicated in the judgment**
With regards to the fact that the convicted person had no prior criminal convictions, according to the Guidelines this falls under the category of other mitigating factors. The Guidelines state that if court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed in this judgment. With regards to the fact that the convicted person is a family man, the court provided sufficient justification in compliance with the criteria of the Guidelines. Further, the court provided sufficient justification in compliance with the criteria of the Guidelines for the aggravating factors, such as: the high degree of intent, the number of victims, and the age of the victim. However, the court has double counted the factors when it determined the number of victims and the number of victims who suffered grievous bodily injuries as two separate aggravating factors.

**Mitigating and aggravating factors ignored in the judgment**

There are a number of factors, both mitigating and aggravating, that the court failed to consider in its justification or to give a reasoning as to why those factors were not considered. The court failed to consider the presence of actual or threatened violence in the commission of the criminal offense, whether the criminal offense was committed with particular cruelty, whether the victim of the criminal offense was particularly defenseless or vulnerable, the age of the victim, evidence of (non) provocation by the victim, the age of the defendant, general cooperation by the convicted person with the court, remorse or lack of remorse by the convicted person, (non) compensation for the loss or damage, post conflict conduct of the convicted person, (non) violation of court orders, elapse of time and (non) support from the victim.

**The method of the Sentencing Guidelines**

Even though the factors indicated in this judgment were justified to an extent, the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In this concrete case, we have four aggravating factors and two mitigating factors, which according to the Guidelines would fall under the instances of “total aggravation in excess of mitigation,” which would qualify under the factors justifying highest aggravating within the limit. According to Appendix 1 of the Guidelines, part 7, point h, the sentence in this case should be from 22 to 25 years of imprisonment, which means that the sentence for the criminal offense of aggravated murder is not within this range as it is two years shorter. With regards to the criminal offense of unauthorized ownership, control or possession of weapons, according to Appendix 1 of the Guidelines, part 1, point g, the sentence should be from four to five years of imprisonment, which means that the sentence in this case is not within the range as it is more lenient.

7 Case PRK.nr.108/18 – Aggravated murder as in article 179, par. 1, subpar. 1.4, 1.3 and 1.8 of the CCRK

Judgment
According to the judgment of the Basic Court in Ferizaj – Department for Serious Crimes, rendered on 11 November 2018, the convicted person R.Sh. was found guilty for the criminal offense of “Aggravated murder,” because on 13 April 2018, around 03:30, in the village of Varosh, Municipality of Ferizaj, with the intent to deprive from her life his spouse N.Sh, while she was asleep, he went out to the yard, took an axe, entered the house, and hit the victim three times in the neck area, causing her bodily injuries, and as a result of these injuries the victim remained in a coma and after a certain period of time passed away in the University Clinical Center of Kosovo (UCCK) in Pristina.

**The punishment according to the CCRK:** imprisonment of not less than ten (10) years or life long imprisonment.

**Imposed sentence:** twelve (12) years of imprisonment.

**Mitigating factors:**

1. The defendant plead guilty to the criminal offense;
2. No prior criminal convictions;
3. Showed remorse;
4. Old age;
5. Suffers from a mental disorder.

**Aggravating factors**

1. The criminal offense was committed in the late hours of the night while the victim was asleep.

**Appropriateness of the sentence:**

The court is convinced that the imposed sentence will achieve the purpose of punishment as to the special and general deterrence and the punishment is adequate and proportionate with the gravity of the offense, the circumstances of the commission of the offense, the degree of criminal liability and the personality of the offender.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

In this part, the court cites only two of the purposes of punishment (specific and general deterrence). The court failed to justify any of these purposes according to the requirements of the Guidelines in order to indicate how this sentence will achieve those two purposes. With regards to the other two purposes, the court fails to consider or indicate them in the judgment.

**Implementation of the principles**
The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**

The Guidelines, with regards to entering a guilty plea, sets forth four relevant questions that the court should address in the judgment, which the court failed to do in the reasoning of this judgment. The court also failed to address the eight factors that are required regarding remorse. Therefore, since the court failed to elaborate on these two factors with facts or evidence, according to the Guidelines there is a double counting of factors. As to the fact that the convicted person had no prior criminal convictions, according to the Guidelines this circumstance qualifies under other mitigating factors. The Guidelines states that if the court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed in the judgment. With regards to the fact that the convicted person is old, the court in this case has only indicated that the defendant is old, which represents only one of nine relevant questions that the court must address. The other relevant questions were not addressed by the court in the judgment. With regards to the mental disorder, even though in other parts of the judgment there is a justification of this finding, the court fails to address the relevant questions as required by the Guidelines regarding the justification of the type and length of the sentence. Whereas, with regards to the aggravating factor of “the criminal offense was committed in the late hours of the night while the victim was asleep,” which was indicated by the court in its judgment, it remains unclear as to which aggravating factor the court is referencing in relation to the Guidelines.

**Mitigating and aggravating factors ignored in the judgment**

There are a number of factors, both mitigating and aggravating, that the court failed to consider in its justification or to give a reasoning as to why those factors were not considered. The court did not consider the presence of actual or threatened violence in the commission of the criminal offense, whether the criminal offense was committed with particular cruelty, whether the criminal offense involved multiple victims, the age of the victim, evidence of (non) provocation by the victim, general cooperation by the convicted person with the court, the extent of the damage caused by the convicted person, the personal circumstances and character of the convicted person, remorse or lack of remorse by the convicted person, (non) compensation for the loss or damage, post conflict conduct of the convicted person, (non) violation of court orders, elapse of time and (non) support from the victim.

**The method of the Sentencing Guidelines**

In this case the court failed to provide any justification as to the internal significance of any of the applicable factors as well as to assigning weight to the circumstances. In this concrete case, we have five mitigating factors and one aggravating factor, which according to the Guidelines would fall under the instances of “overall combined mitigation factors (of any
valid type) significantly greater than quantity of aggravation,” which would qualify under the factors justifying highest mitigation within the limit. According to Appendix 1 of the Guidelines, part 7, point h, the sentence in this case should be from 10 to 13 years of imprisonment, which means that the sentence in this case is within the range.

8 Case PKR.nr.369/17 – Aggravated murder as in article 179, par. 1, subpar. 11 of the CCRK

Judgment

According to the judgment of the Basic Court in Pristina – Department for Serious Crimes, rendered on 5 June 2018, the convicted person L.I. was found guilty for the criminal offense of “Aggravated murder,” because on 29 August 2016, around 11:40, in P., near the city park, in the “H.J.” street, deprived of life E.A.2 and A.G., because of a prior dispute over a debt, which the accused did not acknowledge as his, the same persons a day earlier had gone to the house of the victim E.2. and took from the victim E.2 and A.G. a vehicle that was owned by his sister, and following ongoing pressures and threats to pay back the debt, in the critical day, after a telephone communication between the accused L.I. and the victim E.2., the latter together with the now deceased A.G., headed in the direction of city park, in a motorcycle ridden by now deceased A.G., and after they arrived at the city park, while the accused L.I. was crossing the road towards the city park, they stopped the motorcycle vigorously and the now deceased E.A.2. got off the motorcycle and frantically headed toward the accused L.I., whereas the accused L.I. at that moment, with the intent to deprive them of their lives, fired with a firearm in their direction, hitting them several times in different parts of the body, which caused them serious bodily injuries, as a result of which E.A.2 passed away at the scene, whereas A.G. passed away at the UCCK.

The punishment according to the CCRK:

Aggravated murder: imprisonment of not less than ten (10) years or life long imprisonment

Unauthorized ownership, control or possession of weapons: a fine of up to seven thousand and five hundred (7,500) EUR or imprisonment of up to five (5) years.

Imposed sentence:

For aggravated murder: nineteen (19) years and six (6) months of imprisonment

For unauthorized ownership, control or possession of weapons: one (1) year of imprisonment

Mitigating factors:

1. The young age of the offender at the time of the commission of the criminal offense;
2. The circumstances in which the criminal offense was committed, the fact that there was a dispute prior to the critical event about a debt which the accused did not acknowledge as his and the fact that he was threatened and also a vehicle owned by his sister was taken away from him;

3. The convicted person almost fully admitted the commission of the criminal offense from the beginning of the criminal proceedings, except for the circumstances that led to the crime;

4. Pre-conflict and post-conflict conduct of the convicted person;

5. No prior criminal convictions.

**Aggravating factors**

1. Young age of the victims;

2. The harm caused to the families of the victims, who were deprived of their loved ones thereby causing irrecoverable suffering to the parents of the victims.

**Appropriateness of the sentence:**

The court determined that the imposed sentence is in compliance with the degree of criminal liability of the accused and the intensity of danger or injury to the protected value. The court is convinced that the sentence for this criminal offense is in compliance with the intensity of the danger to the society and the degree of criminal liability of the accused, and as such it should serve as a general deterrence, especially individual deterrence, and increase the morality of the society and strengthen the respect for every person’s life.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

The court in this case cites three of the purposes of punishment (specific or special deterrence, general deterrence and expresses the judgment of society for criminal offenses, increases morality and strengthens the obligation to respect the law). The court only cites these purposes and fails to justify them in accordance with the requirements in the Guidelines. As to the fourth purpose (victims and the community), the court failed to apply or justify this factor in the judgment.

**Implementation of the principles**

Regarding the principles, the court implemented only one principle (the manner of commission of the criminal offense) as required by the Guidelines, by justifying it with specific factors. The other principles were not indicated or justified as required by the Guidelines. The court cites some of the principles under the appropriateness of the sentence without relating them to any factor.
Mitigating and aggravating factors indicated in the judgment

With regards to the circumstances in which the offense was committed, the guilty plea, and the damage or harm caused by the offense, the court provided the necessary reasoning as to why they may be used as mitigating or aggravating factors. Whereas, with regards to the age of the convicted person, the court only indicated that the defendant is young, which represents only one of nine relevant issues that the court should have addressed. The other relevant issues were not justified by the court in the judgment. Further, the age of the convicted person is not indicated in the reasoning of the judgment. The court applied the same approach in considering the age of the victims as an aggravating factor. With regards to the post-conflict conduct of the convicted person, the court did not address any of the three relevant questions from the Guidelines, whereas it remains unknown as to the circumstances that were considered by the court in determining the pre-conflict conduct of the defendant as a mitigating factor. With regards to the fact that the convicted person had no prior criminal convictions, according to the Guidelines, this factor should be considered under other mitigating circumstances. The Guidelines states that if the court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed in the judgment.

Mitigating and aggravating factors ignored in the judgment

There are a number of factors, both mitigating and aggravating, that the court failed to consider in its justification or to give a reasoning as to why those factors were not considered. The court failed to consider the degree of intent, the presence of actual or threatened violence in the commission of the criminal offense, whether the criminal offense was committed with particular cruelty, whether the victim of the criminal offense was particularly defenseless or vulnerable, general cooperation by the convicted person with the court, personal circumstances and character of the convicted person, remorse or lack of remorse by the convicted person, (non) compensation for the loss or damage, (non) violation of court orders, and (non) support from the victim.

The method of the Sentencing Guidelines

In this case the court failed to provide any justification as to the internal significance of any of the applicable factors as well as to assigning weight to the circumstances. For this reason, the calculation is quantitative. In this concrete case, we have five mitigating factors and two aggravating factors, which according to the Guidelines would fall under the instances of “overall combined mitigation factors (of any valid type) significantly greater than quantity of aggravation,” which would qualify under the factors justifying highest mitigation within the limit. As to the criminal offense of aggravated murder, according to Appendix 1 of the Guidelines, part 7, point h, the sentence in this case should be from 10 to 13 years of imprisonment, which means that the sentence in this case is not within this range, but is higher by six years and six months. As to the criminal offense of unauthorized ownership, control or possession of weapons, according to part 1, point g of the Appendix, the sentence
should be from one month to one year of imprisonment, which means that the sentence in this case is within this range.

9 Case PRK.nr.31/2018 – Aggravated murder as in article 179, par. 1, subpar. 1.1 and 1.11 of the CCRK

Judgment

According to the judgment of the Basic Court in Prizren – Department for Serious Crimes, rendered on 3 May 2019, the convicted person E.Sh. was found guilty for the criminal offense of “Aggravated murder,” whereas the other convicted person E.Sh. was found guilty for the criminal offense of “Providing assistance to perpetrators after the commission of criminal offenses,” because on 8 April 2015, around 14:10, in Prizren, after a prior dispute, with the intent to deprive of their lives F.Sh., H.Th. and B.E., the accused got out of his house to buy groceries and headed towards the city accompanied by his son, E.Sh., who was driving the car “Golf 2.” Beforehand and without the knowledge of his son, the accused had put an automatic rifle in the trunk of the car, and a gun in his belt, and as soon as they arrived at the crime scene, upon spotting the now deceased persons standing in their feet, the accused gets out of the car, takes the rifle out of the trunk, and from a distance of 5-6 meters starts firing in their direction, and all three victims are hit by the barrage of bullets and fall down on the ground, whereby the convicted person approaches them and fires at them again with his gun, which he had pulled from his belt. He then returns to the vehicle and says to his son to drive away from the crime scene. In this case, F.Sh. died at the crime scene, whereas the victims H.Th. and B.E. were sent to the emergency room, where they died as a result of the injuries.

The punishment according to the CCRK:

Aggravated murder: imprisonment of not less than ten (10) years or life long imprisonment

Providing assistance to perpetrators after the commission of criminal offenses: imprisonment of six (6) months to five (5) years.

Imposed sentence:

For aggravated murder: twenty-three (23) years of imprisonment

Providing assistance to perpetrators after the commission of criminal offenses: four (4) years and six (6) months

Mitigating factors:

1. Correct behavior by the accused at all stages of the proceedings;

2. Constant provocation by the victims;
3. Essentially diminished capacity of the first accused;

4. Young age of the second convicted person.

**Aggravating factors**

1. The degree of criminal liability;

2. The intensity of danger or injury to the protected value.

**Appropriateness of the sentence:**

The court is satisfied that these sentences will achieve the purposes of punishment.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

The reasoning provided in the judgment leads to only one conclusion, which is that the court was satisfied that the imposed sentences would achieve the purposes of the punishment, yet it fails to provide any justification as to any of the four purposes of punishment set forth in the Guidelines or to indicate how those purposes are achieved by the imposed sentence. Therefore, in relation to the appropriateness of the sentence, this judgment fails to comply with the requirements of the Guidelines.

**Implementation of the principles**

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**

With regards to the correct conduct of the accused, the judgment justifies this finding according to the requirements of the Guidelines. Further, the judgment also addresses essentially diminished mental capacity by considering it in relation to the circumstances that are almost a basis for the exclusion of criminal liability, such as diminished mental capacity. With regards to the provocation by the victims, the court considered this fact as a mitigating factor. However, if we refer to the Guidelines, there are several issues that are relevant to this factor that the court failed to justify. As to the second convicted person, it is nonsensical as to how the court determined to consider his young age as a mitigating factor when the convicted person was 23 years old at the time of the commission of the criminal offense. With regards to the aggravating factors, the court determined and provided an appropriate justification as to the high degree of criminal liability, while it unjustifiably used the intensity of the criminal offense as an aggravating factor. Furthermore, it remains unclear as to what the court means
by the term “intensity.” If it implies the fact that there were three victims in this case, this fact cannot be used as an aggravating factor, because this intensity is encompassed in the elements of the criminal offense, which provides that the commission of two or more murders constitutes an aggravated form of the criminal offense. For this reason, this factor is used in complete contradiction with the standards set forth in the Guidelines. In addition, the intensity of the criminal offense is set forth as a principle of punishment, which the court must justify with other specific circumstances, and which the court failed to do in this case. For this reason, according to the Guidelines, there is a double counting of factors in this case.

**Mitigating and aggravating factors ignored in the judgment**

There are a number of factors, both mitigating and aggravating, that the court failed to consider in its justification or to give a reasoning as to why those factors were not considered. The court failed to consider the presence of actual or threatened violence in the commission of the criminal offense, whether the criminal offense was committed with particular cruelty, whether the criminal offense involves multiple victims, whether the victim of the criminal offense was particularly defenseless or vulnerable, the age of the victim, personal circumstances and character of the convicted person, remorse or lack of remorse by the convicted person, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, (non) prior criminal convictions, elapse of time, and (non) support from the victim.

**The method of the Sentencing Guidelines**

In this case the court failed to provide any justification as to the internal significance of any of the applicable factors as well as to assigning weight to the circumstances. For this reason, it is assumed that all the factors were considered as equal and the calculation is quantitative.

As to the criminal offense of aggravated murder, the court determined three mitigating factors and two aggravating factors, which according to the Guidelines would fall under the instances of “existence of minor aggravation along with multiple mitigating factors or mitigation (individual factor or combined factors) in greater quantity than aggravation,” which would qualify under the factors indicating higher mitigation than aggravation. According to Appendix 1 of the Guidelines, part 7, point h, the sentence in this case should be from 13 to 17 years of imprisonment, which means that the sentence imposed in this case is not within this range, but is higher by six years.

According to the CCRK, aggravated murder is punishable by imprisonment of not less than 10 years or by life long imprisonment. According to Appendix 1 of the Guidance, part 7, point h, the starting point in this case should be 17 years of imprisonment, and in cases when there are more mitigating than aggravating factors, the sentence should be from 13 to 17 years of imprisonment, whereas in this case the court imposed a sentence of 23 years to the person convicted of aggravated murder.
As to the criminal offense of providing assistance to perpetrators after the commission of criminal offenses, the court determined four mitigating factors and two aggravating factors, which according to the Guidelines would fall under the same category as the first criminal offense. According to Appendix 1 of the Guidelines, part 2, point h, the sentence in this case should be from one year and six months to two years and six months, which means that the sentence imposed in this case is not within this range, but is higher by two years.

10 Case P.nr.06/2018 – Murder and attempted murder as in article 178 of the CCRK

Judgment

According to the judgment of the Basic Court in Pristina – Department for Serious Crimes, rendered on 20 November 2018, the convicted person F.L. was found guilty for the criminal offense of “Murder”, whereas F.G. was found guilty for “Attempted murder.” According to the judgment, on 14 June 2017, around 15:15, the convicted person F.L. deprived of life the victim I.G. in front of his house, in such a manner that following a dispute with the victim on the critical day, while he was unloading wood in front of the convicted person’s house, the victim had skimmed the wall of the convicted person, whereby the convicted person took an axe and using its “tail” hit the victim in the head. As a result of the injuries, the victim passed away in the hospital. He was also convicted for the criminal offense of “Unauthorized ownership, control or possession of weapons.”

The convicted person F.G., on the same day, attempted to deprive of life the convicted person F.L., in such a manner that after learning that his parent I.G. was hit in the head with an axe, he took a weapon and went to the house of the convicted person F.L., and shot seven times in his direction, but failed to hit him.

The punishment according to the CCRK:

Murder: imprisonment of not less than five (5) years.

Unauthorized ownership, control or possession of weapons: fine of up to seven thousand and five hundred (7,500) EUR or imprisonment of up to five (5) years.

Imposed sentence:

F.L. – For the criminal offense of murder – twelve (12) years of imprisonment.

For the criminal offense of unauthorized ownership, control or possession of weapons: two (2) years of imprisonment.

F.G. – for the criminal offense of attempted murder – two (2) years of imprisonment.
For the criminal offense of unauthorized ownership, control or possession of weapons: 500 Euro fine.

**Mitigating factors:**

**F.L.:**

1. Entering of a guilty plea for the criminal offense of unauthorized ownership, control or possession of weapons;
2. Social and irreproachable conduct during main trial;
3. Apology to the injured parties;
4. Deep remorse for the criminal offense.

**F.G.:**

1. Entering of a guilty plea for the criminal offense of unauthorized ownership, control or possession of weapons;
2. No prior criminal convictions;
3. Pre-conflict and post-conflict conduct, which was particularly social and irreproachable;
4. Deep remorse for the criminal offense.

**Aggravating factors:**

**F.L.**

1. The convicted person had prior criminal convictions against the same victim and even after serving his sentence he continued to display incorrect conduct towards the victim;
2. Kept a weapon without any strong reason and in a constant manner, causing potential danger.

**I.G.**

1. Kept a weapon without any strong reason and in a constant manner, causing potential danger.

**Appropriateness of the sentence:**

The court determined that the imposed sentence is proportionate to the degree of criminal liability and the dangerousness of the criminal offense, and the sentence is adequate to achieve the purpose of punishment and to prevent the perpetrator from committing criminal offenses in the future as well as to prevent other persons from committing criminal offenses.
Implementation of the Guidelines

Appropriateness of the sentence

The court cites only two of the purposes of the punishment (specific and general deterrence). The court merely cites these purposes and does not justify either of them in accordance with the requirements in the Guidelines. However, the court failed to consider or indicate in the judgment the other two purposes of punishment (compensation to victims or the community and judgment of society, increase of morality and strengthening the obligation to respect the law).

Implementation of the principles

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

Mitigating and aggravating factors indicated in the judgment

As to the entering of a guilty plea for the criminal offense of unauthorized ownership, control or possession of weapons, the court applied it as a mitigating factor for both defendants, yet did not address any of the requirements under the Guidelines upon considering it as a mitigating factor in order to determine the importance of the factor in this concrete case. The court also failed to address the four questions that are relevant to this factor according to the Guidelines. As to the correct conduct of the defendant during the proceedings, according to the Guidelines, the court should address a total of five questions, which the court failed to do in this judgment. As to the remorse, according to the Guidelines, the court should address and justify eight factors, which the court failed to do in this judgment. As to no prior criminal convictions, according to the Guidelines, this factor should be considered under other mitigating factors. The Guidelines states that if the court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed in the judgment. As to the apology of the convicted person to the injured parties, according to the Guidelines, this does not constitute a separate mitigating factor, and is merely a fact that establishes the mitigating factor of “remorse shown by the convicted person.” Therefore, in this case, we have double counting of factors. With regards to the fact that the convicted persons kept a weapon without any strong reason, the court merely made a factual statement and failed to indicate the aggravating factor that applies to this fact. With regards to the fact that one of the convicted persons had a prior criminal conviction, the court has addressed two of the factors set forth in the Guidelines but failed to address and justify three other factors.

Mitigating and aggravating factors ignored in the judgment
There are a number of factors, both mitigating and aggravating, that the court failed to consider in its justification or to give a reasoning as to why those factors were not considered. The court failed to consider the degree of participation of the convicted person in the criminal offense, the degree of intent, the presence of actual or threatened violence in the commission of the criminal offense, whether the criminal offense was committed with particular cruelty, whether the criminal offense involves multiple victims, whether the victim of the criminal offense was particularly defenseless or vulnerable, the age of the victim, evidence of (non) provocation by the victim, the age of the convicted person, general cooperation by the convicted person with the court, the degree of damage or harm, personal circumstances and character of the convicted person, remorse or lack of remorse by the convicted person, (non) compensation for the loss or damage, and (non) support from the victim.

The method of the Sentencing Guidelines

In this case the court failed to provide any justification as to the internal significance of any of the applicable factors as well as to assigning weight to the circumstances. For this reason, the calculation is quantitative. As to the first convicted person, for the criminal offense of murder, the court determined three mitigating factors and one aggravating factor. As to the second convicted person, for the criminal offense of attempted murder, the court determined three mitigating factors and no aggravating factor. According to the Guidelines, this would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” which would qualify under the factors justifying highest mitigation within the limit. According to Appendix 1 of the Guidelines, part 6, point e, the sentence in this case should be from five to nine years of imprisonment, which means that the sentence in this case is not within this range, respectively it is harsher for the first convicted person and more lenient for the second convicted person. With regards to the criminal offense of unauthorized ownership, control or possession of weapons, as to the first defendant the court applied four mitigating factors and two aggravating factors, whereas as to the second defendant the court applied four mitigating factors and one aggravating factor. According to the Guidelines, the first case would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” whereas the second case would fall under the instances of “overall combined mitigation factors (of any valid type) significantly greater than quantity of aggravation.” Both cases would qualify under the factors justifying highest mitigation within the limit. According to Appendix 1 of the Guidelines, part 1, point g, the sentence for the first accused should be from one month to one year of imprisonment, which means that the sentence in this case is not within the range. As to the second convicted person, the sentence should be from 100 to 2,000 EUR, which means that the sentence in this case is within the range.
VIII. Sentencing policy in terrorism cases

a. Introduction

In this Chapter, KLI analyzed four judgments in terrorism offenses. Based on the methodology described at the beginning of this report, KLI analyzed whether the judges, in these four judgments rendered in terrorism cases, implemented the requirements and standards set forth in the Guidelines in determining the type and the severity of the sentence. These four judgments include a total of 15 persons and 25 sentences imposed against them.

KLI findings presented below show that the implementation of the Guidelines in practice in terrorism cases is unsatisfactory. What sets apart this category from other categories is the fact that the number of aggravating factors applied in these types of cases is extremely disproportional to the number of mitigating factors, and not a single case has been identified where the factors were applied in accordance with the requirements of the Guidelines. In terms of the Guidelines, this represents an arbitrary application of mitigating and aggravating factors. Therefore, regarding this Chapter, if the Guidelines is used as a reference point for a lawful sentencing policy, then it implies that the sentencing policy of the judicial system in the Republic of Kosovo in terrorism cases is nothing less than arbitrary.

As to the reasoning in the judgments on the type and severity of the sentence, based on the standards set forth in the Guidelines, the parties and the public under no circumstance will be convinced as to why a certain sentence has been imposed in a concrete case.

Therefore, what has generally been presented as progress and a concrete step towards the improvement of the sentencing policy within the justice system in the Republic of Kosovo by the adoption of the Guidelines, based on the findings of this report it is obvious that even in the criminal offenses of terrorism the Guidelines has remained merely a policy in letter and unimplemented in practice.

b. General findings

In the four judgments analyzed under this Chapter, there are eight types of criminal offenses for which the defendants were convicted. The types of criminal offenses are as follows:
<table>
<thead>
<tr>
<th>Criminal offense</th>
<th>Number of punishments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incitement to commit a terrorist offense</td>
<td>1</td>
</tr>
<tr>
<td>Failure to report criminal offenses or perpetrators</td>
<td>1</td>
</tr>
<tr>
<td>Organization and participation in a terrorist group</td>
<td>8</td>
</tr>
<tr>
<td>Unauthorized ownership, control or possession of weapons</td>
<td>4</td>
</tr>
<tr>
<td>Commission of the offense of terrorism</td>
<td>3</td>
</tr>
<tr>
<td>Concealment or failure to report terrorists and terrorist groups</td>
<td>2</td>
</tr>
<tr>
<td>Preparation of terrorist offenses or criminal offenses against the constitutional order and security of the Republic of Kosovo</td>
<td>2</td>
</tr>
<tr>
<td>Unauthorized import, export, supply, transport, production, exchange, brokering or sale of weapons or explosive materials</td>
<td>4</td>
</tr>
</tbody>
</table>

Table 24 – Number of sentences according to criminal offenses.

These four judgments include a total of fifteen persons and twenty-five sentences imposed against them.

Out of twenty-five imposed sentences, there were twenty-one effective imprisonment sentences, three fines, and one suspended sentence.
As to the length of the sentences, there is a lot of disparity in the sentences. The most frequent sentence imposed in these cases is the sentence of three years of imprisonment, which has been imposed four times.

As to the fines, in two cases the imposed fine was 1,800 Euros, and in one case the fine was 2,500 Euros.
As to the factors applied in these cases, the courts applied a total of 30 factors, the majority of which (87%) were mitigating factors.

![Graphic 31 – Total number of factors applied in analyzed judgments.]

As to the number of mitigating factors applied in terrorism cases, in two cases the courts applied four mitigating factors, in one case the court applied seven mitigating factors, and in the other case the court applied eleven mitigating factors.

<table>
<thead>
<tr>
<th>Number of mitigating factors applied</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 factors applied</td>
<td>2 cases</td>
</tr>
<tr>
<td>7 factors applied</td>
<td>1 case</td>
</tr>
<tr>
<td>11 factors applied</td>
<td>1 case</td>
</tr>
</tbody>
</table>

*Table 25 – Number of mitigating factors applied.*

As to the aggravating factors, in one case the court did not apply any aggravating factors, in two cases the court applied one aggravating factor, and in one case the court applied two aggravating factors.

<table>
<thead>
<tr>
<th>Number of aggravating factors applied</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>No aggravating factors</td>
<td>1 case</td>
</tr>
<tr>
<td>1 factor applied</td>
<td>2 cases</td>
</tr>
<tr>
<td>2 factors applied</td>
<td>1 case</td>
</tr>
</tbody>
</table>

*Table 26 – Number of aggravating factors applied.*
The most frequently applied factors in these judgments include remorse, economic situation, the age of the convicted persons, and the entering of a guilty plea.

<table>
<thead>
<tr>
<th>Type of factor</th>
<th>Number of cases in which the factor has been applied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remorse</td>
<td>3</td>
</tr>
<tr>
<td>Very poor economic situation</td>
<td>3</td>
</tr>
<tr>
<td>Young age</td>
<td>3</td>
</tr>
<tr>
<td>Guilty plea</td>
<td>3</td>
</tr>
<tr>
<td>Correct conduct during trial</td>
<td>2</td>
</tr>
<tr>
<td>Promise not to commit such acts in the future</td>
<td>2</td>
</tr>
<tr>
<td>No prior criminal convictions</td>
<td>2</td>
</tr>
<tr>
<td>Low level of education</td>
<td>1</td>
</tr>
<tr>
<td>Repeat offender of criminal offenses of similar nature</td>
<td>1</td>
</tr>
<tr>
<td>Gravity of the criminal offense</td>
<td>1</td>
</tr>
<tr>
<td>The fact that the convicted person was indicted of another criminal offense in the past</td>
<td>1</td>
</tr>
<tr>
<td>Regularly obeyed court summonses</td>
<td>1</td>
</tr>
<tr>
<td>Voluntarily returned and never took any act or attempt to go to Syria again or to participate in any terrorist group, which the court considers as an expression of remorse</td>
<td>1</td>
</tr>
<tr>
<td>Employment of the convicted person</td>
<td>1</td>
</tr>
<tr>
<td>For the convicted person A.K. the court considered the fact that he is a family person</td>
<td>1</td>
</tr>
<tr>
<td>Good conduct after the commission of the criminal offense</td>
<td>1</td>
</tr>
<tr>
<td>A family person</td>
<td>1</td>
</tr>
<tr>
<td>Since the commission of the criminal offense has not</td>
<td>1</td>
</tr>
</tbody>
</table>
violated the law

| During the entire main trial have not shown any signs of regret or remorse for their acts | 1 |

Table 27 – Types of factors that were applied.

However, in the context of the Guidelines, the manner in which these factors were applied and justified illustrates the non-enforcement of the Guidelines in practice, as the KLI analysis of these judgments reveals that no factor was applied and implemented in accordance with the requirements of the Guidelines.

Graphic 32 – Application of factors in accordance with the requirements of the Guidelines.

As to the ignored factors, the courts have ignored five factors in each of these judgments.

As to the double counting, KLI found that this phenomenon is evident in three of the four cases that were analyzed. Further, in one of these cases, KLI analysis shows that there were three instances of double counting factors.
As to the appropriateness of the sentence, all judgments analyzed in this Chapter include the part on the appropriateness of the sentence.

As to the application of the purposes of punishment, none of the judgments analyzed in this Chapter apply all the purposes of punishment, while one judgment fails to apply any of the purposes of punishment.

Graphic 33 – Double counting.

The pie chart shows the distribution of judgments based on the number of purposes of punishment applied. The percentages are as follows:

- 1 Double count: 33%
- 2 Double counts: 33%
- 3 Double counts: 33%

Graphic 34 – Number of the purposes of punishment applied in judgments.

The bar chart displays the number of purposes applied in different categories:

- 0 purposes: 1
- 2 purposes: 1
- 3 purposes: 2
As to the types of purposes of punishment applied in these judgments, the purpose of punishment “victims and the community” was not applied in any of the judgments analyzed under this Chapter.

![Types of purposes of punishment applied in judgments](image)

**Graphic 35 – Types of purposes of punishment applied in judgments.**

However, regarding the implementation of Guidelines, this part also reflects a failure to apply the Guidelines in practice because none of the purposes of punishment have been justified according to the requirements of the Guidelines. The purposes were merely cited, and their achievement is taken for granted.

![Application and justification of the purposes of punishment according to the requirements of the Guidelines](image)

**Graphic 36- Application and justification of the purposes of punishment according to the requirements of the Guidelines.**
An identical situation applied to the implementation of the principles of punishment, because none of these judgments implement the principles of punishment in accordance with the requirements of the Guidelines.

![Graphic 37 – Implementation of the principles.](image)

As to the sentencing ranges set forth in Appendix 1 of the Guidelines, fifty percent of the sentences in these judgments are within the ranges set forth in the Guidelines, whereas the other fifty percent are outside of these ranges.

![Graphic 38 - Sentencing ranges.](image)
c. Case-based analysis of terrorism cases

1. Case P.nr.12/18 – Incitement to commit a terrorist offense as in article 141 of the CCRK; Criminal offense as in article 3, paragraph 4 of the LPJAC; Failure to report criminal offenses or perpetrators as in article 368, paragraph 1, subparagraph 1.4 of the CCRK

Judgment

According to the judgment of the Basic Court in Peja – Department for Serious Crimes, the convicted persons R.A. and K.P. were found guilty for the criminal offense of “Incitement to commit a terrorist offense” and “Failure to report criminal offenses or perpetrators.” According to the judgment, the convicted person R.A., from the summer of 2017, in continuation, posted messages for the public, with the intent to incite commission of a terrorist act, by posting videos and photos in his Facebook profile with username R.A. and openly expressing his support and sympathy for the terrorist organization Islamic State – ISIS. Through these posts, he expressed hatred towards other members of the community and propagated Islamism. The posted photos represent “Jihadists” and “suicide bombers,” in which he commented “craving one of these, but there are none around here,” and other comments in order to incite commission of a terrorist act, thereby causing a serious risk for such offenses to be committed.

The convicted person K.P. was found guilty because on an undetermined time in 2017, he failed to report a criminal offense or its perpetrators, in such a way that after he had contacts with persons that participated in Syria and were involved in terrorist activities, so that when the convicted person R.A., for whom he was aware that he was involved in such activities, when he requested from him to commit a suicide attack in the territory of the Republic of Kosovo, by telling him that he “needed money for financing and some Muslim brethren to organize a suicide attack against the state and the government, even though he did not accept, the defendant Kreshnik did not report the case to the police.

The punishment according to the CCRK:

Incitement to commit a terrorist offense: one (1) to five (5) years of imprisonment.

Failure to report criminal offenses or perpetrators: fine or imprisonment of up to three (3) years.

Imposed sentence

Incitement to commit a terrorist offense: one (1) year and six (6) months of imprisonment

Failure to report criminal offenses or perpetrators: six (6) months of imprisonment

Mitigating factors:
1. Correct conduct during main trial;

2. Remorse;

3. Promise that in the future they will not commit such acts;

4. Very poor economic situation;

5. Young age;

6. Low level of education for the convicted person R.A.;

7. Entering of a guilty plea at the initial stage by the convicted person K.P., and entering of guilty plea at main trial by the convicted person R.A., which in the assessment of the court represent sincere remorse and the start of their rehabilitation.

Aggravating factors

1. Both convicted persons are repeat offenders of criminal offenses of similar nature.

Appropriateness of the sentence:

The court determined that the imposed sentence is proportionate to the degree of criminal liability and the intensity of danger or injury to the protected value. The court is convinced that the sentence will serve to achieve the purpose of punishment in preventing them from committing criminal offenses in the future and will also serve as a general deterrence to prevent other persons from committing criminal offenses.

Implementation of the Guidelines

Appropriateness of the sentence

The court cited two of the purposes of punishment in this judgment and took for granted the fact that by imposing this sentence those purposes will be met. However, the court failed to justify either of these two purposes. With regards to the fourth purpose (judgment of society, increase of morality and strengthening the obligation to respect the law, and victims and communities), the court did not apply or justify these purposes of punishment at all as required by the Guidelines.

Implementation of the principles

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

Mitigating and aggravating factors indicated in the judgment
As to the correct conduct of the defendant during the proceedings, according to the Guidelines, the court should address five relevant questions, which the court failed to do in this judgment. As to the entering of a guilty plea, according to the Guidelines, the court should address four relevant questions, whereas in this case the court has merely indicated the stage when the defendants plead guilty and failed to provide a reasoning as to what this fact entails. The court failed to consider or justify in accordance with the requirements of the Guidelines the mitigating factor of remorse, as it did not address or justify any of the eight relevant questions set forth in the Guidelines. To this end, under the guilty plea, the court states that the guilty plea shows remorse by the accused. The court therefore would have avoided double counting. However, the court applied remorse too as a mitigating factor, which according to the Guidelines constitutes double counting of factors if there is no justification for each of them in compliance with the requirements of the Guidelines. Further, the promise not to commit a criminal offense in the future is not listed as a mitigating factor in the Guidelines. As to the fact that the convicted persons are in a poor economic situation, the court did not provide any reasoning to support this finding and failed to indicate why this fact constitutes a mitigating factor in this case. The court did similarly with regards to the level of education of the defendants. However, poor economic situation and low level of education do not constitute two separate mitigating factors. Instead, they comprise one single factor, which is “personal circumstances and character of the convicted person.” Therefore, according to the Guidelines, in this case we have double counting of factors. As to the young age of the defendants, according to the Guidelines, there are nine relevant questions that the court should consider and address in the judgment, which the court failed to do in this case. Further, it is inexplicable as to how the court considered their ages as a mitigating factor in this case, when one of the accused persons was 26 years old at the time of the commission of the criminal offense, whereas the other one was 23 years old. As to the fact that the accused persons are repeat offenders, the court addressed and justified only one of the five factors set forth in the Guidelines, by indicating that prior convictions were for a similar nature of criminal offenses, and completely neglected the other four factors.

Mitigating and aggravating factors ignored in the judgment

The court failed to consider the degree of intent, whether the criminal offense involved multiple victims, the degree of damage or harm, (non) repentance, and post-conflict conduct of the convicted person.

The method of the Sentencing Guidelines

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In this concrete case, as to the first convicted person, the court determined seven mitigating factors and one aggravating factor. As to the second convicted person, the court determined six mitigating factors and one aggravating factor. According to the Guidelines, this would fall under the instances of “overall combined mitigation factors (of any valid type) significantly greater than quantity of aggravation,” which would qualify under factors justifying highest mitigation within the limit. As to the criminal offense of incitement to
commit a terrorist offense, according to Appendix 1 of the Guidelines, part 3, point d, the sentence in this case should be from one to two years of imprisonment, which means that the sentence in this case is within the range. As to the criminal offense of “failure to report criminal offenses or perpetrators,” according to Appendix 1 of the Guidelines, part 1, point f, the sentence should be from one to eight months of imprisonment, which means that the sentence for this criminal offense is also within the range.

2. Case PKR.nr.264/15 – Organization and participation in a terrorist group as in article 143 par. 2 of the CCRK; Unauthorized ownership, control or possession of weapons as in article 374 par. 1 of the CCRK.

Judgment

According to the judgment of the Basic Court in Pristina – Department for Serious Crimes, the convicted persons B.SH., A.B., E.L., J.B., A.K. and B.H. were found guilty for the criminal offense of “Organization and participation in a terrorist group.” The convicted persons K.B. and B.H. were also found guilty for the criminal offense of “Unauthorized ownership, control or possession of weapons.” According to the judgment, the convicted persons B.SH., A.B., E.L., J.B., A.K. and B.H., during different time periods, through Pristina International Airport, traveled to Turkey, and later to Syria, and conducted military and physical training as part of the terrorist organization “ISIS.” They fought in Syria for a certain period, and later returned to Kosovo. The convicted person B.H. was found guilty for the criminal offense of “Unauthorized ownership, control or possession of weapons,” because until 11 August 2014, without authorization, he held ammunition and weapons, more specifically two automatic rifles AK-47, one semi-automatic rifle, four magazines, ammunition of different types, one military uniform, and one gas mask, which were found and confiscated during the search of his house by the police.

The convicted person K.B. was found guilty for the criminal offense of “Unauthorized ownership, control or possession of weapons,” because until August 11, without authorization, he held a gun “TT,” which was found and confiscated during the search of his apartment by the police.

The punishment according to the CCRK:

Organization and participation in a terrorist group: five (5) to ten (10) years of imprisonment.

Unauthorized ownership, control or possession of weapons: fine of up to seven thousand and five hundred (7,500) EUR or imprisonment of up to five (5) years.

Imposed sentence for the criminal offense of organization and participation in a terrorist group

B.Sh. was sentenced to three (3) years of imprisonment;
A.B. was sentenced to two (2) years and four (4) months of imprisonment;

E.L. was sentenced to three (3) years of imprisonment;

J.B. was sentenced to two (2) years and four (4) months of imprisonment;

A.K. was sentenced to four (4) years of imprisonment;

B.H. was sentenced to two (2) years and eight (8) months of imprisonment;

**Imposed sentence for the criminal offense of Unauthorized ownership, control or possession of weapons**

K.B. was sentenced to an eight (8) month suspended sentence;

B.H. was sentenced to six (6) months of imprisonment.

**Mitigating factors:**

1. Young age of the convicted persons;

2. Regularly obeyed the summonses of the court;

3. Voluntarily returned and never took any act or attempt to go to Syria again or to participate in any terrorist group, which the court considers as expression of remorse;

4. The entering of a guilty plea by the convicted persons A.B, and J.B. for the criminal offense from Article 143 par. 2 of the CCRK, and K.B. and B.H. for the criminal offense from Article 374 par. 2 of the CCRK;

5. No prior criminal convictions for A.B., J.B., K.B. and B.H. as there is no evidence that they had any prior final criminal convictions for similar or other criminal offenses;

6. Good conduct following the commission of the criminal offense by the convicted persons A.B., J.B., K.B. and B.H.;

7. Poor economic situations of the families of convicted persons A.B., J.B., K.B. and B.H.;

8. Remorse for their acts for convicted persons A.B., J.B., K.B. and B.H.;

9. Regular appearances in court whenever summoned, without any tendency to prolong the proceedings for convicted persons A.B., J.B., K.B. and B.H.;

10. Young age of the convicted persons B.Sh., E.L. and B.H.;

11. Expression of remorse by the fact that they voluntarily returned from Syria to Kosovo for convicted persons A.B., J.B., K.B. and B.H.;
12. Employment for the convicted persons B.Sh., E.L. and B.H.;

13. Regular appearances in court whenever summoned, despite the fact that they were in liberty for convicted persons B.Sh., E.L. and B.H.;

14. The fact that he is a family person for the convicted person A.K.;

15. Young age for the convicted person A.K.;

**Aggravating factors**

None.

**Appropriateness of the sentence:**

The court imposed on convicted persons the sentences specified in the enacting clause of this judgment and applied mitigating provisions from Articles 75 and 76 par. 1, subpar. 1.2 of the CCRK. The court individualized the sentences and determined that all sentences are appropriate and fair for each of the convicted persons, fully convinced that the imposed sentences are appropriate to the gravity of the criminal offense, the conduct and the degree of criminal liability for each of them, and that the sentences will have an impact in their resocialization, increase of morality and strengthen the obligation to respect the law. The sentences will also deter others from committing such criminal offenses and will achieve the purpose of punishment from Article 41 of the CCRK. Finally, the court is convinced that the accused will not commit or repeat criminal offenses of such or similar nature.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

The court has cited three of the purposes of punishment in this judgment and took for granted the fact that by imposing this sentence those purposes will be met. However, the court failed to justify either of these three purposes. With regards to the fourth purpose (victims and communities), the court did not apply or justify this purpose of punishment as required by the Guidelines.

**Implementation of the principles**

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**

As to the age of the convicted persons, according to the Guidelines, there are nine relevant questions that the court should consider and address in the judgment, which the court failed to do in this case. Furthermore, as to the convicted persons A.K., B.Sh., E.L. and B.H., the court
double counted certain factors, such as the young age of the convicted persons, which was used twice. Also, the court failed to give any reasoning as required by the standards of the Guidelines in applying mitigating factors such as the fact that some of the convicted persons are family persons, employed, or have a poor economic situation. The court also considered as a mitigating factor the fact that the convicted persons appeared in the court whenever summoned. As to this factor, the court applied it once as a mitigating factor for some of the convicted persons, and three times as a mitigating factor for two of the convicted persons. According to the Guidelines, this constitutes a double counting of factors. As to the correct behavior of the defendants during the proceedings, according to the Guidelines, the court should address five relevant questions, which the court failed to do in this judgment in applying this mitigating factor. As to the entering of a guilty plea, the court addressed none of the requirements set forth in the Guidelines that should be applied in relation to this factor, which also determines the importance of this factor in a concrete case. The court also failed to address any of the four relevant questions for this factor provided in the Guidelines. As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this circumstance qualifies under other mitigating factors. The Guidelines states that if the court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed at all in the judgment. As to the post-conflict conduct of the accused, the court provided an optimal reasoning by tying this factor to the fact that the convicted persons returned voluntarily from the war zone and they did not attempt to go back to that zone.

Mitigating and aggravating factors ignored in the judgment

The court failed to consider the degree of participation of the convicted person in the criminal offense, the degree of intent, the degree of damage or harm, (non) repentance, and elapse of time.

The method of the Sentencing Guidelines

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In this concrete case, the court determined many mitigating factors that vary from convicted person to convicted person, while determining no aggravating factors. According to the Guidelines, this would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm along with other significant mitigation and no aggravation,” which would qualify under factors that justify maximum mitigation within the range. As to the criminal offense of organization and participation in terrorist group, according to Appendix 1 of the Guidelines, part 6, point a, the sentence in this case should be from five to six years of imprisonment, which means that the sentence imposed in this case is within the range. As to Article 75, the court failed to provide any justification as to its application in this case. This means that the judgment against the six convicted persons for this criminal offense is outside of the range, respectively lower. Further, as to the criminal offense of unauthorized ownership, control or possession of weapons, according to Appendix
1 of the Guidelines, part 1, point g, the sentence should be from one month to one year of imprisonment, which means that the sentence imposed in this case is within the range.

3. **Case PKR.nr.161/18 – Organization and participation in a terrorist group as in article 143 par. 2 of the CCRK**

**Judgment**

According to the judgment of the Basic Court in Pristina – Department for Serious Crimes, the convicted person N.A. was found guilty for the criminal offense of “Organization and participation in a terrorist group.” According to the judgment, the convicted person N.A., on 17 January 2014, traveled from Pristina International Airport to Istanbul, and then from Istanbul to the city of Gaziantep in Turkey, near the border with Syria, and from there crossed into Syrian territory with the intent to join and become part of the “Al Nusra” organization. The convicted person N.A., after a week in Syria, returned to Kosovo. On 4 March 2016, he again attempted to go to Syria, using the Skopje-Istanbul route, however, after he got to the Istanbul Airport, he was arrested by Turkish authorities and later deported because of his ties to the war zone.

**The punishment according to the CCRK:** *Five (5) to ten (10) years of imprisonment*

**Imposed sentence:** *Two (2) years suspended sentence*

**Mitigating factors:**

1. Remorse for the commission of the criminal offense;
2. Promise not to commit any criminal offense in the future;
3. The fact that the convicted person did not violate the law since the commission of this offense, more specifically since 2014;
4. Poor economic situation.

**Aggravating factors**

1. The gravity of the criminal offense;
2. The fact that the convicted person had a prior indictment for a criminal offense.

**Appropriateness of the sentence:**

The court shares the opinion that the imposed sentence will achieve the effect and the purpose of punishment as provided by Article 41 of the CCRK.

**Implementation of the Guidelines**
Appropriateness of the sentence

The court in this judgment failed to consider or justify how the imposed sentence will satisfy the purposes of punishment required by the Guidelines. The court merely cited that the imposed sentence would achieve the purpose of punishment but failed to indicate or provide further justification.

Implementation of the principles

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

Mitigating and aggravating factors indicated in the judgment

As to the remorse, according to the Guidelines, the court should address and justify eight relevant factors set forth in the Guidelines, which the court failed to do in this case. The promise of the convicted person not to commit such acts in the future is not indicated in the Guidelines as a mitigating factor. As to the elapse of time, the court took into consideration the fact that the convicted person committed no further criminal offenses and justified this factor. As to the fact that the convicted person has a poor economic situation, the court did not support this finding with any evidence or reasoning that would indicate why this fact represents a mitigating factor in this case. Meanwhile, the court considered the gravity of the criminal offense as an aggravating factor in the judgment. According to the Guidelines, the gravity of the criminal offense is a principle of punishment that should be justified in relation to other factors. Therefore, the gravity of the criminal offense is not a factor by itself, which means that according to the Guidelines there is a double counting of factors in this case. As to no prior criminal convictions, according to the Guidelines, the court should consider five factors and address six relevant questions, which the court failed to do in this judgment.

Mitigating and aggravating factors ignored in the judgment

The court failed to consider the degree of intent, general cooperation by the convicted person with the court, the degree of damage or harm, (non) repentance, and (non) violation of court orders.

The method of the Sentencing Guidelines

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In this concrete case, the court determined four mitigating factors and two aggravating factors, which according to the Guidelines would fall under the instances of “existence of minor aggravation along with multiple mitigating factors or mitigation,” which would qualify under the factors indicating higher mitigation than aggravation. Even though the court in this judgment cited Article 75 of the CCRK, the court failed to provide any justification as to the applicability of this Article in this case. According to Appendix 1 of the
Guidelines, part 6, point a, the sentence in this case should be from six months to two years of imprisonment, which means that the sentence in this case is well outside this range. Also, even if the mitigation in this particular case had been justified in accordance with Article 75, and if the mitigation had been full or partial, the minimum sentence permitted in this case would be three years, which means that even under those circumstances the imposed sentence is more lenient than the sentencing range set forth in the Guidelines.

4. Case PRK.nr.203/2017 – Commission of the offense of terrorism as in article 136 par. 1 in conjunction with Article 145 and 31 of the CCRK; Preparation of terrorist offenses or criminal offenses against the constitutional order and security of the Republic of Kosovo as in article 144 par. 1 in conjunction with Article 135 par. 1 subpar. 1.1 in conjunction with Article 179 par. 1.9 in conjunction with Article 31 of the CCRK; Unauthorized import, export, supply, transport, production, exchange, brokering or sale of weapons or explosive materials as in article 372 par. 1 of the CCRK; Unauthorized ownership, control or possession of weapons as in article 374 par. 1 of the CCRK.

The judgment

According to the judgment of the Basic Court in Pristina – Department for Serious Crimes, the convicted persons V.A, B.I, L.V and F.G were found guilty for the criminal offense of “Commission of the offense of terrorism.” The convicted persons A.A. and L.G. were found guilty for the criminal offense of “Preparation of terrorist offenses or criminal offenses against the constitutional order and security of the Republic of Kosovo.” The convicted persons V.I. and K.P. were found guilty for the criminal offense of “Unauthorized import, export, supply, transport, production, exchange, brokering or sale of weapons or explosive materials.” The convicted persons B.I. and L.M. were found guilty for the criminal offense of “Concealment or failure to report terrorists or terrorist groups.” The convicted person L.G. was found guilty for the criminal offense of “Organization and participation in a terrorist group.” The convicted persons L.M. and B.P. were found guilty for the criminal offense of “Unauthorized ownership, control or possession of weapons.” The nine convicted persons were charged for planning to commit a terrorist attack against Israeli players and fans during the football match between Albania and Israel, which took place in the city of Shkodra, in November 2016, in such a way that, through regular contacts between Lavdrim Muhaxheri and the convicted person V.A., the former called on him to commit a terrorist attack against Israeli players and fans, who were scheduled to arrive in the city of Shkodra in Albania, in November 2016. These communications were made using an internet app called “Telegram.” The convicted persons A.A. and L.G. have used the same app to communicate with Lavdrim Muhaxheri, with the purpose to commit terrorist attacks in Kosovo during October, by planning a terrorist attack on internationals or security institutions. The purchase of weapons for the group was part of the arrangement, with money to be provided by Lavdrim Muhaxheri. The court found that this group managed to produce explosives in the house of the convicted person K.P. The convicted person L.G. is charged for actively participating for
two weeks in the ranks of terrorist organization “Al Nusra,” thereby committing the criminal offense of organization and participating in a terrorist group.

The punishment according to the CCRK for the criminal offense of “Commission of the offense of terrorism”: not less than five (5) years of imprisonment.

The punishment according to the CCRK for the criminal offense of “Concealment or failure to report terrorists or terrorist groups”: six (6) months to five (5) years of imprisonment.

The punishment according to the CCRK for the criminal offense of “Preparation of terrorist offenses or criminal offenses against the constitutional order and security of the Republic of Kosovo”: not less than ten (10) years of imprisonment or life long imprisonment.

The punishment according to the CCRK for the criminal offense of “Organization and participating in a terrorist group”: from five (5) to ten (10) years of imprisonment.

The punishment according to the CCRK for the criminal offense of “Unauthorized import, export, supply, transport, production, exchange, brokering or sale of weapons or explosive materials”: fine of up to seven thousand and five hundred (7,500) EUR and imprisonment of one (1) to eight (8) years.

The punishment according to the CCRK for the criminal offense of “Unauthorized ownership, control or possession of weapons”: fine of up to seven thousand and five hundred (7,500) EUR and imprisonment of up to five (5) years.

Imposed sentence for the criminal offense of “Commission of the offense of terrorism”:

V.I. was sentenced to nine (9) years of imprisonment.
L.V. was sentenced to five (5) years of imprisonment.
F.G. was sentenced to five (5) years of imprisonment.

Imposed sentence for the criminal offense of “Concealment or failure to report terrorists or terrorist groups”:

B.I. was sentenced to three (3) years of imprisonment.
L.M. was sentenced to three (3) years of imprisonment.

Imposed sentence for the criminal offense of “Preparation of terrorist offenses or criminal offenses against the constitutional order and security of the Republic of Kosovo”:

A.A. was sentenced to one (1) year and six (6) months of imprisonment.
L.G. was sentenced to two (2) years of imprisonment.

**Imposed sentence for the criminal offense of “Organization and participating in a terrorist group”:**

L.G. was sentenced to five (5) years of imprisonment.

**Imposed sentence for the criminal offense of “Unauthorized import, export, supply, transport, production, exchange, brokering or sale of weapons or explosive materials”:**

V.I. was sentenced to a fine of one thousand and eight hundred (1,800) EUR and two (2) years of imprisonment.

K.P. was sentenced to a fine of one thousand and eight hundred (1,800) EUR and one (1) year and six (6) months of imprisonment.

**Imposed sentence for the criminal offense of “Unauthorized ownership, control or possession of weapons”:**

L.M. was sentenced to one (1) year of imprisonment.

B.P. was sentenced to a fine of two thousand and five hundred (2,500) EUR.

**Mitigating factors:**

1. The entering of a guilty plea for the convicted persons A.A., K.P. and B.P.;
2. Young age for the convicted persons A.A., K.P. and B.P.;
3. Correct conduct during the entire main trial for the convicted persons A.A., K.P. and B.P.
4. Young age for the convicted persons V.I., B.I., L.V., F.G., L.G. and L.M.;
5. No prior criminal convictions brought to to the court’s knowledge for the convicted persons V.I., B.I., L.V., F.G., L.G. and L.M.;

**Aggravating factors**

For the convicted persons V.I., B.I., L.V., F.G., L.G. and L.M the fact that during the entire main trial they showed no signs of repentance or remorse for their actions.

**Appropriateness of the sentence:**

The court considers that the imposed sentences against the convicted persons will achieve the purpose of punishment provided by law, in compliance with Article 41 of the CCRK, namely to prevent the perpetrators of these criminal offenses from committing criminal offenses in the future and to rehabilitate the perpetrators, to prevent other persons from committing
criminal offenses, and through these punishments to express the judgment of society for criminal offenses committed by the accused.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

The court has cited three of the purposes of punishment in this judgment and took for granted the fact that by imposing this sentence those purposes will be met. However, the court failed to justify either of these three purposes. With regards to the fourth purpose (victims and communities), the court did not apply or justify this purpose of punishment as required by the Guidelines.

**Implementation of the principles**

The court has merely cited mitigating and aggravating factors in this case and failed to connect them to the principles that should be considered in determining a sentence, as provided by the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**

As to the entering of a guilty plea, the court did not apply any of the requirements set forth in the Guidelines in considering it as a mitigating factor, which determines the importance of this factor in this concrete case. The court also failed to address any of the four relevant questions set forth in the Guidelines. As to the age of the convicted person, the court did not provide any reasoning for this factor and failed to address any of the nine relevant questions set forth in the Guidelines. As to the correct conduct of the defendant during the proceedings, according to the Guidelines, the court must address five relevant questions, which the court failed to do in this judgment. As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this factor qualifies under other mitigating circumstances. Guidelines state that if the court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed at all in the judgment. Whereas, as to the finding of a lack of repentance as an aggravating factor, the court provided a modest, yet acceptable justification, and indicated that during the entire main trial the defendants did not show any signs of repentance.

**Mitigating and aggravating factors ignored in the judgment**

The court failed to consider the degree of intent, the presence of actual or threatened violence in the commission of the criminal offense, the degree of damage or harm, and the personal circumstances and character of the convicted person.

**The method of the Sentencing Guidelines**
In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In this concrete case, the court determined three, respectively two mitigating factors and one aggravating factor, which according to the Guidelines would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” which would qualify under the factors justifying highest mitigation within the limit. As to the criminal offense of commission of the offense of terrorism, according to Appendix 1 of the Guidelines, part 6, point e, the sentence in this case should be from five to nine years of imprisonment, which means that the sentence imposed in this case is within this range. As to the criminal offense of concealment or failure to report terrorists and terrorist groups, according to Appendix 1 of the Guidelines, part 2, point h, the sentence should be from six months to one year and six months of imprisonment, which means that the sentence imposed in this case is not within the range, respectively it is higher. As to the criminal offense of preparation of terrorist offenses or criminal offenses against the constitutional order and security of the Republic of Kosovo, according to Appendix 1 of the Guidelines, part 7, point h, the sentence in this case should be from 10 to 13 years of imprisonment, which means that the sentence imposed in this case is not within the range, and is under the legal minimum. As to this criminal offense, the court did not provide any justification on the application of Article 75 of the CCRK. However, even if it had been applied and justified by the court, according to the Appendix, the court under no circumstance should have imposed a sentence under five years of imprisonment, as it did in this case. As to the criminal offense of organization and participation in a terrorist group, according to Appendix 1 of the Guidelines, part 6, point a, the sentence in this case should be from five to six years of imprisonment, which means that the sentence imposed in this case is within the range. As to the criminal offense of unauthorized import, export, supply, transport, production, exchange, brokering or sale of weapons or explosive materials, according to Appendix 1 of the Guidelines, part 3, point g, the sentence should be from one to three years of imprisonment, whereas the fine should be from 100 to 1,000 Euros, which means that the sentence imposed in this case is not within the range. As to the criminal offense of unauthorized ownership, control or possession of weapons, according to Appendix 1 of the Guidelines, part 1, point g, the sentence should be from one month to one year of imprisonment, and the fine should be from 100 to 1,000 Euros, which means that the imprisonment sentence imposed in this case is within the range, whereas the fine is not within the range.
IX. Sentencing policy in weapons offenses

a. Introduction

In this Chapter, KLI analyzed four judgments on weapons offenses. Based on the methodology described at the beginning of this report, KLI analyzed whether the judges, in these four judgments rendered in weapons cases, implemented the requirements and standards set forth in the Guidelines in determining the type and the severity of the sentence. These four judgments include a total of eleven persons and twenty-four sentences imposed against them.

KLI findings presented below indicate that the Guidelines were not implemented in practice in weapons cases. What sets apart this category from other categories is the fact that despite the disproportionality in the number of mitigating versus aggravating factors applied in these cases, none of the factors were applied or justified according to the requirements of the Guidelines. In addition, none of the sentences were within the range set forth in Appendix 1 of the Guidelines. Just like in other chapters, if the Guidelines is used as a reference point for a lawful sentencing policy, then it implies that the sentencing policy of the judicial system in the Republic of Kosovo in weapons offenses is nothing less than arbitrary.

As to the reasoning in the judgments on the type and severity of the sentence, based on the standards set forth in the Guidelines, the parties and the public under no circumstance will be convinced as to why a certain sentence has been imposed in a concrete case.

Therefore, what has been presented as progress and a concrete step towards the improvement of the sentencing policy within the justice system in the Republic of Kosovo by the adoption of the Guidelines, based on the findings of this report it is obvious that even in weapons offenses the Guidelines has remained merely a policy in letter and unimplemented in practice.

b. General findings

In this Chapter, KLI analyzed four cases of unauthorized import, export, supply, transport, production, exchange, brokering or sale of weapons or explosive materials. In addition to this criminal offense, these judgments also include three other types of criminal offenses. The criminal offenses included in these judgments are as follows:
<table>
<thead>
<tr>
<th>Criminal offense</th>
<th>Number of sentences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unauthorized import, export, supply, transport, production, exchange, brokering or sale of weapons or explosive materials</td>
<td>10</td>
</tr>
<tr>
<td>Unauthorized ownership, control or possession of weapons</td>
<td>7</td>
</tr>
<tr>
<td>Inciting national, racial, religious or ethnic hatred, discord or intolerance</td>
<td>1</td>
</tr>
<tr>
<td>Assault</td>
<td>1</td>
</tr>
<tr>
<td>Failure to report preparation of criminal offenses</td>
<td>1</td>
</tr>
</tbody>
</table>

Table 28 - Number of sentences according to criminal offenses.

These four judgments include eleven persons and twenty-four sentences imposed against them.

Out of these twenty-four sentences, sixteen of them are effective imprisonment sentences, whereas eight of them are fines.

![Types of imposed sentences](chart)

Graphic 39– Types of imposed sentences.

As to the severity of imprisonment sentences, the most frequent sentence imposed is one year of imprisonment, which was imposed in six cases. The most lenient sentence under this
category is six months of imprisonment, whereas the most severe sentence is five years and six months of imprisonment.

As to the punishment of fine, the most frequent fine is 1,800 Euros, which was imposed in three cases. The most lenient fine is 1,000 Euros, whereas the most severe is 7,000 Euros.

As to the number of factors applied in these cases, the courts have applied a total of twenty-two factors. Contrary to other categories, this is the only category where the total number of aggravating factors outweighs the total number of mitigating factors.
As to the number of mitigating factors, the courts have applied three mitigating factors in two cases, and four mitigating factors in the other two cases.

<table>
<thead>
<tr>
<th>Number of mitigating factors applied</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 factors applied</td>
<td>2 cases</td>
</tr>
<tr>
<td>4 factors applied</td>
<td>2 cases</td>
</tr>
</tbody>
</table>

**Table 29 - Number of mitigating factors applied.**

As to the number of aggravating factors, in two cases the courts have applied no aggravating factors, in one case the court has applied one aggravating factor, and in the other case the court has applied seven aggravating factors.

<table>
<thead>
<tr>
<th>Number of aggravating factors applied</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>No aggravating factor</td>
<td>2 cases</td>
</tr>
<tr>
<td>1 factor applied</td>
<td>1 case</td>
</tr>
<tr>
<td>7 factors applied</td>
<td>1 case</td>
</tr>
</tbody>
</table>

**Table 30 - Number of aggravating factors applied.**

As to the types of factors applied, the data show a variety of factors that were applied in these cases. There is a total of eighteen factors that were applied, and only four of them were applied twice.
<table>
<thead>
<tr>
<th>Type of factor</th>
<th>Number of cases in which the factor was applied</th>
</tr>
</thead>
<tbody>
<tr>
<td>No prior criminal convictions</td>
<td>2</td>
</tr>
<tr>
<td>The entering of a guilty plea</td>
<td>2</td>
</tr>
<tr>
<td>Elapse of time since the commission of the criminal offense</td>
<td>2</td>
</tr>
<tr>
<td>The convicted persons is married, a father of five children and provided for the children</td>
<td>2</td>
</tr>
<tr>
<td>The conduct of the convicted person after the commission of the criminal offense</td>
<td>1</td>
</tr>
<tr>
<td>Correct conduct in the court</td>
<td>1</td>
</tr>
<tr>
<td>The fact that since the commencement of the investigation for the criminal offenses until the conclusion of main trial the convicted persons did not commit any other criminal offense</td>
<td>1</td>
</tr>
<tr>
<td>Degree of criminal liability of the convicted persons, because they had knowledge of the criminal liability and the criminal offenses</td>
<td>1</td>
</tr>
<tr>
<td>The fact that they were adults and sufficiently educated to understand their actions</td>
<td>1</td>
</tr>
<tr>
<td>The intensity of the danger or injury to the protected value</td>
<td>1</td>
</tr>
<tr>
<td>The presence of violence against vulnerable victims and the commission of criminal offenses against them because of their religious beliefs</td>
<td>1</td>
</tr>
<tr>
<td>High degree of participation of the accused persons in the criminal offense, which means the possession of a large number of weapons and ammunition in their houses and the purchase of weapons in large quantities</td>
<td>1</td>
</tr>
<tr>
<td>The circumstances in which the criminal offense was committed</td>
<td>1</td>
</tr>
<tr>
<td>High degree of participation of the convicted persons in the commission of the criminal offenses for which they</td>
<td>1</td>
</tr>
</tbody>
</table>
were found guilty and high degree of intent on the part of the convicted persons to commit these criminal offenses

<table>
<thead>
<tr>
<th>Factor</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior criminal past</td>
<td>1</td>
</tr>
<tr>
<td>Personal circumstances of the convicted person</td>
<td>1</td>
</tr>
<tr>
<td>Poor economic situation</td>
<td>1</td>
</tr>
<tr>
<td>Remorse</td>
<td>1</td>
</tr>
</tbody>
</table>

Table 31 – Types of applied factors.

In the context of the Guidelines, it is concerning that none of these factors, either mitigating or aggravating, were applied or implemented in accordance with the requirements of the Guidelines, which means that the implementation of the Guidelines for this category of criminal offenses is zero.

The analysis identified factors that were ignored by the court in all judgments. In one case, the analysis identified only one ignored factor, whereas in another case the analysis identified five ignored factors. In two cases, the analysis identified six ignored factors.
As to the double counting, KLI identified one case in this Chapter where there has been a double counting of factors.

As to the appropriateness of the sentence, all the judgments include a justification on the appropriateness of the sentence.

As to the application of the purposes of punishment, KLI found that none of the judgments analyzed under this Chapter applied all the purposes of punishment set forth in the Guidelines.

**Graphic 44 - Number of ignored factors.**

**Graphic 45 - Number of the purposes of punishment applied in judgments.**
As to the types of the purposes of punishment applied in these cases, the specific/special deterrence is the most commonly applied purpose, whereas the purpose of victims and the community was applied only in one single case.

![Types of the purposes of punishment applied in judgments](image1)

**Graphic 46 - Types of the purposes of punishment applied in judgments.**

In the context of the practical implementation of the Guidelines, it is extremely concerning that there is not a single purpose under this category that was applied and justified in accordance with the requirements of the Guidelines, which gives further credence to the conclusion that the Guidelines is not being enforced within the judicial system.

![Application and justification of the purposes of punishment according to the requirements of the Guidelines](image2)

**Graphic 47 - Application and justification of the purposes of punishment according to the requirements of the Guidelines.**
A similar finding also pertains to the implementation of the principles. The courts have partially applied the principles in compliance with the requirements of the Guidelines in only one case, whereas in the other cases the principles were not implemented at all as required by the Guidelines.

**Graphic 48 - Implementation of the principles.**

As to the sentencing ranges set forth in Appendix 1 of the Guidelines, the imposed sentences did not respect these ranges in any of the cases.

**Graphic 49 - Sentencing ranges.**
c. Case-based analysis of weapons offenses

1. Case PKR.nr.252/15 - Unauthorized import, export, supply, transport, production, exchange, brokering or sale of weapons or explosive materials as in article 372 par. 1 of the CCRK; Unauthorized ownership, control or possession of weapons as in article 374 par. 1 of the CCRK; Inciting national, racial, religious or ethnic hatred, discord or intolerance as in article 147 par. 1 in conjunction with Article 31 of the CCRK; Assault as in article 187 par. 2 in conjunction with par. 1 in conjunction with Article 31 of the CCRK; Failure to report preparation of criminal offenses as in article 385 par. 2 of the CCRK.

Judgment

According to the judgment of the Basic Court in Pristina – Department for Serious Crimes, the convicted persons V.Sh., A.M., N.S. and G.S. were found guilty for the criminal offenses of “Unauthorized import, export, supply, transport, production, exchange, brokering or sale of weapons or explosive materials” and “Unauthorized ownership, control or possession of weapons.” The convicted person N.S. was found guilty for the criminal offenses of “Unauthorized ownership, control or possession of weapons” and “Assault.” The convicted person G.S. was also found guilty for the criminal offense of “Inciting national, racial, religious or ethnic hatred, discord or intolerance.” According to the judgment, the convicted person V.Sh. was also found guilty for the criminal offense of “Unauthorized ownership, control or possession of weapons.” The convicted person M.H. was found guilty for the criminal offenses of “Unauthorized ownership, control or possession of weapons” and “Failure to report preparation of criminal offenses.” According to the judgment, it was proved that, on 5 November 2013, the convicted persons V.Sh., A.M., N.S. and G.S., acting as a group, in co-perpetration and in violation of the applicable law in Kosovo on weapons and explosives, in the “Germia” location in Pristina, purchased 14 automatic rifles and one sniper. The convicted person A.M. was found guilty because on an undetermined date, before 5 November 2013, in Gjilan, produced explosive materials by combining and modifying artificial fertilizers and mixing it with combustibles, thereby creating nitrate ammonium known as ANFO, which is often used as an explosive component for handmade bombs. The convicted person N.S. was found guilty because from an undetermined date and until 5 November 2013, he maintained ownership, control or possession of two weapons. The convicted person N.S. was also found guilty for the criminal offense of “Assault,” because on 3 November 2013, in co-perpetration with other persons, because of religious hatred and intolerance, physically assaulted the injured parties E.R. and C.W. because of their distribution of religious literature. The convicted person V.Sh. was found guilty because from an undetermined date and until 5 November 2013, he maintained ownership, control or possession of a hunting rifle, air rifle, 1,583 cartridges of different calibers, and 1,173 bullets, in violation with the applicable law on such weapons. The convicted person G.S. was found guilty for the criminal offense of “Inciting national, racial, religious or ethnic hatred, discord or intolerance” because from July 2013 and until 5 November 2014, in Pristina, Gjilan, and other place places of the Republic of Kosovo, by using an electronic communication platform.
and social media, publicly incited and spread hatred, discord and intolerance between religious groups living in Kosovo. The convicted person M.H. was found guilty for the criminal offense of unauthorized ownership, control or possession of weapons because from an undetermined date and until 5 November 2013, he maintained ownership, control or possession of two weapons, one hunting rifle and a gas pistol. The convicted person M.H. was also found guilty for the criminal offense of “Failure to report preparation of criminal offenses” because from 5 November 2013, after the meeting in Restaurant “Nora” in Klina, despite being informed and aware of the details and despite having participated in various meetings with the other defendants, failed to report the preparation of criminal offenses in violation of Chapter XXX, which were not reported to the law enforcement authorities.

The punishment according to the CCRK for the criminal offense of “Unauthorized import, export, supply, transport, production, exchange, brokering or sale of weapons or explosive materials”:

Fine of up to seven thousand and five hundred (7,500) EUR and by imprisonment of one (1) to eight (8) years.

The punishment according to the CCRK for the criminal offense of “Unauthorized ownership, control or possession of weapons”:

Fine of up to seven thousand and five hundred (7,500) EUR or by imprisonment of up to five (5) years.

The punishment according to the CCRK for the criminal offense of “Inciting national, racial, religious or ethnic hatred, discord or intolerance”:

Fine or imprisonment of up to five (5) years.

The punishment according to the CCRK for the criminal offense of “Assault”:

Imprisonment of six (6) months to five (5) years.

The punishment according to the CCRK for the criminal offense of “Failure to report preparation of criminal offenses”:

Imprisonment of three (3) months to three (3) years.

Imposed sentence for the criminal offense of “ Unauthorized import, export, supply, transport, production, exchange, brokering or sale of weapons or explosive materials”:

V.Sh. was sentenced to four (4) years and six (6) months of imprisonment and a fine of one thousand and eight hundred (1,800) EUR for this criminal offense committed in co-perpetration.
A.M. was sentenced to four (4) years and six (6) months of imprisonment and a fine of one thousand and eight hundred (1,800) EUR for this criminal offense committed in co-perpetration.

A.M. was also sentenced to one (1) year of imprisonment and a fine of one thousand (1,000) EUR for this criminal offense.

N.S. was sentenced to four (4) years and six (6) months of imprisonment and a fine of one thousand and eight hundred (1,800) EUR for this criminal offense committed in co-perpetration.

G.S. was sentenced to four (4) years and six (6) months of imprisonment and a fine of one thousand and eight hundred (1,800) EUR for this criminal offense committed in co-perpetration.

Imposed sentence for the criminal offense of “Unauthorized ownership, control or possession of weapons”:

A.M. was sentenced to two (2) years of imprisonment.

N.S. was sentenced to one (1) year of imprisonment.

V.Sh. was sentenced to two (2) years of imprisonment.

M.H. was sentenced to one (1) year of imprisonment.

Imposed sentence for the criminal offense of “Inciting national, racial, religious or ethnic hatred, discord or intolerance”:

G.S. was sentenced to a fine of one thousand and eight hundred (1,800) EUR.

Imposed sentence for the criminal offense of “Assault”:

N.S. was sentenced to three (3) years and six (6) months of imprisonment.

Imposed sentence for the criminal offense of “Failure to report preparation of criminal offenses”:

M.H. was sentenced to a fine of six hundred (600) EUR.

Mitigating factors:

1. The fact that according to the information at the disposal of the court the defendants were not tried or convicted in the past by a final judgment for a criminal offense and there are no prior indictments against them.

2. The entering of a guilty plea for the criminal offenses under the chapter on weapons for the convicted persons A.M., G.S. and N.S.
3. The conduct following the commission of the criminal offenses, considering the fact that the convicted persons had correct conduct and respected the measure of reporting to a police station and appeared in court as summoned.

4. The fact that since the initiation of the investigation for the criminal offenses and until the conclusion of the main trial, the convicted persons did not commit any further criminal offenses, including the period from 5 November 2013 until now.

**Aggravating factors**

1. The degree of criminal liability of the convicted persons, because they had knowledge of the criminal liability and the criminal offenses;

2. The fact that they were adults and sufficiently educated to understand their actions;

3. The intensity of danger or injury to the protected value, because bodily injuries were caused to the injured persons – American missionaries Robertson and Wheelock;

4. The presence of violence against vulnerable victims and the commission of criminal offenses against them because of their religious beliefs – applies to the convicted person N.S.;

5. High degree of participation of the accused persons in the criminal offense, which means the possession of a large number of weapons and ammunition in their houses and the purchase of weapons in large quantities;

6. The circumstances in which the criminal offense was committed;

7. High degree of participation of the convicted persons in the commission of the criminal offenses for which they were found guilty and high degree of intent on the part of the convicted persons to commit these criminal offenses;

8. The intensity of danger or injury to the protected value considering the fact that the weapons and the materials used for the production of explosives in an artisanal manner found on the accused constitute a great danger and are harmful for its users and for the citizens of the Republic of Kosovo because their use represents a serious danger to the individuals and the society.

**Appropriateness of the sentence:**

The court imposed on the convicted persons the sentences specified in the enacting clause of this judgment, fully convinced that the imposed sentences are appropriate and correspond to the degree of social danger of the criminal offenses, as well as the degree of criminal liability of the convicted persons. The court further believes that the imposed sentence will accomplish the purposes of punishment provided in Article 41 of the CCRK, namely to prevent the perpetrators from committing criminal offenses in the future, to compensate the victims or the community for losses or damages caused by the criminal conduct, and to
express the judgment of society for criminal offenses, increase morality and strengthen the obligation to respect the law.

Implementation of the Guidelines

Appropriateness of the sentence

The court in this case applied three of the purposes of punishments, whereas the court failed to apply or justify the purpose of general deterrence. However, the court has merely cited and took for granted the achievement of the three purposes of punishment applied in this case. The court did not provide any justification as to how these sentences will lead to the achievement of the purposes of punishment, respectively did not provide any causal link between them in this case.

Implementation of the principles

The court in this case applied a certain number of the principles of punishment as to mitigating factors but failed to do so as to aggravating factors. Furthermore, under aggravating factors, the court determined as an aggravating factor the circumstances in which the criminal offenses were committed, which according to the Guidelines is not a specific aggravating factor but is merely a principle of punishment that should be related to other specific mitigating factors. Therefore, in this case, we have a partial implementation of the principles of punishment.

Mitigating and aggravating factors indicated in the judgment

As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this circumstance qualifies under other mitigating factors. Guidelines state that if the court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed in this judgment. As to the entering of a guilty plea, the court did not consider any of the requirements that according to the Guidelines should be applied in considering this factor, which determine the importance of this factor in a concrete case. The court also failed to address the four relevant questions set forth in the Guidelines. As to the correct conduct of the defendant during the proceedings, according to the Guidelines, the court should address five relevant questions, whereas the court in this case has merely indicated that the defendants respected the measures and appeared in court. As to the elapse of time, the court justified this factor as required by the Guidelines. As to the aggravating factors, the court applied and justified all aggravating factors as required by the Guidelines, apart from the circumstances in which the criminal offense was committed. As to the latter, the court applied it as an aggravating factor despite not tying it to any specific factor. According to the Guidelines, the circumstances in which the criminal offense was committed is a principle of punishment and not a specific factor. In the context of the Guidelines, this constitutes a double counting of factors by the court.

Mitigating and aggravating factors ignored in the judgment

179
The court in this case failed to consider remorse or lack of it by the convicted persons.

**The method of the Sentencing Guidelines**

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court considered three, respectively four mitigating factors against the convicted persons, and seven, respectively eight aggravating factors against them, which according to the Guidelines would fall under the instances of “total aggravation significantly in excess of mitigation,” which would qualify under the factors justifying highest aggravation within the limit. As to the criminal offense of unauthorized import, export, supply, transport, production, exchange, brokering or sale of weapons or explosive materials, according to Appendix 1 of the Guidelines, part 1, point i, the imprisonment sentence in this case should be from six to eight years of imprisonment and the fine should be from 5,250 to 7,500 Euros, which means that in this case neither of the sentences is within the range. As to the criminal offense of unauthorized ownership, control or possession of weapons, according to Appendix 1 of the Guidelines, part 1, point g, the sentence in this case should be from four to five years of imprisonment, which means that the sentence imposed for this criminal offense is not within the range. Further, as to the criminal offense of inciting national, racial, religious or ethnic hatred, discord or intolerance, according to Appendix 1 of the Guideline, the sentence should be from 17,500 to 25,000 Euros, which means that the sentence imposed for this criminal offense is not within the range. As to the criminal offense of assault, according to Appendix 1 of the Guidelines, part 2, point h, the sentence in this case should be from four to five years of imprisonment, which means that the sentence imposed for this criminal offense is not within the range. As to the criminal offense of failure to report preparation of criminal offenses, according to Appendix 1 of the Guidelines, the sentence should be from 17,500 to 25,000 Euros, which means that the imposed sentence is not within the range.

2. **Case PKR.nr.130/11 – Unauthorized supply, transport, production, exchange or sale of weapons as in article 327 par. 2 in conjunction with Article 23 of the CCK; Unauthorized ownership, control, possession or use of weapons as in article 328 par. 3 in conjunction with par. 2 of the CCK.**

**Judgment**

According to the judgment of the Basic Court in Pristina – Department for Serious Crimes, the convicted persons A.M. and Av.M. were found guilty for the criminal offense of “Unauthorized supply, transport, production, exchange or sale of weapons.” The convicted person A.M. was also found guilty for the criminal offense of “Unauthorized ownership, control, possession or use of weapons.” According to the judgment, it was proven that the convicted persons A.M. and Av.M., in co-perpetration with the now deceased G.M., until 3 April 2008, at their house in st. “Aleksander Moisiu,” and at their warehouse, received
supplies of weapons from Albania, which they later modified and sold. The convicted person Av.M. was also found guilty for the criminal offense of “Unauthorized ownership, control, possession or use of weapons,” because it was proven that on 3 April 2008, at his house, without a valid permit, he possessed and owned guns and bullets of different calibers, and in the hutch doves of the convicted person Av.M., the authorities found 44 thousand Euros, wrapped in two packs of cigarettes “Ronson” and “Marlboro,” which were proceeds of the commission of the criminal offense.

The punishment according to the CCK for the criminal offense of “Unauthorized supply, transport, production, exchange or sale of weapons”:

Imprisonment of one (1) to ten (10) years.

The punishment according to the CCK for the criminal offense of “Unauthorized ownership, control, possession or use of weapons”:

Imprisonment of one (1) to ten (10) years.

Imposed sentence for the criminal offense of “Unauthorized supply, transport, production, exchange or sale of weapons”:

A.M. was sentenced to a one (1) year suspended sentence;

Av.M was sentenced to one (1) year of imprisonment

Imposed sentence for the criminal offense of “Unauthorized ownership, control, possession or use of weapons”:

Av.M. was sentenced to six (6) months of imprisonment.

Mitigating factors:

1. For the convicted persons A.M. and Av.M., the elapse of a long time since the commission of the criminal offense;

2. For the convicted persons A.M. and Av.M., their conduct before and after the commission of the criminal offense, because the court has no information of any other initiated, ongoing or concluded criminal proceeding;

3. For the convicted person Av.M., the court considered his entering of a guilty plea for the criminal offense of unauthorized ownership, control, possession or use of weapons as a particularly mitigating factor, which enabled the court to apply the provisions on mitigation of punishment and to impose a sentence below the minimum provided by the law for this criminal offense;

4. The personal circumstances of the convicted person Av.M.;
5. The fact that the convicted person Av.M. is married, a father of five children and the provider for his children.

Aggravating factors:

None

Appropriateness of the sentence:

In determining the factors that affect the type and the severity of the sentence, the court determined that the imposed sentence is in compliance with the degree of criminal liability of the convicted persons and the intensity of danger or injury to the protected value, and will therefore prevent them from committing criminal offenses in the future, will rehabilitate them, and will deter other persons from committing criminal offenses, which is the purpose of punishment under Article 41 of the CCK.

Implementation of the Guidelines

Appropriateness of the sentence

In this judgment the court has cited two of the purposes of punishment and took for granted the fact that this sentence will achieve those purposes. However, the court failed to justify either of these two purposes. As to the fourth purpose (judgment of society, increased morality and the obligation to respect the law, and victims and the community), the court did not apply or justify this purpose of punishment as required by the Guidelines.

Implementation of the principles

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

Mitigating and aggravating factors indicated in the judgment

As to the elapse of time, the court fails to provide any justification for this factor in the judgment. As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this factor qualifies under other mitigating factors. Guidelines state that if the court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed in the judgment. As to the entering of a guilty plea, the court addressed none of the requirements set forth in the Guidelines that should be applied in relation to this factor, which also determines the importance of this factor in a concrete case. The court also failed to address the four relevant questions for this factor as required by the Guidelines. Furthermore, the court stated in the judgment that this factor enabled it to apply the provisions on mitigation of punishment in
order to sentence the defendants to a sentence under the minimum punishment provided by the law, despite the fact that the guilty plea was made after the commencement of the trial. As to this situation, the Guidelines explicitly states that “mitigation under Article 75 should not be available once the trials begins.” In addition, the court considered the personal circumstances of one of the defendants as a mitigating factor, while also considering the fact that the defendant is married, a father of five and provider for his children as a mitigating factor. Apart from not justifying either of these two factors as required by the Guidelines, the court in this case double counted these factors because the family situation of the defendant is part of the mitigating factor of “the personal circumstances and character of the convicted person” and does not represent a separate mitigating factor.

**Mitigating and aggravating factors ignored in the judgment**

The court failed to consider the degree of participation of the convicted person in the commission of the criminal offense, the degree of intent, general cooperation by the convicted person with the court, the extent of damage, remorse/lack of remorse by the convicted persons and (non) repentance.

**The method of the Sentencing Guidelines**

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined five mitigating factors and no aggravating factors for the first convicted person, and two mitigating factors and no aggravating factors for the second convicted person. According to the Guidelines, both cases would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” which would qualify under the factors justifying highest mitigation within the limit. As to the criminal offense of unauthorized ownership, control, possession or use of weapons, according to Appendix 1 of the Guidelines, part 1, point j, the sentence should be from one to four years of imprisonment, which means that the sentence imposed in this case is within the range. As to the criminal offense of unauthorized supply, transport, production, exchange or sale of weapons, according to Appendix 1 of the Guidelines, part 1, point j, the sentence in this case should be from one to four years of imprisonment, which means that the sentence imposed in this case is not within the range.

3. Case PKR.nr.30/18 - Unauthorized import, export, supply, transport, production, exchange, brokering or sale of weapons or explosive materials as in article 372 par. 2 of the CCRK, and Unauthorized ownership, control or possession of weapons as in article 374 par. 1 of the CCRK.

**Judgment**
According to the judgment of the Basic Court in Pristina – Department for Serious Crimes, rendered on 20 July 2018, the convicted persons M.D., A.K., D.P. and D.M. were found guilty for the criminal offense of “Arms trafficking” and “Unauthorized ownership, control or possession of weapons,” because the court found that the convicted persons M.D., A.K. and D.P., acting as an organized criminal group, with A.V. in charge, against whom the criminal proceedings are ongoing in the USA, committed serious criminal offenses of arms trafficking.

According to the judgment, during April/May 2017, in the territory of the United States of America, an undercover Drug Enforcement Administration (DEA) agent made an agreement with A.V. to purchase 15 automatic weapons, under the pretext of purchasing them for the drug gangs in Mexico, for a price of 900 dollars, and paid him a total of 13,500 dollars. On 18 June 2017, the accused persons A.K. and A.V., after a prior agreement with a Kosovo Police officer, who in coordination with American law enforcement was implementing the covert measure of simulated purchase, met at the “N” Restaurant in Klina, and delivered six AK 47’s and an empty magazine to the police officer.

On 27 June 2017, at the same location, the convicted persons A.K. and D.P. delivered to the undercover officer eight automatic rifles “AK 47” with magazines, a propelled grenade with a 64 mm projectile, and three empty magazines, whereas the accused person M.D. oversaw the operation from the Restaurant. A few minutes later all of them were arrested.

The punishment according to the CCRK for the criminal offense of “Unauthorized import, export, supply, transport, production, exchange, brokering or sale of weapons or explosive materials”: Fine and imprisonment of one (1) to ten (10) years.

The punishment according to the CCRK for the criminal offense of “Unauthorized ownership, control or possession of weapons”: Fine of up to seven thousand and five hundred (7,500) EUR or by imprisonment of up to five (5) years.

**Imposed sentence for the criminal offense of “Unauthorized import, export, supply, transport, production, exchange, brokering or sale of weapons or explosive materials”:**

M.D. was sentenced to five years and six months of imprisonment and a 7,000 Euro fine;

A.K. was sentenced to four years and six months of imprisonment and a 5,000 Euro fine;

D.P. was sentenced to two years of imprisonment and a 3,000 Euro fine.

**Imposed sentence for the criminal offense of “Unauthorized ownership, control or possession of weapons”:**

A.K. was sentenced to one year of imprisonment;

D.M. was sentenced to a fine of 4,000 Euros.

**Mitigating factors:**

184
For the convicted person D.M.:

1. Entering of a guilty plea;
2. No prior criminal convictions.

For the convicted person D.P.:

1. No prior criminal convictions;
2. Remorse.

For the convicted persons M.D. and A.K.:

1. Remorse for the criminal offense.

Aggravating factors:

For the convicted persons M.D. and A.K.:

1. Prior criminal convictions.

Appropriateness of the sentence:

The court determined that the imposed sentences were adequate and just for each of the defendants, convinced that the sentences correspond to the gravity of the criminal offense, the conduct of the offender, and the degree of criminal liability of each defendant, and would help in their resocialization and increase morality and strengthen the obligation to respect the law. The sentences will also deter others from committing criminal offenses.

Implementation of the Guidelines

Appropriateness of the sentence

In this judgment the court cited three of the purposes of punishment and took for granted the fact that the imposed sentence would achieve those purposes. However, the court failed to justify any of these purposes. As to the fourth purpose (victims and the community), the court did not apply or justify this purpose of punishment as required by the Guidelines.

Implementation of the principles

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

Mitigating and aggravating factors indicated in the judgment
As to the entering of a guilty plea, the court addressed none of the requirements set forth in the Guidelines that should be applied in relation to this factor, which also determines the importance of this factor in a concrete case. The court also failed to address the four relevant questions for this factor as required by the Guidelines. As to prior criminal convictions, according to the Guidelines, the court should consider five factors and address six relevant questions, which the court failed to do in this judgment. As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this factor qualifies under other mitigating factors. Guidelines state that if the court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed in the judgment. As to remorse, according to the Guidelines, the court should address and justify eight factors, which the court failed to do in this case.

**Mitigating and aggravating factors ignored in the judgment**

The court failed to consider the degree of participation by the convicted person in the criminal offense, the degree of intent, general cooperation of the convicted person with the court, the extent of damage, the personal circumstances and character of the convicted person, post-conflict conduct of the convicted person, and (non) violation of court orders.

**The method of the Sentencing Guidelines**

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, as to the first two convicted persons, the court determined two mitigating factors and no aggravating factors, which according to the Guidelines would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” which would qualify under the factors justifying highest mitigation within the limit. As to the convicted person for the criminal offense of unauthorized import, export, supply, transport, production, exchange, brokering or sale of weapons or explosive materials, according to Appendix 1 of the Guidelines, part 1, point j, the imprisonment sentence should be from one to four years of imprisonment and the fine should be from 100 to 6,250 Euros, which means that the sentence imposed in this case is within the range. As to the second convicted person, for the criminal offense of unauthorized ownership, control or possession of weapons, according to Appendix 1 of the Guidelines, the punishment of fine should be from 100 to 1,000 Euros. In this case, the imposed fine is not within the range. As to the other two convicted persons, the court determined one mitigating factor and one aggravating factor for each of them, which according to the Guidelines would fall under the instances of “aggravating and mitigating circumstances are equivalent and neither one prevails,” which would qualify under column 7, starting point. As to the first convicted person under this part, for the criminal offense of unauthorized import, export, supply, transport, production, exchange, brokering or sale of weapons or explosive materials, according to Appendix 1 of the Guidelines, part 1, point j, the imprisonment sentence in this case should be five years of imprisonment, whereas the fine should be 12,500 Euros, which means that the imposed sentence in this case is not within the range. As to the second convicted person under this part, for the criminal offense of unauthorized import, export, supply, transport, production, exchange, brokering or sale of weapons or explosive materials, according to Appendix 1 of the Guidelines, part 1, point j, the imprisonment sentence in this
case should be five years of imprisonment, whereas the fine should be 12,500 Euros, which means that the imposed sentence in this case is not within the range. As to the same convicted person, for the criminal offense of unauthorized ownership, control or possession of weapons, according to Appendix 1 of the Guidelines, the fine should be 3,750 Euros, which means that the sentence in this case is not within the range.

4. Case P.nr.266/08 – Unauthorized supply, transport, production, exchange, or sale of weapons as in article 327 par. 2 in conjunction with par. 1 in conjunction with Article 23 of the CCK.

The judgment

According to the judgment of the Basic Court in Pristina – Department for Serious Crimes, the convicted person A.A. was found guilty for the criminal offense of “Unauthorized supply, transport, production, exchange or sale of weapons,” because it was proven that the convicted person A.A. received supplies and transported a large number of weapons, together with the accused persons B.A. and H.R., with the purpose of selling them without authorization. It has also been proven that the convicted person A.A., together with the accused person B.A., have spoken over the telephone about the sale of different weapons. On 1 August 2007, during the search of the houses of the accused B.A. and H.R., the police found and confiscated weapons of different calibers, including large amounts of cartridges, magazines, and hunting rifles.

The punishment according to the CCRK for the criminal offense of “Unauthorized supply, transport, production, exchange or sale of weapons”:

Fine and imprisonment of one (1) to ten (10) years.

Imposed sentence for the criminal offense of “Unauthorized supply, transport, production, exchange or sale of weapons”:

A.A. was sentenced to six months of imprisonment, which upon the consent of the convicted person may be substituted with a fine of three thousand (3,000) Euros.

Mitigating factors:

1. Elapse of a long time since the commission of the criminal offense;

2. The fact that the convicted person is a family person, a father of five children and provider for his children;

3. Poor economic situation;

4. Prior and post-conflict conduct, because the court has no information of any prior criminal convictions.

Aggravating factors
None.

**Appropriateness of the sentence**

In assessing the factors that determine the type and the severity of the offense, the court determined that the imposed sentence is in compliance with the degree of criminal liability of the convicted persons and the intensity of danger to the protected value. The court is convicted that the sentence for this criminal offense is in compliance with the intensity of danger to the society and the degree of criminal liability of the accused persons, and as such, in addition to individual deterrence, it will also serve as a general deterrence, and will strengthen the morality of the society and the respect for the life of each citizen as set forth by Article 41 of the CCRK.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

In this judgment the court cited three of the purposes of punishment and took for granted the fact that the imposed sentence would achieve those purposes. However, the court failed to justify any of these purposes. As to the fourth purpose (victims and the community), the court did not apply or justify this purpose of punishment as required by the Guidelines.

**Implementation of the principles**

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**

As to the elapse of time, the court does not provide any justification in the judgment. As to the family circumstances of the convicted person, the court does not address all the requirements of the Guidelines in qualifying this circumstance as a mitigating factor. As to the economic situation, the court fails to provide any justification. However, the economic situation and the family situation are not two separate factors as both fall under the factor of personal and family situation, which in the context of the Guidelines constitutes double counting. As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this factor qualifies under other mitigating factors. Guidelines state that if the court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed in the judgment.

**Mitigating and aggravating factors ignored in the judgment**
The court failed to consider the degree of intent, general cooperation of the convicted person with the court, the extent of damage, remorse/lack of remorse by the convicted person (non) repentance, and (non) violation of court orders.

**The method of the Sentencing Guidelines**

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined four mitigating factors and no aggravating factors, which according to the Guidelines would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” which would qualify under the factors justifying highest mitigation within the limit. According to Appendix 1 of the Guidelines, part 1, point j, the sentence in this case should be from one to four years of imprisonment, which means that the sentence imposed in this case is not within the range, but is under the minimum punishment provided by the law. As to imposing a sentence under the minimum punishment provided by the law, which may be imposed when applying the provisions of Article 75, the court has merely stated that it imposed a sentence under the minimum and failed to justify the permissibility and compatibility of the application of mitigating provisions in the context of the Guidelines.
X. Sentencing policy in cases of criminal offenses adjudicated in the general departments

a. Introduction

In order for the report not to be limited only to serious crimes adjudicated in the serious crimes departments, KLI also analyzed judgments issued in cases adjudicated in the general departments.

Based on the methodology described at the beginning of this report, KLI analyzed twenty judgments rendered for criminal offenses adjudicated in the general departments to see whether the judges applied the requirements and standards set forth in the Guidelines upon determining the type and the severity of punishment. These twenty judgments include a total of twenty-one persons and twenty-three sentences imposed against them.

KLI findings presented below indicate that the implementation of the Guidelines in practice is not even remotely sufficient. The findings from these judgments indicate the use of templates in justifying both mitigating and aggravating factors, as well as the purposes of punishment. The implementation of the principles of punishment is inexistent. What characterizes this Chapter compared to other chapters is the fact that the number of the same factors repeated in different cases is extremely high, as well as their lack of justification. Therefore, similar to other chapters, if the Guidelines is used as a reference point for a lawful sentencing policy, then it can be inferred that the sentencing policy of the judicial system in the Republic of Kosovo in cases adjudicated in general departments is nothing less than arbitrary.

As to the reasoning in the judgments on the type and the severity of punishment, based on the standards set forth in the Guidelines, the parties and the public under no circumstance will be convinced as to why a certain sentence has been imposed in a concrete case.

Therefore, what has been presented as progress and a concrete step towards the improvement of the sentencing policy within the justice system in the Republic of Kosovo by the adoption of the Guidelines, based on the findings of this report it is obvious that even in the criminal offenses adjudicated in the general departments the Guidelines has remained merely a policy in letter and unimplemented in practice.

b. General findings

The twenty judgments analyzed under this chapter involve various criminal offenses and were rendered by the general departments. These judgments include the following criminal offenses:
<table>
<thead>
<tr>
<th>Criminal offense</th>
<th>Number of sentences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Irresponsible medical treatment</td>
<td>1</td>
</tr>
<tr>
<td>Aggravated theft</td>
<td>12</td>
</tr>
<tr>
<td>Attempted aggravated theft</td>
<td>1</td>
</tr>
<tr>
<td>Unauthorized ownership, control or possession of weapons</td>
<td>1</td>
</tr>
<tr>
<td>Assault</td>
<td>1</td>
</tr>
<tr>
<td>Light bodily injury</td>
<td>2</td>
</tr>
<tr>
<td>Purchase, receipt or concealment of good obtained through the commission of a</td>
<td>1</td>
</tr>
<tr>
<td>criminal offense</td>
<td></td>
</tr>
<tr>
<td>Theft of utility services</td>
<td>1</td>
</tr>
<tr>
<td>Removing or damaging official stamps or marks</td>
<td>1</td>
</tr>
<tr>
<td>Organizing pyramid schemes and unlawful gambling</td>
<td>1</td>
</tr>
<tr>
<td>Failure to report or falsely reporting property, revenue/income, gifts, other</td>
<td>4</td>
</tr>
<tr>
<td>material benefits or financial obligations</td>
<td></td>
</tr>
<tr>
<td>Fraud</td>
<td>2</td>
</tr>
<tr>
<td>Forest theft</td>
<td>2</td>
</tr>
<tr>
<td>Unauthorized possession of narcotic drugs, psychotropic substances and analogues</td>
<td>2</td>
</tr>
<tr>
<td>Endangering public traffic</td>
<td>2</td>
</tr>
</tbody>
</table>

Table 32 – Number of sentences according to criminal offenses.

These twenty judgments involve twenty-one persons and thirty-three sentences imposed against them.
Out of these twenty-three sentences, imprisonment and suspended sentences are the most prevailing punishments with each one imposed in nine cases, followed by fines, which were imposed in seven cases, and one case of a judicial admonition.

As to the severity of imprisonment sentences (effective and suspended), this Chapter shows a disparity between sentences. The most frequent sentence is three months suspended sentence.

Graphic 50 – Types of imposed sentences.

Graphic 51 – Severity of imprisonment sentences.
There is also plenty of disparity as to the amount of fines. The highest imposed fine is 2,000 Euros, whereas the most frequent fine is 200 Euros, which was imposed in three cases.

A total of eighty-two factors were applied in the twenty judgments analyzed under this Chapter. However, there is a huge disproportion between the number of mitigating factors and aggravating factors, as the number of mitigating factors greatly outweighs aggravating factors. Mitigating factors constitute about eighty-five percent (85%) of total factors applied in these cases.

As to the mitigating factors, the courts in these judgments have determined from one to seven mitigating factors. In one case, the court found no mitigating factors.
### Number of mitigating factors applied

<table>
<thead>
<tr>
<th>Number of mitigating factors applied</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>No mitigating factors</td>
<td>0 cases</td>
</tr>
<tr>
<td>1 mitigating factor</td>
<td>3 cases</td>
</tr>
<tr>
<td>2 mitigating factors</td>
<td>1 case</td>
</tr>
<tr>
<td>3 mitigating factors</td>
<td>6 cases</td>
</tr>
<tr>
<td>4 mitigating factors</td>
<td>4 cases</td>
</tr>
<tr>
<td>5 mitigating factors</td>
<td>5 cases</td>
</tr>
<tr>
<td>7 mitigating factors</td>
<td>1 case</td>
</tr>
</tbody>
</table>

*Table 33 – Number of mitigating factors applied.*

However, despite a large number of aggravating factors provided in the CCRK and the Guidelines, KLI found that in thirteen of these judgments the courts did not determine any aggravating factors. The highest number of aggravating factors applied in a judgment is three, which were applied in one judgment.

### Number of aggravating factors applied

<table>
<thead>
<tr>
<th>Number of aggravating factors applied</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>No aggravating factors</td>
<td>13 cases</td>
</tr>
<tr>
<td>1 aggravating factor</td>
<td>5 cases</td>
</tr>
<tr>
<td>2 aggravating factors</td>
<td>2 cases</td>
</tr>
<tr>
<td>3 aggravating factors</td>
<td>1 case</td>
</tr>
</tbody>
</table>

*Table 34 - Number of aggravating factors applied.*

The most frequently applied factors in these judgments include the entering of a guilty plea, no prior criminal convictions, and expression of sincerity during main trial.
<table>
<thead>
<tr>
<th>Type of factor</th>
<th>Number of cases in which the factor has been applied</th>
</tr>
</thead>
<tbody>
<tr>
<td>The entering of a guilty plea</td>
<td>15</td>
</tr>
<tr>
<td>No prior criminal convictions</td>
<td>12</td>
</tr>
<tr>
<td>Expression of sincerity during main trial</td>
<td>9</td>
</tr>
<tr>
<td>Remorse</td>
<td>5</td>
</tr>
<tr>
<td>Economic situation</td>
<td>4</td>
</tr>
<tr>
<td>Promise by the convicted person not to commit criminal offenses in the future</td>
<td>4</td>
</tr>
<tr>
<td>The circumstances in which the criminal offense was committed</td>
<td>4</td>
</tr>
<tr>
<td>The convicted person is a family person</td>
<td>3</td>
</tr>
<tr>
<td>The intensity of danger or injury to the protected value</td>
<td>3</td>
</tr>
<tr>
<td>Conduct during main trial</td>
<td>3</td>
</tr>
<tr>
<td>The fact that the convicted person is retired</td>
<td>2</td>
</tr>
<tr>
<td>Elapse of long time since the commission of the criminal offense</td>
<td>1</td>
</tr>
<tr>
<td>The criminal offense was not committed by direct intent, but by indirect intent</td>
<td>1</td>
</tr>
<tr>
<td>The child suffered permanent injuries</td>
<td>1</td>
</tr>
<tr>
<td>Father of a child</td>
<td>1</td>
</tr>
<tr>
<td>Suspected of involvement in over 49 criminal offenses, including aggravated</td>
<td>1</td>
</tr>
<tr>
<td>theft, possession of narcotic substances, possession of weapons, threats,</td>
<td></td>
</tr>
<tr>
<td>assault, etc.</td>
<td></td>
</tr>
<tr>
<td>Factor</td>
<td>Count</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>Criminal offense remained an attempt</td>
<td>1</td>
</tr>
<tr>
<td>Prior criminal conviction</td>
<td>1</td>
</tr>
<tr>
<td>Feels repentance for the consequence caused by the criminal offense</td>
<td>1</td>
</tr>
<tr>
<td>The convicted person is a student</td>
<td>1</td>
</tr>
<tr>
<td>Is employed in construction labor to support his family</td>
<td>1</td>
</tr>
<tr>
<td>Apology</td>
<td>1</td>
</tr>
<tr>
<td>The dangerousness of the criminal offense</td>
<td>1</td>
</tr>
<tr>
<td>The convicted persons are in a good economic situation and were not motivated by economic reasons to commit the criminal offense</td>
<td>1</td>
</tr>
<tr>
<td>The criminal offense was committed with intent and persistence</td>
<td>1</td>
</tr>
<tr>
<td>Lack of remorse or repentance</td>
<td>1</td>
</tr>
<tr>
<td>His actions were not the sole reason for the accident</td>
<td>1</td>
</tr>
<tr>
<td>Did not plead guilty</td>
<td>1</td>
</tr>
<tr>
<td>Did not apologize for the criminal offense</td>
<td>1</td>
</tr>
</tbody>
</table>

Table 35 – Types of applied factors.

In the context of the implementation of the Guidelines, KLI findings indicate that the implementation of the Guidelines for this category is inexistent, whereas the application of factors in these judgments as required by the Guidelines is the exception to the rule rather than the rule, as it took place in only 2% of the cases.
Ninety-nine percent (99%) of the mitigating factors applied in these judgments, respectively sixty-eight mitigating factors, were not applied or justified in accordance with the requirements of the Guidelines.

The analysis identified a similar pattern with aggravating factors. In these judgments, the courts applied only one aggravating factor in accordance with the requirements of the Guidelines, whereas eleven aggravating factors did not comply with the requirements of the Guidelines.
A concerning fact relates to the ignoring of factors by the court, which leads to a lack of a clear picture as to the appropriateness of the sentencing policy in the judicial system in the Republic of Kosovo. In these twenty judgments, there is not a single case in which factors were not ignored. The lowest number of ignored factors is six, the most common number of ignored factors is ten (in five cases), and in one case the total number of ignored factors is nineteen.

Graphic 56 - Application and justification of aggravating factors in accordance with the requirements of the Guidelines.

Graphic 57 - Number of ignored factors.
As to the double counting of factors, this phenomenon is extremely prevalent in the judgments analyzed under this Chapter. KLI findings identified double counting in fourteen of the twenty judgments analyzed under this chapter. In three of them there were two double counts.

Graphic 58 – Double counting of factors.

As to the appropriateness of the sentence, out of these twenty judgments, in three of them there is no justification whatsoever as to the appropriateness of the imposed sentence.

Graphic 59 - Appropriateness of the sentence.
As to the application of the purposes of punishment, this part reflects a higher number of purposes applied by the courts compared to other categories. In fourteen judgments under this category, the courts applied three of the four purposes of punishment. In one case, the court applied all four purposes of punishment, whereas in three cases none of the purposes were applied.

**Graphic 60 - Number of the purposes of punishment applied in judgments.**

**Graphic 61 - Types of purposes of punishment applied in judgments.**
It is concerning that from all the purposes of punishment applied in these judgments, the purpose of punishment was applied and justified as required by the Guidelines in only one case. In all other cases, the purposes of the punishment were merely cited.

<table>
<thead>
<tr>
<th>Application and justification of the purposes of punishment in accordance with the requirements of the Guidelines</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specific/special deterrence</td>
</tr>
<tr>
<td>1</td>
</tr>
</tbody>
</table>

**Graphic 62 - Application and justification of the purposes of punishment in accordance with the requirements of the Guidelines.**

A similar situation also prevails with regards to the implementation of the principles of punishment. From all the judgments analyzed under this Chapter, the principles were partially implemented in only two cases (or 10% of all cases), while there is not a single case in which the principles were fully implemented. In eighteen judgments, or in 90% of the analyzed judgments, the principles of punishment were not implemented according to the requirements of the Guidelines.
As to the sentencing ranges set forth in Appendix 1 of the Guidelines, these ranges were not respected in thirty-five percent (35%) of the sentences imposed by these judgments.

c. Cased-based analysis of cases involving criminal offenses adjudicated in the general department

1. Case P.nr.3674/16 – Irresponsible medical treatment as in article 219 par. 4 in conjunction with par. 1 of the CCK
Judgment

The Basic Court in Pristina – General Department, on 17 April 2019, found guilty the convicted person H.D., because on 13 July 2009, in University Clinical Center of Kosovo – Obstetric-Gynecologic Clinic in Pristina, during provision of medical services used an inappropriate method to deliver the newborn baby T.G. and thereby caused grievous bodily injuries and seriously impaired the health of the child. The injuries were ascertained later because upon release from the hospital no release papers were issued to the child.

The punishment according to the CCRK: one (1) to eight (8) years of imprisonment

Imposed sentence: one (1) year suspended sentence

Mitigating factors:

1. The fact that the convicted person is a retired doctor;
2. No prior criminal convictions;
3. The convicted person is a family person;
4. Elapse of long time since the commission of the criminal offense;
5. The criminal offense was not committed by direct intent, but by indirect intent.

Aggravating factors:

1. The child suffered permanent injuries.

Appropriateness of the sentence:

The court is fully convinced that the imposed sentence will achieve the purposes of punishment, namely to prevent the accused person from committing criminal offenses in the future and to rehabilitate the perpetrator, to prevent other persons from committing criminal offenses, and to express the judgment of society for criminal offenses, increase morality and strengthen the obligation to respect the law.

Implementation of the Guidelines

Appropriateness of the sentence

In this judgment the court cited three of the purposes of punishment and took for granted the fact that the imposed sentence would achieve those purposes. However, the court failed to justify any of these purposes. As to the fourth purpose (victims and the community), the court did not apply or justify at all this purpose of punishment as required by the Guidelines.
Implementation of the principles

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

Mitigating and aggravating factors indicated in the judgment

The fact that the convicted person is a retired doctor is not foreseen as a mitigating factor under the Guidelines. However, if the court referred to the age of the defendant in this concrete case, according to the Guidelines, there are nine relevant questions that the court should consider and address in the judgment, which the court failed to do in this case. As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this factor qualifies under other mitigating factors. Guidelines state that if the court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed in the judgment. As to the fact that the convicted person is a family person, the Guidelines sets forth seven factors that the court should address and justify in determining this circumstance as a mitigating factor, which the court failed to do in this judgment. As to the elapse of time, the court did consider the fact that since the commission of the criminal offense the defendant did not commit any other offense. The court provided a modest justification as to the degree of intent. As to the permanent injuries to the child, according to the Guidelines, the court should address nine relevant questions, which the court failed to do in this case. However, the injury to the victim is an element of the criminal offense for which the defendant was convicted, therefore, under the Guidelines, there is double counting of factors in this case.

Mitigating and aggravating factors ignored in the judgment

There are a number of factors, both mitigating and aggravating, that the court failed to consider in its justification or to give a reasoning as to why those factors were not considered. The court failed to address whether the criminal offense involves multiple victims, whether the victim of the criminal offense was particularly defenseless or vulnerable, the age of the victim, evidence of (non) provocation by the victim, general cooperation of the convicted person with the court, remorse/lack of remorse by the convicted person, (non) repentance, (non) compensation for the loss or damage, (non) violation of court orders, and (non) support by the victim.

The method of the Sentencing Guidelines

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined five mitigating factors and one aggravating factor, which according to the Guidelines would fall under the instances of “overall combined mitigation factors (of any valid type) significantly greater than quantity of
aggravation,” which would qualify under the factors justifying highest mitigation within the limit. According to Appendix 1 of the Guidelines, part 3, point h, the sentence in this case should be from one to three years of imprisonment, which means that the sentence imposed in this case is within the range.

2. Case P.nr.1/19 – Aggravated theft as in article 327 par. 1 of the CCRK

Judgment

The Basic Court in Pristina – General Department, on 7 March 2019, found guilty the convicted person H.H. because on 24 September 2018, in St. “Dardania,” the convicted person H.H., together with F.A., who is at large, through the use of force and with adequate tools broke into the apartment of the injured party P.N. and stole jewelry in the amount of 1,350 Euros and a laptop with a bag and supporting equipment in the amount of 250 Euros.

The convicted person was also found guilty because on 2 October 2018, together with the other accused person, broke into the apartment of the injured party D.M. and stole a box of savings.

The convicted person H.H. was also found guilty because on 7 March 2016, in St. “Dardania,” the convicted person in co-perpetration with F.A., who is at large, approached the building with a “Renault” vehicle, and through the use of force and with adequate tools broke into the apartment of the injured party B.I. and stole a laptop and a bag valued at 200 Euros.

The punishment according to the CCRK: fine and imprisonment of three (3) to seven (7) years.

Imposed sentence:

For criminal offense 1: two (2) years of imprisonment and a fine of 1,500 Euros;

For criminal offense 2: one (1) year and six (6) months of imprisonment and a fine of 1,000 Euros;

For criminal offense 3: two (2) years of imprisonment and a fine of 1,500 Euros.

Mitigating factors:

1. Entering of a guilty plea for a criminal offense for which he has shown repentance;

2. Economic situation – unemployed;

3. Father of one child;
4. The promise of the convicted person not to commit criminal offenses in the future.

**Aggravating factors**

1. Suspected of involvement in over 49 criminal offenses, including aggravated theft, possession of narcotic substances and weapons, threats, assault, etc.

**Appropriateness of the sentence:**

The court determined that the imposed sentence is proportionate to the gravity of the criminal offense, the conduct and the circumstances of the perpetrator, the degree of danger to the society, and the degree of criminal liability.

The court also determined that the criminal sanction against the convicted person will resocialize and rehabilitate him and deter others from committing criminal offenses.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

In this judgment the court cited two of the purposes of punishment and took for granted the fact that the imposed sentence would achieve those purposes. However, the court failed to justify any of these purposes. As to the fourth purpose (judgment of society, increased morality and the obligation to respect the law, and victims and the community), the court did not apply or justify this purpose of punishment as required by the Guidelines.

**Implementation of the principles**

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**

As to the entering of a guilty plea, the court addressed none of the requirements set forth in the Guidelines that should be applied in relation to this factor, which also determines the importance of this factor in a concrete case. The court also failed to address the four relevant questions for this factor set forth under the Guidelines. However, the court in this case has taken due care to avoid double counting of factors by not considering remorse as a separate mitigating factor. As to the fact that the convicted person is poor, the court did not support this finding with any justification, but just merely cited it. As to the fact that the convicted person is a family person, the court in this case merely indicated the number of children and overlooked the other six factors set forth under the Guidelines. Furthermore, the mere fact that social and familial circumstances were considered as two separate mitigating factors constitutes a double count of factors according to the Guidelines. Those two circumstances do
not constitute separate mitigating factors but are merely facts through which the court should determine “the personal circumstances and character of the convicted person.” The promise of the convicted person not to commit criminal offenses in the future is not indicated in the Guidelines as a mitigating factor. The fact that the convicted person is suspected of 49 other criminal offenses cannot be considered as an aggravating factor at all according to the Guidelines. Prior criminal convictions should be the only relevant fact for the court. As to prior criminal convictions, according to the Guidelines, the court should consider five factors and address six relevant questions, which the court failed to do in this judgment.

**Mitigating and aggravating factors ignored in the judgment**

There are a number of factors, both mitigating and aggravating, that the court failed to consider in its justification or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the presence of actual or threatened violence in the commission of the criminal offense, whether the criminal offense was committed with particular cruelty, whether the criminal offense involves multiple victims, whether the victim of the criminal offense was particularly defenseless or vulnerable, the age of the victim, evidence of (non) provocation by the victim, the age of the defendant, general cooperation of the convicted person with the court, the degree of damage or loss, remorse/lack of remorse by the convicted person, (non) repentance, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, (non) violation of court orders, and (non) support by the victim.

**The method of the Sentencing Guidelines**

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, as to the first and third criminal offense the court determined three mitigating factors and one aggravating factor, whereas as to the second criminal offense the court determined four mitigating factors and one aggravating factor. According to the Guidelines, both cases would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” which would qualify under the factors justifying highest mitigation within the limit. According to Appendix 1 of the Guidelines, part 5, point c, the sentence in this case should be from three to four years of imprisonment, which means that none of the sentences imposed in this case are within the range.

3. **Case P.nr.816/18 – Assault as in article 187 par. 3 of the CCRK**

**Judgment**

According to the judgment of the Basic Court in Pristina – General Department, A.B. was found guilty for the criminal offense of “Assault” because on 13 December 2017, around
12:00, in Pristina, at his house in the “Kacaniku” street, after a dispute with his mother S.B., assaulted her by hitting her in the face and in the arm.

**The punishment according to the CCRK:** *six (6) months to three (3) years of imprisonment*

**Imposed sentence:** *six (6) months suspended sentence*

**Mitigating factors:**

1. The entering of a guilty plea by the convicted person;
2. The intensity of danger or injury to the protected value;
3. Expression of sincerity during the hearing;
4. The circumstances in which the act was committed;
5. The convicted person violated the law for the first time and had no prior criminal convictions.

**Aggravating factors**

None.

**Appropriateness of the sentence**

The court determined that a six-month suspended sentence is proportionate to the gravity and the danger to the society posed by the criminal offense for which the defendant was convicted. According to the court, this punishment will prevent the perpetrator and other persons from committing criminal offenses in the future and will express the judgment of society for criminal offenses, increase morality and strengthen the obligation to respect the law.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

In this judgment the court cited three of the purposes of punishment and took for granted the fact that the imposed sentence would achieve those purposes. However, the court failed to justify any of these purposes. As to the fourth purpose (victims and the community), the court did not apply or justify this purpose of punishment as required by the Guidelines.

**Implementation of the principles**

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.
Mitigating and aggravating factors indicated in the judgment

As to the entering of a guilty plea, the court addressed none of the requirements set forth in the Guidelines that should be applied in relation to this factor, which also determines the importance of this factor in a concrete case. The court also failed to address the four relevant questions for this factor set forth under the Guidelines. As to the intensity of danger or injury to the protected value and the circumstances in which the act was committed, according to the Guidelines these are principles of punishment that should be justified with other separate factors. These two circumstances do not constitute separate mitigating factors. For this reason, according to the Guidelines, there is a double counting of factors in this instance. As to the expression of sincerity by the convicted person, the Guidelines does not provide for this fact as a mitigating factor and the court failed to provide any justification as to why this fact should be considered as a mitigating factor. As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this factor qualifies under other mitigating factors. The Guidelines state that if court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed in the judgment.

Mitigating and aggravating factors ignored in the judgment

There are a number of factors, both mitigating and aggravating, that the court failed to consider in its justification or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, the presence of actual or threatened violence in the commission of the criminal offense, whether the criminal offense was committed with particular cruelty, whether the criminal offense involves multiple victims, whether the victim of the criminal offense was particularly defenseless or vulnerable, the age of the victim, evidence of (non) provocation by the victim, the age of the defendant, general cooperation of the convicted person with the court, the degree of damage or loss, the personal circumstances and character of the convicted person, remorse/lack of remorse by the convicted person, (non) repentance, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, (non) violation of court orders, elapse of time, and (non) support by the victim.

The method of the Sentencing Guidelines

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined five mitigating factors and no aggravating factors, which according to the Guidelines would fall under the instances of “overall combined mitigation factors (of any valid type) significantly greater than quantity of aggravation,” which would qualify under the factors justifying highest mitigation within the limit. According to Appendix 1 of the Guidelines, part 2, point f, the sentence in this case should be from six months to one year of imprisonment, which means that the sentence imposed in this case is within the range.
4. Case P.nr.962/16 – Theft of utility services as in article 320 of the CCRK

Judgment

According to the judgment of the Basic Court in Pristina – General Department, rendered on 25 March 2019, Z.V. was found guilty for the criminal offense of “Theft of utility services,” because it was proven that the convicted person, from an undetermined date until 28 July 2015, in his house in Obilic, with the intent to obtain an unlawful material benefit for himself, stole electricity from KEDS by connecting to the electricity transmission without an electricity meter.

The punishment according to the CCRK: fine or imprisonment of up to three (3) years

Imposed sentence: four (4) months suspended sentence over a verification period of one (1) year.

Mitigating factors:

1. No prior criminal convictions;
2. Old age;
3. Poor economic situation.

Aggravating factors:

None.

Appropriateness of the sentence

The court determined that the imposed sentence is proportionate to the degree of danger to the society posed by the criminal offense. According to the court, this sentence will achieve the purposes of punishment to prevent the perpetrator and other persons from committing criminal offenses in the future. Further, according to the court, this sentence will provide compensation to the injured party for losses or damages and will express the judgment of society for criminal offenses, increase morality and strengthen the obligation to respect the law.

Implementation of the Guidelines

Appropriateness of the sentence

In this judgment the court cited all four purposes of punishment and took for granted the fact that the imposed sentence would achieve those purposes. However, the court failed to justify any of these purposes.

Implementation of the principles
The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**

As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this factor qualifies under other mitigating factors. The Guidelines state that if court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed in the judgment. As to the age of the defendant, the court merely determined that the convicted person is old and overlooked the other eight relevant questions that the court should address according to the Guidelines. As to the poor economic situation of the convicted person, the court merely cited this factor and failed to support it with any justification.

**Mitigating and aggravating factors ignored in the judgment**

There are a number of factors, both mitigating and aggravating, that the court failed to consider in its justification or to give a reasoning as to why those factors were not considered. The court failed to address the degree of intent, general cooperation of the convicted person with the court, the degree of damage or loss, remorse/lack of remorse by the convicted person, (non) repentance, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, (non) violation of court orders, and (non) support by the victim.

**The method of the Sentencing Guidelines**

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined three mitigating factors and one aggravating factor, which according to the Guidelines would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” which would qualify under the factors justifying highest mitigation within the limit. According to Appendix 1 of the Guidelines, part 2, point f, the sentence in this case should be from one to eight months of imprisonment, which means that the sentence imposed in this case is within the range.

5. Case P.nr.1305/16 - Purchase, receipt or concealment of goods obtained through the commission of a criminal offense as in article 345 par. 2 of the CCRK

**Judgment**

According to the judgment of the Basic Court in Pristina – General Department, rendered on 31 January 2019, the convicted person A.R. was found guilty for the criminal offense of
“Purchase, receipt or concealment of goods obtained through the commission of a criminal offense.” According to the judgment, on 9 July 2015, in Pristina, unidentified persons stole an “iPhone 4” and an “iPhone 6+” from the injured party F.M. According to the court, the convicted person knew or could have known that the telephone “iPhone 6+” was obtained through the commission of a criminal offense.

**The punishment according to the CCRK:** *up to one (1) year of imprisonment.*

**Imposed sentence:** *judicial admonition*

**Mitigating factors:**

1. Entering of a guilty plea by the convicted person;
2. Good conduct during the hearing;
3. Remorse shown by the convicted person.

**Aggravating factors**

None

**Appropriateness of the sentence:**

The court determined that the imposed sentence is just and lawful and in compliance with the degree of criminal liability of the accused person and the intensity of danger or injury to the protected value. The court is satisfied that the imposed sentence will achieve the purpose of the punishment.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

In this judgment the court did not cite or justify any of the purposes of punishment that according to the Guidelines should be addressed and justified in each judgment.

**Implementation of the principles**

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**

As to the entering of a guilty plea, the court did not address any of the four relevant questions for this factor as required by the Guidelines. The court also did not address any of the eight
relevant questions pertaining to remorse shown by the convicted person. Therefore, according to the Guidelines, the failure of the court to justify these two factors with facts and evidence leads to double counting. As to the correct conduct of the defendant during the proceedings, according to the Guidelines, the court should address five relevant questions, which the court failed to do in this judgment.

**Mitigating and aggravating factors ignored in the judgment**

The court failed to address the degree of intent, the age of the defendant, the degree of damage or loss, the personal circumstances and character of the convicted person, (non) repentance, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, (lack of) prior criminal convictions, elapse of time, and (non) support by the victim.

**The method of the Sentencing Guidelines**

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined three mitigating factors and one aggravating factor, which according to the Guidelines would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” which would qualify under the factors justifying highest mitigation within the limit. According to Appendix 1 of the Guidelines, part 1, point d, the sentence in this case should be from one to four months of imprisonment. The court in this case imposed a judicial admonition. Article 86, paragraph 5 of the CCRK states that “when determining whether to impose a judicial admonition, the court shall consider, in particular, the purpose of a judicial admonition, the perpetrator’s past conduct, his or her behavior after the commission of the criminal offense, the degree of criminal liability, other circumstances surrounding the criminal offense and the voluntary participation of the perpetrator in a treatment program.” The court failed to provide a justification on any of these. For this reason, the aforementioned criteria set forth in the Guidelines are applicable, which means that the sentence imposed in this case is not within the range.

6. **Case P.nr.1439/13 – Attempted aggravated theft as in article 253 par. 1, subpar. 1 in conjunction with Article 20 of the CCK.**

**Judgment**

According to the judgment of the Basic Court in Pristina – General Department, rendered on 24 August 2018, the convicted person A.O. was found guilty for the criminal offense of “Attempted aggravated theft.” According to the judgment, on 18 July 2011, at an undetermined time, in P., in the St. “H.P.,” at the shoe store “A,” in order to obtain an unlawful material benefit for himself, through the use of force, opened the ground floor window of the house owned by the injured party L.T., penetrated inside, opened the doors of the rooms by the use of force, however the criminal offense remained an attempt because he
did not manage to take anything as he did not find any valuable items, but nevertheless he caused material damage to the injured party because while searching for valuable items to steal, he demolished both floors of the house, and then fled the crime scene.

**The punishment according to the CCRK:** six (6) months to five (5) years of imprisonment

**Imposed sentence:** eight (8) months of imprisonment

**Mitigating factors:**

1. The convicted person entered a guilty plea at the initial hearing;

2. Remorse for the criminal offense;

3. Promise not to commit such acts in the future

4. The criminal offense remained an attempt.

**Aggravating factors:**

1. Prior criminal conviction for the same type of criminal offense.

**Appropriateness of the sentence:**

The court is convicted that the imposed sentence will resocialize and rehabilitate the perpetrator and prevent the perpetrator and other persons from committing criminal offenses in the future and increase morality and strengthen the obligation to respect the law.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

In this judgment the court cited three of the purposes of punishment and took for granted the fact that the imposed sentence would achieve those purposes. However, the court failed to justify any of these purposes. As to the fourth purpose (victims and the community), the court did not apply or justify this purpose of punishment as required by the Guidelines.

**Implementation of the principles**

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**
As to the entering of a guilty plea, the court did not address any of the four relevant questions for this factor as required by the Guidelines. The court also did not address any of the eight relevant questions pertaining to remorse shown by the convicted person. Therefore, according to the Guidelines, the failure of the court to justify these two factors with facts and evidence leads to double counting. The promise of the convicted person not to commit criminal offenses in the future is not indicated in the Guidelines as a mitigating factor. As to the fact that the criminal offense remained an attempt, according to the CCRK, the punishment for a person who attempts to commit a criminal offense may be reduced. However, this fact is not indicated as a mitigating factor in either the CCRK or the Guidelines. The court can use this fact to justify a more lenient sentence in the context of the sentencing range, but it shall not be used as a separate mitigating factor. In the context of the Guidelines, this constitutes a double counting of factors. As to prior criminal convictions, the court merely indicated that the defendant had a prior criminal conviction for the same criminal offense and overlooked the other factors and relevant questions set forth under the Guidelines for this factor.

Mitigating and aggravating factors ignored in the judgment

In this judgment the court failed to address the degree of intent, whether the criminal offense involves multiple victims, the age of the defendant, general cooperation of the convicted person with the court, the degree of damage or loss, the personal circumstances and character of the convicted person, (non) repentance, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, (non) violation of court orders, elapse of time, and (non) support by the victim.

The method of the Sentencing Guidelines

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined four mitigating factors and one aggravating factor, which according to the Guidelines would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” which would qualify under the factors justifying highest mitigation within the limit. According to Appendix 1 of the Guidelines, part 2, point h, the sentence in this case should be from six months to one year and six months of imprisonment, which means that the sentence imposed in this case is within the range.

7. Case P.nr.1447/18 – Unauthorized ownership, control or possession of weapons as in article 374 par. 1 of the CCRK

Judgment

According to the judgment of the Basic Court in Pristina – General Department, rendered on 8 April 2019, the convicted person D.M. was found guilty because the court found that on 16 February 2018, at his house, upon receiving information that the minor person D.M. posted
photos with a weapon in social media, Kosovo Police conducted a search at the identified location and located the weapon, which the convicted person admitted belonged to him and the minor person in the photo is his son.

The punishment according to the CCRK: fine of up to seven thousand and five hundred (7,500) EUR or by imprisonment of up to five (5) years.

Imposed sentence: 700 Euros.

**Mitigating factors:**

1. The entering of a guilty plea;
2. Deep remorse for the criminal offense;
3. Expression of sincerity.

**Aggravating factors**

None

**Appropriateness of the sentence:**

The court concluded that the imposed sentence will achieve the purpose of punishment and that the sentence is adequate to the degree of danger to the society and proportionate to the gravity of the criminal offense. According to the court, the punishment will prevent the perpetrator and other persons from committing criminal offenses in the future and increase the morality and strengthen the obligation to respect the law.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

In this judgment the court cited three of the purposes of punishment and took for granted the fact that the imposed sentence would achieve those purposes. However, the court failed to justify any of these purposes. As to the fourth purpose (victims and the community), the court did not apply or justify this purpose of punishment as required by the Guidelines.

**Implementation of the principles**

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**
As to the entering of a guilty plea, the court did not address any of the four relevant questions required by the Guidelines for this factor. The court also did not address any of the eight relevant questions pertaining to remorse shown by the convicted person. Therefore, according to the Guidelines, the failure of the court to justify these two factors with facts and evidence leads to double counting. The expression of sincerity is not indicated in the Guidelines as a mitigating factor and the court failed to provide any justification as to why this fact should be considered as a mitigating factor.

**Mitigating and aggravating factors ignored in the judgment**

The court failed to address the degree of intent, general cooperation of the convicted person with the court, the personal circumstances and character of the convicted person, (non) repentance, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, prior criminal convictions, (non) violation of court orders, and elapse of time.

**The method of the Sentencing Guidelines**

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined three mitigating factors and no aggravating factors, which according to the Guidelines would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” which would qualify under the factors justifying highest mitigation within the limit. According to Appendix 1 of the Guidelines, part 1, point g, the sentence in this case should be from 100 to 1,000 Euros, which means that the sentence imposed in this case is within the range.

8. **Case P.nr.1459/16 – Aggravated theft as in article 327, par. 1, subpar. 1.1 in conjunction with Article 31 of the CCRK**

**Judgment**

According to the judgment of the Basic Court in Pristina – General Department, the convicted person Sh.J. was found guilty because on 4 March 2013, with the intent to obtain an unlawful material benefit, with his “VW” truck, in co-perpetration with another person, committed the criminal offense of aggravated theft. According to the judgment, the accused persons pulled over the truck near the “Kijac” building, crossed the fence of the building, and took five aluminum door frames with dimensions 140/200, which were next to the wall. The accused persons also stole two out-of-use air conditioners, loaded them into the truck, and left the scene.

**The punishment according to the CCRK:** fine and imprisonment of three (3) to seven (7) years.
**Imposed sentence:** one (1) year suspended sentence and a fine of 300 Euros

**Mitigating factors:**

1. The entering of a guilty plea;

2. Expression of sincerity during initial hearing.

**Aggravating factors**

None

**Appropriateness of the sentence:**

The court determined that the imposed sentence is just, lawful and proportionate to the degree of criminal liability of the defendant and the intensity of danger or injury to the protected value, and the sentence will achieve the purpose of punishment.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

In the judgment the court failed to consider or justify any of the four purposes of punishment set forth in the Guidelines. The court merely cited that the imposed sentence would achieve the purpose of the punishment but failed to indicate or provide further justification.

**Implementation of the principles**

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**

As to the entering of a guilty plea, the court addressed none of the requirements set forth in the Guidelines that should be applied in relation to this factor, which also determines the importance of this factor in a concrete case. The court also failed to address the four relevant questions for this factor as required by the Guidelines. The expression of sincerity is not indicated in the Guidelines as a mitigating factor and the court failed to provide any justification as to why this fact should be considered as a mitigating factor.

**Mitigating and aggravating factors ignored in the judgment**

The court failed to address the degree of intent, whether the criminal offense involves multiple victims, the age of the defendant, general cooperation of the convicted person with the court, the degree of damage or loss, the personal circumstances and character of the convicted person, any remorse shown by the convicted person, (non) repentance, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, any prior
criminal convictions of the convicted person, (non) violation of court orders, elapse of time, and (non) support by the victim.

The method of the Sentencing Guidelines

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined two mitigating factors and no aggravating factors, which according to the Guidelines would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” which would qualify under the factors justifying highest mitigation within the limit. In this judgment, the court referenced Article 75 on mitigation of punishments, but failed to provide any justification as to its applicability in this case. Such a situation is unqualified in the Guidelines. According to Appendix 1 of the Guidelines, part 5, point c, the imprisonment sentence in this case should be from three to four years of imprisonment and the fine should be from 100 to 6,250 Euros. In this case, the imprisonment sentence is not within the range, whereas the fine is within the range.

9. Case P.nr.1496/19 – Endangering public traffic as in article 378 par. 9 in conjunction with par. 6 and par. 1 of the CCRK

Judgment

According to the judgment of the Basic Court in Pristina – General Department, rendered on 6 May 2019, the convicted person B.M. was found guilty for the criminal offense of “Endangering public traffic,” because on 3 April 2019, around 16:45, in the national road Pristina-Podujevo, next to the “Anton Zako Cajupi” school, in the village of Bardhosh in Pristina, while he was driving his “Ivico” truck, out of negligence, believing that he would not endanger the traffic, did not respect the traffic rules, thereby endangering human life and acting in violation of Article 53.1 of the Law on Road Traffic Provisions.

According to the judgment, the convicted person did not pay close attention to other traffic participants, in this case pedestrians, despite suitable driving conditions, by not adjusting the speed of his car to traffic conditions considering the fact that the part of the road where the accident occurred is a residential area and the pedestrian crossing is evident and the moment when the danger arose the convicted person could not stop his car in time and with the front left side of his car collided with a pedestrian, the now deceased N.G. The impact of the collision threw the pedestrian over the front windshield of the truck and knocked him to the asphalt. The pedestrian, at the time of the accident, was crossing the road from the left to the right side (if looking from the perspective of the car), and the victim N.G. suffered injuries, as a result of which he passed away in hospital on 3 April 2019.

The punishment according to the CCRK: one (1) to eight (8) years of imprisonment.
Imposed sentence: one (1) year and six (6) months of imprisonment.

**Mitigating factors:**

1. The entering of a guilty plea;
2. Correct conduct in court;
3. Repentance for the consequence;
4. No prior violations of law;
5. The convicted person is a student;
6. Is employed in construction labor to support his family;
7. Promised the court that he would be careful in traffic and not commit a criminal offense.

**Aggravating factors**

1. The dangerousness of the criminal offense because a person lost his life in this case.

**Appropriateness of the sentence:**

The court determined that the imposed sentence is proportionate to the gravity of the criminal offense and the conduct and the circumstances of the perpetrator. The court is convinced that the sentence will resocialize and rehabilitate the perpetrator while also preventing other persons from committing criminal offenses in the future and increasing morality and strengthening the obligation to respect the law.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

In this judgment the court cited three of the purposes of punishment and took for granted the fact that the imposed sentence would achieve those purposes. However, the court failed to justify any of these purposes. As to the fourth purpose (victims and the community), the court did not apply or justify this purpose of punishment as required by the Guidelines.

**Implementation of the principles**

The court in this case applied one of the principles of punishment – the dangerousness of the criminal offense – and connected it to a specific factor. However, as shown below, it represents double counting of factors.

**Mitigating and aggravating factors indicated in the judgment**
As to the entering of a guilty plea, the court addressed none of the requirements set forth in the Guidelines that should be applied in relation to this factor, which also determines the importance of this factor in a concrete case. The court also failed to address the four relevant questions for this factor as required by the Guidelines. As to the correct conduct of the defendant during the proceedings, according to the Guidelines, the court should address five relevant questions, which the court failed to do in this judgment. As to the repentance for the consequence, the court did not consider or justify any of the seven factors set forth in the Guidelines for this factor and failed to address any of the eight relevant questions required by the Guidelines. As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this circumstance qualifies under other mitigating factors. Guidelines state that if the court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed in this judgment.

The court also took the fact that the convicted person is a student and is employed in construction labor to support his family as mitigating factors without providing any justification for it. The promise of the convicted person not to commit a criminal offense in the future is not indicated in the Guidelines as a mitigating factor. As to the consequence caused by this offense, which the court took as an aggravating factor, according to the Guidelines it constitutes a double count of factors. The reason is that the consequence in this case constitutes an aggravated form of the criminal offense, for which the law has provided a higher sentence. Therefore, the same fact shall not serve as a separate aggravating factor.

**Mitigating and aggravating factors ignored in the judgment**

The court failed to address the degree of intent, whether the victim of the criminal offense was particularly defenseless or vulnerable, the age of the victim, the number of victims, the age of the defendant, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, and (non) support by the victim.

**The method of the Sentencing Guidelines**

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined seven mitigating factors and one aggravating factor, which according to the Guidelines would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” which would qualify under the factors justifying highest mitigation within the limit. According to Appendix 1 of the Guidelines, part 3, point g, the sentence in this case should be from one to three years of imprisonment, which means that the sentence imposed in this case is within the range.
10. Case P.nr.2622/16 – Organizing pyramid schemes and unlawful gambling as in article 300 par. 1 and 2 of the CCRK

Judgment

According to the judgment of the Basic Court in Pristina – General Department, rendered on 12 March 2019, the convicted person P.P. was found guilty for the criminal offense of “Organizing pyramid schemes and unlawful gambling.” The convicted person, on 2 November 2015, in the 2nd floor of the “Qafà” building complex, with the intent to obtain an unlawful material benefit, organized unlawful activities of games of chance. During a search by the police it was established that he does not possess the necessary license or permit to organize such activities.

The police found two machines for games of chance, two boxes with considerable poker chips, one poker table, thirteen pairs of gambling cards, seventeen letters indicating client results from the games, and 280 Euros which were found within one of the machines.

The punishment according to the CCRK: six (6) months to five (5) years of imprisonment.

Imposed sentence: six (6) months of imprisonment, which upon the consent of the convicted person is substituted with a fine of 1,800 Euros.

Mitigating factors:

1. The entering of a guilty plea by the convicted person;
2. No prior criminal convictions and no other ongoing criminal proceedings;
3. Correct conduct in court;
4. Remorse;
5. Promised not to commit such acts in the future.

Aggravating factors

None

Appropriateness of the sentence:

The court determined that the imposed sentence is just, lawful, and proportionate to the degree of criminal liability of the defendant and the intensity of danger or injury to the protected value. The court found that the sentence is adequate to the gravity of the criminal offense and the criminal liability and the sentence will achieve the purpose of punishment.

Implementation of the Guidelines
Appropriateness of the sentence

In the judgment the court failed to consider or justify any of the four purposes of punishment set forth in the Guidelines. The court merely underlined that the imposed sentence would achieve the purpose of the punishment but failed to indicate or provide further justification.

Implementation of the principles

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

Mitigating and aggravating factors indicated in the judgment

As to the entering of a guilty plea, the court did not address any of the four relevant questions for this factor as required by the Guidelines. The court also did not address any of the eight relevant questions pertaining to remorse shown by the convicted person. Therefore, according to the Guidelines, the failure of the court to justify these two factors with facts and evidence leads to double counting. As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this circumstance qualifies under other mitigating factors. Guidelines state that if the court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed in this judgment. As to the correct conduct of the defendant during the proceedings, according to the Guidelines, the court should address five relevant questions, which the court failed to do in this judgment. The promise of the convicted person not to commit a criminal offense in the future is not indicated in the Guidelines as a mitigating factor.

Mitigating and aggravating factors ignored in the judgment

The court failed to address the degree of intent, the degree of damage or loss, the personal circumstances and character of the convicted person, post-conflict conduct of the convicted person, and elapse of time.

The method of the Sentencing Guidelines

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined four mitigating factors and no aggravating factors, which according to the Guidelines would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” which would qualify under the factors justifying highest mitigation within the limit. According to Appendix 1 of the Guidelines, part 2, point h, the sentence in this case should be from six months to one year and six months of imprisonment, which means that the sentence imposed in this case is within the range.
11. Case P.nr.3303/15 – Removing or damaging official stamps or marks as in article 414 of the CCRK

Judgment

According to the judgment of the Basic Court in Pristina – General Department, rendered on 27 March 2019, the convicted person Z.K. was found guilty for the criminal offense of “Removing or damaging official stamps or marks.” Z.K. was found guilty because on 1 April 2015, as the user of the electric meter, which was set in his house, without the authorization of the authorized supplier KEDS, with the intent to obtain electricity supply services and to avoid their payment, cut off the seal of the meter, which was set by authorized KEDS personnel.

The punishment according to the CCRK: fine or imprisonment of up to three (3) years.

Imposed sentence: three (3) months suspended sentence

Mitigating factors:

1. The convicted person violated the law for the first time;

Aggravating factors

None

Appropriateness of the sentence:

The court determined that the imposed sentence is proportionate to the degree of criminal liability and the sentence will achieve the purposes of punishment to prevent the perpetrator from committing criminal offenses in the future and to rehabilitate the perpetrator, to prevent other persons from committing criminal offenses, and to increase morality and strengthen the obligation to respect the law.

Implementation of the Guidelines

Appropriateness of the sentence

In this judgment the court cited three of the purposes of punishment and took for granted the fact that the imposed sentence would achieve those purposes. However, the court failed to justify any of these purposes. As to the fourth purpose (victims and the community), the court did not apply or justify this purpose of punishment as required by the Guidelines.

Implementation of the principles
The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**

As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this circumstance qualifies under other mitigating factors. Guidelines state that if the court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed in this judgment.

**Mitigating and aggravating factors ignored in the judgment**

The court failed to address the degree of intent, general cooperation of the convicted person with the court, the degree of damage or loss, the personal circumstances and character of the convicted person, any remorse shown by the convicted person, (non) repentance, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, (non) violation of court orders, elapse of time, and (non) support by the victim.

**The method of the Sentencing Guidelines**

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined one mitigating factor and no aggravating factors, which according to the Guidelines would fall under the instances of “existence of at least one factor for reduced culpability, reduced harm or other mitigation, in any amount, and no aggravation,” which would qualify under the factors indicating higher mitigation than aggravation. According to Appendix 1 of the Guidelines, part 1, point f, the sentence in this case should be from eight months to one year of imprisonment, which means that the sentence imposed in this case is not within the range.

12. Case P.nr.3341/17 - Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations as in article 437 par. 1 of the CCRK

**Judgment**

According to the judgment of the Basic Court in Pristina – General Department, the Municipal Assembly Member from the Municipality of Prizren, S.F., was found guilty for failure to report assets, because from 1 March until 31 March 2017, the convicted person, despite being obliged by law to file a declaration of property as a senior public official, failed to do so for the period from 1 January until 31 December 2016.

**The punishment according to the CCRK:** fine or imprisonment of up to three (3) years.
Imposed sentence: three (3) months suspended sentence and a fine of 600 Euros.

Mitigating factors:

1. The entering of a guilty plea by the convicted person;
2. The intensity of danger or injury of the protected value;
3. Expression of sincerity during the hearing;
4. The circumstances in which the act was committed;
5. The convicted person violated the law for the first time and had no prior criminal convictions.

Aggravating factors

None

Appropriateness of the sentence:

The court determined that the imposed sentence corresponds to the degree of danger to the society posed by the criminal offense. According to the court, the sentence will achieve the purposes of punishment to prevent the perpetrator and other persons from committing criminal offenses in the future as well as to increase morality and strengthen the obligation to respect the law.

Implementation of the Guidelines

Appropriateness of the sentence

In this judgment the court cited three of the purposes of punishment and took for granted the fact that the imposed sentence would achieve those purposes. However, the court failed to justify any of these purposes. As to the fourth purpose (victims and the community), the court did not apply or justify this purpose of punishment as required by the Guidelines.

Implementation of the principles

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

Mitigating and aggravating factors indicated in the judgment

As to the entering of a guilty plea, the court addressed none of the requirements set forth in the Guidelines that should be applied in relation to this factor, which also determines the importance of this factor in a concrete case. The court also failed to address the four relevant...
questions for this factor as required by the Guidelines. In this judgment, the court double counted factors by failing to connect two of the principles of punishment (intensity of danger or injury to the protected value and the circumstances in which the act was committed) with other specific factors and using them as mitigating factors. As to the expression of sincerity by the convicted person, this fact is not indicated in the Guidelines as a mitigating factor, and the court failed to provide any justification as to why this fact should be considered as a mitigating factor. As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this factor qualifies under other mitigating factors. The Guidelines state that if court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed in the judgment.

**Mitigating and aggravating factors ignored in the judgment**

The court failed to address the degree of intent, general cooperation of the convicted person with the court, the degree of damage or loss, the personal circumstances and character of the convicted person, any remorse shown by the convicted person, (non) repentance, post-conflict conduct of the convicted person, (non) violation of court orders, and elapse of time.

**The method of the Sentencing Guidelines**

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined five mitigating factors and no aggravating factors, which according to the Guidelines would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” which would qualify under the factors justifying highest mitigation within the limit. According to Appendix 1 of the Guidelines, part 1, point f, the imprisonment sentence in this case should be from one to eight months of imprisonment and the fine should be from 100 to 6,250 Euros, which means that the sentence imposed in this case is within the range.

**13. Case P.nr.3538/17 – Fraud as in article 335, par. 1 of the CCRK**

**Judgment**

According to the judgment of the Basic Court in Pristina – General Department, rendered on 10 May 2019, the convicted person L.M. was found guilty for the criminal offense of “Fraud,” because on 9 October 2013, in the “Goethe” Language Institute, with the intent to obtain an unlawful material benefit for herself, together with the defendant Q.G., deceived the injured person E.J., who was in charge of the German language exams, in such a manner that by concealing facts she entered the German language exam instead of the other defendant Q.G.
The punishment according to the CCRK: fine and imprisonment of three (3) months to three (3) years.

Imposed sentence: four (4) months suspended sentence and a fine of 200 Euros.

Mitigating factors:
1. The entering of a guilty plea by the convicted person;
2. Deep remorse;
3. Correct conduct in court;
4. Apology;
5. Promise not to commit criminal offenses in the future.

Aggravating factors
None

Appropriateness of the sentence:
The court is convinced that the imposed sentence corresponds to the degree of danger to the society posed by the criminal offense and will resocialize and rehabilitate the perpetrator and prevent other persons from committing criminal offenses.

Implementation of the Guidelines

Appropriateness of the sentence

In this judgment the court cited two of the purposes of punishment and took for granted the fact that the imposed sentence would achieve those purposes. However, the court failed to justify these two purposes. As to the other two purposes (judgment of society, increased morality and the obligation to respect the law, and victims and the community), the court did not apply or justify these purposes of punishment as required by the Guidelines.

Implementation of the principles

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

Mitigating and aggravating factors indicated in the judgment
As to the entering of a guilty plea, the court did not address in the judgment any of the four relevant questions required by the Guidelines for this factor. The court also did not address any of the eight relevant questions pertaining to remorse shown by the convicted person. Therefore, according to the Guidelines, the failure of the court to justify these two factors with facts and evidence leads to double counting. As to the correct conduct of the defendant during the proceedings, according to the Guidelines, the court should address five relevant questions, which the court failed to do in this judgment. The promise of the convicted person not to commit a criminal offense in the future is not indicated in the Guidelines as a mitigating factor. As to the apology, the court did not indicate as to what it exactly entails. In the context of the Guidelines, an apology is a factor that demonstrates repentance, but does not represent a specific mitigating factor in itself. For this reason, according to the Guidelines, we have double counting of factors.

Mitigating and aggravating factors ignored in the judgment

The court failed to address the degree of intent, the degree of damage or loss, the personal circumstances and character of the convicted person, (non) repentance, post-conflict conduct of the convicted person, any prior criminal convictions of the convicted person, elapse of time, and (non) support by the victim.

The method of the Sentencing Guidelines

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined four mitigating factors and no aggravating factors, which according to the Guidelines would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” which would qualify under the factors justifying highest mitigation within the limit. According to Appendix 1 of the Guidelines, part 2, point b, the imprisonment sentence in this case should be from three to ten months of imprisonment and the fine should be from 100 to 6,250 Euros, which means that the sentence imposed in this case is within the range.

14. Case P.nr.3559/15 – Forest theft as in article 358 par. 2 of the CCRK

Judgment

According to the judgment of the Basic Court in Pristina – General Department, on 11 January 2015, around 15:30, in the “Kallaqak” public forest, the convicted person D.M. was spotted cutting timber with a chainsaw, thereby cutting firewood without a permission. Therefore, with the intent to steal, the convicted person had cut oak timber, between 6-10 meters in length, diameter 8-13 cm, at a total of 5.126m³ (cubic meters). By these acts, he caused damage in the amount of 461.34 Euros to the injured party - the Forestry Sector in Pristina.
The punishment according to the CCRK: fine and imprisonment of three (3) months to three (3) years.

Imposed sentence: Three (3) months suspended sentence and a fine of 300 Euros.

Mitigating factors:

1. The entering of a guilty plea by the convicted person;
2. Correct conduct in the court;
3. Showed remorse and promised the court that he would not commit criminal offenses in the future.

Aggravating factors:

None

Appropriateness of the sentence:

The court determined that the imposed sentence is proportionate to the degree of danger to the society and the degree of criminal liability. According to the court, the imposed sentence will prevent the perpetrator of this criminal offense and other persons from committing criminal offenses in the future and increase morality and strengthen the obligation to respect the law.

Implementation of the Guidelines

Appropriateness of the sentence

In this judgment the court cited three of the purposes of punishment and took for granted the fact that the imposed sentence would achieve those purposes. However, the court failed to justify any of these purposes. As to the fourth purpose (victims and the community), the court did not apply or justify this purpose of punishment as required by the Guidelines.

Implementation of the principles

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

Mitigating and aggravating factors indicated in the judgment
As to the entering of a guilty plea, the court did not address in the judgment any of the four relevant questions required by the Guidelines for this factor. The court also did not address any of the eight relevant questions pertaining to remorse shown by the convicted person. Therefore, according to the Guidelines, the failure of the court to justify these two factors with facts and evidence leads to double counting. As to the correct conduct of the defendant during the proceedings, according to the Guidelines, the court should address five relevant questions, which the court failed to do in this judgment. The promise of the convicted person not to commit criminal offenses in the future is not indicated in the Guidelines as a mitigating factor.

**Mitigating and aggravating factors ignored in the judgment**

The court failed to address the degree of intent, the degree of damage or loss, the personal circumstances and character of the convicted person, (non) repentance, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, any prior criminal convictions of the convicted person, elapse of time, and (non) support by the victim.

**The method of the Sentencing Guidelines**

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined four mitigating factors and no aggravating factors, which according to the Guidelines would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” which would qualify under the factors justifying highest mitigation within the limit. According to Appendix 1 of the Guidelines, part 2, point b, the imprisonment sentence in this case should be from three to ten months of imprisonment and the fine should be from 100 to 6,250 Euros, which means that the sentence imposed in this case is within the range.

15. Case P.nr.4091/15 – Aggravated theft as in article 327 par. 1 subpar. 1 in conjunction with Article 31 of the CCRK.

**Judgment**

According to the judgment of the Basic Court in Pristina – General Department, rendered on 15 April 2019, the convicted persons D.A. and G.L. were found guilty because on 24 October 2015, in “Emshir,” block 1, 4th floor, in co-perpetration, with the intent to unlawfully appropriate property for themselves, broke the door cylinder of the apartment of the injured person K.T., penetrated into the apartment, and stole a plasma TV, a DVD, cups, plates, curtains, a blanket, a heater, and bedsheets, thereby causing considerable material damage to the injured person.
The punishment according to the CCRK: fine and imprisonment of three (3) to seven (7) years.

Imposed sentence (for both convicted persons): Two (2) years of imprisonment and a 2,000 Euro fine for each of them individually.

Mitigating factors:

1. The convicted person violated the law for the first time.

Aggravating factors

1. Dangerousness of the criminal offense;

2. The manner and the circumstances in which the act was committed because the injured person was their neighbor and they exploited his occasional absence;

3. The convicted persons enjoy a good economic situation and were not motivated by economic reasons for the commission of this criminal offense.

Appropriateness of the sentence:

The court determined that the imposed sentence is proportionate to the degree of danger to the society and the degree of criminal liability. According to the court, the imposed sentence will achieve the purposes of punishment to prevent the perpetrator from committing criminal offenses in the future and to rehabilitate the perpetrator, to prevent other persons from committing criminal offenses, and to increase morality and strengthen the obligation to respect the law.

Implementation of the Guidelines

Appropriateness of the sentence

In this judgment, the court provided a more elaborate justification as to the appropriateness of the sentence, but not in relation to the purposes of punishment listed in the Guidelines. The court cited three of the purposes of punishment and took for granted the fact that the imposed sentence would achieve those purposes. However, the court failed to justify any of these purposes. As to the fourth purpose (victims and the community), the court did not apply or justify this purpose of punishment as required by the Guidelines.

Implementation of the principles

The court in this case applied one of the principles of punishment (the manner and the circumstances in which the act was committed) and justified this principle with specific
factors as required by the Guidelines. However, the court failed to do the same in relation to the other principles of punishment.

Mitigating and aggravating factors indicated in the judgment

As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this factor qualifies under other mitigating factors. The Guidelines state that if court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed in the judgment. As to the dangerousness of the criminal offense, according to the Guidelines, that is a principle of punishment and does not constitute e specific aggravating factor, which means that the court double counted factors in this case. The court applied the aggravating factor of good economic situation in compliance with the requirements of the Guidelines.

Mitigating and aggravating factors ignored in the judgment

The court failed to address the degree of participation of the convicted person in the criminal offense, the degree of intent, whether the criminal offense involves multiple victims, the age of the victim, general cooperation of the convicted person with the court, the degree of damage or loss, any remorse shown by the convicted person, (non) repentance, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, (non) violation of court orders, elapse of time, and (non) support by the victim.

The method of the Sentencing Guidelines

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined three aggravating factors and one mitigating factor, which according to the Guidelines would fall under the instances of “total aggravation significantly in excess of mitigation,” which would qualify under the factors justifying highest aggravation within the limit. In this judgment, the court failed to reference Article 75 on mitigation of punishments, even though it imposed a sentence under the minimum provided by the law. According to Appendix 1 of the Guidelines, part 5, point c, the imprisonment sentence in this case should be from six to seven years of imprisonment and the fine should be from 18,750 to 25,000 Euros. In this case, both the imprisonment sentence and the fine are significantly lower than the ranges set forth in the Guidelines.

16 Case P.nr.4786/16 – Light bodily injury as in article 188.1.1.4 of the CCRK

Judgment

According to the judgment of the Basic Court in Pristina – General Department, the convicted person B.B. was found guilty because on 20 August 2016, around 00:00, in Fushe
Kosova, respectively in the apartment of the injured party, following notification by his wife, came together with the other accused person, who was acquitted, in the apartment of his brother-in-law, and with the intent to cause him bodily injuries, physically assaulted the injured party with an object (a bat). As a result of these acts, the injured party suffered bodily injuries, including injuries to soft tissues in the head, the cheekbone, the right cheek, injuries to nose tissues, and nose bleeding.

The punishment according to the CCRK: fine or imprisonment of up to one (1) year.

Imposed sentence: A fine of 1,000 Euros.

Mitigating factors:

1. The convicted person violated the law for the first time.

Aggravating factors

1. The criminal offense was committed with intent and persistence;

2. Non repentance and lack of remorse.

Appropriateness of the sentence:

The court determined that the imposed fine in the amount of 1,000 Euros is proportionate to the degree of danger to the society and the degree of criminal liability. The imposed sentence will prevent the perpetrator and other persons from committing criminal offenses and will have an effect in increasing morality and strengthening the obligation to respect the law.

Implementation of the Guidelines

Appropriateness of the sentence

In this judgment the court cited three of the purposes of punishment and took for granted the fact that the imposed sentence would achieve those purposes. However, the court failed to justify any of these purposes. As to the fourth purpose (victims and the community), the court did not apply or justify this purpose of punishment as required by the Guidelines.

Implementation of the principles

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

Mitigating and aggravating factors indicated in the judgment
As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this factor qualifies under other mitigating factors. The Guidelines state that if court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed in the judgment. As to the fact that the criminal offense was committed with intent and persistence, the court failed to support this finding with any other justification and overlooked the seven relevant questions set forth in the Guidelines for this factor. The court also failed to provide a justification regarding its finding of non repentance and lack of remorse as aggravating factors.

**Mitigating and aggravating factors ignored in the judgment**

The court failed to address the presence of actual or threatened violence in the commission of the criminal offense, whether the criminal offense involves multiple victims, whether the victim of the criminal offense was particularly defenseless or vulnerable, the age of the victim, (non) provocation by the victim, general cooperation of the convicted person with the court, the degree of damage or loss, the personal circumstances and character of the convicted person, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, (non) violation of court orders, elapse of time, and (non) support by the victim.

**The method of the Sentencing Guidelines**

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined two aggravating factors and one mitigating factor, which according to the Guidelines would fall under the instances of “total aggravation in excess of mitigation,” which would qualify under the factors indicating higher aggravation than mitigation. According to Appendix 1 of the Guidelines, part 1, point d, the punishment of fine in this case should be from 12,500 to 18,750 Euros, which means that the sentence imposed in this case is significantly lower than these ranges.

17 Case P.nr.5562/18 – Light bodily injury as in article 188 par. 3 in conjunction with subpar. 3.2 of the CCRK

**Judgment**

According to the Basic Court in Pristina – General Department, the convicted person A.M. was found guilty because on 24 November 2018, around 11:00, in his house in the “Ganimete Terbeshi” street, after a dispute with the injured person A.B., assaulted her, causing her light bodily injuries. The defendant, with the intent to cause her bodily injuries, grabbed her by the hair and threw her on the ground, and hit her with a belt on the shoulder and the left leg, and then, with the intent to cause her bodily injuries, hit her with a piece of laminate wood and dragged her, thereby causing her injuries to soft tissues in the region of her left scapula caused by the object.
The punishment according to the CCRK: six (6) months to five (5) years of imprisonment.

Imposed sentence: six (6) months suspended sentence.

Mitigating factors:

1. The entering of a guilty plea by the defendant at the initial hearing;
2. The intensity of the danger or injury to the protected value;
3. Expression of sincerity during the hearing;
4. The circumstances in which the act was committed.

Aggravating factors

None

Appropriateness of the sentence:

The court determined that the imposed sentence corresponds to the degree of danger to the society posed by the criminal offense. According to the court, the imposed sentence will achieve the purposes of punishment to prevent the perpetrator and other persons from committing criminal offenses, and to increase morality and strengthen the obligation to respect the law.

Implementation of the Guidelines

Appropriateness of the sentence

In this judgment the court cited three of the purposes of punishment and took for granted the fact that the imposed sentence would achieve those purposes. However, the court failed to justify any of these purposes. As to the fourth purpose (victims and the community), the court did not apply or justify this purpose of punishment as required by the Guidelines.

Implementation of the principles

The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

Mitigating and aggravating factors indicated in the judgment

As to the entering of a guilty plea, the court addressed none of the requirements set forth in the Guidelines that should be applied in relation to this factor, which also determines the importance of this factor in a concrete case. The court also failed to address the four relevant
questions for this factor as required by the Guidelines. The expression of sincerity is not indicated in the Guidelines as a mitigating factor and the court failed to provide any justification as to why this fact should be considered as a mitigating factor. On the other hand, the court double counted factors in this case by failing to connect two of the principles of punishment (intensity of danger or injury to the protected value and the circumstances in which the act was committed) with other specific factors and using them as mitigating factors.

Mitigating and aggravating factors ignored in the judgment

The court failed to address the degree of intent, the presence of actual or threatened violence in the commission of the criminal offense, whether the criminal offense involves multiple victims, whether the victim of the criminal offense was particularly defenseless or vulnerable, the age of the victim, (non) provocation by the victim, general cooperation of the convicted person with the court, the degree of damage or loss, the personal circumstances and character of the convicted person, any remorse shown by the convicted person, (non) repentance, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, any prior criminal convictions, (non) violation of court orders, elapse of time, and (non) support by the victim.

The method of the Sentencing Guidelines

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined four mitigating factors and no aggravating factors, which according to the Guidelines would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” which would qualify under the factors justifying highest mitigation within the limit. According to Appendix 1 of the Guidelines, part 2, point h, the sentence in this case should be from six months to one year and six months of imprisonment, which means that the sentence imposed in this case is within the range.

18 Case P.nr.631/2017 – Endangering public traffic as in article 378 par. 6 in conjunction with par. 1 of the CCRK

Judgment

According to the judgment of the Basic Court in Pristina – General Department, rendered on 6 March 2019, the convicted person H.H. was found guilty for the criminal offense of “Endangering public traffic.” According to the judgment, on 4 July 2015, around 18:30, the convicted person, in the “Fontana” roundabout, while we was driving his vehicle “VW Polo,” out of negligence violated the Law on Public Traffic Safety (LPTS), namely Article 62 of the LPTS, by failing to yield to other traffic participants, and by this act the defendant made an unsafe move to connect to a road with priority passage, thereby posing a physical hindrance,
which led to a collision of his vehicle with the front of a “Chevrolet Clio” vehicle, whereby the injured party A.Gj. suffered light bodily injuries.

**The punishment according to the CCRK:** fine or imprisonment of up to one (1) year.

**Imposed sentence:** four hundred (400) Euro fine.

**Mitigating factors:**

1. The convicted person violated the law for the first time;
2. The convicted person provides for his family;
3. His actions were not the sole cause for the accident.

**Aggravating factors**

1. Did not plead guilty;
2. Did not apologize for the criminal offense.

**Appropriateness of the sentence:**

The court determined that the imposed sentence is proportionate to the degree of danger to the society and the degree of criminal liability. The court believes that the imposed sentence will achieve the purposes of punishment to prevent the perpetrator from committing criminal offenses in the future and to increase morality and strengthen the obligation to respect the law. According to the court, this sentence will resocialize the defendant by suspending the sentence, because the perpetrator will be seriously warned that if he commits another criminal offense, the punishment will be harsher.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

The court in this case cited three of the purposes of punishment (specific/special deterrence, general deterrence, and judgment of society, increased morality and the obligation to respect the law). As to the specific or special deterrence, the court provided sufficient justification as to how this sentence will achieve this purpose. The court took for granted the fact that the imposed sentence will achieve the other two purposes and failed to justify it. As to the fourth purpose (victims and the community), the court did not apply or justify this purpose of punishment in this judgment.

**Implementation of the principles**
The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

Mitigating and aggravating factors indicated in the judgment

As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this factor qualifies under other mitigating factors. The Guidelines state that if court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed in the judgment. As to the fact that the accused person provides for his family, the Guidelines sets forth seven factors that the court should address and justify when determining this fact as a mitigating factor, which the court failed to do in this judgment. As to the fact that the intent of the defendant, the court provided a modest justification by stating that his omissions were not the sole cause for the accident. As to the refusal of the defendant to plead guilty or to apologize for the offense, the court did not provide any justification as to why it applied these facts as aggravating factors.

Mitigating and aggravating factors ignored in the judgment

The court failed to address whether the criminal offense involves multiple victims, the age of the victim, general cooperation of the convicted person with the court, the degree of damage or loss, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, (non) violation of court orders, elapse of time, and (non) support by the victim.

The method of the Sentencing Guidelines

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined three mitigating factors and two aggravating factors, which according to the Guidelines would fall under the instances of “existence of minor aggravation along with multiple mitigating factors or mitigation in greater quantity than aggravation,” which would qualify under the factors indicating higher mitigation than aggravation. According to Appendix 1 of the Guidelines, part 1, point d, the punishment of fine in this case should be from 6,250 to 12,500 Euros, which means that the sentence imposed in this case is not within the range.

19 Case P.nr.1961/2016 – Unauthorized possession of narcotic drugs, psychotropic substances or analogues as in article 275 par. 1 of the CCRK

Judgment

According to the judgment of the Basic Court in Pristina – General Department, rendered on 17 April 2019, the convicted person P.M. was found guilty for the criminal offense of
Unauthorized possession of narcotics.” According to the judgment, on 27 December 2013, around 22:10, in Pristina, in the “Sylejman Vokshi” street, the convicted person was caught in the possession of narcotic substances. During their operational work, police officers had pulled the convicted person for identification, and found a plastic bag with substances, green color, and a folded substance, which according to the examination by the Kosovo Forensic Agency in Pristina, based on morphological characteristics and chemical components, exhibits 1 and 2 contain cannabis (marihuana), which includes tetrahydrocannabinol (THC), with a total net weight of 1.04 grams.

The punishment according to the CCRK: fine and imprisonment of one (1) to three (3) years.

Imposed sentence: two (2) months suspended sentence and a fine of 200 Euros.

Mitigating factors:
1. The convicted person was sincere during the main trial;
2. The entering of a plea of guilty at the initial stages;
3. The convicted person has a poor economic situation.

Aggravating factors
None

Appropriateness of the sentence:
The court determined that the imposed sentence is proportionate to the gravity of the criminal offense and the conduct and circumstances of the perpetrator. The court is convinced that the sentence will resocialize and rehabilitate the perpetrator, prevent other persons from committing criminal offenses, and increase morality and strengthen the obligation to respect the law. As to the finding that the convicted person is indigent, the court failed to provide any justification as to this factor.

Implementation of the Guidelines

Appropriateness of the sentence
In this judgment the court cited three of the purposes of punishment and took for granted the fact that the imposed sentence would achieve those purposes. However, the court failed to justify any of these purposes. As to the fourth purpose (victims and the community), the court did not apply or justify this purpose of punishment as required by the Guidelines.

Implementation of the principles
The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**

The expression of sincerity is not indicated in the Guidelines as a mitigating factor and the court failed to provide any justification as to why this fact should be considered as a mitigating factor. As to the entering of a guilty plea, the court addressed none of the requirements set forth in the Guidelines that should be applied in relation to this factor, which also determines the importance of this factor in a concrete case. The court also failed to address the four relevant questions for this factor as required by the Guidelines. In addition, the court merely cited the poor economic situation of the convicted person but did not provide any justification in support of this finding.

**Mitigating and aggravating factors ignored in the judgment**

The court failed to address the degree of intent, general cooperation of the convicted person with the court, any remorse shown by the convicted person, (non) repentance, post-conflict conduct of the convicted person, any prior criminal convictions, (non) violation of court orders, and elapse of time.

**The method of the Sentencing Guidelines**

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined three mitigating factors and no aggravating factors, which according to the Guidelines would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” which would qualify under the factors justifying highest mitigation within the limit. In this judgment, the court failed to refer to Article 75 on mitigation of punishments, even though it imposed a sentence under the minimum provided by the law. According to Appendix 1 of the Guidelines, part 3, point b, the imprisonment sentence in this case should be from one year to one year and six months of imprisonment and the fine should be from 100 to 6,250 Euros. In this case, both the imprisonment sentence and the fine are significantly lower than the ranges set forth in the Guidelines.

20 Case P.nr.4173/2018 – Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations as in article 437 par. 1 of the CCRK

Judgment
According to the judgment of the Basic Court in Pristina – General Department, rendered on 16 April 2019, the convicted person F.G. was found guilty for the criminal offense of “Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations.” The court found that the defendant, from 1 March until 31 March 2018, despite being obliged by law to file a declaration of property as a senior public official, failed to do so for the period from 1 January - 31 December 2017.

**The punishment according to the CCRK:** fine and imprisonment of up to three (3) years.

**Imposed sentence:** three (3) months suspended sentence and a fine of 200 Euros.

**Mitigating factors:**

1. The entering of a guilty plea by the convicted person;
2. Expression of sincerity during the initial hearing;
3. No prior criminal convictions.

**Aggravating factors**

None.

**Appropriateness of the sentence:**

The court determined that the imposed sentence is proportionate to the gravity of the criminal offense, the conduct and circumstances of the perpetrator, the degree of danger to the society and the degree of criminal liability. The court is convinced that the imposed sentence will achieve the purposes of punishment to prevent the perpetrator and other persons from committing criminal offenses, and to increase morality and strengthen the obligation to respect the law.

**Implementation of the Guidelines**

**Appropriateness of the sentence**

In this judgment the court cited three of the purposes of punishment and took for granted the fact that the imposed sentence would achieve those purposes. However, the court failed to justify any of these purposes. As to the fourth purpose (victims and the community), the court did not apply or justify this purpose of punishment as required by the Guidelines.

**Implementation of the principles**
The court in this case has merely cited mitigating and aggravating factors and failed to connect them to the principles that should be considered in determining the sentence, as provided in the Guidelines.

**Mitigating and aggravating factors indicated in the judgment**

As to the entering of a guilty plea, the court addressed none of the requirements set forth in the Guidelines that should be applied in relation to this factor, which also determines the importance of this factor in a concrete case. The court also failed to address the four relevant questions for this factor as required by the Guidelines. The expression of sincerity is not indicated in the Guidelines as a mitigating factor and the court failed to provide any justification as to why this fact should be considered as a mitigating factor. As to the fact that the convicted person violated the law for the first time, according to the Guidelines, this factor qualifies under other mitigating factors. The Guidelines state that if court assesses a lack of prior criminal convictions and mitigation may be warranted, it will require finding of facts supporting a conclusion of adherent behavior and pre-disposition to rehabilitation. This issue is not addressed in the judgment.

**Mitigating and aggravating factors ignored in the judgment**

The court failed to address the degree of intent, general cooperation of the convicted person with the court, the degree of damage or loss, the personal circumstances and character of the convicted person, any remorse shown by the convicted person, (non) repentance, (non) compensation for the loss or damage, post-conflict conduct of the convicted person, and (non) violation of court orders.

**The method of the Sentencing Guidelines**

In this case the court failed to provide any justification as to the internal significance of these factors or to assigning weight to the circumstances. For this reason, the calculation is quantitative. In the concrete case, the court determined three mitigating factors and no aggravating factors, which according to the Guidelines would fall under the instances of “existence of at least two factors for reduced culpability and/or reduced harm and no/minor aggravation,” which would qualify under the factors justifying highest mitigation within the limit. According to Appendix 1 of the Guidelines, part 1, point f, the imprisonment sentence in this case should be from one to eight months of imprisonment and the fine should be from 100 to 6,250 Euros, which means that the sentence imposed in this case is within the range.
XI. Sentencing policy at the Appellate Court

According to the Guidelines, “one of the most important goals of sentencing Guidelines is to reduce the disparity in sentences without destroying the discretion of judges to adapt to particular situations.”

To this end, the Appellate Court is obliged to set standards and practices that are fair and in compliance with the Guidelines and to remedy first instance courts. For this reason, the heaviest burden for the implementation of the Guidelines falls on the Appellate Court, as the responsible court for the unification of practices of first instance courts.

In order to see how the Appellate Court reviewed the assessments of first instance courts as to the type and severity of the sentences, as well as the application and justification of those sentences in the context of the Guidelines, KLI analyzed ten judgments issued by the Appellate Court on different natures of cases (cases: 1. PAKR.nr.525/2018, 2. PAKR.nr.80/2019, 3. PAKR.nr.629/2018, 4. PAKR.nr.585/2018, 5. PAKR.nr.95/2019, 6. PAKR.nr.246/2018, 7. PAKR.nr.77/2019, 8. PAKR.nr.27/2018, 9. PAKR.nr.88/2018 and 10. PAKR.nr.89/2018).

Initially, upon analyzing these cases, KLI found that the issue of sentencing policy is not unified within the Appellate Court itself as required by the Guidelines. There is a lot of disparity between the judgments of the Appellate Court in this regard. Therefore, as long as there is no unified standard within the Appellate Court itself as to how to handle these cases, the sentencing practices at the first instance courts will not be harmonized.

In seven of these ten judgments, the Appellate Court merely cited aggravating or mitigating factors, but did not comply with the spirit of the Guidelines, which sets forth the factors that should be considered, the relevant questions that the court should address in the judgment, the considerations for the factor, etc. To this end, the court in these judgments merely cites various factors, but fails to connect those factors with the principles of punishment and the purposes of punishment. In fact, in one of these seven cases, the court fails to provide any justification on the mitigating and aggravating factors applied by the first instance court, the principles of punishment, and the purposes of punishment.

The court addresses mitigating and aggravating factors in detail in only one of the judgments that were reviewed. In that judgment, in addition to indicating ignored factors, the court also justified the factors that were applied by connecting them to different factual circumstances. The court did this partially in two other judgments.

Furthermore, the Appellate Court, just like the first instance courts, failed to provide justification on the internal significance of the factors and assigning weight to the circumstances, which gives further credence to the conclusion that these two important principles of sentencing policy according to the Guidelines are dead in practice.
In addition, there are many other problems in the judgments of first instance courts concerning the Guidelines, which were also identified in this report, that the Appellate Court failed to address in its judgments. The court did not address in any of these ten judgments the issue of double counting, failure to connect the factors with the principles of punishment, lack of justification for the purposes of punishment, etc.

The findings of this report show that the Appellate Court ranks alongside the courts that do not enforce the Guidelines, or minimally enforce it.

To this end, KLI reckons that if the Appellate Court continues not to enforce the Guidelines in its judgments, it will also lead to a lack of willingness by the first instance courts to reform with regards to sentencing policies. If the judgments of the first instance judges are confirmed despite being in violation of the requirements of the Guidelines, it makes the Guidelines virtually dead because it creates the belief that the manner in which the first instance courts justify the factors is correct.
XII. Recommendations

1. The judicial system should take into consideration that it is high time to build a consistent sentencing policy system. In this regard, the judicial system should consider that adoption of the Guidelines has been a step towards consolidation of sentencing policy in the Republic of Kosovo rather than a consolidation of this policy itself.

2. Judges should comply with the Guidelines when determining the type and amount of punishment.

3. Judges should understand that it is not important for parties and the public to know what the judge thinks, but what the judge has reasoned in the judgment.

4. When determining the type and amount of punishment, judges should take into account all mitigating and aggravating circumstances as provided for by the CCRK and explained in the Guidelines.

5. Such circumstances should be reasoned by judges in line with requirements in the Guidelines.

6. Judges should be cautious and avoid double counting of circumstances, as in these cases we have situations where a mitigating or aggravating factor, benefits or harms the defendant more than what is provided for by the Law.

7. Judges should in each case determine the intrinsic importance of each factor applied.

8. Judges should in each case weigh the circumstances.

9. Judges should apply sentencing principles in each case.

10. Judges should observe the appropriateness of sentence in every judgment.

11. Courts should apply all the goals of the sentence set out in the Guidelines as well as reason their achievement through the imposed sentence, and not take it as a fact.

12. When imposing a sentence, courts should refer to Guidelines, namely the chapter "Implementation of Guidelines in Practice" and Annex 1 to the Guidelines.

13. Judges should avoid templates for applying and reasoning circumstances as well as reasoning the appropriateness of sentence, in a way that reasoning is specific to each case.

14. The KJC's Performance Appraisal Committee, should also analyze judgments in the part of the reasoning regarding the determination of the type and amount of sentence, and intervene with concrete measures against the phenomena that are contrary to the fair sentencing policy as determined under CCRK and clarified in the Guidelines.

15. The KJC should organize intensive training and seminars for all judges in order to train them on the use of the Guidelines.