

PROSECUTION AND TRIAL OF CORRUPTION 2023



Author: Lavdim Makshana

Editor: Gzim Shala

Contribution: Florian Smajli dhe Blerta Barku

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

The content of this publication is the exclusive responsibility of the Kosovo Law Institute - KLI and it does not reflect the views of the Bureau of International Narcotics and Law Enforcement Affairs (INL) - the US State Department and NED

Supported by:



**National Endowment
for Democracy**

Supporting freedom around the world

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.

KLI

Str Ilaz Agushi Prishtinë

E: info@kli-ks.org www.kli-ks.org

www.kli-ks.org

**December, 2023
Pristina, Republic of Kosovo**

List of acronyms

KLI	Kosovo Law Institute
KJC	Kosovo Judicial Council
KPC	Kosovo Prosecutorial Council
CPCRK	Criminal Procedure Code of the Republic of Kosovo
CCRK	Criminal Code of the Republic of Kosovo
FRRLS	Functional Review of the Rule of Law Sector
USDS	US Department of State
SD	Special Department
BCP	Basic Court Pristina
BPOP	Basic Prosecution Office Pristina
GD	General Department
SCD	Serious Crime Department
MIA	Ministry of Internal Affairs
SP	State Prosecutor
SPRK	Special Prosecution of the Republic of Kosovo
CA	Court of Appeals

Content

1. Executive summary	5
Part I. Prosecution of Corruption	
2. Treatment of corruption cases by the prosecutorial system	8
3. Indictments raised and the number of accused persons	8
4. Profile of the accused for corruption	9
5. Criminal prosecution of (former) officials	10
6. Time of committing criminal offenses according to the indictments 2023	11
7. Fighting official corruption against non-official persons	12
8. (Non) specification of damage in the indictment	14
9. Lack of a proper criminal investigation	15
10. Seizure and confiscation	18
Part II. Trial of Corruption	
11. The caseload of the judicial system with corruption cases	20
12. Backlog of active corruption cases in the judiciary	20
13. Trial of corruption in the first instance and punitive policy	22
14. Trial of corruption in the first instance and punitive policy	22
15. Administration of cases	23
16. Absence of additional penalties	25

1. Executive summary

Despite the approval of various documents by the KJC and KPC for the prioritization of corruption cases, the prevention and combating of this phenomenon remain one of the main challenges of the justice system. Such issues have been continuously noted in international reports, including the latest Progress Report for Kosovo, which states, among other things, that: “Kosovo is in between an early stage and some level of preparation in the fight against corruption...In general, and corruption remains an issue of concern”.

The large number of unresolved corruption cases in the prosecutor's office and the courts continues to be a concerning problem. During the period January-September 2023, SP managed to resolve cases involving 731 individuals accused of corruption, while accepting cases for 1,157 individuals. This means that the SP has not been able to resolve cases to the extent it has accepted. Compared to the end of 2022, the number of unresolved cases has increased once again.

Compared to the previous year, the courts have shown improvement by resolving more cases than they have accepted, reducing the number of unresolved cases during this reporting period. However, even in the courts, the number of unresolved cases continues to be a cause for concern.

SP has raised a total of 43 indictments against 75 individuals. Only 13 of the accused belong to the high-profile profile. Thus, from the overall total of those accused of corruption, as per the monitoring by KLI, it appears that only 17.3% of the accused fall under the high-profile category.

The indictment of former officials as a characteristic of the criminal prosecution of high-profile corruption has been emphasized in the year 2023. This is because out of the 13 high-profile individuals, charges were brought against only three (3) of them during their tenure as officials.

The fact that the majority of indictments are related to criminal offenses suspected to have occurred relatively recently is considered positive. However, this efficiency of the SP has not been observed in all cases. This is because the KLI has identified cases where indictments have been filed for criminal offenses suspected to have occurred more than nine years ago.

KLI has also found cases where prosecutors have filed indictments for official corruption against non-official individuals. KLI has identified four (4) judicial cases where the indictment was mistakenly filed against seven non-official individuals. Unfortunately, these indictments also pass through the filters of the courts, indicating that judges also overlook the prosecutor's submissions.

KLI has identified the lack of specifying damages in corruption indictments as problematic. From the indictments filed against 75 individuals, KLI found that SP specified damages only against 14 individuals and did not do so for the remaining 61 individuals.

From the 20 indictments analyzed for the purposes of this report, filed in 2023, KLI found that in only four of them, SP requested the seizure or confiscation of unlawfully acquired assets through the indictment. KLI analyzed 20 indictments from the State Prosecutor randomly to identify the type of evidence used to argue the allegations in the indictments. What is observed from this analysis is that in none of the cases analyzed were covert investigative measures applied. Therefore, KLI considers that the State Prosecutor should change the focus of the investigation, in terms of the evidence sought and examined in each criminal procedure. This is to ensure that the criminal investigation of corruption does not turn into an investigation that is more of an administrative nature than a criminal one.

Despite the legal deadlines for the handling of a criminal case, KLI, through its monitoring, has identified corruption cases that are active in the courts, even though the indictment was filed as early as 2008. That is, 15 years ago. In this regard, there are nine (9) corruption cases, the indictments of which were filed from 2008 to 2016, and they have not yet reached a conclusion in court.

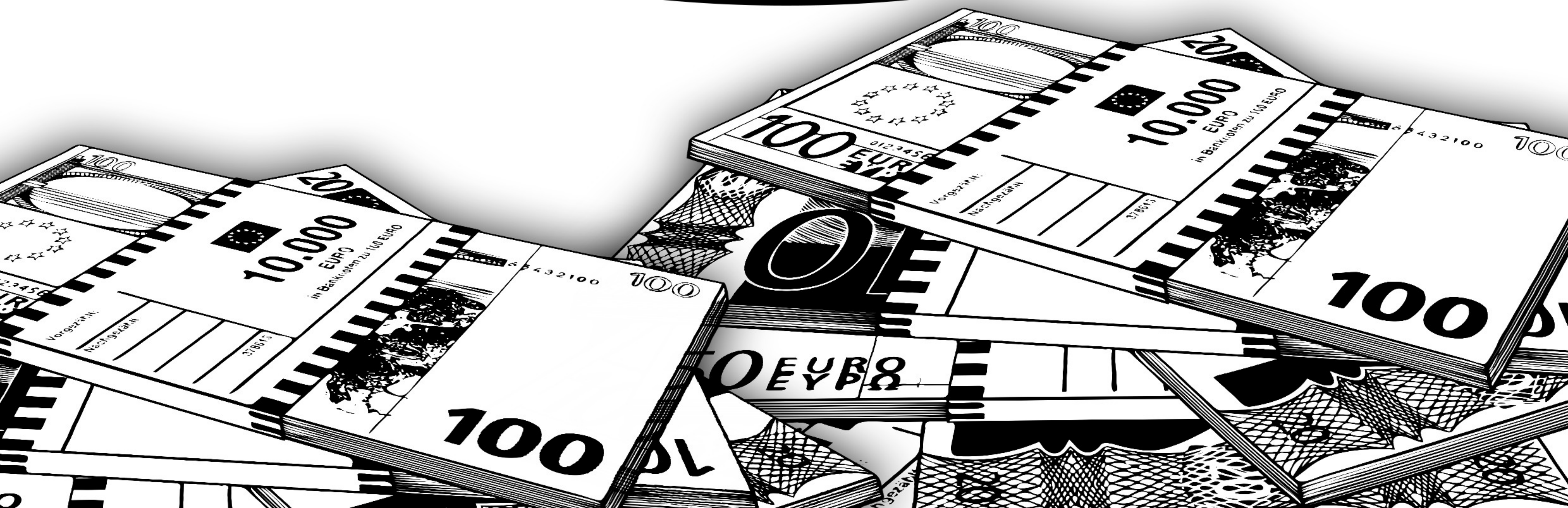
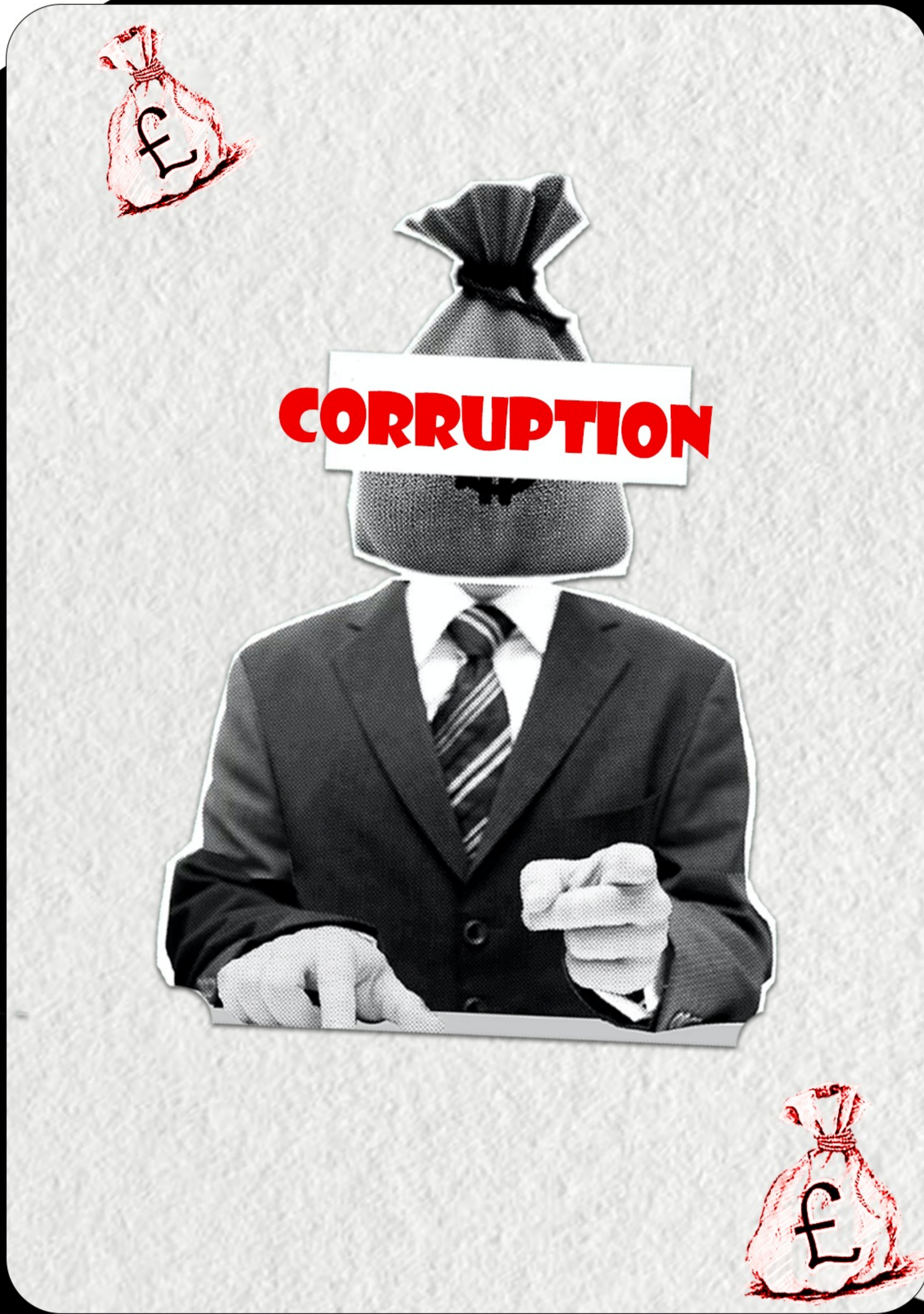
Punishment policy remains lenient as well. Expressed as a percentage, over 65% of the sentences have been fines and conditional sentences. The issue of the punishment policy has also been addressed in the Progress Report for Kosovo for the year 2023, emphasizing, among other things, that the Guidelines of the Supreme Court for Punishment Policy are not systematically applied by the courts and that the sentencing policy for organized crime and corruption remains inconsistent.

Regarding the decision-making process, in 18 corruption cases, the Court of Appeals upheld 11 verdicts issued by the Basic Courts. In three (3) cases, the Court of Appeals amended the first-instance decisions, mitigating the punishment. Meanwhile, the cases returned for retrial during this period include four (4) cases, expressed as a percentage of 22% of resolved cases. Compared to 2022, this court has shown progress regarding cases returned for retrial, as in 2022, out of 64 resolved cases, 21 cases were retried. This constitutes 32.8% of the cases.

In the cases of 70 individuals who were convicted of corruption, the supplementary penalty of the prohibition of exercising a public office was imposed only on 26 of them. Although the data indicate progress for the year 2023, in reality, compared to the number of convicted individuals, these penalties are relatively low.

According to the KLI's monitoring, out of 685 monitored sessions until November 1, 2023, 172 sessions (25%) were postponed, while 513 sessions were held. Compared to the two previous years, there is a 2% progress in relation to 2022 and a 3% progress in relation to 2021. During the monitoring, KLI identified 17 corruption cases that were reset to point zero due to the expiration of the 3 – 6 month period from the last session or due to changes in the judicial panel. To prevent cases from resetting, KLI has recommended that courts implement the provision of the reserve judge.

PROSECUTING CORRUPTION

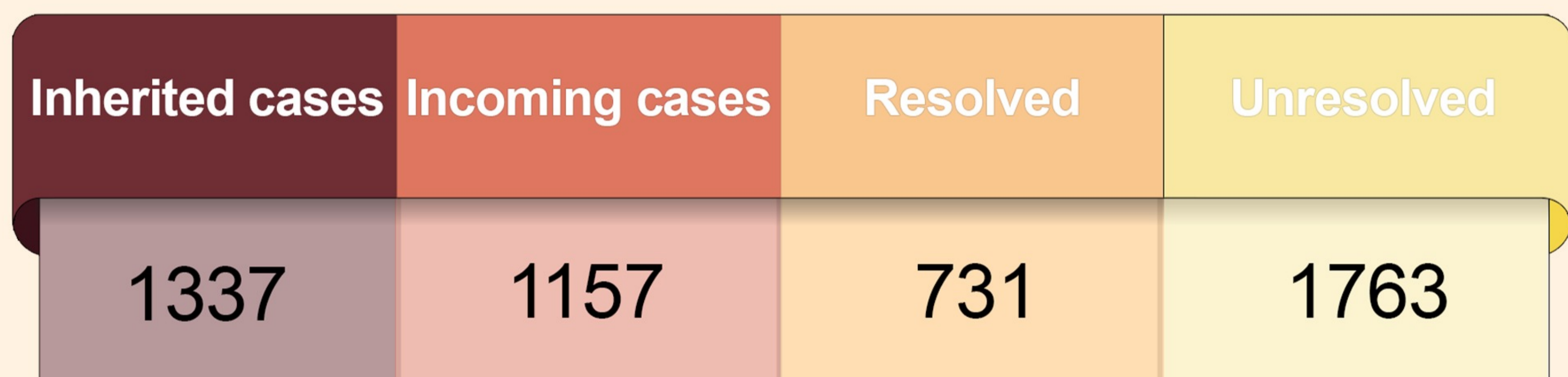


2. Treatment of corruption cases by the prosecutorial system

The State Prosecutor (SP) for the nine-month period (9) of 2023, i.e., from January 1 to September 30, has managed to resolve the cases of 731 persons accused of corruption. Compared to the end of 2022, the number of unsolved cases has increased again¹ and it is unlikely that until the end of 2023 there will be progress in this direction. Compared to the year 2022, the number of people with pending cases has also increased by 318 people. This is because, during the reporting period, the State Prosecutor has not managed to resolve as many cases they have accepted.

If the trend of resolving corruption cases per person is analyzed, then on average, prosecutor's offices have resolved the cases of 243 people every three (3) months, and if this average is taken as a basis, then it indicated that by the end of the year it will not be possible to reduce the number of unresolved cases.

Treating corruption cases with priority by the State Prosecutor, seems to have stalled in practice, since the number of unresolved cases is not showing any progress, the opposite is happening, thus causing the number of corruption cases to increase.



Graph 1: Caseload of the State Prosecutor²

3. Indictments raised and the number of accused persons

KLI has continued monitoring and analyzing the indictments filed for corruption during 2023 as well. Until November 7, 2023, according to KLI monitoring, SP has indicted a total of 75 people for criminal offenses other than the chapter of criminal offenses of corruption.

According to the number of persons accused of corruption, the Basic Prosecutor's Office in Pristina ranks first with 24 accused, while the Special Prosecutor's Office of the Republic of Kosovo (SPRK) ranks second with 18 accused. Even with the smallest number of persons accused of criminal acts of corruption, the last in order and with the same number are the Basic Prosecutor's Office in Mitrovica, Gjakova and Ferizaj.

The following table shows the statistical data related to the number of indictments filed according to prosecutors based on KLI monitoring.

1 Shala G & Makshana L "The failure of the justice in the fight against corruption". April 2023. Prishtinë. Page 6.

2 Answer from KPC for KLI, on November 1, 2023. (Statistics refer to the period January 1 - September 30, 2023).

Prosecution Office	Indictments	Acused	High profile
SPRK	3	18 persons	10
Pristina	18	24 persons	2
Mitrovica	4	4 persons	1
Gjakova	3	4 persons	0
Prizren	4	5 persons	0
Ferizaj	3	4 persons	0
Gjilan	4	8 persons	0
Peja	4	8 persons	0
Total	43	75	13

Graph 2: The indictments filed by SP during 2023.

4. Profile of the accused for corruption

During the year 2023, SP filed a total of 43 indictments against 75 persons. Only 13 of the accused belong to the high profile. Therefore, from the total number of those accused of corruption, according to the data generated by KLI monitoring, it results that only 17.3% of the accused belong to the high profile. Thus, this data shows that even during the year 2023, the criminal prosecution of corruption has not been very pronounced against high-profile corruption:

Number of accused 2023	High profile	In percentage %
75	13	17.3%

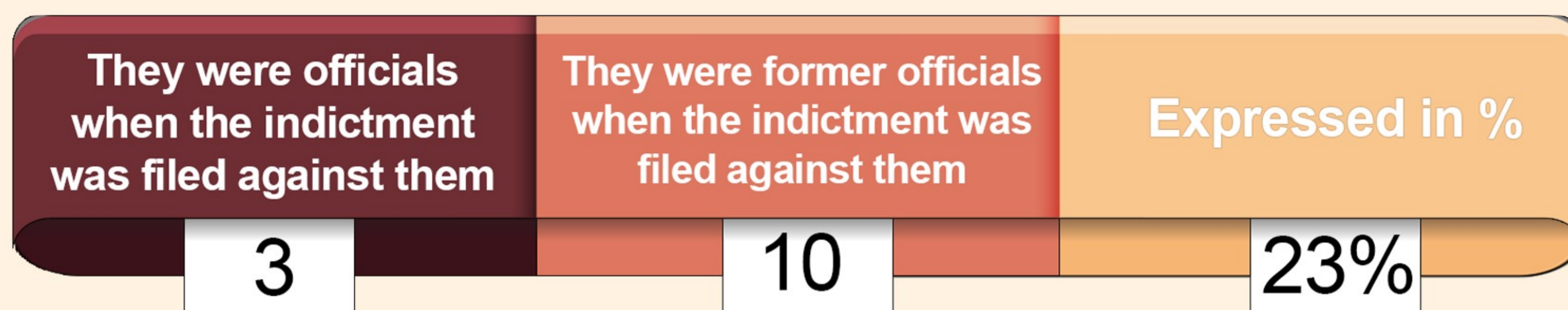
Graph 3: Number of high-profile persons accused during 2023.

According to Prosecution Offices, only the SPRK raised indictments involving high profile persons (10 persons), BP Pristina (2 persons) and Basic Prosecution Office in Mitrovica (against one person). As for the SPRK, from the total number of persons accused by this Prosecutor's Office during 2023, it turns out that over 55% of them belong to a high profile. However, all these people are included in only one indictment of the SPRK.³ In one indictment at the Basic Prosecutors Office in Pristina, the Minister of Foreign Affairs and Diaspora (MFAD), Donika Gervalla is accused.⁴

The categorization of these profiles as high profiles is based on the Strategic Plan for the Efficient Resolution of Corruption and Organized Crime Cases 2022-2024 of the KJC.⁵ In preliminary reports, the categorization of high-level corruption was based on an Instruction of the Chief State Prosecutor, which was approved on November 13, 2013.⁶

5 Criminal prosecution of (former) officials

The criminal prosecution of former officials seems to have become a common occurrence for SP, since even during 2023, out of 13 high-profile accused, only three (3) of them were indicted during the time the same have exercised their duties as officials, while against 10 others, indictments were filed as former officials. Expressed as a percentage, it falls to 23% of the accused.



Graph 4: Indictments against officials and former officials 2023.

The accusation of former officials has been characteristic even during 2022. This is after KLI found that out of eight (8) high-profile people accused of corruption, only one of them was accused of the position he currently holds, while seven (7) others were accused as former officials or for positions they no longer held.

3 "The names of the 10 officials against whom the Special Prosecutor's Office filed an indictment for corruption". Betimi për Drejtësi. 23 August 2023. (See link: <https://betimiperdrejtesi.com/emrat-e-10-zyrtareve-ndaj-te-cileve-prokuroria-speciale-ngriti-aktakuzave-per-korrupsion/>). (Last accessed 9 November 2023).

4 "The complete file of the Prosecutor's Office: What did Minister Gërvalla not declare from her assets and what did she declare to the Prosecutor's Office?". Betimi për Drejtësi. 4 November 2023. (See link: <https://betimiperdrejtesi.com/dosja-e-plote-e-prokurorise-cka-nuk-deklaroi-nga-pasuria-ministrja-gervalla-e-cfare-kishte-deklaruar-ne-prokurori/>). (Last accessed 9 November 2023).

5 Strategic Plan for the Efficient Resolution of Corruption and Organized Crime Cases 2022- 2024.

6 Instruction of the Chief State Prosecutor for offences of high corruption. 13 November 2013.

Such an approach of PS had been a constant criticism of KLI.⁷ Moreover, this practice also shows the efficiency of the State Prosecutor in bringing indictments, where in most cases indictments are not raised against high officials who are in power, as the aforementioned findings of the KLI show, but that these indictments are raised only after these officials pass to the status of “ex-officials”.⁸

6. Time of committing criminal offenses according to the indictments 2023

Corruption is a complex challenge and there are often challenges in fast-tracking cases due to many factors. However, the quick and effective reaction of the prosecution can help speed up the process of prosecuting corruption. The filing of indictments and the quick response of the prosecution in cases of corruption, has the effect of preventing the continuation of further abuses, putting the perpetrators before the court as soon as possible.

As for the indictments filed in 2023, the fact that the largest number of indictments are related to criminal offenses suspected to have been committed relatively late is considered positive. Without prejudging the guilt of the accused, in general, this course of action indicates a quick reaction of the State Prosecutor in these cases.

However, the quick reaction to the indictments by the SP has not happened in all cases. During monitoring, KLI identified indictments which were filed for criminal offenses that are suspected to have been committed nine (9) years ago, i.e., in 2014. This is the case against the accused Haxhimet Ferati, related to the accusation that in the capacity of the manager of the Office of Public Procurement in the Municipality of Mitrovica, has misused the official position, creating benefits for the NTP operator “Tropik” in the amount of 220 thousand euros. He is alleged to have committed this criminal offense in 2014, exceeding his official authorizations. The indictment for this case was filed on October 2, 2023 by the Basic Prosecutor’s Office in Mitrovica. In⁹ this case, on October 26, 2023, the initial hearing¹⁰ was held, where the accused Ferati did not plead guilty.⁹ This cases reaches the statutory of limitation on 19 November 2024.¹⁰

This method of action, in addition to being considered negative, despite the delay of the State Prosecutor’s Office in investigations, increases the possibility of absolute statute of limitation of corruption cases due to the limitation of terms for their trial by the court. KLI had repeatedly criticized such an approach.¹¹

7 Note: In December 2018, KLI published the report entitled: “Integrity of the justice system in the fight against corruption”. In this report, it was emphasized that: “KLI findings prove that high-profile indictments almost always occur only after high-ranking public officials no longer exercise their positions and only after they no longer have great political influence.”

8 Shala G & Makshana L “Failure of Justice in the Fight against Corruption”. April 2023. Pristina. Pg. 6..

9 “The procurement official in Mitrovica, accused of corruption, is declared innocent”. Betimi për Drejtësi. 26 October 2023. (See link: <https://betimiperdrejttesi.com/deklarohet-i-pafajshem-zyrtari-i-prokurimit-ne-mitrovica-i-akuzuar-per-korrupsion/>). (Last accessed 12 November 2023).

10 Note: Read the KLI Corruption Report for 2023 on why the Basic Prosecutor’s Office in Mitrovica has delayed in filing the indictment of this case.

11 Shala G & Makshana L “Failure of Justice in the Fight against Corruption”. April 2023. Pristina. Pg. 6.

The year when a criminal offense is suspected to have been committed according to the indictment	Number of accused
2014	1
2015	0
2016	2
2017	1
2018	6
2019	14
2020	16
2021	12
2022	15
2023	8

Graph 5: Time of committing the criminal offenses according to the indictments 2023

7. Fighting official corruption against non-official persons

Criminal offenses of corruption, as a category of more complex criminal offences, cannot be treated in the same way as other criminal offences. In some cases, KLI has found a lack of professionalism of prosecutors in this regard. The lack of professionalism and competence of prosecutors in general has also been criticized in the Progress Reports for 2023, considering the level of prosecutors as worrying.¹² During monitoring, KLI has evidenced a lack of professional knowledge to handle these types of criminal offenses, due to the fact that prosecutors in some cases have not distinguished the definitions of the persons they have accused of criminal offenses of corruption. This is despite the fact that according to the new Criminal Code the definition of official persons has been extremely clarified.¹³ In addition, the definition of an official is also clarified by the United Nations Convention against Corruption.¹⁴

In the cases monitored by KLI, it appears that the prosecutors in some cases filed indictments for criminal offenses of official corruption against persons who were not official persons nor did they exercise any public authority. Unfortunately, these indictments also pass the filters of the courts, which proves that even the judges exceed the omissions of the prosecutors. This way of handling these cases causes many accused of committing criminal offenses to “escape justice” as due to the wrong definition of the criminal offence, many indictments are dropped and for some others due to the requalification of the criminal offence reach the statute of limitation in later stages of the procedure.

¹²Progress Report for Kosovo 2023. Pg.19.

¹³ Criminal Code of the Republic of Kosovo No.06/L-074. Article 113, par 2.

¹⁴ Article 2.a

KLI has monitored several cases involving corruption during 2023, where among them it has identified four (4) court cases where the indictment was wrongly filed against seven (7) non-official persons. In three (3) cases, the indictments were filed by Dulina Hamiti, prosecutor in the SCD of the Basic Prosecution in Pristina, while one case by prosecutor Ismet Ujkani, prosecutor in the SCD of the Basic Prosecution in Mitrovica, currently the Chief Prosecutor of this Prosecutor's Office. For three (3) indictments, the courts have issued decisions, where it has been proven that the persons who were accused did not have the definition of official persons, while in one case the Basic Court in Pristina issued a judgment of acquittal as it was not proven that the criminal offence of corruption was committed.¹⁵ Indictment against individuals outside of official positions helps to raise good corruption statistics, but does not represent a real fight against corruption.

¹⁵ "The fight" of official corruption against non-official persons, mistakes of the Prosecutor's Office and the court". Betimi për Drejtësi. 24 June 2023. (See link: <https://betimiperdrejtesi.com/luftimi-i-korrupsionit-zyrtar-ndaj-personave-jozyrtare-huqjet-e-prokurorise-dhe-gjykates/>). (Last accessed 5 November 2023).

Prosecutor	Position of the accused	Criminal offence	Case status
Dulina Hamiti	M.S Security agent "Kosova e Re"	"Misappropriation in office"	Statute of limitation after the requalification of offence
Dulina Hamiti	F.P Manager "Kosova Water & Energy"	"Abusing official position or authority"	Acquittal (Reasoning: "Not official person")
Dulina Hamiti	D.Xh Advisor of "Pro Credit Bank"	"Abusing official position or authority"	Acquittal
Ismet Ujkani	1.F.H- Trainer of KF "Trepça 2. B.H- Representative of KF "Trepça" 3. K.D- FFK delegate 4.Fisnik Haxhiu- Secretary of KF "Trepça"	"Abusing official position or authority"	Dismissal of the indictment Reasoning: Persons were not defined as official persons

Graph 6: Cases against non-official persons who were indicted for corruption.

8.(Non) specification of damage in the indictment

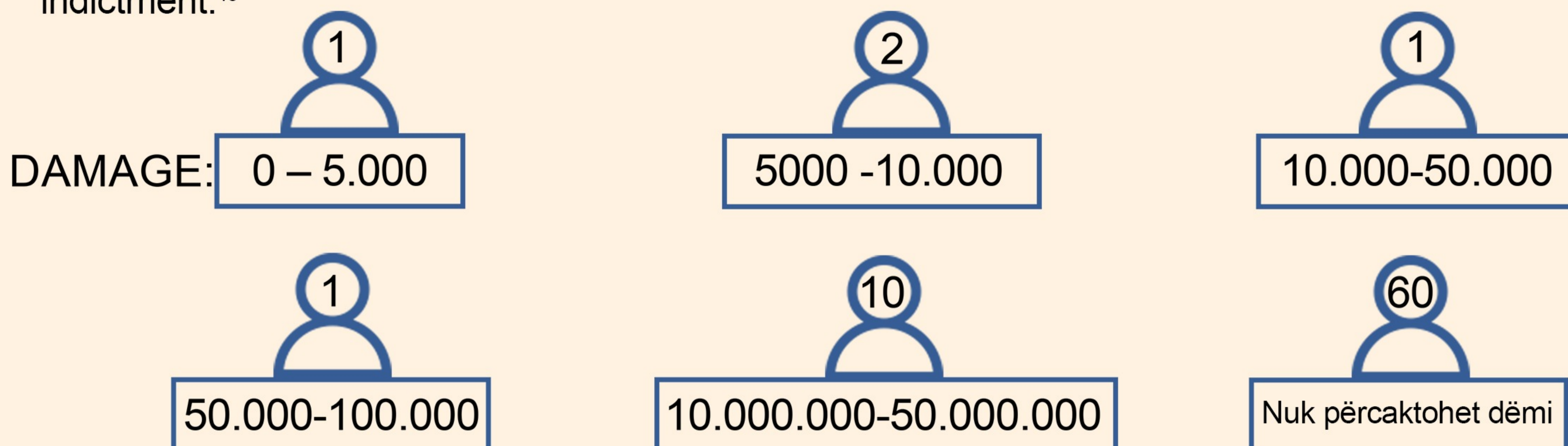
Non-specification of the damage by SP in the indictments filed¹⁶ continues to be a problem even during 2023. Of the indictments filed against 75 persons, the SP specified the damage against only 14 persons or expressed as a percentage, only 18.66% of the indictments filed.

Criminal offenses against official position are criminal offenses that mainly have material benefit for themselves or others. Thus, the amount of damage is one of the crucial elements of these criminal acts.

Failure to determine the amount of damage claimed in the indictment has an impact on the entire course of the criminal procedure. This is because, initially, the non-determination of the claimed damage does not correctly determine the intensity of the criminal offense, and in certain cases, it can be a determining factor of the definition. This is because for various criminal offenses, their qualified form depends on the level of damage caused. On the other hand, the determination of the damage and its level will have an impact on the court for the level of punishment and the level of the degree of responsibility of the perpetrator. Furthermore, the non-determination of the amount of the damage makes it difficult for the court to decide on the assest-legal claim, as well as for the imposition of the additional punishment "the order for compensation of loss or damage".

For these reasons, in each case, the Prosecutor’s Office must undertake to specify the amount of the claimed damage in the investigation phase and make this element part of the indictment.¹⁷

According to the Chair of the KPC, Jetish Maloku, the Office of the Chief State Prosecutor has a decisive and important role in this regard, which through meetings with all the chief prosecutors, has raised this issue, where according to him the damage must necessarily be part of the indictment.¹⁸



Graph 7: Damages claimed under corruption indictments filed in 2023.

9. Lack of a proper criminal investigation

KLI has analyzed 20 indictments of the State Prosecutor in a random manner, to identify the type of evidence used to argue the claims of the indictments. From two (2) indictments in the Basic Prosecutions in Prizren, Gjilan, Mitrovica, Pejë, Ferizaj, Gjakova and SPRK, while in the Basic Prosecution in Pristina six (6) indictments. What is observed from the analysis in question is that in none of the cases analyzed, secret investigative measures were implemented. In four (4) cases, as evidence, SP used electronic communications, in one case transcripts of conversations, in three (3) expertise and in other cases the evidence which is presented in the following graphic.

16 Note: Exceptions in this case are criminal offenses from article 422, 430 of Code NO. 06/L-074 Criminal Code of the Republic of Kosovo or cases where there is no information on whether damage has been caused.

17 Shala G & Makshana L “Failure of Justice in the Fight against Corruption”. April 2023. Pristina. Pg. 10.

18 Written response of the Chair of the KPC, Jetish Maloku on November 7, 2023 regarding this report.



Graph 8: Evidence in 20 indictments analyzed during 2023.

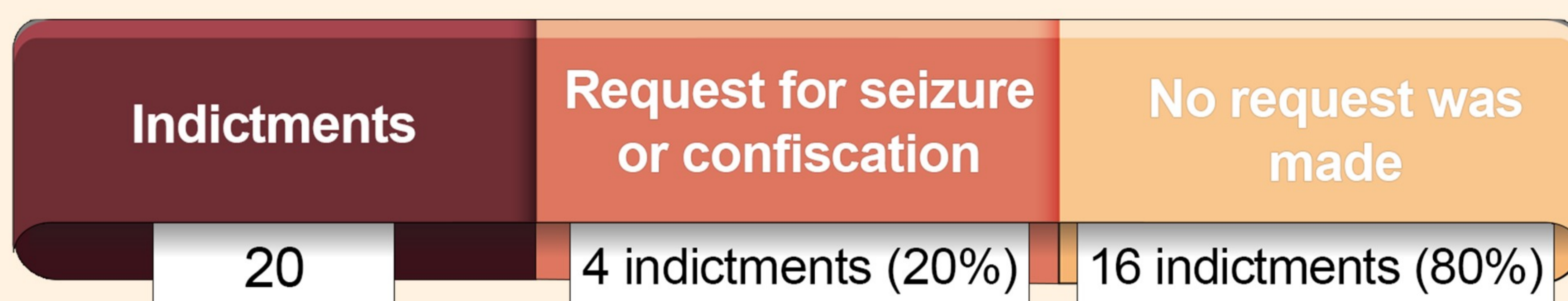
When filing indictments in corruption cases, the Prosecution can use a wide range of evidence to support their charge. This evidence may include documentation, witnesses, financial analysis, reports, expertise, etc. However, the filing of indictments, based mainly on statements of the parties, contracts, decisions, police reports and minutes, has the character of an administrative investigation rather than a genuine criminal investigation of corruption. Due to the fact that corruption, especially high-profile, is a complex category of criminal offenses and is assumed to be carried out with great planning, this criminal category cannot be treated with the same types of evidence that are used in other cases.¹⁹ Therefore, the State Prosecutor must change the focus of the investigation, in terms of the evidence he seeks and examines during a criminal procedure. This is so that the criminal investigation of corruption does not turn into an investigation that more closely resembles an administrative investigation. It should be noted that the application of special investigative techniques in cases of corruption is also defined in the United Nations Convention against Corruption.²⁰

19 Shala G & Makshana L "Failure of Justice in the Fight against Corruption". April 2023. Pristina. Pg. 10.

20 "United Nations Convention Against Corruption". 2004, Article 50. (See link: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf). (Last accessed 5 April 2023).

10. Seizure and confiscation

Of the 20 indictments analyzed for the purposes of this report, filed during 2023, KLI has found that in only four (4) of them, the State Prosecutor, through the indictment, made a request for seizure or confiscation of the assets benefit obtained by criminal offense. However, did not do this in 16 other cases. Thus, expressed as a percentage, the State Prosecutor in only 20% of the indictments made a request for the seizure or confiscation of the assets obtained through a criminal offense. KLI has analyzed two (2) indictments in the Basic Prosecutor's Offices in Prizren, Gjilan, Mitrovica, Pejë, Ferizaj, Gjakova and SPRK, while in the Basic Prosecutor's Office in Prishtina six (6) indictments. From this analysis, it was found that only SPRK in one indictment made a request for confiscation, BP in Pristina only in one indictment, BP in Gjilan in the two analyzed indictments, while the other Prosecutions in none of the indictments.

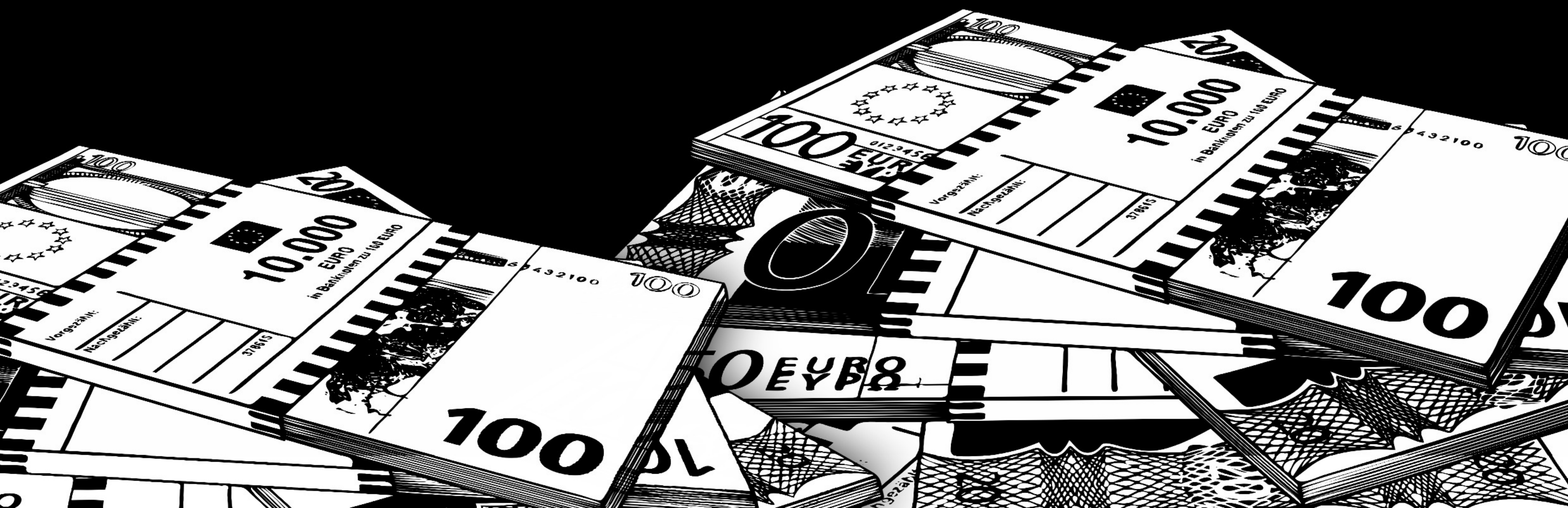


Graph 9: Requests for seizure and confiscation in 20 indictments analyzed 2023.

This course of action clearly shows that the prosecutorial system did not pay enough attention to the need to fight corruption through the confiscation of illegally acquired assets. The lack of requests for seizure or confiscation by the State Prosecutor's Office indicates the insufficient efforts of the State Prosecutor in this regard, while the lack of seizures and confiscations has been one of the shortcomings identified in the Progress Report for 2023.²¹

²¹ Progress Report for Kosovo 2023.

CORRUPTION TRIALS



11. The caseload of the judicial system with corruption cases

According to the statistical data of the KJC, at the beginning of 2023, the Courts had 109 unresolved cases, involving 252 people. Compared to last year, progress has been made, the fact that the courts have managed to resolve more cases than they accepted, reducing the number of unresolved cases during this reporting period.²² However, the number of unsolved cases still remains large.

Cases/Persons	Inherited	Incoming	Resolved	Unresolved
Cases	109 cases	42 cases	53 cases	98 cases
Persons	252 persons	53 persons	87 persons	218 persons

Graph 10: Caseload of first instance courts with corruption cases.

12. Backlog of active corruption cases in the judiciary

Despite the prioritization of corruption cases, KLI has found that there are still active cases in the judiciary, which were filed a decade ago.

Despite the legal deadlines for handling a court case, KLI during monitoring has identified cases of corruption that are active in court, even though the indictment was filed as early as 2008. That is, 15 years ago. In this regard, there are nine (9) court cases of corruption whose indictments were filed from 2008 to 2016, and which have not yet received an epilogue in court.

A concrete case for this is the case of 2008, where the District Public Prosecution in Pristina on October 30 filed an indictment against Shaip Feriz, and others. On March 11, 2019, the same were convicted, where cars and money were confiscated. However, on December 18, 2019, the Court of Appeal returned the case to a retrial. According to KLI monitoring, a total of 15 hearings were scheduled for this case, six (6) of which were postponed, while nine (9) were held.

²² Answer from KJC to KLI, November 24 2023.

Whereas, after the return of the case for retrial, on December 18, 2019, the first scheduled hearing was on May 3, 2023.²³ So 15 years have passed and this case is still active in court.

The fact that corruption cases, whose indictments were filed 15 years ago, continue to remain active in the judicial system, shows the lack of efficiency in solving them. This despite the prioritization of these cases. Moreover, this shows that even the Strategic Plans of the Councils are encountering difficulties and challenges to avoid old cases in the judicial system.

Year of indictment raised	Number of active cases
2008	1
2009	1
2014	0
2015	1
2016	6
2017	5
2018	6
2019	13
2020	17
2021	20
2022	34

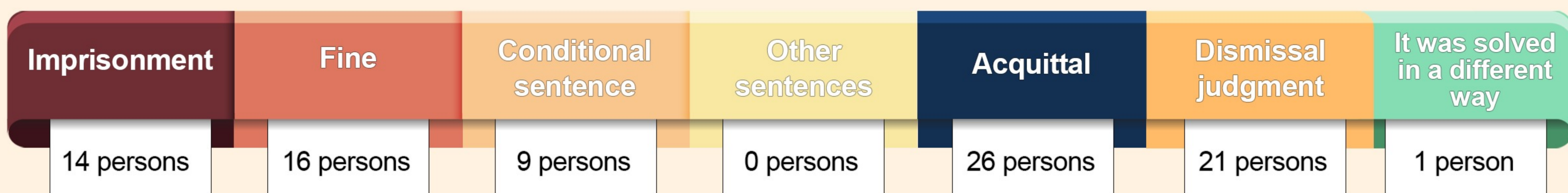
Graph 11: Backlog of active cases in courts, according to the year of indictment filed.

²³ The retrial hearing against those accused of organized crime is postponed”. Betimi për Drejtësi. 5.11.2023. (<https://betimiperdrejte-si.com/shtyhet-seanca-e-rigjykim-it-ndaj-te-akuzuarve-per-krim-te-organizuar/?fbclid=IwAR3xZGhZbNrVVTrIvgx8Lw6m3eQSZzE8v7AAjShRY4UyKkjdIOA1NjYSz8>). (Last accessed 14.11.2023)

13. Trial of corruption in the first instance and punitive policy

A large number of corruption cases have resulted in fines and suspended sentences. According to the data of the KJC, the courts imposed fines on 16 persons, prison sentences on 14 persons, while in nine (9) cases, the courts imposed conditional sentences. Expressed as a percentage, over 65% of the sentences were fines and conditional sentences.²⁴

The issue of penal policy has also been addressed by the Progress Report for Kosovo 2023, where, among other things, this Report has emphasized that the Supreme Court’s Guidelines for Penal Policy are not being systematically applied by the courts and that the policy of punishments for organized crime and corruption continues to remain inconsistent.²⁵

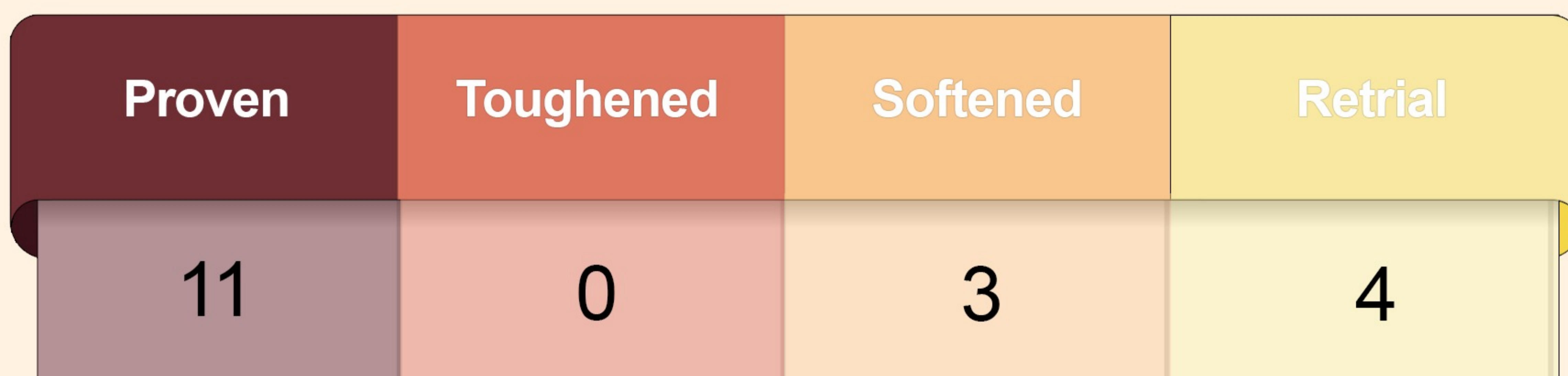


Graph 12: Punitive policy in cases of corruption

14. Trial of corruption in the second instance

The Court of Appeals (CA) out of 39 received corruption cases during the first nine-month of 2023, has not managed to solve 18 cases or expressed in percentage 46% of the cases have been solved. At the end of the reporting period, 21 corruption cases remained unresolved.

SAs for the manner of decision, in 18 cases of corruption, the Court of Appeal confirmed 11 judgments issued by the Basic Courts. In three (3) cases, the Court of Appeal changed the decisions of the first instance, reducing the sentence. Meanwhile, the cases returned for retrial in this period include four (4) cases or expressed as a percentage 22% of the resolved cases. If compared to the year 2022, this court has marked progress in terms of corruption cases returned to retrial, since in 2022, out of 64 decided cases, 21 cases were returned to retrial. Expressed as a percentage, it appears that 32.8% of the corruption cases in which the Court of Appeal had decided, were returned for retrial. So, roughly every third cases.²⁶



Graph 13: Decision-making by the Court of Appeal in corruption cases.

²⁴ Answer from KJC to KLI, November 24 2023.

²⁵ Progress Report for Kosovo 2023. Fq.22.

²⁶ Shala G & Makshana L “Failure of Justice in the Fight against Corruption”. April 2023. Pristina. Pg. 17.

In addition, KLI has monitored a total of 34 hearings in the Court of Appeal until November 2023, where 19 of them were hearings from corruption cases. Out of 19 monitored corruption hearings, 16 were held, while three (3) of them were postponed.

15. Administration of cases

According to KLI monitoring, out of 685 hearings monitored until November 1, 2023, 172 hearings (25%) have been postponed, while 513 hearings have been held. Compared to the previous two (2) years, the progress is 2% in relation to 2022 and 3% in relation to 2021.²⁷

Curing monitoring, KLI has found that in three (3) cases, the procedure has started from zero, due to the passing of the specified legal deadline. In two cases, more than three (3) months had passed since the last hearing²⁸, while in one case six (6) months had passed since the last hearing.²⁹ On February 17, 2023, the new Criminal Procedure Code entered into force. According to this Code, the period that must pass between two hearings, for the trial to return to zero, was extended to six months. Yet, this did not stop these cases. KLI found that one case returned to zero after more than six months passed between two sessions.

On the other hand, KLI during monitoring identified a total of 14 cases, which had to be returned to the point zero, because during the trial one of the members of the trial panel was changed. This situation represents inadequate administration of these cases, which translate into delays and ineffectiveness in the treatment of judicial cases of corruption, which in certain cases may even result in the statute of limitations of the cases.

Regarding the change of the members of the trial panel, the Court of Appeal in a case of corruption found that the first instance, even though it had changed the composition of the trial panel, had not started the criminal case anew, thus committing a violation which, according to the Appeal, again witnesses had to be heard. This case was returned for retrial by the Court of Appeal.³⁰

Cases returned to the point zero due to the passing of the period of 3-6 months, from KLI monitoring.

3

Cases returned to the point zero due to the change of the member of the trial panel, from KLI monitoring.

14

Graph 14: Cases returned to point zero.

27 Shala G & Makshana L "Failure of Justice in the Fight against Corruption". April 2023. Pristina. Pg. 21.

28 Note: According to article 311, par 3 of the Criminal Procedure Code no. 04/L-123: "When the postponement has lasted more than three (3) months or when the trial is held before another president of the trial body, the trial must begin to review all the evidence again and again".

29 Note: According to article 307, par 3 of the Criminal Procedure Code No. 08/L-032 "If the main trial has been adjourned for more than six (6) months or if it is held before a new presiding trial judge, the main trial recommences from the beginning and all the evidence is examined again. However, in such case, after hearing the parties, the trial panel may in this case decide not to examine the witnesses and expert witnesses again and not to conduct a new site inspection, but rather to read the testimony of the witnesses and the expert witnesses given at the previous main trial or the record of the site inspection".

30 "Court of appeal returns the case against the police official to the retrial regarding the accusation of exerting influence". Betimi per Drejtësi. September 10, 2023. (See link: <https://betimiperdrejtësi.com/apeli-e-kthen-ne-rigjykim-rastin-ndaj-zyrtarit-poligor-lidhur-me-akuzen-per-ushtim-ndikimi/>). (Last accessed 14.11.2023)

KLI in the report “Failure of justice in the fight against corruption”, had recommended that the courts implement the provision of the reserve judge.³¹ This provision would prevent cases from returning to zero for various objective or subjective reasons of changing a member of the trial panel. The reserve judge would have the role of an auxiliary mechanism in these cases. The implementation of the provision for reserve judges would be an effective and efficient solution in preventing delays in corruption cases and their better administration by judges.³²

16. Absence of additional penalties

The small number of additional sentences imposed continues to remain one of the main challenges in the fight against corruption. The pronouncement of these sentences should be one of the strongest “weapons” of the judiciary for the effective fight against corruption, but unfortunately these sentences are still not applied to criminal offenses of corruption even though according to the legislation in force, their application is determined as mandatory in sentencing sentences with imprisonment and not as discretion of judges. The non-application of additional penalties for corruption cases has also been criticized in the Progress Report for Kosovo for 2023, where, among other things, it was stated that the additional penalties that prohibit the exercise of public functions in cases of corruption are not applied sufficiently.³³

During KLI monitoring for 2023,³⁴ it was found that in the cases of 70 persons who were found guilty of corruption, the additional punishment of banning the exercise of the function in the public administration was pronounced against only 26 of them. Expressed as a percentage, the additional penalty was imposed in only 37.14% of the convictions.

The non-application of these punishments, where the perpetrators would be prohibited from exercising their function in public administration, seriously violates the public’s trust in the judiciary and also in public administration, since the perpetrators of these criminal offenses can return to exercise public functions after serving their sentence. Moreover, it represents non-application of one of the powerful measures for the prevention of recidivism. However, compared to previous years, there is progress in the imposition of supplementary sentences.

2020	2021	2022	2023
94 Convicted persons	67 Convicted persons	93 Convicted persons	70 Convicted persons
4 additional penalties	24 additional penalties	19 additional penalties	26 additional penalties
4.25%	35.9%	20.4%	37.14%

Graph 15: Rendering of additional punishments for 2020, 2021, 2022 and 2023.

31 Shala G & Makshana L “Failure of Justice in the Fight against Corruption”. April 2023. Pristina. Pg. 22.

32 Note: Criminal Procedure Code No. 08/L-032, Article 284: “If it appears that the main trial may last for some time the presiding trial judge may request the president of the court to assign one judge to attend the main trial in order to replace members of the trial panel in the event that they are prevented from attending the main trial. This judge is called the reserve judge”.

33 Progress Report for Kosovo 2023. Pg. 24.

34 Note: The last data related to additional punishments were released on November 7 2023.

Although the data show progress for the year 2023, in reality, if compared to the number of convicted persons, these sentences are few and the courts still continue the old practice, not rendering this additional sentence. KLI has consistently requested in the annual monitoring reports of the courts that the latter impose additional penalties in cases of corruption, but unfortunately this negative practice has continued during 2023, where the courts, by not applying additional penalties, have not implemented it their obligation according to the Criminal Code and the Guidelines of the Supreme Court.³⁵

³⁵ “Official corruption and criminal offenses against official duty”. Supreme Court. June 2021. Page 50