



**Instituti i Kosovës për Drejtësi**  
**Kosovo Law Institute**  
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## **Special failures in fighting corruption**

**Pristina, November 2019**

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#### ABOUT KLI

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

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## Acronyms

ECHR	European Court of Human Rights
BC	Basic Court
KLI	Kosovo Law Institute
KJC	Kosovo Judicial Council
KPC	Kosovo Prosecutorial Council
PCCK	Provisional Criminal Code of Kosovo
CPCRK	Criminal Procedure Code of the Republic of Kosovo
CCRK	Criminal Code of the Republic of Kosovo
NCCRK	New Criminal Code of the Republic of Kosovo
LDA	Law on declaration of assets
LK	Law on Courts
LKJC	Law on Kosovo Judicial Council
LKPC	Law on Kosovo Prosecutorial Council
LSP	Law on State Prosecutor
BP	Basic Prosecution

## I. Executive summary

The judicial and prosecutorial system, both, have achieved a stable phase that enables them to handle corruption cases within reasonable legal time limits. However, the practice shows that this situation is not serving in that way for prosecutors and judges to handle corruption cases within legal time limits. On the contrary, the phenomenon of violating the law still continues, especially there is negligence in handling high-profile corruption cases.

On September 30, 2019 it results that Prosecution Offices in Kosovo have in work only 291 corruption cases where 806 individuals are involved. These prosecution offices have in work also preliminary investigation cases, where are involved 1127 individuals.

Prosecutions and Courts have their commodity by basing their fight against corruption only against low profile and rarely they fight high-profile corruption. Prosecution offices, this year also, continue to investigate and prosecute mainly low-profile officials. In this regard, prosecution offices have had in work corruption cases involving 412 low profile individuals, cases that have involved 310 medium profile individuals and cases that have 53 high-profile individuals involved.

Sequestration and confiscation of assets obtained unlawfully through corruption criminal offences still remains taboo and, in this regard, there is no result shown by the prosecutorial and judicial system. Prosecutors work based on the logic of filing indictments, but not also on identifying assets that are obtained unlawfully, thus submitting motions to sequester and confiscate assets.

Special Prosecution same as in the previous years (2016, 2017, 2018), also in the year 2019 maintains the trend of avoiding responsibility in handling corruption cases. This prosecution since January 1 until September 30, 2019 has not filed any indictment against high profile individuals regarding corruption offenses. Another distinctive of SPRK is the fact that prosecutors within this prosecution is related to the fact that prosecutors in this prosecution office are not specialized in specific fields, including the specialization in corruption cases and economic crimes. Prosecutors in the SPRK continue to handle different cases of several fields all in the same time, such as cases of organized crime, corruption, war crimes, money laundering, murder, trafficking etc. The lack of specialization of prosecutors and the distribution of corruption cases and economic crimes to a large number of prosecutors within SPRK is a tendency and a policy of this prosecution to distribute the responsibility and accountability.

Sentencing policy in corruption cases still remains a challenge to all the judges in all Kosovo's courts. The judicial system is unable to implement unique sentencing policy and ones that are in accordance with the purpose of the Criminal Code of Kosovo. During this reporting period, the largest number of sentences imposed by the courts are suspended punishments and punishments of a fine, then come the imprisonment punishments. However, in the year 2019, different from the previous years, for the first time, imprisonment punishments imposed by courts in Kosovo have increased.

The year 2019 was also characterized with the phenomenon of postponing a large number of

corruption cases' court hearings. KLI during this period of time has monitored a total of 803 corruption court hearings, of which 587 were held, whereas as a result of not having legal conditions, 216 other court hearings were postponed. Something to worry about is the fact that a large number of court hearings are postponed due to the absence of the judge, prosecutor or the defendants.

Despite the legal obligations and public policies of the prosecutorial and judicial system on handling with an absolute priority corruption cases, KLI continuously has identified and reported in daily bases regarding the phenomenon of statutory limitation of corruption cases. Only during these nine months of 2019, KLI has reported for a number of such corruption cases, that have reached the absolute statutory limitations period to be prosecuted. On February 27, 2019, because of excessive prolongation of handling the case of the former official of Pristina Municipality, Selman Krasniqi, accused of corruption and sentenced by the first instance, after returning the case to retrial, had to be acquitted because of the statutory limitation period. On 30 April 2019 the Basic Prosecution in Mitrovica withdrew from prosecution against Smiljka Vuletiq, who was accused of "abusing official position or authority", because of statutory limitation. For such cases, regarding which KLI reports in daily bases, no one is held responsible.

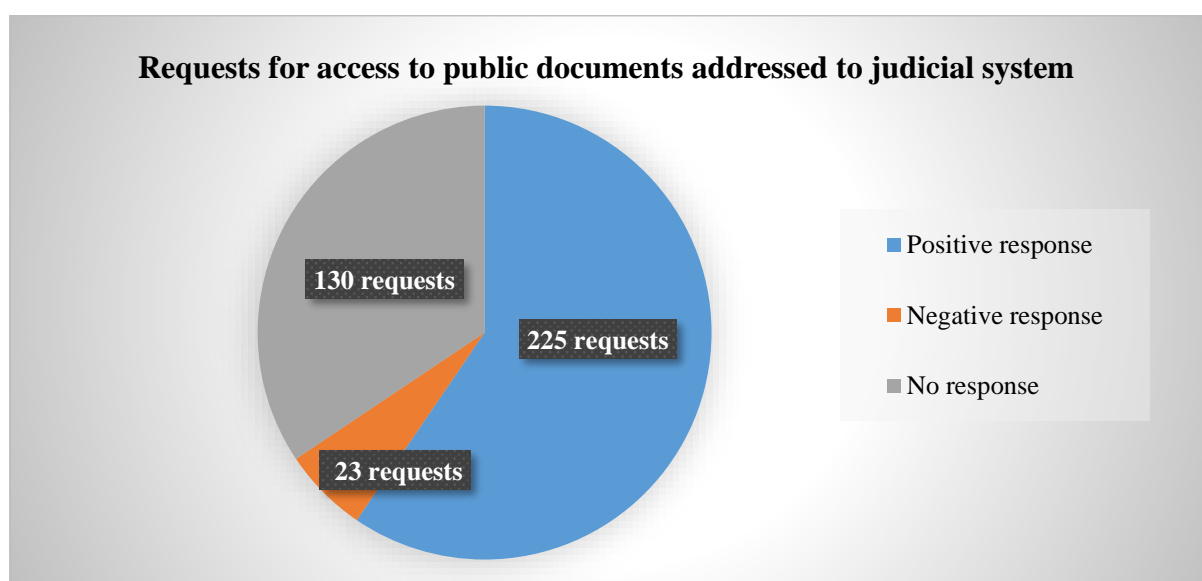
The lack of judicial control in preliminary investigations phase still remains one of the most distinctive forms that shows persecution in investigating and prosecuting citizens or officials that are subject of criminal reports. KLI has identified this problem, still unaddressed, of conducting investigations by the police and prosecution, without an effective control of the judiciary. This phenomenon continues to persecute people, that cause violations of human rights and freedoms, keeping them unlawfully in criminal proceeding evidences and consequently without having the right to appeal on these. On September 30, 2019, KLI has identified a large number of old cases that were reported for corruption, but still remain in the lockers of the prosecution offices. It is worth mentioning that in some cases the criminal reports are submitted by professional responsible institutions such as the Kosovo Police, and still these cases for more than a decade remain in the prosecution's lockers. Some of the oldest cases are: the case no. 485/09-IPR reported on April 8, 2008 by the Kosovo Police and is still unsolved by the Basic Prosecution in Pristina; the case no. 468/08-IPR reported on June 6, 2008 by the Kosovo Police and is still unsolved by the Basic Prosecution in Pristina; and also the case no. 713/08-IPR reported on June 18, 2008 by the owner of the property and is still unsolved by the Basic Prosecution in Pristina.

The transparency in the judicial system is still not in the level as provided by the Law on Access to Public Documents and the objectives that KJC itself has provided through its Strategy on increasing transparency of the judicial system in Kosovo. Despite the fact that different from previous years, the transparency of this system in offering access to public documents is in a level of 70% of 340 requests submitted. Whereas, completely other practice is being implemented by the prosecutorial system, which continues to remain close on offering access to public documents, since it has offered access on only 25% of the 173 requests submitted by KLI.

## II. Public transparency and accountability of the judicial and prosecutorial system

KLI in the process of systematic monitoring of the judicial and prosecutorial system, from January 1 until September 30, 2019, has addressed a total of 551 requests for access to public documents, regarding the fulfillment of legal obligations, sharing of information, statistics and other available and permissible data according to the Law on Access to Public Documents, including courts, prosecution offices, KJC, KPC and other institutions.

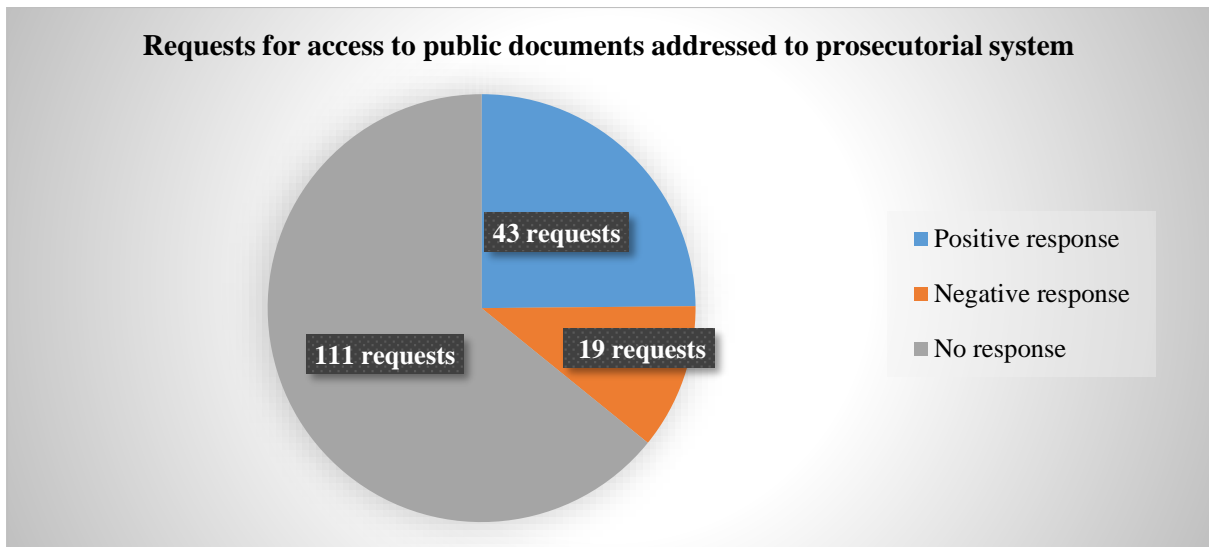
Out of these, 378 requests for access to public documents, KLI addressed only to judicial system, where for 225 requests received positive responses, for 23 requests received negative responses, while for 130 other requests did not receive any response. (See chart)



**Chart 1 – Requests for access to public documents addressed by KLI to judicial system.**

Respectively, in the Courts of Kosovo, KLI has submitted a total of 340 requests, of which 200 positive responses have been received, 21 negative responses, while for 119 requests did not receive any response. Whereas, in the Judicial Council, KLI addressed a total of 38 requests, for which 25 responses were positive, 2 responses were negative, while for 11 requests did not receive any response.

On the other side, 173 requests for access to public documents, KLI addressed to prosecutorial system, where for 43 requests received positive responses, for 19 requests received negative responses, while for 111 other requests did not receive any response. (See chart)



**Chart 2 – Requests for access to public documents addressed by KLI to prosecutorial system.**

Respectively, in the Prosecution offices of Kosovo, KLI has submitted a total of 147 requests, of which 28 positive responses have been received, 15 negative responses, while for 104 requests did not receive any response. Whereas, in the Prosecutorial Council, KLI addressed a total of 26 requests, for which 15 responses were positive, 4 responses were negative, while for 7 requests did not receive any response.

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



### III. Corruption cases handled by the prosecutorial system

SP during the reporting period January – September 2019, has had in total 553 cases in work with 1289 individuals involved in corruption offences. Out of these cases, SP from previous years has inherited 274 corruption cases with 725 individuals involved, while during the reporting period has received at work 279 new corruption cases, with 564 individuals involved. (See table)

#### a) Investigations by the prosecutorial system in corruption cases

Prosecution office	Unsolved cases in the beginning	Individuals whose cases have remained unsolved in the beginning	Accepted cases – new (including severance of proceedings)	Suspects whose cases are accepted in work and suspects with extension of investigations	Total cases in work	Total individuals whose cases are in work	Unsolved cases and cases delegated to competence		Cases unsolved at the end	Individuals whose cases have remained unsolved at the end
							Solved cases	Individuals whose cases are solved		
<b>SPRK</b>	17	93	12	70	29	163	2	13	27	150
<b>Prisatina</b>	110	355	99	177	209	532	106	195	103	337
<b>Prizren</b>	28	63	72	162	100	225	54	112	46	113
<b>Peja</b>	6	15	12	12	18	27	12	19	7	8
<b>Gjilan</b>	8	19	29	42	37	61	29	47	8	14
<b>Mitrovica</b>	68	102	24	42	92	144	21	39	71	105
<b>Ferizaj</b>	22	63	14	20	36	83	21	33	15	50
<b>Gjakova</b>	15	15	17	39	32	54	18	25	14	29
<b>Total</b>	274	725	279	564	553	1289	263	483	291	806

**Table 1 – Corruption cases handled by the prosecutorial system during nine-month period of 2019**

SP during this reporting period has solved 263 corruption cases against 483 involved individuals, respectively this institution has managed to solve 16 cases less than it has received, while it has solved corruption cases for 81 individuals less than it has received during the same period of time.

At the end of this reporting period, the SP had 291 cases left in work with 806 individuals involved in corruption offences. The largest number of cases solved during this period belongs to the Basic Prosecution in Pristina, with 106 cases and 195 individuals, while SPRK has solved only 2 cases with 13 individuals.

BP in Pristina is still the prosecution office with the greatest number of corruption cases, which

has 103 cases in work with 337 individuals involved, followed by BP in Mitrovica with 71 cases with 105 individuals and by BP in Prizren with 46 cases with 113 individuals, while SPRK has 27 cases with 150 individuals. BP in Ferizaj has in work 15 corruption cases with 50 individuals involved, BP in Gjakova has 14 corruption cases with 29 individuals involved, BP in Gjilan has 8 corruption cases with 14 individuals involved, while BP in Peja has only 7 corruption cases with 8 individuals involved.

### Submitters of criminal reports

During this reporting period the largest number of criminal reports filed in the SP came from Kosovo Police, against 230 individuals, ACA with criminal charges against 70 individuals, the injured parties filed 49 criminal reports against 108 individuals. Distinctive during this nine-month period is the fact that criminal reports against 56 individuals have been delegated to competence. (See table)

Prosecution office	SPRK		Pristina		Prizren		Peja		Gjilan		Mitrovica		Ferizaj		Gjakova		Total	
	Cases	Individuals	Cases	Individuals	Cases	Individuals	Cases	Individuals	Cases	Individuals	Cases	Individuals	Cases	Individuals	Cases	Individuals	Cases	Individuals
ACA	2	2	37	44	8	8	3	3	5	5			3	3	5	5	63	70
Customs					1	25											1	25
Injured party			17	43	19	44			12	20			1	1			49	108
KPI			1	1	2	2							1	2	2	6	6	11
Admitted/comp.	3	20			4	20	1	1	2	5	3	3	3	7			16	56
Body of MA					1	2	2	2									3	4
KP	3	24	31	76	31	48	5	5	8	10	17	35	4	5	9	27	108	230
Prosec. Self-init.	2	10	4	4											1	1	7	15
Citizen	2	14	8	8	6	13	1	1	2	2	4	4	2	2			25	44
Property owner			1	1													1	1
<b>Total</b>	<b>12</b>	<b>70</b>	<b>99</b>	<b>177</b>	<b>72</b>	<b>162</b>	<b>12</b>	<b>12</b>	<b>29</b>	<b>42</b>	<b>24</b>	<b>42</b>	<b>14</b>	<b>20</b>	<b>17</b>	<b>39</b>	<b>279</b>	<b>564</b>

Table 2 – Submission of criminal reports regarding corruption in prosecutorial system

### Manner of solving corruption cases by SP

SP during this reporting period has resolved corruption cases against 483 individuals, where against 216 individuals' criminal reports were dismissed, against 116 individuals' investigations were terminated, meanwhile against 147 individuals' indictments were filed. In percentage turns out that SP against 69% individuals has closed cases, while against 31 % of individuals has filed indictments. (See table)

Individuals against whom cases have been solved according to a solving manner								
Prosecution office	Total individuals	Criminal report was dismissed	Measures for psychiatric treatment	The investigation is terminated	Indictment for punitive order	Direct indictment was filed	Indictment filed after conducting investigations	Other manner (joint procedure,...)
SPRK	13			13				
Pristina	195	72	1	61	1	1	59	
Prizren	112	67		17			27	1
Peja	19	5		3		1	10	
Gjilan	47	26		8		3	10	
Mitrovica	39	20		1		1	15	2
Ferizaj	33	19		6		1	7	
Gjakova	25	7		7			11	
<b>Total</b>	<b>483</b>	<b>216</b>	<b>1</b>	<b>116</b>	<b>1</b>	<b>7</b>	<b>139</b>	<b>3</b>

**Table 3 – Manner of solving corruption cases in prosecutorial system.**

SPRK during this reporting period has terminated investigations against 13 individuals, whereas it has not dismissed criminal report or file any indictment. BP in Pristina, has dismissed criminal reports against 72 individuals and has terminated investigations against 61 individuals, while has filed indictments against 61 individuals, which in percentage turns out that this prosecution office against 69% of individuals has closed cases, while against 31% has filed indictments. BP in Prizren has closed corruption cases against 84 individuals and has filed indictments against 27 individuals. BP in Gjilan has closed corruption cases against 34 individuals and has filed indictments against 13 individuals. BP in Mitrovica has closed corruption cases against 21 individuals and has filed indictments against 16 individuals. BP in Ferizaj has closed corruption cases against 25 individuals and has filed indictments against 8 individuals. BP in Peja has closed corruption cases against 8 individuals and has filed indictments against 11 individuals. While, BP in Gjakova has closed corruption cases against 7 individuals and has filed indictments against 11 individuals.

## b) Preliminary investigation of corruption by the prosecutorial system

SP started the year 2019 with 597 corruption cases with 1065 individuals involved in the preliminary procedure. While during the reporting period SP has received 314 new cases with 601 individuals involved, which in total means that the Prosecution office during this year, until the end of September has had a total of 911 cases in work, involving 1666 involved.

During this reporting period, the Prosecution office closed 310 cases with 539 individuals, while in work, there were still unsolved 601 cases with 1127 individuals. (See table)

Prosecution office	Unclosed – unsolved information at the beginning	Individuals whose cases have remained unsolved at the beginning	Received – new information	Suspects whose cases have been received in work and suspects with extension of the investigation	Total cases – information in work	Total individuals whose cases are in work	Finished information – closed – solved	Individuals regarding whom information are closed	Unclosed – unsolved information at the end	Individuals whose cases have remained unsolved at the end
<b>SPRK</b>	31	96	32	75	63	171	18	50	45	121
<b>Pristina</b>	375	636	137	230	512	866	184	311	328	555
<b>Prizren</b>	21	35	42	82	63	117	31	56	32	61
<b>Peja</b>	20	45	65	132	85	177	42	69	43	108
<b>Gjilan</b>			1	4	1	4			1	4
<b>Mitrovica</b>	67	107	7	35	74	142	5	5	69	137
<b>Ferizaj</b>	53	100	12	13	65	113	20	34	45	79
<b>Gjakova</b>	30	46	18	30	48	76	10	14	38	62
<b>Total</b>	597	1065	314	601	911	1666	310	539	601	1127

Table 4 – Initiation of cases for preliminary investigations in prosecutorial system.

### *Submitters of corruption cases for preliminary investigation*

Kosovo Police during this reporting period has submitted to SP cases against 191 individuals, injured party have submitted cases against 132 individuals, citizens have submitted cases against 93 individuals, etc. (See table)

Prosecution office	SPRK		Pristina		Prizren		Peja		Gjilan		Mitrovica		Ferizaj		Gjakova		Total	
	Cases	Individuals	Cases	Individuals	Cases	Individuals	Cases	Individuals	Cases	Individuals	Cases	Individuals	Cases	Individuals	Cases	Individuals	Cases	Individuals
ACA	1	1	2	3													3	4
Customs			1	1							1	1	1	2			3	4
Injured party			28	96	11	17									10	19	49	132
KPI							6	8									6	8
Admitted/comp.	2	13	39	40	5	25	11	38	1	4	3	31	1	1			62	152
Body of MA			3	3			1	1									4	4
KP	7	17	40	63	18	27	36	62			1	1	10	10	8	11	120	191
Prosec. Self-init.			8	8													8	8
Citizen	22	44	15	15	7	12	10	20			2	2					56	93
General Aud.					1	1	1	3									2	4
Property owner			1	1													1	1
<b>Total</b>	<b>32</b>	<b>75</b>	<b>137</b>	<b>230</b>	<b>42</b>	<b>82</b>	<b>65</b>	<b>132</b>	<b>1</b>	<b>4</b>	<b>7</b>	<b>35</b>	<b>12</b>	<b>13</b>	<b>18</b>	<b>30</b>	<b>314</b>	<b>601</b>

**Table 5 –Submission of cases for preliminary investigations in prosecutorial system.**


#### **c) Filing of indictments for corruption and the profile of defendants**

KLI has continued to monitor and analyze the profile of perpetrators of corruption offences based on information published by the SP on the official website of the State Prosecutor, regarding indictments against perpetrators of corruption offences during the nine-month period (January-September) 2019.

During this reporting period, SP has published special announcements for filing of 24 indictments for corruption offences, against 46 individuals.

The profile of the individuals indicted include: police officers, municipal officials, Vehicle Registration Center Administration officials, businessmen and other individuals, mainly low-level. Whereas, for 12 individuals there is no information on which profile they belong to. However, no indictments filed during this reporting period include high-profile individuals.

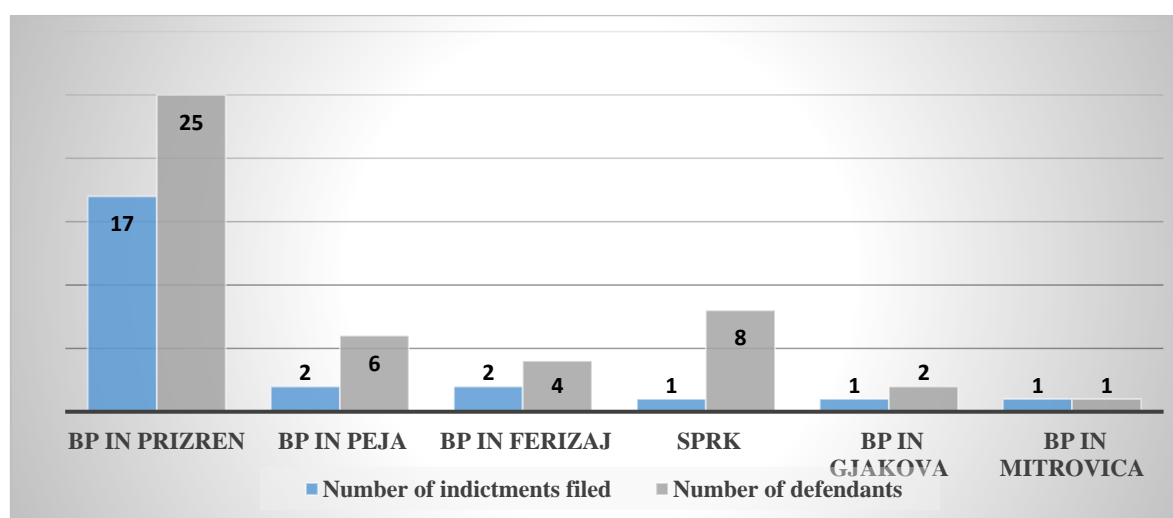
According to the indictments filed by prosecution offices, only in some of them there is information regarding the amount of the damage caused, meanwhile there is no information whether they have filed requests for sequestration or confiscation of property acquired through criminal offence. (See table)

 Date	 Position of the defendant	€ Value of the damage caused	 Request for sequestration/confiscation	 Number of individuals	 Prosecution office
25.02.2019	A bill collector at KEDS Company	360 euro	No information	1	BP in Peja
28.02.2019	No information	No information	No information	3	BP in Ferizaj
15.03.2019	No information	No information	No information	1	BP in Ferizaj
22.03.2019	Two police officers	No information	No information	2	BP in Gjakova
25.03.2019	A construction inspector in Prizren	No information	No information	1	BP in Prizren
26.03.2019	An accounting chief at a firm	273,107.39 euro	No information	1	BP in Mitrovica
27.03.2019	A construction inspector in Prizren	No information	No information	1	BP in Prizren
02.04.2019	An official at the Vehicle Registration Center Administration in Prizren	No information	No information	1	BP in Prizren
23.04.2019	A construction inspector in Prizren and a businessman	No information	No information	2	BP in Prizren
24.04.2019	A construction inspector in Prizren and a businessman	No information	No information	2	BP in Prizren
25.04.2019	A construction inspector in Prizren	No information	No information	1	BP in Prizren
02.05.2019	A project manager for the construction of a house of culture in Zhur village and four officials of the Project Supervisory Body	962,387.95 euro	No information	5	BP in Prizren
21.05.2019	A head of the procurement office in the Municipality of Prizren	No information	No information	1	BP in Prizren
24.05.2019	A market inspector in Prizren	No information	No information	1	BP in Prizren
30.05.2019	No information	No information	No information	8	SPRK
12.06.2019	Four municipal officials in Peja and one businessman	9,929 euro	No information	5	BP in Peja
01.07.2019	A clerk at the Vehicle Registration Center Administration in Prizren	No information	No information	1	BP in Prizren
01.08.2019	One director in the Directorate of	23,600 euro	No information	2	BP in Prizren

	Economy and Finance in the Municipality of Prizren and one acting director at the same Directorate.				
02.08.2019	A former director of Public Services in the Municipality of Prizren	7,000 euro	No information	1	BP in Prizren
06.08.2019	A former director of Urbanism and Spatial Planning in the Municipality of Prizren	7,200 euro	No information	1	BP in Prizren
22.08.2019	A former director of Administration in the Municipality of Prizren	19,350.00 euro	No information	1	BP in Prizren
23.08.2019	An inspector in the Directorate of Inspectorates of Prizren Municipality	No information	No information	1	BP in Prizren
03.09.2019	A registrar in the Municipality of Mamusha and a citizen	No information	No information	2	BP in Prizren
26.09.2019	A construction inspector in Prizren	No information	No information	1	BP in Prizren

**Table 6 – Indictments filed by prosecution offices during this reporting period (January-September 2019).**

According to published data, it turns out that the most efficient prosecution office during this period is BP in Prizren with 17 indictments against 25 individuals. Further, BP in Peja has filed 2 indictments against 6 individuals, BP has filed 2 indictments against 4 individuals, SPRK has filed 1 indictment against 8 individuals, BP in Gjakova has filed 1 indictment against 2 individuals and BP in Mitrovica has filed 1 indictment 1 individual. (See chart)




**Chart 3 – Number of indictments filed by prosecution offices and the number of defendants.**

The State Prosecutor, since May this year, has started publishing a 24-hour work report, which

also contains data on indictments filed by prosecution offices, including those for corruption offenses.

According to the monitoring of these reports, it turns out that SP does not always send special announcements on the filing of indictments for corruption offences, but only in certain cases, such as those mentioned above.

From the analysis of the 24-hour reports, where the data are clear for each prosecutor and separated by criminal offences, it turns out that in addition to the abovementioned indictments, prosecution offices have filed 39 other indictments for corruption against 51 individuals, without giving further details, such as the position of the defendant, the value of the damage caused or if there were any requests for the sequestration or confiscation of the property acquired by the criminal offense. (See table)

	BP in Pristina	BP in Prizren	BP in Peja	BP in Gjilan	BP in Ferizaj	BP in Gjakova
<b>Number of indictments filed</b>	19	4	3	8	2	3
<b>Number of defendants</b>	27	4	4	11	2	3

**Table 7 – Number of indictments filed by prosecution offices and number of defendants, according to 24-hour reports of SP.**

Data show that BP in Pristina has filed 19 indictments for corruption offences against 27 individuals, BP in Gjilan 8 indictments against 11 individuals, BP in Prizren 4 indictments against 4 individuals, BP in Peja 3 indictments against 4 individuals, BP in Gjakova 3 indictments against 3 individuals and BP in Ferizaj 2 indictments against 2 individuals.

In addition, in two 24-hour reports of SP it is stated that BP in Ferizaj has filed 3 indictments against 6 individuals, whereas BP in Prizren has filed 3 indictments against 5 individuals for the criminal offenses “robbery”, “giving bribes”, “Unauthorized ownership, control or possession of weapons”, “use of weapon or dangerous instrument”, “abusing official position or authority” and “aggravated murder”, but in no case is specified how many of those indictments and against how many individuals are related to corruption.

Moreover, there are cases when SP does not report at all the filing of a corruption indictment, such as the indictment of BP in Pristina in April this year, against the police officer Jeton Menxhiqi, for the criminal offence “abusing official position or authority”.



## IV. Performance of the Special Prosecution in the fight against corruption

The Special Prosecution of the Republic of Kosovo established on 2007 from UNMIK as the Office of Special Prosecutor of Kosovo, in the year 2008 based on the Law for Special Prosecution of the Republic of Kosovo is established as a permanent and specialized prosecutorial organ that acts within the State Prosecutor. This prosecution has a mandate and jurisdiction in the whole territory of the Republic of Kosovo, in investigating and prosecuting perpetrators of criminal offences provided by the law, where special (exclusive) and complimentary competencies are part of it.

### a) Handling cases of investigations from SPRK

SPRK started the year 2018 with 18 corruption cases inherited from the previous years with 66 individuals involved. During this reporting period (*January 1 – September 30, 2019*) this prosecution has admitted 15 new cases with 77 individuals involved. SPRK during this reporting period has solved 5 corruption cases with 20 individuals involved. Out of 20 individuals that are subject of criminal proceedings in SPRK, against 13 of them the investigations were terminated and against 7 others the case has been solved in other ways, respectively based on the practice installed from this prosecution, cases against these individual have been sent in competence to the other competent Basic Prosecutions.

Corruption cases in SPRK (January 1 – September 30, 2019)	Unsolved in the beginning (January 1, 2019)		Received (January 1 – September 30, 2019)		Solved (January 1 – September 30, 2019)		Manner of solving				Unsolved in the end (30 September, 2019)	
	Cases	Individuals	Cases	Individuals	Cases	Individuals	Dismissal	Break	Indictment	Other way	Cases	Individuals
SPRK	18	66	15	77	5	20		13		7	27	150

Tabela 8 – Rastet e trajtuara të korrupsionit nga PSRK në periudhën nëntëmuajor 2019.

The Government and the Assembly of Kosovo in order to achieve specific results in fighting organized crime, high level corruption, Money laundering criminal offenses and financing terrorism, war crimes and serious criminal offences, at the end of the year 2018, has approved the new Law on Courts <sup>1</sup>. Through this law, was decided to change the internal organization of the Basic Court in Pristina and the Court of Appeals, through the establishment of the Special Department for Cases in Competence of Special Prosecution of the Republic of Kosovo, all over the territory of the Republic of Kosovo.

<sup>1</sup> Law No. 06/L-054, on Courts, Official Gazette of the Republic of Kosovo, No 22, December 18, 2018.

Kosovo Judicial Council in accordance with the obligations deriving from the Law on Courts during the second part of the year 2019 was able to complete the process of recruitment, as well as to functionalize these two departments in the Basic Court in Pristina and the Court of Appeals.

Based on the law, these two departments have competence and responsibility to adjudicate all criminal offences initiated by the SPRK, part of which are also criminal offenses of corruption.

Since the functionalization of the special department in the Basic Court in Pristina, SPRK during 2019 (January 1 – September 30) has not filed any indictment against high profile individuals regarding corruption offenses. On the other hand, as for the cases adjudicated in the Special Department, there is a new indictment filled from the SPRK for corruption offenses, but not against high profile individuals, as well as there are cases that are being handled in this Department, that are cases transferred from the Serious Crimes Department.

Even though the Law on SPRK has provided that this prosecution office has the right to exercise complementary powers in handling corruption cases, in the last four years in the same way this institution is avoiding exercising such power.

This is affirmed with the fact that SPRK *“uses so little the exercise of complementary powers while handling corruption cases. While this prosecution office in the year 2016 had received 12 corruption cases, in the year 2017 has received only four new cases, whereas in the year 2018 has received six new corruption cases.”*<sup>2</sup>

If SPRK continues with this trend of avoiding responsibility while handling corruption cases, including high profile corruption, then even the establishment of special departments within the Basic Court in Pristina and the Court of Appeals, will lose its purpose and meaning regarding which were established in the first place.

Another distinctive of SPRK is the fact that prosecutors within this prosecution is related to the fact that prosecutors in this prosecution office are not specialized in specific fields, including the specialization in corruption cases and economic crimes. Prosecutors in the SPRK continue to handle different cases of several fields all in the same time. Now it is a practice that SPRK prosecutors in the same time investigate cases of organized crime, corruption, war crimes, Money laundering, murder, trafficking etc.

Such approach of prosecutorial system and the SPRK directly affects the distribution of responsibility to all prosecutors and the reduction of efficiency at work.

SPRK at the end of this reporting period has 27 corruption cases unsolved with 150 individuals involved.

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<sup>2</sup> Kosovo Law Institute. Report – Impunity of Corruption, risk for society and state. March 2019.

Kosovo Police still remains the largest submitter of corruption cases also in SPRK, with 68 cases, then come the citizens with 29 cases and with 30 cases received in competence from the Basic Prosecutions in Kosovo.

SUBMITTERS OF CRIMINAL REPORTS	Unsolved in the beginning (January 1, 2019)	Received (January 1 – September 30, 2019)	Solved (January 1 – September 30, 2019)	Manner of solving			Unsolved (January 1 – Septembe r 30, 2019)
				Dismissal	Break	Other way	
	Individuals	Individuals	Individuals	Individua ls	Individua ls	Individua ls	Individual s
Anti Corruption Agency		1	1			1	
Kosovo Police	9	24					68
Citizen	31	15	9		7	2	29
Prosecutor with self initiative		12					12
Received in competence	9	25	4			4	30
Kosovo Customs	9						9
EULEX	8		6		6		2
<b>Total:</b>	66	77	20		13	7	150

**Table 9 – Corruption cases handled by SPRK based on the submitters for the nine-month period of 2019.**

## b) Handling preliminary investigations of corruption cases from the SPRK

Similar situation can be found in the cases registered as PPN. SPRK at the beginning of the year 2019 had inherited 33 cases with 39 individuals from prior years, while during the reporting period has received 55 cases with 138 individuals involved. From 1 January until September 30, 2019, SPRK has solved 51 cases with 134 individuals, where against 48 individuals the investigations have been closed, in no case was filed an indictment and against 86 individuals, cases were solved in another manner.

Corruption cases in SPRK (January 1 – September 30, 2019)	Unsolved in the beginning (January 1, 2019)		Received (January 1 – September 30, 2019)		Solved (January 1 – September 30, 2019)		Manner of solving				Unsolved in the end (30 September, 2019)	
	Cases	Individuals	Cases	Individuals	Cases	Cases	Dismissal	Break	Indictment	Other way	Cases	Individuals
							Individuals	Cases	Individuals	Cases		
<b>SPRK</b>	31	96	56	138	51	134	48			86	45	121

**Table 10 – Preliminary corruption cases handled by SPRK during the nine-month period of 2019.**

The largest number of reporting cases PPN in the SPRK come from citizens, against 55 individuals, then comes the Kosovo Police with cases against 25 individuals.

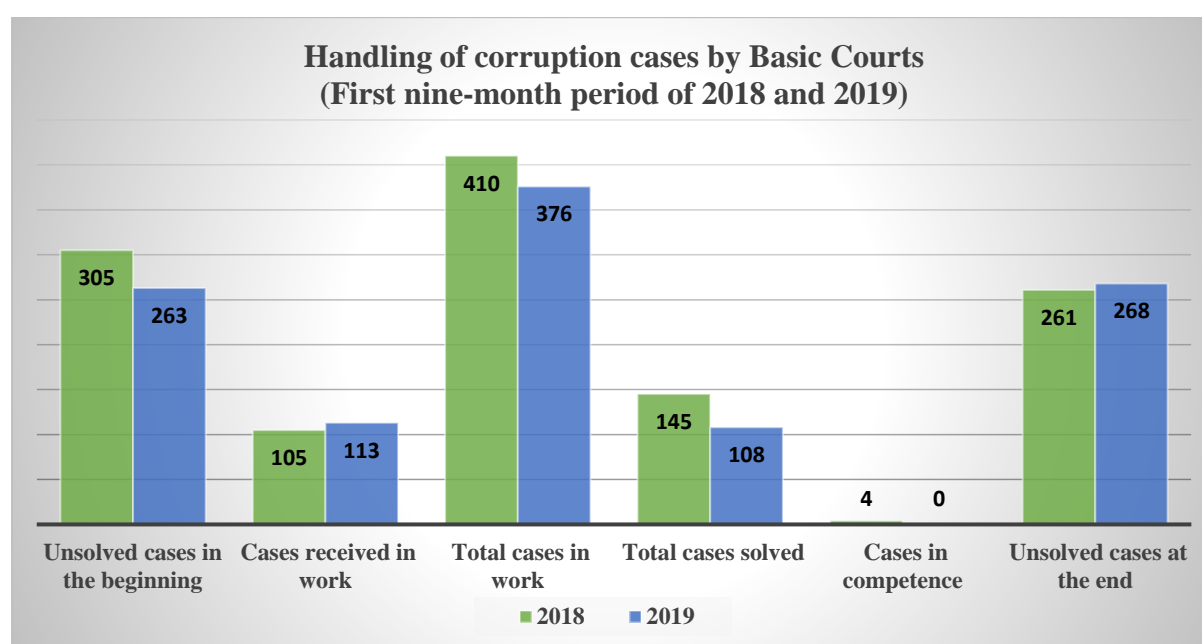
SUBMITTERS OF CRIMINAL REPORTS	Unsolved in the beginning (January 1, 2019)		Received (January 1 – September 30, 2019)		Solved (January 1 – September 30, 2019)		Manner of solving			Unsolved in the end (30 September, 2019)
	Individuals	Individuals	Individuals	Individuals	Individuals	Individuals	Dismissal	Break	Other way	Individuals
							Individuals	Individuals	Individuals	
<b>Anti Corruption Agency</b>				1	1				1	
<b>Kosovo Police</b>	7		22		4	1			3	25
<b>Citizen</b>	43		96		102	36			66	55
<b>Received in competence</b>	46		19		27	11			16	41
<b>Total:</b>	96		138		134	50			84	121

**Table 11 – Preliminary corruption cases handled by SPRK based on submitters during the nine-month period of 2019.**

## V. Sentencing policy of corruption cases based on the Tracking Mechanism – KJC

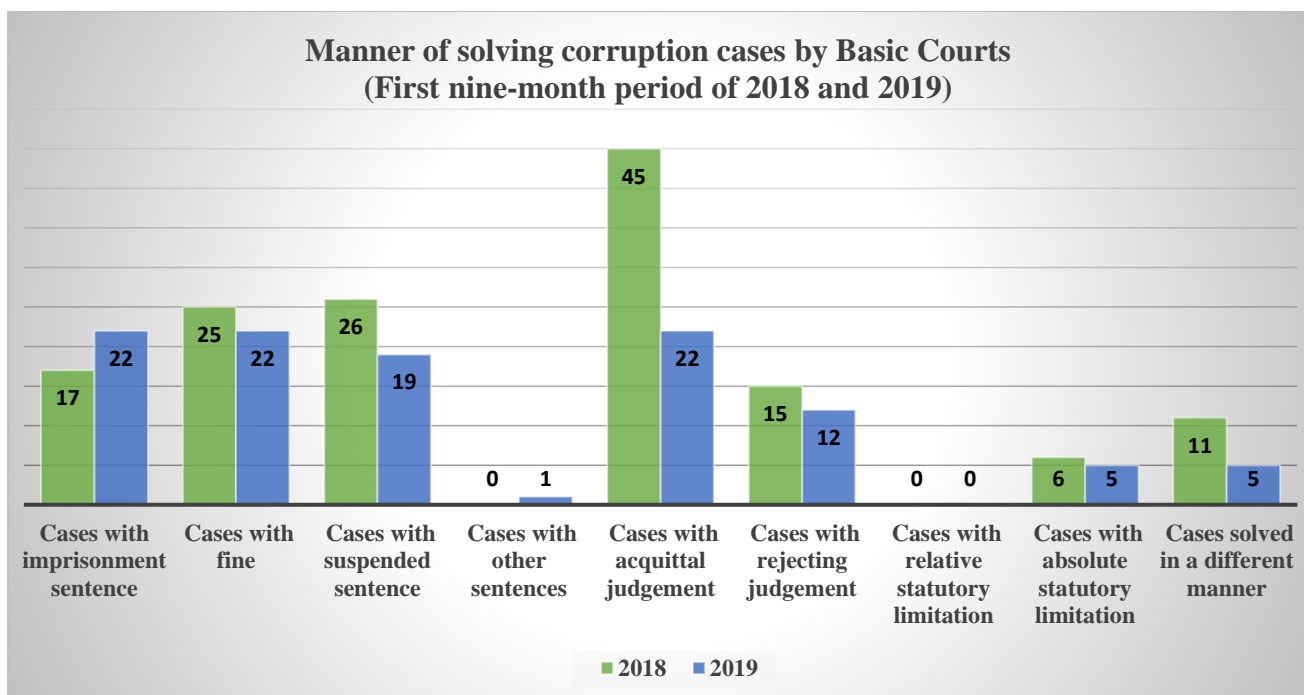
Sentencing policy in corruption cases remains still low, which is mostly based on imposing suspended punishments and punishments of a fine. KLI assesses that such sentences do not achieve its purpose, considering that the corruption phenomenon remains to be seen as the cancer of society, economic development and European perspective.

Sentencing policy based on a comparative analysis of the first nine months of 2018 and 2019, results that in the first nine months of 2019 have been solved 37 less cases than in the first nine months of the year 2018. (See chart)



**Chart 4 – Handling of corruption cases from the Basic Courts during the first nine months of the years 2018 and 2019.**

Different from the year 2018, in the year 2019 imprisonment punishments have increased, whereas suspended punishments, punishments of a fine and judgments of acquittal have decreased. (See chart)



**Chart 5 – Manner of solving corruption cases from the Basic Courts during the first nine months of 2018 and 2019.**

***Court decisions in corruption cases based on Tracking Mechanism of KPC***

Data of Tracking Mechanism of KPC show that Courts of Kosovo during this reporting period (*January 1 – September 30, 2019*) have rendered decisions against 116 individuals charged from SP, for corruption criminal offences, of whom against 61 individuals the courts have rendered judgment of conviction, against three individuals the courts have dismissed the indictment prior to the main trial, 9 accused were found not guilty with a judgment of acquittal, whereas against 43 individuals the indictments have been rejected.

Out of 61 convicted individuals, the courts have found guilty 13 individuals against whom the indictment was filed by the BP in Pristina, 17 against whom the indictment was filed from the BP in Prizren, 11 against the indictment was filed by the BP in Gjakova, 8 against whom the indictment was filed by the BP in Mitrovica, 7 against whom the indictment was filed from the BP in Ferizaj and 5 against whom the indictment is filed from the BP in Peja. (See table)

Prosecution office	Number of individuals against whom the Court has rendered a decision regarding indictments	The indictment was dismissed before the main trial	The defendant is found GUILTY	The defendant is released	For the defendant the Indictment was rejected
<b>SPRK</b>					
<b>Pristina</b>	16	1	13	1	1
<b>Prizren</b>	22	1	17	2	2
<b>Peja</b>	10		5		5
<b>Gjilan</b>					
<b>Mitrovica</b>	14	1	8	5	
<b>Ferizaj</b>	43		7	1	35
<b>Gjakova</b>	11		11		
<b>Total</b>	116	3	61	9	43

Table 12 – Judicial decision regarding corruption cases based on the Tracking Mechanism of KPC.

## VI. Monitoring of corruption cases by KLI

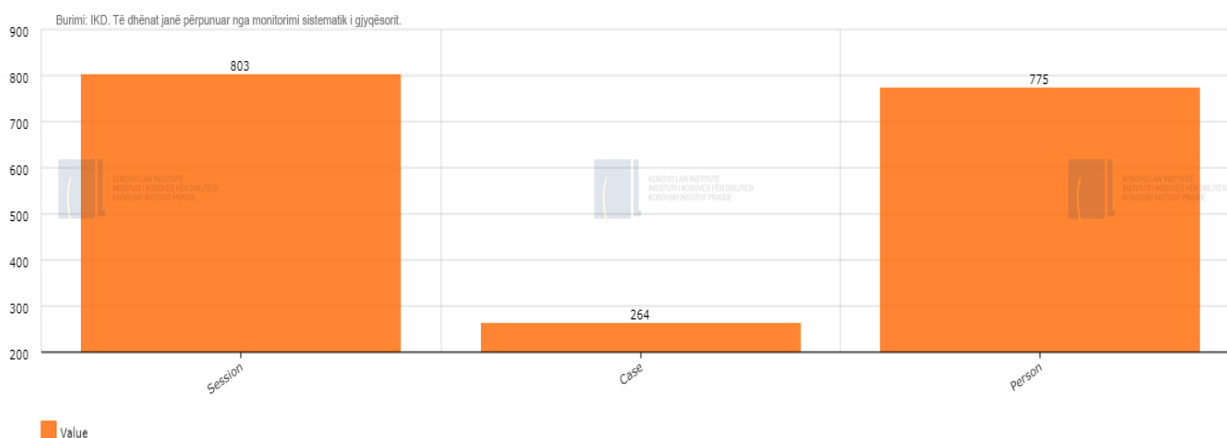
KLI since June 2015, monitors corruption cases in all Basic Courts of the Republic of Kosovo. The team of KLI researchers, since June 2015 continuously in daily basis have visited all Courts Presidents of Basic Courts to closely monitor each case related to corruption offenses. The monitoring included the process of identifying cases of corruption at work, scheduling and case allocation, information at what stage of the proceedings these cases are in the courts and their reporting to the public on a daily basis through the website.<sup>3</sup> Identifying cases of corruption and securing the hearing schedule have been and remain a challenge for KLI monitoring team.<sup>4</sup>

<sup>3</sup>KLI, in cooperation with Public Radio Television, co-produce a special program for the rule of law "Oath for Justice". In addition, the portal "Oath for Justice" has been developed, in which, in addition to the research, analysis and debates that take place on the program, KLI monitoring team daily reports on all corruption cases are also available. These reports are published through a special rubric and is available on:

<https://betimiperdrejtesi.com/lajme/>

<sup>4</sup> BC's still do not have an efficient and effective system of updating the database on the timetable for holding hearings in general and for corruption cases. Initially, KLI established communication through the Court Presidents and spokespersons of respective courts, that informed the KLI monitoring team about the hearing schedule for corruption cases. However, this practice has not worked in the best way, because the spokespersons have sent incomplete and inaccurate information on the schedule of hearings to the KLI monitors, which has caused problems for their monitoring. This communication has progressed daily, but there are still practical problems associated with the timetable of hearings for corruption cases. In view of these challenges, KLI, using the positive legislation to have access to all the necessary information about these cases, has signed a Memorandum of Understanding with the KJC, which facilitates better access, communication, cooperation and coordination in between KLI and KJC monitors, respectively at all levels of the Courts and Presidents.

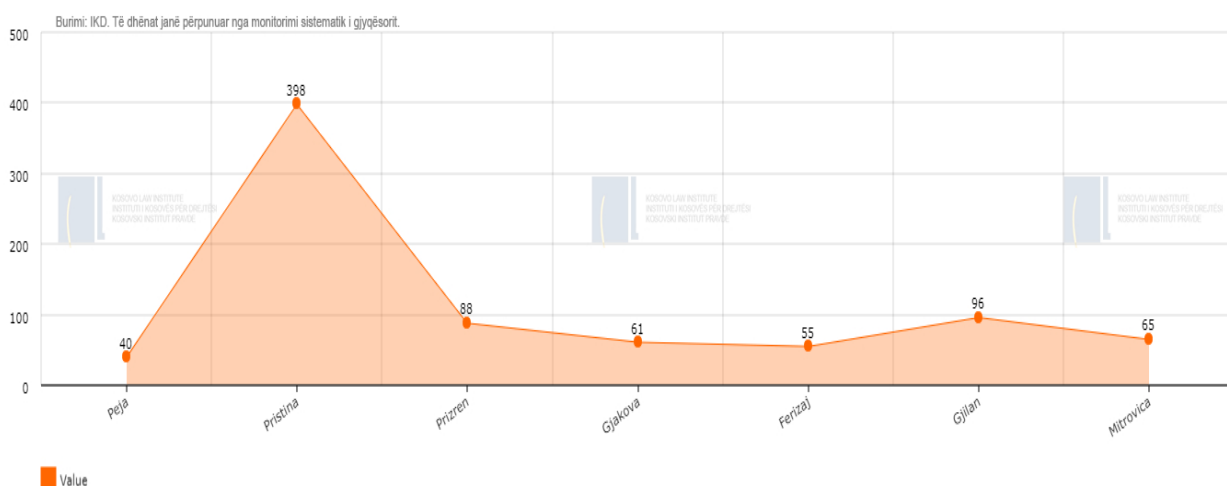
KLI researchers from January 1 until September 30, 2019 have monitored 803 court hearings, of 264 corruption cases involving 775 individuals. (See the chart below).



**Chart 6 – Corruption cases monitored by KLI (January 1 – September 30, 2019).**

#### a) Special analysis of corruption cases

In this report, subject of research and analysis are cases of corruption monitored during the first nine months of 2019 (*January, February, March, April, May, June, July, August and September 2019*). During this reporting period, KLI has monitored 803 court hearing in the Basic Courts of the Republic of Kosovo. (*See chart*)

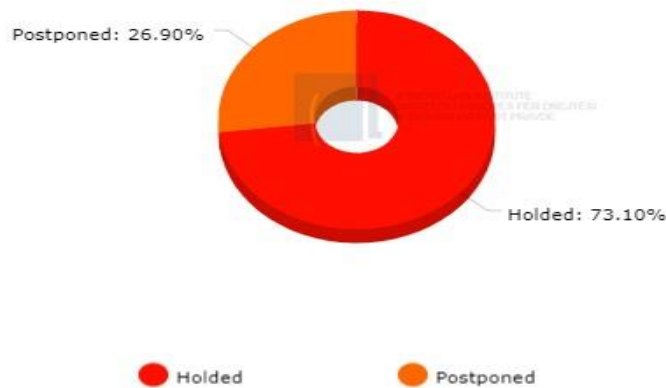


**Chart 7 – Court hearings monitored on corruption cases during the reporting period January 1 – September 30, 2019.**

The largest number of court hearings monitored includes the BC in Pristina with 398 court hearings monitored. BC in Gjilan follows with 96 court hearings monitored, BC in Prizren with 88 court hearings monitored, BC in Mitrovica with 65 court hearings monitored, BC in Gjakova with 61 court hearings monitored, BC in Ferizaj with 55 court hearings monitored and the BC in Peja with 40 court hearings monitored.

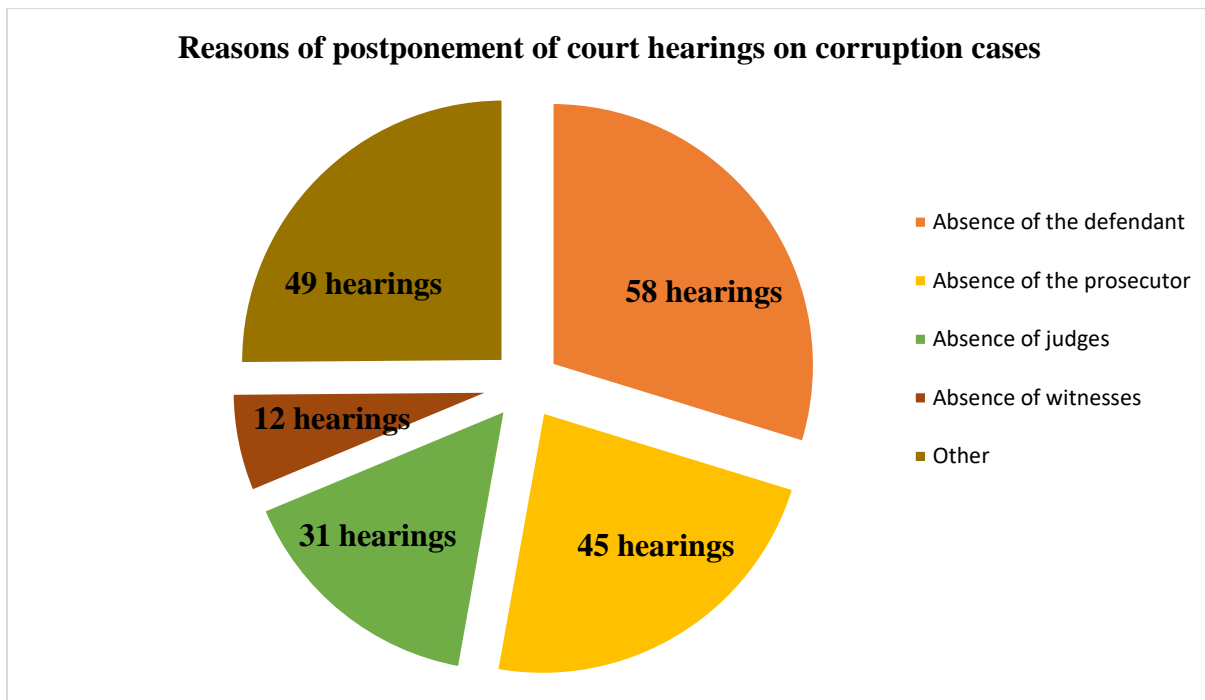


Of these 803 court hearings, 587 of them were held, whereas as a result of not having legal conditions, 216 other court hearings were postponed. (See chart)



**Chart 8 – Number of court hearings held and postponed during the period January 1 – September 30 2019.**

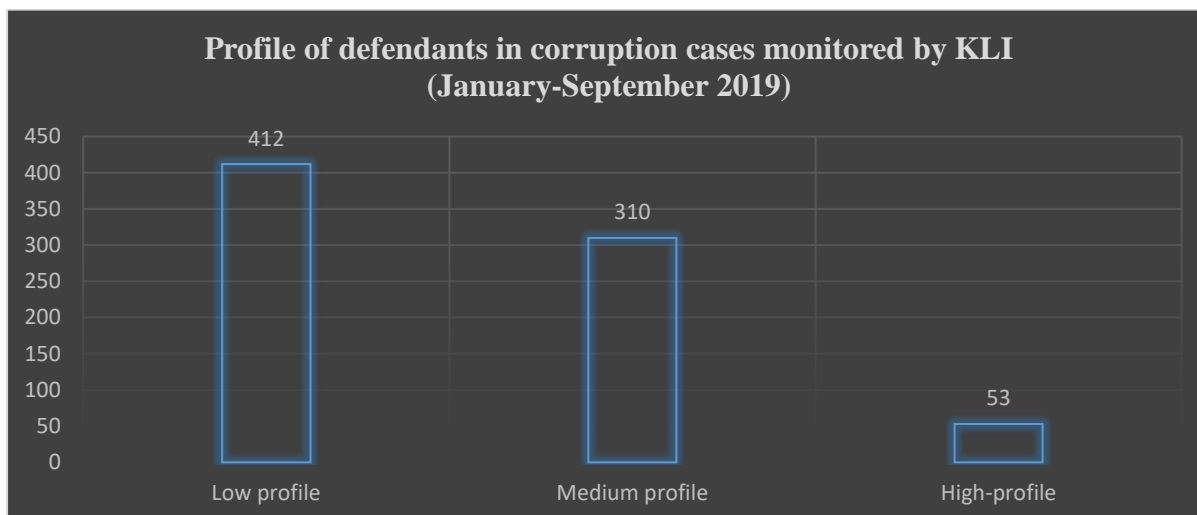
The reasons of postponement of court hearings are different, from the absence of the accused, prosecutors, attorneys, judges, witnesses and other reasons such as the absence of the injured party, expert, not having delivered case files in time etc. (See chart)



**Chart 9 - Reasons of postponement of monitored corruption court hearings during the period January 1 – September 30, 2019.**

## b) Profile of the defendants in corruption cases

In these 264 cases of corruption monitored by KLI during the first nine months of 2019 (January – September), are involved all profiles of the defendants. Out of 775 defendants, 412 belong to low profile, 310 belong to medium profile and 53<sup>5</sup> belong to high profile. (See chart)



**Chart 10 – Profile of the defendants in corruption cases (January – September 2019).**

## c) Sentencing policy in corruption cases

KLI assesses that the sentencing policy in corruption cases is still soft. During this reporting period, KLI has reported of 105 judgments announced by the Basic Courts in the Republic of Kosovo in corruption cases, against 189 individuals involved in corruption cases. Out of those, 170<sup>6</sup> individuals are accused of several corruption offenses, whereas 19 of them are involved in these cases, but are charged with non-corruptive offenses.

Judgments announced in the first instance against these 170 individuals show that judges mostly implement a soft sentencing policy against perpetrators of criminal corruption offenses. Therefore, KLI assesses that the sentencing policy in corruption cases remains to be soft and no adequate to fulfill the purpose of sentencing.

Against 95 of 170 individuals is announced conviction judgment, whereas 75 individuals have been acquitted of corruption charges. Below you can see the table that shows the details of these decisions regarding the sentences imposed to judges in these 105 judgments on corruption cases. (See table)

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<sup>5</sup> Clarification: The profile data for senior officials have been calculated based on the Instruction of the Chief State Prosecutor, when a corruption offense will be considered high-level, divided by the position and value of the damage caused (November 3, 2016)

<sup>6</sup> Clarification: Of 170 accused individuals for corruption offenses, against whom during this reporting period a judgment was announced from the first instance, 2 of them are involved in more than one case.

Punishment of imprisonment		Suspended punishment		Punishment of a fine		Judgment of Acquittal	Rejection Judgment	Dismissal of Indictment
Individuals	Months	Individuals	Months	Individuals	Amount in euro	Individuals	Individuals	Individuals
31 <sup>7</sup>	435	44 <sup>8</sup>	424	20	45,600	63 <sup>9</sup>	11	1

**Table 13 – Cases of judgments monitored by KLI.**

KLI findings, based on the monitoring of these corruption cases, show that in cases against 343 individuals against whom a judgment was rendered during the first nine months of 2019, against 31 individuals' punishment of imprisonment has been imposed, in a total of 435 months or 36 years and 3 months for all convicted individuals.

Out of 31 individuals convicted with effective imprisonment, one individual is punished to 1 months of effective imprisonment, one individual has been sentenced to 2 months of effective imprisonment, one individual<sup>10</sup> was sentenced to 3 months of effective imprisonment, eleven individuals<sup>11</sup> have been sentenced to 6 months of effective imprisonment, one individual<sup>12</sup> has been sentenced to 8 months of effective imprisonment, four individuals<sup>13</sup> have been sentenced to 9 months of effective imprisonment, one individual was sentenced to 10 months of effective imprisonment, one individual was sentenced to 12 months of effective imprisonment, one individual<sup>14</sup> was sentenced with 15 months of effective imprisonment, three individuals were sentenced with 24 months of effective imprisonment each, three individuals were sentenced with 30 months of imprisonment each, one individual was sentenced to 36 months of imprisonment and two individuals were sentenced to 42 months of effective imprisonment.

Judges against 44 individuals have imposed suspended punishments of 424 months. Out of them, one individual was sentenced to a suspended punishment of 3 months, thirty individuals<sup>15</sup>

<sup>7</sup> Clarification: Out of 31 individuals punished to effective imprisonment, 8 of them are the same to whom a punishment of a fine in the total amount of 7,750 Euro has been imposed.

<sup>8</sup> Clarification: Out of 44 individuals punished of suspended imprisonment, 14 of them are the same to whom a punishment of a fine in the total amount of 17,950 Euro has been imposed

<sup>9</sup> Clarification: One of the individuals acquitted of corruption, is the same who during this reporting period was acquitted in two other cases. Also, one of the other individuals acquitted of corruption, is the same against whom in the second case was announced a rejection judgment, because the prosecutor withdrew from prosecution.

<sup>10</sup> Clarification: The individual sentenced to imprisonment of 3 months, is the same against whom a punishment of a fine was imposed in the amount of 250 euro.

<sup>11</sup> Clarification: Out of 11 individuals sentenced of imprisonment of 6 months each, 4 of them are the same against whom a punishment of a fine was imposed in the amount of 4,200 euro.

<sup>12</sup> Clarification: The individual sentenced of 8 months of imprisonment is the same one against whom a punishment of a fine was imposed in the amount of 1,000 euro.

<sup>13</sup> Clarification: Out of 4 individuals punished of 6 months of imprisonment each, 1 of them is the same against whom a punishment of a fine in the amount of 2,000 euros was imposed.

<sup>14</sup> Clarification: The individual punished to 15 months of imprisonment is the same one against whom a punishment of a fine in the amount of 300 euros was imposed.

<sup>15</sup> Clarification: Out of 30 convicted individuals with a suspended punishment of 6 months each, 10 of them are the same against whom a punishment of a fine in the amount of 13,250 euro was imposed.

were sentenced with a suspended punishment of 6 months each, one individual was sentenced to a suspended punishment of 7 months, four individuals<sup>16</sup> were sentenced to a suspended punishment of 12 months each, one individual<sup>17</sup> was sentenced to a suspended punishment of 18 months and seven individuals were sentenced to a suspended punishment of 24 months each.

Judges against 20 individuals have imposed suspended punishments of a fine in a total of 45,600 euros. Out of them, one individual was sentenced to a punishment of a fine in the amount of 100 euros, one individual was sentenced to a punishment of a fine in the amount of 300 euros, two individual shave been sentenced to a punishment of a fine in the amount of 400 euros, two individuals were sentenced to a punishment of a fine in the amount of 50 euro, one individual was sentenced to a punishment of a fine in the amount of 600 euros, one individual was sentenced to a punishment of a fine in the amount of 700 euros, one individual was sentenced to a punishment of a fine in the amount of 1,800 euro, on individual was sentenced to a punishment of a fine in the amount of 2,500 euro. one individual was sentenced to a punishment of a fine in the amount of 2,800 euros, four individuals were sentenced to a punishment of a fine in the amount of 3,000 euros, four individuals were sentenced to a punishment of a fine in the mount of 4,000 euros and one individual was sentenced to a punishment of a fine in the amount of 7,000 euros.

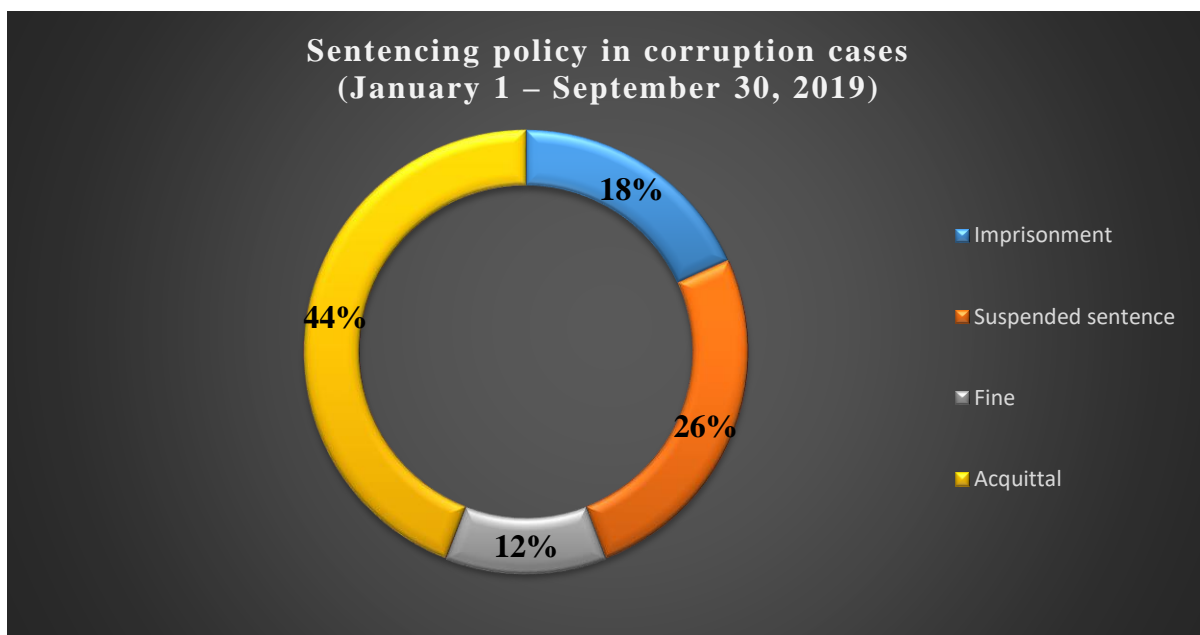
Judges against 36 individuals have announced a judgment of acquittal, whereas against 11 individuals have announced a rejection judgment, while against 1 individual have dismissed the charges.

Out of 170 individuals accused, Courts result that have imposed effective imprisonment to 31 individuals or 18% of the accused. Also, out of these 170 accused individuals, judges against 44 individuals have imposed suspended punishments or in 26% of them, against 20 individuals have imposed punishments of a fine or 12% of them, whereas 75 individuals were acquitted or 44% of them. (*See chart*)

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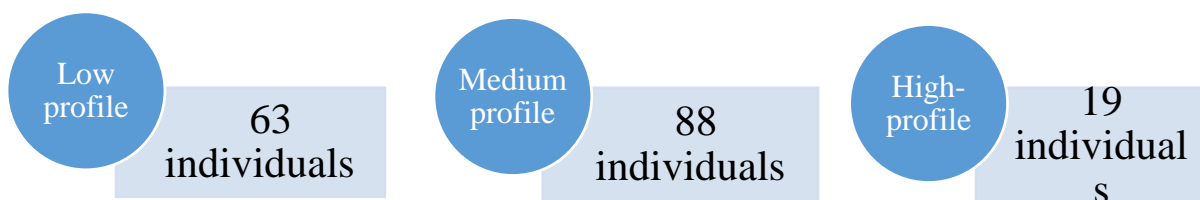
<sup>16</sup>*Clarification:* Out of 4 individuals sentenced to a suspended punishment of 6 months each, 3 of them are the same against whom a punishment of a fine in the amount of 1,700 euro was imposed.

<sup>17</sup>*Clarification:* The individual sentenced to a suspended punishment of 18 months, is the same one against whom a punishment of a fine in the mount of 3,000 euros was imposed.



**Chart 11 – The percentage of judgments announced by the Basic Courts during the period January 1 – September 30, 2019.**

In these cases of corruption in which the judgment was announced, all profiles of the accused individuals were included. Out of these, 63 individuals belong to low profile, 88 medium profile and 19 individuals belong to high profile. (See chart)












**Chart 12 - Profile of accused individuals for corruption criminal offences, against whom a judgment was announced by a Basic Court, during the reporting period (January - September 2019).**

Part of high profile individuals against whom the Basic Courts have announced judgments are: former MP Naser Osmani (judgment of acquittal), former Mayor of Kllokot Sasha Mirkoviq (judgment of acquittal in three cases), former Minister of Health Ferid Agani (judgment of conviction – 30 months of effective imprisonment), former Mayor of Skenderaj Municipality Sami Lushtaku (judgment of acquittal), former PRB Head Hysni Hoxha (judgment of acquittal), former Mayor of Klina Municipality Sokol Bashota (judgment of conviction – six months of suspended imprisonment and 1000 euros of fine). Because of the large amount of the damage that is allegedly caused by committing criminal offenses, as high profile are lined also officials of the Kosovar Privatization Agency (KPA) Melita Ymeraga, Adrian Kelmendi, Bahri Shabani, Shkëlzen Lluka dhe Naim Avdiu (judgment of acquittal), former secretary of the Ministry of Health Gani Shabani (judgment of conviction – 24 months of effective imprisonment), former Director of KEK Arben Gjukaj (judgment of acquittal), the official of

KEK Azem Duraku (judgment of acquittal), former Director of procurement in KEK Driton Pruthi (judgment of acquittal), businessman Esat Tahiri (judgment of acquittal), KFOR contractors on cigarette import (judgment of conviction – 24 months of suspended imprisonment each).

Furthermore, out of 95 individuals against whom Basic Courts have announced judgment of conviction during this reporting period, against 4 of them was imposed accessory punishment, prohibition on exercising a profession for a specific period of time, whereas against 11 individuals were confiscated assets that were allegedly part of the commission of criminal offences, and that mostly we deal with Money in the amount of 10 euro.

 <b>For 1 individual</b>	Accessory punishment: prohibition on exercising a profession for a period of time of two years.
 <b>For 3 individuals</b>	Accessory punishment: prohibition on exercising a profession for a period of time of one year.
 <b>For 1 individual</b>	Confiscation: two banknotes of five euros.
 <b>For 5 individuals</b>	Confiscation: banknotes of 10 euros.
 <b>For 1 individual</b>	Confiscation: banknotes of 20 euros.
 <b>For 1 individual</b>	Confiscation: banknotes of 50 euros.
 <b>For 1 individual</b>	Confiscation: the amount of 5,086.75 euro.
 <b>For 1 individual</b>	Confiscation: two cars, one “BMW” and the other a “Daimler Chrysler”.
 <b>For 1 individual</b>	Confiscation: a black colored set with a key, with the amount of 4,179 euros, one “Audi 8E” as well as the vehicle’s certificate of registration, two falsified stamps, “BMW” car, “Renault Twingo” car, as well as the amount 20,055.58 euro.

**Table 14 – Accessory punishments imposed by Basic Courts and confiscation of assets that is alleged to be part of the commission of the criminal offenses.**

KLI without commenting the merits of decision making on these corruption cases, expresses its concern that the sentencing policy that is implemented by judges in corruption cases is not sending a clear message to the potential perpetrators of such criminal offences. This kind of sentencing policy, imposing soft imprisonment punishments or suspended punishments and punishments of a fine, send a negative message to the citizens and the public. Also, these soft punishments imposed cannot reach their purpose for which the punishment is imposed in the first place. So, it does not reach the purpose of punitive character, against those who were found guilty of committing criminal offenses, or preventive character, that unables to send a clear message to individuals who may be subject of committing criminal offenses of corruption.

#### d) Duration of court proceedings in corruption cases

Failures to respect legal deadlines in handling corruption cases appear at all levels of justice system, including delays in police, prosecution offices and courts.<sup>18</sup> Delays in solving cases have a direct effect in violating the rights of citizens of the Republic of Kosovo,<sup>19</sup> which are guaranteed by the Constitution of the Republic of Kosovo.<sup>20</sup>

Through monitoring of the handling of corruption cases in prosecution offices and courts, including all stages of criminal proceeding, KLI presents the real state on how long it takes the institutions responsible for handling a case of corruption, from the submission of the criminal report until the announcement of the verdict, as well as the delays and violations identified during the treatment of these cases.

Out of 803 court hearings monitored in all seven BC, all involving about 264 corruption cases, KLI has identified violations in all stages of the proceedings. KLI has set several indicators to measure the time spent on handling the case at each stage of criminal proceedings, including: 1) The time period from the submission of the criminal report until the initiation of investigations<sup>21</sup> 2) the time period from the initial of investigations until the completion of investigations; 3) the time period from the initiation of investigations until filing the indictment<sup>22</sup>; 4) the time period from the completion of investigations until filing the

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<sup>18</sup> Miftaraj E. and Musliu B. *“Fighting corruption in Kosovo, a priority on paper”*. Kosovo Law Institute. Pristina. December 10, 2015.

<sup>19</sup>All reports of the Ombudsperson in the Republic of Kosovo highlight the continued violation of the rights and freedoms of citizens from the justice system in the country. See the Ombudsperson's annual reports. (See link <http://www.ombudspersonkosovo.org>).

<sup>20</sup>Article 31 “Right to fair and impartial trial”. Constitution of the Republic of Kosovo. June 15, 2008.

<sup>21</sup> Article 82, “Dismissal of Police Criminal Report”. 1. The state prosecutor shall issue a decision dismissing a criminal report received from the police or another source within thirty (30) days if it is evident from the report that:

1.1. there is no reasonable suspicion that a criminal offence has been committed; 1.2. the period of statutory limitation for criminal prosecution has expired; 1.3. the criminal offence is covered by an amnesty or pardon; 1.4. the suspect is protected by immunity and a waiver is not possible or not granted by the appropriate authority; or 1.5. there are other circumstances that preclude prosecution. Criminal Procedure Code of the Republic of Kosovo. Assembly of Republic of Kosovo. December 13, 2012.

<sup>22</sup> Article 159, “Time Limits of Investigation”, 1. If an investigation is initiated, the investigation shall be completed within two (2) years. If an indictment is not filed, or a suspension is not entered under Article 157 of this Code, after two (2) years of the initiation of the investigation, the investigation shall automatically be terminated. Criminal Procedure Code of the Republic of Kosovo. Assembly of Republic of Kosovo. December

indictment; 5) the time period from the submission of the criminal report until filing the indictment; 6) the time period from filing the indictment until the scheduling of the initial hearing<sup>23</sup>; 7) the time period from the initial hearing until the appointment of the second hearing<sup>24</sup>; 8) the time period from the second hearing until the appointment of the main trial; 9) the number of hearings that were held and 10) the time period from the main trial until the announcement of the verdict of the first instance<sup>25</sup>.

Based on these indicators, KLI has measured corruption cases monitored during the first nine months of 2019 (January – September). KLI findings show that prosecutors and judges have constantly violated the legal deadlines set by the Criminal Procedure Code. In the graph below, KLI has presented some of these indicators of certain criminal proceedings stages and the average of the time spent for each of these stage as a result of practical monitoring and research, as well as legal analysis.<sup>26</sup> (*See chart*)

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13, 2012.

<sup>23</sup> Article 242, “Procedure for Filing the Indictment”; Paragraphs 4 and 5; 4. 4. The single trial judge or presiding trial judge shall immediately schedule an initial hearing to be held within thirty (30) days of the indictment being filed. 5. If the defendant is being held in detention on remand, the initial hearing shall be held at the first opportunity, not to exceed fifteen (15) days from the indictment being filed. Criminal Procedure Code of the Republic of Kosovo. Assembly of Republic of Kosovo. December 13, 2012.

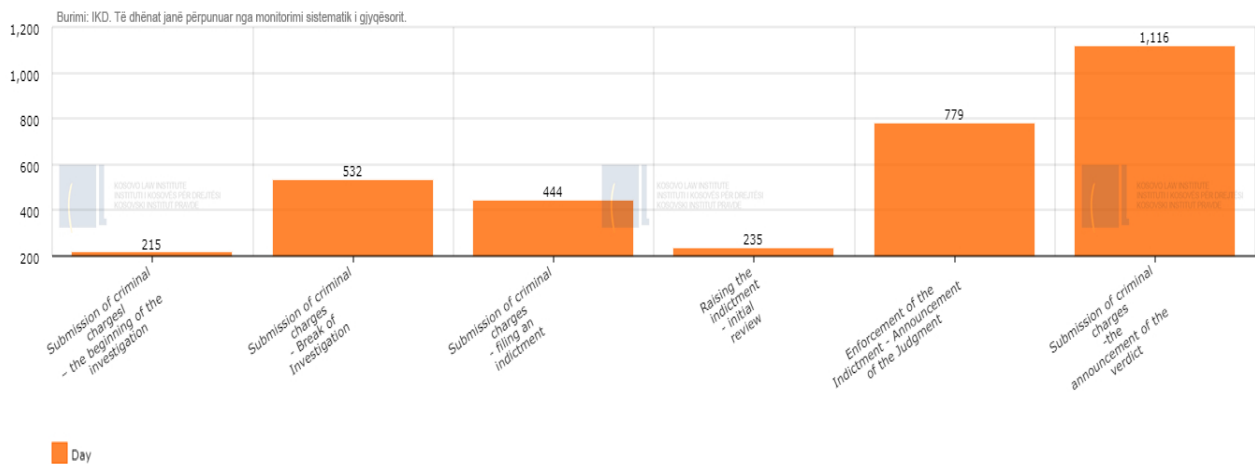
<sup>24</sup> Article 245, “The Initial Hearing”, paragraph 5. During the initial hearing, the single trial judge or presiding trial judge shall schedule a second hearing no less than thirty (30) days after the initial hearing, and no more than forty (40) days after the initial hearing. In the alternative, the single trial judge or presiding trial judge may only require the filing of motions by a date set no more than thirty (30) days after the initial hearing. Criminal Procedure Code of the Republic of Kosovo. Assembly of Republic of Kosovo. December 13, 2012.

<sup>25</sup> Chapter XIX, MAIN TRIAL, Article 285 Scheduling of Main Trial, paragraph 2) 2. The single trial judge or presiding trial judge shall schedule the main trial to commence within one (1) month from the second hearing or the last order issued under Article 254 paragraph 5 of the present Code. Criminal Procedure Code of the Republic of Kosovo. Assembly of Republic of Kosovo. December 13, 2012.

Article 314, “Time to Complete Main Trial”; 1. Unless the single trial judge or trial panel adjourns the main trial under Article 310 of the present Code, the main trial shall be completed within the following time limits: 1.1. if the main trial is before a single trial judge, the main trial shall be completed within ninety (90) days, unless the single trial judge issues a reasoned decision to extend the time for the main trial for one of the reasons in paragraph 2 of the present Article. 1.2. if the main trial is before a trial panel, the main trial shall be completed within one hundred and twenty (120) days, unless the trial panel issues a reasoned decision to extend the time for the main trial for one of the reasons in paragraph 2 of the present Article. 2. The main trial may be extended by a reasoned decision under paragraph 1 of the present Article if there exist circumstances which require more time, including but not limited to: 2.1. there are an unusually large number of witnesses; 2.2. the testimony of one or more witnesses is unusually lengthy; 2.3. the number of exhibits is unusually big; or 2.4. the security of the trial requires the extension. 3. The main trial may be extended for thirty (30) days for each decision under paragraph 1 of the present Article. Criminal Procedure Code of the Republic of Kosovo. Assembly of Republic of Kosovo. December 13, 2012.

<sup>26</sup> *Note:* The measures for each indicator in each stage differ in terms of the number of cases. KLI has measured and analyzed only those cases for which monitors have managed to provide the completed data about the each stage of the criminal procedure set in indicators.





**Chart 13 - The average of criminal proceedings duration in corruption cases monitored by KLI (January – September 2019).**

As can be seen from the graph above, at each of the stages of criminal proceedings, prosecutors and judges have violated the legal deadlines, meanings thus they have also violated the rights of the defendants in criminal proceedings. The handling of a corruption case from the submission of the criminal report until the announcement of the judgment lasted more than three years or 1116 days. From the submission of the criminal report until the initiation of investigations, the average of duration is 215 days. From the submission of the criminal report until the filing of indictment, the average of duration is 444 days. From the filing of indictment until the initial hearing, the average of duration is 235 days. From the filing of indictment until the announcement of the judgment, the average of duration 779 days. The handling of corruption cases, with this average of legal deadlines, proves that prosecutors and judges constantly violate the law and do not respect prosecutorial and judicial system policies to address corruption cases with priority. Consequently, defendants in criminal proceedings of corruption cases are constantly subject to violations of rights to resolve their cases in a reasonable time.

## VII. Handling of corruption cases by the Court of Appeal

Within the systematic monitoring of the judicial system in Kosovo, the KLI during the first nine months of 2019, has also monitored the Appeal Court.

For this reporting period (*January 1 - September 30, 2019*), KLI's monitors have monitored total 163 hearings held at the Appeal Court, of which 20 were corruption cases with a total of 34 charged with criminal offenses of corruptive nature, whereas, other monitored hearings were related to criminal offenses of other fields.

None of these 20 monitored hearings had been adjourned or failed to be held for any reason, but the small number of public hearings held in the Appeal Court for corruption cases, reflects better also the soft punitive policy that the courts in Kosovo implement in corruption cases.

This is because the law itself, in particular paragraph 1 of Article 390 of the Criminal Procedure Code of the Republic of Kosovo enables the Appeal to hold public hearings only in cases when the sentences imposed by the first instance are with effective imprisonment, and such a thing is rare in corruption cases in Kosovo.

As in the past, not even during this first nine-month period of 2019, there was not imposed even a conviction judgment with effective imprisonment been pronounced for any accused of high-profile regarding corruption cases.

Even, the Appeal during this period has canceled a first instance judgment, which in a high-profile case had imposed sentence with three years effective imprisonment for corruption and returned this case in retrial, whereas a sentence with effective imprisonment imposed against a former MP of the Kosovo Assembly by the Appeal Court, was canceled by the Supreme Court and returned the case in retrial.

Otherwise, during this period, the Appeal Court has decided regarding the appeals of the parties even in some cases of high profile.

- On May 30, 2019, the Appeal Court had finally acquitted from charges for corruption acting Deputy Prime Minister, **Fatmir Limaj**, the Acting Minister of Trade and Industry, **Endrit Shala**, and three other accused in the MTPT's case, **Shpetim Telaku**, **Nexhat Krasniqi** and **Florim Zuka**. The second instance rejected the appeal of the Special Prosecution Office of the Republic of Kosovo (SPRK), which, because of allegations that the judgment of the Basic Court was involved with the violations, requested that the case be returned in retrial.

Limaj and others in this case were charged for organized crime related to the criminal offenses of "Abusing official position or authority," "Accepting Bribes", "Giving bribes" "Abuse of authorizations in economy" and "Non declaration of money received for campaign".

For this case, the first indictment was filed on December 5 2012, the second indictment on February 19 2014, whereas the consolidated indictment was filed by the SPRK on

September 28 2015, by which the two previous indictments were attached of MTPT 1 and MTPT 2 cases.

Regarding this indictment, the Basic Court in Pristina issued a judgment of acquittal for all accused on November 24 2017, while the Appeal had more than a year to decide on the appeal of the SPRK against the judgment of the Basic Court.

- Less than that, the Appeal had to annul a conviction judgment imposed in a case of high profile, such as the "Ferronikel" case, where charged for corruption is the former Mayor of Lipjan, **Shukri Buja**, as well as the accused **Nebih Zeqiri, Halit Gashi, Magbule Sadiku, Fahri Retkoceri, Hasim Vishesella, Edmond Rehxhepi, Driton Avdiu, Burim Kodra and Bajram Rizani**.

Criminal offenses by which the accused are charged in this case are, "Abusing official position", "Illegal construction works", Giving bribes", "Accepting Bribes", and "Exercise of influence".

This case, which is also targeted for visa liberalization, was one of the rare cases where courts in Kosovo have imposed effective imprisonment sentences for the accused of high profile, such as Buja in this case.

However, the judgment of the Basic Court issued on November 5, 2018, which sentenced Buja with three years' imprisonment for corruption, was annulled by the Appeal Court on June 12, 2019, because, as stated in the Appeal decision, the judgment of the Basic Court was involved with essential violations of the procedural provisions. Except Buja, the first instance found guilty for abusing official position, the other accused in this case, Nebih Zeqiri, who was sentenced with two years and six months imprisonment, Halit Gashi with six months' imprisonment, Edmond Rexhepi is sentenced with six months' imprisonment, Bajram Rizani with six months' imprisonment, while Hasim Vishesella was found guilty of accepting bribes and sentenced with five months' imprisonment.

Whereas, Magbule Sadiku, Burim Kodra and Driton Avdiu were acquitted from charges, while against businessman Fahri Retkoceri, was taken a judgment of acquittal for the criminal offense, illegal construction works, while rejected judgment due to statutory limitation was taken for the criminal offense of giving bribes.

- On August 26, 2019, the Appeal Court finally acquitted from charges for corruption the former director of the Kosovo Accreditation Agency (KAA), **Basri Muja**, the former head of the State Council on Quality (SCQ), **Ferdije Zhushi - Etemi and Armend Muja**.

In this case, which is also targeted for visa liberalization, the Appeal confirmed the judgment of the BC in Pristina, which on January 29 2019, acquitted from some points of charges Basri and Armend Muja and Ferdije Zhushi-Etemi, whereas for some other points had taken a rejection judgment.

- The Appeal Court, on March 28 2019, sentenced with effective imprisonment, former deputy of the Kosovo assembly, **Etem Arifi**.

Arifi, who was sentenced from the first instance with two years suspended imprisonment for the criminal of Fraud with subsidies, the Appeal had severed his sentence on effective imprisonment to one year and three months.

Also, the second instance has severed sentence to the other accused in this case, **Bajram**

**Gashi**, by judging the same with one-year effective imprisonment, unlike the first instance who sentenced Gashi with two years suspended imprisonment for the criminal offense of Fraud with Subsidies.

The second instance court, obliged both the accused to compensate the damage caused to Ministry of Labor and Social Welfare (MLSW) in the amount of 22,900 euros whereas the Office of the Prime Minister in the amount of 2749 euros.

Also, the Appeal annulled the judgment of the Basic Court in relation to the criminal offense of Exercising Influence for which MP Arifi was acquitted from the charges from the first instance, returning the case in retrial.

However, this judgment of the Appeal was annulled by the Supreme Court and the case was returned on reinstatement, after the Supreme Court found that the same judge who had decided regarding the appeals at the confirmation stage of the indictment had also attended the college that had issued the judgment in this case.

During this period, the second instance had high profile cases also in the confirmation stage of the indictment.

- The Appeal Court rejected the appeals of accused and remained in force the indictments in the cases of former Mayor of municipality of Gjakova, **Pal Lekaj**, former Mayor of municipality of Gjilan, **Qemajl Mustafa**, former Mayor of municipality of Suhareka, **Sali Asllanaj** and the Mayor of municipality of Istog, **Haki Rugova**.
- The indictment against the former mayor of municipality of Drenas, **Nexhat Demaku**, remained in force, but this happened because previously the Appeal had once returned in reinstatement decision of the Basic Court.
- Also, on August of this year, the Appeal Court rejected the appeals of the accused and let in force also in the case known as "Veterans", where accused for corruption are, **Nuredin Lushtaku, Sadik Halitjaha, Shkumbin Demaliaj, Qelë Gashi, Shukri Buja, Ahmet Daku, Rrustem Berisha, Faik Fazliu, Smajl Elezaj, Fadil Shurdhaj dhe Xhavit Jashari**.
- Whereas, in a rare case, the Appeal Court had canceled had turndown the decision of the Basic Court in Pristina which had dismissed the indictment against former chiefs of Kosovo Telecom, **Agron Mustafa, Ejup Qerimi and Rexhë Gjonbalaj**, instructing the first instance that in this case to proceed with the trial of the accused.
- In other cases, where are not involved the accused of high profile, the Appeal Court, during the first nine months of 2019, decided for the second time regarding the appeals of parties also in the case known as "Contract", where charged for fraud on duty are **Hakif Veliu and Albert Rakipi**.

The first time, the Appeal Court had decided for this case on May 2, 2018, in which Veliu and Rakipi were sentenced with one year effective imprisonment for the criminal offense of "fraud on duty", unlike the first instance which judged two of the accused with six months imprisonment with the possibility of replacement with punishment with a fine from 10 thousand euros, each separately.

However, this case was returned in reinstatement by the Supreme Court, but on April 16, 2019, the Appeal Court again had again taken the same decision as the first time, so Veliu and Rakip were sentenced again with one-year effective imprisonment.

The former Rector of the University of Pristina, Enver Hasani, was also involved in this case, but the same was acquitted by the Appeal Court on May 2018, a decision which was then confirmed by the Supreme Court.

- On January 31, 2019, the Appeal Court returned in retrial the case of the former judge of the Basic Court in Peja, Branch in Decan, **Safete Tolaj**, her son, **Fisnik Tolaj**, and police officer, **Granit Shehaj**, after, according to the Appeal Court, the judgment of the Basic Court is involved in a substantial violation of the essential provisions of criminal proceeding.

According to the Appeal Court decision, as to the rejected part which relates only to the criminal offense of “Unauthorized Ownership or Control of Weapons” for the accused Fisnik Tolaj, the judgment was confirmed.

Former Judge Tolaj and the accused Shehaj on July 13 of 2018 were announced innocent on all points of the indictment, while Fisnik Tolaj was sentenced with a unique sentence from four years and six months imprisonment after being found guilty for two criminal offenses of "exercising influence" and "falsifying the document". This case is targeted for visa liberalization.

- During this period, the second instance had confirmed acquittal judgments also in the case of members of the Procurement Review Body (PRB), **Tefik Sylejmani and Ekrem Salihu**, who were charged for abusing official position or authority. The second instance court rejected the appeal filed by the Basic Prosecution in Pristina, which had requested from the Appeal Court to announce guilty the two accused or to return the case in retrial.
- Also, the acquittal judgments of first instance were also confirmed by the Appeal Court in the case of former Director of the Youth and Sports Palace, **Bajram Uka**, Inspector of Kosovo Tax Administration (KTA), **Violeta Januzi** and Head of the Procurement Office at the Regional Hospital "Dr. Sami Haxhibeqiri", in Mitrovica, **Zylfije Halili**. All of them were charged of that have committed criminal offense of "abusing official position or authority".
- Confirmation of the first instance judgment, but this time conviction, the Appeal Court had taken in the case of the Director of Regional Hospital “Isa Grezda” in Gjakova, **Ahmet Asllani** and five others charged with a tender for the supply with uniforms of this hospital. In this case, with six month suspended imprisonment for the criminal offense "abusing official position or authority," Asllani was sentenced and the accused, **Adnan Brovina**, for exercise of influence was sentenced **Skender Ndrecaj** and **Mirlinda Mullahasani** and **Mentor Bytyqi** for falsification of official document.

Also for falsification of official document, **Kumrije Kameri** was sentenced with three months suspended imprisonment, if within a year she does not commit another criminal offense.

Sentences against these accused will not be executed if the accused does not commit other criminal offenses during the verification period of one year from the finality of the judgment.

Whereas, the criminal proceeding was ceased against the accused for unconscious economic activity, **Mirlinda Shehu-Kaqi** and **Flamur Zeneli**, because against these two of the accused reached the relative statutory limitation of criminal prosecution.

- The sentences imposed by the first instance, the Appeal Court also confirmed to the accused **Nexhmi Ejupi**, who was accused that had attempted to give 50 euros bribe to the police officers, and in another case, two other police officers, **Arben Shala** and **Tafa Murseli**, who was charged that had received 100 euros for not initiating a criminal case.
- Also, the Appeal Court confirmed the sentence of the former Director of the Department of Urology at the University Clinical Center of Kosovo (UCCCK), **Rexhep Kasumaj**. Kasumaj was sentenced for receiving bribes with nine months effective imprisonment and punishment with a fine of 2000 euros.
- “Mercifully” the Appeal was shown in two cases where involved were a large number of police officers.
- On May 2019, 15 of the 20 officials of the Kosovo Police sentenced for receiving bribes by the Basic Court in Prizren on January 2018 their sentences were reduced by the Appeal Court. The accused that benefited from this reduction of sentences, **Shemsi Demolli, Safet Veliu, Naser Rama, Ivica Djokić, Ismail Azemi, Blerim Zylfaj, Bekim Zogaj, Qerim Beqiri, Azem Goxhufi, , Sasha Nedeljkovic, Shaban Gerguri, Lulzim Gashi, Shefki Zeka and Muhamet Buzhala and Alush Elshani**. Whereas, the second instance court had decided to reject the appeals from the accused **Ardian Rrecaj, Shemsi Zejnullahu, Aziz Krasniqi, Nuhi Zogaj and Afrim Rafuna**.
- On March 2019, the Appeal Court halved the sentences with punishment of a fine of former officials of Kosovo Police **Neshat Avdaj, Driton Bajrami, Myzafer Sylejmani and Binak Bytyqi**, sentenced by the first instance for receiving bribes.
- Further, in other cases decided by the Appeal during the first nine months of 2019, is also the case of inspector of municipality of Kamenica **Sadullah Dermaku**, who was twice found guilty by the first instance, but early on, the judgments are annulled by the Appeal Court and the case is currently being treated by the Basic Court in Gjilan for the third time.
- In retrial, the Appeal had returned also the case of former director of Education in the municipality of Mitrovica, **Ajmane Barani** which previously, was announced innocent by the Basic Court in Mitrovica.
- After more than 10 years have passed since the prosecution alleged that the former board member of the Regional Water Company “Hidrodrini”, in Peja, **Elez Hajdaraj**, had committed the criminal offense of appropriation on duty, the Appeal Court has concluded that this offense has already been prescribed.  
For this reason, on May 17 2019, the Appeal decided to reject the charge for this offense against Hajdaraj, while the second instance also rejected the appeal of the Basic Prosecution in Peja regarding the other criminal offense that Hajdaraj was charged that of intimidation during criminal proceedings thus ultimately acquitting from this charge the accused.
- The Appeal Court had finally acquitted from charges of abusing official position **Ilir Beqiri** former procurement official of the Regional Garbage Company (RGC) “Pastertia” in Ferizaj.
- The peculiarity of these two cases, of Elez Hajdaraj and Ilir Beqiri, is that Appeal had to decide three times in each of them.

## VIII. Handling of corruption cases by Supreme Court

Kosovo Law Institute, during this nine (9) months of 2019, has also monitored the Supreme Court, where the latter has decided in several corruption cases, including also high-profile officials.

As the Supreme Court does not hold public hearings unless in cases when the Appeal Court amends the acquittal judgment of the Basic Court and replaces it with a conviction sentence for the accused as well as in cases of imposing maximum sentences or with life time imprisonment sentences, the Supreme Court has focused more on analyzing decisions and legal opinions issued by the Supreme Court.

In at least four cases that KLI has monitored during this period, it is seen that the Supreme Court found violations committed by the lower instances of the judiciary in favor of those accused for corruption, but in legal impossibility that the same to return in retrial, the Supreme had only concluded the violations in question.

This, pursuant to Article 438, paragraph 2, of the Criminal Procedure Code of Kosovo, when the Supreme Court of Kosovo finds that the request submitted for protection of legality to the detriment of the defendant is grounded, it only finds violation of the law without affecting the final judgment.

- On January 21 2019, the panel of judges of the Supreme Court Valdete Daka, Nesrin Lushta and Agim Maliqi issued a judgment by which had concluded that the judgments of the Basic Court in Pristina and the Appeal Court in the case of the former mayor of the Municipality of Obiliq, Mehmet Krasniqi, with regard to the acquittal part, was subjected with essential violations of the procedural provisions.

Whereas regarding the trial part of the judgments in question, the Supreme Court rejected as ungrounded the request for protection of legality exercised by the State Prosecutor.

On May 2017, the Basic Court in Pristina in the lack of evidence, had acquitted from charges for abusing official position, former Mayor of municipality of Obiliq, Mehmet Krasniqi, and officials of the municipality in question Xhavit Krasniqi, Haki Raqi, Nazmi Gashi , Ramadan Hashanin, Bajram Palojin, Azem Spanca and Altin Preniqi whereas Hasnije Dushi was acquitted from charges of fraud on duty.

Whereas, against the accused for fraud Emir Sopjani and Sami Kadriu, the court announced a conviction judgment, imposing sentence to them with 1 year and 6 months suspended imprisonment while Bujar Alidema and Shpend Kelmendi were sentenced with 2 years suspended imprisonment and with punishment of a fine of 4,000 euros and Basri Kqiku was sentenced with 1 year suspended imprisonment and 3,000 euros fine. This decision was then confirmed by the Appeal.

A request for protection of legality at the Supreme had submitted the State Prosecutor, who had attacked the judgments of the two lower instances of the judiciary because of



substantial violations of criminal procedure provisions and violation of criminal law, and had proposed to the Supreme Court to conclude that the judgments in question were violated.

By approving partially this request of the State Prosecutor, the Supreme Court had concluded that the essential violation of the criminal procedure provisions in the concrete case consists in giving unclear reasons for the decisive facts and especially the will of the convicts for committing the criminal offenses for which they were acquitted from charges.

Since the violations in this case of the first instance court and the Appeal Court had been in favor of the accused, the Supreme Court had only concluded the violations in question without being able to return the case in retrial.

- The Supreme Court, on April 1, 2019, also found a violation in the case known as "Sekseri", where former Director of Economic Crimes in Kosovo Police, Emin Beqiri, was charged for abusing official position or authority, obstruction of the test and failure to report the criminal offenses or their perpetrators, whereas Rrahim Hashimi was charged for exercise of influence and fraud.

The Basic Court in Pristina, on June 2018, rejected the appeals of the accused persons who had requested the dismissal of the indictment. Following the appeals made by the defendants of the accused at the Appeal Court, the latter dismissed the charge and ceased the criminal proceedings regarding the accused Beqiri and returned in reinstatement regarding the accused Hashimi. Following reinstatement, the first instance had again confirmed the charge for Hashimi, but, after the appeal of his defense, the Appeal ceased the criminal proceedings for the criminal offense of exercise of influence, and rejected the appeal of defense for the criminal offense of fraud.

Against these rulings, the State Prosecutor had requested protection of legality because of the essential violations of the provisions of criminal proceedings and because of the violation of criminal law, with the proposal that the Supreme Court to conclude that the rulings of the Appeal Court of Kosovo contain violations of provisions and criminal proceedings as well as violation of criminal law, or the case be returned in reinstatement.

This request of the State Prosecutor was approved as grounded by the panel of judges of the Supreme Court, Agim Maliqi, Valdete Daka and Rasim Rasimi according to which, with all the evidence submitted by the prosecution, which are consistent with one another, the Appeal Court has come to the wrong conclusion when has concluded that there was no evidence which has involved Emin Beqiri in the criminal offenses for which has been charged.

According to the Supreme Court, the second instance court taking the role of the first instance court has failed to confirm or not the guilt of the defendants and the conclusion or not of the evidence submitted by the prosecution, even assessing the evidence itself, although among these evidences there was evidence which supported a well-grounded suspicion that they had committed the criminal offenses for which they were charged.

- The Supreme Court, namely the Panel consisting of judges Agim Maliqi, Nesrin Lushta and Rasim Rasimi, on June 5 2019, issued a judgment by which has concluded that the judgments of the Basic Court in Pristina and the Appeal Court in the case of the former



President of The Appeal Court, Salih Mekaj, violated the criminal law.

The Supreme Court had concluded that the violations in question had to do in relation of the accused Mekaj for the criminal offense of exercise of influence and for the accused Vlora Gorani, for the criminal offense of exercise of influence, and the request for protection of the legality was rejected as ungrounded of the State Prosecutor of Kosovo was rejected as ungrounded, exercised against these judgments, with regard to the accused Vlora Gorani, Mentor Seferaj and Ali Seferaj in the part related to the defendants for the criminal offense of tentative giving bribes.

All these accused were acquitted from the charges for which they were charged by the Basic Court in Pristina on May 2018, and the judgment of acquittal was then confirmed by the Appeal Court on October 2018.

According to the Supreme Court, the first and second instance in their judgments fairly and fully have confirmed the decisive facts of the concrete case but with the acquittal of the accused, Mekaj and Gorani issued wrong conclusions about the existence of the criminal offense, that is violation of the criminal law because they applied the law which could not be applied, because with the fair application of criminal law, according to the Supreme Court, Mekaj would have to plead guilty for the offense that is the subject of the charge.

Mekaj's actions, according to the Supreme Court, according to the facts mentioned in the judgment, present exercise of influence, as the reason for the conversations with Judge L.M was Mecaj's connection with Gorani, which did not exist earlier but happened after Gorani had gone to get interested for the case of her husband accused for a criminal offense. According to the Supreme Court, without Gorani's initiative, the defendant Mekaj has not started conversations with the judge, at least from the issued evidences it does not appear that these conversations begun before.

In its decision, the Supreme emphasizes that the fact that Mecaj's influence has not been successful, has not reached its intended result does not change the defendant's criminal legal position of the defendant, as foreseen by Article 431.par.1 of CCK.

Even in this case, since the violations have been committed to the benefit of the accused, the Supreme had only found the violations without being able to return the case in retrial.

- On June 2019, the Supreme Court had returned in reinstatement the case of former MP of Kosovo Assembly Etem Arifi, who is charged for criminal offenses of fraud with subsidies and exercise of influence, and the accused Bajram Gashi, who was charged for fraud with subsidies.
- The supreme court annulled the decision taken on March 2019 by the Appeal Court, by which former MP Arifi and the accused Gashi were sentenced with effective imprisonment for the criminal offense of fraud with subsidies, and was scheduled for retrial for the criminal offense of exercise of influence.

According to the decision of the Supreme Court, the panel of the Appeal Court that issued the judgment in question had also a judge who had been part of panel of the Appeal also in the confirmation stage of the indictment, which is contrary to Article 39, paragraph 2 of the Criminal Procedure Code, which foresees, inter alia, that a judge is excluded if he has participated in previous proceedings in the same criminal case.

- The Supreme Court of Kosovo had also found violations in the case of acquittal from charges for receiving bribes, by which was charged the inspector of the Independent Commission for Mines and Minerals (ICMM), Lulzim Çitaku.
- He was acquitted by such a charge by the Basic Court in Peja, and after also the Appeal Court confirmed his innocence, but the Supreme Court assessed that the first and second instance court violated criminal law, acting in favor of inspector Citaku.

The Supreme Court gave such a conclusion on July 11 of this year, following the request for protection of legality submitted by the prosecutor Sahide Gashi, following the Judgments of the Basic and Appeal Court.

According to the Supreme Court, the first and second instance court in their judgments, with the acquittal of the defendant regarding criminal offense of receiving bribes, issued wrong conclusions about its existence and applied the law which could not be applied because with the fair application of the criminal law he would be found guilty for the criminal offense that was subject of the charge.

## IX. Annex: Special analysis of high-profile cases of corruption

According to the Supreme Court, the first and second instance courts in their judgments, with the acquittal of the defendant in regard to the criminal offense of bribery, have come to incorrect conclusions about its existence and applied the law which could not be applied, because with the proper application of criminal law he would be found guilty for the criminal offence which was the subject of the charge.

### Case of the Mayor of Istog Municipality, Haki Rugova

#### Basic Court in Peja

**Case number:** PKR.nr.25/18

**Presiding judge:** Sylë Lokaj

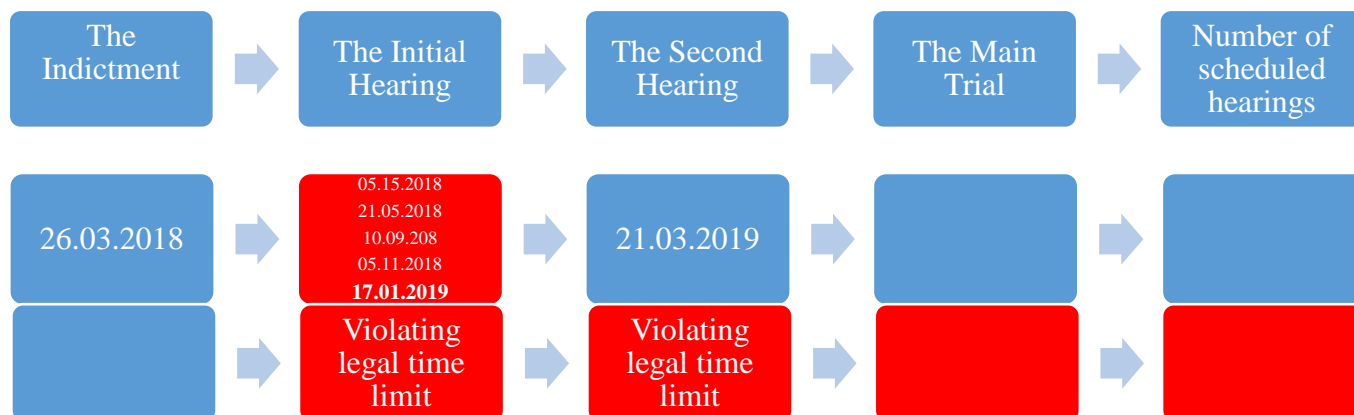
**Prosecutor:** First Agron Matjani, then Ramiz Buzhala

**Defendant:** Haki Rugova

**Criminal offence:** “Conflict of interest”

**Stage of proceedings:** In process

**(SINCE THE INDICTMENT HAS BEEN FILED UNTIL SEPTEMBER 30, 2019 HAVE PASSED 554 DAYS)**



On December 7, 2017, ACA filed a criminal report against Haki Rugova, since allegedly the Mayor of Istog Municipality, Haki Rugova, has committed criminal offence of “conflict of interest”, when he signed a tender in this municipality, and his brother, Gani Rugova, was the one who benefited from this. This criminal report has been the reason that BP in Gjakova, on March 26, 2018 filed an indictment against Rugova, claiming that he gave a tender to his brother Gani Rugova, in the amount of 300,000 Euro. Rugova, it is said, that when acting as the Mayor of Istog Municipality, on August 1, 2014, signed a contract agreement with “Ma-Con” L.L.C., whose director has been Gani Rugova. According to this agreement, the company had to build canalization for the villages Cërca and Lubozhda, with a price of 289,119.85 Euro. The Prosecution claims that by these actions, the defendant, Rugova, made it possible for his brother Gani Rugova, to benefit financially, thus it accuses him for the criminal offence of

conflict of interest.

### **KLI's findings regarding the handling of the case**

Initially the criminal report of the ACA has been sent to the Basic Prosecution in Peja, and has been delegated to Prosecutor Haxhi Sinanaj, but he, on January 17, 2018, sent a letter to the Chief Prosecutor of the Basic Prosecution in Gjakova, Ali Selimaj, and after consulting the Chief Prosecutor of the Appeals Prosecution, Haxhi Dërguti, as well as Agim Kurmehaj, the case has been delegated to the Basic Prosecution in Gjakova, because Sinanaj has said that he had friendly relationship with Rugova, and the delegation should happen in order for the investigation to be fair and independent.<sup>27</sup> After the case has been delegated to the Basic Prosecution in Gjakova, after more than 3 months of the filing of the criminal report, the indictment has been filed on March 26, 2018, but this indictment has still not been heard by Rugova, because the initial hearing has failed four times in a row. BC in Peja had scheduled the first initial court hearing, on May 7, 2018, but it failed to be held because the defendant Rugova was absent. Earlier he had notified the court that he still had not assigned a defense attorney, and thus he had not gone to the court.<sup>28</sup>

The other court hearing has been scheduled on May 21, 2018, but it had failed for the same reason, the absence of Rugova. Although, different from the court hearing of May 7, when Rugova notified regarding his absence, on May 21, he did not give any notification regarding his absence. The presiding judge, Sylë Lokaj, had said that regarding the next court hearing, that had been postponed in an unspecified period of time, the Court will issue an order to force Rugova to be present in the next court hearing.<sup>29</sup> Haki Rugova, on September 10, has been present in court, in what has been the third attempt scheduled by the court, but like the previous two times, this court hearing, also, did not manage to be held. This time, upon the request of Rugova's attorney Besnik Berisha, who stated that the defense did not accept the case files from the prosecution, thus making Agron Matjani to agree with this request.<sup>30</sup>

After three failed court hearings, it was expected for that to be held on November 5, 2018, but this did not happen. This time, the reason of postponing it, was the absence of the presiding judge Sylë Lokaj, thus making this case to fail starting the initial hearing once again. Also, in the court hearing was absent the defendant, Rugova, who had notified the court that is traveling

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<sup>27</sup> "An indictment for conflict of interest is filed against the Mayor of Istog, Haki Rugova". Betimi për Drejtësi. April 16, 2018. (Follow link <https://betimiperdrejtesi.com/ngritet-aktakuze-per-konflikt-interesi-ndaj-kryetarit-te-istogut-haki-rugova/>)

<sup>28</sup> "The Mayor of Istog is absent, the initial hearing regarding the case where he is defendant of conflict of interest, fails". Betimi për Drejtësi. May 7, 2018. (Follow link <https://betimiperdrejtesi.com/mungon-kryetari-i-istogut-deshton-seanca-fillestare-ne-rastin-ku-ai-akuzohet-per-konflikt-interesi/>)

<sup>29</sup> "Haki Rugova is absent again, an order to force him to be present in court is warned". Betimi për Drejtësi. May 21, 2018. (Follow link <https://betimiperdrejtesi.com/serish-mungon-haki-rugova-paralajmerohet-se-ai-mund-te-sillet-me-force-ne-gjykate/>)

<sup>30</sup> "Mayor of Istog, Haki Rugova is present in court, but the court hearing is postponed because of the lack of case files". Betimi për Drejtësi. September 10, 2018. (Follow link <https://betimiperdrejtesi.com/kryetari-i-istogut-haki-rugova-paraqitet-ne-gjykate-por-seanca-shtyhet-ne-mungese-te-shkresave-te-lendes/>)

outside the country.<sup>31</sup>

After four (4) failed initial hearings, that one had been held after 298 days from the filing of indictment. The hearing was held on January 17, 2019, in which Rugova pleaded not guilty, while on March 21, 2019 or more than a month after the legal deadline had been held the second hearing, in which Rugova objected the indictment of the Prosecution office.<sup>32</sup>

The first instance confirmed the indictment on April 8, 2019, and a same decision was also taken by the Court of Appeal, which on June 7, 2019, paved the way for the main trial.<sup>33</sup> Judge Sylë Lokaj scheduled the main trial to begin on October 23, which hearing was held.

**Alleged damage:** No information.

**Sequestration and confiscation:** No information.

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<sup>31</sup> “*The judge is in training, Haki Rugova in a business travel, the trial against the Mayor of Istog fails again*”. Betimi për Drejtësi. November 5, 2018. (Follow link <https://betimiperdrejtesi.com/gjykatesi-ne-trajnim-haki-rugova-ne-udhetim-zyrtar-serish-deshton-gjykimi-ndaj-kryetarit-te-istogut/>)

<sup>32</sup> “*Haki Rugova objects the charge for conflict of interest, Prosecution office says that the Mayor of Istog enabled his brother's company to make a financial profit*” Betimi për Drejtësi. March 21, 2019. (Follow link <https://betimiperdrejtesi.com/haki-rugova-kundershton-akuzen-per-konflikt-interesi-Prosecutoria-thote-se-kryetari-i-istogut-i-mundesoi-fitim-pasuror-kompanise-se-vellait-te-tij/>)

<sup>33</sup> “*Court of Appeals confirms the indictment for conflict of interest against Mayor of Istog, Haki Rugova*” Betimi për Drejtësi. June 7, 2019. (Follow link <https://betimiperdrejtesi.com/apeli-konfirmon-aktakuzen-per-konflikt-interesi-ndaj-kryetarit-te-istogut-haki-rugova/>)

## Case of the Mayor of Novo Brdo Municipality, Svetislav Ivanoviq

### Basic Court in Gjilan

**Case number:** PKR.nr.238/18

**Presiding judge:** Naser Maliqi

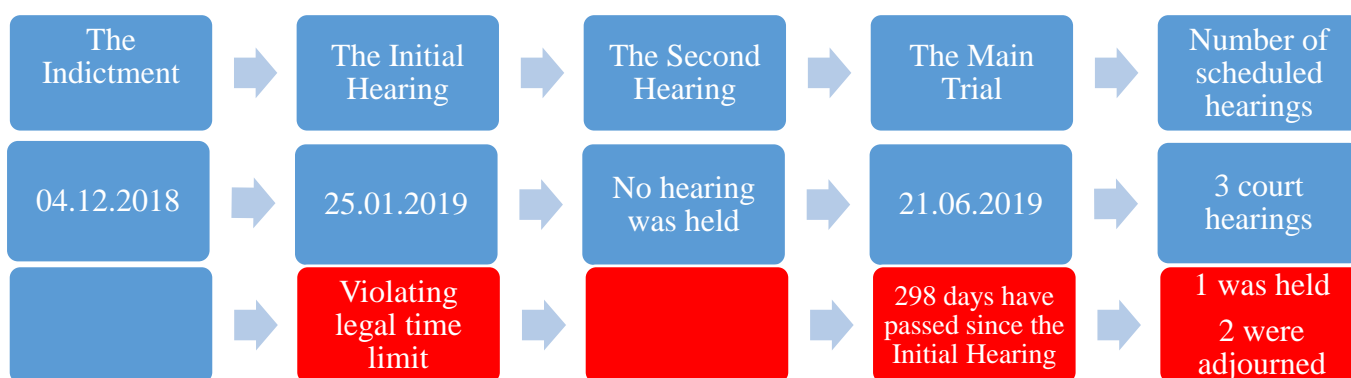
**Prosecutor:** Arben Kadriu

**Defendant:** Svetislav Ivanoviq

**Criminal offence:** “Abusing official position or authority”

**Stage of proceedings:** In process

**(SINCE THE INDICTMENT HAS BEEN FILED UNTIL SEPTEMBER 30, 2019 HAVE PASSED 301 DAYS)**



On May 16, 2018, a citizen filed a criminal report against the Mayor of Novo Brdo, Svetislav Ivanoviq, alleging that he abused his official position. BP in Gjilan, on October 26, 2018 had initiated the investigations, while on December 4, 2018 this Prosecution office had filed and indictment against Ivanoviq, charging him with the criminal offence “abusing official position or authority”.

According to the indictment filed on December 4, 2018, it is alleged that on November 15, 2017, in Novo Brdo, the defendant as an official, in the capacity of the Mayor of the Municipality of Novo Brdo, for the purpose of unlawfully obtaining property for another legal entity - Hunters Association “Kalaja” has exceeded its official powers and violated the rights of another legal entity - Hunters Association "Ujku", in a way that he gave to Hunters Association “Kalaja” for use and management the entire territory of Novo Brdo and an office in the municipality.

The Prosecution claims that by these actions, the defendant caused material damage to the municipality in the amount of 12,200.00 euro.

## **KLI's findings regarding the handling of the case**

BC in Gjilan, on January, 2019 or 21 days after the legal deadline, had scheduled the initial hearing at which hearing, Ivanoviq pleaded not guilty.<sup>34</sup>

Since no second hearing was held and the indictment had been confirmed, the main trial was scheduled to begin on June 21, 2019, but this did not happen as Mayor Ivanoviq was not present in the courtroom, and the presiding judge, judge Naser Maliqi had issued an order to force him to be present in the courtroom.<sup>35</sup> The judge also said that if the defendant would justify his absence, the court would withdraw that order.

But even though judge Maliqi had said that against the defendant would be issued an order to force him to be present in the courtroom, but this did not happen as Ivanoviq did not attend neither the hearing scheduled for September 20, 2019. Even at this hearing, Maliqi said that an order to force the defendant to be present in the courtroom would be issued, in order to force him to be brought to the courtroom for the hearing scheduled for October 18.<sup>36</sup>

**Alleged damage:** 12,200.00 euro.

**Sequestration and confiscation:** No information .

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<sup>34</sup> “*Mayor of Novo Brdo Municipality pleaded not guilty for corruption*” Betimi për Drejtësi. January 25, 2019. (Follow link <https://betimiperdrejtesi.com/kryetari-i-komunes-se-novoberdes-nuk-e-pranon-fajesine-per-korrupsion/>)

<sup>35</sup> “*An order to force the defendant to be present in the courtroom was issued against Novo Brdo Mayor missing in corruption trial*” Betimi për Drejtësi. June 21, 2019 (Follow link <https://betimiperdrejtesi.com/leshohet-urdherese-per-sjellje-me-detyrim-ndaj-kryetarit-te-novoberdes-qe-mungoi-ne-gjykimin-per-korrupsion/>)

<sup>36</sup> “*Missing again the hearing, An order to force the defendant to be present in the courtroom was issued against Novo Brdo Mayor*” Betimi për Drejtësi. September 20, 2019. (Follow link <https://betimiperdrejtesi.com/serish-mungoi-ne-seance-leshohet-urdherese-per-sjellje-me-detyrim-ndaj-kryetarit-te-novoberdes/>)

## Case of the Mayor of Killokot Municipality, Sasha Mirkoviq

### Basic Court in Gjilan

**Case number:** PKR.nr.68/2019

**Presiding judge:** Agim Ademi

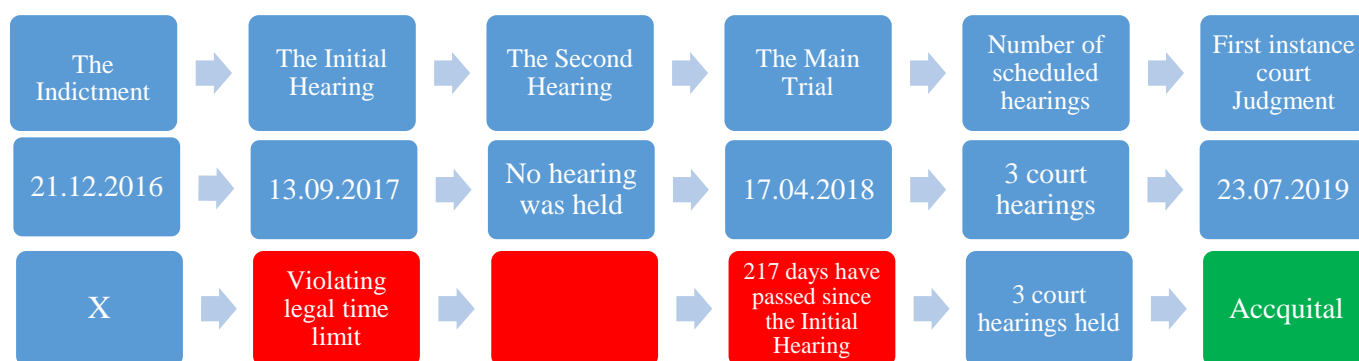
**Prosecutor:** Shaban Spahiu

**Defendants:** Sasha Mirkoviq and Zharko Dejanoviq

**Criminal offences:** "Abusing official position or authority"

**Stage of proceedings:** First instance judgment

**(SINCE THE INDICTMENT HAS BEEN FILED UNTIL SEPTEMBER 30, 2019  
HAVE PASSED 1014 DAYS)**



A criminal report filed by the Municipality of Killokot on November 8, 2016, charging former mayor Sasha Mirkoviq with abusing his official position, made BP in Gjilan to initiate investigations after eight days. These investigations resulted with an indictment in which, along with Mirkoviq, former Municipal Assembly Speaker, Zharko Dejanoviq was also charged with the criminal offence "abusing official position or authority".

According to the indictment, filed on December 20, 2016, Sasha Mirkoviq as mayor of Killokot and Zharko Dejanoviq, as Municipal Assembly Speaker, are charged for exceeding their powers, for the purpose of unlawfully obtaining material benefit for their selves and Dardan Novosella.

In the indictment, it is alleged that on February 22, 2012, without following the legal procedures, they rendered a decision and rented a cadastral parcel for a period of 10 years, specifically the Center for Physical Medicine and Rehabilitation, " Nëna Naile ", owned by Dardan Novosella, in the amount of 550 euros per month, while for several months no rent payment was collected, which caused material damage to the municipal budget in the amount of 7,700.00 euros.



## **KLI's findings regarding the handling of the case**

BC in Gjilan held the initial hearing for this case after 266 days, where the defendants pleaded not guilty. After nine scheduled hearings, three of which were adjourned, on November 29, 2018, the court had announced acquittal judgment for both defendants.<sup>37</sup>

But following the Prosecutor's appeal, the Court of Appeal had returned the case for retrial, and five more hearings were held in the retrial process, after which a similar ruling was issued on July 23, 2019, acquitting both Mirkovi1 and Dejanoviq.<sup>38</sup>

**Alleged damage:** 7,700 euro.

**Sequestration and confiscation:** No information.

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<sup>37</sup> “Former Mayor of Kllokot and former Municipal Assembly Speaker are released from charges for corruption (Video)” Betimi për Drejtësi. November 29, 2018. (Follow link <https://betimiperdrejtesi.com/ish-kryetari-i-kllokotit-dhe-ish-kryesuesi-i-kuvendit-komunal-lirohen-nga-akuza-per-korrupsion/>)

<sup>38</sup> “After retrial, former Mayor of Kllokot and former Municipal Assembly Speaker are released from charges for abusing official duty” Betimi për Drejtësi. July 23, 2019. (Follow link <https://betimiperdrejtesi.com/pas-rigjykimit-ish-kryetari-i-kllokotit-dhe-kryesuesi-i-kuvendit-komunal-lirohen-nga-akuza-per-keqperdorim-detyre/>)

## Case of former Mayor of Suhareka Municipality, Sali Asllanaj

### Basic Court in Prizren

**Case number:** PKR.nr.87/18

**Presiding judge:** Artan Sejerani

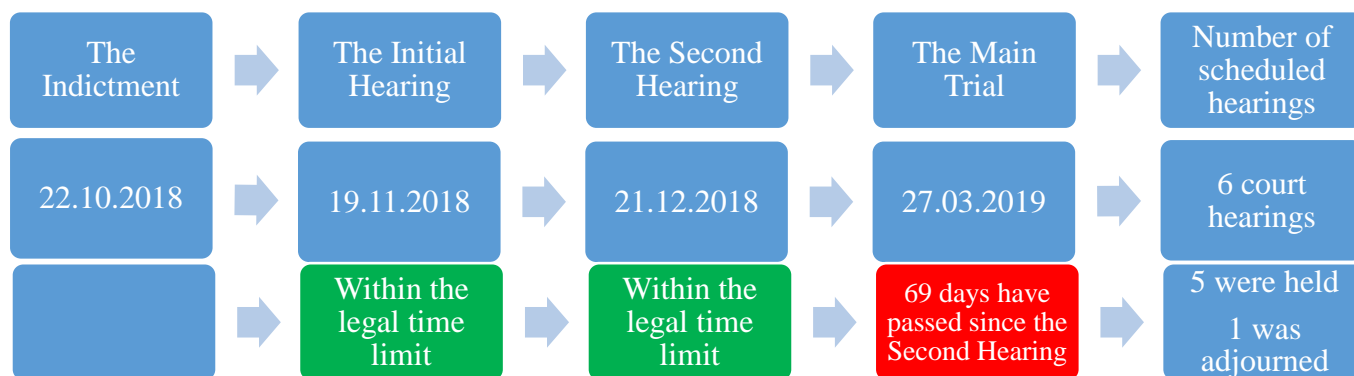
**Prosecutor:** Ervehe Gashi

**Defendants:** Sali Asllanaj, Sherif Berisha, Milazim Hajdari

**Criminal offences:** “Abusing official position or authority”

**Stage of proceedings:** In process

**(SINCE THE INDICTMENT HAS BEEN FILED UNTIL SEPTEMBER 30, 2019 HAVE PASSED 344 DAYS)**



BP in Prizren, on December 26, 2017, initiated investigations against the abovementioned accused and Avni Bytyqi, while on October 22, 2018, filed an indictment against the former Mayor of Suhareka, Sali Asllanaj and Sherif Berisha as the Director of Municipal Educational Directorate in Suhareka and Milazim Hajdari, as the Director of “Bajram Curri” school. Against the defendant Avni Bytyqi, investigations were terminated.

Based on the indictment, the defendants are suspected of using their official position to surpass their competencies in order to benefit for another person, regarding the Agreement on Understanding and Co-Financing between the Municipality of Suhareka and the NGO “Kosovo Hope” to implement the project “Transport of students”, in violation of the Public Procurement Law No. 04/L-042, Law on Public Financial Management and Accountability no.03/L-048, as well as the Financial Regulation No. 01/2013, thus damaging the budget of Kosovo in the total amount of 10,556.00 Euro.

## **KLI's findings regarding the handling of the case**

The initial hearing was held on November 19, 2018, within the 30-day legal time limit set by the CPCK to hold the initial hearing after the indictment filing. In this hearing all of the accused have pleaded not guilty. The second hearing has also been scheduled within the legal time limit, on December 21, 2018.

After the indictment was confirmed,<sup>39</sup> the main trial began 12 days later, concretely on February 27, 2019, after which three (3) hearings were held, and the hearing scheduled for August 29, 2019 failed due to lack of a member of the trial panel, which was on sick leave.<sup>40</sup>

At the hearing of September 26, 2019, the main trial continued where a financial expert was questioned, while at the next hearing scheduled for November 21, 2019 it is foreseen for the defendants to present their defense.

**Alleged damage:** 10,556.00 euro.

**Sequestration and confiscation:** No information.

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<sup>39</sup> "Court of Appeal confirms the indictment for corruption against former Mayor of Suhareka, Sali Asllanaj and two other defendants" Betimi për Drejtësi. February 15, 2019. (Follow link <https://betimiperdrejtesi.com/apeli-konfirmon-aktakuzen-per-korrupsion-ndaj-ish-kryetarit-te-suharekes-sali-asllanaj-dhe-dy-te-tjereve/>)

<sup>40</sup> "Absence of a trial member postpones the corruption hearing against former Mayor of Suhareka and other defendants" Betimi për Drejtësi. August 29, 2019. (Follow link <https://betimiperdrejtesi.com/mungon-anetarja-e-trupit-gjykues-deshton-gjykimi-per-korrupsion-ndaj-ish-kryetarit-te-suharekes-dhe-te-tjereve/>)

## Case against the former judge Kolë Puka and lawyers

### Basic Court in Pristina

**Case number:** PS.nr.24/19

**Presiding judge:** First Hamdi Ibrahim, then Musa Kongjeli

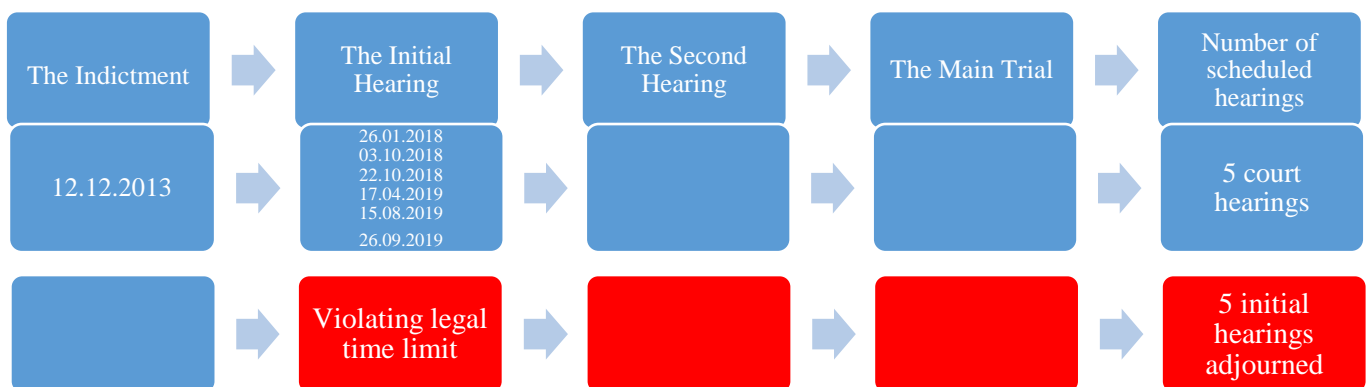
**Prosecutor:** First Ali Rexha, then Fikrije Fejzullahu

**Defendants:** Kolë Puka, Zef Marleku, Lon Palushaj, Isa Salihi, Fatbardh Makolli and Besnik Nikqi

**Criminal offences:** “Organized crime”, “Issuing unlawful judicial decisions”, “Abusing official position or authority”, “Fraud”, “Breach of trust”

**Stage of proceedings:** In process

**(SINCE THE INDICTMENT HAS BEEN FILED UNTIL SEPTEMBER 30, 2019 HAVE PASSED 2119 DAYS)**



The first indictment in this case by SPRK was filed on December 12, 2013, while it was specified on November 14, 2014, June 30, 2017 and August 14, 2017. According to the indictment, all defendants had participated in the structured criminal group, who acted in a specific time and space. The insurance companies operating in the Republic of Kosovo have been the target of the attack

The indictment says that this group was created, led, supervised and controlled by former judge of Klina, Kolë Puka. According to the indictment, Puka managed to reach agreements with members of the criminal group to imagine court cases, issue unlawful decisions, falsify documents, present false facts, abuse official position or authority, and to disrespect judicial power. As it is written, all of this is done in order to have an unlawful benefit funds of great value, by damaging others, as quickly and as easily as possible.

According to the indictment, Puka had entered into an unlawful benefit agreement with lawyers who were the first in the chain of criminal activity after him, such as Zef Marleku and Lon Palushaj.

The indictment states that Zef Marleku authorized Puka to access his bank account, through which he operated with large amounts of money illegally. Then, an agreement was reached with representatives of the Insurance Companies so that during the main trial they would agree with Kolë Puka's proposals-decisions from the position of the judge such as Isa Salihaj, Fatbardh Makolli and Besnik Nikqi. Further, the indictment states that they created relations also with specialist doctors, mainly orthopedics such as the now deceased, Bedri Bakalli.

This activity, according to the indictment, lasted from 2004 until 2008. With this activity, according to the indictment, they illegally separated the amount of 1.225.927.93 euros. The indictment states that with the actions of all defendants, elements of the organized crime offence are included.

Kole Puka is charged with issuing unlawful judicial decisions and abuse of official position or authority. Zef Marleku and Lon Palushaj are charged with breach of trust. Fatbardh Makolli and Besnik Nikqi are charged with fraud and abuse of official position, and Isa Salihu is charged with abuse of official position or authority.

### **KLI's findings regarding the handling of the case**

The case against former judge Kolë Puka and five other defendants, is one of the cases reflecting the non-seriousness of the justice system in handling high profile cases, in which case the damage is claimed to be over one (1) million euro.

This is because even though the indictment was filed on December 12, 2012, this case is still in the initial phase after many changes to this indictment. The initial hearing was held on September 26, 2019 or after 2115 days. All the defendants pleaded not guilty regarding the claims of the Prosecution office.<sup>41</sup>

This case had initially been in the Serious Crimes Department, but with the functioning of the Special Department, during the court hearing held on April 17, 2019, it had moved to the last department.

In the Serious Crimes Department, judge Hamdi Ibrahim failed to hold the five scheduled hearings due to the fact that in each of them lacked one of the parties without which it was impossible to hold an initial hearing. The hearing scheduled for January 26, 2018, was

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<sup>41</sup> "Former judge Kolë Puka and five lawyers pleaded not guilty for organized crime and corruption" Betimi për Drejtësi. September 26, 2019. (Follow link <https://betimiperdrejtesi.com/ish-gjykatesi-kole-puka-dhe-pese-avokate-deklarohen-te-pafajshem-per-krim-te-organizuar-dhe-korrupsion/>)

adjourned because there was prosecutor to represent the case,<sup>42</sup> and due to the absence of the defendant Leon Perlaskaj the hearings scheduled for May 31, May 3 and October 22, 2018 failed to be held.<sup>43</sup>

Due to the establishment of the special department within the BC in Pristina, judge Ibrahim had informed the parties that the hearing scheduled for April 17, 2019 would not be held as this case would be transferred to that department, and even after the transfer to this department, the new judge of the case, Musa Konxheli failed to hold the initial hearing due to the absence of the prosecutor Fikrije Fejzullahu.<sup>44</sup>

**Alleged damage:** Over 1 million euros.

**Sequestration and confiscation:** No information.

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<sup>42</sup> “Currently the case without a prosecutor, trial against former judge Kolë Puka and others is adjourned” Betimi për Drejtësi. January 26, 2018. (Follow link <https://betimiperdrejtesi.com/lenda-aktualisht-pa-Prosecutor-shtyhet-gjykimi-ndaj-ish-gjykatesit-kole-puka-dhe-te-tjereve/>)

<sup>43</sup> “For the fourth time in a row fails to be held the trial for organized crime against former judge Kolë Puka and others” Betimi për Drejtësi. October 22, 2018. (Follow link <https://betimiperdrejtesi.com/kater-here-radhazi-desh-ton-gjykimi-per-krim-te-organizuar-ndaj-ish-gjykatesit-kole-puka-dhe-te-tjereve/>)

<sup>44</sup> “Due to the absence of the prosecutor fails to be held the the trial for organized crime against former judge Kolë Puka and others” Betimi për Drejtësi. August 15, 2019 (Follow link <https://betimiperdrejtesi.com/mungon-Prosecutorja-desh-ton-gjykimi-per-krim-te-organizuar-ndaj-ish-gjykatesit-kole-puka-dhe-avokateve/>)

## Case against former Mayor of Drenas Nexhat Demaku

### Basic Court in Pristina

**Case number:** PKR.nr.242/18

**Presiding judge:** Shpresa Hasaj-Hyseni

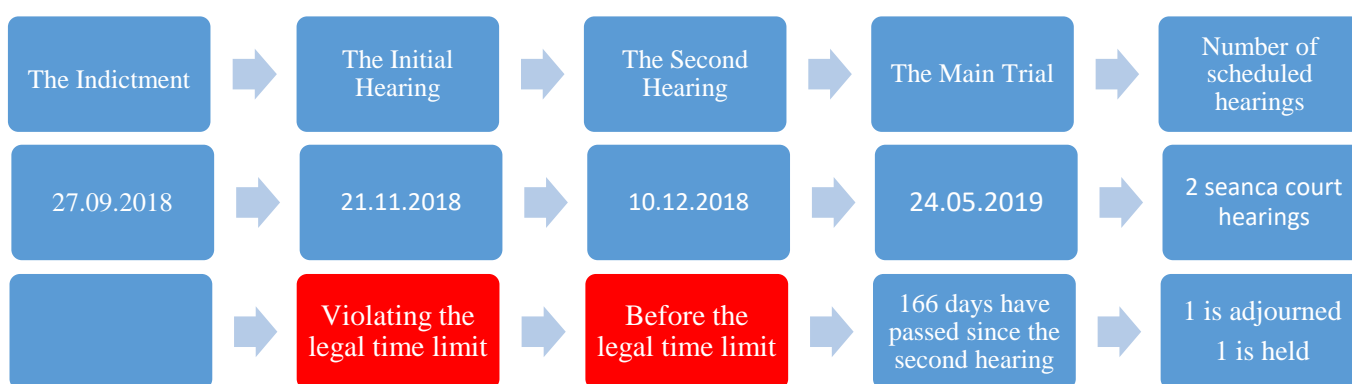
**Prosecutor:** Dulina Hamiti

**Criminal offense:** “Abusing official position or authority”

**Defendants:** Nexhat Demaku and Sadik Tahiraj

**Stage of proceedings:** Ongoing.

**(SINCE THE INDICTMENT HAS BEEN FILED UNTIL SEPTEMBER 30, 2019 HAVE PASSED 369 DAYS)**



After the submission of the criminal report from the Kosovo Police on May 31, 2018, Basic Prosecution in Pristina on August 6 of last year had started the investigation that after a few months had created the indictment, that was filed on September 27, 2018, based on which the former Mayor of Drenas Nexhat Demaku and former Director of Education of this Municipality Sadik Tahiraj were accused of having committed the criminal offence of “abusing official position”.

According to the indictment, Nexhat Demaku is accused that using his official position as the Mayor of Drenas Municipality has exceeded his competencies in order to obtain unlawfully for himself or another person.

He is accused that on March 10, 2015 has issued a note to name Mimoza Berisha as trade inspector in the Inspection Directorate of the Drenas Municipality, in a duration from March 5, 2015 until March 5, 2016, as well as on January 20, 2016, numbered 01-120-3424 in the duration from March 5, 2015 until June 5, 2018 has issued another note for Berisha to be appointed in the Inspection Directorate of the Drenas Municipality as trade inspector, without a public vacancy call, thus not going through the recruiting – employment procedures. With such actions, the prosecution alleges that Demaku has enabled Mimoza Berisha to unlawfully obtain the amount of 18,309.01 euro, while the Municipality of Drenas was damaged in that amount.

Regarding the employment of Mimoza Berisha, the prosecution also alleges that former Director of Education in the Drenas Municipality Sadik Tahiraj abused his position. According to the prosecution, Tahiraj using his position or authority has exceeded his competencies in order to unlawfully obtain for himself or another person.

He is accused that on November 3, 2014 has issued the employment contract of teacher Mimoza Berisha, with the title teacher of preschool level in the Elementary and Middle School “Ali Gashi” in Drenas. Also, it is said that he had issued a decision on November 3, 2014 for Berisha to be named as a teacher in that school, without any public vacancy call and has hired her without being qualified, without any recruiting – employment procedure. According to the indictment, Tahiraj, on March 5, 2015 has issued a decision to Mimoza Berisha to transfer her to the Inspection Directorate in the Municipality of Drenas, working as trade inspector, with what has enabled Mimoza Berisha to unlawfully obtain the amount of 756.18 euros, whereas the injured party Drenas Municipality has suffered a damage of the budget in the amount of 756.18 euro.

### **KLI’s findings regarding the handling of the case**

The initial hearing, where none of the accused pleaded guilty, was held on November 21, or 30 days after the legal time limit provided by the CPCRK. Meanwhile, based on the motion of the defense, judge Shpresa Hasaj Hyseni, violating the provisions of the CPCRK, decided to not read the indictment against the defendants.

After the objections of the defense, the Basic Court in Pristina had rejected them, while after the appeals in the Court of Appeals, this court reasoning that the first instance court’s judgement consisted on legal violations, thus returned the affirmation of indictment to reconsideration.<sup>45</sup>

But after the decision to return the case for reconsideration, the first instance court had affirmed the indictment again, thus rejecting the objections of the defense.<sup>46</sup>

After the indictment was final, the accused Nexhat Demaku and his defense attorney Gazmend Halilaj, in the first hearing of main trial held on May 24, 2019, requested the exclusion of the judge Shpresa Hasaj Hyseni, reasoning that this judge was part of another judicial process where Demaku was accused of corruption. According to him, Hasaj – Hyseni in that process was part of the trial panel and Demaku was sentenced to one year and five months of

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<sup>45</sup> “*The Appeal returns the case against former Mayor of Drenas Nexhat Demaku for reconsideration*”. Betimi për Drejtësi. February 13, 2019. (Follow link: <https://betimiperdrejtesi.com/apeli-e-kthen-ne-rivendosje-rastin-ndaj-ish-kryetarit-te-drenasit-nexhat-demaku/>)

<sup>46</sup> “*The first instance again confirms the indictment for corruption against former Mayor of Drenas Nexhat Demaku*”. Betimi për Drejtësi. February 19, 2019. (Follow link: <https://betimiperdrejtesi.com/shkalla-e-pare-perseri-konfirmon-aktakuzen-per-korrupsion-ndaj-ish-kryetarit-te-drenasit-nexhat-demaku/>)



imprisonment.<sup>47</sup>

But such a request of Demaku was rejected by the President of the Basic Court in Prishtina, Afërdita Bytyqi, while the main trial started on August 2, 2019, when the representative of the Municipality, Gentiana Morina, declared that the Municipality of Drenas does not submit a legal proper claim in the amount of 18,309 euros as an injured party in this case.

**Alleged damage:** 19,065.19 euro.

**Sequestration and confiscation:** There was no request in the indictment.

### Case against former mayor of Gjilan Qemajl Mustafa

#### Basic Court in Peja

**Case number:** PKR.no.227/16

**Presiding judge:** Sylë Lokaj

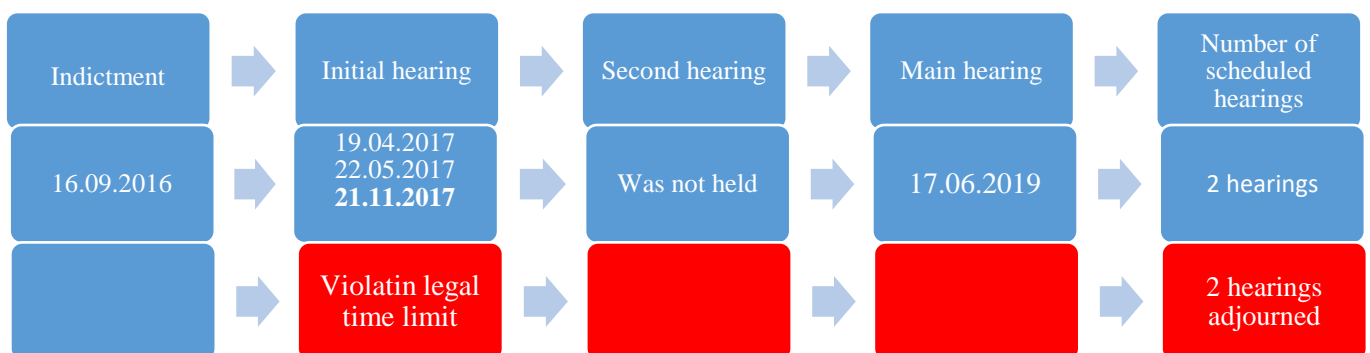
**Prosecutor:** Agron Bajrami

**Criminal offense:** “organised crime”, “abusing official position or authority”, “abusing authority in economy”

**Defendant:** Qemajl Mustafa and 38 others

**Stage of proceedings:** In proces

**(SINCE THE INDICTMENT HAS BEEN FILED UNTIL SEPTEMBER 30 2019, HAVE PASSED 1110 DAYS)**



<sup>47</sup> “Former Mayor of Drenas requires the exclusion of the presiding judge in the trial for abusing position”. Betimi për Drejtësi. May 24, 2019. (Follow link: <https://betimiperdrejtesi.com/ish-kryetari-i-drenasit-kerkon-perjashtimin-e-kryetares-se-trupit-gjykues-ne-gjykimin-per-keqperdorim-detyre/>)

The Kosovo Police on December 20 2013 filed criminal report against Qemajl Mustafa and others, and the ruling for the initiation of investigations was issued by the Prosecution on November 6 2015. On September 16 2016, the SPRK filed an indictment against the defendants: Qemajl Mustafa , Hatixhe Daku, Vehbi Geci, Qefsere Sadriu, Ijaz Rashiti, Musa Nasufi, Muhamet Kastrati, Heset Mahmuti, Fatmir Halili, Drita Bajrami, Agim Hoxha, Ramush Musliu, Selvije Shefkriu, Ganimete Kastrati, Shemsedin Qerimi, Merita Canaj, Merita Canaj , Behar Mehmeti, Hamdi Ismajli, Fadil Osmani, Heset Asllani, Selver Xhelili, Qemajl Latifi, Enver Biqku, Asllan Mustafa, Naser Sylejmani, Zeqirja Fazliu, Azem Mujku, Nazim Jashari, Basri Kqiku , Avdi Pireva, Rrustem Hajdari, Florim Zuka, Skender Imeri, Naser Mehmeti, Mejdj Ahmeti, Burim Govori, Asllan Asllani and Asllan Sylja, for the criminal offenses "organized crime", "abusing official position or authority" and "abusing authorisations in the economy". According to the indictment, officials by acting in their capacity as officials have abused their official position, exceeding their powers or failing to perform their official duties.

Whereas, other defendants acting as owners or representatives of these economic operators, have exercised economic activities for the purpose of unlawfully benefit of material gain for themselves or for other economic operator when bidding in procurement activities, in that municipality.

### **KLI's findings in treating cases**

Although the indictment in this case was filed more than two years ago, the trial is still in initial stage. The initial hearing of the case was scheduled after 432 days, specifically on April 19, 2017, but was adjourned because some of the accused did not have a defense lawyer.<sup>48</sup> Even the initial hearing scheduled to be held on May 22, 2017 was adjourned because, on May 11, 2017, the court returned the in completion the indictment to the PSKR.<sup>49</sup> On July 25 2017, the first instance court dismissed partly as irregular the indictment of the SPRK.<sup>50</sup> Following the SPRK appeal, the Appeal Court on September 2017 had returned the case in reinstatement.<sup>51</sup> On November 21 2017, or about 14 months after the indictment was filed, BC in Peja held the initial hearing for this case, where all the accused were pleaded not guilty.<sup>52</sup> On April of this year, the court of first instance again confirmed the indictment only partially, but on September

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<sup>48</sup> "In the absence of lawyers, the trial was adjourned against former mayor of Gjilan and 38 other defendants". Oath for Justice. April 19 2017. (See the link <https://betimiperdrejtesi.com/ne-mungese-te-avokateve-mbrojtesshtyhet-gjykimi-ndaj-ish-kryetarit-te-gjilanit-dhe-38-te-pandehurve-tjere/> )

<sup>49</sup> "Requested completion of charge in the case of former mayor of Gjilan, otherwise it's announced its dismissal". Oath for Justice. May 22 2017. (See the link <https://betimiperdrejtesi.com/kerkohet-plotesimi-i-akuzesne-rastin-e-ish-kryetarit-te-gjilanit-dhe-38-te-pandehurve-tjere/> )

<sup>50</sup> "Dismissed partially the indictment against former Mayor of Gjilan, Qemajl Mustafa and 38 other accused in this case". Oath for Justice. August 2 2017. (See the link <https://betimiperdrejtesi.com/hudhet-pjeserisht-aktakuzandaj-ish-kryetarit-te-gjilanit-qemajl-mustafa-dhe-38-te-akuzuarve-tjere-ne-kete-rast-dokument/> )

<sup>51</sup> "Former Mayor of Gjilan, Qemajl Mustafa returns in the bank of the accused for all clause of the indictment". Oath for Justice. September 22 2017. (See the link <https://betimiperdrejtesi.com/ish-kryetari-i-gjilanit-qemajlmustafa-kthet-ne-banken-e-te-akuzuarve-per-te-gjitha-pikat-e-aktakuzes/> )

<sup>52</sup> "Former Mayor of Gjilan, Qemajl Mustafa and 38 other accused pleaded not guilty". Oath for Justice. November 21 2017. (See the link <https://betimiperdrejtesi.com/ish-kryetari-i-gjilanit-qemajl-mustafa-dhe-38-te-akuzuarit-e-tjere-deklarohen-te-pafajshem/> )

of this year, the case was returned in reinstatement by the Appeal, continuing the ping-pong Basic<sup>53</sup> - Appeal.<sup>54</sup>

In the beginning of December 2018, BC in Peja, partially confirmed the indictment against Mustafa and others for abusing official position and other criminal offenses, but found that in this indictment there are no elements of the organized crime offense.<sup>55</sup>

The Appeal Court had treated again this indictment, but on February of this year the court has approved the indictment against Mustafa and others, paving the way that finally initiate the court hearing.<sup>56</sup>

First attempt to initiate the court hearing was on June 17, 2019 but failed because of the absence of prosecutor Agron Bajrami.

Another failure to initiate the trial is the hearing of June 27, 2019, at which hearing but Prosecutor Bajrami at the hearing of June 27, 2019. The reason for the failure of this hearing was the absence of accused Nazmi Jashari and Burim Govori. According to the presiding judge, Judge Syle Lokaj, the accused Jashari, did not go to court although he was invited on a regular basis, but Govori informed the court that he was out of state.<sup>57</sup>

At the hearing of June 27, Judge Lokaj also said that it was not the fault of Prosecutor Bajrami for his absence at the hearing of June 17 after it was confirmed that the invitation had not gone on a regular basis. The next hearings are scheduled to be held on 14, 15, 16, 17, 18, as well as 20, 21 and October 22 2019.

**Alleged damage:** No information.

**Sequestration and confiscation:** There was no request in the indictment .

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<sup>53</sup> "Partially confirmed the indictment for corruption against former Mayor of Gjilan, Qemajl Mustafa and others". Oath for Justice. April 18 2018. (See the link <https://betimiperdrejtesi.com/konfirmohet-pjeserishtaktuza-per-korrupsion-ndaj-ish-kryetarit-te-gjilanit-qemajl-mustafa-dhe-te-tjereve/> )

<sup>54</sup> "The Appeal returns in the reinstatement case of the former Mayor of Gjilan, Qemajl Mustafa and others accused for corruption". Oath for Justice. September 14 2018. (See the link <https://betimiperdrejtesi.com/apeli-e-kthen-nerivendosje-rastin-e-ish-kryetarit-te-gjilanit-qemajl-mustafa-dhe-te-akuzuarve-tjere-per-korrupsion/> )

<sup>55</sup> Court confirms the indictment for corruption against Qemajl Mustafës, finds no organized crime in the actions of the accused". Oath for Justice. December 6 2018. (See the link

<https://betimiperdrejtesi.com/gjykatakonfirmon-aktakuzen-per-korrupsion-ndaj-qemajl-mustafes-sgjen-krim-te-organizuar-ne-veprimet-e-teakuzuarve/>)

<sup>56</sup> "The Appeal decides that former mayor of Gjilan, Qemajl Mustafa and 38 others accused to be trialed for corruption and other offenses" Oath for Justice. February 19 2019. (See the link

<https://betimiperdrejtesi.com/apeli-vendos-qe-ish-kryetari-i-gjilanit-qemajl-mustafa-dhe-38-te-akuzuar-te-tjere-te-gjykohen-per-korrupsion-dhe-vepra-tjera/>)

<sup>57</sup> "Fails again the trial against former mayor of Gjilan and others, Qemajl Mustafa disagrees that the hearing is adjourned for October" Oath for Justice. June 27 2019. (See the link <https://betimiperdrejtesi.com/serish-deshton-gjykimi-ndaj-ish-kryetarit-te-gjilanit-dhe-te-tjereve-qemajl-mustafa-spajtohet-qe-seanca-eshte-shtyre-per-tetor/>)

**Case against former deputy minister of the MH Bujar Bukoshi and former secretary of the MH Ilir Tolaj**

**Basic Court in Pristina**

**Case number:** PKR.no.737/16

**Presiding judge:** Naime Krasniqi-Jashanica

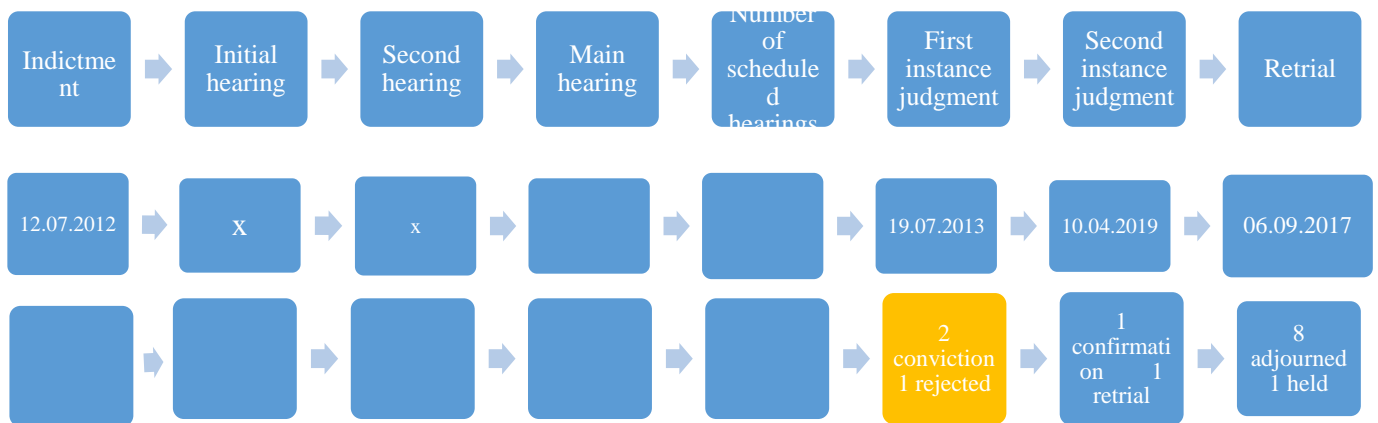
**Prosecutor:** Fikrije Fejzullahu

**Criminal offense:** “abusing official position of authority”, “accepting bribes”

**Defendants:** Bujar Bukoshi, Ilir Tolaj, Arbenita Pajaziti, Hajrullah Fejza, Zenel Kuqi and Bekim Fusha.

**Stage of proceedings:** In the process of retrial

**(SINCE THE INDICTMENT HAS BEEN FILED UNTIL SEPTEMBER 30 2019, HAVE PASSED 2637 DAYS)**



The ruling to initiate investigations against the accused in this case was issued on December 28 2008, but the indictment was filed on July 16 2012. The indictment compiled by the special prosecutor of EULEX Maria Bamieh, charges Ilir Tolaj, Arbenita Pajaziti, Ismet Hysenin, Zenel Kuqi, Hajrullah Fejza, Bekim Fusha, Alban Thaçi, Basri Asllani, Bujar Bukoshi, Nexhat Shabani and Imer Ajeti with the criminal offense of "abusing official position or authority". At the hearing held on June 5 2018, special prosecutor Fikrije Fejzullahu Në seancën e mbajtur më 5 qershor 2018, prokurorja speciale Fikrije Fezullahu changed the indictment in this case.<sup>58</sup> With the amended indictment submitted to the Court, Ilir Tolaj, Arbenita Pajaziti, Zenel Kuqi, Hajrullah Fejza, Bekim Fusha and Bujar Bukoshi are charged for committing the criminal offense "abusing official position or authority", by Article 339 of the Provisional Criminal Code, currently penalized with paragraph 1 of Articles 422 and 423 regarding Article 81 of the Criminal Code. In the indictment it is said that Ilir Tolaj, Permanent Secretary at the Ministry of Health (MoH) and Arbenita Pajaziti, a official for supply at the MoH, between September 26 2007 and October 1 2007, have abused their official duties by allowing legally obliging

<sup>58</sup> “Prosecution makes the amendment of the indictment against Ilir Tolajt, Bujar Bukoshit and others, defense says that prescription is reached”. Oath for Justice. June 5 2018. (See the link <https://betimiperdrejtesi.com/prokuroria-ben-ndryshimin-e-aktakuzes-ndaj-ilir-tolajt-bujar-bukoshit-e-te-tjerevembrojtja-thote-se-eshte-arritur-parashkrimi/>)

contracts with "Jona Med" passing without respecting its terms and conditions. According to the indictment, Jona Med filed a lawsuit against the MoH for allowing the contract to fail without fulfilling its obligations under it and then signing a contract with other pharmaceutical companies, and the contract was worth € 3.8 million. The lawsuit had been successful, and the indictment states that the Commercial Court has taken a decision for indemnification against the MoH worth 1.5 million, in addition to the costs of running the new and unnecessary tender process. Ilir Tolaj it is stated that has abused his official position, after telling the evaluation commission that which operator should be selected in two emergency tenders, he said one tender should be given to "Koslabor" and the other to the Exclusive Company from Gjilan. According to the indictment, the owner of the latter, Burim Shkodra, had been a student of Tolaj and in relation with Arbenita Pajaziti after the latter had sold her license to Arsim Shkodra's brother. According to the indictment, Tolaj did not want to change the existing contracts of the MoH because he wanted to issue new contracts in his own interests and for the material benefit of those with whom had financial relation or otherwise. Whereas, Pajaziti, the indictment says she has abused her official position after not declaring the conflict of interest and did not leave from the evaluation commission. Tolaj and Pajaziti are accused that they have asked for and through Alban Pozhegu, Raimonda Hyseni to sign that she had participated in the evaluation of tenders when she had not participated at all. Such a thing is considered that have enabled material benefits to the tender winners. According to the indictment, the tender procedures for these contracts were not in compliance with the Law on Public Procurement of January 15 2004.

Further, in the indictment it is stated that Tolaj and Pajaziti abused their positions on November and December 2007, meeting with the suppliers on different dates between November 15 and 18 and seeking from suppliers who could not supply until December 21 2007, to ensure bank guarantee. The indictment says the bank guarantee were a way for suppliers to be paid from the financial budget of current year budget for goods that will be delivered in the next financial year. Pajaziti, according to the indictment, told the admission committee to sign a false statement of receiving medicines by suppliers who were unable to supply the MoH before December 21 2007.

Tolaj and Pajaziti, allegedly made it possible that suppliers to obtain a material benefit, namely advance payment fraudulently, and Pajaziti has cheated the Ministry of Finance by telling the Admission Committee to sign false receiving certificates claiming that the goods was taken when in fact it had not been so.

Further it is said that when the products were received after December 21, 2007, they were not in compliance with the contracts. According to the indictment, it is further said that Tolaj abused his official position by running a campaign to damage Jona Med and this by making sure that this company does not win any contracts from the MoH, sending inspectors and demanding to punish them, making criminal reports and civil lawsuits against "Jona Med" and using their influence to ensure that "Jona Med" not to obtain import and export licenses. Ilir Tolaj and Bujar Bukoshi are accused of abusing their official duties on June 2010, when Tolaj was personal adviser of Bujar Bukoshi, according to the indictment, Tolaj has used his

influence as an adviser that a contract plus won by "Jona Med" not to continue. Although contracts have been drafted, Bujar Bukoshi had not signed the contracts for "Yess Pharm" or for "Jona Med". The two companies have filed civil lawsuits against the Ministry. Tolaj, Fejza, Fusha, and Kuqi, according to the indictment, between March 1, 2011 and April 30, 2011 have abused their official duties by giving a contract to "Lirimed". They did not adhere to the procurement procedures as there was a signed final report by which the contract was given to "Jona Med". Kuqi, the procurement leader, did not sign, and the evaluation committee continued by giving the contract to the company that did not meet the tender criteria. Tolaj, and Kuqi, are accused of abusing official position from January 1, 2009 until December 31, 2011 announcing and then without any good reason canceling tenders for essential medicines for patients, "Beta", Interfon and "Fluradabine". The owner of the company that supplied with those medicines, according to the indictment, was disliked by the Ministry, and instead of using exceptions by the Procurement Laws, the latter continued to remove and cancel tenders for these medicines. Zenel Kuqi is said that has abused his official position by failing to keep records for lot 72 and 73 containing files of Sante Pharm, which according to the indictment meant that it was not possible to challenge the decision on these lot. Ilir Tolaj and Arbenita Pajaziti are charged for attempt abusing official position. They are said to have attempted to abuse official positions. According to the indictment, on November 30, or about this date 2011, Bekim Deshishku was invited in the meeting to resolve a civil dispute between the parties. The meeting was also attended by Tolaj, Pajaziti and Ismet Hyseni. At the meeting, it is said that Pajaziti had told Deshishku to withdraw the lawsuit he had filed at the Commercial Court. According to the indictment, Deshishku had been told that if he did so he would receive a contract with an emergency tender worth 70,000 euros and would be considered favorable for future tenders. Defendants Tolaj, Pajaziti and Hyseni claimed that on November 30, 2011 have attempted to give material benefit to the company "Jona Med" in amount of 5,000 euros by winning a tender and contract in the amount of 70,000 euros, acting out of their financial authority. Hajrullah Fejza, then chief of quality control, is accused that acting as an official of the MoH, on various dates, required bribes. Tolaj and Fejza are accused of abusing their official duties on or about December 24, 2010 interfering in the tender process for Glivek insisting that procurement official Enver Maliqi to sign the tender for "Farmkos" when this was a violation of international license of Novartis. They insisted that Maliqi sign cases for lot where he had only two bids, while the law required three responsive bids.

### **KLI's findings in treating cases**

The BC in Pristina, with the ruling issued on July 19, 2013, former Permanent Secretary of the Ministry of Health, Ilir Tolaj, sentenced to 10 months imprisonment for "incitement to falsify official documents", and 9 months imprisonment for "tax evasion". The court has imposed a unique sentence of 18 months imprisonment, where according to the same judgment, the time spent in detention and house arrest will be accounted. Also, he was punished with a fine of 1,000 euros for committing the criminal offense of "tax evasion".

This judgment also prohibits the exercise of functions in the administration or civil service for three years. Arbenita Pajaziti, was sentenced to 6 months imprisonment for committing criminal offense of "incitement of falsification of official documents", while also for another point of indictment charged for "incitement of falsification of official documents", was sentenced to 6 months suspended imprisonment.

The court has given a unique sentence from 8 months, which will not be executed if the same does not commit a criminal offense for a period of 2 years, from the moment the judgment becomes final.

Pajaziti was also prohibited from exercising public duties in administration or public service for two years. Hajrullah Fejza has been sentenced to 6 months imprisonment for the criminal offense accepting bribes. The court has imposed a unique sentence of 8 months imprisonment. According to the judgment, the time of detention on remand will be counted for the imprisonment sentence. Fejza has also been prohibited from exercising public duties in public administration and service for three years.

For other points of the indictment, the above mentioned have been acquitted from the charges. Bujar Bukoshi, former Minister of Health, with the judgment of the BC in Pristina, has been acquitted from charges. The other accused, Ismet Hyseni, Zenel Kuqi, and Bekim Fusha, have been acquitted from the accusatory act.

Following the appeals of the defense of Ilir Tolaj, Arbenita Pajaziti, and Hajrullah Fejza, in the Appeal Court, regarding the judgment of the BC, the Appeal Court has taken the following judgment: the judgment of the BC in Pristina is canceled in relation to points 1.1, 1.2, 1.3, 1.6, 1.7, 1.8, 1.9, 2, 3.1, 10 and 12 and regarding these points the case was returned in retrial. Whereas, the Appeal confirmed the appealed judgment of the BC on points 1.4, 1.5, 11 as well as points which were not appealed by the prosecutor 1.7, 1.10, 1.11, 1.12, 1.13, 3.2, 6.8 and 9. The Supreme Court approved the request for Ilir Tolaj's defense, and was rejected the charge for committing criminal offense of tax evasion. In which case was amended the judgment of the BC and the Appeal Court. The Supreme Court also canceled the sentence of Hajrullah Fejza, convicted for criminal offense of accepting bribes, and returned the case to the first instance court.

Also, on March 6 2017, the Supreme Court approve the request for protection of legality for Ismet Hyseni, considering it as grounded. With the approval of the request for protection of legality, was canceled the judgment of the Appeal Court of Kosovo of September 13 2016 only with regard to point two of the clause and only regarding to the defendant Ismet Hyseni, while the case in this part was returned to the same court in reinstatement.

After returning the case for retrial at the BC in Pristina, except hearing on which Prosecutor Fejzullahu had specified the indictment, no court hearing was held, and this hearing failed to be held in eight (8) court attempts, most of which failed due to the absence of accused Bujar Bukoshi, who is sick.

Hearing of May 10 2019, had failed for the reason that in that hearing except the accused Bukoshi, absent was also the member of presiding judge Valbona Musliu – Selimaj, which was on an official trip.<sup>59</sup>

After many hearings failed, the court on June 11 2019 had singled out the proceedings against the accused Bujar Bukoshi, while had continued with the other accused who had given their opening statements.<sup>60</sup> In addition to this hearing, the court has managed to hold also the hearing of July 25, 2019, while the next hearing is scheduled to be held on October 7, 2019, at 9:00 am.

**Alleged damage:** No information.

**Sequestration and confiscation:** There was no request in the indictment.

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<sup>59</sup> “Absent is member of presiding judge and Bujar Bukoshi, for the eighth time fails trial against him, Ilir Tolajt and others” Oath for Justice. May 10 2019. (See the link <https://betimiperdrejtesi.com/mungon-anetarja-e-trupit-gjykues-dhe-bujar-bukoshi-per-here-te-tete-deshton-gjykimi-ndaj-tij-ilir-tolajt-dhe-te-tjereve/>)

<sup>60</sup> “Proceedings against Bujar Bukosh singled out, whereas Ilir Tolajand others oppose the amended indictment, prosecution says that there is evidence” Oath for Justice. June 11 2019 (See the link <https://betimiperdrejtesi.com/vecohet-procedura-ndaj-bujar-bukoshit-derisa-ilir-tolaj-e-te-tjeret-e-kundershtojne-edhe-aktakuzen-e-ndryshuar-prokuroria-thote-se-ka-prova/>)



## Case of the former Mayor of Klina Sokol Bashota

### Basic Court in Peja

**Case number:** PKR.no.168/16

**Presiding judge:** Sylë Lokaj

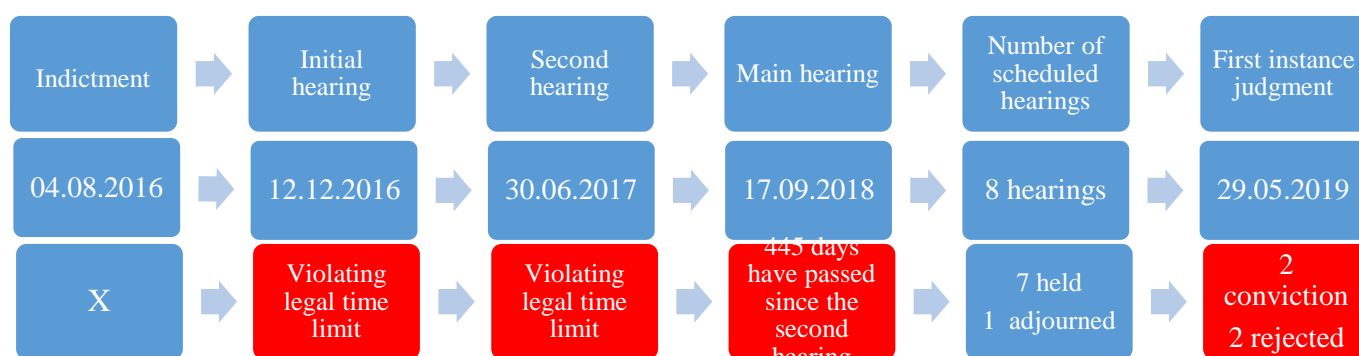
**Prosecutor:** Sahide Gashi

**Defendants:** Sokol Bashota, Esat Raci, Fadil Gashi, Enver Berisha

**Criminal offenses:** “Abusing official position or authority”, “Non-reporting or false reporting of property, income, gifts, other material benefit or financial obligations”

**Stage of proceedings:** First instance judgment

**(SINCE THE INDICTMENT HAS BEEN FILED UNTIL SEPTEMBER 30 2019, HAVE PASSED 1153 DAYS)**



On November 25 2013, the ACA filed a criminal report regarding allegations for abuse in the Municipality of Klina. On February 24 2014, the Prosecution issued a ruling to initiate the investigation, while on August 4 2016, the prosecutor of EULEX filed an indictment against Sokol Bashota, Mayor of Klina and three others for “Abusing Position or Authority”, “Non-reporting or false reporting of property, income, gifts, other material benefit or financial obligations”.

According to the indictment, during the process of allocation of rented apartments owned by the Municipality of Klina, they have made political agreements (PDK, LDK, AAK AND LDD) on the distribution of apartments. Following this agreement, the defendants influenced the decision-making process, overlooked applicants with serious economic conditions and rewarded their party friends with apartments. According to the prosecution, the two defendants Esat Rraci and Fadil Gashi, using the provisions of the Law on the Sale of Apartments, in which there is a residential right, had submitted written requests for the purchase of the apartments, which were distributed to them. But as a result of the investigation, the process of purchase was suspended. The prosecution charges also the defendant Sokol Bashota that between

January 2009 and June 2016, in the capacity of the Mayor of Klina, deliberately falsified or did not include the data or information, when he has submitted his property statements to the ACA.

### **KLI's findings regarding treating cases**

The indictment in this case was filed on August 4, 2016, while the initial hearing was scheduled on December 12, 2016, or more than three months after the 30 day deadline set by the CPCRK, for holding the initial hearing after the indictment was filed. At this hearing all the accused had pleaded not guilty.<sup>61</sup> The second hearing in this case was scheduled for January 23, 2017, but was adjourned because prosecutor Valeria Bolici had stated that she had not received no other record regarding opposition of evidence presented by the parties, except those of accused Bashota.<sup>62</sup> On March 31, 2017, this trial had just begun due to the amendment and extension of the indictment by Prosecutor Bolici.<sup>63</sup>

Following the extension of this indictment, the second hearing was held three months later, on June 30, 2017, violating foreseen Article 245, paragraph 5 of the CPCRK, where the accused and their defense were stated regarding the request for dismissal of the indictment and evidence.<sup>64</sup>

On November 30 2017, the first instance had rejected the requests for dismissal of the indictment and opposition of the evidence, but following the appeals of the defense and the accused, the Appeal Court on February 6 2018 canceled the first instance judgment and returned the case on reinstatement.<sup>65</sup>

Even after returning the case on reinstatement, the first instance court, on April 19 2018, had decided same as in the first time, again rejecting the requests of the accused for dismissal of the indictment. This first instance decision was also confirmed by the Appeal Court on May 2018.<sup>66</sup>

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<sup>61</sup> "Mayor of the Municipality of Klina Komunës and three other municipal officials pleaded not guilty for the offenses that are charged". Oath for Justice. December 12 2016. (See the link <https://betimiperdrejtesi.com/kryetari-it-komunes-se-klines-dhe-tre-zyrtare-tjere-komunal-deklarohen-te-pafajshem-per-veprat-me-te-cilat-ngarkohen/>)

<sup>62</sup> "Prosecutor did not receive all requisitions for the opposition of evidences, second hearing adjourned in the case of Mayor of Klina and three other accused". Oath for Justice. January 23 2017 (See the Link <https://betimiperdrejtesi.com/prokurorja-nuk-i-ka-pranuar-te-gjitha-shkresat-per-kundershtimin-e-provave-shytyhet-shqyrtimi-i-dyte-ne-rastin-e-kryetarit-te-klines-dhe-tre-te-akuzuarve-tjere/> )

<sup>63</sup> "Initiated from the beginning the trial against Mayor of Klina, Sokol Bashota". Oath for Justice. March 31 2017. (See the link <https://betimiperdrejtesi.com/nis-prej-fillimi-gjykimi-ndaj-kryetarit-te-klines-sokol-bashota/>)

<sup>64</sup> "Trial against mayor of Klina, Sokol Bashota and three other officials". Oath for Justice. June 30 2017 (See the link <https://betimiperdrejtesi.com/gjykimi-ndaj-kryetarit-te-klines-sokol-bashota-dhe-tre-zyrtareve-te-tjere/>)

<sup>65</sup> "The Appeal returns in reinstatement the case against former mayor of Klina, Sokol Bashota". Oath for Justice. March 10 2018 (See the link <https://betimiperdrejtesi.com/apeli-e-kthen-ne-rivendosje-rastin-ndaj-ish-kryetarit-te-klines-sokol-bashota/>)

<sup>66</sup> "The appeal confirms the indictment against former mayor of Klina, Sokol Bashota and others". Oath for Justice. May 30 2018. (See the link <https://betimiperdrejtesi.com/apeli-konfirmon-aktakuzen-ndaj-ish-kryetarit-te-klinessokol-bashota-dhe-te-tjereve/> )

Following confirmation of the indictment, the main hearing was scheduled to be held for July 10, 2018, but failed due to a strike of the administrative staff, and also failed to be held the hearing scheduled for July 11, 2018. At the hearing of December 3, 2018, the court had decided to make a financial expertise to determine the height of the price of the apartments which are the subject of the indictment.<sup>67</sup> At the hearing on March 4, 2019, he had used the right to be defended in silence.<sup>68</sup> Whereas at the hearing held on May 27, 2019, prosecutor Sadihe Gashi withdraw from the criminal prosecution for abusing official position or authority against the four accused, as according to her it was not confirmed that the accused committed criminal offense establish that the accused had committed the criminal offenses which they were charged with. While for not stating the property for which the accused Bashota and Berisha were charged, Prosecutor Gashi had requested that Bashota be found guilty and be prohibited to exercise his official duties.<sup>69</sup>

On May 29, 2019, the BC in Peja announced the judgment in this case, where two of the accused Bashota and Berisha were sentenced to six months suspended imprisonment and punishment with a fine of 1,000 euros, for non-declaration or false declaration, but the suspended sentence will not be executed against them unless they do not commit any other criminal offense within one year.<sup>70</sup>

From the main hearing until the judgment was announced, in this case were scheduled 10 hearings, of which 7 were held while three were adjourned.

**Alleged damage:** Not defined with the indictment

**Sequestration and confiscation:** There was no request in the indictment.

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<sup>67</sup> “Financial expertise assigned in trial against Sokol Bashotës and others”. Oath for Justice. December 3 2018. (See the link <https://betimiperdrejtesi.com/caktohet-ekspertize-financiare-ne-gjykimin-ndaj-sokolbashotes-dhe-te-tjereve/> )

<sup>68</sup> *Trial against Sokol Bashota and others, former mayor of Klina defended in silence, prosecutor opposes the financial expert*”. Oath for Justice. March 4 2019. (See the link <https://betimiperdrejtesi.com/gjykimi-ndaj-sokol-bashotes-dhe-te-tjereve-ish-kryetari-i-klines-mbrohet-ne-heshtje-prokurorja-kundershton-ekspertin-financiar/>)

<sup>69</sup> “Prosecution withdraw from the charge for abusing position against Sokol Bashota, seeks to plead guilty for non-declaration of property”. Oath for Justice. May 27 2019 (See the link <https://betimiperdrejtesi.com/prokuroria-heq-dore-nga-akuza-per-keqperdorim-detyre-ndaj-sokol-bashotes-kerkon-te-shpallet-fajtor-per-mos-deklarim-te-pasurise/>)

<sup>70</sup> “Sokol Bashota sentenced with suspended imprisonment for non-declaration of property, rejection judgment for abusing position (Video)”. Oath for Justice. May 29 2019 (See the link <https://betimiperdrejtesi.com/sokol-bashota-denohet-me-burgim-me-kusht-per-mos-deklarim-te-pasurise-aktgjykim-refuzues-per-keqperdorim-detyre/>)

## Case against former mayor of Gjakova Pal Lekaj and others

### Basic Court in Gjakova

**Case number:** PKR.no.16/18

**Presiding judge:** Shaqir Zika

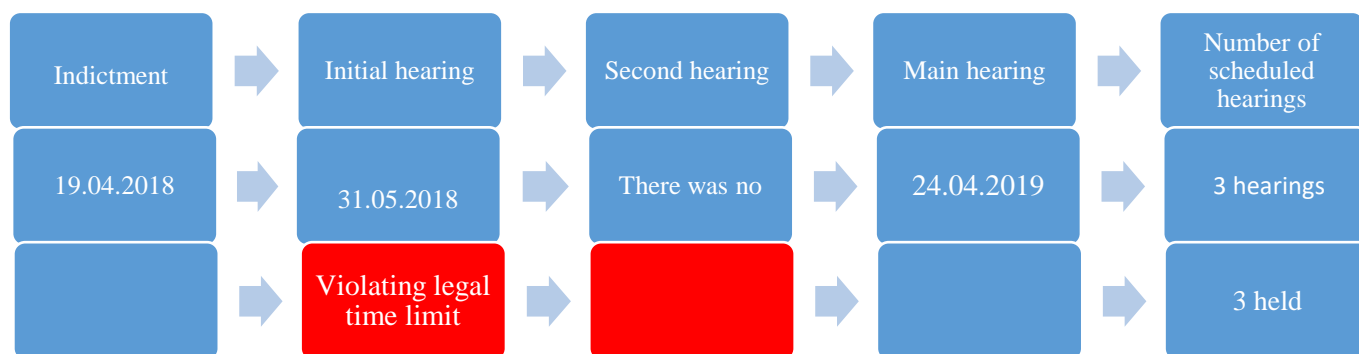
**Prosecutor:** Atdhe Dema

**Defendants:** Pal Lekaj, Pashk Sylja, Bekim Sylja, Teuta Mejzini, Dafina Thaqi, Veli Hajdaraga, Ismet Isufi

**Criminal offenses:** “abusing official position or authority”, “appropriation while exercising official duty”, “fraud with subsidies”, “tax evasion”.

**Stage of proceedings:** In process

**(SINCE THE INDICTMENT HAS BEEN FILED UNTIL SEPTEMBER 30 2019, HAVE PASSED 530 DAYS)**



The SPRK issued the ruling on initiation of investigations on April 12 2016, while the indictment was filed on April 10 2018, for the criminal offenses of "abusing official position or authority" and "appropriation while exercising official duty", against the former mayor of Gjakova, Pal Lekaj. He is accused that without legal basis has given subsidies in agriculture over 630,000 euros.<sup>71</sup> Along with Lekaj, Ismet Isufi, Pashk Sylja, Bekim Sylja, Teuta Mejzini and Dafina Thaqi are also accused that acting as officials of the Municipality of Gjakova, have abused their official positions during the distribution of subsidies.<sup>72</sup>

Pal Lekaj and Ismet Isufi, are accused that during the period 2008-2014, acting in the capacity of official persons, the first as the mayor of Gjakova, while the second as director of the Directorate for Agriculture, have distributed subsidies through the company “ UNIONVL ”, violating the Law on Public Financial Management.

<sup>71</sup> “Exclusive: The indictment was filed for corruption against Pal Lekaj”. Oath for Justice. April 12 2018. (See the link <https://betimiperdrejtesi.com/ekskluzive-ngritet-aktakuze-per-korrupsion-ndaj-pal-lekaj/> )

<sup>72</sup> “Pal Lekaj charged that has given over 630 thousands euros subsidies without legal basis”. Oath for Justice. April 24 2018. (Shih linkun <https://betimiperdrejtesi.com/pal-lekaj-akuzohet-se-ka-dhene-mbi-630-mije-eurosubvencione-pa-baze-ligjore/> )

According to the indictment, the subsidies were authorized by the accused without supervision if payments were made to farmers and having no contract at all with the company "UNION-VL", whereby 40% of over three thousand farmers did not receive payments that were authorized to them.

Whereas, defendants Pashk Sylja, Bekim Sylja, Teuta Mejzini and Dafina Thaqi, are accused that being in the capacity of presidents and members of the committees for overseeing the distribution of subsidies, have compiled reports that allegedly the distribution of subsidies has been done as it should, although about 40% of applicants have not received subsidies. In this case, Veli Hajdaraga is also accused, who, according to the prosecution, during the period 2008-2015, gave incorrect information that allegedly all applicants for subsidies received subsidies and allowed that instead of farmers who were on the list to receive subsidies, to receive other persons without having right.

### **KLI's findings regarding treating cases**

The initial hearing in this case was scheduled for May 31, 2018, or 21 days after the 30 day deadline set by the CPCK for holding the initial hearing after the indictment was filed.<sup>73</sup> Whereas on July 16, 2018, the first instance court had decided to dismiss the charge in relation to the criminal offense of "appropriation while exercising official duty" against Pal Lekaj, Isuf Isufi, Pashk Sylja, Bekim Sylja, Teuta Mejzini and Dafina Thaqi. The same court had confirmed the charge against Lekaj regarding criminal offense of "abusing official position or authority". The indictment has also been confirmed against the other defendants, Ismet Isufi, Pashk Sylja, Bekim Sylja, Teuta Mejzini, Dafina Thaqi and Veli Hadaraga, for abusing official position and fraud regarding subsidies.<sup>74</sup>

On November 2018, the Appeal Court returned the case in reinstatement against Lekaj and others in relation to criminal offense of abusing Official Position, for which point the BC in Gjakova had confirmed the indictment, after according to the assessment of the Appeal, the first instance court did not give sufficient reasons when it had confirmed the charge for the criminal offense of abusing position against the accused and rejected the appeals of their defense. Whereas, regarding other offense for which also the Basic dismissed this point of the indictment, the same has been confirmed by the Appeal.<sup>75</sup>

After the case was returned for reinstatement, on May 3, 2019, a second hearing was held, in

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<sup>73</sup> "Former mayor of Gjakova, Pal Lekaj and others declare innocent for corruption". Oath for Justice. May 31 2018. (See the link <https://betimiperdrejtesi.com/ish-kryetari-i-gjakoves-pal-lekaj-dhe-te-tjeretdeklarohen-te-pafajshem-per-korrupsion/> )

<sup>74</sup> "The indictment was partially dismissed against minister Pal Lekaj". Oath for Justice. July 24 2018. (See the link <https://betimiperdrejtesi.com/hudhet-pjeserisht-aktakuza-ndaj-ministrit-pal-lekaj/> )

<sup>75</sup> "The Appeal returns in reinstatement case of Pal Lekaj for abusing position, confirms dismissal of the indictment on appropriation". Oath for Justice. November 27 2018. (See the link <https://betimiperdrejtesi.com/apeli-e-kthen-nerivendosje-rastin-e-pal-lekajt-per-keqperdorim-pozite-verteton-hudhjen-e-akuzes-per-pervetesim> )

which the defendants requested the dismissal and opposition of the evidence<sup>76</sup>. This indictment was confirmed by the BC in Gjakova, whereas has dismissed the indictment and ceased the criminal proceedings against the accused Pashk Sylja, Bekim Sylja, Teuta Mejzini, Dafina Thaqi, for the criminal offense of Abusing Official Position, due to the relative statutory limitation of criminal prosecution.<sup>77</sup> Whereas the Appeal Court Has confirmed the indictment againsts Pal Lekaj, Isufi and Hajdaraga leaving in force the ruling of the BC in Gjakova.<sup>78</sup>

From the date of the initial hearing until the date of the main hearing 329 days have passed. On April 24 2019, the main hearing session was held, on which hearing the SPRK had concluded that has sufficient evidence against the accused, while the defense objected this indictment. Whereas in the same hearing it was decided to make a new financial expertise.<sup>79</sup> Whereas on August 16 2019, the BC in Gjakova attached the case of the accused for abuse in distribution of subsidies Gani Rama, and the accused Leka, Isufi and Hajdaraga, as according to prosecutor Atdhe Dema both cases were the same and interrelated.<sup>80</sup> This case is still in court proceeding.

**Alleged damage:** Over 630.000 euros.

**Sequestration and confiscation:** There was no request in the indictment.

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<sup>76</sup> “Former mayor of Gjakova, Pal Lekaj and others request the dismissal of the indictment for corruption”. Oath for Justice. January 3 2019 (See the link <https://betimiperdrejtesi.com/ish-kryetari-i-gjakoves-pal-lekaj-dhe-te-tjeret-kerkojne-hudhjen-e-aktakuzes-per-korrupsion/>)

<sup>77</sup> “The indictment was confirmed for abusing position against Pal Lekaj and two others, the criminal proceeding is ceased for the four accused”. Oath for Justice. January 18 2019 (See the link <https://betimiperdrejtesi.com/konfirmohet-aktakuza-per-keqperdorim-pozite-ndaj-pal-lekaj-dhe-dy-te-tjereve-per-kater-te-akuzuar-pushohet-procedura-penale/>)

<sup>78</sup> “The Appeal confirms the indictment for corruption against Pal Lekaj and two others”. Oath for Justice. March 14 2019 (See the link <https://betimiperdrejtesi.com/apeli-verteton-aktakuzen-per-korrupsion-ndaj-pal-lekaj-dhe-dy-te-tjereve/>)

<sup>79</sup> “Trial against Pal Lekaj and others, prosecutor defends the indictment, the defense objects it”. Oath for Justice. 24 April 2019 (See the link <https://betimiperdrejtesi.com/gjykimi-ndaj-pal-lekaj-dhe-te-tjereve-prokurori-mbron-aktakuzen-mbrojtja-e-kundershton/>)

<sup>80</sup> “The case of Gani Rama is attached with the case of Pal Lekaj and others, charged for corruption”. Oath for Justice. August 16 2019 (See the link <https://betimiperdrejtesi.com/behet-bashkimi-i-rastit-te-gani-rames-me-ate-te-pal-lekaj-dhe-te-tjereve-te-akuzuar-per-korrupsion/>)

## Case against Sami Lushtaku and others

### Basic Court in Pristina

**Case number:** PKR.nr.18/15.

**Presiding judge:** Initially this case has been adjudicated by the EULEX Judge Vladimir Mikula, but then it was transferred to the local Judge Beqir Kalludra.

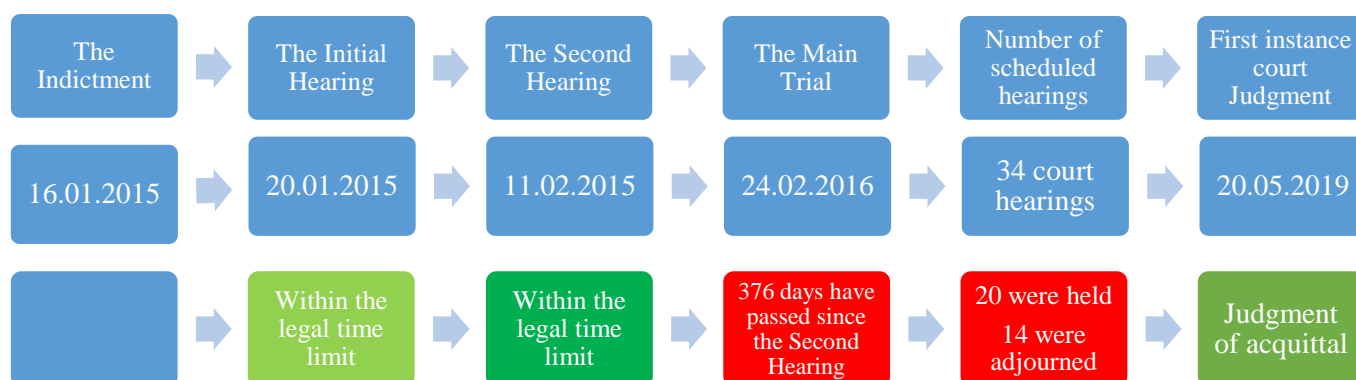
**Prosecutor:** Initially this case was prosecuted by the EULEX Prosecutor Paul Flynn, but then it was continued by prosecutor Florie Salihu-Shamolli.

**Defendants:** Sami Lushtaku, Esat Tahiri, Milazim Lushtaku, Driton Pruthi, Arben Gjukaj, Hysni Hoxha and Azem Duraku.

**Criminal offence:** “Abusing official position or authority”; “Falsifying documents in co-perpetration”; “Incitement to abusing official position or authority”; “Fraud”; “Entering into harmful contracts”.

**Stage of proceedings:** First instance court judgment.

**(SINCE THE INDICTMENT HAS BEEN FILED UNTIL SEPTEMBER 30, 2019 HAVE PASSED 1719 DAYS)**



On September 2, 2012, a criminal report was filed against Sami Lushtaku, Mayor of Skenderaj. On October 5, 2012, the EULEX prosecutor issued a decision to initiate investigative stage, and on January 16, 2015, he filed an indictment in BC in Pristina against Sami Lushtaku, Esat Tahiri, Milazim Lushtaku, Driton Pruthi, Arben Gjukaj, Hysni Hoxha and Azem Duraku, for the criminal offences “abusing official position or authority”, “falsifying documents in co-perpetration”, “incitement to abusing official position or authority”, “fraud”, “entering into harmful contracts”.

They are accused of a bid of millions of euros, on physical security of KEK facilities. Sami Lushtaku is charged with the criminal offence of “incitement to abusing official position or authority”, Arben Gjukaj and Hysni Hoxha for the criminal offence of “abusing official position or authority”, Esat Tahiri and Milazim Lushtaku for criminal offences “fraud” and “falsifying documents in co-perpetration”. Driton Pruthi for the criminal offences of “abusing official position or authority” and “entering into harmful contracts”, while Azem Duraku for the criminal offence of “incitement to abusing official position or authority”.



## **KLI's findings regarding the handling of the case**

The indictment regarding the case against Sami Lushtaku and others was filed on January 16, 2015. The initial hearing regarding this case has been scheduled and held in record time, only after four days of filing the indictment, respectively on January 20, 2015 and the second hearing on February 11, 2015. While the first and second hearing have been scheduled and held within the legal time limits set by the CPCRK, while the main trial in this case has been adjourned for more than a year and was held only on February 24, 2016.

This case was transferred from the EULEX Judge Vladimir Mikula to local Judge Beqir Kalludra, and also, from the EULEX prosecutor Paul Flynn, to prosecutor Florie Salihu-Shamolli.

Since February 24, 2016, when the first hearing of the main trial was held, so far, 20 court hearings have been scheduled, ten of which have failed to be held. On November 2, 2018, this trial had failed to be held because the presiding judge Beqir Kalludra had to attend an ethics training.<sup>81</sup> Meanwhile, the hearing scheduled for December 14, 2018 had failed to be held due to the absence of the accused Sami Lushtaku, against whom Judge Kalludra said that would issue a mandatory conduct order.<sup>82</sup>

Meanwhile, due to the lack of defense attorneys of the accused had failed to be held the hearing scheduled for January 9. This happened because the Kosovo Bar Association entered into a general boycott until the withdrawal of the order and recommendation of the Kosovo Judicial Council related to the restriction of lawyers and other parties to court facilities without an invitation or without the permission of the president of the relevant court.<sup>83</sup> The hearing scheduled for April 23, 2019, when was expected to be given the closing statements failed to be held because the prosecutor of the case, Florije Shamolli, was not ready to give the closing statement, since according to her, in SPRK, prosecutors were busy handling the case of some returnees from Syria to Kosovo.<sup>84</sup>

The final hearing held in this case took place on May 3, 2019, where the prosecution had requested the conviction of the accused, while the defense attorneys had requested their acquittal. Also, the defense attorney of the accused Esat Tahiri stated that one of the criminal offences of which his defendant charged with – “falsifying document”, has reached the

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<sup>81</sup> “The judge is in training, trial regarding the famous case “KEK II” is adjourned”. Betimi për Drejtësi, November 2, 2018 (Follow link: <https://betimiperdrejtesi.com/gjykatesi-ne-trajnim-shtyhet-gjykimi-ne-rastin-e-njohur-kek-ii/>)

<sup>82</sup> “Case “KEK 2”, Sami Lushtaku is absent, the judge says that against him will be issued a mandatory conduct order”. Betimi për Drejtësi, December 14, 2018 (Follow link: <https://betimiperdrejtesi.com/rasti-kek-2-mungon-sami-lushtaku-gjykatesi-thote-se-ndaj-tij-do-te-leshohet-urdherese-per-sjellje/>)

<sup>83</sup> “Attorneys boycott the court, the trial against Sami Lushtaku and others fails”. Betimi për Drejtësi. January 9, 2019. (Follow link: <https://betimiperdrejtesi.com/avokatet-bojkotojne-punen-ne-gjykate-deshton-gjykimi-ndaj-sami-lushtakut-dhe-te-tjereve/>)

<sup>84</sup> “The closing statement is adjourned, in the trial against Sami Lushtaku and others regarding the million euro bid in KEK”. Betimi për Drejtësi, April 23, 2019 (Follow link: - <https://betimiperdrejtesi.com/shtyhet-dhenia-e-fjales-perfundimtare-ne-gjykimin-ndaj-sami-lushtakut-dhe-te-tjereve-per-tenderin-milionesh-ne-kek/>)



statutory limitation period, and thus he proposed to the court to render a rejection judgment regarding that offence.<sup>85</sup>

After 34 hearings, of which 20 were held and 14 were adjourned, it was decided that the announcement of the judgment would be held on May 20, 2019, thus violating the legal time limit, according to which the announcement of the judgment should be presented three days after the completion of the main trial.

On May 20, Judge Beqir Kalludra, decided that the former mayor of Skenderaj, Sami Lushtaku and all other defendants be acquitted of their charges. According to the judgment announced by Judge Kalludra, it has not been proven that the accused have committed the criminal offences they were charged with. Whereas, against Esat Tahiri and Milazim Lushtaku, a rejection judgment was announced regarding the criminal offence of falsifying documents, on the grounds that absolute statutory limitation period was reached. They were also acquitted regarding the criminal offence of fraud, while Tahiri was acquitted also regarding the criminal offence incitement to abusing official duty.<sup>86</sup>

Judge Kalludra, while announcing the judgment, also discussed regarding the alleged damage in this case, which according to him was also discussed in the media. He stated that an indictment could not stand if it does not accurately determine the value of the damage caused to the state budget. “In the media it was discussed regarding the damage, but if you have the indictment in front of you, on page 5 paragraph 5, you’ll see the sum of 6 million and 182 thousand, while in the same page, paragraph 3, you’ll see the amount of 100 thousand. Then at the next point is 50,000 thousand. Therefore I’m kindly asking, this should not ever happen. Six million is the value of the bid, whereas the damage should have been the difference between the companies. Such an indictment is not valid, you find somewhere the amount of 100,000, and somewhere else 6,000,000”, the judge stated while giving his reasoning after the judgment was announced.

**Alleged damage:** 6,182,609.76 euro.

**Confiscation and sequestration:** There was no request in the indictment.

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<sup>85</sup> “The trial regarding the million euro bid in KEK ends, the prosecution requires the punishment of Sami Lushtaku and others, the defense calls it “a mean indictment””. *Betimi për Drejtësi*, May 3, 2019 (Follow link: - <https://betimiperdrejtesi.com/perfundon-gjykimi-per-tenderin-milionesh-ne-kek-prokuroria-kerkon-denimin-e-sami-lushtakut-dhe-te-tjereve-mbrojtja-e-quan-aktakuze-te-poshter/>)

<sup>86</sup> “Sami Lushtaku and others are acquitted of charges in the famous case KEK 2”. *Betimi për Drejtësi*, May 20, 2019 (Follow link: <https://betimiperdrejtesi.com/sami-lushtaku-dhe-te-tjeret-lirohen-nga-akuzat-ne-rastin-e-njohur-kek-2/>)

## Case “FAN” against Naser Osmani and others

### Basic Court in Pristina

**Presiding judge:** Shashivar Hoti.

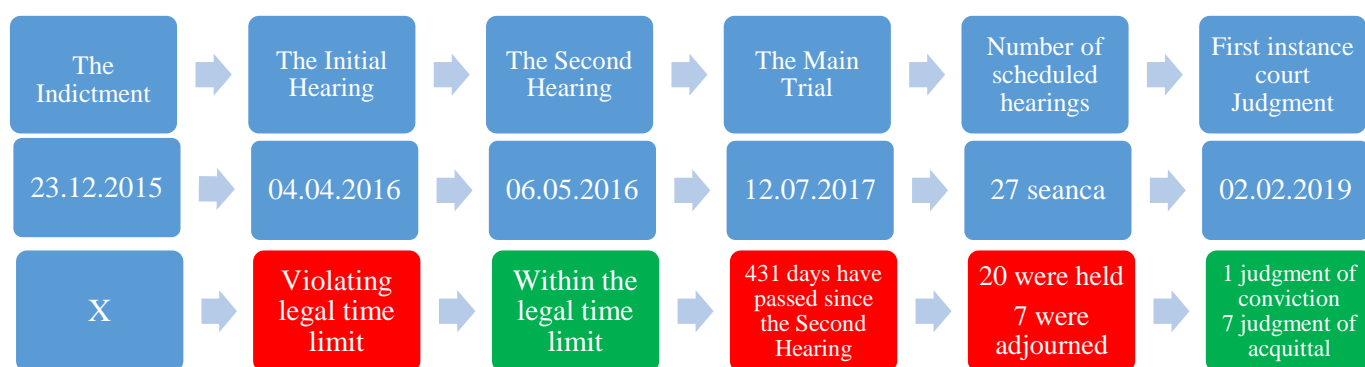
**Prosecutor:** Fikrije Fejzullahu.

**Defendants:** Naser Osmani, Bahri Shabani, Shkelzen Lluka, Naim Avdiu, Melita Ymeraga, Agron Kamberi, Adrian Kelmendi, Agim Deshishku.

**Criminal offences:** “Abusing official position or authority”, “Fraud”, “Tax evasion”, “Legalization of false content”.

**Stage of proceedings:** First instance court judgment.

**(SINCE THE INDICTMENT HAS BEEN FILED UNTIL SEPTEMBER 30, 2019 HAVE PASSED 1378 DAYS)**



The case against Naser Osmani began based on the criminal report filed by the Kosovo Police on April 28, 2014. The SPRK on April 30, 2014 issued a decision to initiate investigative stage, whereas this Prosecution on February 16, 2016 filed an indictment to the BC in Pristina, against Member of the Parliament Naser Osmani, deputy Chairman of PAK Board of Directors, Bahri Shabani, also against Shkëlzen Lluka, Naim Avdiu, Melita Ymeraga, Agron Kamberi, Adrian Kelmendi, all officials at the PAK, and Agim Deshishku, businessman.

Based on the indictment filed by the SPRK, the accused Naser Osmani, as deputy chairman of the PAK Board of Directors, Bahri Shabani as the Director of the PAK Board of Directors, Shkelzen Lluka as PAK Manager, Naim Avdiu as Deputy Managing Director of PAK and Melita Ymeraga, Ardian Kelmendi, Agron Kamberi as the head of the PAK Monitoring Unit, in cooperation with other officials as international PAK members: Lisa Brodey, Mohammed Omran and Hubert Warsmann, have exceeded official competencies for the purpose of obtaining unlawful benefits for themselves or for another person, in the amount of 5,400,000.00 Euro.

They are accused of violating the rights of workers of this enterprise, and at the same time have caused damage to the Social Enterprise “FAN” represented by the PAK and to the state budget,

regarding the NewCo “FAN-Podujeva”. The latter was privatized in the 7th wave of sales by the KTA, when it was purchased for a price of 2,310,000 Euro from the buyer, and then the accused, Agim Deshishku, under the signed contract had commitments to make investments in the amount of 2,800,000 Euro and employ 236 employees over the two year period.

### **KLI’s findings regarding the handling of the case**

The initial hearing regarding this case has been scheduled on March 17, 2016. This court hearing has been adjourned and scheduled for April 4, 2016. At the hearing of April 4, 2016, while Special Prosecutor Admir Shala read the charges in indictment, Naser Osmani and Bahri Shabani, members of the Board of Directors of the PAK, did not plead regarding guiltiness, on the grounds that all members of the board should be present.<sup>87</sup> The main trial regarding this case was scheduled on April 10, 2017, after more than a year, but the same was adjourned twice in a row, while it was held on July 12, 2017.

On January 29, 2019 was expected to be announced the judgment regarding this case, but judge Shashivar Hoti noted that during the time the trial panel had, wasn’t able to review all case files, thus the announcement of the judgment will be adjourned for February 8, 2019.<sup>88</sup>

After 27 court hearings, 7 of which had failed to be held, and almost 3 years after the indictment was filed, on February 8, 2019, the Member of the Parliament Naser Osmani and other accused Melita Ymeraga, Adrian Kelmendi, Bahri Shabani, Shkelzen Lluka and Naim Avdiu were found not guilty of abusing official position.

Not guilty regarding the criminal offence legalization of false content was found the other accused Agim Deshishku. But, Deshishku was found guilty by the Basic Court in Pristina regarding the criminal offence of consistent fraud, thus convicted of 1 year of imprisonment. Whereas, regarding the criminal offence of tax evasion, Deshishku was convicted with 1 year of imprisonment and 10,000 euros of a punishment of a fine. Against him was imposed an aggregate punishment of 1 year and 8 months of imprisonment, where will be calculated the time spent in detention on remand and house detention. Also, based on the judgment announced by the judge Shashivar Hoti, the accused Agim Deshishku is obliged to repay the damage of 53,807.46 euros to the Tax Administration of Kosovo, as well as to pay the scheduled court amount in the value of 300 euros.

Whereas, the Kosovo Trust Agency was referred to civil litigation. Based on the indictment, the prosecution’s request to confiscate the company “FAN” was rejected.<sup>89</sup> Otherwise, against

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<sup>87</sup> “The trial starts, Naser Osmani and others regarding the PAK case plead not guilty”. Betimi për Drejtësi. April 4, 2016. (Follow link <http://betimiperdrejtesi.com/fillon-gjykimi-naser-osmani-dhe-te-tjeret-ne-rastin-e-akp-se-deklarohen-te-pafajshem/>)

<sup>88</sup> “The announcement of the judgment against MP Naser Osmani and others regarding the privatization of the fabric “FAN” is adjourned”. Betimi për Drejtësi. January 29, 2019 (Follow link: <https://betimiperdrejtesi.com/shtyhet-shpallja-e-aktgjykimit-ndaj-deputetit-naser-osmani-dhe-te-tjereve-per-privatizimin-e-fabrikes-fan/>)

<sup>89</sup> “MP Naser Osmani and others are found not guilty of abusing official position, Agim Deshishku is found

Agron Kamberi, the procedure has been terminated, because the prosecution has withdrawn from prosecution.

**Alleged damage:** More than 5 million Euros.

**Sequestration and Confiscation:** The prosecution’s request to confiscate company “FAN” has been rejected.

### Case “Veterans”

#### Basic Court in Pristina

**Case number:** PKR.nr.230/18.

**Presiding judge:** Nushe Kuka-Mekaj.

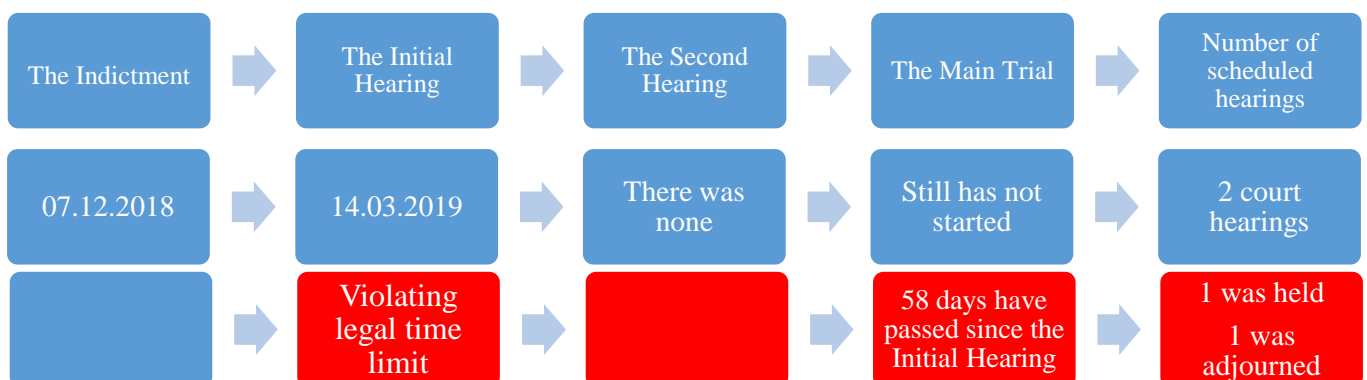
**Criminal offences:** “Abusing official position or authority”.

**Prosecutor:** Initially it was Afrim Shefkiu, then jointly Enver Krasniqi and Valdet Gashi

**Defendant:** Agim Çeku, Nuredin Lushtaku, Sadik Halitjaha, Shkumbin Demaliaj, Qelë Gashi, Shukri Buja, Ahmet Daku, Rrustem Berisha, Faik Fazliu, Smajl Elezaj, Fadil Shurdhaj and Xhavit Jashari.

**Stage of proceedings:** Ongoing.

**(SINCE THE INDICTMENT HAS BEEN FILED UNTIL SEPTEMBER 30, 2019 HAVE PASSED 298 DAYS)**



guilty”, Betimi për Drejtësi, February 2, 2019 (Follow link: <https://betimiperdrejtesi.com/deputeti-naser-osmani-dhe-te-tjeret-shpallen-te-pafajshem-per-keqperdorim-pozite-denohet-agim-deshishku/>)

The case known as “Veterans” is considered to be the largest case prosecuted by the local prosecution, because supposedly, former KLA soldiers, Members of the Commission for verification of the status of KLA veterans have abused their official position, adding to the veterans’ list 19,500 individuals, who according to the prosecution should not have had such a status.

Based on this indictment filed on December 7, 2018, the 12 involved individuals are charged because from 2011 to 2017, acting as members of the Governmental Commission for the Recognition and Verification of the Statute of the Nation’s Martyr, Invalid, Veteran, Member and Interned of the Kosovo Liberation Army’s War, have used their official duty and authority, by intentionally surpassing their competencies and by not fulfilling their official duties, in order to unlawfully benefit for another individuals, consistently, thus damaging the budget of the Republic of Kosovo.

According to the SPRK, the provided evidence shows that out of the unlawful payments for the KLA veteran fighters, the budget of the Republic of Kosovo was damaged in the amount of 88,769,217.04 Euro.

### **KLI’s findings regarding the handling of the case**

This case, even without starting to be handled at the court, has been involved in a non-serious handling by the SPRK. This indictment was initially compiled by the Special Prosecutor Elez Blakaj, but on August 2018, he resigned.<sup>90</sup> In his letter of resignation, Blakaj, had stated that on July 11, 2018, he had signed an indictment according to which 19,060 individuals have the veteran status unlawfully and that he has handed over that indictment to the Chief Prosecutor of the Special Prosecution of the Republic of Kosovo, Reshat Millaku, but the indictment still was not presented in court.<sup>91</sup>

Millaku, in a press conference, on August 20, 2018, said that one of the reasons why the indictment has not been filed to the court was that the enacting clause of the indictment filed by the resigned Special Prosecutor, Elez Blakaj, does not have written names and surnames of 19,060 veterans, who are considered to be false, even though he admitted that all the evidence was included, but using footnotes. Also, he stated that there has not been initiated any motion to interrupt the payment of pensions of these false veterans.<sup>92</sup> But SPRK, the indictment

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<sup>90</sup> “Elez Blakaj speaks, he says he was threatened by the veterans, he mentions the pressure of the Chief Prosecutor Aleksandër Lumezi regarding KLA veterans and “Pronto” case”. Betimi për Drejtësi. August 20, 2018. (Follow link: <https://betimiperdrejttesi.com/flet-elez-blakaj-thote-se-kishte-kercenime-nga-veteranet-permend-presionin-e-kryeprokurori-aleksander-lumezi-per-veteranet-e-uck-se-dhe-rastin-pronto/>)

<sup>91</sup> “The resigned prosecutor in July filed the high-profile indictment against veterans, where the first in the list is Agim Çeku and the last Xhavit Jashari, this indictment ‘sleeps’ in the Special Prosecution”. Betimi për Drejtësi. August 15, 2018. (Follow link: <https://betimiperdrejttesi.com/prokurori-i-dorehequr-elez-blakaj-ne-july-e-kan-gritur-aktakuzen-e-profilite-larte-per-veteranet-te-ciles-i-prin-agim-ceku-dhe-perfundon-me-xhavit-jasharin-The-Indictment-flene-ne-pr/>)

<sup>92</sup> “Chief Prosecutor Millaku does not argue why the indictment has not been sent to the Court, says that its enactment clause is not complete, even though he admits that all evidence is included in the indictment, but using footnotes (Video)”. Betimi për Drejtësi. August 20, 2018. (Follow link

regarding veterans, through prosecutor Afrim Shefkiu, filed in court on September 14, 2018, in the same time increasing the number of unlawful veterans from 19,060 to 20,238.<sup>93</sup>

At the time when this indictment was filed in court, the names of 20,238 individuals, along with their personal details, became public in the media, which followed with a great public debate, as many people came up with statements that they have been soldiers throughout the wartime but were included in those lists.

Although the accused were waiting for the initial hearing to be scheduled, Judge Nushe Kuka-Mekaj returned this indictment to the SPRK for improvements and clarifications, because, according to her, the indictment was not compiled in accordance with the provisions of the CPCRK and that the description of the factual situation of the enacting clause was unclear. Judge Kuka-Mekaj had given the SPRK 30 days to make the required improvements.<sup>94</sup>

Although State Prosecutor Aleksandër Lumezi, in his statements to the media, said that the indictment would be filed in court within the time limit set by the court<sup>95</sup>, this did not happen, as the SPRK requested from BC in Pristina to extend this time limit for 30 more days, in order to make the required improvements. This request has been approved on November 9, 2018 by Judge Kuka-Mekaj.<sup>96</sup>

On December 7, 2018, SPRK, finally handed this indictment to the court.<sup>97</sup> The initial hearing was scheduled for January 28, 2019 or 21 days after the legal time limit provided by the CPCRK, but even this had failed due to the absence of the Minister of Defense Rrustem Berisha, and two accused Faik Fazliu and Smajl Elezaj. In this hearing, besides special prosecutor Enver Krasniqi, who was assigned to represent this indictment, present in the hearing was also the other prosecutor Valdet Gashi. This hearing was adjourned for March 14, 2019.<sup>98</sup>

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<https://betimiperdrejtesi.com/kryeprokurori-millaku-nuk-e-argumenton-mos-dergimin-e-aktakuzes-ne-gjykate-thote-se-eshte-e-manget-ne-dispozitiv-edhe-pse-pranon-se-te-gjitha-provat-jane-perfshire-ne-aktakuze-por-permes-fusnotave/>

<sup>93</sup> “The indictment of the resigned prosecutor Elez Blakaj, regarding the case known as “Veterans”, is submitted to the Court”. Betimi për Drejtësi. September 14, 2018. (Follow link:

<https://betimiperdrejtesi.com/dorezohet-ne-gjykate-The-Indictment-e-prokurorit-te-dorehequr-elez-blakaj-per-rastin-e-njohur-si-veteranet/>)

<sup>94</sup> “The indictment of the case “Veterans” is returned to the Special Prosecution to be improved and clarified”. Betimi për Drejtësi. October 10, 2018. (Follow link <https://betimiperdrejtesi.com/The-Indictment-e-veteraneve-i-kthet-prokurorise-speciale-per-permiresim-dhe-qartesim/>)

<sup>95</sup> “Chief State Prosecutor Lumezi says that within a few days the veteran’s indictment is going to be re-submitted to Court”. Betimi për Drejtësi. October 22, 2018. (Follow link:

<https://betimiperdrejtesi.com/kryeprokurori-lumezi-thote-se-brenda-pak-ditesh-The-Indictment-e-veteraneve-dote-ridergohet-ne-gjykate/>)

<sup>96</sup> “The Court extends the legal time limit to 30 more days for the Special Prosecution to improve the indictment on the “Veterans” case. Betimi për Drejtësi. November 9, 2018. (Follow link:

<https://betimiperdrejtesi.com/gjykata-i-jep-edhe-30-dite-afat-prokurorise-speciale-qe-te-plotesoje-aktakuzen-ne-rastin-veteranet/>)

<sup>97</sup> “Special Prosecution submits to the Court the improved indictment regarding “Veterans” case. Betimi për Drejtësi. December 7, 2018. (Follow link: <https://betimiperdrejtesi.com/prokuroria-speciale-e-dorezon-ne-gjykate-aktakuzen-e-plotesuar-ne-rastin-e-veteraneve/>)

<sup>98</sup> “Case “Veterans”, the absence of minister Rrustem Berisha and two others adjourns the initial hearing”.



In the next hearing, two out of twelve of the accused, Xhavit Jashari and Ahmet Daku were absent due to different reasons, thus judge Nushe Kuka – Mekaj asked parties present in the hearing if they propose the severance of proceedings, but neither the prosecutor Krasniqi or the defense attorneys did not agree with such a proposal. Anyway, considering the efficiency of the proceedings, judge Kuka – Mekaj ex – officio ordered the severance of proceedings against Jashari and Daku.

Upon the fulfillment of the legal conditions to hold the hearing, all of the accused pleaded not guilty<sup>99</sup>, whereas the defense was given until April 15, 2019 to submit their motions to dismiss the indictment.

During the initial hearing, SPRK submitted the motion to temporarily terminate the pensions of 19,500 veterans, who are considered to be “false veterans”, but such a motion was rejected by judge Kuka – Mekaj on March 26, 2019.<sup>100</sup>

Within the reasoning of this ruling, it is said that the SPRK’s motion was not directed against the accused, but against MLSW, as a third party.

“In this specific case, considering the motion for a secure measure, which is of mandatory character and with a purpose of maintaining an existing situation, namely to not harm the budget of the Republic of Kosovo, was not directed against the defendants but against the Ministry of Labor and Social Welfare, the Department of Martyr’s Families and War Invalids, which is in the capacity of the third party. Thus, the court found that the legal condition to assign such a measure are not fulfilled”, it is said in the ruling rendered by the presiding judge Nushe Kuka Mekaj, on March 26, 2019.

Whereas, regarding the two accused Xhevat Jashari and Ahmet Daku for whom the severance of proceedings was ordered, judge Kuka – Mekaj scheduled and held the initial hearing on April 1, 2019, and both the accused pleaded not guilty regarding the charges they are accused of.<sup>101</sup> In June 2019, BC in Pristina through a press release notified the confirmation of this indictment.<sup>102</sup> After the confirmation of this indictment from the first instance, the Court of Appeals too had confirmed this indictment thus validating the decision of June 19, 2019 of the

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Betimi për Drejtësi. January 28, 2019. (Follow link: <https://betimiperdrejtesi.com/rasti-veteranet-mungesa-e-ministrit-rrustem-berisha-dhe-dy-te-tjereve-shtyn-seancen-fillestare/>)

<sup>99</sup> “Case “Veterans”, Agim Çeku, Rrustem Berisha, Shkumbin Demalijaj and others plead not guilty (Video)”. Betimi për Drejtësi. March 14, 2019. (Follow link: <https://betimiperdrejtesi.com/rasti-veteranet-agim-ceku-rrustem-berisha-shkumbin-demalijaj-dhe-te-tjeret-deklarohen-te-pafajshem/>)

<sup>100</sup> “The court rejects Special Prosecution’s motion to terminate pensions of 19,500 veterans”. Betimi për Drejtësi. March 14, 2019. (Follow link: <https://betimiperdrejtesi.com/gjykata-refuzon-kerkesen-e-prokurorise-speciale-per-pezullimin-e-pensioneve-per-19-500-veterane/>)

<sup>101</sup> “Case “Veterans”, Ahmet Daku and Xhavit Jashari plead not guilty”. Betimi për Drejtësi. April 1, 2019. (Follow link: <https://betimiperdrejtesi.com/rasti-veteranet-ahmet-daku-e-xhavit-jashari-deklarohen-te-pafajshem/>)

<sup>102</sup> “The indictment against Rrustem Berisha, Agim Çeku and others in the case “Veterans” is confirmed”. Betimi për Drejtësi. June 24, 2019 (Follow link <https://betimiperdrejtesi.com/konfirmohet-aktakuza-ndaj-rrustem-berishes-agim-cekut-e-te-tjereve-ne-rastin-veteranet/>)

BC in Pristina. “The Court of Appeals found that the first instance court has given sufficient reasons that the objections are not grounded and that the indictment filed from the Special Prosecution of the Republic of Kosovo has sufficient evidence, acceptable evidence in the procedural aspect, to support the well-grounded suspicion that the accused have committed the criminal offence of which they are accused, whereas now the legal conditions based on which the indictment can be dismissed are not fulfilled, as provided by the Criminal Code of Procedure in article 250, par. 1.1, 1.2, 1.3 and 1.4”, it is said in the press release of the Court of Appeals.<sup>103</sup>

Meanwhile, regarding this case, the main trial hasn’t yet been scheduled.

**Alleged damage:** 88,769,217.04 euro.

**Confiscation and sequestration:** There was no request in the indictment.

### Case “Stent 1”

#### Basic Court in Pristina

**Case number:** PKR.nr.369/16.

**Presiding judge:** Shadije Gërguri.

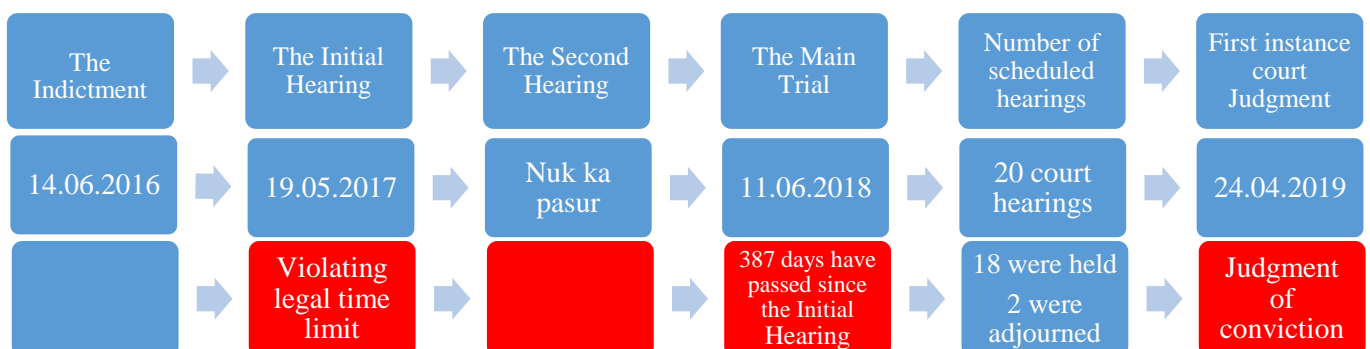
**Prosecutor:** Florije Salihu-Shamolli.

**Criminal offence:** “Abusing official position or authority”.

**Defendants:** Ferid Agani and Gani Shabani

**Stage of proceedings:** First instance court judgment.

**(SINCE THE INDICTMENT HAS BEEN FILED UNTIL SEPTEMBER 30, 2019 HAVE PASSED 1204 DAYS)**



<sup>103</sup> “Case “Veterans”, Appeal confirms the indictment against Agim Çeku, Rrustem Berisha and others”. Betimi për Drejtësi. August 26, 2019. (Follow link <https://betimiperdrejtesi.com/rasti-veteranet-apeli-konfirmon-aktakuzen-ndaj-agim-cekut-rrustem-berishes-e-te-tjereve/>)



On June 14, 2016, the Office of the Chief State Prosecutor filed an indictment against the former Minister of Health, Ferid Agani, the General Secretary of MoH, Gani Shabani and 62 other individuals, for the criminal offences of “Abusing official position or authority”, “Accepting bribes”, “Giving Bribes”, “Irresponsible medical treatment”, “Unlawful exercise of medical or pharmaceutical activity” and “Tax evasion”.

In this criminal case, investigations were initially conducted against 116 natural persons and 4 legal persons. After the investigation, for 56 natural persons, the legal conditions were not met to be included in this indictment, therefore the investigations were terminated for them. Distinctive of this case is that the indictment has been filed by the Prosecutor of the Office of the Chief State Prosecutor, in violation of the law and judicial precedent in Kosovo, a finding that KLI has established in previous reports.<sup>104</sup>

So far, four prosecutors have been replaced while working on “Stent” case. Another distinctive of the case is that the Prosecutor who filed the indictment does not represent it. The indictment was filed in June 2016, but the reading of charges in indictment had not taken place for a long period of time, since the prosecution had failed to provide evidence to all defendants in the language they understand. This resulted in 5 adjourned court hearings.

The initial hearing was held on May 19, 2017, as well as on May 25, 2017 for one of the defendants who was absent in the hearing of May 19. The claims of defendants’ attorneys for the dismissal of the indictment and the objections to evidence have been rejected by the first instance court on July 31, 2017, while, after the appeals that defendants’ attorneys have filed to the Court of Appeals in October 2017, this court, had returned the case for reconsideration.<sup>105</sup> Upon returning the case for reconsideration, on February 26, 2018, the presiding judge, Shadije Gërguri, for the purpose of efficiency of the case, ordered the severance of proceedings in three parts. Since then, Ferid Agani and Gani Shabani are separately adjudicated as a case (STENT 1), Gani Bajraktari and other accused, mainly doctors, who are part of enactment clause three and four of the indictment, are being adjudicated separately (STENT 2), while Ali Hocaoglu and other accused included in provisions four to ten of the indictment will be adjudicated separately (STENT 3).<sup>106</sup>

None of the defendants pleaded guilty in the initial hearing held on February 26, 2018, whereas their requests for dismissal of the indictment and objections to evidence have been rejected by the first instance court. In the case of Ferid Agani and Gani Shabani, as well as in the other case Gani Bajraktari and others, the indictment has also been affirmed by the Court of Appeals and these cases are already at the phase of main trial, whereas in the case of Ali Hocaoglu and others, the case has been returned for reconsideration by the Court of Appeals upon the appeals

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<sup>104</sup> “*War, persecution or amnesty in the name of the fight against corruption?*”. Kosovo Law Institute. December 2017. (Follow link <http://kli-ks.org/lufte-persekutim-apo-amnisti-ne-emer-te-lufte-kunder-korrupsionit/> )

<sup>105</sup> “*The Court of Appeals returns the case “Stent” to reinstatement*”. Betimi për Drejtësi. November 2, 2017. (Follow link <https://betimiperdrejtesi.com/apeli-e-kthen-ne-rivendosje-rastin-stenta/> )

<sup>106</sup> “*After the severance of proceedings, former Minister Agani and former Secretary Shabani, again plead not guilty*”. Betimi për Drejtësi. February 26, 2018. (Follow link <https://betimiperdrejtesi.com/pas-vecimit-te-procedures-ndaj-tyre-serish-deklarohen-te-pafajshem-ish-ministri-agani-dhe-ish-sekretari-shabani/> )

of the defendants' attorneys. In the meantime, because he is deceased, criminal proceedings have been terminated against one of the defendants in this case, Bedri Zaiti.

### **KLI's findings regarding the handling of the case**

The criminal report in "Stent" case was filed on May 26, 2014, whereas the decision to initiate investigative stage on June 16, 2014. The indictment was filed on June 14, 2016. The initial hearing regarding the "Stent" case has been scheduled on October 21, 2016, respectively with four months of delay or violating the legal time limit provided by CPOK. Also distinctive of this case is the adjourned hearing on February 28, 2017. At this initial hearing the presiding judge, Shadije Gërguri, explained that the prosecution by a letter informed the court that Afrim Bektashi had been involved in the investigations regarding this case, but no elements of the criminal offence were found against him and thus he is not part of the indictment anymore.<sup>107</sup> The manner of the indictment filing and the withdrawal from prosecution against Afrim Bektashi proves the non-seriousness of the prosecution handling corruption cases. Also, the reasoning of the prosecution that there is a technical error in filing this indictment, contradicts the legal obligation of the State Prosecutor under Article 48 of the CPOK, which stipulates that it is the obligation of the prosecutor to analyze the evidence as well as inculpatory and exculpatory facts and to ensure that the investigation is conducted, while fully respecting the rights of the defendant.

On April 18, 2019, the closing statements were delivered, and prosecutor Florije Salihu – Shamolli required the conviction of the accused, whereas the defense attorneys required their acquittal<sup>108</sup>, while on April 24 the first instance court found the accused guilty of abusing official position.

Agani was convicted with two years and six months of effective imprisonment, while the other accused, Gani Shabani was convicted with two years of effective imprisonment. They were also obliged to cover the costs of criminal proceedings as well as the scheduled judicial amount, all in the value of 400 euros.<sup>109</sup>

In this targeted case for visa liberalization, since the indictment has been filed, until the announcement of the judgment by the first instance, 1165 days have passed.

**Alleged damage:** 4,555,553.00 euro.

**Sequestration and confiscation:** There was no request in the indictment.

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<sup>107</sup> "Afrim Bektashi is mistakenly involved in the indictment regarding "Stent" case, thus is acquitted of prosecution". Betimi për Drejtësi. February 28, 2017. (Follow link <http://betimiperdrejtesi.com/perfshihet-gabimisht-ne-aktakuzen-e-rastit-stenta-lirohet-nga-ndjekja-penale-afrim-bektashi/>)

<sup>108</sup> "Stent I", former minister Agani and former secretary Shabani require to be acquitted of charges, prosecution requires their punishment". Betimi për Drejtësi. April 18, 2019. (Follow link: <https://betimiperdrejtesi.com/stenta-1-ish-ministri-agani-dhe-ish-sekretari-shabani-kerkojne-te-lirohen-nga-akuzat-prokuroria-kerkon-denimin-e-tyre/>)

<sup>109</sup> "Case "Stent I", former minister Ferid Agani and former secretary Gani Shabani are punished to over 4 years of effective imprisonment (Video)". Betimi për Drejtësi. April 24, 2019. (Follow link: <https://betimiperdrejtesi.com/rasti-stenta-1-ish-ministri-ferid-agani-dhe-ish-sekretari-gani-shabani-denohen-me-mbi-4-vjet-burg-efektiv/>)

## Case “Post”

### Basic Court in Pristina

**Case number:** PKR.nr.202/18.

**Presiding judge:** Lutfi Shala.

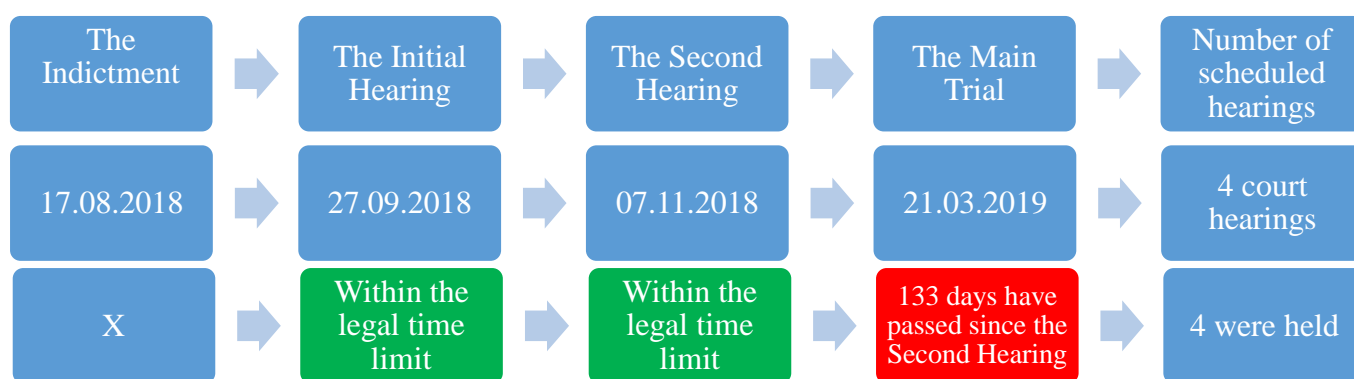
**Prosecutor:** Florije Salihu-Shamolli.

**Defendants:** Agron Mustafa, Ejup Qerimi and Rexhë Gjonbalaj.

**Criminal offence:** “Abusing official position”.

**Stage of proceedings:** Ongoing.

**(SINCE THE INDICTMENT HAS BEEN FILED UNTIL 30 SEPTEMBER 2019, HAVE PASSED 410 DAYS)**



On December 22, 2016, the Office of the Chief State Prosecutor, after several media publications, submitted the case PPN.nr.236/16, requesting from the Special Prosecution to deal with the dispute between PTK and “Z-mobile”, in the arbitration process, a dispute that PTK had already lost, thus forcing it to meet the obligation in the amount of 32,856,407.28 euro to the benefit of Z-mobile.

After the SPRK had initiated the investigations, on August 17, 2018, filed an indictment against the Director of PTK Agron Mustafa, former Director of PTK Ejup Qerimi and against the Chairman of the Board of Directors of PTK Rexhë Gjonbalaj, charging them of “abusing official position”, a criminal offence provided by Article 422 of the CCRK.

Based on the indictment, from February 19, 2015, when Agron Mustafa was elected as Chief Executive of PTK until May 24, 2017, although he was not competent in the dispute between PTK and now injured party DARDAFON.net (Z-Mobile) had signed the agreement to execute the final arbitration award. This action, according to the prosecution, caused delays in sending SIM cards, then it had not supplied the numbering block and had not provided 3G and 4G services to the injured party. Although regarding this contract, for the criminal offence of “entering into harmful contracts”, with a final judgment in June 2011, five individuals were acquitted, and even though the regulatory authority of electronic and postal communications, now injured part Z-Mobile had allowed the use of non-geographic numbering 045, this decision

had not been implemented by the same.

In this way, as the prosecution claims, despite the efforts of the injured party to resolve this agreement and eliminate possible arbitration process, Mustafa had not taken any action in this regard. Based on the indictment, Mustafa, in the arbitration procedure had engaged the company “Studioligji” to represent the company, in which procedure, the International Court of Arbitration decided in favor of the injured party. Based on these actions of Mustafa, the prosecution is claiming that PTK was supposed to pay the injured Z-Mobile the sum of 32,856,407.28 Euro, without counting the other costs of the arbitral procedure, in the amount of over 500,000 Euro and 65,000 English Pounds.

Regarding this dispute among PTK and Z-mobile, in both domestic and arbitral courts, after which PTK has been damaged in the amount of millions of euros, besides Mustafa, regarding the period 2012-2014, the Chief Executive of PTK Ejup Qerimi, is also being accused, as well as the Chief of the Board of Directors, Rexhë Gjonbalaj. According to the prosecution, they have abused their official duties, damaging the injured party Z-mobile, as well as the PTK.

### **KLI’s findings regarding the handling of the case**

The indictment against Mustafa, Qerimi and Gjonbalaj, had arrived at the Basic Court on Pristina the same day in which it has been filed, on August 17, 2018, and it has been assigned to the Judge Lutfi Shala.

Shala had scheduled the initial hearing on September 27, 2018, or 10 days after the legal time limit of 30 days from the moment when the indictment had arrived at court, and in this hearing all the three accused have pleaded not guilty.<sup>110</sup>

At the second hearing that have been scheduled on November 7, 2018, within the legal time limit since the initial hearing, the accused requested this indictment to be dismissed.<sup>111</sup> Whereas on December 7, 2018 judge Lutfi Shala rendered a ruling based on which he dismissed the indictment, because as he stated, it was not proved that the accused have committed the criminal offence of which they are charged. Even though the SPRK alleged that the three accused had damaged the budget of the Republic of Kosovo in the amount of approximately 30,000,000 euros, according to the court, the prosecution has not offered enough evidence to support the well – grounded suspicion that the defendants have committed a criminal offence.<sup>112</sup>

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<sup>110</sup> “The indictment against Agon Mustafa and others in the case “Z – Mobile” is dismissed”. Betimi për Drejtësi. December 18, 2018. (Follow link: <https://betimiperdrejtesi.com/agron-mustafa-dhe-te-tjeret-deklarohen-te-pafajshem-per-rastin-e-z-mobile/>)

<sup>111</sup> “Agron Mustafa and two others request the dismissal of the indictment for the “Z-Mobile” case . Betimi për Drejtësi. 7 nëntor 2018 ( Follow link: <https://betimiperdrejtesi.com/agron-mustafa-dhe-dy-te-tjeret-kerkojne-hudhjen-e-aktakuzes-per-rastin-z-mobile/>)

<sup>112</sup> “Indictment against Agron Mustafa and others for the “Z-Mobile” case is dismissed . Betimi për Drejtësi. 18 dhjetor 2018 (Follow link: <https://betimiperdrejtesi.com/hudhet-poshte-aktakuza-ndaj-agron-mustafes-dhe-te-tjereve-ne-rastin-e-z-mobile/>)

Upon the appeal of the SPRK against the ruling to dismiss the indictment, the Court of Appeals decided to approve SPRK's appeal and thus had affirmed the indictment against three defendants.<sup>113</sup>

After the indictment was affirmed, judge Shala held only one court hearing of the main trial, which was held on March 21, 2019, when Blerim Devolli testified, since in this trial he is an injured party.<sup>114</sup> The court hearing scheduled for May 16, 2019 was annulled, since the accused Ejup Qerimi by a submission had informed the court that due to health reasons he is abroad. Also, judge Shala informed parties to the proceeding that special prosecutor Naim Abazi had informed the court that he cannot be present in this court hearing, because he was earlier assigned in the trial of case "Land", where are accused Azem Sylja and 17 other individuals regarding the criminal offence organized crime and other offences. But the indictment in the case "Land", on the court hearing of May 16, was represented by prosecutor Habibe Salihi<sup>115</sup>

In the scheduled hearing held on 10 March 2019, telecommunications expert Ismet Haliti classified the contract that Telecom of Kosovo agreed with the company "Dardafon.net", regarding the division of numbers for Z-Mobile as a crime of the greatest magnitude. He also stated that such a contract has seriously damaged public interest.<sup>116</sup> At the same hearing the head of the Legal Department at Telecom of Kosovo, Sabahudin Ramxhiku testified, whom stated that the findings that were conducted by his office before the signing of the contract with Dardafon.net was not respected by the PTK Board.<sup>117</sup> The next hearing was held on 8 July 2018, in which hearing the former PTK deputy chief executive Mehdi Latifaj gave his statement, who said that the contract signed between PTK and Z-Mobile had legal disparities.<sup>118</sup>

At the hearing held on 22 August 2019, former manager of revenue insurance in the "Vala" unit, Arben Shabani stated that the contract signed with Z-Mobile services such as 3G and 4G

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<sup>113</sup> "The Court of Appeals decides that Agron Mustafa and other former Kosovo Telecom chiefs will be adjudicated regarding the case "Z-Mobile". Betimi për Drejtësi. 4 February 2018 (Follow link: <https://betimiperdrejtesi.com/apeli-vendos-qe-agron-mustafa-dhe-ish-drejtuesit-tjere-te-telekomit-te-kosoves-te-gjykohen-per-rastin-z-mobile/>)

<sup>114</sup> "Blerim Devolli says that meetings with Telecom's chiefs were "cold" and only to meet each other" Betimi për Drejtësi. 21 March 2019 (Follow link: <https://betimiperdrejtesi.com/blerim-devolli-thote-se-takimet-me-udheheqesit-e-telekomit-ishin-te-ftohta-dhe-sa-per-tu-njoftuar/>)

<sup>115</sup> "The indictment against Agron Mustafa and others in the case "Z – Mobile" is dismissed" Betimi për Drejtësi. 21 March 2019 (Follow link: <https://betimiperdrejtesi.com/anulohet-seanca-ndaj-agron-mustafes-dhe-dy-te-tjereve-per-rastin-e-z-mobile/>)

<sup>116</sup> "Trial against former heads of Telecom, Ismet Hamiti stated that the contract Z-Mobile is an organized crime scheme", Betimi për Drejtësi. 10 June 2019 (Follow link: <https://betimiperdrejtesi.com/gjykimi-ndaj-ish-krevere-te-telekomit-te-kosoves-ismet-hamiti-thote-se-kontrata-me-z-mobile-eshte-skeme-e-krimet-te-organizuar/>)

<sup>117</sup> "'Z-Mobile" Case, head of the Telecom Legal Department stated that their findings were not respected by the Board". Betimi për Drejtësi. 10 qershor 2019 (Follow link: <https://betimiperdrejtesi.com/rasti-z-mobile-udheheqesi-i-departamentit-ligjor-ne-telekom-thote-se-gjetjet-e-tyre-nuk-ishin-respektuar-nga-bordi/>)

<sup>118</sup> "Former deputy chief executive of PTK stated that the agreement with Z-Mobile had legal disparities". Betimi për Drejtësi. 8 July 2019 (Follow link: <https://betimiperdrejtesi.com/ish-ushtruesi-i-detyres-se-kryeshefit-ekzekutiv-te-ptk-se-thote-se-marreshja-me-z-mobile-kishte-mangesi-juridike/>)

were nor foreseen.<sup>119</sup>

**Alleged damage:** Around 30,000,000 euro.

**Sequestration and Confiscation:** There was no request in the indictment.

### Case of nine accused for organised crime and other criminal offences

#### Basic Court in Pristina

**Case number:** PKR.nr.445/08

**Presiding judge:** Shadije Gërguri

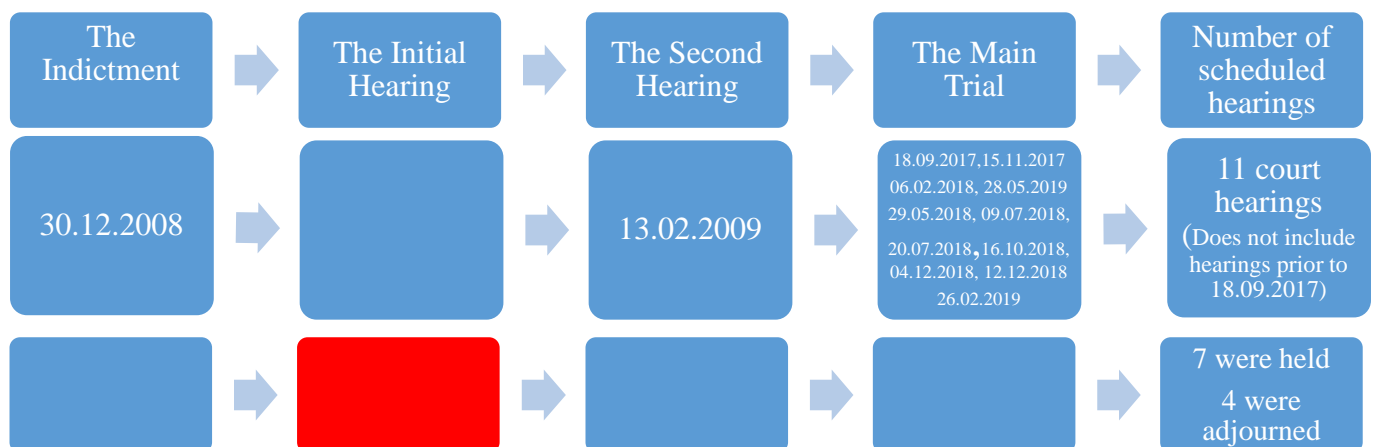
**Prosecutor:** initially Habibe Salili, then Afrim Shefkiu

**Defendants:** Shaip Ferizi, Shqipe Avdiu, Arben Jashari, Mustafë Vitia, Mexhid Mustafa, Besnik Ferizi, Faton Topanica, Arsim Topanica, Ajdar Jashari, Lulzim Gashi

**Criminal offences:** “Organised crime related to criminal offence “Abuse of official position”, “Fraudulent evasion of duty payments”

**Stage of proceedings:** In proceedings at the Court of Appeals

**(SINCE THE INDICTMENT HAS BEEN FILED UNTIL 30 SEPTEMBER 2019, HAVE PASSED 3927 DAYS)**



<sup>119</sup> “Telecom officer stated that the contract with *Z-Mobile services such as 3G and 4G were not foreseen*”.  
Betimi për Drejtësi. 22 August 2019 (Follow link: <https://betimiperdrejtesi.com/zyrtari-i-telekomit-thote-se-ne-kontraten-me-z-mobile-nuk-ishin-parapare-shepbimet-3g-dhe-4g/>)



Criminal report in this case was submitted on 11 October 2007, whereas the indictment from the District Public Prosecutor was raised on 30 December 2008, then was specified by the SPRK on 20 July 2017.

According to the indictment, nine of the accused from 8 September 2006 until 9 October 2007, as part of one organised crime group, by each having separate role in criminal activity, with the purpose of the benefit of unlawful material or financial gain, during the importation of cigarettes as a contractor for KFOR and in the name of KFOR abused official position.

Cigarettes in the value of 2.931.929.08 euro were not submitted to KFOR, but where sold to other companies without label, causing tax evasion to Kosovo's consolidated budget of a sum from 2,441,927,71 euro.

Prosecution of accused Shaip Ferizi, Shqipe Avdiu and Arben Jashari, charged them with criminal offences of “organised crime” related to criminal offence “Abuse of official position”, “Fraudulent evasion of duty payments”.

Whereas, the defendants Mustafë Vitia, Mexhid Mustafa, Lulzim Gashi, Besnik Ferizi, Faton Topanica, Arsim Topanica and Ajar Jashari, were charged with criminal offences of “Fraudulent evasion of duty payments”.

### **KLI’s findings regarding the handling of the case**

This marathon judicial process, which allegedly caused damage to the state budget of around 2,441,927,71 euro initiated by an indictment raised by the former District Public Prosecutor on 30 December 2008 even though up until 30 September 2019, around 4,000 days passed, and the same is still being treated by the Kosovo judiciary.

In this case many hearings were schedules and many witnesses were heard, whereas in the hearing held on 18 September 2017, the witness Shemsije Shala was heard, who when faced with prosecutor Habibe Salihu by the statement given to the police, she stated that she was pressured to during her statement.<sup>120</sup> Due to the fact that Mustafë Vitia was absent in the hearing foreseen to be held on 15 November 2017, the court released an arrest warrant, whereas his lawyer, Florin Vërtopi stated that Vitia was in Germany due to health reasons.<sup>121</sup>

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<sup>120</sup> “The witness in the case of organized crime: I’ve had pressure while testifying in the police station”. Betimi për Drejtësi. September 18, 2017. (Follow link <https://betimiperdrejtesi.com/deshmitarja-ne-rastin-per-krim-te-organizuar-kam-pasur-presion-gjate-dhenies-se-deklarates-ne-polici/>)

<sup>121</sup> “An arrest warrant is issued for one of the ten accused of organized crime”. Betimi për Drejtësi. November 15, 2017. (Follow link <https://betimiperdrejtesi.com/leshohet-urdherarrest-per-njerin-nga-dhjete-te-akuzuarit-per-krim-te-organizuar/>)

On 6 February 2018 the next hearings was scheduled to be held however, the same failed to be held due to the absence of the accused Lulzim Gashi<sup>122</sup>, who was also absent for the hearing on 28 May 2018 and the severance of the proceedings were ordered and an international arrest warrant was ordered, also against him detention on remand was assigned.<sup>123</sup> In this hearing the accused Shaip Ferizi gave his defence, in which he completely denied the accusation given by the prosecution. In the hearing held on 29 May 2018, the accused Shqiipe Avdiu, Arben Jashari, Mustafë Vitia, Besnik Ferizi, Faton Topanica and Arsim Topanica exercised their right to silence, whereas the accused Shaip Ferizi, Mexhid Mustafa and Ajdar Jashari, presented their defence.<sup>124</sup>

On 16 October 2018 the next hearing was held in which the witness Violeta Pllana testified, she stated that the value of cigarettes destined for KFOR, but that was sold to private companies, reached the value of 1.8 million euro.<sup>125</sup> On 4 December 2018 the closing statement was given by Special Prosecutor Afrim Shefkiu where he sought the conviction of the nine accused, whereas the defence requested a rejection judgement because of statute of limitation or the release of the accused.<sup>126</sup>

Eventually the BC in Pristina, decided on 12 December 2018 to publish a decision, however, the court decided to reopen the trial because according to the presiding judge, Judge Shadije Gërguri, the prosecution in its indictment had proposed to impose a supplementary sentence along with the main one - the seizure of items that are the result committing the criminal offence.<sup>127</sup> According to her, considering the specification of the indictment on July 20, 2017, as well as the closing statement given by prosecutor Afrim Shefkiu, the property-legal claim has not been specified.

Judge Gërguri had said that in the absence of this proposal, the court is not in a position to decide on this point. She said that in failing to decide on this issue as well, the trial panel considered that the main trial should be reopened only for this point of the indictment. Further,

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<sup>122</sup> “One of the accused is abroad, the trial for organized crime fails”. Betimi për Drejtësi. February 6, 2018. (Follow link <https://betimiperdrejtesi.com/njeri-nga-te-akuzuarit-jashte-shtetit-deshton-gjykimi-per-krim-te-organizuar/>)

<sup>123</sup> “One of the nine organized crime accused denies damaging Kosovo's budget over two million euros”. Betimi për Drejtësi. 28 May 2018 (Follow link: <https://betimiperdrejtesi.com/njeri-nga-nente-te-akuzuarit-per-krim-te-organizuar-mohon-se-e-demtoi-buxhetin-e-kosoves-mbi-dy-milione-euro/>)

<sup>124</sup> “The three organized crime accused give their defense, while six of them exercise their right silence”. Betimi për Drejtësi. 29 May 2018 (Follow link: <https://betimiperdrejtesi.com/tre-te-akuzuarit-per-krim-te-organizuar-japin-mbrojtjen-e-tyre-ndersa-gjashte-prej-tyre-mbrohen-ne-heshtje/>)

<sup>125</sup> “Witness says the value of cigarettes destined for KFOR but sold to private companies amounts to 1.8 million euro”. Betimi për Drejtësi. 16 October 2018 (Follow link: <https://betimiperdrejtesi.com/deshmitarja-thote-se-vlera-e-cigareve-te-destinuara-per-kfor-in-por-qe-u-jane-shitur-kompanive-private-arrin-shumen-1-8-milione-euro/>)

<sup>126</sup> “Prosecution seeks conviction of nine organized crime defendants, defense says case reached statutory of limitation”. Betimi për Drejtësi. 4 December 2018 (Follow link: <https://betimiperdrejtesi.com/prokuroria-kerkon-denimin-e-nente-te-akuzuarve-per-krim-te-organizuar-mbrojtja-thote-se-lenda-eshte-parashkuar/>)

<sup>127</sup> “The trial reopens in the case of nine accused for organized crime”. Betimi për Drejtësi. 12 December, 2018. (Follow link: <https://betimiperdrejtesi.com/rihapet-shqyrtimi-ne-rastin-e-nente-te-akuzuarve-per-krim-te-organizuar/>)



he said that in the next session the Special Prosecutor is obliged to specify the property-legal claim, respectively the request on which items should be confiscated or returned to the parties.

t the next hearing held on February 26, 2019, after the defendants' defense had rejected SPRK's request for confiscation of items and money, Special Prosecutor Afrim Shefkiu had decided to waive the confiscation of motor vehicles, motorcycles of depreciated items while remaining close to the claim for confiscation of other assets, including sets of cash, vehicles, circulation permits, counterfeit seals.<sup>128</sup>

On March 11, 2019, the court announced the judgement in this case, based on which all nine of the accused were found guilty and were sentenced to imprisonment. Shaip Ferizi was sentenced to two years of suspended imprisonment, that is not going to be executed if he does not commit another criminal offence in the course of five years. Also, from him has been confiscated a black set with a key, with the amount of 4,179 euro, one "Audi A4", as well as the vehicle's registration certificate, two falsified stamps, "BMW" car, "Renault Twingo" car, as well as the amount of 20,055.58 euro.

The defendant Shqipe Avdiu has been sentenced with two years of suspended imprisonment, that will not be executed if within four years she doesn't commit any other criminal offence, and also from her the amount of 5,086.75 euro have been confiscated.

The accused Arben Jashari has been sentenced to two years of imprisonment, that will not be executed if he doesn't commit any other criminal offence within five years. Also, two cars have been confiscated from him, one "BMW" and the other "Daimler Chrysler".

With two years of imprisonment is sentenced also the accused Mustafë Vitia, but also against him this sentence will not be executed if he doesn't commit any other criminal offence, but besides the suspended sentence, from him were confiscated the amount of 231,00 euro and also a car "Volkswagen 1 J Bora".

Same as the accused Vitia, were sentenced also Mexhid Mustafa and Ajdar Jashari. Besides the suspended sentence, from Mustafa has been confiscated the amount of 1,409 euro, whereas from the other accused Jashari, the amount of 50,000-euro, 60,400 euro, 586.50 euro, as well as a "Renault Clio" car. Besnik Ferizi and Arsim Topanica were sentenced with two years of suspended imprisonment, that will not be executed if they do not commit any other criminal offence within four years. From the accused Ferizi was confiscated an "Audi" car, while from the accused Arsim Topanica a "Volkswagen" van and its vehicle's registration certificate, another "Mercedes Daimler Chrysler" van and its vehicle's registration certificate, as well as two "Volkswagen" cars, one of which a "pickup". Meanwhile, the accused Faton Topanica was

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<sup>128</sup> "Prokuroria heq dorë nga konfiskimi i të hollave dhe disa sendeve në gjykimin ndaj nëntë të akuzuarve për krim të organizuar". Betimi për Drejtësi. 26 shkurt 2019 (<https://betimiperdrejtesi.com/prokuroria-heq-dore-nga-konfiskimi-i-te-hollave-dhe-disa-sendeve-ne-gjykimin-ndaj-nente-te-akuzuarve-per-krim-te-organizuar/>)

sentenced to a year of suspended imprisonment, which will not be executed if he does not commit another criminal offence within two years.<sup>129</sup>

On the other hand, because of not being able to secure the presence of the accused Lulzim Gashi, the court has ordered the severance of proceedings against him.

After the appeals, this case is actually in process in the Appeals Court.

**Alleged damage:** 2,441,927.71 euro

**Sequestration and confiscation: Money:** 141,946.00 euro, **Cars:** “Audi A4”, “Renault Twingo”, “BMW”, “Daimler Chrysler”, “Volkswagen 1 J Bora”, “Renault Clio”, “Audi”, “Volkswagen” van, “Pickup – Volkswagen”. Three (3) vehicle’s registration certificates, two (2) falsified stamps .

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<sup>129</sup> “Nine of the accused for organized crime are sentenced to suspended imprisonment, cars and thousands of euros are confiscated from them”. Betimi për Drejtësi. March 11, 2019 (Follow link <https://betimiperdrejtesi.com/denohen-me-kusht-nente-te-akuzuarit-per-krim-te-organizuar-u-konfiskohen-vetura-dhe-mijera-euro/>)

## Case “Land”

### Basic Court in Pristina

**Case number:** PKR.nr.610/16

**Presiding Judge:** Initially Arcadeus Sedek, then Petko Petkov, and right now Beqir Kalludra

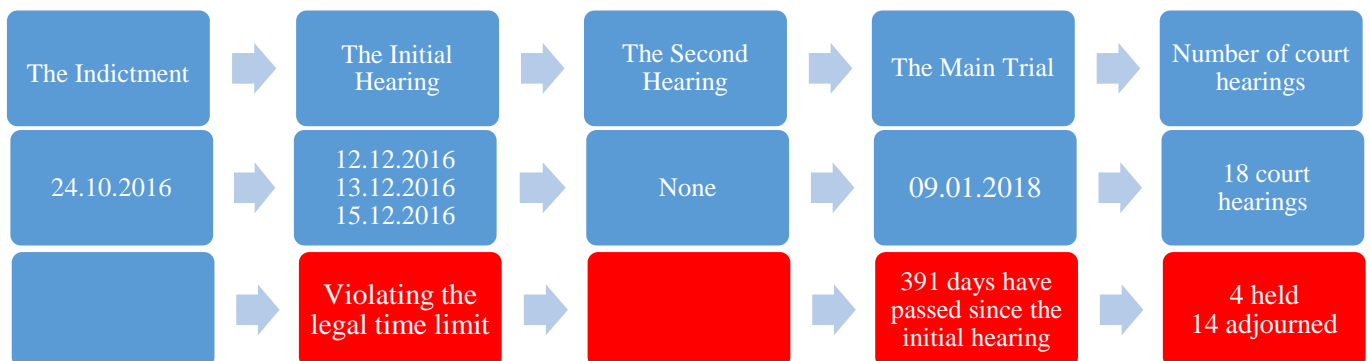
**Prosecutor:** Initially Danilo Cecarelli, then Naim Abazi

**Defendants:** Azem Sylja, Shaban Sylja, Shpresim Uka, Fahredin Gashi, Ramadan Uka, Arton Vila, Avdyrrhaman Brajshori, Lubisha Vujoviq, Gazmend Gashi, Sabedin Haxhiu, Nyrtene Brajshori, Sami Maqedonci, Ndue Palushi, Ramadan Mavraj, Avni Maxhuni, Elhame Uka and Lumnije Sopjani.

**Criminal offence:** “Organized crime”, “Accepting bribes”, “Money laundering”, “Fraud in office”, “Fraud”, “Abusing official position or authority”, “Issuing unlawful judicial decisions”, “Legalization of false content” and “Tax evasion”.

**Stage of proceedings:** Ongoing.

**(SINCE THE INDICTMENT HAS BEEN FILED UNTIL 30 SEPTEMBER 2019, HAVE PASSED 1062 DAYS)**



The EULEX Prosecutor on April 30, 2014, issued a decision to initiate investigative stage against Azem Sylja, Nuhi Uka and others. On October 24, 2016, the Prosecution filed an indictment against Azem Sylja, Nuhi Uka and 20 others for the offences of “organized crime”, “accepting bribes”, “money laundering”, “fraud in office”, “fraud”, “abusing official position or authority”, “issuing unlawful judicial decisions”, “legalization of false content” and “tax evasion”.

Also, based on the indictment, the defendants are accused that in co-perpetration, through criminal activities, have deprived Kosovo’s social properties, including the falsification of official decisions and documents, fraud and other corruptive actions. Investigations in this case have also been conducted in cooperation with the Special Department of Organized Crime of the Prosecution Office in Belgrade.

## **KLI's findings regarding the handling of the case**

The indictment in this case was filed on October 24, 2016, whereas the initial hearing was scheduled for December 12, 2016 or 49 days after the indictment was filed, even though it should be scheduled only after 30 days, but was postponed due to the absence of the accused Hajrullah Berisha.<sup>130</sup> The other scheduled initial hearing in this case was held on December 15, 2016, where the absence of two defendants Hajrullah Berisha and Mustafa Halili caused a long-lasting discussion in the courtroom. Despite the request of the defense attorneys to severance the proceedings against these two defendants, this did not pose a problem for the judge, Arcadeus Sedek, to continue the proceedings even in the absence of the defendant Berisha, who was in the Republic of Macedonia and defendant Halili, who was in the USA.<sup>131</sup> Article 245, paragraph 1 of the CPOK stipulates that during the initial hearing the Prosecutor, defendant or defendants and their attorneys should be present.

Judge Sedek had decided not to hold a second hearing, but outside the hearing, he had rejected the defense requests for the dismissal of the indictment and the objections to evidence. The presiding judge Arcadeus Sedek after admitting the indictment and the objections of the defense had rejected all and on April 4, 2017 had affirmed the indictment in the first instance. The defense continued to demand the rejection of the indictment by appealing to the Court of Appeals, considering the decision of judge Sedek not fair. But the Court of Appeals on October 26, 2017 rendered a judgement with which affirmed the first instance decision and thus the indictment of the Special Prosecution of the date October 24, 2016 was still in force.

The main trial by judge Sedek was scheduled after more than a year since the affirmation of the indictment, respectively on January 9, 2018. On Tuesday, January 9, 2018, although all parties came to court, the main trial has not started, because the presiding judge Arcadeus Sedek had stated that the Trial Panel is not in full composition. He had stated that to complete the trial panel they requested from the KJC to allow judge Nora Bllaca, who has then been transferred to the Court of Appeals, to be a member of this trial panel.<sup>132</sup>

According to Judge Sedek, the justification of this request was to not repeat the testimonies of two protected witnesses, that had been taken in the procedure of special investigative opportunity in 2016, prior to the filing of the indictment, procedure in which, part of the trial panel has also been Judge Bllaca. The CPOK stipulates that in cases where a procedure of special investigative opportunity has been conducted, so that the evidence obtained in that

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<sup>130</sup> "Case "Land" becomes public, the hearing is postponed due to the absence of one of the accused". Betimi për Drejtësi. 13 December 2016. (Follow link <http://betimiperdrejtesi.com/hapet-per-media-rasti-toka-shtyhet-seanca-ne-mungese-te-njerit-nga-te-akuzuarit/> )

<sup>131</sup> "Case "Land" – Azem Syla and others plead not guilty". Betimi për Drejtësi. December 15, 2016. (Follow link <http://betimiperdrejtesi.com/rasti-toka-deklarohen-te-pafajshem-azem-syla-dhe-te-tjeret/> )

<sup>132</sup> "The incomplete Trial Panel adjourns the court hearings scheduled for this week against Azem Syla and others in the case "Land". Betimi për Drejtësi. January 9, 2018. (Follow link <https://betimiperdrejtesi.com/trupi-gjykues-jo-i-plote-shtyhen-seancat-e-kesaj-jave-ndaj-azem-syles-dhe-te-tjereve-ne-rastin-toka/> )

proceeding are valid at the main trial, one of the members of the panel of special investigative possibility should also be a member of the panel in the main trial.

EULEX did not wait for the response of the KJC and withdrew the request for Bllaca's return to the trial panel of this case and then assigned EULEX Judge Vladimir Mikula as a member this trial panel, who along with Bllaca has been part of special investigation opportunity panel. At the court hearing of January 24, 2018, the composition of the trial panel had changed, where instead of Arcadeus Sedek as the Presiding Judge was Petko Petkov, then local judge Nora Bllaca was substituted by Judge Vesel Ismajli, while the other member was Vladimir Mikula. Although EULEX judges had not held any main trial hearing, Judge Petkov had briefed the parties at the hearing on February 20, 2018 that this case should be transferred to local judges. However, prosecutor Danilo Ceccarelli did not agree with this decision, and called this a shame, considering it as a major failure of the EULEX mission in Kosovo.<sup>133</sup>

From January 9, to September 3, 2018, 7 court hearings had failed, while at the court hearing of September 3, Judge Kalludra had ordered severance of proceedings against Ilaz Sylja, Hajrullah Berisha and Mustafë Haliti, who did not respond to court invitations, as well as against Nuhi Uka, who was in poor health condition.<sup>134</sup> Nuhi Uka on September 28, 2018 had died and thus the procedure against him has been terminated.

The court hearing expected to be held on November 16, 2018, has been postponed upon the request of the accused Shaban Sylja, as his attorney was not present at the hearing.<sup>135</sup>

The court hearing of January 16, 2019 failed to be held due to the absence of defense attorneys Arianit Koci and Xhevahire Kloppner<sup>136</sup>.

On June 25, 2019 after several failures, the main trial was able to be held and the parties presented their initial statements. Prosecutor Naim Abazi stated that during main trial will be proven that the accused were a part of a criminal group and based on several evidence will be proven that they are guilty. Whereas, the accused and their defense attorneys opposed the indictment.<sup>137</sup>

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<sup>133</sup> "EULEX transfers the case of Azem Sylja to locals, the prosecutor calls this decision shameful". Betimi për Drejtësi. February 29, 2018. (Follow link <https://betimiperdrejtesi.com/eulex-i-e-transferon-te-vendoret-rastin-e-azem-syles-prokurori-e-uan-te-turpshem-vendimin/>)

<sup>134</sup> "Case "Land", Ilaz Sylja escapes, severance of proceedings is ordered against him and others that were absent in the court hearing". Betimi për Drejtësi. September 3, 2018. (Follow link <https://betimiperdrejtesi.com/rasti-toka-arratiset-ilaz-sylja-vecohet-procedura-ndaj-tij-dhe-te-tjereve-qe-munguan-ne-seance/>)

<sup>135</sup> "With the request of one defendant, the trial against Azem Sylja and others in the case "Land" is adjourned". Betimi për Drejtësi. November 16, 2018. (Follow link <https://betimiperdrejtesi.com/me-kerkese-te-njerit-nga-teakuzuarit-shtyhet-gjykimi-ndaj-azem-syles-dhe-te-tjereve-ne-rastin-toka/>)

<sup>136</sup> "Attorneys in Hauge, the trial against Azem Sylja and others in the case "Land" is adjourned". Betimi për Drejtësi. January 16, 2019. (Follow link <https://betimiperdrejtesi.com/avokatet-ne-hage-shtyhet-gjykimi-ndaj-azem-syles-dhe-te-tjereve-ne-rastin-toka/>)

<sup>137</sup> "Case "Land", the prosecutor states that the group of Azem Sylja has corrupted court officials and officials of cadastral offices, the defense opposes the indictment". Betimi për Drejtësi. June 25, 2019. (Follow link

The hearing if September 5, 2019 failed to be held due to the lack of the defense attorney of the accused Gazmend Gashi, lawyer Qerim Metaj, who according to the presiding judge Beqir Kalludra, through a submission had notified the court that attorney Metaj is in the hospital being treated.<sup>138</sup> The hearings of September 11 and 18 were held in the BC in Gjilan because the BC in Pristina is not equipped with the technical tools to listen to the cooperative witness through video link, hearings that were closed to the public.<sup>139</sup>

On September 27, 2019 was expected to continue with the main trial, but this did not happen due to the request of the defense attorney of Azem Sylja, lawyer Besnik Berisha, to postpone the hearing, because he had a case of death.<sup>140</sup>

## X. Conclusions

- Transparency in the judicial system is not yet under the level set by the Law on Access to Public Documents and in accordance with the objectives set by the KJC itself with its strategies on increasing the transparency of the judicial system in Kosovo. However, compared to previous years, there is an improvement of increase of the transparency of this system in providing KLI's monitors access to public documents, with a percentage over 70% of the access to required documents, to 340 submitted requests.
- While another practice continues to be implemented by the prosecutorial system, which system continues to be closed for access to public documents. The same system has provided access to public documents in only 25% of them, of 173 submitted requests by the KLI.
- The judicial and prosecutorial system have now reached a stable stage, which enables them to handle corruption cases within a reasonable deadline. However, due to the negligence of prosecutors and judges, corruption cases continue to be treated in violation of applicable law and procedures. Whereas number of cases and persons involved in corruption cases in prosecution offices and courts of Kosovo before few years reached up to three thousand persons, at the end of this reporting period in the prosecution offices remained at work only 291 corruption cases with 806 involved persons persons, where the most loaded prosecution still remains the BP in Pristina. Whereas, the number of persons that are still working in the prosecution offices of Kosovo Prosecutor regarding preliminary investigations 1127.

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<https://betimiperdrejtesi.com/rasti-toka-prokurori-thote-se-grupi-i-azem-syles-ka-korruptuar-zyrtare-te-gjykatave-dhe-te-zyrave-kadastrale-mbrojtja-e-kundershton-aktakuzen/>

<sup>138</sup> "The trial against Azem Sylja and others in the case "Land" fails". Betimi për Drejtësi. September 5, 2019. (Follow link <https://betimiperdrejtesi.com/desh-ton-gjykimi-ndaj-azem-syles-dhe-te-tjereve-ne-rastin-toka/>)

<sup>139</sup> "The trial against Azem Sylja and others in the case "Land" is closed for the public". Betimi për Drejtësi. September 11, 2019. (Follow link <https://betimiperdrejtesi.com/mbyllet-per-publicun-gjykimi-ndaj-azem-syles-dhe-te-tjereve-ne-rastin-toka/>)

<sup>140</sup> "One of the attorneys is absent, the trial against Azem Sylja and others in the case "Land" fails". Betimi për Drejtësi. September 29, 2019. (Follow link <https://betimiperdrejtesi.com/desh-ton-gjykimi-ndaj-azem-syles-dhe-te-tjereve-ne-rastin-toka-2/>)

- Reducing and stabilizing corruption cases in prosecution and court offices of Kosovo should be translated into increase of work quality and more proactive access of the State Prosecutor in investigating and prosecuting high level corruption and trial in courts, and which is still not happening in practice.  
Prosecutions and Courts still base their convenience in the fight against low level corruption. Sequestration and confiscation of illegally acquired property through corruption criminal offenses is still a taboo subject and with no result in the prosecutorial and judicial system. Prosecutors still base their work on the logic of filing indictments but not on identifying illegally acquired property, submission of request for sequestration and confiscation of property.
- The SPRK same as in the previous years (2016, 2017, and 2018) as well as in 2019, continues the trend of escape to take responsibilities in treating corruption cases. This Prosecution from January 1, 2019 until September 30, 2019 has not filed any indictment against high profile for corrupt criminal offenses. Such an access of the SPRK is losing the meaning and logic of the establishment of the Special Department within the Basic Court in Pristina and the Appeal Court of Appeal, regarding the request for concrete results in the fight against organized crime and corruption.
- Another characteristic of the SPRK relates to the fact that prosecutors in this prosecution are not profiled and specialized in specific fields, including profiling in corruption cases and economic crimes. Prosecutors at the SPRK continue in the same time to treat cases of different fields. Now has already become a practice that prosecutors of the SPRK in the same time to investigate cases of organized crime, corruption, war crimes, money laundering, murder, trafficking, etc. The lack of profiling of prosecutors, and the distribution of cases of corruption and economic crimes to a large number of prosecutors in the SPRK is also the tendency and policy of this prosecution in the distribution of responsibility and accountability.
- Prosecutions continue also this year with the criminal investigation and prosecution mainly of low profile officials, respectively, prosecutions had at work corruption cases against 412 persons that belong to low profile, against 310 persons that belong to middle profile and against 53 persons of high profile.
- Punitive policy to the corruption cases still remains a challenge for judges in all courts of Kosovo. The judicial system is still unable to implement unique punitive policies and in accordance with the spirit and purpose of the Criminal Code of Kosovo itself. Even during this reporting period, the largest number of imposed sentences by the courts are suspended sentences and fines, followed by imprisonment sentences. However, year 2019, compared to previous years for the first time, has marked an increase of the number of effective imprisonment sentences imposed by the courts of Kosovo.
- Year 2019, has continued to be characterized by the phenomenon of adjourning the large number of court hearings in corruption cases. KLI during this period monitored 803 court hearings, of which 587 were held, and 216 of them were adjourned due to failure to meet the legal requirements for holding hearings.

- Reasons for adjourning 216 corruption hearings are different, starting from the absence of accused, prosecutors, lawyers, judges, witnesses, and other reasons such as the absence of the injured party, the expert, the failure to timely provide timely case files, etc.
- Reasons for adjourning 216 corruption hearings are different, starting from the absence of defendants, prosecutors, lawyers, judges, witnesses, and other reasons such as the absence of the injured party, the expert, the failure to provide timely case files, etc. Concerning remains the fact that a large number of hearings are adjourned due to the absence of the judge or prosecutor. Of the 216 adjourned hearings, 45 of them were adjourned due to the absence of the prosecutor and 31 hearings were adjourned due to the absence of the judge or panel, and 58 hearings were not held due to the absence of the accused. KLI finds that all parties to the proceedings, starting with judges, prosecutors, defendants, witnesses and others, do not take seriously the priority of developing criminal proceedings in high profile corruption cases. As an illustration, the initial hearing against the mayor of Istog, Haki Rugova, failed for four consecutive times for banal reasons. The first hearing failed due to the absence of the accused Haki Rugova, who informed the court that he did not engage lawyers and could not be present, the second hearing failed again due to the absence of the accused Haki Rugova, but this time he did not inform the court at all to justify the absence, the third hearing failed because the defense of the accused Besnik Berisha complained that he did not possess the full file of the case, with which prosecutor Agron Majtani did not provide, while the fourth hearing failed because of the absence of Judge Syle Lokaj, but also the accused Haki Rugova. This demonstrates the unseriousness of the judicial system in treating with the dignity of the conduct of criminal proceedings and the lack of accountability to hold responsible all parties in the proceedings, including the judges themselves.
- Violation of legal deadlines for treating corruption cases, especially high profile cases. Treating cases as in the preliminary investigation stage, as after the indictment is filed, is of concern because the legal deadlines set by the Criminal Procedure Code are constantly violated. In the case where the accused is the former mayor of Gjilan, Qemajl Mustafa, the initial hearing, which is determined by the Criminal Procedure Code to be held within 30 days, was adjourned after 432 days. Similar to the other case, where the defendants are Sasa Mirkovic, mayor of Killokot Municipality, and Zarko Dejanovic, president of Municipal Assembly, the initial hearing was scheduled after 266 days. This proves that judges are not treating high profile corruption cases with priority, rather they are violating legal deadlines and violating all policies of the Kosovo Judicial Council to treat these cases with priority. In this way, state policies are also violated, through which the fight against corruption has been declared an absolute priority.
- The Kosovo Prosecutorial Council and the Kosovo Judicial Council have not yet proven that the mechanisms for evaluating the performance and discipline of prosecutors and judges are efficient and effective. KLI has specifically identified thousands of cases of prosecutors and judges, who have conducted continuous violations in treating corruption



cases, for which only disciplinary proceedings have been initiated, but no adequate disciplinary measures have been taken to hold accountable violatorsof the law.

- Despite legal obligations and public policy of the prosecutorial and judicial system for the absolute priority treatment of corruption cases, KLI has consistently identified and reported on a daily basis the phenomenon of prescription of corruption cases. Only in this stage of the nine-month period 2019, KLI has reported on a number of these corruption cases, which have reached the deadline of absolute statutory of criminal prosecution. On February 27, 2019, due to the prolongation in the hearing of the case, the former Pristina Municipality official, Selman Krasniqi, charged with corruption and sentenced in the first instance, after his case returned in retrial, had to be acquitted due to achieving the statutory limitation of crimianal prosecution. On 30 April 2019, the Basic Prosecution in Mitrovica withdraw from the criminal prosecution of the accused for the criminal offense of "abusing official position or authority", Smiljka Vuletic, due to absolute statutory limitation. Such cases, the KLI reports on a regular basis, but no one is held responsible for them.
- The lack of judicial control at the preliminary investigation stage continues to be one of the most persecuted forms of investigation and prosecution of citizens or officials that are subject of various criminal reports. KLI has identified this problem, still unaddressed, of conducting investigations by the police and prosecution without any effective control of the judiciary. This phenomenon continues to persecute the various parties on which violate fundamental human rights and freedoms, by keeping them unfairly in the records of criminal proceedings and consequently without the right to complain about these persecutions in court. On September 30, 2019, KLI has identified a large number of old cases that have been denounced for corruption but are still held by prosecutors. It is worth noting some of the cases that have been filed by professional responsible institutions such as the Kosovo Police, which have been in the shelves of Prosecutions for more than a decade. Among the oldest cases are: case no. 485/09-IPR filed by Kosovo Police on April 8 2008, this case is still unresolved in the BP in Pristina; case no. 468/08-IPR filed on June 6 2008 by the Kosovo Police, this case is still unresolved in the BP in Pristina; and case no. 713/08-IPR filed on June 18 2008 by the property owner, this case also remains unresolved in the BP in Pristina.

## XI. Recommendations

- Këshilli The Judicial Council should continue to improve transparency in relation to civil society, the media and the public regarding the provision of access to public documents in accordance with the obligations that derive from the law and strategies adopted by the KJC.
- The KPC should change the practice of isolation in relation to civil society, the media and the public regarding the provision of access to public documents and to terminate selective access. The Law on Access to Public Documents is also mandatory for the prosecutorial system, therefore the Prosecutorial Council should take urgent measures in fulfilling the legal obligations by the State Prosecutor.
- The Judicial Council and the Prosecutorial Council should increase the accountability of officials who do not comply legal obligations regarding access to public documents.
- The State Prosecutor when drafting indictments, should raise their quality, and base the same them on facts, evidence, including their professional defense before the court.
- The State Prosecutor should implement legal obligations regarding the identification of property acquired with criminal offenses, and submit requests for sequestration and confiscation of property acquired through criminal offenses.
- The SPRK should exercise its legal mandate and take a leading role in investigating and prosecuting high level corruption offenses.
- The courts in Kosovo need to unify the punitive policy, including the implementation of the Punitive Policies Guide in corruption cases.
- Judges and prosecutors to administrate corruption cases more efficiently treating the corruption cases at the stage of court hearing. Judges and prosecutors should stop the practice of adjourning court hearings due to the lack of judges and prosecutors in court hearings.
- Presidents of Courts and Chief Prosecutors to raise accountability to the judges and prosecutors for adjourning court hearings without reason and the continuous violation of legal deadlines for treating cases.