



# HUMOURING CORRUPTION



ANNUAL COURT MONITORING  
REPORT **2020**

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## Table of Contents

ACRONYMS .....	4
EXECUTIVE SUMMARY .....	5
METHODOLOGY.....	8
INTRODUCTION .....	11
STATISTICAL DATA ON CORRUPTION CASES KOSOVO WIDE FROM 2020 .....	13
Methods of resolving corruption cases at the country level .....	16
Statistical data for corruption cases by court .....	18
ANALYSIS OF SENTENCING PRACTICES IN CORRUPTION CASES .....	24
Sentencing practices in corruption cases .....	24
Overall findings related to sentencing practices in corruption cases .....	25
Analysis of Individual Courts .....	33
RECOMMENDATIONS .....	70

## ACRONYMS

### **BIRN**

Balkan Investigative Reporting Network

### **I/KS**

Internews Kosova

### **KJC**

Kosovo Judicial Council

### **KPC**

Kosovo Prosecutorial Council

### **SKJC**

Secretariat of Kosovo Judicial Council

## EXECUTIVE SUMMARY

This monitoring report analyses the sentencing practices of Kosovo’s courts in corruption cases during 2020 and the performance of the judiciary in handling such corruption cases. The analysis of 40 judgements issued by Kosovo’s courts on corruption cases in 2020, reveals that sentencing practices in corruption cases do not comply with the requirements of the Criminal Code and the Criminal Procedure Code of the Republic of Kosovo, nor the Sentencing Guidelines adopted by the Supreme Court in 2018.

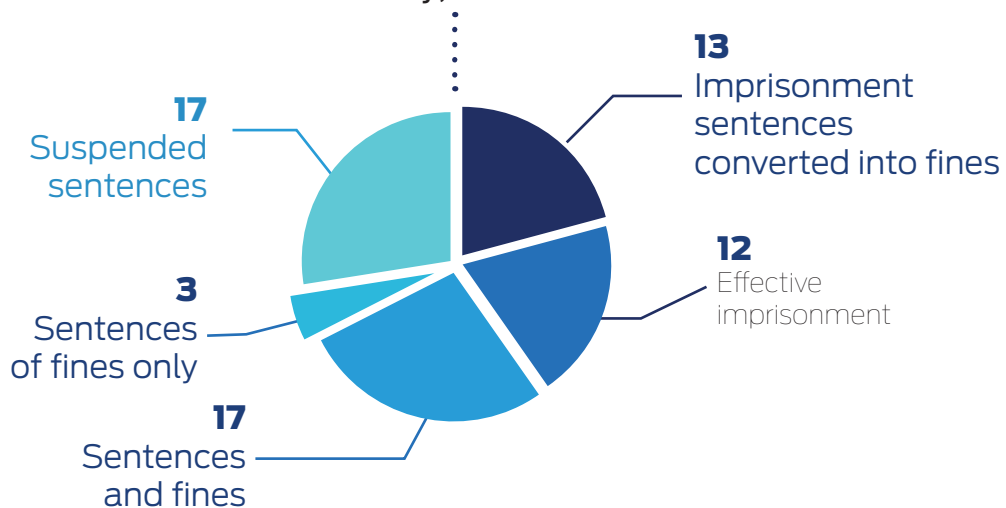
The data from these 40 analysed judgements reveal that, in 2020, the courts issued sentences, suspended sentences, and permitted conversions of prison sentences into fines based on circumstances that were not justified. In most of the cases, Kosovo’s courts applied mitigating circumstances to issue lenient sentences without justification, and did not apply circumstances that would aggravate sentences as foreseen by the rules, not even for a single case.

By rendering sentences that did not adequately reflect the weight and importance of the criminal offences for which the accused were found guilty, the courts did not convince society that Kosovo’s judiciary is functioning fairly and impartially.

The quality of a judgement depends on the quality of its reasoning – including the reasons given for determining the severity of the sentence issued. In 2020, Kosovo’s courts did not fulfill the criteria for making quality judgements in the cases analysed regarding corruption.

### **Non-compliance with the Criminal Code and the Criminal Procedure Code, and a complete disregard for the Guidelines in the issuance of imprisonment sentences, conditional sentences, and fines, which were without proper reasoning:**

- From the 40 analysed judgements, 12 were sentenced with effective imprisonments, 17 with suspended sentences, 13 with imprisonment to fine conversions and 3 with fines only;



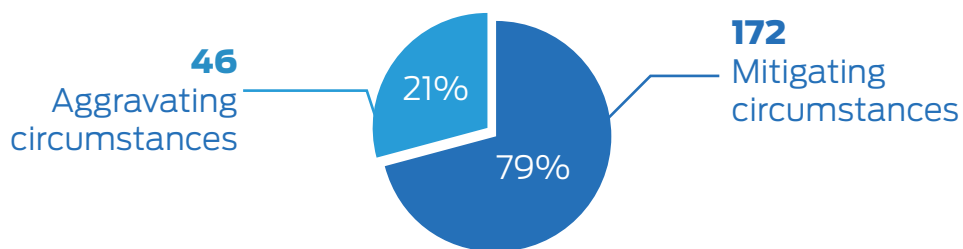
- Of the 17 suspended sentences, 13 conversions of imprisonment to fines, and 3 fines, not one was issued with proper reasoning.

**Recording mitigating and aggravating circumstances without due justification:**



The 40 judgements contained 218 recorded circumstances, which were not fully justified in accordance with the Sentencing Guidelines;

- Out of the 40 judgements analysed, 218 circumstances were recorded, of which 172 or 79% were mitigating and 46 or 21% were aggravating;



- In 18 out of 40 cases (45%), no aggravating circumstances were recorded;
- Only 3 out of 40 cases (8%) recorded more aggravating circumstances than mitigating ones;
- Out of the 40 judgements, 35 or 86% contained more mitigating than aggravating circumstances.

**Mitigation without justification:**

- In 31 of the 40 reviewed judgements (78%), courts applied maximum mitigation within the limits of sentencing when delivering sentences;

**78%**  
Of the cases

In 31 out of 40 analysed judgments

The Maximum mitigation of penalty was announced.

In 5 out of 40 cases

**12.5%**  
Of the cases

The maximal mitigation of punishment was applied, according to article 72 of the Criminal Code of Kosovo.

- In five of the 40 analysed cases, the courts did not apply the maximum mitigation per Article 72 of the Criminal Code of Kosovo when issuing sentences (i.e., greater mitigation was possible);
- In two of the 40 cases, a partially mitigated sentence was imposed that was below the limit provided per Article 71 of the Criminal Code of Kosovo;
- Two of the 40 cases were issued with sentences based on applying more mitigating circumstances than aggravating ones;
- All of the 40 reviewed judgements from 2020 were issued without a starting point, although this is required, and not one aggravated punishment was issued.

**Non-application of the relevant purposes and principles in determining sentences:**

- None of the 40 analysed judgements contained a full justification of the purposes of the sentences, apart from superficially mentioning them;



- None of 40 analysed judgements contained a correlation of principles with circumstances, as foreseen by the Guidelines, in determining mitigating and aggravating sentences.

**No accessory punishments:**

- The analysis of the 40 judgements revealed that no court had issued accessory punishments.

Another matter highlighted in the report is the decreased performance of the State Prosecutor in terms of filing indictments for corruption cases and by the courts in terms of resolving corruption cases. The latter is reflected in the increased number cases that remain unresolved by courts across the country in 2020, compared to other years. The comparative analysis of countrywide statistical data leads to the following findings:

## ■ The comparative analysis of countrywide statistical data leads to the following findings:

- The number of recorded indictments on corruption cases filed in 2020 was down 19% compared to 2019 data and down 44% compared to 2017 data;
- Kosovo's courts resolved 25% fewer corruption cases in 2020 than they did in 2019 and 56% less than in 2017;
- In 2020, the courts resolved only 28% of active corruption cases, compared to 36% in 2019, 46% in 2018, and 45% in 2017;
- The number of unresolved corruption cases in Kosovo's courts in 2020 was 5% higher than in 2019 and 7% higher than in 2018.

## METHODOLOGY

The Balkan Investigative Reporting Network (BIRN) and Internews Kosova (I/KS) were the first civil society organisations in Kosovo to monitor the country's justice sector closely. This was done by monitoring, and publishing reports on, the functioning, management, efficiency and efficacy of the justice sector in Kosovo.

For the 15th consecutive year, BIRN and I/KS are monitoring the justice sector and publishing the findings, with attention to the most current and crucial issues in this sector, in the Annual Court Monitoring Report, as they have done year after year.

Corruption remains the focus of the report in 2020, wherein we investigate Kosovo's justice sector response to this phenomenon.

This year's report is separated into two sections. The first section addresses the efficiency of the country's justice system through an analysis of statistical data obtained from public documents and court monitoring, including comparative analyses of Kosovo's judiciary performance in 2020 against that in previous years, dating back to 2017.

The second, more substantial section of the report, is dedicated to a matter that is crucial to the functioning of the justice system – sentencing policies related to corruption cases.

Through the analysis of selected judgements on corruption cases by Kosovo courts in 2020, the report reflects on whether courts are issuing merit based sentences in accordance with the weight of the criminal offence of corruption and whether the sentences are issued in compliance with the Criminal Code and the Sentencing Guidelines.

The selection of judgements referred to in this report resulted from a thorough analysis of Kosovo wide court proceedings in 2020. Firstly, the category of criminal offence was determined, that is, the criminal offence of corruption and abuse of duty, and secondly, through an extensive search of public documents and the KJC webpage, the selection of 40 judgements of conviction on corruption cases issued in 2020 was finalised.



BIRN and I/KS requested and received from the courts, all corruption case judgements from 2020, of which they chose to focus on the 40 conviction judgements only, excluding those with plea bargain agreements.

All judgements were analysed with reference to the requirements of the Criminal Code (2012 and 2019) and the indications of the Sentencing Guidelines, to assess whether judgements were compiled as required by the Law.

This section of the report presents the findings of the analysis of the selected corruption case judgements of conviction. The analysis compares the foreseen sentence for a specific criminal offence against the sentence issued, and assess how the courts compiled each judgement, from the recorded mitigating and aggravating circumstances, to the justification used in weighing these circumstances, and whether the purposes and principles that must be taken into account when determining a sentence were properly recorded and justified .

The data from the analysis of the elements that were used to determine the sentences issued in each of the monitored corruption cases give an overall impression of how Kosovo's justice system treats corruption cases, particularly when perpetrators are found guilty.

The remainder of the report is dedicated to the direct monitoring of court hearings Kosovo wide and at all levels of the justice system. BIRN and I/KS court monitors reviewed a total of 630 court hearings wherein they reported violations and irregularities in the actions of judges and prosecutors.

An important segment of this report is dedicated to an analysis of statistical data on the handling of corruption cases by Kosovo's courts, offering an overview of trends in the filing of corruption indictments, resolving of corruption cases, and the methods used to resolve them.

Using official data obtained from the KJC, the report presents a comparative analysis of the judiciary's performance in resolving corruption cases against that of the past four years.

The analytical method is applied to the analysis of the individual cases featured in this report, as well as to other sections where fair treatment of complex issues and themes is required.

The comparative method is used to draw parallels between the cases and thus delve deeper into the issues at hand. The latter is a reliable method in establishing a clearer and more accurate overview of the implementation and functioning of procedural and technical rules. BIRN and I/KS have created an authentic database, with 15 years' worth of data generated from their court monitoring activities.

When adding the 630 court cases monitored in 2020, the total number of cases monitored within the court monitoring project is 12,898. This makes for a powerful database that enables comparative and trends analyses, and the measuring of progress over time.

**12,898**

Total

513	—	2008
1,248	—	2009
2,147	—	2010
2,525	—	2011
1,441	—	2012
820	—	2013
501	—	2014
600	—	2015
686	—	2016
307	—	2017
520	—	2018
960	—	2019
630	—	2020

## INTRODUCTION

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BIRN and I/KS, the first organisations from Kosovo to monitor and evaluate the country's justice system, present the Annual Court Monitoring Report 2020, its 15th consecutive report of this kind.

The report is a result of continuous monitoring of the judicial and prosecutorial systems at all levels. It aims to identify any shortcomings and inconsistencies in the justice system that threaten it and to provide concrete recommendations to address these areas. The purpose is to improve efficiency, accountability and transparency in the justice sector, as one of the key pillars of state-building.

This year's report focuses on sentencing policies and practices across all of Kosovo's courts relating to corruption cases. The courts have been continuously criticized for the manner in which they deal with corruption cases, such as allowing cases to drag out and go into statutory limitation, issuing judgements that lack quality, which are usually acquittals, and issuing sentences that are inadequate and unproportioned when compared to the corruption offence and that in turn do not fulfil the purpose of the sentence itself.

The primary role of the courts is to issue adequate, justifiable, coherent, legal, and transparent sentences to the accused who have been found guilty. In cases concerning corruption and abuse of duty, the courts need to be meticulous in their sentencing, knowing that society needs to fight this phenomenon, which is cited as a key hindrance to social and economic development in the country.

Almost all domestic and international reports, including those produced by BIRN and I/ KS, reflect shortcomings in the investigation process in corruption cases, starting with the very initial phase of investigation, through to the unsatisfactory quality of indictments, especially concerning financial investigations and identifying assets obtained by means of criminality, to prolonged judicial processes and low quality judgements that are later annulled by the high courts. The Supreme Court has also concluded that individuals accused of corruption were unlawfully freed in certain cases.

These recorded deficiencies usually result in acquittals or dismissals, while the courts deem it sufficient to simply conclude that damage was caused, without addressing the responsibility and repudiating the consequences.

Dissatisfaction with the performance of the judiciary is not only due to its failure to identify and hold perpetrators of corruption to account. The cases where courts have concluded that the actions of the accused for corruption fulfilled the elements of criminal offence and provided their responsibility and yet the sentences issued are clearly noncompliant with the weight of the criminal offence are plenty. What is even more alarming, is that courts have delivered conditional sentences or symbolic fines in the majority of corruption cases. Even in cases where courts have ruled on imprisonment, the sentence severity was less than what was foreseen in the law and the accused was able to convert the imprisonment into a fine.

In 2018, the justice sector, led by the Supreme Court of Kosovo, produced Sentencing Guidelines to provide more elaboration for those tasked with enforcing the Law. Although not obligatory, the Guidelines aim to provide solutions to problems identified when determining the type and duration of sentences, unify judicial practice and support the issuance of adequate sentences that are proportionate to the weight of the criminal offences that the accused are convicted of.

Through an analysis of the 40 corruption case judgements with convictions from 2020, the report will explore the extent to which the issued sentences comply with the provisions of the Criminal Code and the instructions as per the Guidelines that serve to explain the provisions of the Code.

The first section of the report is dedicated to the analysis of statistical data from the previous four years concerning cases from the Chapter of Corruption and will reflect on performance or lack thereof, by judges and prosecutors within the Republic of Kosovo. Further analysis of data dating back four years indicates, quantitatively, the shortcomings of Kosovo's courts in dealing with corruption cases and the ever-decreasing efficiency of the Prosecution in fighting corruption.

The report also takes a comparative look at data from each of Kosovo's courts from the previous four years to gain insight into how each performed in dealing with corruption cases over time. The same approach is used to review how individual courts resolved cases over the past four years.

The report concludes with a recommendations section that provides workable solutions to the identified shortcomings, with the intention to improve the performance of Kosovo's justice system and fulfil citizens' expectations and needs concerning the justice sector.

## STATISTICAL DATA ON CORRUPTION CASES KOSOVO WIDE FROM 2020

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2020 was a difficult year for the justice sector. Apart from the problems identified during previous years, the system was also challenged by the COVID-19 pandemic, which was affecting all spheres of life across the world, and undoubtedly limited the provision and quality of judicial services offered to Kosovo citizens in 2020.

Only a few days after the first COVID-19 positive cases emerged on 13 March 2020, the Kosovo Judicial and Kosovo Prosecutorial Council limited their services, announcing that they would deal with urgent cases only, such as those concerning pre-detention and domestic violence. Many staff members were let go and only essential personnel remained.

This limited functionality lasted for many months in 2020, and statistical data shows that the result was an increase in the number of unresolved corruption cases, a decrease in the number of indictments on corruption, and a decrease in the number of cases resolved in court.

Bearing in mind the existing negative trends of the past three years and the nature of the pandemic, it is difficult to determine how much of the worsening situation was due to a pandemic and how much to an inefficient judiciary. Needless to say, it is almost certain that the pandemic will be used as a scapegoat in justifying the decreased performance of the sector.

This report, compiled by BIRN and Internews Kosova, uses numerical data to show that Kosovo's courts received far fewer corruption cases in 2020 compared to previous years, but surprisingly had an increase in the number of unresolved cases. The data indicated that even in those cases where courts ruled on a corruption conviction, the trend was to issue the perpetrators with lenient punishments that were not proportionate to the weight of the criminal offence, nor reflective of the consequential damage or financial loss; these were usually in the form of conditional sentences and symbolic fines.

The data collected by BIRN and I/KS and that obtained from the Secretariat of the KJC show that, in 2020, there were 19% fewer indictments related to corruption filed to the court and there were 25% fewer cases of corruption completed by Kosovo courts but a 5% increase in unresolved corruption cases.

The following table shows the undisputed decrease in the level of efficacy among prosecutors and judges in Kosovo in 2020, compared to the three previous years. It highlights the annual performance of individual courts in dealing with corruption cases. Furthermore, it shows the frequency of each sentence issued, indicating mild use of harsh punishments for those accused and found guilty of corruption or abuse of duty.

**Statistical data on corruption cases for 2017**

Courts 2017	Inherited cases	Received cases	Resolved cases	Imprisonment	Fine	Suspended sentence	Acquittal	Dismissal	Other method	Unresolved cases
Prishtina	198	73	88	14	14	22	9	9	20	183
Prizren	23	27	36	7	7	8	10	1	3	14
Peja	22	30	37	2	11	12	4	4	5	15
Mitrovica	19	20	12	1	5	1	1	2	2	27
Gjilan	45	37	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	13
<b>Total</b>	<b>336</b>	<b>223</b>	<b>254</b>	<b>32</b>   12.4%	<b>58</b>   22.8%	<b>56+3</b>   22%	<b>40</b>   15.7%	<b>21</b>   8.2%	<b>44</b>   17.2%	<b>305</b>

**Statistical data on corruption cases for 2018**

Courts 2018	Inherited cases	Received cases	Resolved cases	Imprisonment	Fine	Suspended sentence	Acquittal	Dismissal	Other method	Unresolved cases
Prishtina	183	67	86	10	14	16	20	8	18	164
Prizren	14	19	24	5	5	6	5	1	1	9
Peja	15	15	17	1	2	3	5	2	4	13
Mitrovica	27	23	11	1	4	1	3	2	0	39
Gjilan	44	16	40	3	7	4	21	5	0	20
Ferizaj	9	11	9	1	2	3	2	1	0	11
Gjakova	13	14	20	1	3	4	5	1	6	7
<b>Total</b>	<b>305</b>	<b>165</b>	<b>207</b>	<b>22</b>   10.6%	<b>37</b>   17.8%	<b>38</b>   18.3%	<b>61</b>   29%	<b>20</b>   9%	<b>29</b>   14%	<b>263</b>

**Statistical data on corruption cases for 2019**

Courts 2019	Inherited cases	Received cases	Resolved cases	Imprisonment	Fine	Suspended sentence	Acquittal	Dismissal	Other method	Unresolved cases
Prishtina	164	55	66	10	19	8+2	13	6(+4) <sup>2</sup>	4	153
Prizren	9	36	20	5	4	4	2	2(+3)	0	20
Peja	13	9	10	1	1	5	2	1	0	12
Mitrovica	39	19	18	5	0	5	1	6	1	40
Gjilan	20	22	22	6	2	2	9	3	0	20
Ferizaj	11	9	7	1	3	2	0	0	1	13
Gjakova	7	6	7	2	3	1	1	0	0	6
<b>Total</b>	<b>263</b>	<b>156</b>	<b>150</b>	<b>30</b>   20%	<b>32</b>   21.3%	<b>27+2</b>   19.3%	<b>28</b>   18.6%	<b>18 (+7)<sup>3</sup></b>   12%	<b>6</b>   4%	<b>269</b>

## Statistical data on corruption cases for 2020

Courts 2017	Inherited cases	Received cases	Resolved cases	Imprisonment	Fine	Suspended sentence	Acquittal	Dismissal	Other method	Unresolved cases
Prishtina	153	46	42	3 7%	8 18%	6 14%	16 38%	4 10%	5 12%	157 +3%
Prizren	25	18	17	3 18%	7 41%	1 6%	3 18%	2 12%	1 6%	26 4%
Peja	12	7	9	2 22%	2 22%	3 33%	0	0	2 22%	10 -16%
Mitrovica	40	13	13	2 15%	1 8%	3 23%	5 38%	2 15%	0	40
Gjilan	20	15	17	3 18%	8 47%	0	4 24%	1 6%	1 6%	18 (-10%)
Ferizaj	13	16	9	4 18%	2 18%	0	2 18%	0	1 18%	20 18%
Gjakova	6	10	5	0	5 100%	0	0	0	0	11 (+83%)
<b>Total</b>	<b>269</b>	<b>125</b>	<b>112</b>	<b>17</b>   15%	<b>33</b>   29%	<b>13</b>   11%	<b>30</b>   27%	<b>9</b>   8%	<b>10</b>   9%	<b>282</b>  +5%

## Decreased number of indictments filed on corruption cases

The year 2020 showed a continuous decline in the efficiency of the prosecution when it came to prosecuting corruption offenders through the filing of indictments in this category of criminal offences.

By comparison, Kosovo's courts accepted 223 new cases of indictments for corruption in 2017, and this number significantly reduced in subsequent years. In 2018, there were 165 indictments filed for corruption offences, in 2019 there were 156 indictments, and in 2020 there were just 125 indictments for corruption.

## Number of indictments filed for corruption 2017-2020



## Decrease in the number of unresolved cases

	Inherited cases from the previous year	Received cases processed	Total processed cases	Resolved cases <sup>4</sup>	Cases remaining at the end of the year
2017	336	223	559	254 45%	305
2018	305	165	470	207 44%	263 -13%
2019	263	156	419	150 36%	269 +2%
2020	269	125	394	112 28%	282 +5%

<sup>4</sup>The percentage was calculated considering the number of cases in process and number of cases finished.

The data on corruption cases from the previous four years are concerning, particularly in regard to the decreasing number of resolved corruption cases.

In 2020, Kosovo Courts received fewer cases compared to the previous year, and despite a larger number of judges being assigned to resolve these cases, it turns out that Kosovo's courts resolved fewer corruption cases than in previous years. Kosovo's courts resolved 254 corruption cases in 2017, 207 cases in 2018, and 150 cases in 2019, while in 2020, the courts resolved only 112 cases or 25% fewer corruption cases than in 2019 and 55% fewer cases than in 2017, which shows a drastic decrease in the number of resolved cases.

Other data that point to the poor performance of courts in resolving corruption cases is the ratio of resolved cases to active cases.

In 2017, Kosovo courts accepted a total of 559 active corruption cases, from which 254 or 45% were later completed. In 2018, Kosovo courts had a total of 470 corruption cases in process, with 207 or 44% later solved. In 2019, Kosovo courts had a total of 419 active corruption cases, from which 150 or 36% were then resolved. In 2020, Kosovo courts had a total of 394 corruption cases in process and managed to resolve only 112 or 28% of cases, which shows a decrease in the number of resolved cases compared to previous years.

### Increased number of unresolved cases

The reduction in the number of resolved corruption cases in 2020, inevitably contributed to the increased number of unresolved and deferred cases.

In the year 2017, Kosovo courts had 559 cases in process, of which 305 (55%) were unresolved and deferred to 2018. In 2018, there were 470 active cases in courts, of which 263 (56%) were unresolved, while out of the 419 active court cases in 2019, 269 cases (52%) remained unresolved. In 2020, of the 390 cases in process, 282 or 72% of cases were unresolved, to be taken up again in 2021. The proportion of cases that remain unresolved at year-end had been at just over half in the 3 years before 2020, compared to 72% in 2020.

Methods of resolving corruption cases at the country level

	Methods of resolving corruption cases	Total resolved cases	Imprisonment	Fine	Suspended sentence	Acquittal	Other method
2017	<b>254</b>	<b>32</b> 13%	<b>58</b> 23%	<b>59</b> 23%	<b>40</b> 16%	<b>21</b> 8%	<b>44</b> 17%
2018	<b>207</b>	<b>22</b> 11%	<b>37</b> 18%	<b>38</b> 18%	<b>61</b> 29%	<b>20</b> 10%	<b>29</b> 14%
2019	<b>150</b>	<b>30</b> 20%	<b>32</b> 21%	<b>29</b> 19%	<b>28</b> 19%	<b>25</b> 17%	<b>6</b> 4%
2020	<b>112</b>	<b>17</b> 15%	<b>33</b> 29%	<b>13</b> 12%	<b>30</b> 27%	<b>9</b> 8%	<b>10</b> 9%



## **Punishment by imprisonment**

The analysis of statistical data of the manner of resolving corruption cases by Kosovo courts shows that there is a decreased number of judgements of conviction with imprisonment for corruption cases in 2020. Out of 112 corruption cases finished in 2020, only in 17 of them (15%) a punishment of imprisonment was issued.

This data shows a continuous decrease in the number of judgements of conviction with imprisonment issued by Kosovo courts compared with the previous years. However, even if we look at it as a percentage in relation to the number of resolved cases, there is a decreased number of judgements of conviction with imprisonment compared to the previous year.

In 2019, out of a total of 150 corruption cases finished, 30 or 20% of the total number were with imprisonment, whereas this decreased to 15% in 2020.

## **Suspended sentences and fines**

By issuing fines and suspended sentences for corruption and abuse of duty offences, the courts indicated an unwillingness to give punishments that fit the weight of this type of criminal offence, despite convicting the accused. One could interpret this 'soft' handling of perpetrators, by issuing a suspended sentence or a laughable fine, as meaning that the Sentencing Guidelines, which were approved by the judiciary, are not being followed.

In 2020, out of 112 corruption convictions, 13 or 12% were issued with suspended sentences and 33 or 29% were issued with fines.

The high number of fines issued as punishment in corruption cases is up 8% in 2020 from the previous year and it is concerning that almost 1/3 of corruption cases are being treated with such leniency.

## **Acquittals and Dismissals**

The high number of acquittals and dismissals as a method used to resolve corruption cases is worrisome.

High acquittal rates indicate that indictments are of poor quality and that courts are processing them inefficiently. For an indictment to result in an acquittal, it must go through multiple legal phases, such as being tried in the basic courts and the court of Appeals, which is extensive use of judicial resources, only to have all charges dropped.

Thus, it is of great concern that from a total of 112 corruption cases resolved in 2020, 30 or almost 1/3 (27%) ended up as acquittals, while 9 (8%) were dismissed by the courts, which includes those that exceeded the statute of limitations deadlines.

## Statistical data for corruption cases by court

### Basic Court of Prishtina

	Inherited cases	Received cases	Resolved cases	Imprisonment	Fine	Suspended sentence	Acquittal	Dismissal	Other method	Unresolved cases
2017	198	73	88	14 15.9%	14 15%	22 25%	9 10%	9 10%	20 22.7%	183
2018	183	67	86	10 11.6%	14 16.2%	16 18.6%	20 23.2%	8 9.3%	18 20.9%	164
2019	164	55	66	10 15%	10 28%	8 12%	13 19.6%	6 15%	4 6%	153
2020	153	46	42	3 7%	8 19%	6 14%	16 38%	4 10%	5 12%	157 (+3%)

Table with statistical data for the corruption cases 2017-2020

The Basic Court of Prishtina started 2020 with 153 cases inherited from the previous year, while in 2020 it received a total of 46 new cases, bringing the total number of corruption and abuse of official duty cases in process to 199.

Out of a total of 199 cases, the Basic Court of Prishtina resolved 42 cases, which is less than the number of 88 resolved cases in 2017 and 66 resolved cases in 2018. Compared to 2017, the Basic Court of Prishtina more than halved its number of resolved cases (-52%). With unresolved cases, however, the court decreased the number of unresolved cases by 14%, from 183 unresolved cases in 2017 to 157 unresolved cases at the end of 2020.

The decreased number of cases is potentially due to receiving fewer cases in 2020 (46) than in other years. The Basic Court of Prishtina had received 73 new cases in 2017, 67 cases in 2018, and 55 new cases in 2019.

	Inherited	Received	Resolved
2017	198	73	88
2018	183	67	86
2019	164	55	66
2020	153	46	42

The data from the table above shows that the Basic Court of Prishtina resolved only 21% of its active corruption cases in 2020 and that the number of resolved cases is decreasing over time.

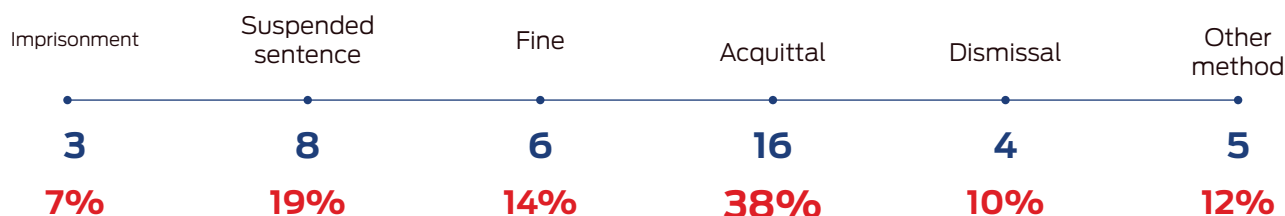


Table: Methods of resolving corruption cases

The punitive measures used in the corruption cases resolved in 2020 is alarmingly soft. Almost 40% of the accused were acquitted, 10% were dismissed, and 7% (in 3 cases only) were imprisoned.

## Basic Court of Prizren

	Inherited cases	Received cases	Resolved cases	Imprisonment	Fine	Suspended sentence	Acquittal	Dismissal	Other method	Unresolved cases
2017	23	27	36	7 19%	7 19%	8 22%	10 27%	1 2.7%	3 3%	14
2018	14	19	24	5 20.8%	5 20.8%	6 25%	5 20%	2 8%	1 4.1%	9
2019	9	36	20	5 25%	4 20%	4 20%	2 10%	2(3) 25%	0	25
2020	25	18	17	3 (18%)	7 (41%)	1 (6%)	3 (18%)	2 (12%)	1 (6%)	26 (+44%)

Table with statistical data for corruption cases from 2017-2020

The Basic Court of Prizren was unable to reduce the number of inherited corruption or abuse of official duty cases in 2020; instead, the number of inherited cases rose in 2021.

The court started the year 2020 with 25 unresolved cases inherited from 2019 and closed the year with 26 unresolved cases to pass on as an inheritance to 2021.

This shows a 4% increase of the number of unresolved cases in 2020, despite the Court having received only 18 new cases in 2020, which is 50% fewer than in 2019, when it had received 36.

	Inherited	Received	Resolved	
2017	23	27	36	72%
2018	14	19	24	72%
2019	9	36	20	44%
2020	25	18	17	40%

In 2020, the Basic Court of Prizren resolved only 40% or 17 of its active corruption cases and consequently the number of unresolved cases increased by 4% from the previous year.

Despite having received exactly 50% less cases than in 2019, the Court was not able to decrease the number of unresolved cases from the previous years.

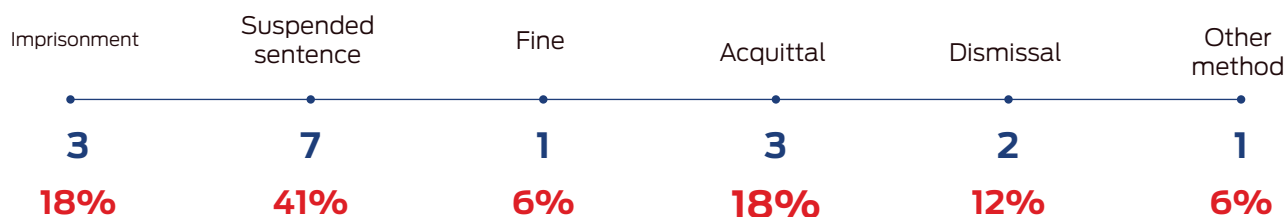


Table: Methods of resolving corruption cases

Sentencing was rather lenient when it came to resolving corruption cases in 2020. Compared to 2019, the percentage of fines doubled from 20% to 41%, while imprisonments sentences decreased from 25% to 18% and acquittals increased from 10% to 18%.

## Basic Court of Peja

	Inherited cases	Received cases	Resolved cases	Imprisonment	Fine	Suspended sentence	Acquittal	Dismissal	Other method	Unresolved cases
2017	22	30	37	2 5.4%	11 29.7%	12 32.4%	4 10.8%	1 2.7%	5 13.5%	15
2018	15	15	17	1 5%	1 11.7%	3 17.6%	5 29.4%	2 11.7%	4 23.5%	13
2019	13	9	10	1 10%	1 10%	5 50%	2 20%	1 10%	0	12
2020	12	7	9	2 (22%)	22 (22%)	3 (35%)	0	0	2 (22%)	10 (-16%)

Table with statistical data for the corruption cases 2017-2020

In 2020, the Basic Court of Peja continued to reduce the number of unresolved corruption and abuse of official duty cases.

The court started the year 2020 with 12 unresolved corruption cases and ended it with 10. Despite this being a positive step, other indicators show unsatisfactory performance compared to previous years.

The completion rate of corruption cases by the Basic Court of Peja has not improved with time.

	Inherited	Received	Resolved	
2017	23	27	36	72%
2018	14	19	24	72%
2019	9	36	20	44%
2020	25	18	17	40%

Data shows that, in the past four years, the Basic Court of Peja has seen a continuous decrease in the number of resolved corruption cases. The number of resolved cases stood at 9 at the end of 2020, a drop of 75% from 2017 when 37 cases were resolved.

A potential reason for the drop in the number of resolved cases could be the decreasing number of new corruption cases being received each year. The Basic Court of Peja received 30 cases in 2017, compared to half that amount (15) in 2018, 9 in 2019, and only 7 in 2020.

The notable decrease in the number of resolved corruption cases is alarming, considering the court had more cases unresolved (10) than resolved (9) by the end of 2020.

In terms of sentencing, only two (2) out of 9 cases were punished with imprisonment in 2020.

## Basic Court of Mitrovica

	Inherited cases	Received cases	Resolved cases	Imprisonment	Fine	Suspended sentence	Acquittal	Dismissal	Other method	Unresolved cases
2017	19	20	12	1 5.4%	5 29.7%	1 8.3%	1 8.3%	1 8.3%	2 16.6%	27
2018	27	23	11	1 8.3%	4 41.6%	1 9%	3 27.2%	2 18.1%	0	39
2019	39	19	18	5 27.7%	0 36.3%	5 27.7%	1 5.5%	6 33.3%	1 5.5%	40
2020	40	13	13	2 (15%)	1 (8%)	3 (23%)	5 (38%)	2 (15%)	0	40 (-16%)

Table with statistical data for the corruption cases 2017-2020

The Basic Court of Mitrovica was not able to decrease its number of corruption and abuse of official duty cases in 2020 and also resolved fewer cases in 2020 than it did in 2019.

The constant number of unresolved cases may be attributed to a decrease in the number of corruption indictments filed in 2020.

The court received 19 new corruption cases in 2019, and only 13 in 2020.

In 2020, the Basic Court of Mitrovica resolved 13 cases, which was only 25% of the total active cases that year. This figure is also below that of 2019, when 18 cases were resolved (31% of the total that year).

	Inherited	Received	Resolved	
2017		20	12	31%
2018	27	23	11	22%
2019	39	19	18	31%
2020	40	13	13	25%

As for how the cases were resolved, it may be noted that 5 or 38% of cases ended with an acquittal and only two (2) were issued with a prison sentence.

## Basic Court of Gjilan

	Inherited cases	Received cases	Resolved cases	Imprisonment	Fine	Suspended sentence	Acquittal	Dismissal	Other method	Unresolved cases
2017	45	37	38	1 2.6%	10 26.3%	4 10.5%	11 28.9%	11 28.9%	8 21%	44
2018	44	16	40	3 7.5%	7 17.5%	4 10%	21 52.5%	5 12.5%	0	20
2019	20	22	22	6 27.2%	2 9%	2 9%	9 40.9%	3 13.6%	0	20
2020	20	15	17	3 (18%)	8 (47%)	0	4 (24%)	1 (6%)	1 (6%)	18 (-10%)

Table with statistical data for the corruption cases 2017-2020

The Basic Court of Gjilan was able to close 2020 with fewer unresolved cases than 2019, showing a relatively satisfactory result. The number of unresolved cases decreased by two (10%).

That said, the court also resolved fewer cases in 2020 than in previous years.

The year 2017 saw 38 cases resolved and 2018 saw 40, while 22 cases were resolved in 2019 and only 17 cases in 2020.

	Inherited	Received	Resolved	
2017	<b>45</b>	<b>37</b>	<b>38</b>	<b>46%</b>
2018	<b>44</b>	<b>16</b>	<b>40</b>	<b>67%</b>
2019	<b>20</b>	<b>22</b>	<b>22</b>	<b>53%</b>
2020	<b>20</b>	<b>15</b>	<b>17</b>	<b>49%</b>

The table above highlights that the court of Gjilan completed fewer cases in 2020 than in previous years. The court resolved just 49% of its total active corruption cases in 2020.

Gjilan courts resolved almost half of its 2020 corruption cases with fines (47%) and only 18% with imprisonment. Meanwhile, 30% ended in acquittals or dismissals.

#### Basic Court of Ferizaj

	Inherited cases	Received cases	Resolved cases	Imprisonment	Fine	Suspended sentence	Acquittal	Dismissal	Other method	Unresolved cases
2017	17	19	27	7 25.9%	6 22.2%	5 18.5%	11 7.4%	2 7.4%	2 7.4%	9
2018	9	11	9	1 11.1%	2 22.2%	3 33.3%	3 22.2%	1 11.1%	0	11
2019	11	9	7	1 14.2%	3 42.8%	2 28.5%	0	0 13.6%	1 14.2%	13
2020	13	16	9	4 (44%)	2 (22%)	0	2 (22%)	0 (6%)	1 (11%)	20 (+53%)

Tabela me të dhënat statistikore për rastet e korrupsionit 2017-2020

The Basic Court of Ferizaj almost doubled the number of unresolved corruption cases during 2020. The Court started 2020 with 13 inherited cases and closed it with 20 unresolved cases that were then deferred to 2021, which shows a 53% increase.

This drastic increase comes despite the court resolving nine cases in 2020, compared to seven in 2019, and was likely due to receiving 16 cases in 2020, which is seven more cases than 2019.

	Inherited	Received	Resolved	
2017	<b>17</b>	<b>19</b>	<b>27</b>	<b>75%</b>
2018	<b>9</b>	<b>11</b>	<b>9</b>	<b>45%</b>
2019	<b>11</b>	<b>9</b>	<b>7</b>	<b>35%</b>
2020	<b>13</b>	<b>16</b>	<b>9</b>	<b>31%</b>

The Court of Ferizaj resolved 31% of its active corruption cases in 2020, compared to 35% in 2019, 45% in 2018, and 75% in 2017. It is difficult to comprehend how the Court of Ferizaj could resolve 27 corruption cases in 2017 and only 7 to 9 per year since then. This is reflected in the total number of unresolved cases.

The court of Ferizaj applied harsher sentencing to corruption convictions, with four out of nine resolved cases (44%) receiving imprisonment sentences.

### Basic Court of Gjakova

	Inherited cases	Received cases	Resolved cases	Imprisonment	Fine	Suspended sentence	Acquittal	Dismissal	Other method	Unresolved cases
2017	12	17	16	0	5 31.2%	4 25%	3 18.7%	0	4 25%	13
2018	13	14	20	1 5%	3 15%	4 20%	5 25%	1 5%	6 30%	7
2019	7	6	7	2 28.5%	3 42.8%	1 14.2%	1 14.2%	0	0	6
2020	6	10	5	0	5 (100%)	0	0	0	0	11 (+83%)

Tabela me të dhënat statistikore për rastet e korrupsionit 2017-2020

At the end of 2020, the Basic Court of Gjakova had almost doubled the number of unresolved corruption cases from the previous year.

The court started 2020 with six inherited corruption cases from the year prior and ended it with 11 unresolved cases, an increase of 83%.

An increase in new cases in 2020, a total of 10 compared to 6 in 2019, somewhat explains the radical rise in unresolved case numbers. Data also show that a total of five (5) cases were resolved in 2020, two less than in 2019.

	Të trashëguara	Të pranuar	Të zgjidhura	
2017	<b>12</b>	<b>17</b>	<b>16</b>	<b>55%</b>
2018	<b>13</b>	<b>14</b>	<b>20</b>	<b>74%</b>
2019	<b>7</b>	<b>6</b>	<b>7</b>	<b>54%</b>
2020	<b>6</b>	<b>10</b>	<b>5</b>	<b>31%</b>

The table above reflects the struggles of the Basic Court of Gjakova to resolve its open corruption cases over the past four years. It processed 31% of its total cases in 2020, 54% in 2019, 74% in 2018, and 55% in 2017.

Unlike other local courts, the Basic Court of Gjakova resolved all five corruption cases in 2020 with fines only.

## **ANALYSIS OF SENTENCING PRACTICES IN CORRUPTION CASES**

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### Sentencing practices in corruption cases

Low efficacy and efficiency levels are a constant criticism of the justice system and are seen as obstacles to the overall development of Kosovo. Of particular concern is the lack of results in bringing those guilty of criminal corruption offences to account, in sequestering and confiscating illegally gained assets, and in issuing punishments that adequately fit the weight of the crimes.

The majority of criticism is directed at the quality of the investigations and indictments relating to corruption and the clement punishments issued to those convicted of such criminal offences.

Another major complaint is that the Kosovo judiciary appears to not be issuing sentences appropriate to the severity of the criminal offences committed. Consequently, the perception is such that perpetrators of criminal offences of corruption are being 'pampered' with lenient sentences which usually are closer to the lower limit for the punishment foreseen for the criminal offences of corruption.

Applying quality sentences that align with the weight of the criminal offence fulfils the principle of legality, reflects judicial transparency, improves public trust in the justice system, and most of all deters unlawful and arbitrary sentencing.

In every democratic country, the judiciary aims to achieve and maintain consistency in sentencing practices. In Kosovo, however, sentencing practices in corruption cases are inconsistent, and punishments tend to be disproportionately lenient to the weight of the offence, which invites criticism from the public, civil society, and the local and international organisations that monitor the justice sector in the country.

To address this, the Supreme Court of Kosovo adopted the Sentencing Guidelines on 15 February 2018, the purpose of which was to elaborate further on the existing provisions of the applicable criminal legislation on sentencing and punitive measures.

The Guidelines aim, through greater clarification, to practically address the problems mentioned as obstacles and the lack of a uniform approach in Kosovo. The Guidelines do not aim to represent legally binding instruction, nor do they define mandatory provisions during sentencing.

These Guidelines are offered as a method to avoid unwarranted disparity in sentencing, influencing the structure of judicial discretion without taking it away.

The Guidelines include examples of international judicial practices relevant to circumstances defined in the Criminal Code to assist judges in determining sentence type and duration.

The analysis of corruption case judgements used in this report followed the Sentencing Guidelines, the 2012 Criminal Code of the Republic of Kosovo - 04/L-082, and the 2019 Criminal Code of Kosovo 06/L-074-KOD.



Although the Guidelines were adopted before the 2019 Criminal Code entered into force, its principles, definitions, and logic are applicable to the sentences foreseen in the latest Criminal Code. Nevertheless, it is recommendable to have entirely new Guidelines or ones that specifically address the cases of corruption foreseen in the 2019 Criminal Code.

### **Overall findings related to sentencing practices in corruption cases**

The analysis of 40 corruption case judgements that span all of Kosovo's courts indicates that the judiciary completely ignored the Sentencing Guidelines and did not respect Criminal Code and Criminal Procedure Code provisions when issuing sentences.

While the Guidelines are indicative only, the Criminal Code and the Criminal Procedure Code are legally binding. Noncompliance with the latter in the issuance of criminal sentencing is arbitrary and unlawful behaviour that damages the reputation of the judiciary, worsens the public's opinion of the system and its ability to function and serve justice.

Results from the analysis of the 2020 judgements indicate a pattern of behaviour, in almost all cases, that includes:

- Judges concluding mitigating circumstances without writing a single word reasoning the mitigated circumstances that are taken into account;
- Not recording the aggravating circumstances and not giving reasoning for this;
- Not weighing or assessing the circumstances supported by concrete evidence administered during the trial;
- Completely disregarding the circumstances and principles defined in the Criminal Code when determining the sentence;
- Not correlating these principles and the circumstances recorded; and,
- Issuing sentences that are mainly in the lower limits or even below the limits of punishment foreseen by the Law, hence applying maximum leniency, without providing any reasoning.

The above chain of actions are in violation of the law and resulted in sentencing that is clearly unlawful, that does not comply procedurally with the requirements of the Criminal Code and Criminal Procedure Code, and does not serve justice.

The results from the analysed data show that the key problems in the issuance of sentences when resolving corruption cases are as follows:

- Lack of application of the Criminal Code and the Criminal Procedure Code, complete disregard for the Sentencing Guidelines, and issuing imprisonment, suspended sentences and fines without recorded reasoning;
- Recording mitigating and aggravating sentences without proper reasoning;
- Non-application of purposes and principles of the punishment when setting the length of a sentence term; and,
- Lack of accessory sentences issued.

## **Lack of application of the Criminal Code and the Criminal Procedure Code, and complete disregard for the Sentencing Guidelines**

The Criminal Procedure Code has defined the steps to follow and requirements to meet to ensure the welfare of a criminal procedure and to reach a final verdict that is fair, does not violate any rights or duties of the parties, and fulfils the responsibilities of the judiciary towards society as a whole.

In this regard, one of the principles of a criminal procedure is that the court renders its decision based on the evidence examined and verified in the main trial.

This definition is set in point 2 of Article 8 of the Criminal Procedure Code: *2. The court renders its decision on the basis of the evidence examined and verified in the main trial.*

This definition of paragraph 2 of Article 8 of the Criminal Procedure Code entitled *“Principle of Judicial Independence”* has defined the independence of the courts in rendering decisions, but this independence in decision-making shall always be rendered in accordance with the legal rules provided and they apply for every party equally, and shall not be used to issue arbitrary decisions that are not based in the law.

Furthermore, paragraph 8 of Article 370 of the Criminal Procedure Code stipulates the following: 8. If the accused has been sentenced to a punishment, the statement of grounds shall indicate the circumstances the court considered in determining the punishment. The court shall, in particular, explain by which grounds it was guided if it found that it was an especially serious case or that it is necessary to impose a sentence which is more severe than what has been prescribed, or if it found that it was necessary to reduce the sentence or to waive the sentence, or to impose an alternative punishment or to impose a measure of mandatory rehabilitation treatment or confiscation of the material benefit acquired by the commission of a criminal offence.

dënimin, të shqiptojë dënim alternativ ose masën për trajtim të detyruar rehabilitimi ose të konfiskohet dobia pasurore e fituar me vepër penale.

Article 38 of the 2019 Criminal Code of Kosovo defines the purposes of a sentence, whereas Articles 69 to 80 define the principles that shall be taken into account when setting the length of a sentence, the mitigating and aggravating circumstances, the mitigation of sentences and all other issues regarding the type and length of a sentence.

Moreover, Articles 47, 48 and 49 of the Criminal Code define the aim of suspended sentences and rendering this type of punishment, and the conditions that must be met by a perpetrator to enable setting a suspended sentence.

Additionally, Articles 43 and 44 of the Criminal Code stipulate the issuing of a sentence and the limits of fines and conditions when imprisonment may be converted to a sentence of fine.

Meanwhile, as a non-legally binding document, the Guidelines have defined instructions that clearly define the correlation of principles, the circumstances that should be taken into account when setting a sentence, the purposes of a punishment and how these purposes should be reasoned, all mitigating circumstances, how to weigh the circumstances, questions that should be answered for each circumstance, and factors that should be taken into account for each circumstance. It also foresees weighing the circumstances to determine the length of a punishment and facts that should be reasoned when issuing a suspended sentence or converting a punishment. All these serve the purpose of issuing adequate and proportional sentences for the perpetrators of criminal offences.

The analysis of the 40 corruption case judgements with conviction from 2020, reveal that none of the cases included reasoning for the type and length of the sentences issued per the requirements stipulated by the Criminal Code, Criminal Procedure Code, and Sentencing Guidelines.



Number of judgements analysed by courts in 2020

Full reasoning according to the Codes and Guidelines

Incomplete reasoning according to the Codes and Guidelines

	Number of judgements analysed by courts in 2020	Full reasoning according to the Codes and Guidelines	Incomplete reasoning according to the Codes and Guidelines
Prishtina	11	0	11
Prizren	4	0	4
Peja	5	0	5
Mitrovica	4	0	4
Gjilan	4	0	4
Ferizaj	4	0	4
Gjakova	8	0	8
<b>Total</b>	<b>40</b>	<b>0</b>	<b>40</b>

### Issuing imprisonment sentences, suspended sentences and fines without reasoning

Out of the 40 analysed judgements for corruption cases issued by Kosovo's courts in 2020, 12 imprisonments of 165 months were issued and 17 suspended sentences of 173 months, while 13 imprisonments of 59 months were converted into fines of EUR 30,400, and 3 fines of EUR 1,000 were issued.



Effective imprisonment sentences

Suspended sentences

Sentences AND fines

Imprisonment sentences converted into fines

Sentences of fines only

Prishtina	4 sentences 45 months	7 sentences 89 months	Conditional and 5 fine sentences 2,100	6 sentences 35 months 13,100	0
Prizren	1 sentence 18 months	2 conditional sentences 24 months	Conditional and 2 fine sentences 800 Jail converted	1 sentence – 6 months – 4,000	0



	Effective imprisonment sentences	Suspended sentences	Sentences AND fines	Imprisonment sentences converted into fines	Sentences of fines only
Peja	1 sentence 15 months	3 sentences 24 months	Conditional and fine 800 Jail and 400 fine	1 sentence 3 months 1,800	0
Mitrovica	1 sentence 42 months	1 sentence 12 months	Jail sentence and 1,000	1 sentence – 6 months – 2,000	1 sentence – 300
Gjilan	2 sentences 13 months	0	0	2 sentences 11 months 4,200	0
Ferizaj	2 sentences 24 months	2 sentences 12 months	1 jail sentence and 500 2 conditional sentences and 2,400	0	0
Gjakova	1 sentence 8 months	2 sentences 12 months	2 conditional sentences and 600 1 jail sentence and 1,000	2 sentences – 12 months – 5,400	2 dënime – 700
<b>TOTAL</b>	<b>12 sentences 165 months</b>	<b>17 sentences 173 months</b>	<b>17 sentences -7,900</b>	<b>13 sentences – 59 months – 30,400</b>	<b>2 sentences – 700</b>

## Justification of conditional sentences and prison sentences converted into fines

Type of sentences	Number of sentences	Justified	Unjustified
Suspended sentences	<b>17</b>	<b>0</b>	<b>17</b>
Prison sentences converted	<b>13</b>	<b>0</b>	<b>13</b>
Sentences and fines	<b>17</b>	<b>0</b>	<b>0</b>
Only fines	<b>3</b>	<b>0</b>	<b>3</b>

Suspended sentences were the most common type of punishment issued by Kosovo's courts in the 40 judgements on corruption cases analysed from 2020.

In 17 out of 40 judgements, suspended sentences were issued at a duration of 173 months.

The Sentencing Guidelines explain that suspended sentences are important and beneficial to human rights when applied in appropriate situations, but that they become contradictory if they appear to completely free the perpetrator from any responsibility or consequence for the criminal offence committed.

*The Guidelines note that “suspended sentences with no conditions other than a general prohibition on re-offending should be rare occurrences and reserved for the most minor of situations where there are strong indicators of remorse, restitution to any victim and cooperation with courts and law enforcement”.*

Article 50 of the Criminal Code has foreseen that the purpose of suspended sentences is to not impose a punishment for a criminal offense that is not severe and where a reprimand with the threat of punishment is sufficient to prevent the perpetrator from committing a criminal offence.

Meanwhile, the Guidelines stipulate that whenever the court renders an alternative sentence, it is crucial to provide comprehensive reasoning for the suspended sentence, and it asserts that the court should automatically return the case to the lower level court, if this criteria provided for by the law is not fulfilled.

Furthermore, Article 44 of the Criminal Code stipulates the possibility to replace the punishment of up to six (6) months imprisonment with the punishment of a fine and has foreseen the discretion of the court to convert imprisonment to a fine with the consent of the convicted person.

None of the aforementioned 13 cases issued with punishments of imprisonment converted into punishments of fines included any reasoning for allowing this conversion.

The 17 rendered suspended sentences from the analysis contained incomplete reasoning for rendering a suspended sentence or a fine.

### **Identification of mitigating and aggravating circumstances without justification**

#### **Applied circumstances in 40 analysed corruption cases in 2020**

218	Total of applied circumstances	The process of recording mitigating and aggravating circumstances precedes the definition of the type and length of a sentence for the persons found guilty of the criminal offence of corruption.
0	Mitigating circumstances according to the	
172 - 79%	Mitigating circumstances	
46 - 21%	Aggravating circumstances	
No aggravating circumstances	18 out of 40 cases	
More aggravating circumstances	3 out of 40 cases - 8%	
Equal number of circumstances	2 out of 40 - 5%	
More mitigating circumstances	35 out 40 cases - 86%	

Article 70 of the Criminal Code has foreseen 14 aggravating circumstances and the same number of mitigating circumstance, and gives courts the discretion to record other mitigating or aggravating circumstances when defining the sentence.

As mentioned above, Article 370 of the Criminal Procedure Code has defined the obligation of the court to reason in its judgement all mitigating circumstances that lead to mitigating the sentence as well as aggravating circumstances which influence the rendering of a harsher punishment.

However, court responsibilities do not end there, as the Sentencing Guidelines foresee the actions that ought to be taken by the courts with the purpose of qualitatively reasoning the sentence rendered, and consequently, the entire judgement.

The Guidelines envisage that the court should emphasise, for each circumstance mentioned in the judgements, a relatively detailed summary of the evidence that the court believes supports its findings for the circumstances. Afterwards, the court should assign value to each circumstance after stating the facts supporting the circumstance. Then, the court must refer the numbers for every circumstance that does not exist and emphasize there are no facts supporting it.

Additionally, the Guidelines indicate that for any evidence proposed in support of a certain mitigating/aggravating circumstance not found credible by the court, then the court must emphasize this explicitly and provide short reasoning, as well as clarify the circumstances that are equal, non-existent, or outweigh considerably.

None of these requirements were met in the 40 corruption cases rendered by Kosovo courts in 2020 and analysed in this report.

This report notes that in the 40 judgements analysed, there were 218 mitigating/aggravating circumstances evidenced, of which 79% or 172 were mitigating ones and 46 or 21% were aggravating circumstances.

Furthermore, in 18 out of the 40 judgements (45%), there were no aggravating circumstances recorded.

More aggravating circumstances were encountered in three of the 40 cases only.

An equal number of aggravating/mitigating circumstances were encountered in two of the 40 cases only.

There were more mitigating circumstances encountered in 35 of the 40 cases.

**Mitigation of sentences without justification**

Maximal mitigation when Article 75 is applied	5 - 12.5%
Partial mitigation when Article 75 is applied	2 - 5%
Circumstances that justify maximal mitigation of the sentence within the limit	31 - 78%
Factors that show more mitigating than aggravating circumstances	2 - 5%
Starting point for measuring the sentence	0
Factors that show more aggravating circumstances than mitigatory ones	0
Factors that justify maximal sentences within the limit	0

The Sentencing Guidelines outline the steps that must be taken in determining the length of a sentence, which is the last step in rendering a punishment.

In order to provide judges with a mechanism that would facilitate determining the length of a sentence, the Guidelines created a visual table, the Sentencing Table, which is divided into columns defining all the limits of sentencing, including the limits for imprisonment, the starting point for each of the sentences foreseen, and the mitigating/aggravating circumstances that determine the length of the sentence:

- Column 9 - “Factors justifying highest aggravation within the limit”;
- Column 8 - “Factors indicating higher aggravation than mitigation”;
- Column 7 - “Starting point (Aggr. = Mit.)”;
- Column 6 - “Factors indicating higher mitigation than aggravation”;
- Column 5 - “Factors justifying highest mitigation within the limit”; and,
- Columns 4 and 3 - “Maximum mitigation when Article 75 is applied” and “Partial mitigation when Article 75 is applied” .



Depending on the mitigating and aggravating circumstances concluded in the judgement, a situation/column is consulted accordingly. Using the sub points listed within each column as per the Guidelines' Sentencing Table, the length of a sentence for the perpetrator may be found, as each column and relevant sub point generates the minimum and maximum sentence length and severity, based on the circumstances of the specific case. The Guidelines have foreseen for final limits to be emphasized in the judgement together with the final sentence.

Furthermore, mitigated sentences from Article 75 (72 with the new Code) must include more specific clarifications as to what provisions of the Code the court used when mitigating the sentence. In order for a judicial judgement to be of a good quality, it must be perceived by the parties in the procedure and by society as a result of adequate application of judicial rules, fair procedure, adequate factual assessment, and to be effectively applicable. Only then will the parties be convinced that their case was tried adequately and will society perceive the judgement as a factor in re-establishing social harmony.

For the judgements analysed in this report, the assessment on the circumstances used by the court was done based on the length of the sentence rendered, taking for granted the circumstances concluded in the judgements, without discussing their merit or weight, as these data were justified by the court in its judgement.

In 31 out of 40 cases (78%), the sentence was rendered based on circumstances justifying maximal mitigation of the sentence within the limit;

In 5 out of 40 cases, maximal mitigation of the sentence that was below the limit set in Article 72 was used;

In 2 out of 40 cases, partial mitigation of the sentence that was below the limit set in Article 71 was applied;

In 2 out of 40 cases, a sentence was rendered based on a situation where there were more mitigating than aggravating circumstances;

In none of the 40 cases, was the starting point used or an aggravated sentence issued.

### **Lack of application of purposes and principles of punishment when determining the length of a sentence**

Article 38 of the Criminal Code has set out the four purposes of a punishment, while Article 69 defines the seven principles, i.e., the general rules for calculating a punishment. *"When determining the punishment of a criminal offense, the court must look to any minimum and maximum penalty applicable to the criminal offense. The court must then consider the purposes of punishment, the principles set out in this chapter and the mitigating or aggravating factors relating to the specific offense or punishment."* - Article 69 of the Criminal Code of Kosovo.

Our analysis has shown that:

None of the 40 reviewed judgements contained full reasoning of the purposes and principles of punishments apart from superficially mentioning them.

None of the 40 reviewed judgements showed application of the principles or consideration of mitigating or aggravating circumstances in determining the punishment, as defined in the Guidelines.

## **No rendering of accessory punishments**

Accessory punishments cannot be rendered on their own. These punishments can only be rendered with principal or alternative punishments as foreseen by the Criminal Code.

This type of punishment is issued when it is assessed that the purpose of the punishment cannot be reached satisfactorily through rendering a principal or alternative punishment alone.

The Criminal Code of Kosovo has foreseen a total of eight accessory punishments stipulated in Article 59.

There are two accessory punishments in particular that could be issued when defendants are found guilty of corruption-related criminal offences:

- Prohibition on exercising public administration or public service functions;
- Prohibition on exercising a profession, activity or duty

The Criminal Code has foreseen prohibition on exercising public administration or public service functions that can be imposed on perpetrators who have abused these functions and are sentenced with punishments of imprisonment, while the length of the accessory punishment could last for a period of 1 to 5 years.

Furthermore, according to the Criminal Code, the courts may prohibit perpetrators of a criminal offence to exercise a profession, activity, or any managerial or administrative duties related to the systematization, management and utilization of assets connected to public property, or to the protection of public assets if the person abused their position, activity or duty with the purpose of committing a criminal offence or if there is reason to expect that exercising of a profession, activity or duty may be abused to commit a criminal offence.

Out of the 40 judgements of corruption cases rendered in 2020, it may be noted that none of the courts rendered accessory punishments.



## Analysis of Individual Courts

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Basic Court of Prishtina

### PKR.nr.30/20

L.J., was charged with the criminal offence of “Misappropriation of office” per Article 418, par.1 of the CCRP.

Per the indictment, L.J., in his position as sales officer at “Kosovo Telecom” from the period of February to September 2019, and with the intent to obtain unlawful material benefit for himself, unlawfully appropriated money in the amount of EUR 2,282.00, which was collected from selling scratch SCO cards for phone minutes. The defendant pleaded guilty.

#### Foreseen Sentence

Punishment with a fine and punishment of imprisonment between 6 months and 5 years.

#### Sentence rendered

6 months suspended sentence and a fine in the amount of EUR 300.

#### Mitigating circumstances:

- Young age;
- No prior convictions for criminal offences;
- Genuine remorse after committing the criminal offence;
- Entering a guilty plea;
- Good behaviour during the main trial;
- Personal and family circumstances;
- Character and post-conflict conduct of the convicted person.

#### Aggravating circumstances:

- Danger to society caused by the offence;
- Time and manner of committing the criminal offence;

#### Compatibility of the sentence and application of Guidelines principles

The court concluded that the sentence rendered is compatible with the extent of the danger caused to the society by the criminal offence that the defendant was found guilty based on his extent of criminal liability. The court mentioned the three purposes of a punishment without reasoning them, while not providing a correlation between the principles and circumstances that ought to be considered when setting the sentence. Although it did mention them superficially.

#### Mitigating and aggravating circumstances mentioned in the judgement

In the judgement, the court mentioned seven mitigating circumstances and three aggravating circumstances, and apart from doubling, or in fact tripling the impact of personal circumstances, the court did not justify the circumstances mentioned, it did not show the weight of the circumstances, and it did not address the relevant issues, factors and questions that ought to be answered, but rather only described them.

## The method as per the Guidelines in calculating the punishment

The calculation is quantitative for this case as well. In this judgement, the court mentioned seven mitigating circumstances and three aggravating ones, however, no reasoning was given as to the internal nature and gravity of the circumstances. Based on Appendix 1 of the Sentencing Guidelines, the cases qualifies for Column 5, “Factors justifying highest mitigation within the limit”. In this regard, according to Appendix 1 as per the Guidelines, part 2, point h), the punishment in this case should have been for a minimum for 6 months. In this case, the court applied this situation and sentenced the convicted person with six months, which were converted into suspended sentence both for the punishment of imprisonment as well as for the fine, however, there was no justification provided for this.

### **PKR.nr.03/2018**

I.H and S.C., were charged with abuse of official position or authority per Article 422, par.1 in conjunction with Article 31 of the CCRK.

#### Enactment clause

According to the indictment, I.H., in his capacity as an official person, namely the Chief of Construction for the municipality of Prishtina, and S.C., in the capacity of public official as a Law Enforcement Officer, did not fulfil their official duty for demolishing an illegally built building in the property of....

Punishment according to the Criminal Code  
6 months and up to 5 years.

#### Sentence rendered

I.H. - with 9 months of imprisonment.

S.C. – 6 months converted to a EUR 2,000 fine.

#### Mitigating circumstances:

I.H.

- Is a parent of four children;
- Was not previously convicted.

S.C.

- Is a parent;
- Is well-regarded in family and social circles.

#### Aggregating circumstances:

- Method of commission of the criminal offence of corruption;
- Persistent and decisive actions committed.

#### Compatibility of the sentence and application of Guidelines principles

In the judgement issued, the court did mention without further elaboration, two principles of a punishment – specific and general prevention, but did not mention the other two purposes of a punishment. The court only mentioned mitigating and aggravating circumstances but did not correlate at all the principles that should be considered in setting the length of a sentence.

## Mitigating and aggravating circumstances mentioned in the judgement

The court did not provide any description or justification of the mitigating and aggravating circumstances, but only mentioned them inaccurately and in full violation of the definitions as per the Guidelines.

## The method as per the Guidelines in calculating the punishment

The court is very contradictory with the conclusions in the judgement as well as in determining the sentence. This is due to the judgements containing mentions for defendants - it mentions two mitigating and aggravating circumstances, deeming them minor ones (without elaborating whatsoever on the mitigating circumstances), while the Guidelines foresee a classification of “starting point of calculating a sentence” at a minimum, as foreseen in Appendix 1, part 2, point h).

In this case, the sentence should have been 2 years and six months for both defendants at a minimum, whereas the court rendered a punishment of 90 months’ imprisonment for the first defendant and six months converted into a fine for the second, which clearly is not in line with the Guidelines.

Furthermore, the court did not justify its decision to convert the imprisonment punishment into a fine at all.

## **PKR nr. 11/2018**

“Accepting bribes”, per Article 428 par.1 of the CCRK.

Per the indictment, on May 10, 2017, I.J., at a location on “...” in Fushë Kosovë in the capacity of an official person – police officer, received EUR 110 from the injured party by using his official authority.

## Sentence foreseen by the Law and the one rendered in the case

6 months and up to 5 years.

5 months of suspended sentence and fine in the amount of EUR 300.

## Mitigating and aggravating circumstances

No mitigating or aggravating circumstances are described in the judgement.

## Compatibility of the sentence and application of the principles as per the Guidelines

No description.

## The method as per the Guidelines in calculating the punishment

There are no elements of justification or description in the entire judgement. It may be understood from the judgement that the sentence was rendered according to the “Partial mitigation when Article 75 is applied” method. The conversion of the sentence into a suspended one was not justified at all.

## PKR.nr.21/20

### Criminal Offence

H.D., “Abusing power or official authority” from Article 414, par.1 of the CCRK.

Gj.Sh., Assistance in commission of a criminal offence, “Abusing power or official authority” from Article 414, par.1, in conjunction with Article 33, par.1 of the CCRK.

### Enacting clause of the judgement

According to the indictment, on 27 June 2019, H.D., at the dedicated hunting location in..., in the capacity of an official person – Woodward, with the intention of benefiting during working hours, had entered the area he was responsible of overseeing in his private car and cut 1.2m<sup>3</sup> of wood using a private motorised-saw.

At the same time, location and using the method described above, Gj.Sh. helped H.D., in cutting and transporting wood in his motor vehicle.

### Sentence foreseen by the Law and the one rendered in the case

According to the Criminal Code of the Republic of Kosovo, the punishment for this offence varies from 1 year to 8 years in total.

### Mitigating Circumstances

For H.D.

- Pleaded guilty;
- Remorse;
- Commitment that the criminal offence will not be repeated;
- Family circumstances;
- Head of the family;
- No prior conviction;
- Relatively young age.

For Gj.Sh.

- Pleaded guilty;
- Remorseful;
- Commitment that the criminal offence will not be repeated;
- Family circumstances;
- Head of the family;
- No prior conviction.

### Aggregating circumstances

- Location and method of commissioning the criminal offence.

### Compatibility of the sentence and application of the principles as per the Guidelines

The court only highlighted the mitigating and aggravating circumstances, however it did not elaborate or justify them in relation to the principles on setting the punishments as defined by the Code and noted in the Guidelines.

### The method as per the Guidelines in calculating the punishment

In this particular case, the court applied maximum mitigation within the limit of the punishment as foreseen in Article 71 and 72 of the Criminal, and only mentioned these Articles of the Code, but without providing a justification on the gravity of the circumstances or their composition. Additionally, the court did not provide any reasoning for the conversion of imprisonment into a fine.

Thus, according to appendix 1, part 3, point g) of the Guidelines, the situation of “maximum mitigation when Article 75 (72 with the new Code) is applied” was used, which provides for the possibility of reducing the sentence by up to 3 months, however no further justification was provided.

## **PKR.nr.120/2016**

O.A., “Misappropriation in office”, per Article 425 par.2 of the CCRK.

### **Enacting clause of the judgement**

According to the indictment, O.A., in the capacity of ticket sales person in “...”, in Prishtina, in such a manner that while exercising his official duty per authorization for November 2014, had collected financial means through ticket sales, which was obliged to be delivered to the cash box of the enterprise, and while evading this obligation, he delivered only 390.00 Euro. However, based on the ticket register, he misappropriated the amount of EUR 12,399.00.

### **Foreseen punishment**

Punishment of fine and imprisonment for 1-8 years.

### **Punishment rendered**

1 year of suspended sentence and EUR 500 fine.

### **Mitigating Circumstances**

- Guilty plea;
- Circumstances of commissioning the criminal offence;
- Prior conduct of the defendant;
- Sincerity shown during the trial;
- Living conditions of the defendant;
- Economic situation.

### **Aggregating circumstances**

- None.

### **Mitigating and aggravating circumstances mentioned in the judgement**

The court deemed the sentence rendered to be compatible with the extent of the criminal liability of the perpetrator. The court referred to Article 41 and mentioned the purposes of the punishment, although it did not provide even a single clarification or correlation to the circumstances of the case, as it is foreseen by the Code and the Guidelines.

### **Mitigating and aggravating circumstances mentioned in the judgement**

The court did not highlight any aggravating circumstances while it only described mitigating circumstances, without elaborating them further.

### **The method as per the Guidelines in calculating the punishment**

In this particular case, the court only highlighted mitigating circumstances while there were no aggravating ones. The court applied the situation of “circumstances justifying maximum mitigation within the limit” as foreseen by the Guidelines. Therefore, according to the Guidelines, Appendix 1, part 3, point g), the minimum sentence may be lowered up to 1 year, which happened in this case, however no justification was provided as to the suspended sentence, which is required by the Code and the Guidelines.

## PKR.nr.161/2019

F.C., “Accepting bribes” per Article 428 par.1 of the CCRK.

### Enacting clause of the judgement

According to the indictment, on April 2nd 2019, F.C., working in the laundry service in the Psychiatric Forensics Clinic, with the intent of obtaining an unlawful material benefit for herself, demanded and received a bribe by the injured party with the purpose of fixing medical documents to apply for the status of sexual violence victim during the war. The defendant took EUR 400 from the injured party.

### Sentence foreseen by the law and sentence rendered

Punishment of fine and imprisonment between 6 months and up to 5 years.

### Sentence rendered

6 months suspended sentence and EUR 400 fine.

### Mitigating Circumstances

- Remorse;
- Medical state;
- Sincerity during initial trial;
- No prior conviction and no other procedures against her;
- Pleaded guilty

### Aggregating circumstances:

- Gravity of the criminal offence.

### Compatibility of the sentence

The court did not mention any of the four principles foreseen by the Guidelines specifically, but rather only mentioned application of Article 73 and 41 of the CCRK.

### The method as per the Guidelines in calculating the punishment

In this particular case, the court highlighted 5 mitigating circumstances and one aggravating circumstance, while not describing or weighing the circumstances apart from the guilty plea, which was deemed “especially mitigating” without offering adequate elaboration. Consequently, the calculation was quantitative, while in determining the punishment, the court applied the situation entitled “Circumstances justifying maximum mitigation of the sentence within the limit”. In this regard, according to Appendix 1 of the Guidelines, part 2, point h), the sentence should have been at least 6 months. Thus, the court applied this situation and sentenced the convicted person with a punishment of 6 months suspended sentence without any justification as to why this kind of sentence was rendered.

## PKR.nr.206/19

Sh.B., H.G., H.V., E.R., and E.B., “Abusing power and official authority”, Article 422, par.1.

### Enacting clause of the judgement

This is a highlighted case for visa liberalization known as “Ferronikeli”. A former municipality Mayor, 7 municipal officials, and 1 businessman are charged with abuse of official duty.

### Sentence foreseen by the law and sentence rendered

Imprisonment between 6 months and up to 5 years;

Sh.B.- 2 years imprisonment (5 counts of the indictments);

H.G. - 6 months imprisonment, converted to EUR 2,000 fine (3 counts of the indictment);

H.V. - 5 months imprisonment that may be converted into EUR 1,500 fine;

E.R. - 6 months imprisonment that may be converted into EUR 2,000 fine;

B.R. - 6 months imprisonment that may be converted into EUR 2,000.

### Mitigating Circumstances

- No prior conviction;
- Good behaviour during procedure;
- Time passed since the criminal offence was committed.

### Aggregating circumstances

- High degree of participation by Sh.B.;
- High degree of danger for protected values;
- High degree of criminal liability, intent and premeditation.

### Compatibility of the sentence and application of the principles as per the Guidelines

Out of four purposes of a punishment that should be taken into consideration as instructed by the Guidelines, the court only collected the purposes of the punishment based on Article 41 of the Code, but did not elaborate on them, nor did it correlate the evidence according to the principles highlighted in the Code and the Guidelines.

### Mitigating and Aggravating Circumstances noted in the judgement

The court highlighted 3 mitigating circumstances and 3 aggravating circumstances but did not justify them, rather it only highlighted them in the judgement without weighing their severity or content.

### The method as per the Guidelines in calculating the punishment

The court ruled that there were more mitigating circumstances than aggravating ones for the defendants, while differentiating the first defendant Sh.B. from the other defendants.

Thus, Sh.B. was convicted with 2 years imprisonment, while the punishment envisaged for this punishment is between 6 months and up to 5 years imprisonment. In this particular case, it appears the court calculated the punishment based on the situation indicating “factors indicating more mitigating than aggravating circumstances”, which, according to Appendix 1, part 2 point h), foresees a minimum sentence of 1 year and 6 months and up to a maximum of 2 years and six months.



Bearing in mind the circumstances highlighted in the judgement, if the quantitative calculation is taken into account, at a minimum, when there are equal numbers of mitigating and aggravating circumstances, the situation of “starting point of calculating a sentence” ought to be considered and the sentence should have started at 2 years and 6 months.

Further, for the rest of the defendants, the court applied the situation of “circumstances justifying maximum mitigation of a sentence within the limit”, by rendering punishments of less than 6 months imprisonment and imposing a conversion of these sentences into fines without justification, despite the court having itself highlighted an equal number of aggravating and mitigating circumstances.

### **PKR.nr.273/19**

N.D., “Abusing official position or authority” per Article 414, par.1 of the CCRK.

According to the indictment, defendant N.D., in her official capacity and with the intent of unlawfully obtaining material benefit, during the period of March 2019 to October 2019 while she was assigned as a property tax official, she received money amounting to EUR 10 from citizens with the purpose of issuing confirmation of zero debts, which enabled citizens to claim having fulfilled all municipal taxes for registration of vehicles.

### **Sentence foreseen by the law and sentence rendered**

From 1 year to 8 years imprisonment

1 year of suspended sentence with a two year verification period

### **Mitigating Circumstances**

- No prior conviction or other procedure against her;
- Deep remorse;
- Commitment to not repeat the criminal offence;
- Pleaded guilty;
- Poor economic situation.

### **Aggregating circumstances**

- Intensity of the criminal offence;
- Gravity of the criminal offence.

### **Compatibility of the sentence and application of the principles as per the Guidelines**

Out of the four aims of a punishment which should have been taken into account per the Guidelines for each judgement, the Court did not mention of any of the aims nor the compatibility of the punishment in the judgement it rendered. The court did not correlate the principles of determining a punishment with the circumstances highlighted in the judgement, and in fact, it used principles of a punishment as special circumstances.

### **The method as per the Guidelines in calculating the punishment**

The court found 5 mitigating circumstances and 2 aggravating circumstances without justifying even superficially either of them, thus rendering only a quantitative assessment of the circumstances. Hence, the court applied the situation of “circumstances justifying maximum mitigation of the sentence within the limit” as per the Guidelines. In this case, per Appendix 1, part 3, point g) of the Guidelines, a sentence of minimum 1 year



should have been applied, which was imposed in this case, however the court then converted it into a suspended sentence without giving any reasoning behind the decision.

## PKR.nr.830/20

N.S., “Abusing official position or authority”, per Article 414 par.1 of the CCRK.

### Enacting Clause of the Judgement

According to the Prosecutor, N.S., on 6 July 2020, in the O area.– P, in the official capacity did not exercise his official duty as a Woodward, with the intention of unlawfully obtaining material benefit and using his official axe no. G-PP-1 which was assigned to him to fulfil his duty, had enabled marking of a quantity of 8m +6m oak wood, without registering them at all and placed them in two different trucks.

### Foreseen punishment by the law and the punishment rendered

1 – 8 years in prison

2 years suspended sentence

### Mitigating Circumstances:

- Prior conduct of the defendant;
- Guilty plea;
- Sincerity shown during initial trial;
- Conduct after committing the criminal offence;
- Economic situation.

### Aggregating circumstances:

- None.

### Compatibility of the sentence and application of the principles as per the Guidelines

Out of the four aims of the punishment per the Guidelines which must be taken into account in each of the judgements when determining the punishment, the court mentioned all of the aims of the sentence, but did not elaborate on the mitigating and aggravating circumstances nor their correlation with the principles, which ought to be considered when determining the length of a sentence and the punishment itself.

### Mitigating and Aggravating Circumstances cited in the judgement

The court highlighted 5 mitigating circumstances and no aggravating circumstances, while there was no elaboration given on any of them.

### The method as per the Guidelines in calculating the punishment

The court highlighted 5 mitigating circumstances and no aggravating circumstances in this judgement, however there was no justification given for the internal nature and gravity of the circumstances.

In particular, the court applied the “circumstances justify maximum mitigation of the sentence within the limit” situation per Column 5 of the Guidelines. Appendix 1, part 3, point g) as per the Guidelines, which foresees the punishment to be a minimum of 1 year and a maximum of up to 3 years, while the court rendered a suspended sentence of 2 years without justifying it whatsoever.

## PKR.nr.849/2020

S.P., "Giving bribes" per Article 422, par.2 of the CCRK.

### Enacting clause of the judgement

According to the indictment, on 27 August 2020, at the border crossing in Merdare, the defendant S.P., in a car trailer of the "Mercedes" type car he was driving, was carrying two other cars, namely a "Polo" and "Caddy", whilst fully aware that he had not completed the required documentation, when handing the document to the police officer, he put a EUR 10 banknote in the midst of the document.

### Foreseen punishment by the law and the punishment rendered

Fine and imprisonment between 6 months and up to 5 years.

2 years suspended sentence and EUR 600 fine.

### Mitigating Circumstances:

- Prior conduct of the defendant;
- Guilty plea;
- Sincerity demonstrated;
- Economic situation;
- Conduct demonstrated after commissioning of the criminal offence.

### Aggregating circumstances

None.

### Compatibility of the sentence and application of the principles as per the Guidelines

Out of the four aims of the punishment per the Guidelines which must be taken into account in each of the judgements when determining the punishment, the court mentioned three of them based on Article 41 of the Criminal Code, however it did not detail the aims. There was no correlation between the principles and mitigating and aggravating circumstances, either.

### The method as per the Guidelines in calculating the punishment

In this case, the court highlighted 5 mitigating circumstances and no aggravating circumstances without elaborating on the gravity of the circumstances or their inner importance. There was no correlation between the principles when determining the length of the sentence, either.

Thus, the calculation of the sentence was quantitative, while it may be noted that per the Guidelines, the court highlighted the situation "circumstances justifying maximum mitigation of the sentence within the limit" as per Column 5 of the Guidelines and based on Appendix 1, part 2, point h) as per the Guidelines and rendered a 6 months sentence.

The court did not provide a justification for the suspended sentence nor the extent of the fine.

## PKR.nr.127/18

B.K. dhe I.D.

B.K. and I.D., “Abusing power and official authority”, per Article 422, par.1, in conjunction with Article 31 of the CCRK.

### Enacting clause of the judgement

According to the indictment, on 7 August 2018, at the AKPPM, the defendants B.K. and I.D., used their official duty, with the intention of obtaining material benefit, specifically from economic operator .... in such a manner that defendant B.K., by issuing an unlawfully ruling on the complaint of an operator, which involved recommending the Department of Administration to prepare and issue banderols for drugs and medicine for the economic operator, which allowed the operator to issue 435.124 banderols for 18 medicinal products.

### The sentence foreseen by the Law and the sentence rendered

Imprisonment of 6 months to 5 years.

B.K. - 6 months imprisonment.

I.D. - 6 months imprisonment.

### Mitigating Circumstances

- No prior trial or conviction;
- Prior conduct of the defendants;
- Good behaviour during the procedure;
- They are parents;
- They are primary breadwinners;

For both defendants, the court saw the fact they had no prior trials or convictions for any criminal offence, thus their prior behaviour, their good behaviour during the criminal procedures, and that they were parents and sole breadwinners in the family as mitigating circumstances.

### Aggregating circumstances

- High degree of participation;
- Intent to commission the criminal offence.

### Compatibility of the sentence and application of the principles as per the Guidelines

Out of the four aims of the punishment per the Guidelines, which must be taken into account in each of the judgements when determining the punishment, the court mentioned only two without giving any further elaboration.

Further, the court did not weight the mitigating and aggravating circumstances and their correlation with the principles of determining the length of a sentence.

### The method as per the Guidelines in calculating the punishment

The court highlighted 5 mitigating circumstances and two aggravating circumstances, while there was no justification or elaboration on any of the circumstances noted, nor their correlation with the principles. Consequently, the calculation of the sentence was done quantitatively and the court applied the situation of “circumstances justifying maximum mitigation of the sentence within the limit” per Column 5 of the Guidelines, Appendix 1, part 2, point g), and rendered a punishment of 6 months for each defendant.

## **P.nr.119/20**

A.C., “Giving bribes” per Article 422, par.1 of the CCRK

### Enacting clause of the judgement

A.C. was charged with offering EUR 20 to an official person at the border crossing in Vermice in July 2020, which he had placed inside his travel documents.

### The sentence foreseen by the Law and the sentence rendered

Punishment of fine and imprisonment of up to 5 years.

1 year suspended sentence for a two year period and a fine of EUR 500.

### Mitigating Circumstances

- Guilty plea;
- Remorse for the committed offences;
- Poor economic condition;
- Personal circumstances, father of five children.

### Aggregating circumstances

- None.

### Compatibility of the sentence and application of the principles as per the Guidelines

The court did not record the purposes of the sentence in its judgement, did not elaborate the principles on determining the length of the sentence and circumstances recorded, but rather only stated them in the judgement.

### Application as per the Guidelines in determining the sentence

The court recorded four mitigating circumstances and no aggravating ones, while it did not justify any of the circumstances or address relevant questions, nor did it weight the importance of the circumstances recorded in the judgement.

In this particular case, the court rendered a suspended sentence of 6 months and issued a EUR 500 fine, resulting from the application of the situation of “circumstances justifying maximum mitigation of the sentence within the limit” as foreseen by the Guidelines, namely Appendix 1, part 2, point h), that specifies a minimum sentence of 6 months. The court did not provide a justification as to how it determined the amount of the fine or the suspended sentence issued to the defendant.

## PKR.nr.62/20

D.P., "Giving bribes" per Article 422, par.1 of the CCRK

### Enacting clause of the judgement

D.P., as the driver of the truck that had been charged with offering an official person the amount of 500 Albanian LEK in June 2020, despite no irregularities found when checking his documents.

### The sentence foreseen by the Law and the sentence rendered

Punishment of fine and imprisonment of up to 5 years.

1 year suspended sentence and EUR 300 fine.

### Mitigating Circumstances

- Guilty plea;
- Family circumstances, breadwinner for the family;
- Poor economic conditions;
- Remorse;
- No prior conviction;
- Commitment to not commit other criminal offences.

### Aggregating circumstances

- None

### Compatibility of the sentence and application of the principles as per the Guidelines

The court only recorded the mitigating and aggravating circumstances without elaborating or correlating them with the principles in determining the length of the punishment. The court only mentioned the principles without further elaboration, while there was no mentioning of the other three aims at all.

### Application as per the Guidelines in calculating the punishment

In this case, the court recorded 6 mitigating circumstances and no aggravating ones, but there was no elaboration or weighing of the circumstances recorded, as foreseen by the Guidelines.

### Application as per the Guidelines when determining the sentence

The court recorded 6 mitigating circumstances and no aggravating ones, while none of the factors or relevant questions were justified and no weighting of the recorded circumstances was provided in the judgement.

In this particular case, the court issued 6 months suspended sentence and a fine of EUR 300, resulting in the application of the situation foreseen by the Guidelines "circumstances justifying maximum mitigation within the limit", which, according to Appendix 1, part 2, point h), foresees a minimum sentence of 6 months. The court did not provide justification for the length of the fine issued, nor when determining the suspended sentence rendered for the defendant.

## **PKR.nr.45/19**

E.B., “Abusing power or official authority” per Article 422, par.1 of the CCRK

### **Enacting clause of the judgement**

E.B., an inspector of the Inspector Department in the municipality was charged with abusing power or official authority, specifically for not demolishing an illegally built building. According to the Prosecution, E.B. only did administrative work in compiling the records but did so without drawing conclusions on demolishing the building that was without a permit, thus providing material benefit from the 13 floors of the building to the investor.

### **The sentence foreseen by the Law and the sentence rendered**

6 months and up to 5 years.

Punishment of imprisonment of 1 year and 6 months.

### **Mitigating Circumstances:**

- Family person, father of four children;
- Good behaviour during the procedure.

### **Aggregating circumstances:**

- Circumstances which the criminal offence was committed;
- The characteristics of personal circumstances in being an inspector;
- Loss of credibility among citizens through his work;
- He is a recidivist of criminal offences of this nature;
- Bringing benefits and extent of danger to the protected value.

### **Compatibility of the sentence and application of the principles as per the Guidelines**

The court did not mention any of the principles of punishment as envisaged by the Code and Guidelines, rather it only recorded mitigating and aggravating circumstances, described and correlated them to the principles only superficially, but did not elaborate or correlate them to the principles of determining a sentence as provided by the Guidelines.

### **Calculation of the sentence according to the Guidelines**

For this particular case, the court recorded five aggravating circumstances and only 2 mitigating ones. The court rendered a sentence of 1 year and 6 months imprisonment. Per point h), part 2 of Appendix 1 of the Guidelines, this sentence could have been rendered with the application of the situation “factors indicating more mitigating than aggravating circumstances”. In this particular case, it is clear that this is not the situation as indicated in the circumstances recorded by the court itself.

## **Case PKR.nr.87/16**

H.G., “Misappropriation in office” per Article 425, par.1 of the CCRK.

In the criminal case against H.G. in the capacity of an official person-debt collector for the water company in Prizren, in the period of March 2013 to May 2015, with the intention of unlawfully obtaining material benefit for himself, appropriated assets that were entrusted to him, in such a manner that he did not deliver the collected debt for the water used and billed.

#### The sentence foreseen by the Law and the sentence rendered

Punishment of fine and imprisonment of 6 months to 5 years.

6 months imprisonment converted to EUR 4,000 and a fine of EUR 800.

#### Mitigating Circumstances

- First time violation of the Law;
- Family situation, married with three kids.

#### Aggregating circumstances

- Offence committed with a high degree of intention;
- Manner of committing the offence by issuing double bills systematically;
- Appropriation of the money collected;

#### Compatibility of the sentence and application of the principles as per the Guidelines

The court mentioned the purposes of the punishment and partially elaborated on them, did a partial correlation of the circumstances with the purpose in determining the length of the sentence, and thus partially fulfilled the requirements of the Guidelines.

#### Calculation of the sentence according to the Guidelines

The court recorded 3 aggravating circumstances and 2 mitigating ones and it elaborated them partially per the requirements of the Guidelines. The defendant was rendered a six month imprisonment which was converted to a EUR 4,000 fine and was issued an additional EUR 800 fine. This is an adequate sentence for the situation when “circumstances justifying maximum mitigation of the sentence within the limit” apply, as per point h), part 2 of Appendix 1 of the Guidelines, which foresees a minimum sentence of 6 months. In this particular case, however, the court recorded more aggravating circumstances than mitigating ones, therefore the sentence rendered is not compliant with the circumstances recorded by the court. The court did not justify the conversion of the punishment of imprisonment to a fine.

Basic Court of Peja

#### Case PKR.nr.20/20

“Giving bribes” per Article 422, par.1 of the CCRK.

#### Enacting clause of the judgement

On 22 February 2020, at 13:37, at the regional road, the defendant directly offered a bribe to officials persons - two traffic police officers, after police officers stopped the defendant and indicated that he had exceeded the speed limit after checking the radar. When the defendant gave his documents to the police officers, he also gave them 20 Swiss franks. When the police officer asked him about the money, the defendant stated “so you can have a coffee”. The defendant pleaded guilty in the initial hearing.



The sentence foreseen by the Law and the sentence rendered  
Punishment of a fine and imprisonment of 6 months to 5 years.  
1 year suspended sentence.  
EUR 250 fine.

#### Mitigating circumstances recorded in the judgement:

- Guilty plea;
- Good conduct in the courtroom;
- No prior conviction;

#### Aggravating circumstances:

- None.

#### Compatibility of the sentence and application of the principles as per the Guidelines

Only the purposes of punishment are mentioned in the judgement without elaboration nor mention of the principles and circumstances of commissioning the criminal offence.

#### The method as per the Guidelines in calculating the punishment

In this particular case, the calculation was quantitative. The court mentioned three mitigating circumstances and no aggravating ones, while no justification was provided on the details of the circumstances and their weight. As per the Guidelines, this qualifies in the scope of Column 5, namely “circumstances justifying maximum mitigation of a sentence within the limit”. In this regard, according to Appendix 1, part 1, point g), the punishment should have been a minimum of 1 month and maximum up to 1 year. In this case, the sentence was within the limit, as the defendant was rendered one year of imprisonment.

#### **Case PKR.nr.5/20**

“Giving bribes” per Article 422, par.1 of the CCRK

On 21 January 2020, at approximately 22:40, while on the motorway, the defendant offered an unreasonable gift to an official person, in such a manner that when the police officer stopped him and when he asked about the documents and green card, the defendant placed a 5 Euro banknote in the document. The defendant pleaded guilty in the initial hearing.

#### The sentence foreseen by the Law and the sentence rendered

A sentence of a fine and imprisonment of up to five (5) years.  
6 months suspended sentence with a verification of 1 year and EUR 100 fine.

#### Mitigating circumstances recorded in the judgement

- Guilty plea;
- Good conduct of the defendant in the courtroom;
- Genuine remorse.

#### Aggravating circumstances

- None.



## Compatibility of the sentence and application of the principles as per the Guidelines

The judgement only recorded the fact that through this sentence the aim of the criminal sanction would be achieved, with no mentioning or elaboration of the aim of the sentence. Further, the court only recorded mitigating circumstances without correlating them with the principles that should be taken into account when determining the sentence as defined in the Guidelines.

### The method as per the Guidelines in calculating the punishment

In this judgement, the court mentioned only three mitigating circumstances and no aggravating ones, while no justification was provided on the internal significance of the factor and weight of the circumstances. Thus, the calculation was quantitative. Based on Appendix 1 of the Guidelines, the case qualifies under column 5, particularly at the “circumstances justifying maximum mitigation of the sentence within the limit” part. Therefore, according to Appendix 1 of the Guidelines, part 1, point g), the sentence should be a minimum of 1 month. Thus, the sentence rendered in this case was within the limit, as the defendant was issued 6 months imprisonment and EUR 100 fine.

### Case PKR.nr.66/20

E.B., “Giving bribes” per Article 422, par.1 of the CCRK

### Enacting clause of the judgement

On 18 July 2020, at approximately 14:00, at the location of E.B., the defendant directly offered material benefit to the official person so that the latter would not act in accordance with his official power – Trade Inspector of the municipality. In issuing the mandatory fine and compiling the minutes, the defendant as the manager of the place, took out a EUR 50 banknote and offered it to the official person stating “take this and we’re done”. The defendant pleaded guilty in the initial hearing.

### The sentence foreseen by the Law and the sentence rendered

Sentence of a fine and imprisonment up to 5 years.

6 months imprisonment with a verification period of one year and a EUR 200 fine.

### Mitigating Circumstances

- Good prior conduct and no previous altercations with the law;
- Guilty plea.

### Aggravating circumstances

- None.

## Compatibility of the sentence and application of the principles as per the Guidelines

The aim of preventing the perpetrator to commit criminal offences in the future was mentioned in the judgement, but no further aims were mentioned. In this criminal case, the court only mentioned mitigating and aggravating circumstances but there was no mention of the correlation with principles, which should be considered when determining the sentence, as defined by the Guidelines.

## Mitigating and Aggravating Circumstances mentioned in the judgement

The court did not provide elaborations on two of the mitigating circumstances recorded in the judgement, but only cited them, thus it did not fulfil the requirements of the Guidelines.

## The method as per the Guidelines in calculating the punishment

In the judgement, the court mentioned two mitigating circumstances and no aggravating ones, while it did not justify the internal significance of the factors nor the weight of the circumstances. In this case, the calculation was quantitative and based on Appendix 1, where it qualifies under Column 5, namely “circumstances justifying maximum mitigation of the sentence within the limit”. In this regard, according to Appendix 1, part 1, point g) of the Guidelines, the sentence should be a minimum of 1 month. The sentence rendered through this judgement was within the limit, as the defendant was issued a 6 month imprisonment sentence and a EUR 200 fine.

In this particular case, no weighing of circumstances was performed, while the assignment of their weight in the sentence was not elaborated and neither was the conversion of the sentence of imprisonment into a fine, nor the amount of the fine itself.

## Case PKR.nr.92/20

“Abusing official position or authority” per Article 414, par.1 of the CCRK.

## Enactment clause of the judgement

On 4 May 2020, at approximately 08:00, while using his power, the defendant did not fulfil his official duty with the purpose of obtaining material benefit for the witness F.R., in such a manner that in his official capacity of Woodward, on the critical day while he was assigned as guard of the forest, he did not stop to search the truck driven by the above mentioned witness, who was carrying wood worth EUR 1,424.50 in his truck. The defendant pleaded guilty in the initial hearing.

## Sentence foreseen by the Law and sentence rendered

Sentence of imprisonment of 1 to 8 years.

Imprisonment of 3 months, converted to EUR 1,900.

## Mitigating Circumstances

- Guilty plea;
- Good conduct of the defendant in the courtroom;
- Remorse.

## Aggregating circumstances:

- Prior conviction of the defendant.

## Compatibility of the sentence and application of the principles as per the Guidelines

Eligibility of the sentence is not mentioned in the judgement at all, while two out of four principles of the sentence are mentioned but not justified as required by the Guidelines. In this criminal case, the court only mentioned mitigating and aggravating circumstances but did not correlate them with the principles that should be taken into account when determining the sentence, as defined by the Law.

## The method as per the Guidelines in calculating the punishment

In this case, the calculation was quantitative. In the judgement, the court only mentioned three mitigating circumstances and one aggravating one but did not provide a justification in regards to the internal significance of the factors nor the weight of the circumstances. It appears that the court applied the “maximum mitigation when Article 75 (71 with the new Criminal Code) is applied”, and rendered the minimum sentence of 3 months as envisaged by Column 3 of the Guidelines.

### Case PKR.nr.19/2020

“Misappropriation in office” per Article 425, par.1 in conjunction with Article 81 of the CCRK.

Fraud from Article 335, par.1 in conjunction with Article 81 of the CCRK.

### Enactment clause of the judgement

In the time period of November 2017 to February 2018 continuously, as the official person of .... company, the defendant in continuity and with the intention of unlawfully obtaining material benefit appropriated financial means which were entrusted to him in his capacity as debt collector for the .... company. He took the total amount of EUR 280 in the name of collecting debt for electricity spent and with the purpose of depositing them, but in fact the defendant appropriated them for himself.

### Appropriation in office

Sentence of fine and imprisonment of 6 months up to 5 years.

### Aggregate sentence

Sentence of fine and imprisonment of 6 months up to 3 years.

In this particular case, the trial panel rendered a suspended sentence of 15 months and fine of EUR 400 for the criminal offence of “misappropriation in office”.

For the criminal offence in point 2 of the enactment clause of the judgement, the defendant was rendered a sentence of imprisonment in the duration of 12 months and a fine of EUR 300.

2 years and EUR 700 fine with a verification period of one year.

### Mitigating Circumstances:

- Primary breadwinner;
- Very poor economic conditions;
- No prior convictions for criminal offences.

### Aggregating circumstances:

- None.

### Compatibility of the sentence and application of the principles as per the Guidelines

The eligibility of the sentence was not mentioned in the judgement, while superficially only two of the purposes of a sentence were mentioned - the general and individual preventions, but without justification or description and without mention of the other two purposes of a sentence. Mitigating and aggravating circumstances were mentioned but no correlation was made with the principles that ought to be taken into account when determining a sentence, as defined by the Guidelines.

## Mitigating and aggravating circumstances in the judgement

The court did not provide any elaboration for three of the mitigating circumstances recorded in the judgement, just merely cited them, while there was no weighing of the circumstances nor needed clarification on the calculation of the weight of these circumstances.

### The method as per the Guidelines in calculating the punishment

In the judgement, the court mentioned only three mitigating circumstances and no aggravating ones, while there was no justification on the internal significance of the factors and no weighing of the circumstances. Thus, the calculation was quantitative. According to Appendix 1 of the Guidelines, the case qualifies under “factors indicating more mitigating than aggravating circumstances”. Thus, per Appendix 1, part 2, point h) of the Guidelines, the sentence in this case should be 1 year and 6 months. The defendant was rendered a sentence of 6 months imprisonment, however the Guidelines envisaged this sentence only when provision of Article 71 of the Criminal Code on mitigation of sentences is applied

Basic Court of Mitrovica

### P.nr.51/2019

S.D., “Misappropriation in office” per Article 425, par.3 in conjunction with par.2 of the CCRK.

### Enacting clause of the judgement

From January 2005 to December 2015, S.D., in the capacity of chief accountant for companies “..” and “...” in Mitrovica, which were initially registered with UNMIK and later on with the Business Registration Agency of Kosovo as “...” in Mitrovica, with the intention of unlawfully obtaining material benefit, appropriated money that was entrusted to him due to his position in the amount of EUR 273,107.39.

Sentence foreseen by the Law and sentence rendered

Sentence of a fine and imprisonment of 6 months to 12 years.

3 years and 6 months imprisonment and EUR 1,000 fine.

Obligated to return the money to the company.

### Mitigating Circumstances

- First altercation with the Law;
- Old age-retired person;
- Poor economic conditions.

### Aggregating circumstances

- Manner and circumstances how the criminal offence was commissioned;
- Degree of criminal liability.

### Compatibility of the sentence and application of the principles as per the Guidelines

Out of the four purposes of a sentence envisaged by the Guidelines that should be taken into account in every judgement, the court mentioned only two purposes of the sentence, without elaborating, nor mentioning the other two purposes at all.

In this particular case, the court only cited the mitigating and aggravating circumstances without correlation to the principles that should be taken into account when determining the sentence, as defined by the Guidelines.

### The method as per the Guidelines in calculating the sentence

In its judgement, the court mentioned three mitigating circumstances and two aggravating ones, without weighing them or elaborating on the internal significance of the factors in these circumstances, meaning that it conducted a quantitative assessment of the circumstances.

Based on the sentence rendered, it appears that the court used the “circumstances justifying maximum mitigation of the sentence within the limit” which, according to point e), part 5 of Appendix 1 of the Guidelines, foresees a minimum sentence of 3 years imprisonment.

### **P.nr.117/2018**

“Abusing official position or authority” per Article 422, par.1 in conjunction with Article 81 of the CCRK.

### Enacting clause of the judgement

According to the indictment, V.B., in the capacity of the senior financial officer of KRU ..., in August 2014 exceeded his competences by ordering two company officials to purchase two internal wheels of the excavator in the amount of EUR 1,784.00.

Sentence foreseen by the Law and sentence rendered

6 months imprisonment and up to 5 years.

6 months imprisonment with possibility of conversion to EUR 2,000 fine.

### Mitigating Circumstances

- Good conduct during the entire judicial procedure;
- Does not work at the KRU any more;
- No prior trial;
- Personal circumstances such as primary breadwinner and parent to two children;
- Conduct of the defendant after commissioning the criminal offence.

### Aggregating circumstances

- Manner of commissioning the criminal offence;
- Intent of his actions.

### Compatibility of the sentence and application of the principles as per the Guidelines

Out of the four purposes of a sentence foreseen by the Guidelines, which ought to be taken into account in every judgement, the court mentioned only three of purposes but without any elaboration and did not correlate principles with circumstances when determining the length of the sentence.

### Calculation of the sentence according to the Guidelines

In this case, the court recorded 5 mitigating circumstances and 2 aggravating circumstances, while it provided a superficial explanation for only one of the aggravating circumstances. Thus, the court conducted a quantitative calculation of the circumstances recorded.

Therefore, the court applied the situation of “circumstances justifying maximum mitigation within the limit” as foreseen by point h), in part 2 of Appendix 1 of the Guidelines, which foresees a minimum sentence of 6 months imprisonment. The court did not provide a justification, apart from referring to the Article of the Code related to conversion of an imprisonment sentence into a fine.

## **P.nr.141/2018**

A.B. and P.H., “Abusing official position or authority” per Article 422, par.1 of the CCRK.

### **Basic description of the case and judgement**

The Prosecution in Mitrovica charged A.B. for two criminal offences - abusing official position or authority and violation of equal status of citizens and inhabitants of the Republic of Kosovo, in the capacity of the director in the municipality.

P.H., a former director as well, was charged by the Prosecution with the criminal offence of falsifying an official document.

Sentence foreseen by the Law and sentence rendered

Imprisonment of 6 months up to 5 years.

1 year suspended sentence with a 2 year verification period.

### **Mitigating Circumstances**

- Remorse;
- Good conduct during the trial;
- No prior conviction;
- The competition was annulled through a decision of the Inspectorate.

### **Aggregating circumstances**

- None.

Compatibility of the sentence and application of the principles as per the Guidelines

Out of the four purposes of a sentence that ought to be taken into account in every judgement as per the Guidelines, the court mentioned only two of them, without elaborating on the requirements defined by the Guidelines.

In this case, the court only cited the mitigating and aggravating circumstances but did not correlate them to the principles to be considered when determining the sentence as is defined by the Guidelines.

### **The method as per the Guidelines in calculating the punishment**

The court mentioned three mitigating circumstances in the judgement. The court did not assess the internal significant of factors in the recorded circumstances nor their weight in calculating the length of the sentence, therefore the assessment of the circumstances was quantitative.

Hence, the court applied the situation of “circumstances justifying maximum mitigation of a sentence within the limit” in point h), in part 2, of Appendix 1 in the Guidelines, which defines a minimum sentence of 6 months. The court did not justify the reasons that led to it determining a suspended sentence.

## **Rasti P.nr.716/2020**

“Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations”, per Article 437, par.2 of the CCRK.



### Enacting clause of the judgement

According to the indictment, on 1 April 2019, F.A. did not provide all the required data in the declaration of assets to the ACA, in such a manner that on the said date, he submits the form for the declaration of all income and assets for the period of 1 January 2018 to 31 January 2018.

### Sentence foreseen by the Law and sentence rendered

Sentence of fine and imprisonment of 6 months up to 5 years.

Fine of EUR 300.

### Mitigating Circumstances

- Guilty plea;
- Good conduct;
- Genuine remorse.

### Aggregating circumstances

- None.

### Eligibility of the sentence

In the judgement, the court weighed up the importance of the criminal offence on the one hand and the personality of the defendant as the perpetrator on the other hand, and applying the purpose of the sentence per Article 41 of the CCRK, the court assessed that even by means of a fine, the general purpose of the special prevention may be attained. The court also added that the sentence complies with the degree of culpability of the defendant, the degree of the of importance of the criminal offence, and subsequent consequences.

### Compatibility of the sentence and application of the principles as per the Guidelines

In its justification, the court mentioned only the general purpose of “special prevention”, however the court did not elaborate nor did it specify any of the other purposes but only mentioned purposes per Article 41 of the CCRK. The court only cited mitigating and aggravating circumstances and did not correlate them with the principles to be considered when determining the sentence as defined by the Guidelines. In the judgement, only Articles of the Code are cited but there is no correlation between principles for calculation of the sentence.

### The method as per the Guidelines in calculating the punishment

In this case, the court recorded three mitigating circumstances – among them the guilty plea, while it recorded no aggravating circumstances, so it rendered a sentence of a EUR 300 fine. A sentence of a fine and imprisonment of 6 months up to 5 years is envisaged for this criminal offence per the Guidelines, so if the court was applying “partial mitigation when Article 75 is applied”, then it should have rendered a minimum of 1 year imprisonment. In this particular case, the court issued only a EUR 300 fine, and apart from not justifying the amount of the fine, it did not clarify in the judgement as to how it reached the calculation for this sentence.

### **PKR.nr.32/2020**

E.B., “Falsifying official document”, Article 434, par.1 of the CCRK.

#### **Enacting clause of the judgement**

E.B., “Falsifying official document”, Article 434, par.1 of the CCRK.

#### **Enacting clause of the judgement**

According to the indictment, E.B. was found guilty after the court found that he had falsified an official document on a ticket for minor traffic offence presented by the police officer, by writing with a pen ‘Article 118’ instead of ‘Article 188’, which foresees a lesser fine for minor offences. He did so on 8 January 2018 at the Police Station in Gjilan.

Sentence foreseen by the Law and sentence rendered

Imprisonment from 6 months up to 5 years.

180 days imprisonment, converted to EUR 1,200 fine.

#### **Mitigating Circumstances:**

- First time offender;
- Committed the criminal offence in an emotional state due to the situation of the injured party;
- No prior conviction for criminal offences;
- No other criminal offence or disciplinary offence under way.

#### **Aggregating circumstances:**

- None.

The court mentioned the purposes of the sentence but did not elaborate nor did it correlate the principles to determine the length of the sentence in line with the recorded circumstances.

#### **Calculation of the sentence per the Guideline**

The court recorded 4 mitigating circumstances and no aggravating circumstances, while it did not justify or support them as required by the Guidelines. The court rendered the defendant with a sentence of imprisonment of 180 days with the option to convert it to a EUR 1,200 fine, when this criminal offence should be issued with a sentence of imprisonment from 6 months up to 5 years. The court seems to have applied the situation of “circumstances justifying the maximum mitigation of a sentence within the limit” in Appendix 1, part 2, point h) of the Guidelines, which foresees a minimum sentence of 6 months. The court did not justify the conversion of imprisonment to a fine nor the amount issued as a fine.

### **PKR.nr.87/20**

R.B., “Abusing official position or authority” per Article 414, par.1 of the CCRK.

#### **Enacting clause of the judgement**

R.B., in the capacity of an official person – Commander of the Fire-fighters Service, by using his official position and authority with the intent of unlawfully obtaining material benefit for himself and causing damage to the fire-fighters service, was charged with exceeding his official competences in such a manner that he filled his private car with 58 liters of oil derivatives.



Sentence foreseen by the Law and sentence rendered  
Imprisonment of 1 to 8 years;  
Imprisonment of 5 months.

#### Mitigating Circumstances

- Guilty plea;
- Genuine remorse;
- Stated sincerity;
- Responsive to all court summons;
- Good conduct during the trial;
- Apologised to the injured party;
- Commitment not to re-offend;
- Little damage caused.

#### Aggregating circumstances

- High degree of criminal liability;
- Social danger of the criminal offence.

#### Compatibility of the sentence and application of the principles as per the Guidelines

The court only recorded the mitigating and aggravating circumstances but did not elaborate on them, nor did it assess their weight or correlate the principles of determining the length of a sentence.

#### Application as per the Guidelines in calculating the sentence

In this case, the court recorded two aggravating circumstances and eight mitigating circumstances, but did not elaborate per the Guidelines. The defendant charged with the criminal offence that has a foreseen sentence of imprisonment of 1 up to 8 years, was rendered a sentence by the court of 5 months imprisonment citing Article 72, par.1, point 1.5, that says: “if a period of one (1) year is provided as the minimum term of imprisonment for a criminal offense, the punishment can be mitigated to imprisonment of up to three (3) months.” According to the Guidelines, this falls under “maximum mitigation when Article 75 is applied” that stipulates a minimum sentence of 3 months imprisonment.

#### **PKR 238/18**

S.I., “Abusing official position or authority” per Article 422, par.1 of the CCRK.

#### Enacting clause of the judgement

S.I. was found guilty after the court concluded that on 15 November 2017, in his capacity as Mayor, with the intention of unlawfully obtaining material benefit for a legal person, he exceeded his official competences and seriously violated the rights of another legal person.

#### Sentence foreseen by the Law and sentence rendered

Imprisonment from 6 months up to 5 years.  
Imprisonment of 150 days converted to a EUR 3,000 fine.

### Mitigating Circumstances

- Good conduct of the defendant;
- Family person;
- Not known for other criminal offences.

### Aggregating circumstances

- Circumstances how the criminal offence was committed;
- Damage caused to the municipality.

### Eligibility of the sentence

The court mentioned the purposes of a sentence but did not justify them nor did it correlate them with the principles that determine the length of a sentence, as defined by the Guidelines.

### Calculation of a sentence per the Guidelines

In this case, the court only cited the aggravating and mitigating circumstances but without any correlation with the principles that need to be considered when determining the sentence, as it is defined in the Guidelines. The court concluded, in the judgement, 3 mitigating circumstances and only 2 aggravating ones, and did not weigh the importance of these circumstances.

The court rendered a sentence term of 150 days or 3 months and enabled the defendant to convert the imprisonment term to a fine of EUR 3,000, whereas the sentence foreseen for this criminal offence is 6 months and up to 5 years. It appears that the court used the situation “partial mitigation according to Article 75”, which foresees a minimum sentence of 1 month, stipulated in point 1.5. of paragraph 1, of Article 71 of the Criminal Code, that says: “if a period of one (1) year is provided as the minimum term of imprisonment for a criminal offense, the punishment can be mitigated to imprisonment of up to three (3) months”.

The court did not justify how it came to such a mitigation, nor the circumstances or weight of the circumstances that led to such a decision.

### **PKR.nr. 129-18**

N.N., “Abusing power or official authority” per Article 422, par.1 of the CCRK.

### Enacting clause of the judgement

According to the judgement, N.N. was found guilty of, from August 2015 to April 2017, in the capacity of the director for finances and budget at the municipality, through using his power and official authority and with the intention of unlawfully obtaining material benefit for himself or another party or to cause damage to another person intentionally, he did not fulfil his duties as defined by the Law.

### Sentence foreseen by the Law and sentence rendered

Imprisonment term of 6 months up to 5 years.

8 months imprisonment term.

### Mitigating Circumstances

- Guilty plea;
- Good conduct during the main trial;
- Primary breadwinner;
- No prior conviction for criminal offences.

### Aggregating circumstances

- Circumstances in which the criminal offence was committed;
- Injury caused;
- Danger of the criminal offence.

### Compatibility of the sentence and application of the principles as per the Guidelines

In its judgement, the court recorded the purposes of the sentence, but did not justify them, while it only described the mitigating and aggravating circumstances without correlating them to the principles in determining the length of the sentence.

### Calculation of the sentence per the Guideline

The court recorded 4 mitigating and 3 aggravating circumstances but did not elaborate per the Guidelines. In this particular case, it appears that the court applied the category of “circumstances justifying maximum mitigation of the sentence within the limit”, which, per point h), part 2, of Appendix 1 in the Guidelines envisages a minimum sentence of 6 months.

Basic Court of Ferizaj

### PKR.nr.9-18

A.I, “Trading in influence”, per Article 431, par.1 of the CCRK and criminal offence of “extortion” per Article 340, par.1 in conjunction with Article 28 and Articles 31 and 33 of the CCRK.

### Enacting clause of the judgement

For the period of December 2016 to 14 August 2017, A.I. was charged with continuously and directly demanding money from the injured party, with the purpose of training in influence with official persons – prosecutors and judges so that his son would not be convicted or would be convicted leniently.

### Foreseen sentence by the Law and sentence rendered

Fine or imprisonment of up 8 years.

1 year imprisonment.

### Mitigating Circumstances

- Family situation;
- Economic situation;
- Parent to one child.

### Aggregating circumstances

- Criminal liability;
- Manner and circumstances of committing the criminal offence;
- Dangers of the criminal offence;
- Prior conviction for criminal offence.

## Compatibility of the sentence and application of the principles as per the Guidelines

The court described the purposes of the sentence in the judgement but did not elaborate on them nor did it correlate circumstances to the principles on determining the length of a sentence.

## Calculation of the sentence according to the Guidelines

The court recorded 3 mitigating circumstances and 4 aggravating circumstances. In this particular case, only the sentence issued for the count of indictment on the criminal offences from the chapter of corruption and misuse of official authority were analysed, which related to trading in influence. For this criminal offence, a sentence of a fine or imprisonment of up to 8 years is foreseen, but the court rendered a 1 year imprisonment term. There were more aggravating than mitigating circumstances in this particular case that were recorded in the judgement and yet the court appears to have applied the situation of “circumstances justifying maximum mitigation of the sentence within the limit” which falls under point i) of part 2 of Appendix 1 as per the Guidelines, which stipulate a minimum of 1 year imprisonment term.

### **PKR.nr.95-20**

R.D., “Giving bribes” per Article 422, par.2 of the CCRK

### Enacting clause of the judgement

R.D. was charged with having directly offered an unreasonable gift or other benefit to an official person on 16 May 2020 at 11:50 in the village of ..., in such a manner that on the critical day while he was driving his cargo truck, he was stopped by Police officers due to a minor traffic offence, while in the moment the police officer requested his document for verification, the defendant offered a EUR 10 banknote to the officer.

### Sentence foreseen by the Law and sentence rendered

Fine or imprisonment for 6 months up to 5 years.

6 months suspended sentence and EUR 400 fine.

### Mitigating Circumstances

- Pleaded guilty at the initial hearing;
- Not known for previous criminal offences;
- No prior conviction;
- Parent to three minor children;
- Low value of bribe offered.

### Aggregating circumstances

- Circumstances of how the criminal offence was committed.

## Compatibility of the sentence and application of the principles as per the Guidelines

The court recorded the purposes of the sentence in the judgement, but did not elaborate or justify the purposes or the recorded circumstances, nor made any correlation with the principles on determining the length of the sentence.

## Calculation of the sentence according to the Guidelines

In this particular case, the court recorded 5 mitigating circumstances and 1 aggravating circumstance, while for this criminal offence, a fine and 6 months to 5 years imprisonment term are foreseen, whereas the court rendered 6 months imprisonment and a fine of EUR 400. In this particular case, it appears that the court applied the “circumstances justifying maximum mitigation of the sentence within the limit” situation, which per point h), part 2, Appendix 1 in the Guidelines envisages a minimum sentence of 6 months. The court did not justify the suspended sentence it rendered, nor the amount of the fine issued.

## PKR.nr.113-20

A.T., “Giving bribes” per Article 422, par.2 of the CCRK

## Enacting clause of the judgement

A.T. was charged with having directly offered an unreasonable gift or other material benefit to official persons on 29 July at around 09:30 in the village of ..., in the municipality of .... He did so in such a manner that while driving his car on the critical day, he overtook a truck on a solid line when he was stopped by police officer, while when the latter required documentation and the police officer was writing the minor offence ticket, the defendant offered a 100 dollar banknote to the officer, so he would not be issued a ticket, which caused the defendant to be arrested.

## Sentence foreseen by the Law and sentence rendered

Fine and imprisonment from 6 months up to 5 years.  
6 months suspended sentence and EUR 2,000 fine.

## Mitigating Circumstances

- First time committing a criminal offence;
- No prior conviction;
- No other procedures against him;
- Guilty plea.

## Aggregating circumstances

- Circumstances of how the criminal offence was committed.

## Compatibility of the sentence and application of the principles as per the Guidelines

The court recorded the purposes of the sentence in the judgement, but did not elaborate or justify the purposes, nor the circumstances recorded or any correlation with the principles on determining the length of the sentence.

## Calculation of the sentence according to the Guidelines

In this particular case, the court recorded 4 mitigating circumstances and 1 aggravating circumstance, while for this criminal offence, a fine and imprisonment term of 6 months to 5 years is stipulated. The court issued 6 months suspended sentence and a EUR 2,000 fine. In this particular case, it appears that the court applied the “circumstances justifying maximum mitigation of the sentence within the limit” situation, which per point h), part 2, Appendix 1 as per the Guidelines envisages a minimum sentence of 6 months. The court did not justify the suspended sentence nor the amount of the fine issued.

## PKR.nr.149/19

M.M., “Abusing official position or authority” per Article 422, par.2 of the CCRK

### Enacting clause of the judgement

M.M. was charged in co-perpetration with defendant..., accused of the intent to unlawfully obtain material benefits in their official position by not acting in accordance with their official duties. For the period of 5 September to 13 September 2019, they were accused of having demanded a bribe from injured party ....., in such a manner that they requested from the injured party an amount of EUR 400 not to enforce a judgement in the Basic Court of Ferizaj.

### Sentence foreseen by the Law and sentence rendered

Fine and imprisonment term of 1 to 8 years;  
1 year of effective imprisonment and EUR 500 fine.

### Mitigating Circumstances

- Family situation, parent to three children;
- No previous record of criminal offences.

### Aggregating circumstances

- Degree of criminal liability;
- Circumstances and concrete dangers of the criminal offence.

### Compatibility of the sentence and application of the principles as per the Guidelines

The court recorded the purposes of the sentence in the judgement, but did not elaborate or justify the purposes, nor the circumstances recorded and any correlation with the principles on determining the length of the sentence.

### Calculating of the sentence according as per the Guidelines

The court recorded 2 mitigating circumstances and 2 aggravating circumstances. For this criminal offence, a fine and imprisonment of 1 to 8 years is foreseen, while the court rendered a 1 year effective imprisonment sentence and a EUR 500 fine. The court appears to have applied the situation classified as “circumstances justifying maximum mitigation of the sentence within the limit”, which, according to point g), part 3, Appendix 1 as per the Guidelines, foresees a minimum sentence of 1 year. The court did not reason the circumstances justifying maximum mitigation, considering that in the judgement it recorded two mitigating and two aggravating circumstances, while it did not justify the amount of the fine either.

Basic Court of Gjakova

## PKR.nr. 152/20

I.M., “Falsifying official document”, Article 434, par.1 of the CCRK.

### Enacting clause of the judgement

According to the indictment, I.M., in the capacity of the chief of public services in the municipality, acted in violation of the Law on Public Procurement when initiating the request for supply with electricity cables for one of the villages of the municipality.

Sentence foreseen by the Law and sentence rendered  
Imprisonment from 6 months up to 5 years.  
6 months imprisonment converted to a EUR 3,400 fine.

#### Mitigating Circumstances

- Age of the defendant – retired;
- No prior conviction.

#### Aggregating circumstances

- None.

#### Compatibility of the sentence and application of the principles as per the Guidelines

According to the judgement, this sentence is in harmony with the weight of the criminal offence, responsibility and personality of the defendant, and in rendering this sentence, the court believes the purpose of the sentence will be met.

In this case, the court only mentioned that the purpose of the sentence was attained according to Article 41 of the CCRK, but did not specify which purpose.

#### Application as per the Guidelines in calculating the sentence

In this case, the court recorded two mitigating circumstances and no aggravating ones and did not elaborate on the circumstances, nor did it note the internal significance of the factors or weight of the circumstances, thus it did a quantitative assessment. The court rendered a sentence of 6 months with the possibility of converting it into EUR 3,400 fine. It appears that the court applied the situation of “circumstances justifying maximum mitigation of the sentence within the limit”, which according to point h), part 2 in Appendix 1 of the Guidelines, defines a minimum sentence of 6 months and a maximum sentence of 2 years. The court did not justify its decision to allow the conversion of imprisonment sentence into a fine at all.

#### **PKR.nr.149/20**

I.H., “Accepting bribes” per Article 428, par.1 of the CCRK

#### Enacting clause of the judgement

The indictment notes that in May 2018, the defendant misused his official authority by demanding EUR 1,500 from a person, a manager in a restaurant, for the organization of prom, in such a manner that his real offer was EUR 11 per person, whereas the defendant demanded the manager to increase the price to EUR 13, and keep the EUR 2 per person difference for himself.

Sentence foreseen by the Law and sentence rendered  
Fine and imprisonment of 6 months to 5 years.  
8 months imprisonment and EUR 1,000 fine.



### Mitigating Circumstances

- Good conduct;
- Primary breadwinner;
- No prior conviction.

### Aggregating circumstances

- None.

### Compatibility of the sentence and application of the principles as per the Guidelines

In terms of eligibility of the sentence, the court, based on Article 47 of the CCRK and the purposes within this Article, said that the sentence issued is in compliance with the weight of the criminal offence, and the rendered sentence of imprisonment and fine would attain the purpose of the sentence. The court mentioned three out of four purposes of a sentence but did not go into details, while there was no correlation of principles with the circumstances of the case, as they were only cited.

### Application as per the Guidelines in determining the sentence

The court recorded 3 mitigating circumstances and no aggravating circumstances, while it rendered a sentence of 8 months imprisonment and a EUR 1,000 fine. The court did not provide any elaboration of the circumstances mentioned in the judgement, while the calculation of the length of the sentence was done per the situation “circumstances justifying maximum mitigation of the sentence within the limit”, which, according to point h), part 2, in Appendix 1 of the Guidelines, foresees a minimum sentence of 6 months. In this particular case, the court rendered an imprisonment term of 8 months and a EUR 1,000 fine.

### **PKR.nr.105/2020,**

A.V., “Giving bribes” per Article 422, par.1 of the CCRK.

### Enacting clause of the judgement

A.V. was charged with giving a bribe in the amount of EUR 5 to a police officer at the border crossing in Qafë Prush with the aim of easing the border control.

Sentence foreseen by the Law and sentence rendered.

Fine and imprisonment term of up to 5 years.

Suspended fine of EUR 300.

### Mitigating Circumstances

- Guilty plea;
- Remorse;
- Father of two children;
- Poor economic conditions;
- Primary breadwinner of a 6 member family;
- Good conduct;
- Commitment to not commit a criminal offence;
- No prior conviction for criminal offences;

### Aggregating circumstances:

- None.



## Compatibility of the sentence and application of the principles as per the Guidelines

The court recorded the purposes of a sentence but did not elaborate nor correlate principles with the circumstances recorded in the judgement.

### Application as per the Guidelines in calculating the sentence

The criminal offence the defendant is charged with foresees a sentence with a fine and imprisonment of up to 5 years. In this particular case, the court issued only a suspended EUR 300 fine. The court recorded 9 mitigating circumstances and no aggravating circumstances, whereas the Guidelines foresees a situation that provides for a minimum sentence of 1 month imprisonment, but for this case, the court appears to have used the mitigation foreseen in Article 71 of the Criminal Code on the limits of mitigation “1.7. if there is no indication of the minimum term of imprisonment for a criminal offense, a punishment of a fine can be imposed instead of imprisonment”.

### **P.nr.492/19**

D.Zh., “Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations”, per Article 430, par.1 of the CCRK.

### Enacting clause of the judgement

D.Zh. was charged by the Prosecution in Gjakova in her capacity as a member of the Municipal Assembly for not complying with her obligation to declare her assets to the Anti-Corruption Agency in Prishtina.

### Sentence foreseen by the Law and sentence rendered

Fine or imprisonment of up to 3 years.

EUR 400 fine

### Mitigating Circumstances

- Guilty plea;
- Personal circumstances of the defendant;
- Commitment not to commit criminal offences in the future.

### Aggregating circumstances

- None.

## Compatibility of the sentence and application of the principles as per the Guidelines

The court recorded the purposes of the sentence but did not elaborate nor correlate principles with the circumstances recorded in the judgement.

### Application as per the Guidelines in calculating the sentence

The court recorded 3 mitigating circumstances and no aggravating circumstances in its judgement, but without elaborating or analysing their weight, while it issued a EUR 400 fine. The court appears to have referred to Article 71 of the Criminal Code on the limits of mitigation “1.7. if there is no indication of the minimum term of imprisonment for a criminal offense, a punishment of a fine can be imposed instead of imprisonment” in rendering the sentence of a fine. The court did not justify the amount it set for the fine.

## **P.nr.680/19**

H.Z. “Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations”, per Article 430, par.1 of the CCRK

### **Enacting clause of the judgement**

H.Z. was charged in her capacity as former member of the Municipal Assembly in Gjakova from Alternativa, for not having complied with her duty to declare her assets to the Anti-Corruption Agency in Prishtina.

### **Sentence foreseen by the Law and sentence rendered**

Fine or imprisonment of up to 3 years.

EUR 400 fine

### **Mitigating Circumstances**

- Guilty plea;
- Good conduct;
- Remorse;
- Young age;
- University qualification;
- No prior conviction;

### **Aggravating circumstances**

- None.

### **Compatibility of the sentence and application of the principles as per the Guidelines**

In terms of reasoning the sentence, the court based its decision on Article 38 of the CCRK, citing the purposes of the sentence rendered, which it mentioned superficially and did not elaborate further. There was no correlation between the circumstances recorded and the principles the court should consider when determining the sentence.

### **Application as per the Guidelines in calculating the sentence**

The court recorded 6 mitigating circumstances and no aggravating circumstances in the judgement, however it did not elaborate nor analyse their weight, when issuing a EUR 400 fine. The court appears to have based its decision on the limits of mitigation foreseen in Article 71 of the Criminal Code, “1.7. if there is no indication of the minimum term of imprisonment for a criminal offense, a punishment of a fine can be imposed instead of imprisonment”. The court did not justify the amount set for the fine

## **P.nr.214/18**

I.B., “Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations”, per Article 437, par.2 of the CCRK.

### **Enacting clause of the judgement**

I.B. was charged for not declaring his assets or income, while knowing that in his duty as a member of the Municipal Assembly in Gjakova, he is obliged to do so.

Sentence foreseen by the Law and sentence rendered

Fine and imprisonment of 6 months up to 5 years.

6 months suspended sentence and EUR 300 fine.

## Mitigating Circumstances

- He is a doctor;
- He is the primary breadwinner;
- Good conduct during the trial;
- Commitment not to commit other offences;
- Guilty plea;
- Remorse;
- No prior conviction.

## Aggregating circumstances

- None.

## Compatibility of the sentence and application of the principles as per the Guidelines

The court recorded the purposes of the sentence in the judgement, but did not elaborate or justify the purposes for this specific case. The court did not elaborate on the circumstances recorded and any correlation with the principles on determining the length of the sentence

## Application as per the Guidelines in calculating the sentence

The court recorded 7 mitigating circumstances and no aggravating ones, while it did not provide factors or answers to relevant questions, nor did it weigh the internal significance of the factors affecting the circumstances recorded in the judgement.

In this particular case, the court rendered a 6 month suspended sentence and EUR 300 fine, resulting in the application of situation “circumstances justifying maximum mitigation of the sentence within the limit”, which, according to point h), part 2, Appendix 1 as per the Guidelines, foresees a minimum sentence of 6 months. The court did not provide any justification as to the amount set for the fine.

## P.nr.137/20

I.A., “Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations”, per Article 437, par.2 of the CCRK.

## Enacting clause of the judgement

I.A. was charged in his capacity as chief executive officer of .... company, for not providing the required data in the declaration of asset forms, in such a manner that for the period of 1 January to 31 December 2018, he presented false reports on his assets.

Sentence foreseen by the Law and sentence rendered

Fine and imprisonment of 6 months up to 5 years term

6 months imprisonment converted to EUR 2,000 and a fine of EUR 500.

### Mitigating Circumstances

- Guilty plea;
- Personal circumstances of the defendant;
- Father of four children;
- Good conduct in the court;
- Employed;
- University education;
- No prior conviction.

### Aggregating circumstances

- The criminal offence committed by him.

### Compatibility of the sentence and application of the principles as per the Guidelines

In terms of eligibility of the sentence, the court based its decision on Article 38 of the CCRK, citing the purposes of the sentence rendered, mentioning them superficially and not elaborating further. There was no correlation between the circumstances recorded and the principles the court should consider when determining the sentence.

### Application as per the Guidelines in calculating the sentence

The court recorded 7 mitigating circumstances and one aggravating circumstance, while it did not provide factors nor answers to relevant questions and weighing the internal significance of the factors affecting the circumstances recorded in the judgement.

In this particular case, the court rendered a 6 months imprisonment sentence, but enabled it to be converted into a EUR 2,000 fine, while it also issued a EUR 500 fine to the defendant, as a result of applying the situation of “circumstances justifying maximum mitigation of the sentence within the limit”, which, according to point h), part 2, Appendix 1 as per the Guidelines foresees a minimum sentence of 6 months. The court did not provide any justification as to the amount set for the fine, nor for the conversion of imprisonment into a fine.

### **P.nr.806/18**

I.B., “Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations”, per Article 437, par.2 of the CCRK.

#### Enacting clause of the judgement

I.B. was charged in the capacity of an official person – director of the ....in Gjakova, for not having presented the required data in the declaration of assets for the period of 1 January to 31 December 2016.

### Sentence foreseen by the Law and sentence rendered

Fine and imprisonment of 6 months up to 5 years.

6 months suspended sentence and EUR 300 fine.

### Mitigating Circumstances

- Guilty plea;
- Remorse;
- No prior conviction;
- Good conduct;
- Commitment to not commit criminal offences.

## Aggregating circumstances

- None.

Compatibility of the sentence and application of the principles as per the Guidelines  
The court recorded the purposes of the sentence but did not elaborate or correlate principles with the circumstances recorded in the judgement nor weigh the circumstances in determining the length of a sentence.

## Application as per the Guidelines in calculating the sentence

The court recorded 5 mitigating circumstances and no aggravating ones, while it did not justify factors or answers to relevant questions and did not weigh the internal significance of the factors affecting the circumstances recorded in the judgement.

In the particular case, the court rendered a 6 months suspended sentence and a EUR 300 fine to the defendant, resulting from the application of the situation “circumstances justifying maximum mitigation of the sentence within the limit”, which, according to point h), part 2, Appendix 1 as per the Guidelines, foresees a minimum sentence of 6 months. The court did not provide any justification as to the amount set for the fine or the suspended sentence rendered.

## RECOMMENDATIONS

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- Produce a new Sentencing Guidelines or an updated Guidelines with a special section dedicated to specific sentencing policies for corruption cases;
- Judges to render sufficient sentences for corruption that are proportional to the gravity of the criminal offence, fully justified, and in line with the Sentencing Guidelines, despite the latter being a non-binding document;
- Justice Academy to organise training for judges and prosecutors on sentencing policies in general, with additional training specifically on corruption case sentencing;
- Judges must comply fully with the provision of the Criminal Code and Criminal Procedure Code corruption cases and attempt to bear in mind the instructions of the Sentencing Guidelines;
- Judges must record, justify and weigh all mitigating and aggravating circumstances in line with the provisions of the Criminal Code and Criminal Procedure Code and bear in mind the instructions of the Sentencing Guideline;
- Judges must record and justify the aims of the sentence per the Criminal Code when rendering sentences on corruption cases;
- Judges must record, justify and apply principles per the Criminal Code when rendering sentences on corruption cases;
- Judges must justify the issuance of suspended/conditional sentences when rendering suspended sentences on corruption cases;
- Judges must justify the allowance of the punishment of imprisonment to be converted into the punishment of a fine for the specific case when rendering sentences on corruption cases ;
- Judges must justify the setting of a fine and the amount of the fine;
- Judges must justify the length of the sentence, referring to the Guidelines and applying the mechanisms provided for by the Guidelines when determining the length and type of a sentence, to avoid arbitrary sentencing;
- Assess the performance of judges, with careful attention paid to assessing the quality of the justifications used in sentences;
- Court of Appeals to pay particular attention to the quality of justification used in rendering sentences; and,
- Judges to understand that the overall quality of the judgement is dependant on the quality of the justification of the sentence itself.



# PËRKËDHELJA E **KORRUPSIONIT**

