KOSOVA DEMOCRATIC INSTITUTE

TRANSPARENCY INTERNATIONAL KOSOVA

THE "CULTURE OF IMPUNITY" IN KOSOVO

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TABLE OF CONTENTS

EXECUTIVE SUMMARY

While "widespread corruption continues to be the major shared challenge for the whole Western Balkans"[1] it is "the phenomenon of impunity of grand corruption cases" that is emerging as a real threat to its European future. Prevailing executive branches and political parties affiliated with various groups of interest (often exceeding state boundaries) dominate the political system and this constellation of power challenges any attempt for a fully independent judiciary. Law enforcement and anti-corruption bodies are weak and fail to provide meaningful oversight of government activities and investigate and prosecute alleged corruption cases. The end result is a situation in which laws and anti-corruption policies, though good on paper, are selectively enforced and corruption in the public office goes largely unsanctioned.[2] This uniform picture of high-level of corruption across the region can be attributed to both recent shared history and geographical position. More specifically it can be linked to the armed conflicts of the 1990s – the sanctions and embargos on former Yugoslavia and flourishing smuggling channels as well as the legacy of communism and the post-communist transition period.[3]

In Kosovo, the number of corruption-related cases brought to justice is relatively small and the grand corruption cases with final verdict are also very scarce. The conduct of investigation and indictments are of poor quality and the judges lack the independence needed to rule in accordance with the legal framework. Since the special departments for dealing with corruption and organised crime in the Basic Court of Pristina and the Appellate Court were made fully functional in July 2019, Special Prosecution of Republic of Kosovo has not filed a single indictment against any high-profile individuals.[4] Court proceedings of corruption cases are marred with a very low profile of defendants, occasional changes of case prosecutors and judges, unclear sentencing policies, recurring court session adjournments and prolonged proceedings that sometimes exhaust the statutory limitations.

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The Tracking Mechanism (designed in the specific context of visa liberalisation benchmarks) established in 2015 by Kosovo Prosecutorial Council (KPC) is an integrated case management system enabling the tracking of a select number of high-profile organised crime and corruption cases from investigation and prosecution to final conviction. This instrument is aimed at monitoring and coordinating high-level corruption and organised crime cases; eventually it should comprise a comprehensive roster covering all high-level cases relating to organised crime and corruption. This mechanism was also designed to allow all cases against high-level officials to be prioritised and handled with the highest level of scrutiny within a single comprehensive and overall tool. In July 2020, it included

1 European Parliamentary Research Service, "Anti-corruption efforts in the Western Balkans", April 2017
2 Transparency International, "Fighting corruption in Western Balkans and Turkey", November 2016
3 Ibid
4 Kosovo Law Institute, "Special failures in fighting corruption", November 2019

66 cases with 56 indictments so far, of which 36 cases concern corruption and 20 cases concern organised crime. Thirteen cases had a final verdict. Out of these eight ended with a (partially) guilty verdict, leading to convictions of 15 individuals for corruption-related offences.[5]

While the impunity of grand corruption cases is largely attributed to the lack of an independent judiciary, Transparency International saw a need for further research on tailor-made laws and legislative processes to analyse possible attempts at undue interference. Because this research introduced a new concept, the project team found a challenging lack of wide-ranging literature and data from previous research. This challenge, commonly encountered by all pioneering approaches, was overcome through methodology developed by Transparency International.

It involved detailed analysis of specific developments before and during the legislative process and the effects of the legislation following its implementation by the government. In this regard, Kosova Democratic Institute/Transparency International Kosovo (KDI/TI Kosovo) also drew extensively from its long-term work and in-house capacities in monitoring the Assembly of Kosovo as the highest representative and legislative institution. One of the key findings during the review of assumed cases of tailor-made laws is the frequent use of the secondary legislation[6] to adopt tailor-made rules. It seems that these attempts are carefully planned to shy away from the parliamentary scrutiny of opposition.

5 European Commission, Kosovo 2020 Report, October 2020

6 Secondary legislation, drafted and adopted by the executive branch, derives from national laws and provides more details on the legal provisions

INTRODUCTION

The research seeks to provide a better understanding of the role of the judiciary in corruption prosecution, the importance of its impartiality and independence, and the gaps in the legislative and institutional framework that enable officials to maintain corrupt networks.

Kosovo's path to full membership in the European Union family is marred by a long list of pre-conditions that must be addressed by Kosovar institutions. Efforts in fighting corruption and achieving concrete results are only a few of the preconditions reiterated in the recent 2020 Country Report.[7] Despite some progress in completing the legal framework in the fight against corruption, the Corruption Perception Index[8] for 2019 shows that Kosovo, for the second year in the row, has lowered its score and is now ranked at 101 with 36 points (in 2017 Kosovo's score was 39 while in 2018 lost two points). With the actual score, Kosovo lags behind the global average of 43, let alone the European average score of 66. This drop in ranking is mainly attributed to the weak rule of law institutions and the level of impunity in corruption cases. The Global Corruption Barometer (GCB)[9] also reports that two-thirds of citizens in Kosovo rank corruption as one of the three biggest problems faced by their country.

This report results from research on grand corruption and tailor-made laws in Kosovo as part of *Ending Impunity for Grand Corruption in the Western Balkans and Turkey*, a regional project. As the lack of political will is considered a major obstacle in prioritising the anti-corruption agenda, the Kosova Democratic Institute provides a comprehensive summary of the current situation in corruption prosecution. It is based on a thorough analysis of reports drafted by civil society organisations and the international mechanism that systematically monitors the work of rule of law institutions.

The research seeks to provide a better understanding of the role of the judiciary in corruption prosecution, the importance of its impartiality and independence, and the gaps in the legislative and institutional framework that enable officials to maintain corrupt networks.

The assessment of how the justice sector prosecutes grand corruption cases is based on analysing several such cases and their procedural aspects. The research shows numerous procedural deficiencies such as the length of proceedings, unproductive hearings, poor indictment quality, soft sanctioning policies and undue influence over the work of judiciary. These shortfalls contribute to the overall image of the judiciary as inefficient and failing to fulfil its obligations.

The report seeks to establish connections between the grand corruption cases and tailor-made laws and to identify any attempts at passing customised laws. It appears that Kosovo, as a young European democracy, has benefited from a huge international presence in the post-war years while drafting its legal framework in compliance with high European standards. As a result, the *Kosovo Criminal Code, Criminal Procedure Code, Law on Courts, Law on Prosecution Office, Law on Prevention of Conflict of Interest* and *Law on Protection of Whistleblowers* constitute legislation that lack nothing on paper but falls short on its enforcement. The Assembly of Kosovo, despite its achievements in the legislative process, should focus

7 https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf
8 www.transparency.org/sq/cpi/2019
9 www.transparency.org/whatwedo/publication/people_and_corruption_europe_and_central_asia_2016

on scrutinising the work of the executive branch, especially the task of drafting secondary legislation derived from national laws.

The study concludes with a series of recommendations on how to tackle serious challenges regarding inefficient court management, soft sanctioning policies and undue interference with the judiciary. As a credible partner of the Assembly of Kosovo, KDI/TI Kosovo is also planning to advocate legislative initiatives for regulating lobbying activities within the institutions at both the central and local level. These systematic watchdog activities and evidence-based advocacy work aim to build momentum for political support within the assembly. Should this initiative be successful, it would greatly improve parliamentary performance in the fight against corruption and fuel the civic demand for the assembly's greater accountability, efficiency and transparency in fulfilling its role.

The assessment

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BACKGROUND OF THE STUDY

This report is one of the research outputs of the EU-funded project *"Ending Impunity for Grand Corruption in the Western Balkans and Turkey"* which aims to reduce corruption and state capture in Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, Serbia and Turkey. The project seeks to improve governance, transparency, and the accountability of the judiciary and democratic law-making. To this end, we look at how state capture is achieved and sustained, highlighting shortcomings in the criminal justice system when handling grand corruption cases, and exposing tailor-made laws created to protect the private interests of a few.

Our research is combined with evidence-based advocacy campaigns to push for change in each country. In addition to a regional report, the project's research outputs include seven national reports and two databases. One database collects corruption cases in the region, specifically grand corruption cases or cases that might represent an entry point for state capture. These cases illustrate red flags and shortcomings in each country's judicial systems when they address political corruption. The second database contains tailor-made laws, which are laws that serve to gain and hold onto privileged benefits and in doing so make state capture legal. It reveals how law-making is used to protect private interests. Neither database is intended to be fully comprehensive. Rather, each database uses a qualitative approach, treating the cases and laws as tools to understand how the judicial system operates and how law-making is influenced.

This project builds on Transparency International's previous work in the Western Balkans and Turkey. In 2014 and 2015, Transparency International conducted in-depth research into anti-corruption efforts in Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, Serbia and Turkey, and found that state capture was a consistent problem across all of the countries. Subsequent research on cases of state capture in specific sectors of each country allowed us to understand better where capture takes place and what its characteristics are. Now, by analysing how each country's judiciary addresses corruption cases that can serve as an entry point to capture and how undue influence in law-making results in tailor-made laws, we can answer the question of what makes state capture possible.

To build on our research, we are now developing recommendations for reforms to combat corruption effectively and reinforce the rule of law in these countries. These recommendations are enlisted at the very end of this document and will be translated into practical key messages of the larger evidence-based advocacy campaign that will commence shortly after the publication of this report. This campaign will involve the launch of a Regional Grand Corruption Online Database[10] available for public, a video series of two documentaries for each country and public activities (TV debates, workshops, roundtable discussions and similar activities) that aim to "spread the word" on the main findings and recommendations of the research.

10 Link to Regional Grand Corruption Online Database www.transparency.org/balkans-turkey/data

METHODOLOGY

State capture is a key obstacle to the effectiveness of anti-corruption and rule-of-law reforms in the Western Balkans and Turkey. State capture is understood as efforts undertaken by private or public actors with private interests to redirect public policy decisions away from the public interest, using corrupt means and clustering around certain state bodies and functions, ultimately to obtain financial gain for themselves. Based on this understanding, the impunity for corruption and the creation of laws to further the private interests of particular groups or individuals against the public interest are considered key ways to explain the existence and sustainability of state capture.

Our analysis in this report draws on several sources of information: primary data collected on corruption cases and tailor-made laws; previous assessments of corruption, state capture and the rule of law in the region by Transparency International's National Integrity System, the European Commission, the Group of States against Corruption (GRECO) and the United Nations Convention against Corruption (UNCAC); official documents; media articles; and the specialised literature.

Our collection of original data on cases and laws has covered the last 10 to 12 years in order to identify any variations arising from changes in government after elections. The selection of corruption cases followed three criteria. The first was to include any corruption cases that match Transparency International's definition of grand corruption [www.transparency.org/en/corruptionary/grand-corruption#].

Transparency International defines grand corruption as offences set out in UNCAC Articles 15-25 when committed as part of a scheme involving a high-level public official and comprising a significant misappropriation of public funds or resources, or severely restricting the exercise of the most basic human rights of a substantial part of the population or of a vulnerable group. However, since such a legal definition presents limitations for the exploration of a complex political phenomenon, we added two further selection criteria: first, cases showing a lack of autonomy, independence and impartiality in the judiciary; and second, cases that serve as an entry point for state capture. The indicators to consider a case as an entry point for state capture include:

- when a member of parliament or official with the power of law or policy-making is involved in such capacity in criminal offences
- when a top-level decision-maker of a regulatory body is involved in such capacity in criminal offences
- when the alleged criminal offences involve a public official who obtained his/her position through a *revolving-door* situation
- when the conduct in any of the above three categories serves the interest of a legal person or a narrow group/network of connected persons and not the interest of other participants in a sector, groups of society or the public interest
- cases linked to tailor-made laws "

TAll three criteria have in common the involvement of at least one public official who has the power to influence or change policies and regulations. In most cases, such public officials have held roles of high responsibility in state-level institutions such as ministries. However, political reality in the Western Balkans and Turkey is characterised by the power of political parties and party members in certain municipalities, so corruption cases involving powerful mayors or other local authorities have also been included.

Tailor-made laws are defined as legal acts enacted with the purpose of serving only the interests of a natural person, a

legal person or a narrow group/network of connected persons and not the interest of other participants in a sector, groups of society or the public interest. Although it may appear to have general application, a tailor-made law in fact applies to a particular matter and results in circumventing any potential legal remedies that could be provided by ordinary courts. Based on this definition, the following criteria are considered as indicators that laws may potentially be tailor-made: who is behind the law, any irregularities in the making or approval of the law, who has benefited from the law, and who its victims are.

Based on their purpose, we consider three types of tailor-made laws: 1) to control a sector or industry, or protect certain privileges; 2) to remove or appoint unwanted or wanted officials; 3) to reduce the checks and balances on institutional power by controlling personnel procedures, reducing the monitoring capacity of agencies or audits, preventing accountability, or weakening scrutiny by media and civil society organisations.

Far from providing a comprehensive picture of the situation, our report offers a qualitative approach that builds on the best efforts of Transparency International's chapters and partners in the region to identify cases and laws and collect detailed information.

FINDINGS AND DISCUSSION

This section presents the main findings from our analysis of the grand corruption cases in Kosovo as well as pieces of legislation to establish a possible connection between corruption cases and laws that contribute to the overarching theme of state capture. For clarity and illustrative purpose it is divided into three main subsections – grand corruption, "tailor-made laws" and the last subsections that seek to connect the grand corruption with tailor-made legislation".

GRAND CORRUPTION CASES

Research findings confirm what the European Commission stated in its latest Country Report[11] – Kosovo is in early stages in its campaign against corruption, with some level of preparation. All 10 grand corruption cases featured in this section are selected from among 66 cases (commonly known as "targeted cases") through the Tracking Mechanism, which is an instrument designed to scrutinise progress in cases of organised crime and corruption. This section analyses key issues related to the judiciary; these were identified by analysing grand corruption cases in the database, plus other grand corruption cases that formed part of the research.

KDI/TI Kosovo identified three major obstacles while analysing these cases:

1. **Prolonged court proceedings:** These included long periods of investigation led by prosecution offices followed by indictment editions, frequent changes of prosecutors and a series of unproductive court hearings. An important process contributing to prolonged court proceedings was the scaling-down of the European Union Rule of Law Mission (EULEX) in 2018 and the ensuing hand-over of unfinished business to the local courts.[12] Retrial policy and case allocation is yet another element that caused additional delay to proceedings. According to the EULEX 2020 report, the Court of Appeals has made it common practice to send a relatively large number of cases to the respective basic courts for retrial, despite the notion that retrials should only ordered in exceptional cases.
2. **Soft sanctioning policy:** Two factors contributing to lenient sanctioning policies are frequent acquittals or minor sentences for high-profile defendants and random administration of accessory punishments as provided by Criminal Procedure Code[13] that affect a defendant after they serve a sentence. The Kosovo Law Institute in its 2019 report[14] stated that although the courts in the targeted cases ruled against 51 out 76 suspects, only 14 were convicted, 11 were fined and 26 received suspended sentences.
3. **Undue influence over the judiciary:** There is a general perception – although it is difficult to provide evidence – which holds that parties within the justice system operate under the influence of

11 European Commission, Kosovo Country Report, October 2020
12 EULEX concluded the handover of police, prosecutorial and judicial case files to the Kosovo authorities in December 2018. In total, EULEX handed over 495 organised crime police case files, 434 war crime police case files, missing persons' case files, judicial case files handled only by EULEX, and more than 1,400 prosecutorial case files
13 Kosovo Criminal Procedure Code, Article 59 "Accessory punishments", https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413
14 Kosovo Law Institute, "Failure in targeted cases", 2019

political and business elites. The so-called Pronto case epitomised state capture when the Special Prosecution accused former senior Democratic Party of Kosovo officials and the heads of several public enterprises of abusing their positions and "violating the equal status of citizens and residents of the Republic of Kosovo" by appointing political allies to senior positions in publicly owned enterprises[15]. The case of Special Prosecutor Elez Blakaj (who was investigating allegations over a falsified war veterans list),[16] who was forced to flee the country few days before the indictment of the veterans case was confirmed proves that prosecutors could face physical threats when operating professionally.

Prolonged court proceedings

The right to a fair trial is defined by several international human rights instruments and it is one of the most extensive human rights[17]. Article 7 of the Universal Declaration of Human Rights[18] stipulates, "Everyone is equal before the law and is entitled without any discrimination to equal protection of the law. Everyone is entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

The European Convention on Human Rights (ECHR), adopted in 1950, further advances the provision of the Universal Declaration by acknowledging the right to a fair trial by an independent court within a reasonable time. Article 6 of the ECHR explicitly states, "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..." This article obliges those active in the justice system to ensure a professional and independent trial where all necessary actions are taken to prevent delay.

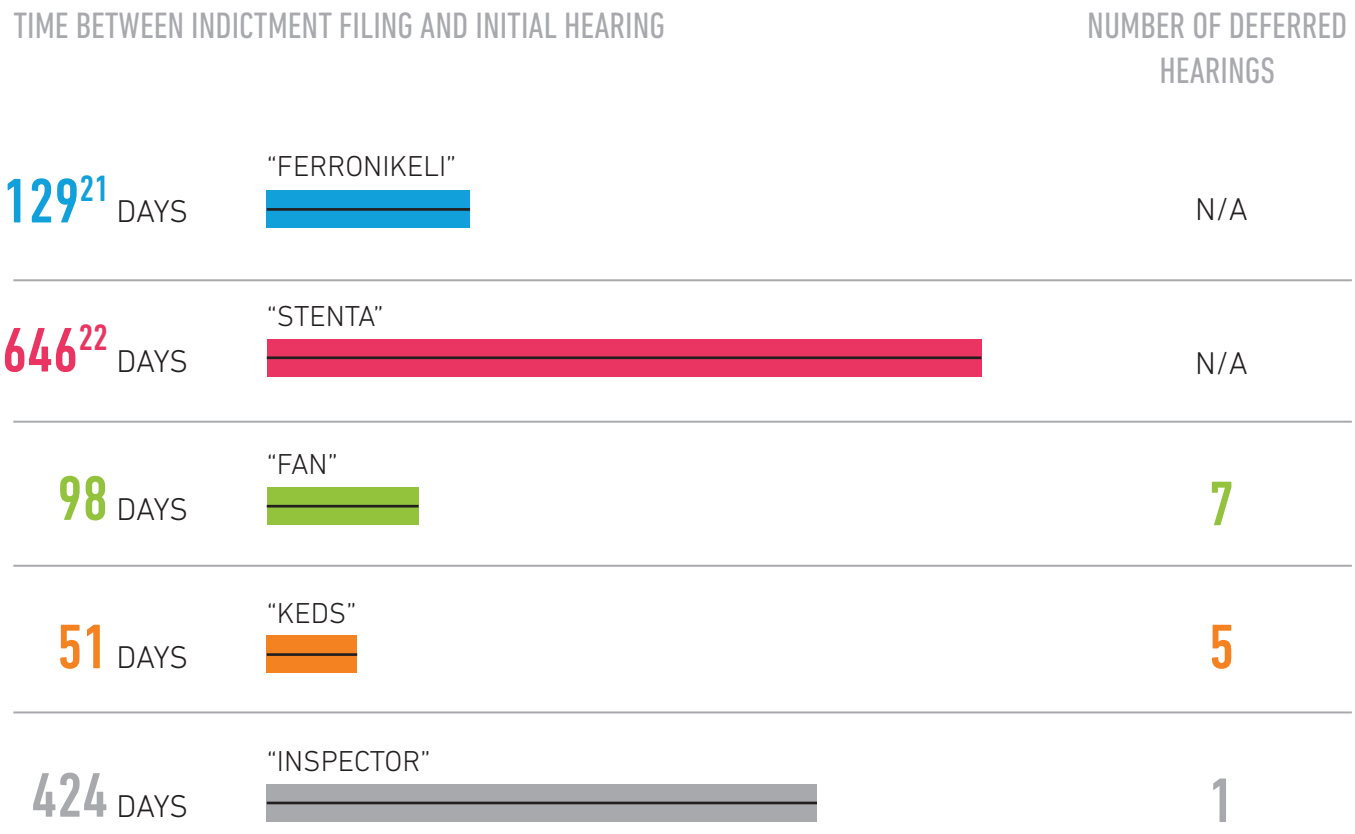
In the local context, the principle of a fair trial within a reasonable time is included in Kosovo's national legislation. The applicability of international conventions in Kosovo is incorporated and regulated in its constitution: Article 19, paragraph 1 stipulates its legal precedence over Kosovo's domestic legislation[19]. Furthermore, the Kosovo Criminal Procedure Code,[20] Article 5, paragraph 1 stipulates that "any person charged with a criminal offence shall be entitled to fair criminal proceedings conducted within a reasonable time" to continue with the paragraph 2 that "the court shall be bound to carry out proceedings without delay and to prevent any abuse of the rights of the participants in proceedings".

More specifically, the length of the investigation is governed by Article 159. Once the investigative stage is initiated by the state prosecutor, it must generally be completed within two years. The time during suspension is not counted towards the two-year limit. The investigation may be extended by six months if the criminal offence under investigation is complex. Complex cases can include those with four or more defendants, multiple injured parties, those with requests for international assistance and other extraordinary circumstances. However, the six-month extension is not available if the defendant is held in detention on remand, unless the state prosecutor shows that investigation is being actively conducted and the delay is beyond the prosecutor's control.

The time limits for detention on remand are stipulated in Article 190 of the Criminal Procedure Code. The code states that the detainee may be held in detention on remand for a maximum period of one month from the day he or she was arrested. After that, they may be held in detention on remand only with a ruling from the pretrial judge, single trial judge or presiding trial judge that orders an extension of detention on remand. Before an indictment is filed, detention on remand should not come to more than four months if proceedings are conducted for a criminal offence punishable by imprisonment of less than five years and eight months, and if proceedings are conducted for an offence punishable by imprisonment of at least five years.

15 "Court finds Adem Grabovci guilty in Pronto appeal" https://prishtinainsight.com/court-finds-adem-grabovci-guilty-in-pronto-appeal/
16 https://balkaninsight.com/2018/09/15/kosovo-files-an-indictment-on-fake-veterans-case-09-15-2018/
17 Doebbler, C., *Introduction to International Human Rights Law, 2006*
18 https://www.un.org/en/universal-declaration-human-rights/
19 Constitution of the Republic of Kosovo
Article 19 [Applicability of International Law]
1. International agreements ratified by the Republic of Kosovo become part of the internal legal system after their publication in the Official Gazette of the Republic of Kosovo. They are directly applied except for cases when they are not self-applicable and the application requires the promulgation of a law.
2. Ratified international agreements and legally binding norms of international law have superiority over the laws of the Republic of Kosovo.
20 https://www.oak-ks.org/repository/docs/CRIMINAL_PROCEDURE_CODE_502172.pdf

TABLE 1. NUMBER OF UNPRODUCTIVE HEARINGS BASED ON ABSENT PARTIES IN THE PROCEEDINGS (ADOPTED BY BIRN REPORT CORRUPTED LIBERALIZATION)



In exceptional cases where proceedings are conducted for a criminal offence punishable by imprisonment of at least five years, the case is complex and the delay cannot be attributed to the state prosecutor, detention on remand before filing an indictment may be extended by up to four months for a maximum 12 months in total. This can be further extended for another six months to a maximum 18 months in total if there is reasonable suspicion of a threat of public danger or violence with the release of a defendant before trial.

Failure to meet deadlines in handling corruption cases occurs at all stages of justice proceedings in Kosovo, including investigations in police and prosecution offices. KDI/TI Kosovo has analysed the findings of various organisations (both domestic and international) that conduct systematic monitoring of how courts and prosecution offices handle corruption cases at all stages of criminal proceedings. The timelines affect the length of the investigation, the amount of time a person can be held in detention on remand before indictment and the length of time between indictment and the main trial.

Kosovo Law Institute (KLI)[23] in 2019 has monitored over 803 court hearings in 264 corruption cases in all seven basic courts in Kosovo. The KLI report shows that prosecutors and judges have constantly violated the legal deadlines set by the Criminal Procedure Code. Systematic monitoring of

21 Ibid
22 Igic
23 https://kli-ks.org/en/

the work of courts is also conducted by Balkan Investigative Reporting Network (BIRN).[24] The following table utilises the findings from the BIRN Report:

EU Rule of Law Mission in its recent report [25] finds that

> **"...several cases involving high-profile officials had stalled or recorded setbacks. Some investigations were lagging behind because of rather poor cooperation between police and prosecution. A tendency was noted to maintain some cases in the initial phase, while the opening of formal investigations was being delayed by the SPRK until the last moment, possibly in order to prolong the procedure so that the investigation extends over the legal deadline of two years, or to serve other pressures".**

Another major contributor to the length of court proceedings in Kosovo is **the retrial policy** within the country's justice system. EULEX's report[26] finds that the Court of Appeals has made a common practice of sending a relatively large number of cases to the respective basic courts for retrial, despite the notion that the instrument of retrial should be occasionally used and only ordered under exceptional circumstances. The EULEX report raises concerns over the effect of retrial on the rights of the accused for a fair trial within a reasonable time – in line with Article 6 of the European Convention on Human Rights.

Provisions in the current Kosovo Criminal Procedure Code do allow the Court of Appeals to adopt a more proactive approach when adjudicating appeals against judgments of the basic courts. Specifically, Article 403 provides the Court of Appeals panel with the possibility to hold hearings, take new evidence or confirm the existing evidence in order to properly determine and assess the material facts. However, EULEX's monitoring of judicial practice reveals that "the provisions of Article 403 are hardly relied upon. Instead, the common practice of the Court of Appeals panels has been to annul the judgments of the Basic Courts and return the cases to the respective courts for retrial, placing an additional and often unnecessary burden on the Basic Courts".[27] Statistical data provided by the Courts of Appeals to EULEX for 2018 and 2019 confirm the trend of an increasing number of cases sent for retrial: 292 cases sent for retrial in 2018 compared to 462 cases in 2019.

EULEX also found in its assessment[28] of a range of criminal and civil cases – including high-profile cases and cases it previously dealt with – is **the practice of reallocating** cases returned for retrial by decisions of a superior court to the same presiding trial judge or trial panel that first handled the matter at the basic court. According to Article 39, paragraph 2 of the Kosovo Criminal Procedural Code, a judge would be excluded as the single trial judge, presiding trial judge, or as a member of the trial panel, appellate panel or Supreme Court panel if they have participated in previous proceedings in the same criminal case. An exception would be a judge who is serving on a special investigative opportunity panel.

Further, paragraph 3 stipulates that a judge may also be excluded from exercising judicial functions in a case if circumstances are presented and established that render his or her impartiality doubtful or create the appearance of impropriety. The leadership of justice system insists that the cases returned for retrial represent new proceedings and base their opinion on the fact that "new cases" receive new registration numbers. Since both the parties and the court court are well familiarised with the case, they also believe that it expedites the retrial proceedings.

A relevant finding in the analysis of grand corruption cases in Kosovo is a large number of **unproductive hearings**. The EULEX Justice Monitoring Report[29] "defines unproductive hearing as a hearing that was scheduled but immediately adjourned without any meaningful progress". Frequent adjournment of court proceedings is considered symptomatic of an inefficient judicial system that contributes

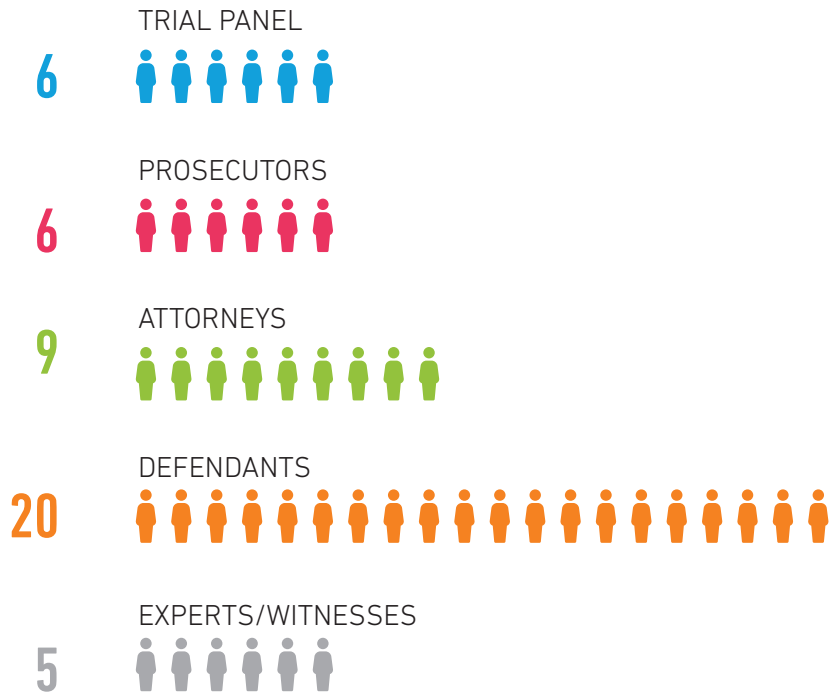
24 BIRN Kosovo, Corrupted Liberalization Report, 2018
25 EU Rule of Law Mission, Justice Monitoring Report, October 2020
26 EU Rule of Law Mission, Justice Monitoring Report, October 2020
27 EU Rule of Law Mission, Justice Monitoring Report, October 2020
28 Ibid
29 EU Rule of Law Mission, Justice Monitoring Report, October 2020

heavily to delaying proceedings. This could undermine any public trust in the justice system; the report concludes that "excessive length of procedures can be a source of inequality, can create conditions favourable to the development of corruption and ultimately lead to a general lack of trust of citizens in the judicial system".[30]

EULEX monitored 287 monitored cases in the period from August 2019 to February 2020 and reported 67 (23 per cent) unproductive hearings. The main reasons for deferment listed by EULEX included the absence of the defendant (36 per cent), which is attributed to poor coordination between the court and the correctional service in cases when defendants were held in detention. In addition, several hearings had to be adjourned due to the absence of prosecutors and to a lesser extent, judges not attending the sessions[31]. Similar findings are confirmed by BIRN in its report Corrupted Liberalization[32], which categorises unproductive hearing based on the absence of litigants.

TABLE 2. NUMBER OF UNPRODUCTIVE HEARINGS BASED ON ABSENT PARTIES IN THE PROCEEDING (ADOPTED BY BIRN REPORT CORRUPTED LIBERALIZATION)

46 TOTAL NUMBER OF UNPRODUCTIVE HEARINGS



30 Ibid
31 Ibid
32 https://birn.eu.com/wp-content/uploads/2018/04/BIRN-Raporti2018-LiberalizimiiKorruptuar-Final-ENG-WEB.pdf, (Qasur më 27 tetor, 2020)

Grand corruption cases analysed by the Kosova Democratic Institute as part of this research provide ample examples of deliberate prolonging. In the case against Judge Kole Puka and five lawyers on charges of creation and operation as a criminal group for the purpose of personal financial gain, the indictment itself was edited three times and hearings were frequently postponed due to the absence of the defendants.

The MPTP (Ministry of Transport, Post and Telecommunications) case is an example of a EULEX case that transferred to local prosecutors and judges after the EULEX mission was scaled down. These transfers reversed the process and caused a complete restart of the court hearings.

Soft sanctioning policies

Two factors contributing to soft sanctioning policies are frequent acquittals or lenient punishments for high-profile defendants, along with the random application of accessory punish¬ments as provided by Criminal Procedure Code. The Kosovo Law Institute in its 2019 report[33] states that altho¬ugh courts in targeted cases first ruled against 51 out 76 suspects only 14 were convicted, 11 were fined and 26 received suspended sentences. Criminal offences or illegal actions represent the violation of human rights as well as the moral and social values guaranteed and safeguarded by the constitution of the Republic of Kosovo. In order to protect these values, criminal law sets penalties that are imposed as sanctions against the perpetrators. These punishments are an institutional reaction towards perpetrators of criminal offences, imposed only to protect citizens and society as a whole. Punishments aim to enable the basic conditions of common life in an organised society.[34]

Aside from commenting on the merits of decision-making in these corruption cases, KDI is concerned that a "soft" sanctioning policy imposed by judges in corruption cases does not convey the right message to potential perpetrators of criminal offences and reduces the level of public trust in the justice system.

The legal system of the Republic of Kosovo includes three types of sentences: principal, alternative and accessory punishments.[35] Among the criminal sanctions provided by the Criminal Code of the Republic of Kosovo (CCRK) accessory punishments are imposed jointly with the principal or alternative punishments aiming at achieving the effect that the imposition of the principal sentence only would not achieve. [36]There are many types of accessory punishments. This research takes a special interest in:

- the deprivation of the right to be elected
- prohibition on exercising public administration or public service functions
- prohibition on exercising a profession, activity or duty

According to the Group for Legal and Political Studies (GLPS)[37] such a legal possibility has not been exhausted and consequently the goal of imposing accessory punishments fails. A crucial distinction between accessory punishments and other types is that they are imposed only after the principal punishment has been served. Another special feature of accessory punishment is the fact that some rights can be withheld completely or restricted and this is done mainly for two reasons:

1. The functioning and authority of certain state and public duties require that these rights pertain to people who did not commit any criminal offences in the past. This is justified despite views that the person who exercised official duty was rehabilitated after serving the main sentence. It would be difficult and risky to entrust someone who has just served this sentence with public office, knowing that the same person was convicted by a final court decision for a relevant criminal offence.

2. Secondly, these sentences are meant to prevent recidivism or the recurrence of a criminal offence. With these sanctions it would be impossible for a convicted person who has served the main sentence to have the opportunity of using their position to commit a new criminal offence.

33 Kosovo Law Institute, "Special failures in fighting corruption", 2019
34 The Commentary on the Criminal Code of Republic of Kosovo, p.183 http://jus.igjk.rks-gov.net/485/1/Komentari%20-%20Kodi%20Penal%20i%20Kosoves.pdf
35 The Criminal Code of Republic of Kosovo, Article 39, Types of punishments
36 Ibid, Article 59, Accessory punishment
37 GLPS Justice Today Snapshot Analysis, "Corruption Offences - lack of supplementary punishments" https://www.rolpik.org/wp-content/uploads/2020/09/Corruption-offences-%E2%80%93-lack-of-supplementary-sentences.pdf

The lack of accessory punishments in final verdicts has already caused serious political consequences. In 2016 the Central Election Commission (CEC) decided[38] to decertify a group of 86 candidates for local elections due to their criminal record. Zafir Berisha (a decertified candidate), who was running for Mayor of Prizren, appealed the decision at the Supreme Court. The court ruled in favour of Mr Berisha stating that "only the courts have the right to take a decision to rescind someone's right to be elected". This case was later used by the Constitutional Court against Etem Arifi (Member of Parliament)[39] whose vote for Hoti government[40] was decisive. Vetevendosje, the biggest political party, is questioning the constitutionality of Arifi's vote and refers to Article 70 of the constitution, which states that a deputy's mandate comes should end after being "convicted and sentenced to one or more years imprisonment by a final court decision". While pending the final verdict of the Constitutional Court, this complicated situation would have been avoided if the basic court had imposed the accessory punishments and deprived Arifi of the right to be elected, as stipulated in the Kosovo Criminal Code, Article 59.

Undue interference in the work of judiciary

Out of three major findings in this section of the report, undue interference in judicial decisions is the most difficult to back up with evidence although it is widely discussed by the public. Among grand corruption cases we analysed, among the most prominent is the so-called Pronto case that epitomises the phenomenon of state capture in Kosovo. In this case, senior officials of the Democratic Party of Kosovo were identified on a series of phone calls where they discussed appointing political allies in senior positions in publicly owned enterprises.[41] The official indictment presses charges "on the violation of Constitutional provision on the equal status of citizens and residents of the Republic of Kosovo", completely neglecting the criminal code and the abuse of official position.

The second case is the "Veterans" case where the special prosecutor Elez Blakaj, who was investigating allegations over falsified war veterans list,[42] fled the country a few days before the confirmation an indictment of in this case. It proves that state prosecutors could be subject to physical threats when operating profe¬ssion¬ally within the country's legal framework.

EULEX in its 2020 report[43] states, "It was generally recognised that many suspects and defendants in corruption trials were considerably wealthy and influential, with powerful political connections or financial links, which could arguably lead to pressure or interference into these criminal proceedings. Indeed, it was monitored that high-profile corruption cases often ended with low sentences or resounding acquittals."

TAILOR-MADE LAWS

The concept of tailor-made law is very new in Kosovo and formally introduced through this research, which has little precedent. Nevertheless, the project team benefited from methodology designed by Transparency International. It involved a thorough analysis of developments before and throughout the legislative process and the effects of the law following its implementation by the government. Transparency International did extensive work and used its capacities to monitor the Assembly of Kosovo.

Three main findings emerge from an in-depth analysis:

1. Tailor-made law is not widespread in Kosovo. The list of legislation presented below was analysed against the criteria set by the Transparency International Secretariat[44] when identifying tailor-made laws. With the exception of the Law on Notary, the rest of the cases failed to provide evidence for any kind of tailor-made attempts.
2. The research reveals interesting facts when it analyses two draft laws as failed attempts at tai-

38 https://prishtinainsight.com/kosovo-committee-removes-86-candidates-local-election-lists/
39 https://kallxo.com/lajm/vetevendosje-e-dergon-ne-kushtetuese-ceshtjen-e-votimit-te-deputetit-etem-arifi/
40 https://www.evropaelire.org/a/kuvendi-qeveria-e-re-avdullah-hoti/30650046.html
41 "Court finds Adem Grabovci guilty in Pronto appeal" https://prishtinainsight.com/court-finds-adem-grabovci-guilty-in-pronto-appeal/
42 https://balkaninsight.com/2018/09/15/kosovo-files-an-indictment-on-fake-veterans-case-09-15-2018/
43 EU Rule of Law Mission, Justice Monitoring Report, October 2020
44 TI-S Data Collection Guidelines (internal document presented during the Belgrade Regional Meeting held in September 2019)

lor-made law. Two such initiatives (Draft Law on Freedom of Association and Draft Law on Political Party Finance) were halted after the pressure from the public and the diplomatic corps accredited in Kosovo. They were considered damaging to the internationally accepted standards of democratic societies. More details are provided further below this section.

3. The analysis of secondary legislation[45] shows that tailor-made attempts are present at the executive branch level. This seems rational since these attempts while drafting secondary legislation occur away from the critical eye of the opposition in the parliament.

The list of laws and secondary legislation analysed for potential tailor-made traits include:

- Law on Amnesty
- Law on Freedom of Association
- Draft-law on Political Party Finance
- Administrative Instruction on Water Payment Structure
- Law on Pharmaceutical Marketing
- Law on Strategic Investments
- Law on Notary
- Administrative Instruction on Vehicle Homologation
- Administrative Instruction on Medical Treatment outside of Public Health Institutions

Law on Notary

Law no.06/L-101 on Notary[46] regulates the organising, conditions for exercising notary duties, notary exam, competencies for notary and other issues related to the exercise of the duty of notary. Although the function was only made fully operational in 2012 in Kosovo, notaries have long operated as an integral component of civil legal systems. As public servants, notary work also possesses a quasi-judicial character; a notary seal is equivalent to the verdict of a court. In post-war Kosovo where the real-estate sector is one of the most lucrative economic activities, the profession of notary is also highly regarded as profitable work.

The new law initially raised concerns over the rise in the number of notaries (Article 5) and the weakening of eligibility criteria as well as the criteria for non-admission (Article 4), which paves the way for political appointments. During the public consultations of the draft law such concerns were voiced for the first time. Article 8.4 states that "the number of notary offices may be increased by Minister's decision, thereby ensuring that at least one (1) notary office is designated for every ten thousand (10,000) inhabitants, in due consideration of documents processed by notary offices on a yearly basis." In the previous law, this figure was one notary office per 20,000 inhabitants. Many notaries and international organisations expressed misgivings about this amendment in the new law, concerned that a potential doubling of the number of notaries in Kosovo could lower the quality of the notary profession and increase susceptibility to corruption, due to a drop in each individual notary's workload.

Criticism was also expressed regarding Article 4 of the Law on Notaries that sets out the conditions and criteria for becoming a notary in Kosovo. Among other criteria, notaries were required to have at least three years of working experience in the field of law. Previously, it was a requirement to have completed three years practice as a lawyer rather than three years of general experience in the field of law. Some notaries felt that this was an additional weakening of eligibility criteria that would allow for the possibility of political appointments.

Further, the criteria for non-admission has also been weakened. Article 4, sub-section 2.3 in the new law stipulates that a person will be deemed as having not met the criteria if he or she "holds a political post". In the previous law membership in a political party disqualified a person. Again, some notaries felt that this relaxing of conditions could allow for political appointments. However, membership of a political party or holding of a political post should not in and of itself be a risk for corruption if the law states that the candidate has not been active in the last three years.

45 Secondary legislation, drafted and adopted by the executive branch, derive from the national laws and provide more details on the legal provisions
46 https://md.rks-gov.net/desk/inc/media/499814CB-3606-44F2-BCAA-434D92CA722F.pdf

Regarding the conflict of interest, the new law does not include any provision. The previous law had an entire article dedicated to preventing any potential conflict of interest. In the absence of such an article, notaries have no legal obligation to carry out their functions in cases where there is potential or actual conflict of interest. Critics perceived this as a serious risk of conflict of interest occurring in the absence of such an article in the law.

In 2019, the Ministry of Justice announced a new call for potential notaries. Over 2,000 applications were submitted and a large percentage were accepted to take the examination, indicating that the criteria may not be sufficiently stringent.

Considerable criticism of the process was noticed in the local media, too. The national newspaper, Koha Ditore, reported concerns regarding possible conflicts of interest on 29 June 2019.[47] The paper reported that at least 60 candidates who have passed the written exam for notaries are members of political parties, family members or individuals connected to the system of justice. Out of approximately 200 names of individuals currently waiting to sit the written test, it reported that at least 50 of them were connected to politics or the justice system.

The Parliamentary Committee of Legislation invited Abelard Tahiri former-Minister of Justice for a public hearing on two occasions, which he declined to attend[48]. Instead, the minister wrote a public letter[49] stating that the issue was caused by one of the political parties in an attempt to politicize the process. The Ministry of Justice informed UNDP (United Nations Development Program) that it had developed a report on the selection process, which did not find any irregularities. Although a copy of the report was requested, this was not provided[50]. The Anti-Corruption Agency have issued an opinion[51] regarding the allegations on potential conflict of interest in the process of notary selection. This opinion concludes that all procedures were duly followed and in cases of conflict of interest, panel members declared it and exempted themselves from particular involvement in the process. This opinion was followed by a formal joint reaction[52] of local NGOs calling on the minister of justice not to proceed with final appointments of notaries. The European Union Office in Kosovo also issued a statement[53] calling upon the resigned authorities of Kosovo to refrain from appointments of any notaries and leave this decision to the new government.

On 29 June 2019 Koha Ditore published the names of notary candidates and their links to politics and justice system[54]. At least 60 candidates who passed the written examination for notaries were members of political parties, their family members or people affiliated with the justice system. Doubling the number of notaries in Kosovo is viewed as an additional burden to the 70 existing notary offices in Kosovo. The concerns were raised regarding the financial sustainability of these offices if the competition is doubled in size. The Notary Chamber of Kosovo agrees that the number of deputy-notaries should be increased but not the total number of notary offices, which is in accordance with European standards – one office for 20,000 inhabitants.

Failed attempts at tailor-made law

The research revealed two cases where attempts to introduce tailor-made laws in Kosovo failed. The Draft Law on Freedom of Association and Draft Law on Political Party Finance were both halted after the public pressure supported by the diplomatic corps accredited in Kosovo.

The Draft Law on Political Party Finance intended to supplement and amend the current law[55] that regulates the manner, conditions of financing, administration, supervision, transparency and reporting of assets and income for political entities in the Republic of Kosovo. Following the

47 www.koha.net/arberi/171433/emrat-e-zyrtareve-te-partive-e-familjareve-te-politikaneve-qe-pritet-te-behen-notere/
48 https://ekonomiaonline.com/nacionale/siguri/tahiri-nuk-merr-pjese-ne-mbledhjen-e-komisionit-per-legjislacion-tregon-arsyet/
49 ibid
50 www.ks.undp.org/content/kosovo/en/home/library/democratic_governance/risk-assessment-for-the-kosovo-chamber-of-notaries.html
51 Opinion no. 06-2118/19, Kosovo Anti-Corruption Agency, 13 September 2019, published on 8 October 2019. www.akk-ks.org/assets/cms/uploads/files/Opinionet/2019/2188-19%20opinion%20konflikt%20interesi%20lidhur%20me%20provimin%20e%20noterise-M.Drejte....pdf
52 www.kcsfoundation.org/en/activity/minister-abelard-tahiri-not-to-appoint-any-notary/
53 EU Office in Kosovo Statement, https://twitter.com/EUKosovo/status/1183648937254834176/photo/1
54 www.koha.net/arberi/171433/emrat-e-zyrtareve-te-partive-e-familjareve-te-politikaneve-qe-pritet-te-behen-notere
55 https://gzk.rks-gov.net/ActDetail.aspx?ActID=2705

Venice Commission's positive review of the text,[56] the draft law passed the first reading and entered the parliamentary committee review stage. It was the revised text published by the Parliamentary Committee on Budget and Finance that sparked the public outcry.

The problematic amendments introduced by the committee members fell into five main categories. First, the draft law restricted the independence of the Political Party Registration Office as part of the Central Election Commission (CEC), by removing its mandate to oversee the finances of political parties. The transfer of these functions to a political body such as the CEC (composed of representatives of political parties) contradicted the recommendations of the Venice Commission to strengthen the role of the party registration office. Secondly, it did not address the priorities of the European Reform Agenda[57] to ensure transparency, accountability, implementation and effective sanctioning of political party finances. The third point was that the draft law violated the principle of constitutionality as interpreted by the Constitutional Court Judgment in Case KO119/14[58] on what constitutes a parliamentary caucus and how that affects the allocation of the Democratisation Fund (funds allocated to political entities on the basis of seats in the Assembly). The fourth point was that changes to the law affected the transparency of political entities because they were not required to disclose the names of the company owners contributing to them. In addition, the allowable contribution ceiling for political entities would be ten times more (from €50 to €500) while the contributions during campaigning would be allowed to double. And last, provisions that extended deadlines for publishing campaign financial reports and allowed mitigation of fines of up to 75 percent for violations of law by political parties revealed how their accountability to the public was reduced.

A group of civil society organisations gathered around a coalition to prevent adoption of the draft law. The campaign involved meetings with all political party leaders, diplomatic missions accredited in Pristina and it organised protests. All these activities received media attention, thereby creating an atmosphere of public pressure on decision-makers to act. In the end, the campaign proved successful and on 21 June 2019 the government withdrew the draft law.

The Law on Freedom of Association – which regulates the establishment, registration, internal governance, operation, termination and deregistration of non-governmental organisations in Kosovo – was the focus of the 2017 legislative change initiative. It was analysed as suspicious tailor-made legislation due to the amendments introduced to the Parliamentary Committee by representatives of micro-finance institutions – seen as a violation of the non-profit principle in civil society engagement. These changes enabled micro-finance institutions (then registered and operating with the status of non-governmental organisations) to transfer the profits accrued through micro-credit to other organisations. A civil society campaign forced the president of the Republic not to promulgate the law although it was approved by the Assembly of Kosovo in the second reading.

Tailor-made secondary legislation

While analysing suspected cases of tailor-made laws, KDI/TI Kosovo made use of its extensive experience as a pioneer watchdog organisation. After the declaration of independence in 2008 the need to create hundreds of laws in a short period of time generated pressure for government ministers. Major challenges that the Assembly of Kosovo faces is the lack of proper parliamentary oversight of the executive branch. This weak oversight was evident throughout the monitoring of government policies, implementation of laws and the adoption of secondary legislation.

Administrative Instruction on Vehicle Homologation[59] derives from Law 05/L-132 on Vehicles and sets out the procedures, organisation and conditions for the placing road vehicles, their systems and spare parts on the market. The instruction also specifies the technical conditions for the homologation of the type of vehicle, the types and contents of the homologation forms and certificates as well as consent to the registration form. Article 7 of the instruction is considered the most problematic provision that institutionalises the monopoly of the current operator (Euro-Lab Company[60]) already built over the last decade in the field of vehicle homologation. This article stipulates

56 www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)016-e
57 http://mei-ks.net/repository/docs/20170929090420_erafinalsq.pdf
58 https://gjk-ks.org/wp-content/uploads/vendimet/gjk_ko_119_14_ang.pdf
59 https://gzk.rks-gov.net/ActDetail.aspx?ActID=16325
60 Euro-Lab is the property of the Devolli Company, run by Blerim and Shkelqim Devolli. The Devolli family are considered to be the most wealthy and

that the current operator will be part of the feasibility study on whether there is need in the market for the second provider of homologation service.

There is currently a campaign in Kosovo involving non-governmental organisations as well as former opposition parties requesting the end of the Euro-Lab Company's monopoly during the homologation process and allow free and fair competition for other companies to provide the same services. The campaign even drew the attention of EU representatives in Kosovo. The head of the EU Office in Kosovo, Natalya Apostolova, addressed the Parliamentary Committee on Economy on 19 June 2019. She raised concerns over the monopoly on vehicle homologation and the imposition of non-tariff barriers on new vehicles, thus generating unnecessary expenses for the citizens of Kosovo. She said:

> **""The EU is concerned that the Government Administrative Instruction 02/2018 on vehicle homologation will lead to the extension of the monopoly, as the current regulation implies the automatic extension of the economic operator who has had exclusive agreement since 2008. This practice runs in contradiction with the spirit of the Stabilisation and Association Agreement (SAA) and creates trade barriers. Competition between homologation service providers will lower the price and enable better services for the people of Kosovo[61]**

Ambassador Apostolova also expressed concern about mandatory homologation and verification of conformity certificates of new vehicles originating in the EU. "This is against the rules for competition within the EU. According to EU legislation, new vehicles with valid EU homologation must be admitted for sale and registration without any additional checking or costs".

Another case is the administrative instruction on medical treatment outside public health institutions. Instruction number 10/2013, adopted in May 2012, enabled the Ministry of Health to establish a national programme for treatment outside public health care institutions. It enabled patients to receive subsidised treatment in services that the public health system could not provide. The instruction was initially considered vital for the health of patients seeking medical treatment in expensive private clinics in the country and abroad. Problems emerged several months after the programme started when the first complaints against the then minister of health and other ministry officials were filed. A long list of complaints alerted the prosecution office to press charges against 59 individuals and four legal entities. The former health minister and the secretary general of the ministry led the group to be accused of abuse of office, bribery, irresponsible medical treatment, unlawful medical and pharmaceutical activities, authorising payments for the treatment of patients outside public health institutions for 2011 to 2015 and causing total damage to the country's budget of about €4.5 million. This became known as the Stenta case and it is one of the grand corruption cases in Kosovo.

influential oligarchic family in post-war Kosovo. https://balkaninsight.com/2011/10/14/kosovo-factory-sale-broke-privatization-rules/

61 www.koha.net/arberi/169638/apostolova-kerkon-ndaljen-e-monopolit-per-homologim/

CONCLUSION

For years, the fight against corruption has been among the top priorities on the agendas of both the Kosovar government and the assistance programmes provided by the international community. Kosovo is characterised by a persistently high level of corruption, even though the fight against corruption led the agendas of every ruling political party. While Kosovo has shown commitment towards combating corruption by passing a number of laws, regulations and strategies, these initiatives have had limited impact in fighting this phenomenon.

The number of corruption-related cases brought to justice in Kosovo is relatively small, while the grand corruption cases that come to a final verdict are scarce. Judges blame prosecutors for poor investigation and weak indictments. Reports of renowned international organisations such as EULEX also indicate the lack of independence. Reports from civil society organisations such as the Kosovo Law Institute, the Balkan Investigative Reporting Network and Group for Legal and Political Studies reiterate the low profile of defendants in corruption cases in Kosovo, frequent changes of prosecutors and judges, unclear sentencing policies, recurrent court session adjournments and prolonged proceedings that may lead to statutory limitations. Since the establishment of special departments for dealing with corruption and organised crime in July 2019, the Special Prosecution of the Republic of Kosovo has not filed a single indictment against any high-profile individual[62]. The European Commission is also restating that "Kosovo's judicial system is at an early stage of preparation"[63] though it recognises some progress with the new system for the disciplinary liability of judges and prosecutors, and progress in the rollout of an electronic case management system and central criminal record registry.

One of the main obstacles towards building an effective justice system is its vulnerability to undue political influence. The fledgeling justice system is enabling an environment with widespread corruption. Corruption is not only ubiquitous but remains an issue of serious concern for those directly affected by it – Kosovo citizens. The key to changing the current situation and addressing corruption could be political leadership with a strong mission to maintain the principle of clear division of power between legislative, executive and judiciary and respect the latter's full independence in conducting its constitutional duties.

The situation becomes even worse with high-level corruption where investigation, prosecution and the confiscation of assets is particularly weak and directly linked to the lack of results in the fight against organised crime.

The Anti-Corruption Strategy and Action Plan 2018-2022, drafted by the Anti-Corruption Agency (the core administrative institution responsible for preventing corruption in Kosovo) was finally adopted by the government in May 2019 but failed to gain the support of the Assembly of Kosovo amid its perpetual political crisis, which got in its way to the plenary agenda. The plan aims at following up previous anti-corruption strategies dating back to 2004 by sustainably reducing corruption, strengthening institutional integrity, promoting good governance and properly implementing the measures set out in the Action Plan. More specifically, the anti-corruption strategy and its action plan include measures to combat the illegal financing of political parties and terrorism, the informal economy, money laundering and financial crimes.

62 Kosovo Law Institute, Special Failures in Fighting Corruption, November 2019
63 European Commission, Kosovo Country Report 2020, October 2020

The government still needs to demonstrate genuine leadership and the ability to practice planning in advance and willingness to allocate adequate resources to the fight against corruption. Its credibility will depend on the resources allocated to implement the strategy. A monitoring mechanism should be established to regularly assess the impact of the strategy and action plan.

In regard to the legislative process, KDI/TI Kosovo hasn't found major obstacles to its transparency and inclusiveness at the parliamentary stage. However, this doesn't mean that various interest groups will not try to make this stage of law-making process it a target of undue influence as Kosovo consolidates its statehood and witnesses economic growth. In order to prevent future attempts to influence legislative processes, KDI/TI Kosovo has proposed to initiate public discussion on the need for a legal framework that regulates lobbying activities in institutions at central and local levels.

Establishing clear rules for lobbying is an important step in strengthening transparency and the legal framework for combating corruption. It would enhance transparency in the public sector and regulate relationships between different groups – lobbyists, public office holders and politicians - which contributes to a more effectively functioning state administration.

The experiences of Balkan countries show that proper implementation of these laws requires time to be put into practice. In Macedonia, the activities of non-governmental organisations and citizen groups have played an important role in the adoption and subsequent amendment of the law on lobbying, while in Slovenia and Montenegro this law has proved to be an important part of the legal framework for combating corruption in the public decision-making process.

RECOMMENDATIONS

In order to address the weaknesses identified in this report, Kosovo must take urgent steps to implement priorities for reform. As long as those who abuse their positions of power remain unpunished there will be no trust in the legal system and no popular support for reforms. The Kosovo Democratic Institute also sees a critical role for the European Union in supporting the Kosovo government in these reform efforts as part of the EU accession process.

Grand Corruption

Below are recommendations specifically for addressing impunity in grand corruption cases that come to the Kosovo Judiciary Council (KJC) and Kosovo Prosecution Council (KPC). As the situation in the fight against corruption in the last years remains almost unchanged, recommendations below are similar to those from previous publications:

- KJC and KPC should develop safeguards to reduce (if possible, eliminate) executive influence over the judiciary and prosecution by ensuring transparent and more objective systems for the appointment, promotion, transferal and dismissal of judges and prosecutors.
- KPC should strengthen cooperation between bodies responsible for investigating and prosecuting corruption and improve the quality and sharing of information regarding the prosecution of corruption offences.
- KPC should minimise the number of unproductive hearings that delay processing corruption cases. In case of an unproductive hearing, the judge should report on measures taken.
- The management of the court should encourage a new policy on retrials that would make the retrial instrument as an exceptional one, used only used in specific cases. This should further incentives for the appellate courts to refrain from unnecessarily returning cases for retrial.
- Judges should apply the punitive and disciplinary measures available to them in the Criminal Procedure Code. Accessory punishments should be applied in cases of the abuse of official position as it would help to achieve the purpose of the principal punishment.

Tailor-made laws

- In order to prevent future attempts to introduce tailor-made laws, the Kosovo Assembly should improve the law-making process, which would guarantee a more open, transparent and inclusive legislative process.
- One way to move forward in improving the legislative process would be the introduction of a legal framework that regulates lobbying activities in Kosovar institutions. This framework should clearly define lobbying activities, legitimate lobbying activity goals, eligibility criteria for lobbyists and the compulsory lobbying register. Individual lobbyists as well as all lobbying organi¬za¬tions, would need to register in order to conduct their lobbying activities.

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