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Corruption cases on the brink of reaching statutory of limitation

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ABOUT KLI,

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

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December, 2022 Prishtina, Republic of Kosovo

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1. Executive Summary

The statutory of limitation represents a situation where due to the deadline that has expired from the time the criminal offense occurred, the state or justice system institutions lose the right to investigate or prosecute a certain person for an alleged criminal offense.

There are two (2) types of statutory of limitation for criminal prosecution: relative and absolute. With relative statutory of limitation, we mean the delay of justice system institutions to take the necessary procedural actions in order to prosecute a certain criminal offense, for which reason the criminal offence has reached the statutory of limitation. Whereas with absolute statutory of limitation we mean the statutory of limitation of a criminal case due to the time passed from when the criminal offense occurred, regardless of institutional actions. The deadline of absolute statutory of limitation is longer than relative statute of limitation. In the case of Kosovo, the deadline of absolute statutory of limitation is double of that concerning one. The entering into force of the new Criminal Code the deadline of the statutory of limitation has increased for all criminal cases. Also, with this Code the convictions for criminal offences of corruption and abuse of official position have become severe.

According to official KJC statistics, during 2015-2019, Basic Courts have resolved a total of 1,096 cases of persons accused of corruption. Whereas, during this time period, Basic Court have reached the statutory of limitation against 50 people accused of corruption or 4.56% of resolved cases.

The main reason for the procrastination of cases is the non-compliance with the deadlines for scheduling initial hearings, delays in hearings, failure of attendance of parties in proceedings, non-implementation of the Criminal Procedure Code by judges for the assigning measures against parties that are absent several times without a reason as well as frequent return of cases pending retrial by the Court of Appeals.

KLI has identified cases against 11 persons accused of corruption, which risk reaching statutory of limitation during 2021, for seven (7) of the accused are high profile, yet will reach statutory of limitation by January 20, 2022.

In addition to them, cases have been identified against 12 other persons, six (6) of whom belong to high profile, whose cases if not taken prompt action by the judiciary by 2023, risk ending without knowing whether the same are guilty or innocent.

KLI with this report has recommended that judges schedule some hearings within one (1) week so that cases can be tried as soon as possible, in order for judges in cases where the parties are absent without justification, implement punitive measures as stipulated in Articles 306-309 of the Criminal Procedure Code and also that the court of Appeals do not return corruption cases for retrial more than once (1).

2. Statutory of limitation institution

The statutory of limitation represents a situation where due to the deadline that has expired from the time the criminal offense occurred, the state or justice system institutions lose the right to investigate or prosecute a certain person for an alleged criminal offense. The statutory of limitations is presented as in cases for which no action has been taken, in which case the investigation cannot be initiated, as well as in cases that are in progress, in which case the investigation or trial is terminated. Depending on the gravity of the criminal offense, statutory of limitations is also set. So, if the criminal offense is more serious, the statutory of limitations will be longer and vice versa¹. From this institute, in principle, no criminal offense is excluded. The exception is in the criminal offenses of war crimes and crimes against humanity², and in the case of Kosovo also in the criminal offense of aggravated murder³. In addition to criminal prosecution, the statute of limitations also applies to the execution of criminal sanctions⁴.

There are two (2) types of statutory of limitation for criminal prosecution: relative and absolute. With relative statutory of limitation, we mean the delay of justice system institutions to take the necessary procedural actions in order to prosecute a certain criminal offense, for which reason the criminal offense has reached the statutory of limitation. Whereas with absolute statutory of limitation we mean the statutory of limitation of a criminal case due to the time passed from when the criminal offense occurred, regardless of institutional actions. The deadline of absolute statutory of limitation is longer than relative statute of limitation. In the case of Kosovo, the deadline of absolute statutory of limitation is double of that concerning one⁵.

Most legal scholars point out that statute of limitations is set to balance society's need to punish a perpetrator. For some, the other counterbalancing factor is the perpetrator's right to "rest" while others emphasize that over time the quality of evidence fades and justice requires timely prosecution. For this, most scholars agree on a combination between these two (2) balances⁶.

In April 2019, Criminal Code No.06 / L-074 of the Republic of Kosovo (Further: CCRK) entered into force. With the entry into force of the new Criminal Code, the statute of limitations has increased⁷ all criminal offenses have been increased. Also, this code has toughened the punishments for criminal offenses of corruption and criminal offenses against official duty⁸. In

¹ See further Ismet Salihu, Hilmi Zhitija, Fejzullah Hasani, "Commentary of the Criminal Code of the Republic of Kosovo", Pristina, 2014, p. 329-34.

² United Nations General Assembly, "Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity", November 11, 1970.

³ Criminal Code No. 06/L-074 of the Republic of Kosovo, Article 104.

⁴ Ibid, Articles 101-104.

⁵ Ibid, Article 100.8.

⁶ Yair Listokin, *Efficient Time Bars: A New Rationale for the Existence of Statutes of Limitations in Criminal Law*", Journal of Legal Studies, vol. XXXI, The University of Chicago, 2002, p.99-100

⁷ Compare Criminal Code No. 04/L-082 of the Republic of Kosovo, article 106 and Criminal Code No. 06/L-074 of the Republic of Kosovo, article 99.

⁸ Compare Criminal Code No. 04/L-082 of the Republic of Kosovo, chapter 34 and Criminal Code No. 06/L-074 of the Republic of Kosovo, chapter 33.

relation to the statute of limitations for criminal offenses of corruption, this legal solution has significantly increased the statute of limitations for these offenses. Take for example the basic form of the criminal offense of abuse of official position or authority. According to the previous Criminal Code, the relative statute of limitations for this criminal offense was five (5) years, while the absolute 10 years. With the new Criminal Code, the relative statute of limitations for this criminal offense is 15 years, while the absolute is 30 years. For some other criminal offenses of corruption, according to the new Criminal Code, the relative statute of limitations is 20 years, while the absolute one is 40 years. This legal solution of the Ministry of Justice does not represent a balance between the need to prosecute and adjudicate corruption with the rights of citizens. This is because if a citizen is suspected of having committed a criminal offense in 2020, his case may be active in the judicial system until 2050 or 2060. This situation creates a comfort of the justice system to the detriment of the legal security of citizens.

Regarding the extension of the statute of limitations, the former Minister of Justice, Abelard Tahiri, had stated that the extension of the statute of limitations "*gives the courts more time to complete cases related to organized crime and corruption*"⁹. However, this legal solution cannot apply to cases where the judiciary had at work prior to the entry into force of the new Criminal Code, but only on new cases. This because in cases where the judiciary had at work prior to the entry into force of the new Criminal Code (April 2019), the previous Criminal Code applies, as a law most favorable for the defendant¹⁰. Therefore, according to this legal solution, for the accumulated corruption cases before April 2019, the justice system will have the same legal infrastructure, while for the new cases there will be unreasonable comfort to the detriment of the legal security of the citizens. whose rights are restricted while they are part of criminal proceedings.

For such reasons, the Kosovo Law Institute (hereinafter: KLI) considers that this legal solution is not a fair and proportionate solution for dealing with corruption cases. According to KLI, the institutional capacity in the justice system should be strengthened to deal with criminal offenses of corruption within a reasonable time. The lack of these capacities should not be to the detriment of the legal security of the citizens.

3. Statutory of limitation with statistics

⁹ "New Criminal Code, Tahiri says that no one will be forgiven". April 12, 2018. (see link <https://aab-edu.net/media/gazetaknn/kodi-i-ri-penal-tahiri-thote-se-sdo-te-falet-askush/>) . Last accessed December 10, 2021.

¹⁰ Constitution of the Republic of Kosovo, Article 33.4; Criminal Code No. 06/L-074 of the Republic of Kosovo. Article 3.

For the purpose of this report, KLI has analyzed official statistics for 2015-2019. For 2020, KJC did not provide statistical data, with the reason that they are changing system database.

According to official KJC statistics, during 2015-2019, Basic Court have resolved a total of 1,096 cases of persons accused of corruption. Whereas during this time period, the Basic Courts have reached the statutory of limitation against 50 people accused of corruption, where 43 of them have reached absolute statutory of limitation while seven (7) others have reached relative statutory of limitation.

Expressed as a percentage between the number of resolved cases and cases that have reach statutory of limitation, in the judicial system 5.56% of corruption cases have reached statutory of limitation, where this type of percentage, between the courts, is led by the BC in Pristina, while during this time period the BC in Gjilan has not had any cases that reached the statutory of limitation.

Basic Courts	Number resolved cases	of Absolute statutory of limitation	Relative of statutory of limitation	Total	Percentage of statutory of limitation
Pristina	349	27	3	30	8.5%
Mitrovica	96	5	1	6	6.25%
Peja	125	-	1	1	0.8%
Prizren	132	4	1	5	3.78%
Ferizaj	115	4	-	4	3.47%
Gjilan	172	-	-	-	0%
Gjakova	107	3	1	4	3.77%
Total	1,096	43	7	50	4.56%

Table 1. Statutory of limitation of corruption cases according to courts (2015-2019).

4. Reasons for the statutory of limitation of corruption cases in Kosovo

In general, the statutory of limitation is not limited to corruption cases only. According to KLI findings, in 2019 at the Serious Crime Department of the BC's a total of 39 cases reached statutory of limitation, showing a decrease from 2018, where 52 cases had reached the statutory of limitation¹¹. This problem is much more pronounced in criminal offenses which are dealt with by the General Departments of BC. During 2019, although there were fewer cases that reached statutory of limitation from 2018, KLI found that a total of 2,370 cases reached the statutory of limitation, where expressed in on average, it turns out that within 2019, on each calendar day an average of 6.49% cases reached the statutory of limitation, that means 197.5 criminal cases reached the statutory of limitation.

In terms of categorization, there are two (2) categories of circumstances that make court cases, in our case corruption cases, reach statute of limitation: objective circumstances and subjective circumstances.

One of the objective circumstances is the large number of cases in the judiciary. The Rule of Law Strategy finds that the reforms undertaken so far have partially delivered the intended results and the number of unresolved cases remains extremely high. This large number of unresolved cases also creates numerous procedural delays¹². These procedural delays, delay criminal proceedings even in cases of corruption and as a result lead to the statute of limitations for criminal prosecution. Another objective reason is the cases when the delay of proceedings is created due to the fact that the defendant is on the run and cannot be found, when the parties have health problems or other situations of this nature.

On the other hand, there are a number of subjective reasons that consist of the behavior of judges which affect the statute of limitations. In the face of the fact that the judiciary is overloaded with cases, which necessarily creates procedural delays, corruption cases have been defined by the judicial system as cases that should be treated as a matter of priority. Despite this, the judges do not manage to handle these cases within the deadlines set by law. KLI findings prove that despite the fact that the Criminal Procedure Code has provided that after filing the indictment the judge must schedule the initial hearing within 30 days¹³, the average scheduling of the initial hearing in corruption cases is 276 days. KLI also finds that on average, in a corruption case, 1,276 days pass from the filing of the indictment until the moment when the judgment becomes final¹⁴. A practical example of not prioritizing corruption cases, take the case of the former Minister of Health, Ferid

¹¹ Medina Kadriu, Sabina Pergega, "Serious Cases in Kosovo - 2019". KLI. 2020. P 26. (See link: <https://kli-ks.org/wp-content/uploads/2020/11/IKD-Krimet-e-Renda-2019-1.pdf>). (Last accessed on December 10, 2021).

¹² Government of the Republic of Kosovo, "Rule of Law Strategy 2021-2026", July 2021, P 12 and 22. (See link: <https://kli-ks.org/wp-content/uploads/2020/11/IKD-Krimet-e-Renda-2019-1.pdf>). (Last accessed on December 10, 2021.)

¹³ Criminal Procedure Code No. 04/L-123, Article 242.4

¹⁴ Hyrije Mehmeti, Leotrim Gashi, "Punishment of corruption cases treated as minor offences". KLI. April 2021. P. 30. (See link: <https://md.rks-gov.net/desk/inc/media/6DC1CBD5-0DF1-46AE-9D1A-78C96146C7D0.pdf>). (Last accessed on December 10, 2021)

Agani, whose case was returned for retrial, after which retrial, the court of first instance took 15 months to schedule a hearing¹⁵. In the case of the former President of the Football Federation of Kosovo, Agim Ademi, it took the court of first instance five (5) years and a half to decide in this case, during which period the criminal offense of "exercising influence" reached the statutory of limitation. For the other criminal offense in this case for which the Supreme Court had returned the case for retrial, the first instance court took about 14 months to schedule the hearing¹⁶. Whereas, to return the case of the former Secretary General of the Ministry of Health, Ilir Tolaj, for retrial, it took the Court of Appeals over three (3) years¹⁷.

Even the poor and unplanned administration of the KJC in the case of promotion of judges is one of the causes that creates significant procedural delays and consequently affects the reaching of statute of limitation. In December 2021, KJC promoted seven (7) judges of the Serious Crime Department of the BC in Pristina to the Special Department of the BC in Pristina and Court of Appeals. Therefore, from 13 judges at the Serious Crime Department at the BC in Pristina, the number fell to six (6). According to the Criminal Procedural Code¹⁸, due to the change in the trial panel, all cases where these seven (7) judges were President or members of the trial panel were returned to zero.

The poor administration of hearings is another factor that creates procedural delays in which also affect in reaching statute of limitation. According to KLI findings, from 744 hearings on corruption cases monitored in 2020, 231 were adjourned. Expressed in percentage, it means that in 2020, 31.04% of hearings on corruption cases were adjourned or approximately every third hearing. The absence of judges and prosecutors themselves was the reason why a total of 47 hearings were adjourned. Whereas, 68 hearings were adjourned because of the absence of the accused, KLI finds that judges do not apply legal means in securing the presence of parties in procedure, as is foreseen by articles 306-309 of the Criminal Procedure Code¹⁹.

Another subjective circumstance that affects the reaching of the statute of limitation is the return of cases for retrial from the Court of Appeals or the Supreme Court. Amongst others, retrials were the reason for statute of limitation in the case of the former Mayor of Lipjan, Shukri Buja, of which

¹⁵ "At the end of March, the retrial against Ferid Agani and Gani Shabani begins, fifteen months after the decision of the Appeal". March 6, 2021. Betimi per Drejtesi (See link: <https://betimiperdrejtesi.com/ne-fund-te-marsit-fillon-rigjykimi-ndaj-ferid-aganit-dhe-gani-shabanit-pesembedhjete-muaj-pas-vendimit-te-apelit/>). (Last accessed December 10, 2021).

¹⁶ "In October, the retrial against the head of FFK Agim Ademi starts, the case is transferred to the General Department". Betimi per Drejtesi. September 8, 2021. (See link: <https://betimiperdrejtesi.com/ne-tetoris-rigjykimi-ndaj-kreut-te-ffk-se-agim-ademi-lenda-kalon-ne-departamentin-e-pergjithshem/>). (Last accessed on December 10, 2021).

¹⁷ "Bekim Deshishku says that he feels injured but does not ask for compensation, Ilir Tolaj says that the Ministry of Health has compensated him". Betimi per Drejtesi. December 3, 2021. (see link: <https://betimiperdrejtesi.com/bekim-deshishku-thote-se-ndjehet-i-demtuar-por-nuk-kerkon-demshperblim-ilir-tolaj-thote-se-msh-e-ka-kompensuar/>). (Last accessed on December 10, 2021).

¹⁸ Criminal Procedure Code No. 04/L-123, Article 311.1.

¹⁹ Hyrije Mehmeti, Leotrim Gashi, "Punishment of corruption cases treated as minor offences", KLI, April 2021, P.16. (See link: <https://kli-ks.org/wp-content/uploads/2021/04/IKD-D%C3%ABnimi-i-korrupsionit-sikund%C3%ABrvajtje.pdf>). (Last accessed on December 10, 2021)

case was sent for retrial twice (2) by the Court of Appeals and once (1) by the Supreme Court. The latter, returned the case for retrial 10 days before it reached the statute of limitation²⁰. The same nature can be seen in the case of the former General Secretary of the Ministry of Health. Ilir Tolaj²¹, and the case against the Director of the Factory “Anthea”²², cases that await to reach statutory of limitation in January 2022.

5. Big cases that are at risk of reaching statutory of limitation

KLI after monitoring and analyzing indictments involving corruption, has found cases that are at risk of not being adjudicated, due to the approaching of the absolute statute of limitation. According to Kli findings, there are a total of 11 persons that are accused of the criminal offense of corruption, cases that will reach statute of limitation during 2022. In fact, seven (7) of these cases belong to high profile cases (Ilir Tolaj and six others accused in the “Fan” case) and are being judged in the first instance only formally or they are legally considered that they have not reached statute of limitation yet, since practically, the cases of the involving the abovementioned cannot receive a final verdict because the case will reach the statute of limitation.

This is because even if these court cases ended on the day of publication of this report, the court will need time to draft a judgment, against which the parties will have 15 days to file an appeal with the Court of Appeals. In the eventual remaining days, the latter will not be able to issue a meritorious decision in this case, and the case will reach the statute of limitations.

The following infographic presents all cases of corruption which will to at risk of reaching the statute of limitation, respectively all cases which reach the statute of limitations during 2022²³:

²⁰ “Appeals renders a decision, Shukri Buja’s case reaches statute of limitation where he is accused of corruption”, Betimi për Drejtësi, May 7, 2021. (See link: <https://betimiperdrejtesi.com/vendos-apeli-shukri-bujes-i-vjetersohet-lenda-ku-akuzohej-per-korrupsion/>). (Last accessed on December 10, 2021).

²¹ “Bekim Deshishku says that he feels damaged but does not ask for compensation, Ilir Tolaj says that the Ministry of Health has compensated him”, Betimi për Drejtësi, December 3, 2021. (See link: <https://betimiperdrejtesi.com/bekim-deshishku-thote-se-ndjehet-i-demtuar-por-nuk-kerkon-demshperblim-ilir-tolaj-thote-se-msh-e-ka-kompensuar/>). (Last accessed on December 10, 2021).

²² “The damaged is missing in the retrial for corruption, the courts decides that the same to be invited again through the MoJ”, Betimi për Drejtësi, July 6, 2021. (See link: <https://betimiperdrejtesi.com/mungon-e-demtuar-ne-rigjykimin-per-korrupsion-gjykata-merr-vendim-qe-e-njejta-te-ftohet-perseri-permes-md-se/>). (Last accessed on December 10, 2021).

²³ Note: n two cases of this group of cases, the exact date of the criminal offense has not been determined, only the year 2012 as a time when the criminal offense took place.

Corruption cases that are at risk of reaching statutory of limitation



Defendants

Time of criminal offense

Procedural phase

Statute of limitation

Damages



Defendants	Time of criminal offense	Procedural phase	Statute of limitation	Damages
Ilir Tolaj	2006-12.01.2012	Retrial	12.01.2022	Nuk është përcaktuar
Flurim Gallopeni	2011-14.01.2012	Retrial for a third time	14.01.2022	€14,319.16
Naser Osmani	2008-20.01.2012	Retrial	20.01.2022	€5,400,000.00
Bahri Shabani	2008-20.01.2012	Retrial	20.01.2022	€5,400,000.00
Shkelzen Lluca	2008-20.01.2012	Retrial	20.01.2022	€5,400,000.00
Naim Avdiu	2008-20.01.2012	Retrial	20.01.2022	€5,400,000.00
Melika Ymeraga	2008-20.01.2012	Retrial	20.01.2022	€5,400,000.00
Ardian Kelmendi	2008-20.01.2012	Retrial	20.01.2022	€5,400,000.00
Shiqeri Spahiu	1.12.2008-10.05.2012	Main trial	20.01.2022	Nuk është përcaktuar
Avni Biqkaj	2004-2012	Main trial	2022	€486,191.84
Gani Rama	2008-2012	Retrial	2022	€218,956.67

6. Deadlines when corruption cases will reach the statute of limitation

In addition to cases that are at risk of reaching statute of limitation during 2022, KLI has analyzed other cases involving corruption that will also reach the statute of limitation.

The following infographic will present the data on the deadline of statute of limitation for 12²⁴ persons accused of corruption, that will reach the statute of limitation in 2023. This groups also involves six (6) high profile persons, cases that can be closed without a final verdict.

Through this chapter, KLI aims to draw attention to extra care in these cases, so that they do not reach the statute of limitation:

²⁴ Note: In this infographic if also the case of Pal Lekaj and Ismet Isufi, since this is also at risk of reaching the statute of limitation in 2021. For more information refer to the annex of this report.

Corruption cases that are at risk of reaching statutory of limitation



Defendants

Time of criminal offense

Procedural phase

Statute of limitation

Damages



Defendants	Time of criminal offense	Procedural phase	Statute of limitation	Damages
Bujar Nerjovaj	5.12.2011-21.02.2013	Retrial	21.02.2023	€36,143.00
Mimoza Kusari - Lila	08.05.2013	Main trial	08.05.2023	€13,682,166.41
Nenad Rashiq	08.05.2013	Main trial	08.05.2023	€13,682,167.41
Dardan Gashi	08.05.2013	Main trial	08.05.2023	€13,682,168.41
Besim Beqaj	08.05.2013	Main trial	08.05.2023	€13,682,169.41
Arben Gjokaj	08.05.2013	Main trial	08.05.2023	€13,682,170.41
Fllanza Hoxhaj	08.05.2013	Main trial	08.05.2023	€13,682,171.41
Enver Bytyqi	22.06.2006-03.05.2013	At the court of Appeals	03.05.2023	€10,500.00
Nexhmedin Musliu	22.06.2006-03.05.2013	At the court of Appeals	03.05.2023	€10,500.00
Ruzhdi Daka	22.06.2006-03.05.2013	At the court of Appeals	03.05.2023	€10,500.00
Ilir Dushi	07.08.2013	Retrial	07.08.2023	Nuk është përcaktuar
Bersan Kolgeci	07.08.2013	Retrial	07.08.2023	€486,191.84
Pal Lekaj	2008-2011 ose 2008-2014	Retrial	2024 ose 2021	€250,000.00
Ismet Isufi	2008-2011 ose 2008-2014	Retrial	2024 ose 2021	€250,000.00

7. Recommendations

- Judges to schedule more hearings within a week in order for cases to be adjudicated in a speedy manner.
- Judges, in cases where the party is absent without justification, to implement punitive measures as is foreseen by article 306-309 of the Criminal Procedure Code.
- Court Presidents to identify corruption cases that are nearly reaching the statute of limitation and request that judges adjudicating on those cases to treat the cases with priority.
- The Court of Appeals to not return case for retrial more than once (1) in cases involving corruption.

8. Annex: Corruption cases that are nearing the statute of limitation

Basic Court in Pristina

1. “FAN” case

Case number: PKR.no.51/20

President of the Trial Panel: Initially Shashivar Hoti, then Agim Kuqi

Prosecutor: Admir Shala, then Fikrije Sylejmani, then Habibe Salihi

Defendant: Naser Osmani and Bahri Shabani; Shkëlzen Lluca, Naim Avdiu, Melita Ymeraga, Agron Kamberi and Agim Deshishku

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

Procedural phase: Main trial (retrial)

Statute of limitation: 20.01.2022

From the criminal offence until December 8, 2021, 3,611 days have passed.

Date of criminal offense	Date of filed indictment	Initial hearing	First hearing
2008-20 January 2012	23.12.2015	04.04.2016	12.07.2017

SPRK on December 23, 2015 raised an indictment at the BC in Pristina, against former MP Naser Osmani as Vice President of KPA, Bahri Shabani as Director of the KPA Board, then against defendants Shkëlzen Lluca, Naim Avdiu, Melita Ymeraga, Agron Kamberi, Adrian Kelmendi, all KPA officials and against businessman Agim Deshishku.

According to the raised indictment by the SPRK, the accused Naser Osmani as Vice President of the Board of Directors of the KPA, Bahri Shabani as Board Director of KPA, Shkëlzen Lluca as KPA Manager, Naim Avdiu as KPA deputy Managing Director and Melita Ymeraga, Adrian Kelmendi, Agron Kamberi as Chair of the Monitoring Unit in KPA in cooperation with other officials and international members of the KPA: Lisa Brodey, Mohammed Omran, Hubert Warsmann, have passed the official competencies in order to illegally benefit for themselves or for another person, in the amount of 5,400,000.00 euros. They are accused of violating the rights of the employees of this enterprise, which at the same time caused damage to the Socially Owned Enterprise "FAN" represented by the KPA and the state budget, regarding the issue of the New Company "FAN-Podujeva".

In this case involving the abuse of official position was also Agron Kamberi of which was rendered a rejection judgement after the prosecutor withdrew from the indictment.

First instance judgement

Appeals judgement

Date of retrial

08.02.2019

30.12.2019

08.07.2021

On February 8, 2019, Naser Osmani, Melita Ymeraga, Adrian Kelmendi, Bahri Shabani, Shkëlzen Lluca dhe Naim Avdiu were acquitted by a court of first instance in connection with the privatization of the “FAN” factory. Defendant Deshishku was also acquitted of charges pertaining to the legalization of false content. However, Deshishku was found guilty by the Basic Court in Pristina for the criminal offense of continuous fraud, of which he was sentenced to 1 year of imprisonment and where the punishment was confirmed by the second instance.

After the appeal of the SPRK at the second instance, this case on March 2, 2020 was sent for retrial and the retrial was attempted to start of July 8, 2021, yet failed due to the absence of some of the accused, Bahri Shabani.²⁵ Same as the hearing schedules on July 8, three (3) other hearing also failed.

In the following hearing scheduled for September 28, 2021, the accused Shabani was present in the courtroom, but the accused Osmani and Deshishku were absent²⁶, Deshishku did not take part in the hearing on October 28, 2021, either did the accused Shkëlzen Lluca, whereas through them the SPRK prosecutor Habibe Salihu also did not take part.²⁷ Even the session of the fourth attempt to hold the retrial process of November 25, 2021, failed due to the absence of the accused Agim Deshishku and the representative of the KPA.²⁸

The next hearings in this case are scheduled for 16, 23 and 24 December 2021, but this criminal offense for which the accused are charged is going to reach the stature of limitation on 20 January 2022 and this case will be closed without a meritorious decision.

2. Case of “Hydropower Affair”

²⁵ ““FAN” case, one of the accused is absent and two lawyers, the retrial fails to start in the case of former Mayor Naser Osmani and other accused for corruption. (Video)”. 08.07.2021. Betimi për Drejtësi. (See link: <https://betimiperdrejtesi.com/rasti-fan-mungojne-nje-i-akuzuar-dhe-dy-avokate-deshton-te-nise-rigjykimi-ne-rastin-ku-ish-deputeti-naser-osmani-dhe-te-tjeret-po-akuzohen-per-korrupsion-video/>). (Last accessed 08.12.2021).

²⁶ “The retrial is postponed for October, against Naser Osmani and others accused of corruption in the “FAN” case”. 28.09.2021. Betimi për Drejtësi. (See link: <https://betimiperdrejtesi.com/shtyhet-per-tetor-gjykimi-ndaj-naser-osmani-dhe-te-tjereve-ne-akuzuar-per-korrupsion-ne-rastin-e-njohur-fan/>). (Last accessed 08.12.2021).

²⁷ “In the absence of the parties, the retrial for corruption against Naser Osmani and others in the well-known “FAN” case is postponed. 28.10.2021. Betimi për Drejtësi. (See link: <https://betimiperdrejtesi.com/ne-mungese-te-paleve-shtyhet-rigjykimi-per-korrupsion-ndaj-naser-osmanit-dhe-te-tjereve-ne-rastin-e-njohur-fan/>). (Last accessed më 08.12.2021).

²⁸ “For the fourth time, the retrial in the well-known case “FAN” fails to be held. 28.10.2021. Betimi për Drejtësi. (See link: <https://betimiperdrejtesi.com/per-te-katerten-here-deshton-te-filloje-rigjykimi-ne-rastin-e-njohur-fan/>). (Last accessed 08.12.2021).

Case number: PS.no.17/2020

President of the Trial Panel: Valon Kurtaj

Prosecutor: Atdhe Dema

Defendant: Mimoza Kusari-Lila, Nenad Rashiq, Dardan Gashi, Besim Beqaj, Arben Gjukaj, Fllanza Hoxha, Lorik Fejzullahu, Besnik Haziri, Krenar Bujupi, Avni Alidema, Naim Hyseni, Gelor Shala, Burim Basha, Gani Jashari, Izet Ibrahimimi, Flamur Keqa, Agim Nika, Mujë Rugova and Fadil Çitaku

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

Procedural phase: Main trial (retrial)

Statute of limitation: May 8, 2023

From the criminal offence until December 8, 2021, 3,136 days have passed

Date of criminal offense	Date of filed indictment	Initial hearing	First hearing
08.05.2013	10.04.2020	28.10.2020	09.09.2021

According to the indictment raised by the Special Prosecution on April 10, 2020, Besim Beqaj is accused as Cahir of the Governmental Committee on Privatization (GCP) as well as Mimoza Kusari-Lila, Nenad Rashiq, Dardan Gashi and Lorik Fejzullahu, as GCP members, in order to enable any material gain to the other person and to cause harm to the other person, they have exceeded their competencies.

According to the indictment, the same on May 8, 2013, unanimously voted that the hydropower's that produce electrical energy such as: Hydropower Lumbardhi, Hydropower in Burim, Hydropower in Radavic and Hydropower “Dikance”, to be transferred to Kosovo Energy Distribution and Supply Company (KEDSC) and after be privatized from company “Limak-Calik”. With such actions, the SPRK charges these accused persons with criminal offence abusing official position of authority from article 422, par 2 regarding article 31 Criminal Procedure Code of the Republic of Kosovo. Initial hearing was scheduled on June 29, 2020 but failed to be held, while it was in October of that year.

The Basic Court in Pristina had rendered the decision to confirm the indictment in March 2021, with this decision the court confirmed the indictment against four former ministers and two other defendants, while due to the relative statute of limitation of the prosecution, the proceedings were ceased against 13 others.²⁹ This decision was later confirmed in May of this year by the Court of Appeals. After the start of the main trial so far, the court has scheduled six (6) court hearings, two

²⁹ “Case of the “Hydropower Affair”, court refuses the requests of six accused for dismissing the indictment, of which 13 of them the criminal proceedings were ceased”. 11.03.2021. Betimi për Drejtësi. (See link: <https://betimiperdrejtesi.com/rasti-afera-e-hidrocentraleve-gjykata-refuzon-kerkesat-e-gjashte-te-akuzuarve-per-hudhje-te-aktakuzes-ndaj-13-prej-tyre-pushohet-procedura-penale/>). (Last accessed 09.12.2021).

(2) of which have been postponed, one due to the absence of the accused Gashi³⁰ and the other due to the absence of Kusari-Lila.³¹ In addition to these postponements, with separate requests of the SPRK prosecutor and Kusari Lila, on the grounds that they are on an official trip abroad, two pre-scheduled hearings to be held during November of this year have been canceled.³²

While due to the relative statute of limitations for 13 defendants this case has not yet started, if the other defendants are not given a final decision by all courts by May 8, 2023, then the indictment against four former ministers will reach statute of limitation.

³⁰ “Dardan Gashi is absent, the trial is adjourned in the know case of “Hydropower Affair” 21.09.2021. Betimi për Drejtësi. (See link: <https://betimiperdrejtesi.com/mungon-dardan-gashi-shtyhet-gjykimi-ne-rastin-e-njohur-si-afere-e-hidrocentraleve/>). (Last accessed 09.12.2021).

³¹ “Mimoza Kusari-Lila is absent, Wednesday’s hearing fails to be held in the known case of “Hydropower Affair” 10.11.2021. Betimi për Drejtësi. (See link: <https://betimiperdrejtesi.com/mungon-mimoza-kusari-lila-deshton-te-mbahet-seanca-e-se-merkures-ne-rastin-e-njohur-si-afere-e-hidrocentraleve-2/>). (Last accessed 09.12.2021).

³² “Prosecutor and Mimoza Kusari-Lila out of the country, two hearings are postponed in the case known as “Hydropower Affair”. 26.10.2021. Betimi për Drejtësi. (See link: <https://betimiperdrejtesi.com/prokurori-dhe-mimoza-kusari-lila-jashte-vendit-anulohen-dy-seancat-ne-rastin-e-njohur-si-afere-e-hidrocentraleve/>). (Last accessed 09.12.2021).

3. Case of “Ilir Tolaj” and others

Case number: PKR.no.22/2021

President of the Trial Panel: Initially Naime Krasniqi – Jashanica then Avni Sylja

Prosecutor: Maria Bamieh, Damare Teriot, Fikrije Fejzullahu and currently Naim Abazi

Defendant: Ilir Tolaj, Bujar Bukoshi, Arbenita Pajaziti, Ismet Hyseni, Zenel Kuqi, Hajrullah Fejza Bekim Fusha, Alban Thaçi, Basri Asllani, Nexhat Shabani and Imer Ajeti

Criminal Offense: “Abusing official position or authority”.

Procedural phase: Main trial (retrial)

Statute of limitation: 12.01.2022

From the criminal offence until December 8, 2021, 3,619 days have passed.

Date of criminal offense	Date of filed indictment	Initial hearing	First hearing
2006-12 January 2012	16.07.2012 changed to 04.06.2018	2012	?

According to the amended indictment of the SPRK on June 4, 2018, Ilir Tolaj while serving as a General Secretary of the Ministry of Health (MoH), from June 1, 2006 to March 10, 2008, and from October 2010 until January 12, 2021, while also being a personal adviser to Bujar Bukoshi from April-October 2010, abused his official position by leading a campaign to harm "Jona Med". According to the indictment, the campaign against this company was aimed at ensuring that it does not win any contract from the MoH, sending inspectors to this company so that it is punished, filing criminal charges and civil lawsuits against the same, as and their influence on Jona Med not obtaining expert and import licenses.

First instance judgement	Appeals judgement	Date of retrial
1-19.07.2013 2-25.11.2019	1-13.09.2016 2-25.01.2021	1-06.09.2017 2-25.10.2021

Basic Court in Pristina, on July 19, 2013, sentenced Tolaj for three items on the indictment with a unique sentence of 18 months imprisonment and 1,000 euro fine, as well as prohibited him from exercising functions in the administration or civil service for three (3) years. The Court of Appeals had annulled the decision of the first instance regarding the points and returned the case for retrial, while for several other points it had upheld the decisions of the first instance. But, the Supreme

Court, for some points of the indictment had returned the case for retrial, where after returning to retrial, the SPRK, on June 6, 2018, had changed the indictment.³³

For the second time, the BC in Pristina on November 25, 2019, announced Tolaj, Pajaziti, Fejza, Kuqi and Fusha as not guilty for some items of the indictment, while for some other items rendered a rejection decision. However, the Court of Appeals, after an appeal from the SPRK, annulled the first instance decisions and the case was returned to retrial for two items of the indictment for the accused Tolaj, Pajaziti, Fejza, Fusha and Kuqi.³⁴

After the return of the case for retrial, on October 25, 2021, case judge Avni Sylja notified that for item 1.9, where the accused are Tolaj, Fejza, Fush and Kuqi, on April 29, 2021 has reached absolute statute of limitation of the prosecution.³⁵ While in regards to item 1.7, judge Sylja obligated the prosecution that within the deadline of 10 days to specify Pajaziti's role in this item of the indictment. In which case in the session of November 23, 2021, the SPRK removed from the indictment for the accused Pajaziti, while now the trial is continuing only against Tolaj.³⁶ Otherwise, the only point of the indictment left against Tolaj is expected to reach the absolute statute of limitations on January 12, 2022.

³³ “The Prosecution is again obliged to specify the indictment in the case of Bujar Bukoshi, Ilir Tolaj and others”. Betimi për Drejtësi. May 4, 2018. (See link: <https://betimiperdrejtesi.com/prokuroria-serish-obligohet-qe-te-beje-precizimin-e-aktakuzes-ne-rastin-e-bujar-bukoshit-ilir-tolajt-dhe-te-tjereve/>).

³⁴ *Appeal changes the Basic Judgment, former Secretary of MoH, Ilir Tolaj sentenced to three years in prison for corruption*. Betimi për Drejtësi. February 5, 2020. (See link: <https://betimiperdrejtesi.com/apeli-ndryshon-aktgjykimin-e-themelores-ish-sekretari-i-msh-se-ilir-tolaj-denohet-me-tre-vjet-burg-efektiv-per-korrupsion/>).

³⁵ *Ilir Tolaj is absent, the retrial for corruption fails to be held, the absolute statute of limitation has been reached for one item of the indictment*. Betimi për Drejtësi. October 25, 2021. (See link <https://betimiperdrejtesi.com/mungon-ilir-tolaj-deshton-te-nis-rigjykimi-per-korrupsion-arrihet-parashkrimi-absolut-per-nje-pike-te-aktakuzes/>).

³⁶ “The Prosecution specifies the only point of the indictment, removes the official of the Ministry of Health, the trial will continue only against Ilir Tolaj”. Betimi për Drejtësi. Novemebr 23, 2021. (Shih linkun <https://betimiperdrejtesi.com/prokuroria-precizon-piken-e-vetme-te-aktakuzes-heq-zyrtaren-e-msh-se-gjykimi-do-te-vazhdoje-vetem-ndaj-ilir-tolajt/>).

4. Case of “Bedri Halimi” and others

Case number: PS. No. 48/19

President of the Trial Panel: Initially Shadie Gërguri, then Lutfi Shala

Prosecutor: Initially Enver Krasniqi, then Merita Bina-Rugova

Defendant: Bedri Halimi, Enver Bytyqi, Nexhmedin Musliu, Bashkim Krasniqi, Ryzhdi Daka.

Criminal Offense: “Abusing official position or authority”.

Procedural phase: First instance decision

Statute of limitation: Bytyqi, Musliu, Krasniqi and Daka (03.05.2023), Bedri Halimi (2029)

From the criminal offence for the accused Bytyqi, Musliu, Krasniqi and Daka until December 8, 2021, 3,142 days have passed.

Data e veprës penale	Data e ngritjës së aktakuzës	Shqyrtimi fillestar	Shqyrtimi i parë gjyqësor
22 June 2006-3 May 2013	20.11.2019	08.01.2020	12.03.2021

SPRK on November 2019 raised an indictment against Bedri Halimi working as Chief-Inspector at the Inspectorate of the Ministry of Environment and Spatial Planning (MESP), competent for the inspection of construction works in the National Park of “Sharri” in Prevala, intentionally did not perform the necessary tasks set out in the decision to demolish the illegal buildings. As of December 14, 2013 until the filing of the indictment, no decision to demolish the buildings have been implemented.

Whereas, inspectors Enver Bytyqi, Nexhmedin Musliu, Bashkim Krasniqi and Ruzhdi Daka, are accused that as construction inspectors in the Municipality of Prizren from June 22, 2006, until May 3, 2013, when they did not inspect the constructions, they did not order the suspension of construction and did not initiate the procedures provided by law.

On May 17, 2021, the court of first instance acquitted him of the above charges, but according to the appeal of the SPRK, the case is in the Court of Appeals.

If the case against the accused Bytyqi, Musliu, Krasniqi and Daka is not completed by May 2023, the case against them will reach the statutory of limitation.

5. Case of Ilir Dushi and Bersan Kolgeci

President of the Trial Panel: Avni Syla

Prosecutor: Merrushe Llugiqi

Defendant: Ilir Dushi and Bersan Kolgeci.

Criminal Offense: “Abusing official position or authority”.

Procedural phase: Main trial (retrial)

Statute of limitation: August 7, 2023.

From the criminal offence until December 8, 2021, 3,045 days have passed.

Date of criminal offense	Date of filed indictment	Initial hearing	First hearing
07.08.2013	10.03.2014	26.11.2014	07.12.2016

This trial is being developed based on the indictment of the Basic Prosecution Office of Pristina, which alleges that on August 7, 2013, at the Kosovo Agency for Products and Equipment (KAPE), the accused Ilir Dushi, in the position as Chief Executive Officer of KAPE, Haki Ejupi in the position of Director of the Department for Licenses, in collaboration with Bersan Kolgeci, Director of the Legal Department, have abused their official position. According to the Prosecution, the accused Bersan Kolgeci, deciding upon the complaint of this operator has issued a recommendation on August 7, 2013, with which it has recommended the Director of Administration to make the preparations and to issue to "Prima Pharm" the labels for medicines.

Aktgjykimi i shkallës së parë	Aktgjyimi i Apelit	Data e rigjykimit
1-18.06.2017 2- shkurt 2018 3-05.02.2020	1- dhjetor 2017 2-30.05.2018 3-17.03.2021	1-? 2-? 3-12.11.2021

This case also is another example that regardless that many decisions have been rendered, there are still no final decisions. The Basic Court in Pristina regarding this case rendered a convicting sentence three times, in 2020, 2018 and 2017 and if this case is not resolved until August 2023, then this case will reach statutory of limitation.

In the first decision, the first instance court on June 13, 2017, sentenced Dushi and Kolgeci to six months imprisonment, Haki Ejupi with five months' imprisonment and Edon Hajrullaga with 10,000 euro fine, but this decision was overturned by the Court of Appeals after the return from retrial that the Basic Court in Pristina, in February 2018, sentenced Dushi and Kolgeci with a guilty verdict for the criminal offense of abuse of official position and authority and imposed a prison

sentences of up to six (6) months imprisonment for each. The accused Haki Ejupi was acquitted of this charge, a decision which was upheld by the Court of Appeals until it was returned for retrial for the accused Dushi and Kolgeci.

Even in the third trial, the first instance with the decision of February 5, 2020 had found guilty the two accused Ilir Dushi and Bersan Kolgeci for abuse of official position and they were sentenced to six (6) months of effective imprisonment.³⁷

In this case, accused of the criminal offense of "prohibited production" was Edon Hajrullaga, but the same with the verdict of 2017 and 2018 was sentenced to a fine of 10,000 euros, while in 2020 a rejection verdict was rendered due to it reaching absolute statute of limitation.

³⁷ *“Two former KAPE officials again sentenced to prison for allegedly allowing China to market drugs”*. 05.02.2021. Betimi për Drejtësi. (See link: : <https://betimiperdrejtesi.com/dy-ish-zyrtaret-e-akppm-se-serish-denohen-me-burg-per-akuzat-se-lejuan-ne-treg-barnat-e-kines/>). (Last accessed 09.12.2021).

6. Case of Avni Biqkaj

Case number: PKR. No. 624/15

President of the Trial Panel: Initially Valon Kurtaj the Avni Sylja

Prosecutor: Besa Limani

Defendant: Anvi Biqkaj and Astrit Metaj

Criminal Offense: “Abusing official position or authority”.

Procedural phase: The indictment phase

Statute of limitation: 2022

From the criminal offence until December 8, 2021, 3,246 days have passed.

Date of criminal offense	Date of filed indictment	initial hearing	First hearing
2004-2012	28.10.2015	22.09.2017 01.11.2021	Has not started yet

According to the indictment filed on October 28, 2015, Avni Biqkaj and Astrit Metaj are accused of committing the criminal offense "Abuse of official position or authority" in co-perpetration with the defendant Edon Canhasi, who is on the run. The Prosecution alleges that the accused from 2004 to 2012, in the microfinance institution "Kos Invest", the accused Biqkaj in the position of operations manager and deputy director, the accused Ajvazi in the position of manager and the accused Metaj in the capacity of credit analyst in this institution, have exceeded their competencies in order to gain material benefits.

The Prosecution accuses Metaj of having made a loan agreement with 52 clients where the total amount of credit obtained through the misuse of the accused Metaj, was 103 thousand 401 euros and 78 cents. At the end of the indictment, it is stated that since the above-mentioned defendants did not pay the monthly installments for the loans of these persons as promised to the clients, the damage caused to "Kos Invest" by the actions of the defendants amounts to 486,191.84 euros. Otherwise, the initial hearing against Metaj and Biqkaj was held on September 22, 2017 by Judge Valon Kurtaj, while that of the second hearing was scheduled for October 23, 2017, which session failed to be held after Judge Kurtaj was elected director of the Justice Academy.³⁸

Therefore, the initial hearing was held again by Judge Avni Sylja on November 1, 2021³⁹. Even this case, if not completed by the end of next year, due to the passage of 10 years, due to the statute of limitations will end without a final decision.

³⁸ *The hearings of the judge who was elected director of the Justice Academy are canceled*” Betimi për Drejtësi. 23 tetor 2017 (See link: https://betimiperdrejtesi.com/anulohen-seancat-te-gjykatesi-i-cili-u-zgjodh-drejtor-i-akademise-drejtisesi/?fbclid=IêAR1okg5uVHdRX77ut53K5aD2uV_ZHuKnD-u1P6yMI3dfQp7aX_gp6HIJAU) (Last accessed 09.12.2021).

³⁹ *Two former KosInvest officials plead not guilty to charges of abuse of official position*”. Betimi për Drejtësi. 01.11.2021 (See link: <https://betimiperdrejtesi.com/deklarohen-te-pafajshem-dy-ish-zyrtaret-e-kosinvest-per-akuzat-e-keqperdorimit-te->

7. Case of Shiqeri Spahiu and others

Case number: PKR. No. 147/21

President of the Trial Panel: Initially Shashivar Hoti then Avni Syla

Prosecutor: Initially Feti Tunuzliu,e then Shkelzen Ibrahimimi

Defendant: Shiqeri Spahiu and Ramush Thaçi

Criminal Offense: “Abusing official position or authority”.

Procedural phase: in proceedings

Statute of limitation: 10.05.2022

From the criminal offence until December 8, 2021, days have passed.

Date of criminal offense	Date of filed indictment	initial hearing	First hearing
December 2008-May 2012	10.08.2016	03.05.2017	23.01.2020 01.11.2021

According to the indictment, Shiqeri Spahiu from December 2008, as Director of Cadastre and Geodesy and Ramush Thaçi since 2010, as head of the Sector for Cadastre in the Municipality of Pristina outside the official authorizations have changed the titles of properties in the cadastral apparatus referring to false documents: judgment C.nr.395 / 96 dated 21 February 1997, which transferred 10.12.53with cadastral number 1536/1, Cadastral Zone Uglar, Pristina from the injured party KBI "Kosova Export - NSH Bujqësia", in Fushë Kosovo by Marko Mitrovi and related contracts with Marko Mitrovic as the seller of those properties and other persons as their buyer. Judge Avni Syla on February 16, 2021, submitted a complaint to BP in Pristina alleging that first instance court made a mistake with the date when the criminal offense took place, of which according to the prosecution, was committed on May 10, 2012 and that absolute statute of limitation will be reached on May 10, 2022.

The court of Appeals on February 26, 2021, had approved as grounded the appeal of the prosecution and returned the case for retrial, in order to clarify and establish the decisive facts.

According to Judge Syla, after returning the case for retrial, he had asked the prosecutor of the case for clarification regarding the time of the accused's incriminating actions, in which case he had received a response from the prosecution that there were several decisions issued in May 2012, which in the indictment are proposed to be administered as evidence.⁴⁰

Basic Court in Prizren

[detyres/?fbclid=IëAR3A1MXkliTXON_0nn7UnX_RBIoMHtgUaBEzErËotzfbK1ul0AzCF4Hr_oI](#)). (Last accessed 09.12.2021).

⁴⁰ “The trial panel is changed, the trial against two former officials who are accused of registering property with a falsified verdict resumes”. 01.11.2021. Betimi për Drejtësi. (See link: <https://betimiperdrejtesi.com/ndryshohet-trupigjykues-rifillon-gjykimi-ndaj-dy-ish-zyrtareve-te-cilet-akuzohen-se-regjistruan-prona-me-aktgjykim-te-falsifikuar/>). (Last accessed 10.12.2021).

8. Case of Bujar Nerjovaj

Basic Court in Prizren

Case number: PKR.no. 110/19

President of the trial panel: Xheladin Osmani

Prosecutor: Metush Biraj

Defendant: Bujar Nerjovaj

Criminal offense: "Abusing official position or authority".

Procedural phase: First instance decision (retrial)

Statute of limitation: 21.02.2023

From the criminal offence until December 8, 2021, 3,656 days have passed.

Date of criminal offense	Date of filed indictment	initial hearing	First hearing
05.12.2011 - 21.02.2013	30.10.2018	29.11.2018	30.05.2019

According to the indictment filed on October 30, 2018, the defendant Bujar Nerjovaj, in the capacity of former Director of the Municipal Directorate of Inspectorates in Prizren, during the period 2011-2013, has not provided the conditions to execute the conclusions issued by the construction inspectors, for the mandatory demolition of superstructures and constructions of four hotel facilities near the "Shatërvan" square in Prizren. According to the prosecution, the buildings were built without a permit or in violation of the permits issued, all of them built in the First Zone of the Historic Center in Prizren, in which case the cultural and architectural heritage of the Historic Center of Prizren was damaged and due to for non-payment of obligations, the budget of the Municipality of Prizren was damaged by 36,143.00 euros.

First instance decision	Appeals decision	Date of retrial
03.06.2019	-	/

BC in Prizren, on June 3, 2019, Nerjovaj was sentenced to (6) six months conditional imprisonment for abuse of official position, a sentence which would not be executed if he did not commit another criminal offense within a year.

The case from that time is in the Court of Appeals which has not yet decided on this case, but if the same does not receive a final judgment by February 21, 2023, this case will reach the statutory of limitation.

9. Case of Flurim Gallopeni

Case number: P.no. 99/18

President of the trial panel: Raime Elezi

Prosecutor: Initially Mehdi Sefa then Metush Biraj

Defendant: Flurim Gallopeni

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

Procedural phase: First instance decision (retrial)

Statute of limitation: January 14, 2021

From the criminal offence until December 8, 2021, 3,617 days have passed.

Date of criminal offense	Date of filed indictment	initial hearing	First hearing
2011-14.01.2012	24.09.2012	08.05.2013	04.06.2013

According to the indictment of the former District Prosecutor's Office in Prizren, filed on September 24, 2012, Flurim Gallopeni is accused that being the director of the factory "Anthea", from September 20, 2011 until January 14, 2012, removed the goods from the factory warehouse. Where carnival masks were produced, bringing to himself illegal material gain and causing co-investors damage in the amount of 14,319.16 euros.

He was charged with the criminal offense of "abuse of official position or authority", but with the entry into force of the new Criminal Code of 2013, the prosecution has re-qualified the criminal offense of "abuse of official position or authority" under Article 422 par. 1 of the CCRK, as the most favorable code for the accused.

First instance decision	Appeals decision	Date of retrial
1-11.11.2013 2-19.01.2015 3-02.02.2018	1-21.11.2014 2-01.03.2016 3-18.09.2018	1-? 2-01.12.2016 3-01.03.2018

The accused Gallopeni was found guilty from the first instance three times, but after complaints from the defense and the prosecution this case was returned for retrial thrice. For the first time on November 11, 2013, the Basic Court in Prizren found the accused Gallopeni guilty and sentenced him to six months of effective imprisonment, but on November 21, 2014, this judgment was overturned by the Court of Appeals because the factual situation was not confirmed fairly.

While for the second time after the retrial of the case, on November 19, 2015, the court again found the accused Gallopeni guilty, sentencing him to one-year conditional imprisonment, which sentence would not be executed if the accused within two years does not would commit a new criminal offense.

The second judgment was upheld by the Appeal, but the Supreme Court, based on the appeal of the defense counsel for protection of legality, on August 22, 2016, annulled the judgment of the first instance and that of the Appeal, ordering that the case be returned again to the first instance for retrial.

On March 2, 2018, he was found guilty again for the third time and was sentenced to one-year conditional imprisonment, with a verification period of two years, not to commit other criminal offenses, but also for the third time this case was returned for retrial by the Court of Appeals, which recommended that the injured party Micaela Iuvale be heard and confronted with the accused Gallopeni. Although in this case the indictment was filed only eight (8) months after the criminal offense, the same, for more than nine (9) years did not receive a final verdict, because even though he was found guilty three (3) times from the first instance, all these judgments have been overturned twice by the second instance and once by the Supreme Court.

The case is currently in the third retrial procedure but this process after seven (7) judgments from all court instances, will reach statutory of limitation on January 14, 2021 and the accused will neither be found guilty nor innocent.

Basic Court of Gjakova

10. Case of “Pal Lekaj and others”

Case number: PKR.no. 110/21

President of the trial panel: Shaqir Zika

Prosecutor: Initially Faik Halili then Atdhe Dema

Defendant: Pal Lekaj and others

Criminal offense: “Abusing official position or authority, subsidy fraud”

Procedural phase: Main trial (retrial)

Statute of limitation: Pal Lekaj, Ismet Isufi (2024) Gani Rama (2022)

From the criminal offence until December 8, 2021, 2,169 days have passed.



In this case, the SPRK had merged two indictments, one was filed on May 26, 2016, against the financial officer of the Municipality of Gjakova Gani Rama, while the other on April 10, 2016, against Pal Lekaj, Ismet Isufi, Pashkë Sylja, Bekim Sylja, Teuta Mejzini and Dafina Thaqi and Veli Hajdaraga. The indictment states that during the period 2008 - 2012, Gani Rama, in the capacity of official, financial person in the Municipality of Gjakova, has distributed financial resources of the municipality to the business "DPT Union-VL", with owner Veli Hajdaraga, without any procedure, without a contract and without regular invoices. According to the prosecution, the misused amount is claimed to be 218,956.67 euros. Meanwhile, the Special Prosecution of Kosovo filed the indictment against Pal Lekaj and others on April 10, 2016. Before the indictment was partially dismissed, Pal Lekaj together with Ismet Isufi, Pashkë Sylja, Bekim Sylja, Teuta Mejzini and Dafina Thaqi are accused of acting as officials of the Municipality of Gjakova, have abused their official positions during the distribution of agricultural subsidies.

Pal Lekaj and Ismet Isufi, are accused that during the period 2008-2014, acting in the capacity of officials, the first in the capacity of the Mayor of Gjakova, while the second as director of the Directorate of Agriculture, have distributed subsidies through the company " UNION-VL", in contradiction with the Law on Public Financial Management. According to the indictment, the defendants also exceeded their legal competencies, because in addition to the subsidy fund, they also used other budget lines of the Municipality of Gjakova for subsidies, causing it a possible damage of up to about 250 thousand euros.

Whereas, the defendants Pashk Sylja, Bekim Sylja, Teuta Mejzini and Dafina Thaqi, were accused that being in the capacity of chairmen and members of the commissions for supervising the distribution of subsidies, they compiled reports that allegedly the distribution of subsidies in the

field was done as should, although about 40% of applicants did not receive the subsidies, however the indictment against them was dismissed.



In February 2021, the Basic Court in Gjakova sentenced Lekaj to 1 year and 6 months conditional imprisonment. The accused Rama was sentenced to 1 year of conditional imprisonment, while the accused Isufi was sentenced to 1 year and 6 months of conditional imprisonment. An additional sentence was imposed on them, which included a ban on exercising functions in public administration or public services for a period of 2 years. The four defendants were obliged to compensate the Municipality of Gjakova in the amount of 69 thousand 786 euros.

However, the Appeal overturned this judgment of the first instance court and returned the case for retrial. The appeal upheld only the part of the sentence for tax evasion for the accused Veli Hajdaraga, confirming the sentence of 3 thousand euros fine and 1 year of conditional imprisonment, and obliged him to compensate the damage caused to TAK- of. However, the Court of Appeals, upon returning to the retrial, found that the times of committing these criminal offenses were erroneously determined by the Prosecution, followed by the court of first instance.

According to the Court of Appeal the time of the committed offense by the defendant Lekaj and other municipal officials in the indictment is stated as 2008-2014, which the Court of Appeals considers as an estimate. However, according to the court of Appeals, the evidence administered at the main trial shows that all their decisions were issued in 2008, 2009, 2010 and 2011. The second instance requested the first instance, in the process of retrial, to clarify this ambiguity of the time of the criminal offense was committed.⁴¹

In this way the case against Lekaj if the period of the criminal offense, specified in the indictment stands, will reach statutory of limitation in 2024, but if it cannot be proven that after 2011, he did not take any illegal action, then the case against him is has already reached statute of limitation in year 2021.

⁴¹ "The appeal finds that there is uncertainty about the time when the criminal offenses were committed by Lekaj and three others". 24.08.2021. Betimi për Drejtësi. (See link: <https://betimiperdrejtesi.com/apelit-konstaton-se-ka-paqartesi-per-kohen-se-kur-jane-kryer-veprat-penale-nga-lekaj-dhe-tre-te-tjeret/>). (Last accessed 09.12.2021).