

COURT MONITORING REPORT 2017

Authors:

Labinot Leposhtica and Arbër Kadriu

Editor:

Faik Ispahiu

Proofreading:

Përparim Isufi

Monitoring Project Coordinator:

Petrit Kryeziu¹

Monitors:

Arita Gërxhaliu, Blerta Iberdemaj, Shkodran Nikçi, Lekë Muqaj, Bahrie Sadiku, Naim Krasniqi, Behar Mustafa

Contributors:

Kastriot Berisha, Agita Muhadri, Genc Kadriu

Publication of BIRN and INTERNEWS KOSOVO.

All rights reserved by BIRN and INTERNEWS KOSOVO.

Disclaimer:

The original report is in Albanian. In case of any discrepancy between the same report in Albanian and this report translated in English, the report in Albanian will prevail over the translation into English.



¹ Petrit Kryeziu has been working as monitoring project coordinator until December 2017, when he was also decreed as State Prosecutor.

I. Executive Summary

For 12 years, the Balkan Investigative Reporting Network (BIRN) and Internews Kosovo have monitored the Kosovo judicial system at all levels in order to assess their performance in respecting legality, work ethics and judicial proceedings.

A particular focus of this report² will be corruption cases, including criminal offenses that are of interest to society, monitored during 2017, but will also address other issues observed during the work of monitors in the field.

Moreover, the report will highlight procedural violations by judges, prosecutors and other parties during court proceedings, observed by court monitors in courts of the Republic of Kosovo.

The report contains procedural violations, ranging from failure to hold court hearings, changing of witness statements, failure to schedule court hearings, unreasonable delays in trials, failure to comply with the legal deadlines for the initial hearing, holding trials without the presence of the accused, disorder at trial, poor preparation of prosecutors for the trial, and failure to hold hearings due to the lack of court interpreters as one of the basic principles of justice, for trials to be in a language that is known and spoken by the defendant in the proceedings.

As in previous years, the report will also include findings concerning technical violations during court hearings. Although with significant positive improvements from year to year, BIRN and INTERNEWS KOSOVO's 2017 report also provides comparative statistics with previous years regarding technical violations, such as failure to properly announce hearings, delays, use of phones during the hearing, failure to use audio equipment and video recording in court hearings, passivity of members of the trial panel and other technical violations observed this year, which will be addressed in the last part of the report.

Finally, for the eleventh consecutive year, BIRN and INTERNEWS KOSOVO's report will also provide concrete recommendations to institutions and stakeholders involved in the work of the judiciary in Kosovo.

II. Methodology

Direct observation, analysis, comparison and statistical methods were applied for the drafting of this report - depending on the topic or chapter in question.

Direct observation of the work of courts is based on the monitoring of 307 hearings in 2017, with a particular focus on cases related to terrorism and corruption.

The analytical method is presented in specific chapters of the report, in order to address the rather complex problems that occur with the topics in question.

Through the method of comparison, certain parallels were drawn and all the problems that were addressed were clearly reflected in this way. To better and more clearly understand the implementation and functioning of procedural and technical rules, the comparative method is more reliable, and BIRN and Internews Kosovo have already managed to create an authentic 11-year database.

In 2017, the monitoring team covered all instances of Kosovo courts (the seven basic courts and their branches, the Court of Appeal and the Supreme Court).

Monitoring took place at these levels dispersed in the following municipalities: Prishtina, Prizren, Pejë, Mitrovicë, Gjiłan, Ferizaj, Vushtrri, Skënderaj, Glllogvc, Kaçanik, Viti, Podujevë, Rahovec, Suharekë, Klinë, Istog, Gjakovë, Deçan, Dragash, Lipjan, Kamenicë, Novobërdë and Malishevë.

Including 307 hearings monitored in 2017, the total number of hearings monitored in the court monitoring project reached 10,788, thus creating a robust database that enables comparative analysis and measurement of trends and progress achieved.

² This report was compiled with official data of 2017 (December 31, 2017). A number of cases and data may have changed during 2018, and a part of these changes are reflected in the footnotes below.

2008/2009	2009/2010	2010/2011	2011	2012
513 hearings	1,248 hearings	2,147 hearings	2,525 hearings	1,441 hearings
2013	2014	2015	2016	2017
820 hearings	501 hearings	600 hearings	686 hearings	307 hearings

10,788
hearings

Table 1. Table with the total number of monitored court hearings

III. Institutions’ ‘fight’ against corruption

1. Overview of the treatment and analysis of corruption offenses by BIRN and INTERNEWS KOSOVO

The fight against corruption, although declared a priority by justice institutions, in practice, has been hardly visible for years. This finding was mentioned in the 2017 Progress Report of the European Commission, assessing that Kosovo is at an early stage and has a level of preparedness regarding the fight against corruption.³

After monitoring corruption case hearings, two years ago, the BIRN and INTERNEWS KOSOVO report concluded that the main problem at trial in such criminal offenses lies in establishing the motive and securing the facts that have led the perpetrators to commit these crimes.

The monitoring showed that, on one side, prosecutors often filed indictments without well-conducted investigations, leading to investigative actions taken during the course of hearings, and even withdrawal of the charges.

On the other hand, a number of judges lacked the courage or professionalism to render merited sentences against perpetrators as provided for by law and as the public expects them to do.

BIRN and INTERNEWS KOSOVO’s report documented that, due to delays in filing indictments by prosecutors in certain cases, deadlines were missed, leading to serious cases of corruption without trial, such as: KEK’s tender with an insurance company for a value exceeding 6 million EUR; the Kosovo Police tender for weapons supply valued at over 3 million EUR, and the case of the Private Business Bank involving over 450 thousand EUR.⁴

Another key problem is the low sentences issued against confirmed perpetrators of corruption offenses, such as the sentence against two former Ministers of Culture, Astrit Haraqija and Valton Beqiri, the case of the Urbanism Director in Gjakova, and the case of former Mayor of Prizren, Ramadan Muja, as well as five senior municipal officials.

The report, which has drawn from concrete cases, also reported on the failure to treat corruption cases, those that continue to remain unaddressed in prosecution and courts in Kosovo. Such cases are often subject to statute of limitation or dismissed without punishment of the perpetrators of criminal offences. 22 such cases have been identified only through BIRN and INTERNEWS KOSOVO’s monitoring and research.⁵

During the monitoring of corruption cases, BIRN and INTERNEWS KOSOVO identified failures in corruption cases that were broken down into three categories; a) ‘Late’ indictments by prosecution; b) Statute of limitation of corruption offenses in the court; and c) Low sentences in corruption cases. For each of the points highlighted, the report presented concrete cases, recommending and encouraging judges to practice more severe

³ Progress Report for Kosovo for the year 2017.17 April 2018. p.18. https://eeas.europa.eu/sites/eeas/files/01._kosovo_report_2018_0.pdf

⁴ See Court Monitoring Report 2017, page 10. Accessed at: http://kallxo.com/wp-content/uploads/2016/05/BIRN-court-report-2015_ALB_web.pdf.

⁵ Ibid.

and higher punishments against offenders, considering that the criminal offenses of corruption in Kosovo have a significant prevalence.⁶

However, now, two years after these analyses and recommendations were first given, the fight against corruption has not yet been won by justice institutions.

Even during 2017, the Court Monitoring Report by BIRN and INTERNEWS KOSOVO presented concerning findings in the fight against corruption.

In 2017 justice institutions remain ineffective and powerless to issue merited punishments in large cases of corruption.

The report highlights concrete instances of institutions' failures in the fight against corruption. Cases of passivity, impunity and statute of limitation of corruption cases have been observed this year as well, and another concern is the fact that there was no confiscation of assets gained from criminal offenses, according to the data provided by courts, which will be addressed in detail below.

2.Sentences for criminal offenses of corruption in 2017

According to the applicable legislation, the purpose of punishing a perpetrator is to prevent them from committing criminal offenses in the future and ensure his/her rehabilitation as well as to express a preventive element to deter other persons from committing criminal offenses.

The purpose of the punishment does not only target the perpetrator of the offense and other persons, preventing them from perpetrating criminal offenses in the future. The purpose of the sentence is also to provide compensation for victims or the community for the losses and damages caused by the criminal offense, as well as to express social judgment for the criminal offense, increase morale and strengthen the obligation to respect the law.⁷

Monitoring the criminal offenses of corruption in 2017, the Report provides statistical data on concrete cases, which can be used to see if the objective of sentencing, as envisaged within the applicable criminal code, is achieved.

The sentencing policy in corruption cases during 2017, according to the research and analysis of BIRN and INTERNEWS KOSOVO, is soft.

In 254 judgments issued in the first instance in 2017, judges have applied a soft sentencing policy against the perpetrators of criminal offenses of corruption, predominantly issuing fines, suspended sentences and, moreover, there are more acquittals than convictions.

According to statistical data of the Secretariat of the Kosovo Judicial Council for 2017, for criminal offenses from the chapter on corruption in office and official duty, there has been a decrease of cases received, but the number of cases carried over from previous years still remains high.

The data of the Kosovo Judicial Council Secretariat shows that for cases from the chapter on corruption offenses, in 2017, basic courts had 559 cases involving 1,204 persons.

During this period, basic courts have received 223 cases of corruption, while they resolved 254 such cases, namely resolving 31 cases more than they received, while 305 cases are pending.

Resolution of cases in Basic Courts, according to statistical data of KJC in 2017, is presented below:

⁶ Ibid. pages 8 to 25.

⁷ See Criminal Code of the Republic of Kosovo, No. 04/L-082, April 2012, Article 41. Accessed at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2834>

Cases resolved

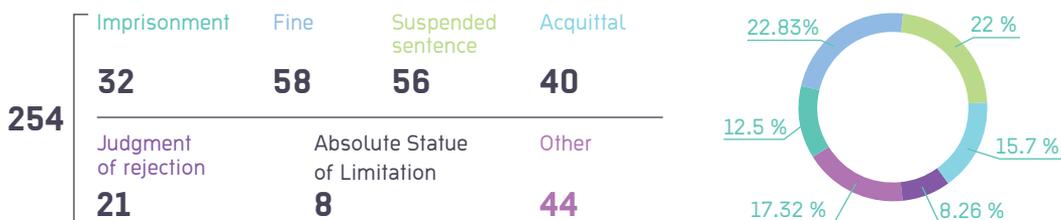


Table 2. Resolution of cases in Basic Courts (data taken by KJC)

The high prevalence of fines and suspended sentences in addition to prison sentences on the one hand, and the larger number of acquittal judgments compared to prison sentences on the other, indicate a general trend in lenient sentencing and a failure of justice institutions in the fight against corruption, taking into account the fact that the Criminal Code envisages higher sentences for these criminal offenses.

BIRN and INTERNEWS KOSOVO monitors have been able to provide data on corruption related criminal offenses and judicial decisions taken by each of the seven basic courts in the country.

The following table shows data on each court in relation to corruption offenses for 2017:

Courts	Remaining Cases from Previous Years	Cases received	Cases resolved	Imprisonment	Punishment of fine	Suspended sentence	Acquittal	Rejection judgment	Other manner	Pending cases
Prishtina	198	73	88	14	14	22	9	9	20	183
Prizren	23	27	36	7	7 ¹	8	10	1	3	14
Peje ²	22	30	37	2	11	12	4	1	5	15
Mitrovica	19	20	12	1	5	1	1	2	2	27
Gjilan	45	37 ³	38	1	10	4	11	3	8	44
Ferizaj	17	19	27	7	6	5	2	5	2	9
Gjakova	12	17	16	0	5	4	3	0 ⁴	4	13
Total	336	223	254	31	58	56	40	21	44	305
%				13.2%	24.2%	21.0%	18.7%	8.2%	13.2%	

Table 3. Data on every court on corruption related offenses in 2017.

1.From the data obtained from the 9 month court monitoring report, it results that there are 8 cases with imprisonment sentences whereas the KJC's 12 month report indicates there are 7 cases.

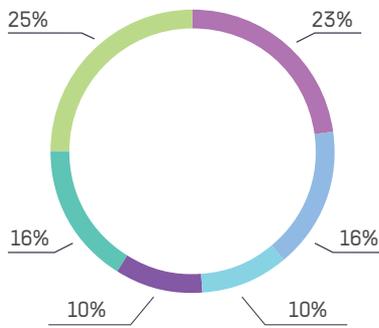
2.Two cases have been resolved with other punishment.

3.One case was resolved with other punishment, in addition to the suspended sentence and fine.

4.Data on the three quarters of 2017 indicate that the Basic Court of Gjakova had 4 cases with judgments of dismissal, whereas the annual report of KJC indicates no such cases. The result is 4 cases resolved in other manners.

Chart of the sentencing policy for corruption cases:

Basic Court in Prishtina

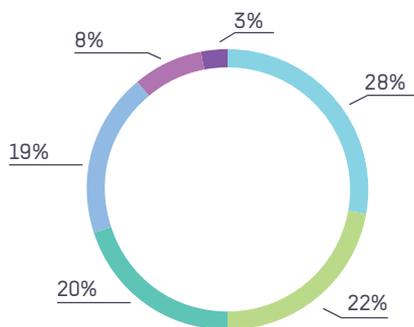


- Imprisonment
- Punishment of fine
- Suspended sentence
- Acquittal
- Rejection Judgment
- Other manner

Resolved Cases
32%

Unresolved Cases
68%

Basic Court in Prizren

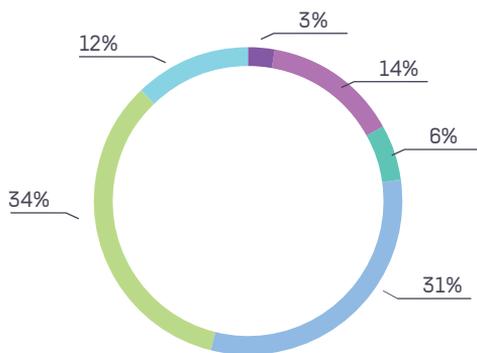


- Imprisonment
- Punishment of fine
- Suspended sentence
- Acquittal
- Rejection Judgment
- Other manner

Resolved Cases
72%

Unresolved Cases
28%

Basic Court in Peje



Imprisonment

Punishment of fine

Suspended sentence

Acquittal

Rejection Judgment

Other manner

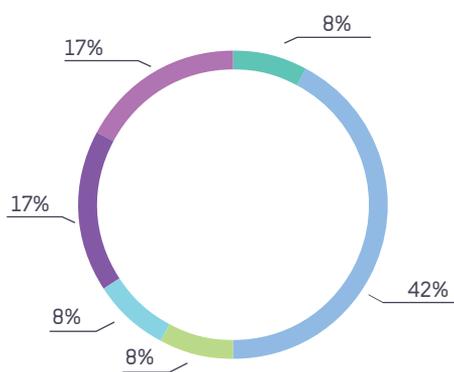
Resolved Cases

29%

Unresolved Cases

71%

Basic Court in Mitrovica



Imprisonment

Punishment of fine

Suspended sentence

Acquittal

Rejection Judgment

Other manner

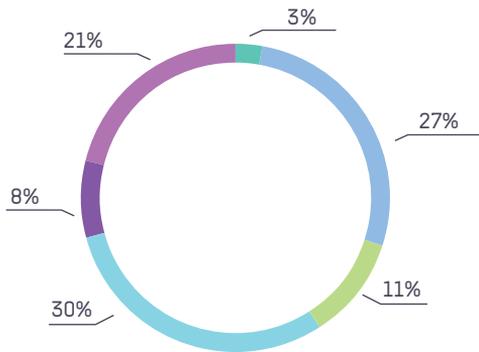
Resolved Cases

31%

Unresolved Cases

69%

Basic Court in Gjilan



Imprisonment

Punishment of fine

Suspended sentence

Acquittal

Rejection Judgment

Other manner

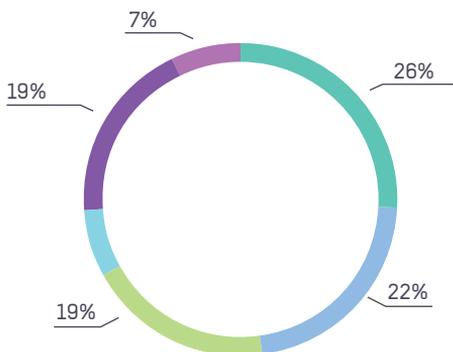
Resolved Cases

46%

Unresolved Cases

54%

Basic Court in Ferizaj



Imprisonment

Punishment of fine

Suspended sentence

Acquittal

Rejection Judgment

Other manner

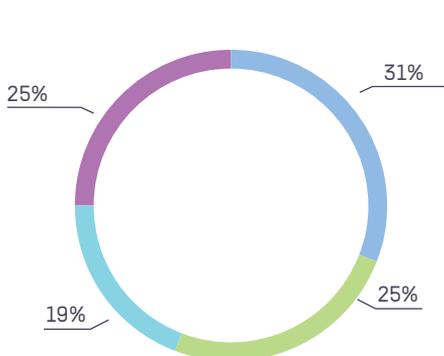
Resolved Cases

75%

Unresolved Cases

25%

Basic Court in Gjakove



Imprisonment

Punishment of fine

Suspended sentence

Acquittal

Rejection Judgment

Other manner

Resolved Cases

55%

Unresolved Cases

45%

3.Failure of indictments in court

In terms of corruption cases, prosecutors have failed to defend and argue their indictments with strong evidence. The data secured by BIRN and INTERNEWS KOSOVO indicates that corruption indictments in 2017 resulted in judgments of acquittal in 15.7% and judgments of dismissal in 8.26% of cases.

This means that there are a total of 61 cases, namely 23.9%, of corruption cases concluded with a judgment of acquittal or dismissal, a figure showing the “professionalism” of prosecutors in investigating corruption cases.

Statistics show a small number of imprisonment sentences and a large number of acquittal judgments, where 61 cases involving many defendants who have been declared innocent or were dismissed with no trial held. This effectively means that 23.9% of cases had judgments of acquittal or dismissal, and have failed in court. Prison sentences were issued in 12.5% of corruption related cases, namely in 32 cases.

The largest share of sentences in corruption cases is held by fines, 22.83%, and suspended sentences, in 22% of cases.

This is undoubtedly very alarming data, showing the weaknesses of the justice system in corruption-related cases, which may even lead to a conclusion that “innocent” citizens are prone to prosecution for purposes of retaliation by investigation agencies.

The President of the Supreme Court of Kosovo, Enver Peci, on the fight against corruption, stated that corruption cases have failed for many reasons. Among others, he highlighted issues in the early stages of the investigation. He demanded more active and professional work by prosecutors since, according to him, a quality indictment makes the judges’ job easier. The Supreme Court President also added that when accused are found guilty of corruption offenses, judges should also issue merited sentences.

“Corruption is not being fought to the desired extent. There are procedural problems, and other problems that are following this process. I can say that from reviewing the cases that are filed to the Supreme Court, in accordance with extraordinary legal remedies and I consider that there is much to be discussed in all respects, from the investigation, filing charges, the trial, to the sentencing,” said the President of the Supreme Court of Kosovo, Enver Peci.⁸

The President of the Court of Appeals, Hasan Shala, passed the blame for judgments of acquittal in corruption cases to prosecutors. He also stated that the time has come for prosecutors not to only run towards numbers to meet their quotas, but also ensure quality work. The Appellate Court President also stated that in cases where guilt is confirmed for defendants in corruption cases, there is no sense in issuing alternative punishments, such as suspended or monetary sentences.

“The biggest burden for the failure of corruption cases falls on the prosecutor, as he is the one who has to argue the indictment. If one charge is rejected in the first and the second instance, then it is known that responsibility remains with the prosecutor, as he was not able to argue the indictment filed with the court”, said President Hasan Shala.⁹

The report, without influencing the independence, impartiality and merit of judges’ decision-making in corruption cases, expresses the concern that with such investigations by prosecutors and low sentencing by judges, the objective of sentences against perpetrators of criminal offenses is not being achieved.

Moreover, these sentences have an impact on the trust of citizens over the justice institutions, a trust which is already poor, according to local and international reports.¹⁰

Monitoring the criminal offenses of corruption in 2017 and based on court decision as per the statistical data, the Report concludes that the perpetrators of such offenses, in the majority of cases, are found not guilty as a result of the inability of the prosecution to argue the allegations of their charges in the court. When the indictment is defended successfully and the courts finds the defendants guilty, the sentences issued are low, and

⁸ Interview with Mr. Enver Peci, dated 08.12.2017. See: <http://kalixo.com/enver-peci-korrupsioni-nuk-po-luftohet-sa-duhet/>

⁹ Interview with Mr. Hasan Shala, dated 09.12.2017. See: <http://kalixo.com/shala-prokuroret-te-mos-vrapojne-pas-numrave-por-pas-cilesise/>

¹⁰ Kosovo Security Barometer, VII Edition, January 2018, Kosovo Center for Security Studies, p. 15, accessed on March 13, 2018. Accessed at: http://www.qkss.org/repository/docs/KOSOVO_SECURITY_BAROMETER_7__SHQIP_FINAL_163414.pdf

fail to reach the objective of the sentences envisaged in the Criminal Code of the Republic of Kosovo.

4. Failures in the fight against corruption

BIRN and INTERNEWS KOSOVO paid special focus in monitoring cases of corruption, as well as the work and judgments of the court against perpetrators of such criminal offenses.

The monitors have observed many cases of failure by the prosecution in arguing indictments, or withdrawals from cases, as well as failure of the judges to ensure that the objective of the sentence, as defined in the Criminal Code of Kosovo, is achieved.

The following examples explain some of the big corruption criminal cases, where the potential perpetrators of such offenses have been found not guilty or have received lower sentences by courts relative to the upper sentencing limit envisaged with the Criminal Code of the Republic of Kosovo. The report highlights the largest corruption cases, which includes high level officials, such as ministers, mayors, rectors, directors, chief inspectors, chief intelligence officers, procurement review body officials, doctors and other senior state officials, treated as failed cases throughout 2017.

A. Judgments of acquittal

Case 1 - Former head of the Procurement Review Body I

No. of case: PAKR 207/2017

Accused: Hysni Hoxha

Offense: Abuse of position of official authority as per article 422 par.1, which envisages a punishment from 6 months to 5 years of imprisonment.

Appellate panel: Driton Muharremi, Hava Haliti and Tonka Berisha

Appellate decision: The accused is acquitted of the charge

Date of appellate decision: July 14, 2017

Basic Court decision: Hysni Hoxha was sentenced to 3 years of imprisonment¹¹.

The suggested enacting clause of the indictment:

According to the prosecution's indictment, Hysni Hoxha as the President of the Procurement Review Body (hereinafter "PRB") exceeded his legal powers and on October 3 and 9, 2014, in violation of the Law on Public Procurement and the Rules of Procedure of the PRB, with the conclusion that it is "res judicata", a charge judged previously that cannot be reviews again, rejected the complaints of several economic operators dated October 2, 2014.

These are the complaints of consortia "Caraglio SRL" and NTSH "Electra" filed against the decision of the contracting authority KOSTT regarding the procurement activity "Installation of metering bundles at the border between KOSTT (KEK) Distribution System Operator (DSO), although competent for this complaint, according to the indictment, was the review panel of the PRB, composed of 5 members.

Hoxha was found not guilty by the Court of Appeals since, according to the appeals judgment, the intent of the accused Hysni Hoxha was not proven, namely intent to commit the criminal offense as a constitutive element of the crime, and it was not proven that his action led to his own or other people's material gain.

Reporting at KALLXO:

<http://kallxo.com/hysni-hoxha-lirohet-nga-akuzat/>

Case 2 - Former Head of the PRB II¹²

No. of case: PKR-679/14

The Accused: Hysni Hoxha, Hysni Muhadri and Arsim Robelli, as well as Veton Fetahu

¹¹ Clarification: Hysni Hoxha was acquitted with a final court decision of the Court of Appeals.

¹² This case has now been decided by the Court of Appeal, which has upheld the Judgment of the Basic Court, conclusively releasing the accused of this case.

who had reached plea agreement at the beginning of the trial.

Offense: Abuse of official position or authority under Article 422/1 in conjunction with Article 31 of the CCRK, which envisages a prison sentence of 6 months to 5 years; Falsification of documents under Article 398/1 in conjunction with Article 31 of the CCRK, which envisage a fine or imprisonment of up to 3 years; Fraud under Article 335/5 in conjunction with paragraph 1 of the CCRK, which is punishable by a fine and a prison sentence of 3 to 10 years; as well as the criminal offense False statement oath under Article 391/1 CPRK, which is punishable by a fine or imprisonment of up to 3 years.

Judges: Arben Hoti, Shpresa Hasaj-Hyseni and Syzana Qerkini

Prosecutor: Sylë Hoxha

Decision: The accused are acquitted of charges on 27 November 2017¹³

The suggested enacting clause of the indictment:

According to the Prosecution, defendants Hysni Hoxha and Hysni Muhadri, on June 20, 2013, in Prishtina, in the capacity of official persons, using their official duty or authority, with direct intent, and in order to obtain material or other gain from company "ConexGroup" LLC, Prishtina, in the procurement activity "Construction of business premises in Qyteteza Pejton", initiated by the contracting authority - Public Housing Enterprise in Prishtina, have exceeded their powers and failed to fulfill their official duties.

They were accused of hiding evidence provided by Kosovo Tax Administration (hereinafter "TAK") from the other two members of the review panel headed by Hysni Hoxha, and in the absence of such evidence the panel members were deceived and rejected the complaint of economic operator, and brought the company "ConexGroup" material benefits in the amount of 1,779,759.54 EUR.

Arsim Robelli, in his capacity of accounting service provider, through the company "Es-Services" for "ConexGroup", in order to obtain unlawful material gain for ConexGroup business, in co-perpetration, and with intent, compile and use falsified documents and contribution reports for workers of "ConexGroup" for quarterly periods TM-4 2010 and TM-4 2011, and submitted them to the procurement activity "Construction of business premises in Qyteteza Pejton", and as a result of the use of these documents, company "ConexGroup" was treated as a responsible operator and was awarded the contract in the amount of 1,779,759.54 EUR.

Reporting at KALLXO:

<http://kallxo.com/video-lirohet-nga-aktakuza-hysni-hoxha/>

Case 3 - Acting Chief Labor Inspector

Accused: Skender Gashi (Agim Millaku, Murat Vokshi and Jovica Filipovic were also accused in the Basic Court but were acquitted in the absence of evidence)

Case No. PAKR 345/2017 (PKR 1093/13 in Basic Court)

Appellate panel: Fillim Skoro, Driton Muharremi and Abdullah Mehmeti

Offense: Abusing official position or authority, as per Article 422 par. 1, which envisages a sentence of 6 months to 5 years of imprisonment.

Basic Court decision: 1 year suspended prison sentence

Appellate decision: The Court of Appeal releases the accused in the absence of evidence.

Enacting clause: According to the indictment, the accused persons, deciding in the second instance procedure on the complaint of a company, approved the complaint of Avni Salihu, owner of company "NTP Bujari", working unit "As Petrol" and issued the decision of 3 February 2009 changing the first instance decision to impose a punitive fine.

According to the indictment, the first instance decision stated that the company should pay a 22.500 EUR fine, whereas in the second instance the accused reduced this to 4.000 EUR, after the complaint of the company.

The Court of Appeals found that there are no evidence to prove the guilt of the accused.

¹³ Note: The Court of Appeals has confirmed the judgment of acquittal on April 23, 2018. See: <https://kallxo.com/apeli-la-verteton-pafajesine-hysni-hoxhes-ne-rastin-e-shenjestuar-per-viza/>

Reporting at KALLXO:

<http://kallxo.com/lirohet-u-d-kryeinspektorit-te-punes/>

Case 4 - Former Mayor of Gjakova - Pal Lekaj

Accused: Pal Lekaj, Qazim Mehmedi and Nikollë Lleshi

Case number: PKR.nr.18/17

Criminal offense: Abusing official position or authority as per article 422, par. 1, in conjunction with par. 2, item 2.4, in conjunction with Article 31, which envisages a sentence of 6 months to 5 years of imprisonment.

Case Prosecutor: Faik Halili from Special Prosecution

Judge: Gëzim Pozhegu

Decision: The indictment of the Special Prosecution PPS.nr. 134/2014 dated 10.02.2017, is dismissed.

Enacting Clause

According to this indictment Lekaj, Mehmeti and Lleshi are accused of, during March 2012, in co-perpetration, exceeding their competencies in order to obtain material gain for themselves or others, to the damage of the Municipality of Gjakova and residents of village Jahoc of this municipality.

The indictment further clarifies that the unlawful actions took place in the statement of needs and the determination of the availability of funds, although there were no funds.

"(...) in contradiction with article 9, par. 2, of the LPP (...) had prepared and signed the "Statement of needs and Availability of Funds" in the amount of 227,076.00 EUR, although there were no sufficient funds for this procurement activity in that amount, (...)", read the indictment.

The Basic Court in Gjakova after the second review dismissed the indictment of the Special Prosecution of the Republic of Kosovo and ceased the criminal proceedings against the accused, arguing that the criminal offense charged against Pal Lekaj, Qazim Mehmedi and Nikolle Lleshi has no evidence to support a well-grounded suspicion that the defendants committed the criminal offense in co-perpetration. According to the assessment of the Basic Court of Gjakova, the actions of the accused in the case of the award of the tender do not constitute a criminal offense because there is no intent, no benefit or damages caused.

From the evidence presented in the indictment, the court has confirmed that for the construction of the road in the village Rripaj-Jahoc, a procurement procedure was conducted in which 12 economic operators applied and competed and according to the terms of the tender the winner should be the cheapest operator, and company "Asfalti" LLC in Peja, which had the cheapest offer, won. Another condition for the existence of this offense was that the accused should exceed their powers, and in the present case, the court found that each of the accused acted within their powers.

Another condition for the existence of this criminal offense is the benefit for oneself or another, or the causation of damage, and in the case presented there was no evidence to establish the amount of benefit the defendants gained or the damages incurred by the Municipality of Gjakova or the inhabitants of Jahoc village, but rather on the contrary the court found that the accused not only did not benefit but also caused no damage to either the municipality or inhabitants of Jahoc village who contributed 19,000 EUR for the construction of this road.

Appellate decision:

The Prosecutor of the Special Prosecution filed a complaint against this judgment because of essential violations of the provisions of the criminal procedure, erroneous determination of the factual situation and the violation of criminal law, with the proposal that the Appellate Court annuls the appealed judgment and returns the case to retrial.

The Kosovo Court of Appeal rejected as unfounded the appeal of the Special Prosecution Office of the Republic of Kosovo against the decision of the Basic Court in Gjakova. According to the assessment of the Court of Appeals in Prishtina, the allegations stated in the appeal are unfounded and the first instance court acted correctly when rejecting the indictment against the defendants.

Reporting at KALLXO:

<http://kallxo.com/aktakuza-ndaj-pal-lekajt-per-asfalt-pa-para-te-zotuara/>

<http://kallxo.com/pal-lekaj-para-gjyqit-per-keqperdorim-detyre/>

<http://kallxo.com/pal-lekaj-nuk-ndihet-fajtor-ne-rastin-e-asfaltimit-te-rruges/>

<http://kallxo.com/kundershtohet-aktakuza-ne-gjykimin-e-pal-lekajt/>

Case 5 - Former Head of Kosovo Intelligence Agency

Accused: Driton Gashi

No. of case: P.nr. 336/16

Offense: Abusing official position or authority, as per Article 422 par. 1, which envisages a punishment from 6 months to 5 years of imprisonment.

Single Judge: Arben Hoti

Prosecutor: Feti Tunuzliu

Decision: The Prosecution's indictment is dismissed because of the prosecution's withdrawal from the indictment

Enacting Clause:

The indictment filed by Prosecutor Tunuzliu accused Driton Gashi of, as the Secretary General of the Ministry of Interior, on September 9, 2013, to enforce the Decision of the Basic Court of Prishtina of 2 August 2013, finding that Luan Ismajli returned to the position of the head of the Division for Aviation Security at the Department of Public Safety of MIA, having previously been removed from that position.

The indictment stated that the decision entered into force on the day of signing, that is, September 9, 2013. Following this decision, on the same day, according to the indictment, Gashi also took a decision that Luan Ismajli is appointed to this position and then on October 4, 2013, he amended this nomination with another nomination act transferring Luan Ismajli to the position of the Head of the Division for Civil Registration of the Ministry of Interior, from October 7, 2013 for the needs of the institution.

According to the indictment, Gashi exceeded his responsibilities as stipulated in the provisions of the Law on State Administration of Kosovo.

The prosecution alleged that this transfer was prohibited under the regulation on the transfer of civil servants as it was not appropriate for the conditions and benefits of the injured party but rather it was a more unfavorable position than the previous one and had adversely affected the development of his career.

Reporting at KALLXO:

<http://kallxo.com/shefi-aki-se-ishte-aktakuze-deri-javen-e-kaluar/>

Case 6 - Case - MTPT 1 and MTPT 2

The Accused: Fatmir Limaj, Endrit Shala, Nexhat Krasniqi, Shpëtim Telaku, Florim Zuka

Case number: PKR.nr. 8/2013

Trial panel: Maria Tuma, Jennifer Seal, Isuf Makolli

Prosecutor: Charles Hardaway

Injured party: Ministry of Infrastructure (Budget of Republic of Kosovo)

Criminal offense:

Fatmir Limaj: Organized crime as per Article 271 par. 3 of the Criminal Code of Kosovo; Abuse of Official Position or Authority from Article 339 par. 1 and 3 of the Criminal Code of Kosovo; accepting bribes in violation of Article 343 par. 1 and 2 of the Criminal Code of Kosovo, in conjunction with Article 23 of the Criminal Code of Kosovo (in co-perpetration), and in conjunction with Article 117.1 items a and d of the Law on Public Procurement; Other criminal offenses in the form of nondisclosure of money received for a campaign in violation of UNMIK Regulation No. 2004/02 on the Prevention of Money Laundering and Related Criminal Offenses under Articles 10.8 and 10.5 in conjunction with Articles 5.1 and 5.6.

Endrit Shala: Organized crime as per Article 271 par. 3 of the old Criminal Code of Kosovo; Assistance as per Article 25 of the Criminal Code of Kosovo in relation to the criminal offense of Abuse of Official Position or Authority; Receiving bribes in violation of Article 343 par. 1 and 2 of the old Criminal Code of Kosovo, in conjunction with Article 23 of the Criminal Code of Kosovo (in co-perpetration), and in conjunction with Article 117.1

items a and d of the Law on Public Procurement;

Nexhat Krasniqi: Organized crime as per Article 271 par. 3 of the old Criminal Code of Kosovo; Abuse of Official Position or Authority from Article 339 par. 1 and 3 of the old Criminal Code of Kosovo; accepting bribes in violation of Article 343 par. 1 and 2 of the old Criminal Code of Kosovo, in conjunction with Article 23 of the old Criminal Code of Kosovo (in co-perpetration), and in conjunction with Article 117.1 items a and d of the Law on Public Procurement;

Shpëtim Telaku: Organized crime as per Article 271 par. 3 of the old Criminal Code of Kosovo; Assistance as per Article 25 of the Criminal Code of Kosovo in relation to the criminal offense of Abuse of Official Position or Authority;

Florim Zuka: Giving bribes as per Article 344 par. 1 of the old Criminal Code of Kosovo; Abuse of authorization in economy as per Article 236 par. 1, sub-paragraph 5 and par. 2 of the old Criminal Code of Kosovo, related to article 117.1. a and d of the Law on Public Procurement

The suggested enacting clause of the indictment:

Initially, Limaj, Shala and Zuka were charged by the indictment filed in November 2012, known as MTPT 1. In February 2014, EULEX filed the second indictment against Fatmir Limaj. Limaj and others were charged with various criminal offenses: organized crime, appropriation, signing harmful contracts, abuse of official duty or authority, accepting bribes and other corruption-related offenses in the former Ministry of Transport and Post Telecommunications.

The prosecutor alleged that the budget of the Ministry of Transport was damaged by at least 890,000.00 EUR, EULEX said at the time. As a result, the Trial Panel decided to merge cases MTPT 1 and MTPT 2. This consolidated indictment was filed by the prosecution at the end of September 2015.

According to the consolidated indictment, the first charge accused Limaj, Shala, Krasniqi and Telaku with the criminal offense of organized crime for the period 2008-2010. This is when Limaj was Minister of Transport and Communications (MTPT). According to the prosecution, Limaj had the factual decision-making authority over the members of his group, including Endrit Shala, Nexhat Krasniqi, and Shpëtim Telaku. According to the indictment, Nexhat Krasniqi is said to have controlled the manipulations of the procurement procedure. The indictment also charges Telaku, Limaj's bodyguard.

The second and third charges against Limaj, Shala, Krasniqi and Telaku accuse them of abusing their official positions and accepting bribes through discussions, promises and awarding tenders for the construction of roads to companies "Tali" and "Inter-Europa" in exchange for seeking and accepting bribes.

According to the prosecution, these tenders were awarding overlooking and manipulating the procurement rules and the Public Procurement Law, which prohibits the promotion of one company over another.

The fourth charge relates to Florim Zuka and accuses him of giving bribes. In the process the tender was awarded to company "Tali" in the amount of 1,192,844.94 EUR.

On the other hand, the fourth charge of the prosecution accused Zuka for Misuse of economic authorizations regarding the construction of the road Ponesh-Zhegovc in Gjiilan, alleging that Zuka, in his capacity as owner of company "Tali", seriously violated the rules of business and tolerated a price fixing arrangement with "Zuka Commerce Company".

The sixth and final charge of the indictment accused Limaj of other criminal offenses in the form of non-disclosure of money received for the campaign. According to the prosecution, this occurred on October 18, 2007, when Limaj received a contribution for the political campaign from Ibrahim Mislimi for his election campaign for mayor of Prishtina in 2007.

Judgment¹⁴:

The accused, Fatmir Limaj, Endrit Shala, and Nexhat Krasniqi were acquitted from the first charge of organized crime, the second charge of abusing official position, and the third charge of accepting bribes, with the reasoning that it was not proven that they had received

¹⁴ Clarification: EULEX Prosecutor Charles Hardaway filed a complaint in the Court of Appeals against the Judgment of the Basic Court in Prishtina.

requests for gain in favor of awarding the tender.

As a result, the trial panel failed to conclude that Limaj abused his official position in awarding this tender, or that Shala assisted Limaj, and expert reports failed to confirm that Krasniqi was aware of any price adjustments. Florim Zuka's charge of bribery reached its statute of limitation, and he was acquitted of charges of Misuse of economic authorizations

Also, for count 6 of the indictment for non-disclosure of assets, Limaj was acquitted. The injured party was instructed to file a property claim in a civil dispute, while the procedural costs would be covered by the Court's budget.

Reporting at KALLXO:

<http://kallxo.com/?s=mtpt>

Case 7 - Shaban Buza - Rector of "Fehmi Agani" University, Gjakova

Accused: Shaban Buza, Rector of "Fehmi Agani" University, Gjakova

Case number: PKR.nr.52/17

Criminal offense: Abusing official position or authority as per article 422, par. 1, of the CCRK, which envisages a sentence of 6 months to 5 years of imprisonment.

Case prosecutor: Ali Uka from the Basic Prosecution of Gjakova

Presiding Judge: Nikollë Komani

Decision: The INDICTMENT of the Basic Prosecution in Gjakova PP/I.nr.164/2016, dated 08.05.2017, is dismissed.

Enacting Clause:

According to the indictment, the Education Inspectorate, after its inspection, concluded that teachers were unlawfully admitted in the University of Gjakova, without notarized documentation, no certified documentation of diplomas issued outside Kosovo, and persons who have reached the age foreseen by law were admitted as assistants.

"In the period from October 9, 2015 until September 13, 2016, in the capacity of Rector of the "Fehmi Agani" University in Gjakova, in order to obtain unlawful material gain and to cause damages to the University, he abused his official position by exceeding his official powers", states the indictment.

In addition, the indictment stated that 'teachers were admitted after the vacancy announcement for the academic year 2015/2016 and 7 teachers and 20 assistants have been hired without a competitive process, thereby violating the law and damaging the revenues of the Ministry of Education'.

The Basic Court in Gjakova, after the second review, dismissed the indictment of the Basic Prosecution of Gjakova and dismissed the criminal proceedings against the accused Shaban Buza in his capacity as Rector of the "Fehmi Agani" University in Gjakova, with the reasoning that after the evaluation and analysis of the indictment and the evidences attached thereto, after reviewing the defense's objection and the evidence presented by the defense, found that neither provided well-grounded suspicion that the accused Shaban Buza committed the criminal offense for which he was charged.

According to the court's assessment based on the evidence, the actions of the accused do not constitute a criminal offense, but rather require an administrative-legal report, therefore the court pursuant the Article 253 par.1 of the CPC dismissed the indictment and ceased the criminal proceedings against Rector Shaban Buza.

None of the evidence managed to argue that "UGJFA" was damaged and this fact has also been indicated in the indictment as it doesn't established that there are injured parties and there is no finding of the amount of damage.

Appellate decision:

The Prosecutor of the Basic Prosecution of Gjakova has filed a complaint against this judgment because of erroneous and incomplete determination of the factual situation and the violation of the criminal law, with the proposal that the Appellate Court annuls the appealed judgment and returns the case for retrial.

The Kosovo Court of Appeal rejected as unfounded the appeal of the Basic Prosecution of Gjakova against the decision of the Basic Court in Gjakova. According to the assessment of the Court of Appeals in Prishtina, the allegations stated in the appeal are unfounded and the first instance court acted correctly when rejecting the indictment against the defendants.

Reporting at KALLXO:

<http://kallxo.com/rektori-universitetit-te-gjakoves-flet-rreth-aktakuzes-kunder-tij/>

<http://kallxo.com/shtyhet-gjykimi-rektorit-shaban-buza/>

<http://kallxo.com/shaban-buza-jam-pafajshem/>

Case 8 - Mayor of Mitrovica, Agim Bahtiri

Case No. PKR.nr.20/16

Criminal offense: Abusing official position or authority as per article 422, par. 1, of the CCRK, which envisages a sentence of 6 months to 5 years of imprisonment.

The Accused: Agim Bahtiri, Haxhimet Ferati, Gazmend Kelmendi

Case prosecutor: Agron Bajrami from Special Prosecution

Presiding Judge: Beqir Halili

Decision: Dismissal of the indictment

According to the indictment, the Kosovo Police, on November 18, 2015 submitted a criminal report to the Special Prosecution Office of the Republic of Kosovo. The SPRK Prosecutor, on February 2, 2016 issued a ruling to initiate the investigations, and on March 1, 2016 filed an indictment against the Mayor of Mitrovica and two others.

The indictment states that everything was launched on July 8, 2014 when HESALIGHT submitted the first bid at the price of 688,751.00 EUR and no additional expenditure was envisaged in the bid, including any type of tax, although they may be incurred as per the applicable laws in Kosovo. In the second bid of September 29, 2014, the company had presented to Mitrovica another offer with the same products but with a price of 642,377.00 EUR, without specifying taxation. A first bid chart was attached to this bid, not with the original price but rather the price of 878,846.00 EUR on behalf of the tax, increasing the bid for 190,095.00 EUR.

Agim Bahtiri and Haxhimi Ferati were suspected of committing, in co-perpetration, the criminal offense of abuse of official position or authority while the other accused, Gazmend Kelmendi, was alleged to have committed the offense of restricting competition through invitations to bid. Gazmend Kelmendi, Kosovo Branch Director of the economic operator, was accused of having submitted a bid to the contracting authority (Municipality of Mitrovica) based on an unlawful agreement the purpose of which was that the municipality of Mitrovica would accept such an offer by restricting open competition.

Appellate decision:

The Court of Appeal dismissed the indictment accusing Agim Bahtiri and two other persons for abuse of position. According to the court, the evidence based on which the indictment was filed did not substantiate the grounded suspicion that the defendants committed the criminal offenses charged by the Special Prosecution.

Reporting at KALLXO:

<http://kallxo.com/supremja-verteton-hedhjen-poshte-te-aktakuzes-ndaj-bahtirit/>

<http://kallxo.com/kronologjia-e-aferes-qe-coi-ne-aktakuzen-ndaj-agim-bahtirit/>

Case 9 - Doctors of University Clinical Center of Kosovo (hereinafter "UCCK")

Accused: Kushtrim Gashi and Sebahate Gashi, doctors in UCCK

Case number: PKR.nr. 95/2016

Trial panel: Valon Kurtaj, Shashivar Hoti, Elmaz Zenuni

Prosecutor: Dulina Hamiti

Injured party: UCCK

Criminal offense: In co-perpetration, the doctors were charged with the offense of 'Abuse of Official Position or Authority' as per Article 422 par. 1, in conjunction with article 31 of the CCK which envisages a punishment from 6 months to 5 years of imprisonment.

In addition, in continuity and in co-perpetration, they were accused of having committed the criminal offense of 'Illegal Exercise of Medical or Pharmaceutical Activity' under Article 262 par. 1 in conjunction with Article 31 of the CCK, an offense punishable by a fine and imprisonment up to 1 year.

Enacting clause:

According to the indictment, Kushtrim Gashi and Sabahate Gashi, from 2001 until May 20, 2015, in the capacity of official persons, doctors at the University Clinical Center in

Prishtina, abused their official duty in order to bring unlawful material gains in such a way that, by abusing their official duties, they took medicine from the essential list to sell them to patients who they treated in their private clinics.

The second point of the indictment accused them of practicing medical activities without authorization in a specialist surgical-prosthetic clinic, performing surgical interventions in different patients, although they were in employment at UCCK.

Judgment¹⁵:

They were found innocent on the grounds that the prosecutor of the case failed to provide sufficient evidence to support the charges. As for the second enactment clause of the indictment on the unlawful exercise of medical activity, according to Judge Valon Kurtaj, the case in question relates to an administrative offense rather than the offense that the doctors were accused. The injured party, in this case UCCK, was instructed to bring this case to civil litigation.

Reporting at KALLXO:

<http://kallxo.com/?s=kushtrim+gashi>

Case 10 – Mehmet Krasniqi – Former Mayor of Obiliq Municipality

Accused: The Mayor of Obiliq, Mehmet Krasniqi, as well as Xhavit Krasniqi, Haki Raqi, Nazmi Gashi, Bajram Paloji, Ramadan Hashani, Hasie Dushi, Azem Spanca, Basri Kqiku, Emri Sopjani and Altin Preniqi

Case number: PKR.nr. 271/14

Trial panel: Afërdita Bytyqi, Arben Hoti, Lindita Jakupi

Prosecutor: Agron Bajrami

Injured party: Municipality of Obiliq

Criminal offense:

1.Mehmet Krasniqi, Xhavit Krasniqi, Haki Raqi: Abusing official position or authority, as per Article 422 par. 1, in conjunction with article 31 of the CCK which envisages a punishment from 6 months to 5 years of imprisonment.

2.Emri Sopjani, Sami Kadriu: Fraud, under Article 335 par. 3 and par. 1 in conjunction with Article 31 of the CCRK and par. 1 in conjunction with Article 31 of the CCRK, an offense punishable by a fine and imprisonment of 3 to 10 years, and Nazmi Gashi. Abusing official position or authority, as per Article 422 par. 1 in conjunction with Article 31 of the CCRK.

3.Bajram Paloji, Ramadan Hashani, Bajram Paloji: Abusing official position or authority, as per Article 422 par. 1, in conjunction with article 31 of the CCK which envisages a punishment from 6 months to 5 years of imprisonment.

4.Bujar Alidema, Shpend Kelmendi, Basri Kqiku: Fraud, under Article 335 par. 3 and par. 1 in conjunction with Article 31 of the CCRK and par. 1 in conjunction with Article 31 of the CCRK, an offense punishable by a fine and imprisonment up to 5 year. Hasie Dushi: Fraud in office, under Article 426 par. 3 in conjunction with par. 2 of CCRK, an offense punishable by a fine and imprisonment of 3 to 12 years.

5.Haki Raqi, Nazmi Gashi, Xhavit Krasniqi: Abusing official position or authority, as per Article 422 par. 1, in conjunction with article 31 of the CCK which envisages a punishment from 6 months to 5 years of imprisonment.

6.Hasie Dushi, Azem Spanca, Mehmet Krasniqi, Altin Preniqi: Abusing official position or authority, as per Article 422 par. 1, in conjunction with article 31 of the CCK which envisages a punishment from 6 months to 5 years of imprisonment.

The Special Prosecution of the Republic of Kosovo filed an indictment on 8 May 2015 against 14 defendants. In this trial, former Mayor of Obiliq, Mehmet Krasniqi, was accused of abusing official position or authority during the period 2012-2013, when several projects of road pavement were implemented in the municipality he was running, along with Haki

¹⁵ Clarification: The Court of Appeal upheld the first instance acquittal judgment, thus rejecting the appeal of the Special Prosecution of the Republic of Kosovo, which requested the punishment of the acquitted persons, or the return of the case to retrial.

Raqi, Xhavit Krasniqi, Nazmi Gashi, Ramadan Hashani, Bajram Paloji, Azem Spania and Altin Preniqi.

For the criminal offense of Fraud, the prosecution accused Emir Sopjani, Sami Kadriu, Bujar Alidema and Shpend Kelmendi, as well as Basri Kqiku again, while for Fraud in office Hasnije Dushi and Haki Raqi.

Judgment:¹⁶

Mehmet Krasniqi, Xhavit Krasniqi, Haki Raqi, Nazmi Gashi, Bajram Paloji, Ramadan Hashani, Hasie Dushi, Azem Spanca and Altin Preniqi were acquitted of all counts.

Meanwhile, Emri Sopjani, Sami Kadriu, Bujar Alidemaj, Shpend Kelmendi and Basri Kqiku were found guilty of the criminal offense of fraud and were punished with a suspended sentence.

Reporting at KALLXO:

<http://kallxo.com/?s=mehmet+krasniq>

Case 11 - Officials of the Ministry of Labor and Social Welfare,

The Accused: Bajram Azemi, Bajram Pajaziti - Ministry of Labor and Social Welfare

Case number: PKR.nr. 300/16

Trial panel: Shashivar Hoti, Beqir Kalluda, Shadije Gërguri

Prosecutor: Feti Tunuzliu

Injured party: Ministry of Labour and Social Welfare

Criminal offense: In co-perpetration, the criminal offense of 'Abuse of Official Position or Authority' as per Article 422 par. 1, in conjunction with article 31 of the CCK which envisages a punishment from 6 months to 5 years of imprisonment.

Enacting clause:

According to the indictment, Bajram Azemi, in his capacity of Head of Division at the Ministry of Labor and Social Welfare, Department of Families of Martyrs, War Invalids and Civilian Victims, and the other accused, Bajram Pajaziti, Director of the same Department, damaged the budget of the Republic of Kosovo, providing unlawful material gain to Rexhep Haxha.

According to the indictment, Bajram Azemi took a decision by which Rexhep Haxha is recognized the right to Martyrs' Family Pension, for his late son Bahri Haxha. Meanwhile, the prosecution alleges that the applicant of the pension on behalf of Haxha family failed to meet the legal requirements for the recognition of the right to pension as they did not have a document issued by the KPC Headquarters that their son, late Bahri Haxha, was killed as a member of the KLA.

Prosecution charges the accused Pajaziti and Azemi that in co-perpetration they committed the criminal offense of abuse of official position or authority, claiming that Rexhep Haxha brought unlawful material gain in the sum of 13,900.98 EUR.

Judgment:

The Basic Court in Prishtina, on March 23, 2017 issued a judgment of acquittal. Then, the prosecution's appeal was upheld by the Court of Appeal, and the case was returned for retrial.¹⁷

Reporting by KALLXO:

<http://kallxo.com/?s=bajram+pajaziti>

Case 12 - Xhevahire Vafoci - Procurement Officer in the Kosovo Police

Case No. PKR.nr.687/11

Criminal offense: Abusing official position or authority as per article 422, par. 1, which offense is punishable with a sentence of 6 months to 5 years of imprisonment.

Accused: Xhevahire Vafoci

¹⁶ Clarification: Since the case was returned for retrial, on April 11, 2018, the Basic Court in Prishtina again acquitted the two officials of the Ministry of Labor and Social Welfare.

¹⁷ Clarification: On April 11, 2018, the Basic Court in Pristina has acquitted for the second time two former officers of the Ministry of Labor and Social Welfare (MLSW), Bajram Azemi and Bajram Pajaziti.

Case Prosecutor: Ibrahim Berisha

Trial panel: Nora Blaca Dula, Vesel Ismajli, Valbona Selimi

Judgment: Acquittal

The Basic Court in Prishtina, in the absence of evidence, acquitted from the charge of abuse of office the former procurement officer in the Kosovo Police Xhevahire Vatovci.

Indictment:

Xhevahire Vatovci was accused by the former District Prosecution in Prishtina that in her capacity of Procurement Officer of the Kosovo Police and as the head of the evaluation committee, for the purpose of obtaining unlawful gain to the private enterprise "HIB Petrol" LLC from Ferizaj, she abused her official position and exceeded her official authorizations, and acted in violation of the Law on Public Procurement in Kosovo. According to the indictment, "HIB Petrol" LLC, based on the consumed fuel during the period April 6, 2009 to December 31, 2010 benefited the amount of 280.370,91 EUR, to the damage of the budget of the Kosovo Police.

Reporting at KALLXO:

<http://kallxo.com/lirohet-ish-zyrtarja-e-prokurimit-te-policise/>

Case 13 - Director of the National Theater

Case No. PKR.nr.570/16

Criminal offense: Abuse of official position

Accused: Elmaze Nura, Beqir Beqiri

Case Prosecutor: Feti Tunuzliu

Trial panel: Shashivar Hoti, Beqir Kalludra, Shadije Gërguri

Judgment¹⁸: Acquittal

The Basic Court in Prishtina found innocent the former director of the National Theater, Elmaze Nura, and Beqir Beqiri, the travel organizer of actors of the show "Lisistrata" in Slovenia.

Indictment:

According to the indictment, Nura and Beqiri were accused of abusing their position, since according to the prosecution the Public Procurement Law was violated during the determination of the company that in 2013 sent the actors and props of "Lisistrata" performance to Slovenia.

Elmaze Nura, in her position of Director of National Theater was accused by the prosecution that she failed to comply with the provisions of the Procurement Law when signing a contract with Alpina Reisen with regard to the transport of NTK actors to Slovenia for the amount of 5,000.00 EUR.

In connection with this trip, Beqir Beqiri is accused of, after the police investigations and the request for documentation addressed to NTK, he manipulated the official dossier on September 10, 2015 and incorporated two bids of two other companies.

Reporting at KALLXO:

<http://kallxo.com/e-pafajshme-ish-drejtresha-e-teatrit/>

Case 14 - Students of the University of Prishtina

No. PAKR.nr. 402/2017

The Accused: Esat Belaj, Kemajl Gashi, Arian Janova, Leonard Bytyqi, Kushtrim Morina, Mevlydin Beqiri, Gazmend Maliqi, Arton Hoti, Albion Haxhijaha, Muhamed Maliqi, Shaqir Reqica, Amona Orllati. (12 accused)

Criminal offenses Accepting bribes under Article 343 paragraph 1 of the CCK, Trading in Influence under Article 345 paragraph 1 of CCK, Abuse of official position or authority under Article 422 par. 1 of the CCRK, accepting bribes as per article 343 par. 1 of the CCK.

Indictment:

According to the indictment of the Basic Prosecution in Prishtina, these actions were

¹⁸ Clarification: The Court of Appeal rejected the appeal of the Basic Prosecution in Prishtina against the acquittal of Nura, thus upholding the first instance judgment.

carried out by the accused during 2009 and 2012. The indictment states that their actions were related to accepting and giving bribes and trading in influence on illegal enrollments in the University of Prishtina and passing exams, mainly at the Faculty of Medicine.

Decision of the Basic Court: PKR.nr.682/2014

Esat Belaj – found guilty, is sentenced to a single imprisonment sentence of 2 years and 8 months, and a fine of 10,000 EUR.

Kemajl Gashi – found guilty, sentenced to a single imprisonment sentence of 7 months and a fine of 1500 EUR.

Arian Janova – found guilty, is sentenced to imprisonment of 8 months.

Leonard Bytyqi – found guilty, 8 months of imprisonment.

Kushtrim Morina – found guilty, 7 months of imprisonment.

Mevlydin Beqiri – found guilty, 8 months of imprisonment.

Gazmend Maliqaj – found guilty, 8 months of imprisonment and a fine in the amount of 5,000.00 EUR.

Arton Hoti – found guilty, 7 months of imprisonment and a fine in the amount of 4,000.00 EUR.

Albion Haxhijaha – found guilty, 8 months of imprisonment.

Muhamet Maliqi – found guilty, 8 months of imprisonment.

Shaqir Reqica – found guilty, 3 months imprisonment (possibility to replace the sentence with a fine).

Amonda Orllati – found guilty, 3 months imprisonment (possibility to replace the sentence with a fine).

Appellate decision: All accused are acquitted of their charges.

All accused persons were acquitted from their charges with the judgment of the Court of Appeal. Some of the accused were acquitted from their charges due to absolute statute of limitation of the offense in accordance with Article 363, par. 1, item 1.3 of the CPCRK, in conjunction with Article 91 paragraph 6 of the CPCRK. Others were acquitted due to the failure to prove the guilt of the accused.

Case 15 - Minister of Communities and Return

Case number: PKR.nr. 95/2017

Individual Judge: Valon Kurtaj

Accused: Dalibor Jevtic, Mihajlo Prlicevic and Nenad Stojcevic

Criminal offense: In co-perpetration, the criminal offense of 'Abuse of Official Position or Authority' as per Article 422 par. 1 in conjunction with Article 31 of the CCRK.

Injured party: Ministry for Communities and Returns

Indictment:

According to the indictment, Dalibor Jevtic, in his capacity as Minister of Communities and Returns, issued a decision on February 11, 2014 for the permanent use of the vehicle Hyundai Accent, owned by the Ministry, to the private company Radio KiM -TV Centar based in Caglavica. The indictment states that Jevtic took the decision to give the vehicle contrary to the administrative instructions on the use of vehicles of the Government of Kosovo.

Nenad Stojčetočić was charged with, as Secretary General of the Ministry of Communities and Return and responsible for maintaining the assets of the ministry, despite having knowledge that that the minister's decision was unlawful, ordered the Ministry's Legal Office to prepare a contract for the use of the official car.

Whereas Prlincevic was accused with, as the person responsible in the Department of Administration and Finance at the Ministry for Communities and Return of the Republic of Kosovo, on February 11, 2014, signing a contract between the ministry and a private company.

Decision of the Basic Court¹⁹:

In September 2017, the Basic Court in Prishtina dismissed the indictment filed by the

¹⁹ Clarification: The Supreme Court of Kosovo approved as founded the request for protection of legality filed by the State Prosecution in this criminal matter. Also, the Supreme Court found that the decisions for dismissal of the Basic Court in Prishtina and the Court of Appeal, included a violation of provisions of the criminal procedure, but had no impact on the final decision in relation to the defendant.

Special Prosecution Office of the Republic of Kosovo (SPRK).

According to the decision of the Basic Court in Prishtina, the persons listed above have not exceeded their powers and it was not proven that their actions brought gain or caused damage to others.

The Court of Appeal rejected the Prosecution's appeal against the decision of the Basic Court in Prishtina to dismiss the indictment against Dalibor Jevtić, Nenad Stojčetočić and Mihajlo Prlinčević.

The communiqué stated that the Court of Appeal found that the appeal of the Prosecution against the Decision of the Basic Court was ungrounded, which then dismissed the indictment and criminal proceedings were ceased against the three accused for abuse of office and authority.

Reporting at KALLXO:

<http://kallxo.com/?s=dalibor+jevtiq>

Case 16 - The officials of Kosovo Accreditation Agency

Case No. PKR.nr.476/15

Criminal offense: 'Abuse of official position or authority' under Article 422, paragraph 1, which envisage a sentence of 6 months to 5 years of imprisonment, 'Accepting bribes' under Article 428, punishable by up to 5 years of imprisonment and 'Giving bribes' under Article 429, which is punishable by a fine and imprisonment of up to 3 years

The Accused: Basri Muja, Director of KAA, Ferdije Zhushi, Armend Muja, Naim Braha (the case reached the statute of limitation)

Case Prosecutor: Abdurrahim Islami

Trial panel: Valbona Selimi, Vesel Ismajli, Isuf Makolli

The trial is still ongoing, but the case against one of the accused, Naim Braha, who was charged with the criminal offense of giving bribes, has been barred by statute of limitation.

In this case, Basri Muja and Ferdije Zhushi are accused of abusing official position or authority in co-perpetration and continuously accepted bribes, while Armend Muja is accused of accepting bribes in continuation and in co-perpetration.

At the time of the indictment, Basri Muja was director of the Kosovo Accreditation Agency, while Ferdije Zhushi was an official of this agency.

Reporting at KALLXO:

<http://kallxo.com/kerkohet-precizimi-aktakuzes-per-zyrtaret-e-akreditimit/>

B.Low penalties and delays in corruption cases

Case 1 - Mayor of Dragash Municipality²⁰

Case No.: PKR. 131/16

Accused: Salim Jenuzi, Mayor of Dragash Municipality, Bean Haxhihasani, Director of Urbanism, Vetim Hasani, Construction Inspector, and Nexhat Selaj

Trial panel: Ajser Skenderi, Teuta Krusha and Kimate Kicaj

Prosecutor: Genc Nixha

Criminal offense: Abuse of official position or authority as per article 422, par. 1, of the CCRK, which envisages a sentence of 6 months to 5 years of imprisonment, and Unlawful occupation of real property, under Article 332, punishable with up to 3 years of imprisonment.

Indictment:

According to the prosecution's indictment, filed on August 10, 2016, Salim Jenuzi is accused that between 2009 and 2016, in Dragash, in order to obtain material gain for others

²⁰ Clarification: The Court of Appeals returned the case for retrial on the grounds that there is substantial violation of the criminal procedure in respect of the accused Salim Jenuzi and Nexhat Selaj. Meanwhile, for the other two accused, Bean Haxhihasani and Vetim Hasani, the second instance verified the acquittal judgment.

and cause damage to the municipality, he allowed the owner of Bakery "Europe", Nexhat Selaj, to appropriate this immovable property.

Selaj then built on socially owned property a two-floor building without a decision of the Municipal Assembly in Dragash, while the Director of Urbanism Behan Haxhiasani and the Municipal Construction Inspector Vetim Hasani did not prevent him.

Basic Court Judgment:

Salim Jenuzi, Mayor of Dragash, was sentenced by the Basic Court in Prizren with one year of suspended sentence. If Jenuzi doesn't want to be behind bars for this sentence, he cannot commit another offense in the next two years.

The court issued a suspended sentence of 6 months to Nexhat Sela for usurpation of immovable property. Sela too, to avoid serving time, must not not commit another offense for two years.

Bean Haxhihasani and Vetim Hasani were acquitted of the charges of abuse of office.

Reporting at KALLXO:

<http://kallxo.com/denohet-kryetari-dragashit/>

<http://kallxo.com/fjala-perfundimtare-ne-gjykimin-e-kryetarit-te-dragashit/>

<http://kallxo.com/gjykimi-kryetarit-per-furren-ne-pronen-komunale/>

Case 2 - Sherif Berisha - Director of the Directorate of Education in Suharekë

Case No. PKR.129/16

Accused: Sherif Berisha - Director of Education in Suharekë

Trial panel: Rahim Elezi, Nazim Vllaqo and Alija Fazli

Prosecutor: Mehdi Sefa

Criminal offense: Abuse of official position or authority as per article 422, par. 1, of the CCRK, which envisages a sentence of 6 months to 5 years of imprisonment, and Infringement of employment rights, punishable with a fine and up to 2 years of imprisonment.

Indictment:

According to the indictment, Sherif Berisha was accused that during the school years 2014/2015 and 2015/2016, using his official duty, exceeded his powers in order to obtain material gain to others, and hired, without competition, 10 people in various schools in Suharekë, nine teachers and one accountant.

The Director of Education was also accused of committing the offense of infringing employment rights because he denied other people the right to employment under the same conditions.

Judgment:

The Director of Education of Suhareka Municipality, Sherif Berisha, was found guilty and sentenced to an effective prison sentence of 5 months. However, the Prizren Court accepted the proposal of the defendant's attorney, who requested that this penalty is replaced with a fine and decided to punish him with a fine of 4,000 EUR.

Reporting at KALLXO:

<http://kallxo.com/shpallet-fajtor-drejtori-arsimit-te-suharekes/>

<http://kallxo.com/drejtori-arsimit-akuzohet-se-punesoi-10-veta-pa-konkurs/>

Case 3 - Directors of Geodesy, Cadastre and Property

Case No. PKR.nr. 77/2016

Criminal offense: Abusing official position or authority as per article 422, par. 1, of the CCRK, which envisages a sentence of 6 months to 5 years of imprisonment.

The Accused: Halim Gecaj and Lulzim Kadriu, Directors of the Directorate for Geodesy, Cadastre and Property at different time periods, Hetem Sejdiqja, Valentina Jashari and Nuradin Hasani, members of the Bid Opening Committee, and Feriz Zeqiri

Trial panel: Beqir Halili, Sabit Rama, Besnik Feka

Case Prosecutor: Njazi Rexha

Indictment:

According to the indictment of the Basic Prosecution Office of Mitrovica, from November 17, 2010 to July 8, 2013, defendant Halim Gecaj is accused that in the capacity

of Director of Geodesy, Cadastre and Property in the Municipality of Skenderaj, exceeded his powers in order to obtain material gain for others. This was done in violation of laws, giving properties of the Municipality to other people in use, without the approval of the Municipal Assembly. The defendant gave for use 37 properties.

Lulzim Kadriu, in his capacity of Director for Geodesy, Cadastre and Property in Skenderaj Municipality, was accused that from March 31, 2014 until February 15, 2015, he leased four business premises without the approval of the Municipal Assembly.

Feriz Zeqiri was also charged in this case, for signing a lease contract, but criminal proceedings were ceased against him as he later died.

The indictment also accused Hetem Sejdiaj, Valentina Jashari and Nuradin Hasani, all three members of the bid opening and evaluation committee for giving land for use and constructing, for the management the green market in Skenderaj. According to the indictment, members of the committee qualified for the selection procedure company “Doni Commerce”, although the latter did not meet the required legal criteria.

Judgment:

The Basic Court of Mitrovica found the accused, Halim Gecaj and Lulzim Kadriu, guilty for abuse of official duty. It rendered a fine and six months of imprisonment.

When announcing the judgment, Judge Beqir Halili informed the accused Halim Gecaj and Lulzim Kadriu that imprisonment may be replaced with a fine of 1,800 EUR.

Hetem Sejdia, Valentina Jashari and Nuradin Hasani were released from the charge.

Case 4 - PTK Officers

Case No. PKR.nr.462/15

Criminal offense: ‘Accepting bribes’ under Article 428, which envisages a sentence of up to 5 years of imprisonment and ‘Giving bribes’ under Article 429, punishable with a fine and up to 3 years of imprisonment.

The Accused: Gazmend Isufi, Agim Zeqiri, Zyhdi Hajzeri, Veton Morina, Nerxhivane Daka, Gëzim Curri and Valon Kuçi.

Case Prosecutor: Ibrahim Berisha

Trial panel: Shashivar Hoti, Valon Kurtaj, Alltene Murseli

Basic Court decision:

Gazmend Isufi, former senior official of PTK, was sentenced by the Basic Court in Prishtina with a 1 year of suspended sentence of imprisonment and a fine of 5.000 EUR.

Agim Zeqiri was sentenced to 1 year and six months of suspended imprisonment and a fine of 1.000 EUR.

Zyhdi Hajzeri was sentenced with an suspended imprisonment of one year and a fine of 1,500 EUR.

Veton Morina was sentenced with an suspended imprisonment of one year and a fine of 1,000 EUR.

Whereas Nerxhivane Daka, Gezim Curri and Valon Kuci were sentenced to suspended imprisonment of six months and a fine of 500 EUR.

Appellate decision:

The Court of Appeals, in the absence of evidence, acquitted from the charge of “accepting bribes” the former Director of Internal Control at Post and Telecom of Kosovo (PTK), Gazmend Isufi.

Together with Isufi, the Appeal also acquitted six other defendants for “giving bribes” - Zyhdi Hajzeri, Veton Morina, Nerxhivane Daka, Gëzim Curri, Valon Kuqi and Agim Zeqiri.

The decision of the Court of Appeals stated that the evidence administered at the main trial failed to prove that the accused committed the criminal offenses for which they were charged and found guilty by the first instance court.

Reporting at KALLXO:

<http://kallxo.com/ish-zyrtari-ptk-se-denohet-kusht-per-ryshfet/>

Case 5 - “Stenta”

Case No.: PKR-369/16

Judge: Shadije Gerguri

Prosecutor: Florije Shamolli – Salihu

Accused: Ferida Agani, Gani Shabani, Ali Hocaoglu, Astrit Bakiqi, Borche Petrovski, Lulzim Borovina, Gani Bajraktari, Nexhmi Zeqiri, Daut Gorani, Elfedin Muhaxheri, Reshat Emra, Bedri Zahiti, Hamza Selmani, Ismajl Avdimetaj, Aferdita Selmanaj, Sali Shala, Nehat Rexhepaj, Agron Besimi, Petrit Ademaj, Bajram Meziu, Agron Leka, Driton Miftari, Masar Gashi, Besim Guda, Mirdi Strana, Shemsedin Shabollari, Fisnik Hima, Luan Pazhari, Ferid Susuri, Galina Berisha, Bajram Preteni, Arton Beqiri, Driton Sylejmani, Abdullah Tuna, Mahmut Qakmak, Shpend Elezi, Blerim Zuna, Lulzim Kamberi, Sami Gjoka, Faik Shatri, Ejup Pllana, Florim Sadiku, Halim Halili, Agim Krasniqi, Hajdin Qitaku, Edmond Haliti, Besnik Koliqi, Afrim Poniku, Ferihane Sefa, Banush Gashi, Nebi Musliu, Dardan Koqinaj, Xhevdet Shabani, Lazer Prekpalaj, Murat Abazi, Rexhep Manaj, Raif Qavolli, Kelmend Pallaska, Arlind Batalli and the legal persons: International Medicine Hospital, Intermed Sh.P.k Eda.

Criminal offense: Abuse of official position or authority under Article 422, par.1 and 2 items 2.1, 2.2 and 2.4, giving bribes under Article 429 par. 2 and 3 in conjunction with Article 31, as well as the Accepting bribes under Article 428, par.2 and 3.

Time of the indictment: 15 June 2016

The Office of the Chief State Prosecutor filed an indictment against 64 defendants, including Ferid Agani, former Minister of Health and Gani Shabani, secretary of the Ministry.

This indictment includes a total of 60 natural persons and 4 legal persons. The list of accused people includes 44 doctors, one nurse employed in public health institutions, as well as 13 persons who have worked or work in private health institutions. A number of them are heads or shareholders of such private healthcare facilities.

Ferid Agani and Gani Shabani are accused of abusing their official position.

According to the indictment, the defendants committed the criminal offenses by acting in violation of the Law on Public Procurement and Administrative Instructions of the Ministry of Health, as well as allowing payments for treatment of patients outside public health institutions for the period 2011 -2015.

The indictment filed in 2016 has not yet been to the main trial.

Although the indictment was filed in June 2016, and despite the fact that the case is from the chapter of criminal offenses of corruption, a year and a half later the main trial has not been held, but rather only the initial and the second hearings were held, while the court has refused the requests for dismissal of the indictment and objection of evidences.²¹

Reporting at KALLXO:

<http://kallxo.com/?s=ferid+agani>

Case 6 - Valdrin Lluka - Minister of Economic Development²²

Case number: PKR-629/2016

Accused: Valdrin Lluka, Minister of Economic Development and Eliana Naka, MTI Secretary General

Criminal offense: Conflict of interest under Article 424, par. 2, which offense is punishable with a sentence of 1 to 5 years of imprisonment.

Trial panel: Hamdi Ibrahim, Naser Foniqi and Vehbi Kashtanjeva

Prosecutor: Habibe Salihu

The last two hearings on this particular case scheduled for October 18 and December 12 have failed. The failure occurred due to the absence of accused Eliana Naka while the event occurred in 2014, and the case remains unresolved.

Description of the enacting clause:

According to the indictment, now Minister Lluka, in his former capacity of Official in the Ministry of Trade and Industry, on May 23, 2014 acted in violation of the law, and requested to initiate procedures for the commitment of 20.000 EUR for NGO "Jakov Innovation Center", the NGO which he founded and was also in the position of CEO of the Investment

²¹ About a month after the Appellate Court rejected the appeals of the defense attorneys of Ferid Agani and Gani Shabani in relation to the indictment, on June 11, 2018, the first hearing of the main trial was held.

²² On July 23, 2018, the Basic Court of Prishtina has acquitted Minister Lluka for the charge of conflict of interest, while has found Eliana Naka guilty for the same charge as Minister Lluka, and sentenced her with a total fine of 7,000 Eur.

Promotion Agency.

Eliana Naka was also accused of conflict of interest in this case who, according to the indictment, as Secretary General of MTI, on June 2, 2014 acting in violation of the law, took the decision to allocate funds in the total amount of 20 thousand EUR to support NGO “Jakov Innovation Center”, the NGO in which she was the Director of the Board.

Reporting at KALLXO:

<http://kallxo.com/?s=VALDRIN+LLUKA>

Case 7 - PAK Officers

Case number: PKR. No. 734/15 - Privatization of “FAN”

Accused: Naser Osmani, Bahri Shabani, Shkëlzen Lluka, Naim Avdiu, Melita Ymeraga, Agron Kamberi, Adrian Kelmendi, Agim Deshishku

Trial panel: Shashivar Hoti, Beqir Kalludra, Shadije Gërguri

Injured party: Privatization Agency of Kosovo

Special Prosecutor: Fikrije Fejzullahu

Stage: Ongoing

Criminal offense: Naser Osmani, Bahri Shabani: in co-perpetration, committed the criminal offense Abuse of official position or authority, under Article 422, in conjunction with Article 31 of the Criminal Code of the Republic of Kosovo.

Shkëlzen Lluka, Naim Avdiu, Melita Ymeraga, Agron Kamberi, Adrian Kelmendi: in co-perpetration, committed the criminal offense Abuse of official position or authority, under Article 422, in conjunction with Article 31 of the Criminal Code of the Republic of Kosovo.

Agim Deshishku; criminal offense of Fraud under Article 261, par. 2 in conjunction with par. 1 of the CCK, and Legalization of false content, in continuity, under Article 403, par. 2 in conjunction with par. 1 of the CCRK. Tax evasion under Article 249 par. 2 of the CCK.

Indictment:

According to the indictment, Naser Osmani and Bahri Shabani are charged in co-perpetration with other official persons of using their official position in the Privatization Agency of Kosovo and failing to fulfill their duties and allow the unlawful material gain of themselves or others, respectively to the buyer of NewCo “FAN-Podujevë”, LLC, defendant Agim Deshishku, in the amount of around 5,400,000.00 EUR. The buyer of this plant, under the contract with the PAK, had to make investments therein. Osmani and Shabani are also accused of, as members of the PAK Steering Board, they decided and voted “in favor” that investments made outside the premises of the enterprise be accepted as investments in it, thus releasing the NewCo “FAN-Podujevë” from the PAK monitoring and the terms of the Commitment Agreement. The prosecution alleges that such actions of Osmani and Shabani were done by Abusing official position or authority.

Shkëlzen Lluka, Naim Avdiu, Melita Ymeraga, Ardian Kelmendi and Agron Kamberi, as officials of the Privatization Agency of Kosovo, are also accused, as Osmani and Shabani, in connection with illegal gains for themselves or buyers of the plant. Lluka and Avdiu are accused of failing to take measures for the implementation of the contract between PAK and the buyer of the plant “FAN”. Melita Ymeraga, Ardian Kelmendi and Agron Kamberi were responsible for monitoring the investments of the buyer of “FAN”, while they are accused of “failing to control and monitor investments reported by the investor, failing to verify investment declarations, failing to carry out physical monitoring of capital investments, verify financial documentation of capital investments and employment commitments”.

Agim Deshishku, buyer of the “FAN” plant, is accused of deceiving PAK officials with false statements or concealment of facts, pushing them to act to the detriment of assets and workers of this enterprise. Deshishku is accused of fraud, legalization of false content, and tax evasion.

The indictment was filed by the Basic Prosecution Office in Prishtina on December 23, 2014. No hearing was held in this trial since April 4, 2016, the time of the initial hearing, until July 12, 2017. Although this is a high level corruption case and a condition for visa liberalization, since the indictment was filed in 2014, after numerous delays, the case is

still ongoing.²³

Reporting at KALLXO:

<http://kallxo.com/?s=naser+osmani>

Article 8 - Tax evasion

Case number: PKR. No. 169/2016

Accused: Blerim, Skender and Fatmir Sinani, Isa Durguti, Samir Sinanaj, Sabit e Ramadan Sogojeva, Enver Hasani and Mentor Emini

Trial panel: Elmaz Zenuni, Valon Kurtaj, Allfene Murseli

Special Prosecutor: Faik Halili

Criminal Offenses: Organized Crime under Article 274, in conjunction with the criminal offense False documents related to tax, under Article 314.

Injured party: Kosovo Budget

Indictment:

According to the indictment, Blerim, Skender and Fatmir Sinani, Isa Durguti, Samir Sinanaj, Sabit and Ramadan Sogojeva, Enver Hasani and Mentor Emini, working as an organized group, in the period 2010-2014, in order to obtain direct financial gain, registered their businesses, some of them fictitious. The Indictment clarifies that to avoid paying taxes, defendants issued fictitious invoices and allowed other businesses to evade tax.

According to the indictment, some of the businesses that were issued fictitious invoices by the accused in question are: "Konto-Web" owned by the accused Isa Durguti, "O and M" owned by the accused Mentor Emini, "Banana" owned by Enver Hasani, "Qami" shpk, "Crem-com", "KAF-Group", "Trade-KS" shpk, "Adi", "Blera", "AMT-Group", "Jehona", "Uniqagroup Austria", "Ariani", "Lesa" and many other companies.

Upon the transfer of the Presiding Judge in this case, Elmaz Zenuni from the Basic Court in Prishtina to the Basic Court in Ferizaj, the main trial proceedings were rendered impossible.

Judge Zenuni had the case until the closing remarks. With his departure, the case was assigned to Judge Hamdi Ibrahim.

Now, with the replacement of the trial panel, the process will start from the beginning even in this big corruption case, as provided by the Criminal Procedure Code.²⁴

Reporting at KALLXO:

<http://kallxo.com/?s=blerim+sinani>

Case 9 - Lushtaku and 23 other accused

Case number: Pkr. 685/16

Trial panel: Shasivar Hoti

Prosecutor: Romulo Mateus - EULEX

Criminal offense: Abuse of official position or authority under Article 422, punishable with 6 months to 5 years of imprisonment, as well as other offenses described for each of the accused.

Accused:

1. EMRUSH THAQI, committed the criminal offense of Abuse of Official Position or Authority, in violation of Article 422, par. 1, 2.1, 2.2 and 2.3 of CCRK.

2. SHEMSI HAJRIZI, committed the criminal offense of Abuse of Official Position or Authority, in violation of Article 422, par. 1, 2.1, and 2.2 of CCRK.

3. SAMI LUSHTAKU, committed the criminal offense of Escape of persons deprived

²³ The case is at the stage of the presentation of the defense of the accused.

²⁴ Clarification: With the replacement of the Presiding Judge the case started from the beginning whereby the opening remarks were given, while the hearing was postponed indefinitely after the accused Skender Sinanaj agreed to enter into a plea agreement. At the same time, Special Prosecutor, Faik Halili, withdrew from the criminal offense of Organized Crime during the main trial, and confirming all other criminal offenses, including Tax Evasion and Abuse of authorizations in the economy. This trial is presided by Judge Hamdi Ibrahim, and members, professional judges Naser Foniqi and Vehbi Kashtanajeva. The defendant Fatmir Sinani was also part of this trial, but the procedure was separated.

of liberty, under Article 405, paragraph 1, in conjunction with Article 31 of the CCRK. He also committed the offense of Obstruction of evidence or official proceedings under Article 394 par. 1.7 and 5 in conjunction with Article 31 of the CCRK, and the criminal offense of Intimidation during criminal proceedings under Article 395 in conjunction with Article 31 of the CCRK. He committed the criminal offense of Organized Crime (Organized Crime Group) under Article 283, paragraphs 1 and 2, in conjunction with Article 31 of the CCRK.

4. SAHIT JASHARI, committed the criminal offense of Escape of persons deprived of liberty, under Article 405, paragraph 1, in conjunction with Article 31 of the CCRK.

5. ISMET HAXHA, committed the criminal offense of Escape of persons deprived of liberty, under Article 405, paragraph 1, in conjunction with Article 31 of the CCRK. He also committed the offense of Obstruction of evidence or official proceedings under Article 394 par. 1.7 and 5 in conjunction with Article 31 of the CCRK, and the criminal offense of Intimidation during criminal proceedings under Article 395 in conjunction with Article 31 of the CCRK. He committed the criminal offense of Organized Crime (Organized Crime Group) under Article 283, paragraphs 1 and 2, in conjunction with Article 31 of the CCRK.

6. MERGIM LUSHTAKU, committed the criminal offense of facilitating the escape of persons deprived of liberty, under Article 406, paragraphs 1 and 4, in conjunction with Article 31 of the CCRK.

7. DARDAN GECI, committed the criminal offense of facilitating the escape of persons deprived of liberty, under Article 406, paragraphs 1 and 4, in conjunction with Article 31 of the CCRK.

8. BASHKIM DERVISHOLLI, committed the criminal offense of Providing assistance to perpetrators after the commission of criminal offenses under Article 388, par. 1, 2.5 and 3 of the CCRK in conjunction with Article 31 of the CCRK and the criminal offense of Unlawful release of persons deprived of liberty, under Article 407 of the CCRK, in conjunction with Article 31 of the CCRK.

9. VALON BEHRAMAJ, committed the criminal offense of Providing assistance to perpetrators after the commission of criminal offenses under Article 388, par. 1, 2.5 and 3 of the CCRK in conjunction with Article 31 of the CCRK and the criminal offense of Unlawful release of persons deprived of liberty, under Article 407 of the CCRK, in conjunction with Article 31 of the CCRK.

10. ARGJENT BEHRAMAJ, committed the criminal offense of Providing assistance to perpetrators after the commission of criminal offenses under Article 388, par. 1, 2.5 and 3 of the CCRK in conjunction with Article 31 of the CCRK and the criminal offense of Unlawful release of persons deprived of liberty, under Article 407 of the CCRK, in conjunction with Article 31 of the CCRK.

11. YLBER BLAKAJ, committed the criminal offense of Unlawful release of persons deprived of liberty, under Article 407, paragraphs 1 and 4, in conjunction with Article 31 of the CCRK.

12. GZIM AHMETI, committed the criminal offense of Unlawful release of persons deprived of liberty, under Article 407, paragraphs 1 and 4, in conjunction with Article 31 of the CCRK.

13. XHEVDET ZENA, committed the criminal offense of Unlawful release of persons deprived of liberty, under Article 407, paragraphs 1 and 4, in conjunction with Article 31 of the CCRK.

14. MERVETE HASANI (LUSHTAKU), committed the criminal offense of facilitating the escape of persons deprived of liberty, under Article 406, paragraphs 1 of the CCRK.

15. AGIM UKAJ, committed the criminal offense Abuse of official position or authority under Article 422, pars. 1, 2.1, 2.2 and 2.3 of the CCRK.

16. ISMAIL DIBRANI, committed the criminal offense Abuse of official position or authority under Article 422, pars. 1, 2.1, 2.2 and 2.2 of the CCRK.

17. SAMI GJOKA, committed the criminal offense Abuse of official position or authority under Article 422, par. 1, 2.1 and 2.2 in conjunction with Article 31 of the CCRK, criminal offense of Falsifying documents under Article 398, par. 1 and 2 in conjunction with Article 31 of the CCRK and criminal offense Facilitating the escape of persons deprived of liberty under Article 406, paragraphs 1 and 4 in conjunction with Article 31 of the CCRK.

18. NEXHIB SHATRI, committed the criminal offense Abuse of official position or authority under Article 422, par. 1, 2.1 and 2.2 in conjunction with Article 31 of the CCRK,

criminal offense of Falsifying documents under Article 398, par. 1 and 2 in conjunction with Article 31 of the CCRK and criminal offense Facilitating the escape of persons deprived of liberty under Article 406, paragraphs 1 and 4 in conjunction with Article 31 of the CCRK.

19. RRUSTEM RRUKOLLI, committed the criminal offense of Obstruction of evidence or official proceedings under 394, par. 1.7 and 5 in conjunction with Article 31 of the CCRK, and the criminal offense of Intimidation during criminal proceedings under Article 395 in conjunction with Article 31 of the CCRK. He committed the criminal offense of Organized Crime (participation in a criminal group) under Article 283, paragraph 1, in conjunction with Article 31 of the CCRK.

20. REXHEP XHOTA, committed the criminal offense of Obstruction of evidence or official proceedings under 394, par. 1, 1.7 and 5 in conjunction with Article 31 of the CCRK and the criminal offense of Intimidation, under Article 395 of the CCRK, in conjunction with Article 31 of the CCRK. He committed the criminal offense of Organized Crime (participation in a criminal group), under Article 283, paragraph 1, in conjunction with Article 31 of the CCRK.

21. FATMIR MJAKU, committed the criminal offense of Obstruction of evidence or official proceedings under 394, par. 1, 1.7 and 5 in conjunction with Article 31 of the CCRK and the criminal offense of Intimidation, under Article 395 of the CCRK, in conjunction with Article 31 of the CCRK. He committed the criminal offense of Organized Crime (participation in a criminal group), under Article 283, paragraph 1, in conjunction with Article 31 of the CCRK.

22. SKENDER TAHIRI, committed the criminal offense of Obstruction of evidence or official proceedings under 394, par. 1, 1.7 and 5 in conjunction with Article 31 of the CCRK and the criminal offense of Intimidation, under Article 395 of the CCRK, in conjunction with Article 31 of the CCRK. He committed the criminal offense of Organized Crime (participation in a criminal group), under Article 283, paragraph 1, in conjunction with Article 31 of the CCRK.

23. SHEREMET JASHARI, committed the criminal offense of Obstruction of evidence or official proceedings under 394, par. 1, 1.7 and 5 in conjunction with Article 31 of the CCRK and the criminal offense of Intimidation, under Article 395 of the CCRK, in conjunction with Article 31 of the CCRK. He committed the criminal offense of Organized Crime (participation in a criminal group), under Article 283, paragraph 1, in conjunction with Article 31 of the CCRK.

24. BAJRAM DIBRANI, committed the criminal offense of Obstruction of evidence or official proceedings under 394, par. 1.7 and 5 in conjunction with Article 31 of the CCRK, and the criminal offense of Intimidation during criminal proceedings under Article 395 in conjunction with Article 31 of the CCRK. He committed the criminal offense of Organized Crime (participation in a criminal group) under Article 283, paragraph 1, in conjunction with Article 31 of the CCRK.

Delays in cases: Although more than one year has passed since the time the indictment was filed, the case is yet to move to the main trial. By September 2017, no hearing was scheduled on this case. The prosecutor stated that this is an insult to justice, the delay in prosecuting this case, while the judge justified this with the large number of cases and objective circumstances that he could not assign this case earlier. Also, the first two initial hearings related to this case have failed due to the absence of the accused while it was necessary to issue an order for forced appearance to ensure the presence of all the defendants in trial.

Reporting at KALLXO:

<http://kallxo.com/sot-lushtaku-ne-gjyq-per-arratisjen-nga-qkuk-ja/>

<http://kallxo.com/prokurori-fyerje-per-drejtisine-zvarritja-e-gjykimit-per-arratisjen-nga-qkuk/>

Case 10 - Ramadan Muja – Former Mayor of Prizren Municipality

Number of case in Appeal: PAKR 32/14

Criminal offense: Abusing official position or authority as per article 422, par. 1, of the CCRK, which envisages a sentence of 6 months to 5 years of imprisonment.

Accused: Ramadan Muja, Sadik Paqarizi, Avni Ademaj, Kadri Ukimeri, Abdulla Tejeci

and Minir Krasniqi

Trial Panel: Piotro Bojarczuk, Presiding Judge, Driton Muharremi and Abdullah Ahmeti Mayor of Prizren, Ramadan Muja, and five other municipal officials, were accused of having committed misuses of municipal property and properties managed by the Privatization Agency of Kosovo.

Muja was accused of four counts of abuse of official position or authority. The same charge was also placed over five officials of Prizren Municipality. Sadik Paçarizi, Director of Urbanism and Spatial Planning, Avni Ademaj, Kadri Ukimeri, Abdullah Tejeci, and Minir Krasniqi - Director of Administration.

Avni Ademaj, Kadri Ukimeri, Abdullah Tejeci, in various time periods for which they are accused, headed the Department for Geodesy and Cadastre of the Municipality of Prizren, or were acting heads. The six accused, deliberately and to obtain material gain for others, failed to enforce the Supreme Court decision and issued use of the land which was under the administration of the Privatization Agency of Kosovo, and in another case gave use of it, free of charge, without complying with the legal procedures. This occurred over a period from 2008 to 2012, when municipal officials also committed another criminal offense, that of preventing other geodesy experts to testify in court hearings in favor of victims on such misuses of land, in at least seven cases. On the issue of obstructing the work of the court, the TV Show "Justice in Kosovo" aired a programme reportage on September 11, 2011.

The value of some of the lands for which the Prizren officials were accused of misusing amounted to around 200,000 EUR.

The proceedings against Mayor Muja et al regarding the accusations were initiated by the Court on March 25, 2013, to be completed in the first instance in March 2014.

In his concluding remarks, after holding 28 hearings, Muja and the five municipal officials pleaded innocent.

Decision of the Basic Court:

Mayor of Prizren, Ramadan Muja, and with five other municipal officials, on March 13, 2014, were found guilty and were convicted by the Basic Court of Prizren.

Muja, for four counts of the indictment, Abuse of official position or authority, was sentenced to two years of imprisonment, provided that he did doesn't commit other criminal offenses during 3 years. He also received a supplementary punishment, ban on exercising public functions for a period of 30 months.

Minir Krasniqi, former director of Public Administration, was sentenced to a suspended imprisonment of 1 year and 6 months, provided that for two years he does not commit another criminal offense. Krasniqi was also banned from exercising public office for 18 months.

Kadri Ukimeri, former director of Geodesy, and Sadik Paçarizi, former director of Urbanism, were sentenced to 8 months of suspended imprisonment, provided they do not commit another criminal offense for two years.

Avni Ademaj, former Director of Geodesy and Cadastre, was sentenced to 5 months of suspended imprisonment, provided that for one year commits no other criminal offense.

Despite the fact that the Criminal Code of the Republic of Kosovo, for the offense of "Abuse of official position or authority" envisages a sentence of imprisonment from 6 months to 5 years, the first instance court in Prizren, presided by an international EULEX Judge, who found the municipal officials of Prizren guilty, decided not to impose effective prison sentences. In the concrete case, he opted for the minimum of suspended sentences.

Appeal:

Defense lawyers, dissatisfied with the first instance verdict, that of the Basic Court of Prizren, filed an appeal with the Court of Appeal in Prishtina.

According to lawyers, the appeal was filed in May 2014, but the case of the mayor of Prizren took four months to get to the Court of Appeals. This delay, according to official reasoning by the EULEX Legal Office, was due to the translation of the appeal from Albanian into English.

An unprecedented delay in practice, although the Criminal Procedure Code of the Republic of Kosovo does not envisage a deadline for sending the case to the second instance, when involving people who are not in detention.

However, given that the criminal offense for which Muja, together with the five municipal officials, was convicted by the Basic Court of Prizren is part of the corruption

crimes, cases which the judiciary committed to addressing with priority, the delay of four months was extensive.

After 15 months of postponement, this case finally was picked up. On June 9, 2015, a hearing was held in the Court of Appeal in which the defense counsel and defendants once again reasoned their appeal and challenged the decision of the Basic Court of Prizren. The attorneys of the defendants reasoned their grounds on substantial violation of the provisions of the Criminal Procedure Code, violations of the criminal law and erroneous determination of the factual situation.

Such long delays in the Muja case do not give the impression that the judiciary is interested in dealing corruption cases with priority. Moreover, the Muja case gives the impression that the Court of Appeals has acted selectively, as there are a large number of other cases which, from the day of their arrival were completed within one, two or three months, unlike Muja's, which took over a year.

The following is a table of all cases addressed in the Court of Appeals during 2015;

Case No.	Defendant	Criminal offense	Date of receipt in the Appeal	Date of completion	Timeframe
PAKR. nr.233/2015	Xhaviti Hajdari	Article 339, par. 3 in conjunction with paragraph 1 of the CCK	09.06.2015	19.10.2015	4 months
PAKR. nr.296/2015	Bashkim Krasniqi	Article 425 of the CCK. Misappropriation in office	23.07.2015	22.10.2015	3 months
PAKR 379/2015	Bajram Shehu	Article 425 of the CCK. Misappropriation in office	03.09.2015	15.10.2015	1months
PAKR. nr.428/2015	Ilmi Kqiku	Article 339 of the CCK. Abuse of official position	29.09.2015	27.10.2015	1 months
PAKR. nr.241/2015	Minush Hoxha etj.	Misappropriation in office Abuse of official duty	09.06.2015	02.11.2015	5 months
PAKR. nr.173/2015	Bekim Shaqiri	Trading in influence Article 431 of the CCK.	01.04.2015	22.10.2015	6 months

Table 4. The duration of addressing cases at the Court of Appeal in 2015.

Appellate decision:

The Court of Appeal, as a second instance court, exercised the right to return the First Instance Judgment to a retrial.

On August 31, 2015, almost a year and a half after the rendering of the verdict against the Mayor of Prizren, the judgment of the Court of Appeal for Mayor Muja was officially returned to the Basic Court of Prizren.

Supreme Court

In the meantime, unexpectedly, Muja's delays continued further, leading to him going towards the end of his mandate as Mayor of the Municipality of Prizren.

The prosecutor of the case, dissatisfied with the decision of the Court of Appeal,

decided to file a complaint to the Supreme Court. In this appeal, the Prosecutor requested the Supreme Court to review the case of Muja, but in a different panel of judges.

The appeal of EULEX prosecutor Judit Eva Tatrai states that the Appellate Court failed to address the issue of whether the Basic Court went beyond the indictment, as some defense lawyers claimed.

“We can conclude that the decision of the Court of Appeals includes the same shortcomings as those in the Judgment of the Basic Court”, read Prosecutor Tatrai’s appeal.

“Based on several reasons, the State Prosecutor requests the Supreme Court of Kosovo to annul the Court of Appeal’s decision of July 22, 2015 and return it with an instruction to assign the case to the Court of Appeal, in a different trial panel,” read the appeal.

The Supreme Court, in December 2015, issued a decision that the appeal filed by the Prosecutor on September 4, 2015 against the decision of the Court of Appeal issued on July 22, 2015, in the case of Muja et al, is UPHELD.

The Supreme Court decided that the appealed decision should be annulled and the case must be returned to the Court of Appeal for review by a new trial panel.

The Supreme Court’s reasoning, *inter alia*, states that there is a noticeable discrepancy between the assessment of the Court of Appeal and the Supreme Court regarding the possibility to proceed with the review of the merits of the case by the Appeal. Based on this fact, the Supreme Court decided to return the case to the Court of Appeal for reconsideration by a new panel.

“Each Court of Appeal decision must be based on a thorough and detailed assessment of the relevant factors and be properly reasoned. Unfortunately, this was not the case with the Court of Appeal regarding the challenged decision, so it was decided to return the case to the Court of Appeal for reconsideration by a new trial panel,” read the Supreme Court reasoning.

Muja case again in retrial²⁵

After a long silence by the Appeal, the case finally returned to retrial, this time tried by locals. Since the Basic Court of Prizren withdrew, the case went to the Basic Court in Gjilan. The latter appointed the initial hearing against Muja et al on December 14, 2017. This date “coincided” with the first day of Muja as a free citizen, without any official obligation, having completed his term as mayor.

Ramadan Muja, who handed over his duty on December 13, 2017, told the court on December 14, 2017 that he was a pensioner.

“Yesterday I handed over the post of Prizren Mayor and now I am a pensioner”, said Ramadan Muja at the main trial hearing session where he is charged with abuse of office.

Four other defendants, except Kadri Ukimeri, who has passed away, were present at this hearing.

Given that court hearings against Mayor Muja and five other municipal officials of Prizren started in the beginning of 2013, five years have passed and the end of this case is nowhere near, while Muja fulfilled his objective of completing his term as Mayor of Prizren.

This case best describes the delays, fragility, and the failure of the judiciary to ensure a fair and reasonable trial. Above all, it directly affects the lack of trust of citizens in justice institutions and their fight against corruption offenses and crimes against official duty.

Reporting at KALLXO:

<http://kallxo.com/?s=RAMADAN+MUJA>

The report highlights that the cases outlined above are just some of the more blatant examples, which included senior state officials, and ended up with the withdrawal of prosecutors from indictments and acquittals. As we saw above, even in cases where courts have proven the commission of corruption offenses and despite the fact that the law allows them to impose higher sentences, such as effective imprisonment, they chose to issue suspended sentences.

²⁵ The case returned for retrial to the Basic Court in Gjilan is being presided by Judge Agim Ademi while the indictment is being represented by Special Prosecutor Fikrije Fejzullahu, and the case is in the main trial stage.

The report concludes that the issuance of suspended sentences and low fines against perpetrators found guilty of committing corruption criminal offenses by state institutions fails to prove the seriousness of the judiciary to combat corruption.

BIRN and INTERNEWS KOSOVO encourage judges to be stricter in their sentencing policies against corruption offenses perpetrators and issue higher sentences, taking into account that corruption offenses in Kosovo are largely prevalent.

C. Confiscated assets from corruption offenses

BIRN and INTERNEWS KOSOVO, during 2017, also put a special emphasis in monitoring the implementation of legal provisions related to confiscation of property acquired through corruption offenses.

Regarding the confiscation of property acquired by a criminal offense, the Criminal Procedure Code of the Republic of Kosovo defines the manner and form of confiscation, which stipulates that the indictment must accurately determine all building, immovable property, movable property, funds or other assets that may be subject to confiscation. The indictment must also describe the appropriate proof required to justify the forfeiture under Chapter XVIII of the present Code.²⁶

Temporarily confiscated items, at the end of the procedure, under Article 115 of the CPPRK, are permanently confiscated. The single trial judge or trial panel orders the permanent seizure of items in accordance with the law, if the state prosecutor: determines in the indictment such items, property, the evidence or money which are subject to permanent seizure; if the main trial verifies that the temporarily seized objects, property, evidence or money have enabled the commission of the criminal offense or constitute a material benefit acquired through the criminal offense; and the law allows for their confiscation.

According to Article 69 of the Criminal Code of the Republic of Kosovo, the court is allowed the takeover of items. Objects used or destined for use in the commission of a criminal offense or objects derived from the commission of a criminal offense, according to the code, shall be confiscated.

According to the Criminal Procedure Code of the Republic of Kosovo, objects, property, or evidence that is permanently sequestered shall be sold and the proceeds used for restitution to the injured parties and any remainder transferred to the budget.²⁷

The report provided data from every court in the entire territory of the Republic of Kosovo regarding the application of the confiscation of assets acquired through criminal offense.

The following table shows cases of confiscation of property for 2017 acquired through corruption offenses.

COURTS	CONFISCATION OF PROPERTY
Prishtina	1
Prizren	0
Peja	0
Mitrovica	0
Gjilan	0
Ferizaj	0
Gjakova	0

Table 5. Cases of confiscation of property for 2017

²⁶ See Article 241 par.1 item 1.9 <http://www.kuvendikosoves.org/common/docs/Ligjet/Kodi%20i%20procedures%20penale.pdf>
²⁷ Article 115 of the CPPRK. <http://www.kuvendikosoves.org/common/docs/Ligjet/Kodi%20i%20procedures%20penale.pdf>

As can be seen from the data presented in the table, throughout 2017 in the entire territory of the Republic of Kosovo there was only one case where property was confiscated as a result of it being acquired through the criminal offense of Corruption.

The case involves the conviction and confiscation of property of former accused Judge Kote Puka. On December 14, 2017, the Kosovo Court of Appeals decided on the appeals in the case of the accused Kote Puka and issued a decision upholding the Judgment of the Basic Court of Prishtina dated 28.06.2017.

Judge Puka was charged with the criminal offenses: "Issuing unlawful judicial decisions", under Article 432 of the Criminal Code of the Republic of Kosovo, "Abuse of official position or authority", under Article 422 of this code, as well as the criminal offense "Prevention of Money Laundering and Terrorist Financing". The accused was sentenced to 3 years and 6 months of imprisonment and a fine of 3,000.00 EUR. He has been banned from exercising public administration or public service functions as well as from practicing law for a period of 3 years after imprisonment.

Immovable property acquired from the commission of the criminal offense, valued at over one million Euros (1,000,000.00 EUR) was confiscated from the accused; a flat in Klina, a flat in Prishtina, real estate (in which a house was built) in Ulcinj, Montenegro, with a surface area of 308m², land (meadow) in Ulcinj, with a surface area of 171m², a business premise in Klina, a vehicle Audi A6, as well as funds from the sale of two business premises.

The case of former Judge Puka is the only case where property was confiscated, while during the year, as shown in the examples above, there were a large number of persons accused regarding abuses in millions.

From the monitoring and collection of statistical data for each of the seven basic courts in the country, the report concluded that on the one hand there were few requests of prosecutors for confiscation of property acquired through criminal offenses, on the other hand confiscation of properties by the court occurs even more rarely (only one case in 2017). Despite the fact that a number of cases were witnessed of persons accused with for abuse of office by state officials, with allegations of misuses exceeding millions, we are yet to see in practice application of provisions for seizure and confiscation of illegally acquired assets.

BIRN and INTERNEWS KOSOVO consider that this is long overdue that the State Prosecution reflects on the prioritization of all serious crime cases, in particular those of corruption, to prevent any impunity of perpetrators who, by committing of such acts undermine the state budget. Moreover, impunity of such persons also leads to the failure in the return of illegally acquired assets.

Therefore, the Report provides recommendations to prosecutors and judges; the former must apply the legal provisions in regards to filing requests, and the latter must apply the provisions on confiscation of property acquired by a criminal offense, especially in cases of corruption offenses under Chapter XXXIV of the Criminal Code of the Republic of Kosovo.

D. Corruption offenses subject to Statute of Limitation

In addition to the failure of a large number of cases in court, the withdrawal of prosecutors from indictments and their failure to make a case before the trial panel, lenient sentencing and non-confiscation of property in corruption and abuse of official office offenses, BIRN and INTERNEWS KOSOVO identified cases where such offenses also reached their statute of limitation in court.

Regarding the statute of limitation of corruption offenses, the Report secured data from seven Basic Courts in the country level for the period January - December 2017, as well as data on the number of offenses subject to statute of limitation, provided by the Secretariat of the Judicial Council Kosovo.

COURTS	CASES SUBMITTED
Prishtina	5
Prizren	0
Peja	0
Mitrovica	0
Gjilan	0
Ferizaj	0
Gjakova	0
TOTAL:	5

Table 6. Data from seven basic courts on cases of corruption subject to statute of limitation

Data from table above with information from seven basic courts at the country level on the cases of corruption subject to statute of limitation indicate that there were only five (5) cases. ALL reported cases are from the Basic Court of Prishtina, while the other six courts have provided data indicating that there are no cases subject to statute of limitation in these courts.

The report went a step further and secured data on such cases by the Kosovo Judicial Council Secretariat. KJCS data refer to a larger number of corruption cases subject to statute of limitation, mainly related to “Official Corruption and Offenses against Official Duty”. According to the KJCS, in the first nine months of 2017, there were eight (8) cases under this chapter.

The report raises concerns on the mismatch of data provided by the Courts and those by the Kosovo Judicial Council Secretariat. Moreover, the mismatch of data on cases of corruption subject to statute of limitation had also occurred in 2015.²⁸

While the 2017 data point to a larger number of such cases according to KJCS compared to courts, in 2015 the KJC had provided evidence that there was no criminal case that had been subject to statute of limitation, court data and BIRN and INTERNEWS KOSOVO monitors identified 22 such cases.

The report raises concerns with the fact that criminal offenses against corruption reach statute of limitation, thus allowing alleged perpetrators from the “most famous” chapter to be remain unpunished.

8 failed cases for which there is no data on the number of persons involved, is an indication of the failure of justice institutions to achieve prosecution, punishment and fulfillment of the objective of the conviction as intended by the Criminal Code of the Republic of Kosovo. Moreover, by allowing this practice, deliberately or not, contradicts the principle of due process within a reasonable time as one of the basic principles in the Criminal Procedure Code of the Republic of Kosovo.

Reports on the statute of limitation in corruption offenses in 2017 is the culmination of the failure of the judiciary. BIRN and INTERNEWS KOSOVO, once again, consider that oversight institutions of the prosecutorial and judicial systems must react decisively and be uncompromised towards corruption cases, demanding public and criminal accountability for judges and prosecutors who allow the statute of limitation of such cases, especially corruption cases.^{29,30}

²⁸ BIRN sent an inquiry to the Kosovo Judicial Council again in May 2018, and replies led to the realization that in addition to the cases subject to statute of limitation in the Prishtina Basic Court, there are also similar cases in the Basic Court of Ferizaj, with a total of three corruption cases.

²⁹ BIRN has requested information from the Basic Court of Prishtina again in May 2018, on the profile of the cases subject to statute of limitation and is awaiting answer.

³⁰ BIRN’s interest led to the clarification of the discrepancy of data between the KJC and courts, as it was found that the Basic Court in Ferizaj did not have any case subject to statute of limitation but rather erroneously submitted the wrong forms.

IV. BIRN and INTERNEWS KOSOVO findings on procedural violations of judges, prosecutors and lawyers

In 2017 a total of 307 hearings, including criminal and civil cases, were monitored, from which many procedural violations were found by prosecutors, lawyers, judges, as well as the trial panel.

The findings of the monitors on procedural violations on 2017 throughout the territory of the Republic of Kosovo vary. They range from failure to hold court hearings, changing of witness statements, failure to schedule court hearing, unreasonable delays in trials, failure to comply with the legal deadlines for the initial hearing, holding trials without the presence of the accused, disorder at trial, poor preparation of prosecutors for the trial, and failure to hold hearings due to the lack of court interpreters as one of the basic principles of justice, for trials to be in a language that is known and spoken by the defendant in the proceedings.

The following is a presentation of concrete and detailed examples regarding violations found in monitored cases, in the both criminal and civil hearings.

1.Failure of court hearings

In the Basic Court, the Serious Crimes Department, in Prishtina, in a criminal hearing on intrusion into computer systems, extortion and blackmail, the hearing scheduled for January 10, 2017, case number Pkr. 476/15, was not held as the Presiding Judge Valbona Selimaj was absent, who, according to judge Nora Bllaca, was on a trip abroad and because of bad weather she was unable to attend the trial.

This is a case where the initial hearing was held in November 2015, while the second hearing was not held in January.³¹

In the Basic Court of Prishtina, the Serious Crimes Department, in the hearing scheduled for January 16, 2017, on the criminal offenses of accepting bribes, and trading in influence, the hearing was not held.

The trial was postponed in the absence of the case prosecutor, Ikramije Bojaxhiu, who took over a permanent position as a member of the KPC's Performance Appraisal Committee. While this happened more than three weeks prior, there was no replacement for the prosecutor in a process followed by many delays, and where one of the charges already reached the statute of limitations, Rajan Zeneli.³²

In the Case No. PKR.376/16, scheduled to be held on February 23, 2017, on the criminal offense of Usury, the court hearing was not held due to the absence of the prosecutor, Dulina Hamiti who, according to the Presiding Judge, was in a training in Albania, while the Basic Prosecution of Prishtina failed to send another prosecutor as replacement.

It is very concerning how easily court hearings are postponed and how little responsibility parties have in the criminal proceedings in Kosovo regarding postponements of court hearings.³³

In the Basic Court of Gjakova, in the Serious Crimes Department, in the case number PKR.225/14, scheduled to be held on March 15, 2017 on the criminal offense of Usury, the hearing failed because of absence of the case prosecutor.

Shpresa Bakija, State Prosecutor, who had represented the state in this matter in previous hearings, was absent. Due to the absence of the prosecutor, who had failed to give

31 Judge; Valbona Selimi, prosecutor; Abdurrahim Islami, accused; Armend Muja with lawyer Ramë Gashi, Basri Muja, Ferdije Zhushi-Hetemi and Naim Braha. Injured party "Biomedica" and "ISPE".

32 Presiding Judge; Shadije Gerguri, Members; Beqir Kalludra and Albina Rama, Prosecutors; Ikramije Bojaxhiu, accused; Esat Belaj, Leonard Bytyqi, Albion Haxhijaha, Amonda Orllati, Arian Janova, Gazmend Maliqaj, Mevludin Beqiri, Kemajl Gashi, Kushtrim Morina. Asdren Hoxha and Arton Hoti, Muhamed Maliqi and Shaqir Reciqaj.

33 Presiding Judge; Valbona Musliu-Selimi, Members; Nora Bllaca-Dula and Vesel Ismajli, prosecutor; Dulina Hamiti (absent), accused; Xhelal Hoxha with lawyer Bahtir Troshupa, Flamur Hoxha, Nuhi Hoxha, and Hamdi Jashari with lawyer Asdren Hoxha.

prior notice on her absence and was in another hearing in room number 1, this hearing was postponed for March 29, 2017.³⁴

In the Serious Crimes Department of the Basic Court of Prizren, in the case number P.nr.221/16, dated May 15, 2017, on the offense of abuse of official position or authority, the court hearing failed due to the absence of the case prosecutor.

The hearing was not held due to the hold-up of the prosecutor who had informed the Presiding Judge in writing that he would not be present at this hearing but instead was making a representation at the Basic Court of Ferizaj in the case of the accused Granit Paçarizi on the criminal offense of attempted murder.

The Trial Panel took a decision to schedule the next hearing after two months, on July 10, 2017. This long postponement and delay in this corruption-related hearing contradicts the PCKK, which foresees that the trial before the trial panel shall be completed within 120 days.³⁵

Basic Court of Gjakova, General Crimes Department, case No. P.nr. 838/16, scheduled for June 5, 2017, on the criminal offense of threat against the state prosecutor, the court hearing was not held as no one from the state prosecutor arrived to represent the matter before the court.

The case judge, Ilirjana Hoti, made numerous attempts to call the prosecutors of the Basic Prosecution of Gjakova, but none of the prosecutors were available. She also contacted the case allocation officer at the Basic Prosecution Office of Gjakova, who informed her that this case could not be found in the Gjakova Prosecutor's Office.

On the other hand, Prosecutor Besim Susuri, with the permission of the court, confirmed by phone that the Prizren Prosecutor's Office, in February, handed over this case to Gjakova. The Accused Eshref Qafteshi and the injured party, Prosecutor Besim Susuri, were present in the hearing, but due to the absence of the Prosecutor of Gjakova Prosecutor's Office, the hearing was not held. The next hearing was scheduled for July 5, 2017.³⁶

Basic Court of Prishtina, Serious Crimes Department, case No. PKR.658/16 dated April 25, 2017, on the criminal offense of abuse of official position or authority, the scheduled hearing was not held.

The defendants were absent in the session: Murat Meha, Ismet Kryeziu, Nemanja Spasić, and the case prosecutor was also not present.

Prosecuting this case was Fikrije Fejzullahu, but she was transferred to the Special Prosecution Office. Judge Shashivar Hoti said that he contacted the Chief Prosecutor on the assignment of a new prosecutor. Only judge Shashivar Hoti was present at this hearing.³⁷

Basic Court of Gjakova, Serious Crimes Department, held on May 23, 2017, on the criminal offense of Robbery, the hearing was not held, and was adjourned due to the absence of the prosecutor, who at the same time was involved in another court hearing.³⁸

Basic Court of Gjiatn, Serious Crimes Department, Case No. P-pkr.270/16, scheduled for September 21, 2017, on the criminal offense Abuse of official position or authority under Article 422 of the CCK and Intimidation during the criminal proceedings under Article 395 of the CCK, the hearing didn't take place because of simple technical reasons, such as a CD, which had to be administered as evidence, could not be opened.³⁹

This reason for postponing the hearing highlights the lack of dedication and unpreparedness for trial, as this is a rather trivial excuse to issue a postponement of a high-level corruption trial where the accused is a state prosecutor.

34 Presiding Judge; Gezim pozhegu, Members; Diana Sina and Myfera Hoxha, prosecutor; Shpresa Bakija (absent), accused; Naim Tariani with lawyer Gani Gexha.

35 Presiding Judge; Xheladin Osmani, members: Ajser Skenderi and Alija Fazli, prosecutor: Ervehe Gashi, accused; Sherif Berisha with lawyer Brahim Sopa.

36 Individual judge; Ilirjana Hoti, Prosecutors; no presence (initial hearing), Accused; Eshref Qafteshi, Injured party; Besim Susuri.

37 Individual judge; Shashivar Hoti, Prosecutor; Fikrije Fejzullahu, Accused; Murat Meha, Ismet Kryeziu, Nemanja Spasiq, Injured parties; "Marigona Residence" LLC.

38 Individual judge; Shaqir Zika, Prosecutor; Agron Matjani, Accused; Qerqiz Lita with lawyer Avdi Rizvanolli, Injured party; Shefik Arllaiti.

39 Presiding Judge, Aziz Shaqiri, Members; Venhar Salihu and Veli Kryeziu, Prosecutor: Arben Ismajli, Accused; Bajram Hamitaga and Luan Delili, Injured Party; Granit Pacarizi.

2.Failure to schedule a court hearing

Basic Court of Prishtina, General Crimes Department, case No. P.nr. 33/11, scheduled to be held on January 12, 2017, on the criminal offense of Aggravated murder, where two people are accused, at the third trial panel of this case.

In May 2016, following the appeal of the defense attorney, the case was returned for retrial, and since then no hearing was scheduled in the case, although the defendants have been in detention for a long time.

The case was initially scheduled for July 2015 and the two accused were sentenced to 30 years in prison.

The Presiding Judge justified this with the fact that a member of the panel in the case, Aferdita Bytyqi, was appointed President of the Court in Prishtina and he could not replace her.⁴⁰

This is an unacceptable justification because such a serious case with such high tensions between the two families should have been prioritized rather than to schedule no hearing from May 2016 until January. The trial panel member of the case, Aferdita Bytyqi, was elected President of the Court in December.

Also in the Basic Court of Prishtina, Serious Crimes Department, in the criminal case number PKR-372/16, held on 13.07.2017, on the criminal offense Organization and participation in a terrorist group under Article 143 paragraph 2 of the CCRK,⁴¹ in the process of being returned for retrial, no court hearing was scheduled for over one year.

In this case, two people are accused of participating in terrorist groups. In the indictment, the prosecution alleged that the two accused were part of terrorist organizations. The prosecution cites as terrorist the organization called "Harausham". KALLXO.com reported that such an organization did not exist but despite this fact, the court of first instance sentenced them to three and a half years of imprisonment, but the Court of Appeals returned the case for retrial.

The defendants were convicted in January 2016, whereas in June 2016 the case was returned for retrial by the Court of Appeals, and no hearing was scheduled until July 13, 2017 in retrial. Exactly one year after the case was returned for retrial, the prosecution changed the indictment stating that the name "Harausham" was erroneously translated, as this organization was Ahrach al Sham and requested revision of whole indictment. In this case, two people were convicted of participation in an organization that did not exist in reality, while there were also extensive delays.

Kosovo Court of Appeal, in case no. PAKR-207/2017, held on 14.07.2017 on the criminal offense of Abuse of Official Position or Authority under Article 422 of the CCRK,⁴² the hearing was scheduled with an eight month delay.

In the first instance this case was tried in December 2016, and the hearing in the Court of Appeal was held after almost 8 months, which speaks of a significant delays in this corruption case, which involved a former senior public official.

3.Changing of witness statements

Basic Court of Prizren, Serious Crimes Department, in the hearing held on February 7, 2017, in the criminal offenses of Usury, Extortion, Organized Crime and Organization of Games of Chance, in the criminal matter P.nr.85/16, the witness changed his statements given in the pretrial procedure.

During this hearing there were changes to witness' statements, especially of witness Fadil Gashi, who completely changed his testimony from the one given to the police and the prosecutor, while there was no serious reaction from the prosecution to initiate the

40 Presiding Judge; Arben Hoti, Members; Aferdita Bytyqi and Syzana Qerkini, Prosecutor; Fikrije Krasniqi, Accused; Gezim Retkoceri with lawyer Fehmije Gashi Bytyqi, and Osman Spahiu with lawyer Rame Dreshaj. Injured party; Naim Hajrizi's family, with lawyer Bajram Tmava.

41 Individual judge; Shadije Gerguri, Prosecutor; Elez Blakaj, Accused; Arben Livoreka and Nexhat Behluli

42 Trial panel; Driton Muharremi Presiding, Prosecutor from the Appeal failed to make a presentation in the hearing and practically no one knew who was a prosecutor, and who were the accused: Hysni Hoxha-attorney Tahir Rrecaj, injured party; companies "Caraglio SRL" and NTSh "Electra"

criminal offense of false statement.

Witness Fadil Gashi, owner of company “Dili Commerc” when confronted by the prosecutor with his statements given to the police, declaring that he had received 45 thousand euros from Tune Kqira, in order for him to repay 50 thousand euros within two weeks, he denied his statement given to the police, stating that he never received money with an interest from the accused Tune Kqira.

Witness Gashi said that he had taken money from Kqira because of the sale of the apartment in the amount of 50 thousand euros money which he needed for the treatment of one of his family members.

His testimony was in full contradiction with the statement given during the investigation phase and there was no initiation of False Declaration procedure.⁴³

Also in the Basic Court of Prizren, Serious Crimes Department, in the case P.Nr.85/16, held on April 27, 2017, in the criminal offenses of Organized crime, Usury, and Extortion, the proposed witness changed his testimony in court.

The only witness testifying to the court was Avdi Zukaj. He stated to the trial panel that he only knows the accused Gëzim Kqira, and said that he once had a meeting with the accused Kastriot Kqira. Witness Zukaj said that the accused Gëzim Kqira had sold him a plot of land, which turned out not to have the right documentation, and then Gëzim asked for the return of his money.

However, in this case the Prosecutor responded by citing his testimony given in the investigative procedure, which differed from what he previously said. The witness reasoned this statement to the court by saying that the accused Gëzim Kqira had received 12 thousand euros, rather 10 thousand as previously stated to then repay him an additional 2 thousand as interest. He said that he had received 2 thousand euros Euro from Gezim in advance for the needs of his children’s education, but he didn’t remember the date he received the money, or when he left his plot as a guarantee. The witness said that he had asked for a debt only from Gezim, without any pressure, and stated that no one else had called him for this matter.

When confronted with his testimony, the prosecutor reminded him that he had declared to having received calls by Kastriot Kqira, the witness said that he did not remember.

After hearing the witness, the Special Prosecutor requested that police officers who interviewed the witnesses take the stand, as the witnesses changed their statements to the court. She stated to having tabled this proposal because she believes the witnesses have changed their testimonies from fear of retaliation by the accused. However, no procedural action was undertaken to change the statements of witnesses.⁴⁴

4.Failure to comply with the legal deadline for holding the initial hearing

Criminal case PKR. 369/16, scheduled to be held on February 28, 2017, in the case of Irresponsible medical treatment and giving bribes, despite the fact that the indictment in this case was filed in June 2016, over 8 months later the initial hearing was yet to be completed, and the indictment was not read and the accused had not declared their pleas.

This shows the level of delays in this case which, in addition to the significant number of accused persons, 64, also had problems with the submission of evidence and case files of accused persons who do not have Albanian as their mother tongue, but to other accused also.

The hearing was postponed this time because the accused Bedri Sahiti was absent and his lawyer Gjuran Dema said that his accused has a health problem.

The judge did not decide separate the procedure and proceed with reading the indictment, and schedule a separate hearing for Bedri Sahiti, but despite having 63 persons present, he adjourned the hearing for only one accused.

Scheduling the initial hearing after more than 8 months, despite the fact that the

43 Presiding Judge; Xheladin Osmani, Members; Artan Sejrani and Refki Piraj, Prosecutor; Merita Bina-Rugova, Accused; Tune, Marian, Gjon, Gjekson, Kastriot and Gëzim Kqira, and Besfort Omaj, Ekrem Leci, Zyrafete Hukolli.

44 Presiding Judge; Xheladin Osmani, Members; Artan Sejrani and Refki Piraj, Prosecutor; Merita Bina-Rugova, Accused; Tunë, Kastriot, Gjon, Marian, Gjekson e Gëzim Kqira, Benson Buza, Besfort Omaj etc.

Criminal Procedure Code of Kosovo stipulates that the initial hearing must be held within 30 days after the indictment is filed when the accused are at liberty and 15 days when they are in detention, is in contradiction with any foreseen legal provision.⁴⁵

Basic Court Prizren, Serious Crimes Department, case No. P.nr.22/17, scheduled for June 22, 2017, in the case of 20 police officers charged with accepting bribes, the initial hearing failed to finish for the third time.

The case judge, Artan Sejrani, at the beginning of the main trial asked the attendees if the conditions for holding the main trial were fulfilled. Prosecutor Genc Nixha stated that all conditions are fulfilled, whereas the defense had no response. After receiving the data on the 20 defendants, all police officers, the prosecutor read the voluminous indictment that charged the police officers for having committed, in co-perpetration, up to six criminal offenses of accepting bribes. The accused pleaded innocent.

Then, at the end of the main trial, a number of defense attorneys stated that they have not received all case files and as a result, without presenting any evidence for the defendants and the defense, the lawyers requested the postponement of the initial hearing, which did occur, leading to months without the initial hearing in this corruption case completed.⁴⁶

Also, in the Basic Court of Prishtina, Serious Crimes Department, in case No. PKR.656/16 dated March 7, 2017, on the criminal offense of Abuse of official position or authority, the scheduled hearing was not held within the legal deadline.

The indictment in the case was filed on November 6, 2016, while the initial hearing was held on March 7, 2017, namely four months, or 121 days, after the indictment was filed.

Also, in this case, the Special Prosecution Office of the Republic of Kosovo failed to issue a communiqué, in contrast to other high profile cases such as this trial on the accused Rame Buja - former Minister of Education.⁴⁷

Basic Court of Prishtina, Serious Crimes Department, Case No. P.KR.5/17, in the criminal offense of Abuser of official position or authority, the initial hearing was held on April 28, 2017, while the indictment was filed on 6 February, nearly three months earlier, which means the hearing was held outside of the legal deadline stipulated by the Criminal Procedure Code of Kosovo.⁴⁸

Basic Court of Prishtina, in the case number P.kr. 118/16, scheduled to take place on May 17, 2017, on the criminal matter of Abuse of official position or authority, the hearing was not held because the defense was not provided with the case files as required by the provisions of the Criminal Procedure Code and the hearing was postponed for another date.

This was the second time that the hearings in this case were postponed.

Also, despite the fact that the indictment was filed in November 2016, in May 2017, six months later, the initial hearing was yet to be held, and the provisions of the Criminal Procedure Code have not been respected.⁴⁹

Basic Court of Prishtina, General Crimes Department, case No. P.nr. 685/16, scheduled for September 25, 2017, on the criminal offense Abuse of official position or authority under Article 422 of the CCK,⁵⁰ although a corruption case, it was not addressed with

45 Individual judge; Shadije Gerhuri, Prosecutor; Sylë Hoxha, Accused; Ferid Agani et al.

46 Individual judge; Artan Sejrani, Prosecutor; Genc Nixha, Accused; Shemsi Demolli, Safet Veliu, Naser Rama, Afrim Rafuna, Muhamet Buzhala, Ivica Djokic, Ismail Azemi, Alush Elshani, Blerim Zylfaj, Bekim Zogaj, Qerim Beqiri, Azem Goxhufi, Ardian Rrecaj, Sasha Nedejkovic, Shaban Gerguri, Shemsi Zejnullahu, Aziz Krasniqi, Lulzim Gashi, Shefki Zeka and Nuhi Zogaj

47 Individual judge; Valon Kurtaj, Prosecutor; Ali Rexha, Accused; Rame Buja with lawyer Petrit Dushi, Xhemajl Buzuku with lawyer Florent Latifaj, Xhavit Dakaj - no attorney, Afrim Demiri with lawyer Rame Dreshaj. The indictment against Rame Buja and the accused Xhavit Dakaj has been dismissed.

48 Individual Judge; Beqir Kalludra, Prosecutor; Agron Bajrami, Accused; Shukri Buja with lawyer Arianit Koci, Nebih Zegiri, Halit Gashi, Fahri Retkoceri, Hasim Vishesella, Edmond Rexhepi, Driton Avdiu, Burim Kodra, Bajram Rizani and Magbule Sadiku. Injured party; Municipality of Lipjan.

49 Individual judge; Shashivar Hoti, Prosecutor; Kushtrim Munishi, Accused; Murat Meha with lawyer Ibrahim Dobruna, Ismet Kryeziu, Nemanja Spasic. The indictment in this case was dismissed by the Basic Court and confirmed by the Appeal.

50 Individual judge; Shashivar Hoti, Prosecutor; Romulu Mateus, Accused; Sami Lushtaku, Emrush Taqi, Shemsi Hajrizi, Sami Gjoka, Nexhip Shatri, Ismajl Dibrani, Agim Ukaj, Rustem Rrukolli, Rexhep Xhota, Fatmir Mjaku, Bashkim Dervisholli, Valon Behramaj, Argjent Behrama, Mërgim Lushtaku, Dardan Geci and Mervete Hasani Lushtaku

priority. Although the indictment was filed a year ago and no initial hearing has been scheduled, the initial hearing was not held on October 25 because the legal conditions were not fulfilled, as four accused were absent who, according to the judge, did not receive the summons.

In the Serious Crimes Department at the Basic Court of Prishtina, in the case number PKR-746/16 on the criminal offense Organization and participation in a terrorist group under Article 143 of the CCK, after more than one year since the indictment was filed and after three adjourned hearings, on September 12th the initial review was finally held.⁵¹

The accused was brought by the Kosovo Police by force while he pleaded innocent, despite having pleaded guilty in his statement given to the investigator. This case highlights the delays in court and the failures to hold hearings even in serious offenses.

5. Justice delayed:

The hearing scheduled for March 22, 2017 on the Case No. C.nr.1414/07 failed due to the civil lawsuit on the verification of property.

This case, which started in 2007, is yet to see an epilogue in the first instance. The last hearing was postponed as the judge informed the parties that he could not be present. BIRN and INTERNEWS KOSOVO addressed the court question but haven't received an answer to what the reason for postponing a hearing that lasted for such a long time was.

Such cases set a bad example of administration of justice and discourage citizens from approaching the court to resolve their problems.⁵²

In the Basic Court of Prishtina, Serious Crimes Department, case No. PKR-194/15, scheduled to be held on 25.10.2017, on the criminal offense of Participation or organization in an organized criminal group under Article 283, paragraph 2 of the CCK, known as the "Apex" case, prosecutor Allen Cansick was late in the deadline for filing the indictment, which was then dismissed by the previous judge Catrien Witteman. After the indictment was dismissed, the prosecution appealed to the Court of Appeal and the case was returned for review. Now, the case is being tried by a local judge, and although nearly 3 years have passed since the filing of the indictment, it is yet to move to the main trial, making the case further late before the trial even starts.⁵³

In the Serious Crimes Department, at the Basic Court of Prishtina, in the case number PKR.685/16, scheduled to be held on 07.11.2017, on the criminal offense of Abuse of official position or authority, under Article 422, although more than one year passed since the indictment was filed, a full hearing on this case is yet to take place, the indictment hasn't been read and the defendants have not declared their pleas. Even Prosecutor Mateus called this a shame for justice, the delay in the case, while on the other hand the judge justified this using the extensive backlog of cases.⁵⁴

6. Contempt of court

In the Basic Court of Prizren, in the Serious Crimes Department, in the case P.nr.193/16, held on 11 July 2017, on the criminal offense of Abuse of official position or authority,

51 Individual judge: Vesel Ismaili, Prosecutor; Elez Blakaj, Accused; Nexhat Ademi. Nexhat Ademi was sentenced to 3 years in prison by the Basic Court while the case is currently at the Court of Appeals.

52 Judge: Hydajet Gashi, plaintiff: Muhamet and Pranvera Shala with lawyer Kushtrim Palushi, respondent; University of Prishtina.

53 Individual Judge: Vehbi Kashanjeva, Prosecutor Allen Cansick, Accused; Arben Krasniqi – attorney Donat Ebert and Granit Vokshi, Astrit Krasniqi – attorney Destan Rukiqi, Arben Neziri – attorney Ymer Osaj, Avni Morina – attorney Kaqusha Avdii replacement, Gani Zeqiraj – attorney Rrahman Kastri with Replacement Authorization – Sadri Godanci, Muje Berisha – attorney Zana Kusari, Kushtrim Hakaj – attorney Xhafer Maliqi, Arsim Molliqaj – attorney Qerim Metaj, Luan Halilaj – attorney Haxhi Qekaj, Agron Hoxha – attorney Merita Stublla Emini, Ilir Morina – attorney Sevdali Zejnullahu. Injured party; APEX Betting Companies. In March 2018, the Court of Appeal dismissed the indictment in the Apex case as time-barred.

54 Individual Judge: Shashivar Hoti, Prosecutor; Romulu Mateus, Accused; Sami Lushtaku, Emrush Thaqi, Shemsi Hajrizi, Sami Gjoka, Nexhip Shatri, Ismajl Dibrani, Agim Ukaj, Rustem Rrukolli, Rexhep Xhota, Fatmir Mjaku, Bashkim Dervisholli, Valon Behramaj, Argjent Behrama, Mërgim Lushtaku, Dardan Geci and Mervete Hasani Lushtaku

while the Prosecutor was interviewing the financial expert, there were frequent interruptions by the defense lawyers Hazr Susuri and Osman Hoxha. This forced the trial panel, after verbal remarks, to call for a break of 15 minutes due to defense's reactions.

The Presiding Judge, Xheladin Osmani, stated for the record that the break was called because of lawyer Osman Hoxha, and stated that he interrupted the course of the main trial and warned that if this continues he will be fined, while the Judge failed to exercise the right to impose fines as envisaged with the Criminal Procedure Code of the Republic of Kosovo, specifically Article 302, par.1 of the CCRK.⁵⁵

Also, in the Serious Crimes Department, at the Basic Court of Prizren, in the case P.nr. 10/2016, held on April 5, 2017, on the criminal offense of Aggravated murder and Light Bodily Injury, the hearing was interrupted because the lawyer Esat Gutaj stated that he will submit his concluding remarks in writing within three days, as he felt impeded by the Presiding Judge.

While lawyer Esat Gutaj gave his concluding remarks, there were several interruptions by the presiding judge. In the last section of his remarks, he cited cases that occurred in detention centers in Kosovo and he wasn't allowed by the presiding judge to continue further, and the attorney, after several warnings that he will be interrupted, decided to stop his remarks because of, as he put it, interruptions and unnecessary obstacles by the presiding judge and claimed that he will submit his concluding remarks in writing to the court.⁵⁶

At the Basic Court of Prishtina, in the Serious Crimes Department, in the main trial hearing held on 18.07.2017, in the case PKR.162/17, on the criminal offense, Preparation of terrorist offenses or criminal offenses against the constitutional order and security of the Republic of Kosovo under Article 144, paragraph 4 and the criminal offense of Unauthorized Ownership, Control or Possession of Weapons under Article 374, paragraph 1 of the CCRK,⁵⁷ during the presentation of concluding remarks by lawyer Asdren Hoxha, a court assistant/recorder or intern standing by Judge Valbona Selimaj, was whispering something to her, while the judge was listening without talking. This made attorney Hoxha react by asking for the Presiding Judge's attention and that of the trial panel. Members Valon Kurtaj and Vesel Ismajli told him to continue, because they are the trial panel and that is how they operate.

The trial panel should remember that they must listen carefully to the entire judicial process, in particular the concluding remarks of the lawyer or their presentation, rather than create the impression of having no interest on the lawyer and the defense, and also the public.

7. Holding the trial without the presence of the accused

In the Serious Crimes Department in the Basic Court of Prishtina, in the case PKR.369/2016, held on May 19, 2017 on the criminal offenses of Irresponsible Medical Treatment, Illegal Exercise of Medical or Pharmaceutical Activity, and Giving bribes, the hearing was held without the presence of two defendants.

Although two of the accused, Murat Abazi and Halit Çitaku (Murat Abazi came in mid-session) were not present in the hearing, it continued with the reading of the indictment, despite the fact that the legal conditions established by the Kosovo Criminal Procedure Code provide that the accused and their defense counsel must be present at the hearing.

Judge Shadije Gërguri, without separating the procedure for the two missing defendants, continued with the reading of the indictment and the pleas of the defendants.

This action is considered a violation of the provisions of the Code of Criminal

55 Presiding Judge; Xheladin Osmani, Members; Artan Sejrani and Alija Fazli, Prosecutor; Ervehe Gashi, Accused; Sali Ademaj and lawyer Hazr Susuri and Hamdi Zymeraj with lawyer Osman Hoxha. The Prosecutor, in June 2018, withdrew from prosecution.

56 Presiding Judge; Xhevdet Elshani, Members Luan Berisha and Fatmir Kastrati, Prosecutor; Mehdi Sefa, Accused; Nebih Berisha, with lawyer Esat Gutaj, Injured; Eliona Berisha.

57 Presiding Judge; Valbona Selimaj, Members; Valon Kurtaj and Vesel Ismajli, Prosecutor; Drita Hajdari, Accused; Besnik Latif-attorney Albana Kelmendi, Gazmend Haliti-attorney Asdren Hoxha, Enis Latifii- attorney Sabrije Jashari, Milazim Haxhij-attorney Bajram Tmava and Fehmi Musa-attorney. Blerim Qela.

Procedure, namely Article 384 point 1.3 provides that the absence of those whose presence is obliged by law constitutes an essential violation of the provisions of the Procedure Code.⁵⁸

In the Basic Court of Prishtina, in the criminal case PKR 305/16, on the offenses of Participation or organization of an organized criminal group and other criminal offenses, held on January 11, 2017, the hearing continued without interruption, although the accused was not present.

Although the initial hearing was held months ago and some of attorneys of the accused had filed their objections to the indictment, EULEX Judge Victor Partal left Kosovo and the case was assigned to Judge Vladimir Micula. This was the second initial hearing, and although the indictment was filed in May last year, the case is still in the initial phase.

Prosecutor Censick, upon the request of the judge, filed the amended indictment.

Liridona Beqiri and two lawyers of the two accused, Hasan Shaqiri and Haxhi Islami, were not present in the hearing and, according to the law, the defense counsel is required to be present in this case.

Despite the absence of the defendants, Judge Micula postponed the hearing for the three people, and proceeded with the rest to the declaration of please, and did so without separating the criminal proceedings.

According to the Criminal Procedure Code of Kosovo, all the accused should be present at trial, unless the procedure is separated, which in this case did not happen.

8. Poor preparation of prosecutors for trial

Basic Court of Prishtina, General Crimes Department, in the hearing scheduled for June 15, 2017, in case number Pkr. 385/17 on the criminal offense of Corruption, Abuse of official position or authority, the court hearing failed to be held.

The hearing was not held because prosecutor Dulina Hamiti was absent, while her alternate prosecutor, Kujtim Munishi, said that he didn't prepare his concluding remarks and requested the adjournment of the hearing, and hence the hearing was postponed to another date.

This behavior shows the inefficiency of the Prosecution in fighting corruption cases, where a case of an Abuse of official duty remains without due representation by the prosecution due to the prosecutor's failure to come prepared in the case.⁵⁹

The adjournment of the hearing also causes time-wasting to the Court, the parties to the proceedings, as well as prosecution itself.

In the Basic Court of Prishtina, at the Serious Crimes Department, in the hearing of the case PKR.nr.476/15, held on 06.06.2017, on the criminal offense of Abuse of official position or authority under Article 422, paragraph 1 of the CCRK, the hearing initially began with delay, and then proceeded with inactivity by the prosecutor and one of the Members of the panel.⁶⁰

During the hearing, the trial panel member, Vesel Ismajli, was continuously inactive, he was drowsy all the time, the same was felt for the Prosecutor Abdurrahim Islami whose eyes even closed from time to time and had no concentration.

9. Failure to submit case files

In the Basic Court of Prizren, in the Serious Crimes Department, in the case Pkr.275/15, scheduled to take place October 11, 2017 on the criminal offense of Organized crime, Usury, and Organization of pyramid schemes and illegal gambling, the hearing failed to be held. The hearing failed because the Accused Zyrafete Hukolli, against whom another

58 Individual judge; Shadije Gerhuri, Prosecutor; Florije Salih-Shamolli, Accused; Ferid Agani, Gani Shabani, et al.

59 Presiding Judge; Beqir Kalludra, Members; Shasivar Hoti and Shadije Gerguri, Prosecutor; Kujtim Munishi, Accused; Fevzi Hajdari with lawyer Ramë Gashi and Tautant Tahirsylaj with lawyer Behar Ejupi. Injured party; Ramush Misini.

60 Presiding Judge; Valbona Musliu Selimaj, Members; Vesel Ismajli, Nora Blaca, Prosecutors; Abdurrahim Islami, Accused; Basri Muja with lawyer Bajram Tmava, Ferdije Zhushi with lawyer Gezim Kollçaku, Armend Muja with lawyer Rame Gashi. Injured party; College "Universum", College "ISPE"

case was ongoing for the criminal offense of deliberate arson, was missing and it was announced that she was in the detention center in Peja.⁶¹

What was important in this hearing was the fact that lawyer Arianit Koci complained to the panel that he had not received any document which stated that Benson Buza's measure of house arrest had been terminated. The lawyer said that he never received court documents from the beginning of this trial.

There were also reactions from Special Prosecutor Merita Bina-Rugova, who expressed her concern that decisions by the trial panel are being taken and the state prosecutor's office is not being notified, thereby causing the deadlines for appeal to be missed. The Presiding Judge said that this is an issue of the administration rather than the trial panel, because the panel has proceeded with the decisions.

Failure to provide the case files is a procedural violation and infringement to the Criminal Procedure Code, since the parties must be provided with the case files and exercise the right to appeal court decisions. Regarding this Code of Criminal Procedure Article 474, paragraph 3 explicitly states:

"Copies of decisions against which an appeal is permitted shall be served along with instructions on the right of appeal".

10. Lack of court interpreters

In the Serious Crimes Department, at the Basic Court of Prizren, in the case P.nr.131/16, dated 16.11.2017, on the criminal offense Abuse of official position or authority, in addition to the fact that the hearing started with 50 minutes of delay, because the prosecutor at the same time was engaged in another trial, another issue in this hearing was the lack of a Bosnian-language court interpreter, which prompted the hearing to be suspended for another day.

Bean Haxhihasani, Director of Urbanism, had also prepared his concluding remarks in writing. However, he was unable to elaborate verbally his remarks as he lacked adequate Bosnian language interpreter. The court interpreter present in the courtroom was only authorized to interpret in Turkish and he stated that he was unable to translate the concluding remarks prepared by the accused. Since there was no other interpreters present in the court, the hearing was adjourned to continue at another date.⁶²

61 Trial panel: Xheladin Osmani, Members: Artan Sejrani and Refki Piraj, Prosecutor: Merita Bina-Rugova, Accused: Tunë, Marian, Gjon, Kastriot, Gjekson and Gëzim Kqira, Benson Buza, Besfort Omaj, Zyrafete Hukolli etc. Attorneys: Azem Vllasi, Ndrec Doda, Esaf Gutaj, Hazër Susuri, Kosovore Kelmendi, Bahrie Besimi etc. The injured parties: Zef and Pal Gruda.

62 Presiding Judge; Ajser Skenderi, Members; Teuta Krusha and Kimete Kicaj, Prosecutor; Genc Nixha, Accused; Salim Jenuzi (attorney Ruzhdi Berisha), others without a lawyer: Bean Haxhiasani, Vetim Hasani and Nexhat Selaj.

V. Technical violations

Since the beginning of the court monitoring project in 2008, BIRN and INTERNEWS KOSOVO paid particular attention to the handling of technical problems which have proven to have been factors paving the way for other problems and eventually lead to procedural violations.

In 2017, BIRN and INTERNEWS KOSOVO monitors also encountered cases where court hearings do not start on time, dress code was not respected, phones used during hearings, directly affecting concentration, hearings held in offices judges instead of in the courtroom, as well as cases where hearings are held in courtrooms and no official audio and video recording tools are used, as well inactivity of judges when engaged as members of the panel.

Although the issue of technical violations was considered as overcome, in reality, statistical data still speaks of a prevalence of such violations.

BIRN and INTERNEWS KOSOVO, in 2017, monitored 307 court hearings, of which 284 were monitored in the Serious Crimes Department and 23 hearings monitored at the General Crimes Department.

DEPARTMENT



Table 7. Cases monitored by BIRN and INTERNEWS KOSOVO.

Out of 307 monitored court hearings, 89, or 29%, of hearings scheduled for trial were not held, while 218 hearings were held.

218 court hearings held will be used as the sample to measure the findings of the ongoing technical violations.

HAS THE HEARING BEEN HELD?



Table 8. Number of monitored hearings that were held and those that were not held

In 2017, court hearings continued to be reported both on the screens placed at the entrance of the court, as well as online, on the KJC website.

Of the 218 monitored sessions, 168 have been announced, and 50 haven't. The number of unannounced court hearings is this year too high, as 23 percent of the monitored hearings have not been announced, despite the fact that courts now have the information officers.

BIRN and INTERNEWS KOSOVO measurements, from 2010 to 2017, of the announcement of court hearings in announcement boards is as follows:

HAS THE COURT HEARING BEEN ANNOUNCED?



Table 9. Number of hearings announced through advertisements

The following table reflects court hearings that started on time and those that started late, in 2017.

According to statistics, in 2017, 41% of hearings didn't start on time.

DID THE HEARING START IN TIME?



Table 10. The number of monitored hearings that have started on time and those that haven't

Over many years, many hearings have been held in offices of judges rather than in courtrooms, thus the venue of the hearing was continuously subject of BIRN and INTERNEWS KOSOVO monitoring interests.

According to data from our monitoring, only 9% of monitored court hearings have been held in offices, while the rest, 91%, of monitored hearings have been held in courtrooms, which also marks an increase in transparency and court's readiness to be open to the public.

WHERE WAS THE HEARING HELD?



Table 11. Venue where the hearing was held

Following frequent reports by BIRN and INTERNEWS KOSOVO monitors on the failure of judges and parties in proceedings to wear uniforms, the Judicial and Prosecutorial Councils have ensured the provision of uniforms for all judges and prosecutors. The same was done by the Kosovo Bar Association.

In 2017, in only 6% of monitored hearings uniforms were not used.

Measurement, from 2010 to 2017, of the use of uniforms is as follows:

ARE UNIFORMS USED?



Table 12. Failure to use official uniforms in court hearings

Of 6 percent of monitored sessions, or of 12 court hearings, lawyers comprise the largest group failing to wear uniforms, in 5 monitored cases, followed by prosecutors and judges.

WHO WORE UNIFORMS?

<u>ADVOCATE</u>	<u>PROSECUTOR</u>	<u>TRIAL PANEL</u>	
5 42%	2 17%	1 8%	
<u>TRIAL PANEL, ATTORNEY</u>	<u>TRIAL PANEL, PROSECUTOR</u>		TOTAL
2 17%	2 17%		12

Table 13. The parties in proceedings who have not used the uniform

Since many parties are present in hearings, including lawyers, prosecutors, police officers and members of the public, as well as judges and the trial panel, this year the report also monitored the use of phones. Of the hearings monitored during 2017, phones were used in 11 percent of them.

The measurement of the use of phones, from 2010 to 2017, is as follows:

WERE PHONES USED?

<u>NO</u>	<u>YES</u>	TOTAL
195 89%	23 11%	218

Table 14. Use of phones during hearings

Of the 11 percent of the use of phones, namely 23 court hearings monitored during 2017 where phones were used, the group with the largest use is lawyers, in 11 cases, followed by the judges, and prosecutors. The other part consists of other parties present in the hearing, including police officers and members of the public.

WHO USED THE PHONE?

<u>ATTORNEY</u>	<u>JUDGE</u>	<u>PLAINTIFF</u>	TOTAL
11 48%	5 22%	1 4%	23
<u>POLICE OFFICER</u>	<u>PROSECUTOR</u>	<u>PROSECUTORS, ATTORNEYS</u>	
2 9%	3 13%	1 4%	

Table 15. Parties using the phone during the hearing

Audio and video recording of court hearings continues to be one of the most troubling technical violation findings in 2017.

In 90 percent of the monitored hearings no official recording equipment for court hearings was used.

The failure to record court hearings, which is also defined by the Criminal Procedure Code of the Republic of Kosovo, leads to the non-compliance of this code, despite the fact that the courts have the means, at least in one of the courtrooms, to do so.

WAS AUDIO AND VIDEO RECORDING BEEN USED IN THE HEARING?



Table 16. Use of audio and video recording in hearing

BIRN and INTERNEWS KOSOVO Report in 2016, drafted through monitors with extensive experience in court monitoring, given the inactivity of judges when they are members of the panel, for the first time measured their involvement as members of the the panel. The same monitoring continued in 2017.

Often, experienced and dedicated judges, in the trials where they are the single judge in the case, are very active. But when they are engaged in trial panels, they almost always are inactive.

Measurements of BIRN and INTERNEWS KOSOVO monitors, from 2016 to 2017, observed significant improvements in this regard.

Of the 218 court hearings, judges appeared to be moderately active in 21 percent of cases, very active in 18 percent, and little active in 16 percent, and inactive in 10 percent of cases. Compared to last year, this year the judges were more active, as last year the judges were inactive in 22 percent of cases.

HOW ACTIVE WERE THE MEMBERS OF THE TRIAL PANEL?

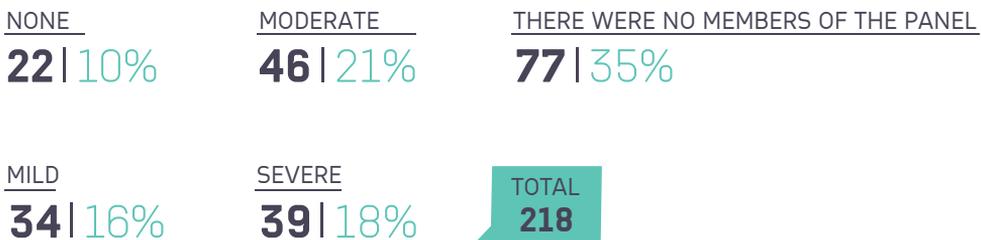


Table 17. How active were the members of the trial panel?

RECOMMENDATIONS

To Kosovo Prosecutorial Council, State Prosecution and the Justice Academy:

Review the performance appraisal process of prosecutors to ensure that qualitative assessment is used as basis for prosecutors' evaluation;

Take disciplinary action against prosecutors who appear unprepared in hearings;

Establish special and mandatory training programs for prosecutors involved in corruption cases;

Establish trainings with a special focus on preparing prosecutors for investigating and prosecuting financial crimes;

Establish special training programs to improve the performance of prosecutors in terms of arguing and proving the relationship between the acquired property and the criminal offense;

Increase the number of cases which, in accordance with the Criminal Procedure Code, can be resolved through mediation;

To the Kosovo Judicial Council and the Justice Academy:

To urgently increase the number of judges in the Basic Court in Prishtina;

Remove the initial 6-month limit for temporary transfers of judges and find ways to prevent the return of the judges transferred to the basic courts without completing the cases assigned to them;

Review the performance appraisal process of judges;

Issue disciplinary measures against judges who, as a result of inadequate management, cause delays in hearings;

Take disciplinary measures against judges who do not respect the deadlines set forth in the Criminal Procedure Code and thus cause undue delays;

Strengthen the sentencing policy in corruption cases;

Establish special training programs for judges in cases of corruption and economic crimes;

Establish special and mandatory training programs for judges to provide basic knowledge in the field of procurement, as the largest number of corruption cases is related to the spending of public money;

Every judge that has cases of corruption must have professional associates;

Every hearing in a corruption case must be provided with audio and video recording equipment;

Review cases where there has been a closing or limiting of the recording of hearings without reason and impose disciplinary measures for such violations;

Clarify and enhance the transparency and access of civil society to Kosovo courts. Indictments must be made public and accessible from the moment they are filed to the court, and the courts should be held responsible to ensure such access.

To the Assembly of Kosovo, the Ministry of Justice:

The new Draft Law on Courts in Kosovo must envisage the establishment of a Special Court with powers to address cases of the Special Prosecution Office of Kosovo, with a focus on corruption cases;

Submit, as soon as possible, to the Assembly of Kosovo, Draft Laws on the Kosovo Judicial and Prosecutorial Councils;

Submit, as soon as possible, the Law on Disciplinary Responsibility of Judges and Prosecutors;

Kosovo Assembly to increase its budget for the Kosovo Judicial and Prosecutorial Councils, in accordance with the requirements presented, and the expectations from the justice system.



