

Analysis on the impact of the Law against Organised Crime  
and the Law on Confiscation of Illegally Acquired Assets  
in the fight against corruption

# “ILLEGAL MILIONS”

Preventing  
and Combating



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## Table of Contents

4

I. Abbreviations .....	5
II. Introduction .....	6
III. Metodology .....	8
IV. Current legal basis for the war against organized crime .....	9
V. Level of organized crime in Kosovo .....	11
5.1 Narcotics-criminality and its strength in Kosovo .....	13
5.2 Organized crime in the shape of human trafficking .....	13
VI. Measures taken to fight organized crime .....	14
6.1 State strategy of Kosovo for the war against organized crime .....	14
6.2 Special competences of SPRK (Special Prosecution of the Republic of Kosovo) .....	15
VII. Other institutional mechanisms and their responsibilities in the fight against organized crime.....	15
VIII. Confiscating assets acquired from illegal activities .....	17
IX. Actions of the institutions in the fight against the organized crime and assets benefited illegally.....	19
9.1. Challenges in implementation of institutional competences.....	19
9.2 Actions to be taken by competent institutions in the fight against organized crime .....	21
4.1 Police .....	21
4.2 Justice .....	21
4.3 Customs.....	22
4.4 Civil Society .....	23
X. Recommendations .....	24

## I. Abbreviations

<b>AKK</b>	Agency against Corruption
<b>ART</b>	Telecommunication Regulatory Authority
<b>ATK</b>	Kosovo Tax Administration
<b>DAOO</b>	Department Against Organized Crime
<b>EU</b>	European Union
<b>EULEX</b>	European Union Mission for Rule of Law in Kosovo
<b>FIC</b>	Financial Intelligence Center
<b>ICITAP</b>	International Criminal Investigative Training Assistance Program
<b>ICO</b>	International Civilian Office
<b>KC</b>	Kosovo Customs
<b>KIA</b>	Kosovo Intelligence Agency
<b>KJC</b>	Kosovo Judicial Council
<b>KPC</b>	Kosovo Prosecutorial Council
<b>KPS</b>	Kosovo Police Service
<b>MCYS</b>	Ministry of Culture, Youth and Sports
<b>MEF</b>	Ministry of Economy and Finance
<b>MEST</b>	Ministry of Education, Science and Technology
<b>MFA</b>	Ministry of Foreign Affairs
<b>MH</b>	Ministry of Health
<b>MIA</b>	Ministry of Internal Affairs
<b>MLSW</b>	Ministry of Labour and Social Welfare
<b>MoJ</b>	Ministry of Justice
<b>MTI</b>	Ministry of Trade and Industry
<b>MTPT</b>	Ministry of Transport and Telecommunication
<b>OPM</b>	Office of Prime Minister
<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>PPCK</b>	Provisional Penal Code of Kosovo
<b>SECI</b>	South-East Cooperation Initiative
<b>UNDP</b>	United Nations Development Programme

## II. Introduction

6

Politics, in transitional countries with unconsolidated democracies (where our country belongs), through institutions, systems and their mechanisms should ensure building of necessary preconditions for a democratic and safe space – environment, which would guarantee and provide for all natural living conditions for the living and existence of people. Today we cannot think of a democratic society without the establishment of state institutions, which based on generally accepted norms and legal rules, protects its values.

The main conundrum of politics in democratic societies is how to maintain the proportional level between security and freedom, especially by reason that it is difficult in modern societies to take the necessary measures for security and stability and at the same time to uphold fundamental rights and basic freedom of the individual.

Organized crime represents one of the most complex threats for the economic, political and social stability and the security of society in transition. The multiple forms of its manifestation and the increasing presence of the organized crime, its infiltration in many areas, using un-useful moves in the field of society, economy, political and other areas, this consolidation and development of societies in transition, and therefore of Kosovo<sup>1</sup>.

With the strengthening of the economic power and by covering certain fields and territories, criminal organizations increasingly resort to applying violence and corruption with the principal aim to prevent barriers and other obstacles being erected that would prevent them to legalize the profit acquired illegally.

Further, the increase the economic and political weight of the carriers of the organized crime is influenced by their communication, or the protective connection with individuals of different institutions, in which case corruption is the connection link and the main means that follows the development of organized crime. This symbiosis is very difficult to be broken at later stages, naturally to disclose the relationship would mean compromising of abovementioned representatives, but in the other hand would alarm the bodies and security services, than other institutions to undertake all measures and legal action available to oppose this type of crime – organized crime.

One of the most prominent forms of organized crime in Kosovo, without doubt are narcotics-criminality (most often observed as narcotic smuggling) and trafficking of human beings (observed most often as trafficking women) with the intent of forcing them into prostitution. Even various regional and international reports on Kosovo distinguish these two forms of organized crime as most profitable businesses of criminal illegal activities.

On the other hand, the enrichment of people, especially elected officials, within a very short time-frame, is concerning in regard of how that wealth was acquired and in most cases points to criminal activity. Concerning is also the fact that competent authorities, prosecution and judiciary, have almost not moved in the regard of implementing

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<sup>1</sup> Conclusions from the KDI workshop organized in June 2011, regarding the discussion and obtaining best practices for fighting organized crime. Criminology experts participated in the workshop.

the provisions of the Criminal Code and the Criminal Procedure Code (although they are not enough defined) that require the confiscation of assets acquired through criminal activities and actions.

Therefore, drafting and approving the Law against Organized Crime and the Law on Confiscation of Assets Acquired Illegally, where all the competences and responsibilities of each responsible institution would be clearly defined, is not only an obligation that stems out of priorities that Kosovo needs to define to fight this phenomena, but also derives from the need of implementing obligations arising from regional strategies. These two laws should determine the strategic priorities of the fight against organized crime and the confiscation of illegally acquired assets. At the same time they should define the objectives of all institutions that take obligations and to harmonize the inter-institutional activities to achieve the defined objectives.

Kosovo Democratic Institute, this year has started advocating for the completion of the anticorruption legal package in Kosovo, with the focus of fighting organized crime and confiscations of illegally acquired assets. In the framework of this project, study analysis and comparative ones with the countries from the region are being compiled.

In this KDI paper, for its most part, the focus was put on the actual legal basis in the country, the level of organized crime, measures undertaken to fight this phenomena, confiscation of illegally acquired assets, etc.

In the coming months, KDI will publish a separate analysis on regional cases and practices on these phenomena, where recommendations and modalities will be offered to the Kosovo institutions fighting these phenomena.

### III. Metodology

8

The methodology used in this study is based on the reviewing the current legislation that touches the respective area, including here the Penal Code and the Code of Penal Procedure of Kosovo, as well as reviewing reports of institutions responsible for justice and rule of law. Also, documents and reports of other mechanisms that study and follow rule of law are taken into consideration. Statistics of crimes and other related issues used are from a mix of local and international institutions. Other fundamental sources of information were the Official Gazette, judicial, procuratorial and police services as well as other NGOs.

This analysis also takes into consideration different practices in the area of rule of law and their comparison to the Kosovo practices. Discussions from the roundtables with rule of law and justice stakeholders that were organized by the Kosovo Democratic Institute are used to enrich this analysis.



#### IV. Current legal basis for the war against organized crime

The most common justification used by judicial authorities to fight organized crime, including here confiscation of criminal assets, is dearth of adequate legislation or unclear and contradictory current legal legislation in Kosovo. In fact, compared to other countries, especially regional ones, there is a lack of specific laws in Kosovo that would enable institutions to adequately fight this negative phenomenon.

Though there is a lack of a chain of specific laws that would strengthen the fight against organized crime, there is a solid fundamental legislation base intended to fight this phenomenon, which should be necessarily completed. Almost all the neighbor countries have adopted additional legislation or have amended penal codes in order to regulate in a specific manner the issue of confiscation of illegally acquired wealth

The Provisional Penal Code of Kosovo (PPCK) in force defines “organized criminal groups”, in article 274. The notion of “organized crime” sets a punishment with a minimal imprisonment of 5 years (the doers or managers of the group of organized crime endanger an imprisonment of a minimal imprisonment of 7 up to 20 years).

Organized crime, according to strict legal terms, exists when someone “commits a serious crime as part of an organized criminal group” (paragraph 1 article 274); when actively takes part in criminal activities or other activities of a group of organized crime, knowing that his/her participation will contribute to committing of serious crimes by the organized criminal group” (parag. 2 article 274); when “organizes, establishes, supervises, manages or directs activities of an organized criminal group” (parag. 3 article 274); or, at the end, when “commits the offence provided for in paragraph 2 of this article, if the activities of the organized criminal group results in death” (parag. 4 article 274).

According to the same article, in paragraph (7) the organized crime is defined as “a serious crime committed by a structured group in order to obtain, directly or indirectly, a financial or other material benefit” (subparag. 1 article 274)<sup>2</sup>.

PPCK is responsible for determining if organized crime has taken place based on: use of (“violence, threat or any other way of compulsion); type of compulsion (“promising gift or any other form of benefit”) aim of compulsion (“to induce another person to refrain from making a statement or to make a false statement, or to otherwise fail to state true information to the police, public prosecutor of a judge”) and the causal relation between the action and consequence (“when such information relates to organized crime”).

The Constitution of Kosovo and PPCK entrust to state institutions to exercise their legal duties to investigate (police), prosecute (prosecutor) and punish (the courts) the accused ones, set the incrimination period, place, the form of execution and consequences caused, that prove execution of the criminal offence of the organized crime that follows conviction and ends with announcement of penal sanction justifying procedural actions with material facts acceptable and legally sufficient.

<sup>2</sup> Penal Code of Kosovo. Article 274.

Based on the practices of the most experienced countries in fighting the organized crime, there are indispensable adequate laws that determine clearly responsibilities of institutions and they help judges to easier announce punishment for the doers of such phenomenon.

Though the Government of Kosovo has foreseen in its Legislative Agenda for 2011 to approve the Law for Prevention and Fighting of Organized Crime in November, until now besides some declarations, there have not been any concrete steps toward the initiation on drafting this law. Still it is not clear this law will regulate the issue of confiscation of illegally acquired wealth. Regarding this, even the Provisional Penal Code of Kosovo should have been amended.

Supplementing and amending the Penal Code, approving the Law on Prevention and Fighting Organized Crime and approving the Law on Confiscation of Criminal Assets would fulfill to a certain extent the legislative obligations necessary to counter organized crime.

Conventions and other international documents that are directly applied in the Republic of Kosovo that influence the war against organized crime are: Universal Declaration of Human Rights, European Convention on Human Rights and its protocols, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment etc.

## V. Level of organized crime in Kosovo

Organized crime is considered as a threat against national and international security. This threat can take various forms of manifestation in accordance with the evolution of economical and social life, particularly in circumstances of globalization<sup>3</sup>. The level of organized crime in Kosovo is unclear and frequently is based on rumors as a lack of information regarding the investigations, prosecutions and judgments.

Furthermore, it is reported that the corruption is widespread in different sectors in Kosovo and remains a serious concern for the processes of state building of Kosovo. The EC Progress Report for Kosovo 2010 stresses some deficiencies, concluding that the declaration of income and assets by senior officials has shown "...discrepancy between incomes and property of senior Kosovo officials. This indicates that widespread corruption at high levels in Kosovo persists".<sup>4</sup>

There is a perception by the wide public opinion that senior officials or their collaborators have been immune toward investigations and prosecutions. In the meantime various international reports continuously have mentioned deficiencies coming from political, institutional and legislative framework, which should be empowered with multi-sectorial structures which require qualitative mechanisms of coordination and communication. Lack of political will to deal with corruption and organized crime, or political interferences to the structures who deal with corruption are worrisome.

Among the most frequent forms of organized crime in Kosovo is narcotics-criminality (in its most frequent form of smuggling narcotics), and trafficking with human beings (in the form of human trafficking in order to force them to prostitution). Even different regional reports on Kosovo identify these two forms of organized crime as the most profitable illegal criminal businesses.<sup>5</sup>

### 5.1 Narcotics-criminality and its strength in Kosovo

Drug addiction in reality is one of the serious challenges that society has rendered. Intensification of illegal drugs became one of the biggest problems in the world and it has included our country. Even though, buying, possessing, distributing and unauthorized selling of dangerous narcotics and psychotropic substances is prohibited by law, drug dealers do not feel so threatened as Western European dealers do.

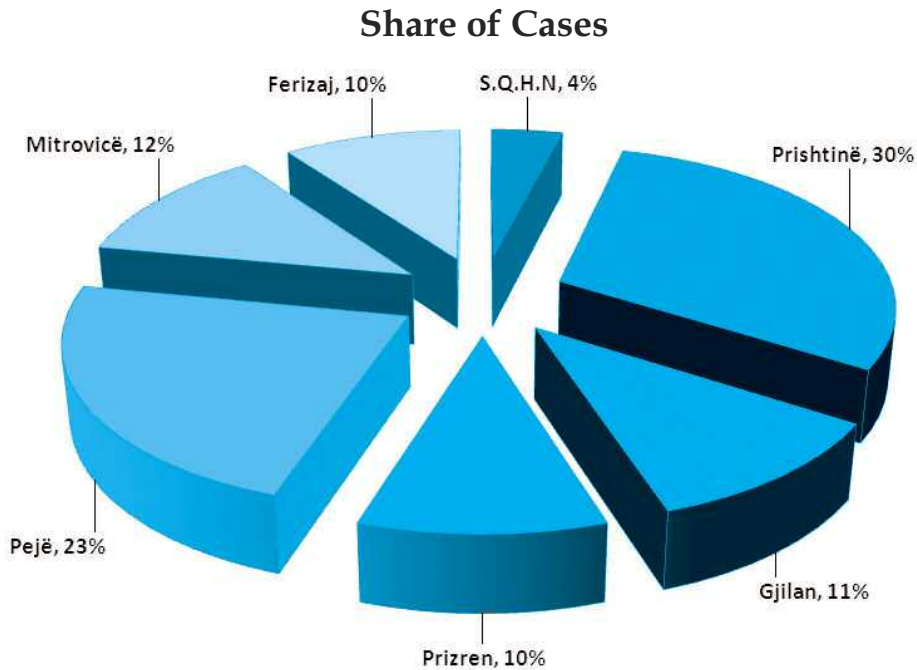
Economic activity in Kosovo is at a very low scale and this is partly a consequence of the last war where almost all the industry and factories were destroyed. As a result, unemployment rates are very high (it is estimated around 40 %) and a lot of people were seduced by high offers of incomes/money from the groups of organized crime including drug syndicates that find Kosovo as an ideal place to organize their criminal activities.

<sup>3</sup> MIA. 208. Inter-sectoral Strategy of the fight against organized crime.

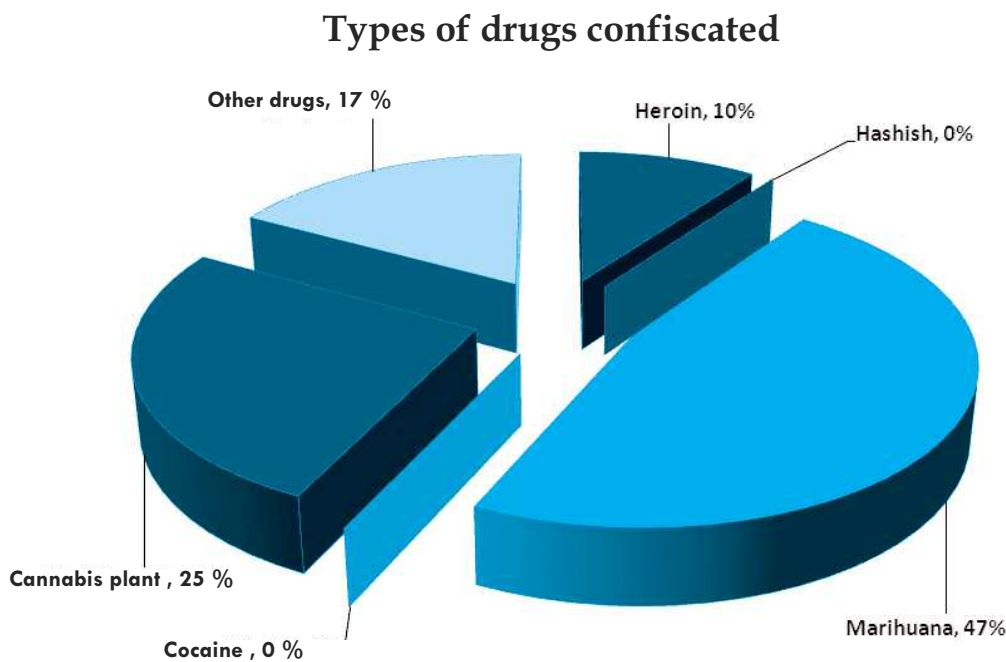
<sup>4</sup> EC Progress Report 2010.

<sup>5</sup> Kosovo Police has developed job description for its senior management and the new police structure which were approved and signed by the Minister of the Internal Affairs. Ibid. 60 See pg. 51 of EULEX Annual report at: [www.eulex-kosovo.eu/docs/justice/annual/](http://www.eulex-kosovo.eu/docs/justice/annual/)

Another reason could be the fact that after the war a lot of people had fluxed Western Europe and while there, they were exposed to the usage of illegal drugs. When they were back, their habits continued and they promoted its usage to their peers, especially to young generations. Thus, more narcotics available as well as the low price, has effected in drug abuse.



*Table No 1. Presents cases of drugs through the regions of Kosovo/Year 2009 (notes from the Anti Drugs Department of Kosovo Police)*



*Table No 2. Drug confiscation/Year 2009 (notes from the Anti Drugs Department of Kosovo Police).*

## 5.2 Organized crime in the shape of human trafficking

According to the organizations that handle protection of victims and prevention of human trafficking, there is a considerable increase on the number of victims used for sexual purposes. According to these organizations, from 2001 up to now, about 600 victims were identified<sup>6</sup>. But, compared to previous years, since 2005 Kosovo had been rendered as a country of origin and a destination for trafficking of human beings, so the number of Kosovar victims increased and the number of foreign victims decreased. In the meantime, Kosovo Police declared that victims of trafficking come from all communities. "Since 2001, when we started keeping statistics for human trafficking up to now, it shows that through years beside Albanians, there were also other ethnicities such as Roma, Croat, Serbs, or all the communities living in Kosovo who have been trafficked," declared one of the Kosovo Police spokesman.

The main reason for increasing trends is accredited to the transition process, the economic crises in Kosovo, increasing poverty and the rate of unemployment, increasing of activity of organized crime and easing border controls in the Eastern and Central Europe<sup>7</sup>, said Tanja Gjurovska, psychologist in SOZM.

Gjurovska presented recent statistics at the disposal of IOM, which show that 84.13 % of women interviewed left their countries for a better working place, 75.96 were recruited with false promises for a safe job abroad, 8.62% were kidnapped, whereas 6.12 % were cheated with false job contracts.

According to SOZM, young population is the most sensitive one toward the trafficking with human beings and needs awareness regarding this problem.

"Potential victims of trafficking chains are recruited from the young population. Thus, they need more information of this phenomenon, get aware and create a system of protection", said Gjurovska.

Since 2004, SOZM implements the Anti Trafficking Program. This program aims to educate, prevent acts and build awareness on the dangerous and potentials of becoming a victim. Under the supervision of this program, SOZM implements Educational Workshops for prevention of Trafficking Human Beings.

Though the law prohibits all forms of human beings trafficking, however there were reports according to which people have been trafficked, inside and outside the country. Women and children have been trafficked inside the country, mainly from the rural parts in the urban bars to western part of the country. The majority of victims trafficked in the country came from Serbia, Kosovo and Albania. Victims from Macedonia and victims that passed through Macedonia have been trafficked in countries of South, Central and Western Europe, such as Greece, Bosnia, Serbia, Italy and Sweden. It has been difficult to obtain official data regarding the trafficking fields of action, because trafficants have changed their operational ways and means. Less than 1/3 of all the potential victims have accepted the support provided by the government.

<sup>6</sup> Statement of Tanja Gjurovska, psychologist at SOZM. Since 2004, SOZM implements an Anti-Trafficking Program. Scientific Journal "Kriminalistike Teme- casopis za kriminalistiku, kriminologiu i sigurnosne studije"

<sup>7</sup> Ibid

## VI. Measures taken to fight organized crime

State and institutional mechanisms should be actively involved in prevention and detection of all forms of organized crime because of the negative consequences that organized crime brings to Kosovo.

The current judicial and prosecution reactions toward organized crime and corruption in Kosovo is derived from the wrong set up established by UNMIK, which until June 15th, 2008 had full responsibility regarding war crimes, interethnic crimes and organized crime that directly threatens rule of law in Kosovo. Old cases were more than sufficient to keep Justice Component of EULEX busy during 2009-2010 leaving little space for other proceedings. On the other side, competent local institutions have carried on with their symbolic measures against this phenomenon.

### 6.1 State strategy of Kosovo for the war against organized crime

The geostrategic position of the Republic of Kosovo in Balkans and the post war conditions have enabled different criminal groups to exercise their organized crime activities. High rate of unemployment and poverty as well have contributed in creating suitable conditions for the crime in general and organized crime particularly.

In order to undertake measures in prevention of manifestation of different forms of crime, state institutions, respectively the Ministry of Internal Affairs, has prepared the document: The State Strategy of the Republic of Kosovo on Crime Prevention and Action Plan for the period 2009-2012. This strategy is a document which sets goals, basic principles, objectives, responsible institutions and the modalities to reach successes in prevention and fighting the organized crime. The National Strategy Against the Organized Crime for the period 2009-2012, stems from the Constitution and applicable legislation in the Republic of Kosovo, international legal instruments and the best international practices<sup>8</sup>.

This strategy is structured in such a way to identify clearly objectives that should be fulfilled in order to let the entire institutional mechanism to be operational in preventing and fighting successfully the organized crime, as well as partnering with other countries and organizations to fight this phenomenon. This strategy helps in developing and implementing policies that strengthen institutional capacities against organized crime to all the levels of social and institutional bodies.

<sup>8</sup> MIA. State Strategy of the Republic of Kosovo Against organized crime and the Action Plan 2009-2012.

## 6.2 Special competences of SPRK (Special Prosecution of the Republic of Kosovo)

The Special Prosecution of the Republic of Kosovo (SPRK) has special competence for prosecuting and investigating crimes also those in the form of alleged crimes. According to the modalities set in Article 10 of the Law for Special Prosecution of the Republic of Kosovo and in accordance with the law in force of KPC, KSPO as well is going to have its subsidiary competences in regards to the criminal offences and penal crime inquiry, also for those in form of attempt and other forms of cooperation in crime<sup>9</sup>.

Exercising subsidiary competences by SPRK according to Article 10.1 of the Law for Special Prosecution of the Republic of Kosovo, when it is in the interest of investigation or proper prosecution of crimes, SPRK will exercise its subsidiary competence regarding criminal offences presented in paragraphs 1 and 2 of Article 9 of this Law<sup>10</sup>. For purposes of this Law it is in the interest of investigation or proper prosecution presented in paragraphs 1 and 2 of Article 9 of this Law that always this criteria is fulfilled.

## VII. Other institutional mechanisms and their responsibilities in the fight against organized crime

Other institutional mechanisms that currently function in our country also have an extraordinary important role to coordinate the activities in the fight against negative phenomena, emphasizing organized crime.

Based on Strategic Documents, in this case the National Strategy of the Republic of Kosovo for prevention as well as the Action Plan for the period 2009-2012, approved by our existing executive institutions, with the aim of preventing and fighting organized crime in the Republic of Kosovo, the following institutions have duties and responsibilities<sup>11</sup>:

1. **National Coordinator** - is an individual body, responsible to coordinate, align, monitor and report on the implementation of policies, activities and actions foreseen within the Strategy against organized crime.
2. **Secretariat** - has the responsibility to gather information and data from other institutions.
3. **Ministry of Internal Affairs** - MIA has a functional role in achieving certain objectives. Kosovo Police as the law enforcement agency within MIA has full responsibility in combating all forms of organized crime. Kosovo Police and Customs, together with other institutions, are key actors in the prevention and fight against organized crime not only at the Kosovo border but throughout Kosovo territory<sup>12</sup>.

<sup>9</sup> Law No.03/L-052 on Special Prosecution Office of the Republic of Kosovo, and Article 10 of the Amending UNMIK Regulation No 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences.

<sup>10</sup> Law No.03/L-052 on Special Prosecution Office of the Republic of Kosovo.

<sup>11</sup> Inter- sector Strategy for Fighting Organized Crime and Trafficking/MIA/2008; National Strategy of the Republic of Kosovo Against Organized Crime and the Action Plan 2009-2012/MPB

<sup>12</sup> National Strategy of the Republic of Kosovo Against Organized Crime and the Action Plan 2009-2012 [http://www.mpb-ks.org/repository/docs/STRATEGJIA\\_KKT\\_30\\_QERSHOR\\_Alb.pdf](http://www.mpb-ks.org/repository/docs/STRATEGJIA_KKT_30_QERSHOR_Alb.pdf)

**4. Ministry of Economy and Finances** - MEF, through its subordinate institutions such as: Customs, the Financial Intelligence Centre and Kosovo Tax Administration will need to take the necessary action in preventing the cross-border transport of goods and materials, fraud and financial transactions related to all forms of organized crime. The role of this ministry is also related to assistance in identifying, reporting and blocking funding for activities related to organized crime.

**5. Ministry of Trade and Industry** - MTI will take actions in identifying and controlling businesses suspected of illegal activities.

**6. Ministry of Justice** - MoJ is one of the most important institutions in the fight against organized crime and other negative phenomena. This institution has the duty to complete legislation in the rule of law area in order to enhance efficiency in achieving the strategic goals for combating criminality related to organized crime and provide necessary conditions for the justice institutions, in this case the Special Prosecution Office that is considered as a key institution in combating organized crime.

**7. Kosovo Judicial Council** - is an institution which is obliged to ensure the independence of Kosovo courts, to be professional and impartial, so that the judicial system is more efficient in the fight against organized crime and other forms of criminality.

**8. Kosovo Prosecutorial Council** - is an institution which is obliged to ensure that the prosecution system in Kosovo is independent, impartial and professional in exercising the pursuit, investigation and detection of criminal offences, and presents indictment before courts on behalf of the state.

**9. Prosecution Offices and Courts** - are the institutions responsible for prosecuting persons charged, their adequate punishment, confiscation of criminal assets and proceeds acquired through criminal activity. In the institutional context, other local institutions, international institutions and partners within and outside Kosovo have also an important role in preventing and combating organized crime<sup>13</sup>.

**10. Kosovo Intelligence Agency** - is a very important body in the fight against organized crime that gathers, assesses and provides information with regard to the threats from organized crime to the Kosovo security.

**11. Kosovo Anti-Corruption Agency** - This Agency is an independent and specialized body for implementing the national policies in the fight against and prevention of corruption. It initiates and undertakes the detection and preliminary investigation procedure of corruption, and forward criminal charges if, for the suspected cases of corruption in competent public prosecutors office, if for the same case the criminal procedure has not been undertaken<sup>14</sup>.

<sup>13</sup> National Strategy of the Republic of Kosovo Against Organized Crime and the Action Plan 2009-2012 [http://www.mpb-ks.org/repository/docs/STRATEGJIA\\_KKT\\_30\\_QERSHOR\\_Alb.pdf](http://www.mpb-ks.org/repository/docs/STRATEGJIA_KKT_30_QERSHOR_Alb.pdf)

<sup>14</sup> Law on Anti Corruption Agency Art.4.

<http://www.kuvendikosoves.org/common/docs/ligjet/2009-159-alb.pdf>



Other institutions that have the role and competence in the fight against organized crime are also these governmental branches: Ministry of Foreign Affairs (MFA), Ministry of Education, Science and Technology (MEST), Ministry of Culture, Youth and Sports (MCYS), Ministry of Health (MH), Ministry of Labor and Social Welfare (MLSW), and Ministry of Transport and Post – Telecommunication (MTPT).

### VIII. Confiscating assets acquired from illegal activities

Confiscation of assets acquired illegally is one of the most fundamental and important measures in increasing the efficiency in the fight against organized crime and individuals, especially senior public officials, who while they hold public offices in a short period of time accumulate millions of Euros.

The applicable legislation in Kosovo has foreseen measures regarding the sequestration and confiscation of assets of those that have acquired these possessions through illegal actions. The Provisional Penal Code of Kosovo, chapter VII for Confiscating Material Benefit acquired through criminal offences and it is a reason for Confiscation of Material Benefit, foresee confiscation of illegal benefit in Article 82, paragraph 1 and 2<sup>15</sup>.

According to the applicable Kosovo Law, the money or property acquired through criminal offences shall be confiscated either through a court verdict that proves the criminal offence or through a request of a public prosecutor in front of a panel, (Criminal Procedure Code of Kosovo, Article 498)<sup>16</sup>. Police and other authorities may participate in investigation of circumstances that can determine benefits acquired during the crime.. The money or property given, accepted or benefited through criminal actions, for example unjustified acceptance of gifts, taking or giving bribe and vending with influence in decision making to a official person, as well should be confiscated. If the benefits from the criminal action are transferred to close family relatives, should be confiscated as well<sup>17</sup>.

The factual situation in the field, proves that that these measures are not used in none of the current cases under investigation or being processed in trials, either by local judicial institutions or EULEX ones. Prosecutors state that judges hesitate to implement these measures due to possible threats against their own safety or due to lack of interest, whereas judges consider that prosecutors do not propose these measures, exactly for the same reasons. The lack of a specific law on the confiscation of assets acquired illegally, frequently is mentioned as the main reason for judges to hesitate to implement such measures. In order to increase the efficiency in the fight against these phenomenon, apart from the need to draft new laws, strengthening of court and prosecution capacities is required in order to work in confiscation of the property in the moment that investigation is initiated for suspected individuals being trialed, or indicted of corruption cases initiates.

Regarding the gifts of senior public officials, the practice has not yet been established

<sup>15</sup> Provisional Penal Code of Kosovo, Confiscation of Material Benefits Acquired by the Commission of Criminal Offences and grounds for Confiscating of Material Benefits, Article 82, paragraphs 1 and 2.

<sup>16</sup> Provisional Penal Code of Kosovo – Article 498

<sup>17</sup> Provisional Penal Code of Kosovo – Article 83.

by Kosovo institutions or EULEX mission. Confiscation of possessions acquired from the criminal actions should be seen as a prevention mechanism in order to ensure that possessions have been acquired by criminal acts.

Though part of the Ministry of Justice, an organizational structure of the Agency is functional and responsible for the management of assets confiscated and sequestered, which is legally based on the Law on Administration of Sequestered or Confiscated Assets. However this Agency is competent only for professional administration of the assets confiscated or sequestered, but does not take decisions on confiscation or sequestration of a specific asset, in this case a property illegally acquired..

The duties and responsibilities of the Agency are to protect and administer the confiscated and sequestered assets in cooperation with the prosecution, court, or other competent bodies in accordance with the current law, excluding the assets confiscated to realize collection of tax obligations. It helps in execution of decisions for sequestration or confiscation of assets. According to the competent bodies it enables the selling of assets sequestered or confiscated, in harmony with the authorization of the competent body it engages experts when needed to estimate the value of assets and modalities to protect the sequestered and confiscated possessions<sup>18</sup>

The Agency administers the data regarding the assets sequestered or confiscated according to the Article 6 (Law No. 03/ L-141)<sup>19</sup>. According to the law "Confiscation" means permanent suspension of the assets, ordered by a final decision of the competent court or another competent authority in accordance with the law in force, "Competent authority" means every authority or institution which in accordance with the law is authorized to sequester or confiscate assets. "Sequestered or Confiscated assets" are considered personal estates, real estates, money and bonds that are in legal circulation; "Sequestration" means temporary suspension of the assets ordered by a competent authority in accordance with the law in force<sup>20</sup>.

The core of this criminal action stands in the aim of owners of these monetary resources or assets acquired in criminal ways to create conditions through illegal activities in order to benefit from them as they were legal profits. For this purpose they use different methods and practices, while one of the techniques is inclusion in circulation or recirculation of money deriving from criminal activities. Legalization of monetary resources and assets acquired illegally is made through such actions, as: Deposit, conveyance, transfer or monetary exchange in order to masking, hiding or denying the ownership or origin of the assets coming from the criminal activities.

Though different local and international reports speak about a major presence of these phenomenon's, unfortunately the actions taken by the competent authorities to prevent them are very minimal.

<sup>18</sup> Law on Administration of Sequestered or Confiscated Assets, Nr. 03/ L-141

<sup>19</sup> Law on Administration of Sequestered or Confiscated Assets Nr. 03/ L-141

<sup>20</sup> Law on Administration of Sequestered or Confiscated Assets Nr. 03/ L-141

## IX. Actions of the institutions in the fight against the organized crime and assets benefited illegally

### 9.1 Challenges in implementation of institutional competences

Law implementation in Kosovo in the field of prevention and fight against organized crime is fractional, it lacks coordination and effective inter-institutional cooperation as well as regional and international cooperation as basic preconditions for success in fighting the phenomenon<sup>21</sup>.

Kosovo police has not yet succeeded to create necessary capacities for internal coordination to manage of the information and intelligence. The local level intelligence units are not managed by the Directorate of Intelligence and Crime Analyses, thus as a consequence police work is dominated by local supervision and minimal cooperation within the organization. Furthermore, there is no effective exchange of information between the central units dealing with organized crime and directorate for crime analyses<sup>22</sup>.

Due to the abovementioned situation, the directorate for crime analyses does not influence the process of strategic decision making regarding information management and fighting the organized crime, so it is clear that a better organization of a national model is needed in order to provide effective exchange of information within police units<sup>23</sup>.

The agencies for the rule of law, especially Kosovo Police and Customs should develop capacities for collection and exchanging of information thus building an institutional system.

Furthermore, there is a lack of cooperation in international level. This is mainly reflected in the difficulties for implementation of regional programs due to the lack of cooperation from some states with Kosovo institutions. Kosovo police lacks trained and specialized staff in the field of computer forensics, legal eavesdropping, cybernetic crime, money laundering, terrorism, and other specialized fields<sup>24</sup>.

Number of specialized prosecutors (with adequate training) and committed to criminal investigation in relation with the organized crime and money laundering is not sufficient.

Responsible institutions for prevention and fighting the organized crime lack the necessary technical and technological informative equipments, as well as having a low level of personnel wellbeing that effects negatively the efficiency of these institutions to fight the organized crime, the EULEX report is cited<sup>25</sup>.

<sup>21</sup> (scientific magazine/sarajevo/kriminalisticke teme pa.4)

<sup>22</sup> ASKK . Fear from the criminality and the fear from institutional coordination, vetparaqitje e devijimit 2009/pr010.

<sup>23</sup> EULEX. July 2009. Available at: / <http://www.eulex-kosovo.eu/docs/justice/annual>

<sup>24</sup> EULEX. July 2009. Available at: / <http://www.eulex-kosovo.eu/docs/justice/annual>

<sup>25</sup> EULEX. July 2009. Available at: / <http://www.eulex-kosovo.eu/docs/justice/annual>

Intelligence/information, are the precondition for any kind of success during investigations. In this sense there is a lack of implementation of the concept: Police led by intelligence, and necessary funding for secret operation and adequate treatment of informants.

Non-adequate maintenance, limited access and lack of an integrated system of databases is an obstacle for the documentation and development of investigations.

The engagement of the institutions of the Republic of Kosovo for the improvement of the situation described above creates conditions for an effective and successful fight against organized crime<sup>26</sup>.

Kosovo's national strategy for the fight against organized crime, creates real possibilities for the institutions of rule of law to efficiently and successfully prevent and fight organized crime.

The police has an inclusive legal structure, there exists a concern regarding the leadership quality and capacities for a strategic direction and these characteristics are of decisive importance for the success of Kosovo police in facing challenges presented by the organized crime and illegal assets.

There were found no facts that the senior staff of KP management is developing an inclusive strategy.

Police admits the need to fully develop the program of accomplishing police duties based on intelligence and EULEX strongly recommends that this program should be among the priorities of high commanders of KP during the next three years.

Border police has capacities to become a very important component in the unique system of intelligence: data regarding the movements of specific people and cars in the borders of Kosovo are of paramount importance to fight organized crime and other major crimes.

The Directorate for Crime Analyses (DCA) remains uncompleted regarding the personnel structure and management, depriving KP from the possibility to have an effective center of its criminal intelligence. DCA should be at the center of a joint effort to fully exercise the mandate, structure and its capacity should be allowed to move towards accomplishing of all police duties 'based on intelligence'<sup>27</sup>.

The Directorate for Organized Crime (DOC) lacks a profound strategic document that defines goals and objectives, consequently there is no written policy or general strategy that would give shape to the attempt to fight the organized crime. Strengthening the use of statistics for the types of crimes and information of the intelligence is needed as well during the planning of DOC activities.

<sup>26</sup> EULEX. July 2009. Available at: / <http://www.eulex-kosovo.eu/docs/justice/annual>

<sup>27</sup> EULEX. July 2009. Available at: / <http://www.eulex-kosovo.eu/docs/justice/annual>

## 9.2 Actions to be taken by competent institutions in the fight against organized crime

### 9.2 .a. Police

Police must evolve a sophisticated and effective illegal migrant strategy, as part of development of Integrated Borders Management (IBM). In its progress towards IBM, Police should work with Customs, Public Prosecutors Office and EULEX to generate a strategy a cross-border crime strategy. Communications and the flow of information – both between the various parts of KP Border and between this Pillar and other parts of Kosovo Police – remain a fundamental weakness. This weakness has a debilitating effect on KP Border operations and its efficacy in achieving its objectives<sup>28</sup>.

The close working relationship between public prosecutors and KP investigators that is implied in the law is often absent in practice which shows the need to functionalize the Judiciary Police, which should comprise competent academic staff specialized in all fields of fighting the organized crime. It is recommended that senior KP officers and Public Prosecutors Office initiate a joint effort to explore ways of allowing Prosecutors and investigators to work more closely in a team effort.<sup>29</sup>

There is concern about the management of certain support functions within the Operations Pillar. There is a lack of accountability in terms of statistical evaluation of the performance of units (e.g. SIU and I/EOD) that are unable to provide detailed statistical data regarding the number/type of incidents attended<sup>30</sup>.

### 9.2.b Justice

Comparing with police, the justice system was completely weak in its ability to support efficient prosecution and trial of cases.

The findings show that accountability mechanisms based on law against corruption are functional. According to the investigations done by the Anti-Corruption Agency, it was proved that mechanism for verifying the level of declaration of wealth from judges is functional. The Anti-Corruption Agency has reported several such cases. EULEX prosecutors and AKK have signed a memorandum of understanding for co-operation in this field.

EULEX findings detect weaknesses with respect to de jure independence in the Kosovo Judiciary. With respect to the de facto independence, shortcomings were identified in terms of security of Kosovo judges. There is hardly any system in place to protect Kosovo judges in court, outside the court and beyond working hours. The lack of measures to ensure the security of Kosovo Prosecutors was also recorded. Some recorded incidents indicate the level of external pressure Kosovo Prosecutors are exposed to; neither ad hoc solutions nor institutionalized mechanisms are in place for following up such incidents<sup>31</sup>.

<sup>28</sup> <http://www.eulex-kosovo.eu/docs/justice/annual>

<sup>29</sup> EULEX. July 2009. Available at: / <http://www.eulex-kosovo.eu/docs/justice/annual>

<sup>30</sup> EULEX. July 2009. Available at: / <http://www.eulex-kosovo.eu/docs/justice/annual>

<sup>31</sup> EULEX. July 2009. Available at: / <http://www.eulex-kosovo.eu/docs/justice/annual>

In the other hand, the EULEX mission has also noticed cases of intimidation of judges, and prosecutors are also exposed to pressures.

There is need for continuous training of staff members of the Legal Affairs Department; moreover identified capacity building efforts seem to suffer from a continuous turnover of staff within the ministry<sup>32</sup>.

### 9.2.c *Customs*

New primary legislation which regulates the functioning of the customs is in place since the approval on late 2008 of the law on Customs and Excise Code of Kosovo. This code is compliant with EU standards as it inspired by “Community Customs Code”.

Secondary Legislation, i.e. the Administrative Instruction with implementing provisions by the Minister of Economy and Finances and subsequent instructions are still to be issued. While no timeframe has been set for this process, legal gaps are being considerably reduced by the application of former UNMIK rules and regulations. Ensuring the correct interpretation and uniform application of European-compliant customs rules will be a continuing challenge.

The Independent Review Board, as the main body for appeal on the Kosovo Customs decisions, has restarted to organize hearing sessions again after twelve month interruption. Internal reporting on breaches of the Code of Conduct seems to be well established and within the KC. The KC have an Action plan to prevent and combat corruption and have proactive measure in place.

The Kosovo Customs training plan is covering introductory, professional and technical training, but more specialized areas of law enforcement and prevention are not extensively covered. The Strategic Operating Framework 2009-2011 announces no major shifts in overall objectives of Kosovo Customs. Operational plans however contain little reference to organized crime.

Although investigative and enforcement functions are present, a review of existing risk profiles must be needed, as well as a risk analysis process. There is no specific information system dedicated to serious crime. Intelligence dissemination and data sharing between Law enforcement and Revenue Operations Directorates within Kosovo Customs seem to be very limited. Cooperation and information sharing with other law enforcement agencies is generally rather limited, although at local level some degree of cooperation has been observed, e.g. between border police and Customs<sup>33</sup>.

The Integrated Border Management Strategy shall considerably strengthen the cooperation between Police and Customs at border crossing points. It will clarify control mechanisms and responsibilities, and intensify controls at the borders in order to prevent and reveal cross-border crime. It also opens possibilities for joint standing operational procedures and emergency plans with other services/law enforcement agencies in the region.

<sup>32</sup> EULEX. July 2009. Available at: / <http://www.eulex-kosovo.eu/docs/justice/annual>

<sup>33</sup> EULEX. July 2009. Available at: / <http://www.eulex-kosovo.eu/docs/justice/annual>

## 9.2.d Civil Society

Regarding the role of the civil society, it is mainly related to the profile of the non-governmental organizations. On January 2009, there were 4,952 registered NGOs to the Ministry of the Public Services; the authorities reported a steady trend of 20 new applicants within one week<sup>34</sup>.

Expectations/observations on EULEX gathered through meetings held with local CSOs/NGOs can be summarized as follows:

The vast majority of CSOs/NGOs consider the fight against corruption as priority number one. A number of CSOs/NGOs began questioning local authorities on high level corruption, but the situation is still considered as far from acceptable. Contrasting Corruption and the organized crime appear as more urgent than dealing with war related crimes or interethnic reconciliation.

Few CSOs/NGOs perform trial monitoring, and usually on specific cases interest. The main effort to provide a comprehensive overview on court functioning relates to reports by Balkan Investigative Reporting Network, including an assesment issued in June 2009 with around 600 cases in 6 Kosovo municipal courts. CSOs/NGOs are keen on fighting corruption, judged as the most serious hurdle to the proper performance of institutions in Kosovo. Organizations like Kosova Democratic Institute (KDI), Fol Movement and Çohu have undertaken various anticorruption campaigns and monitored episodes of misdemeanor.

Institutional efforts against corruption are considered largely insufficient and often driven by the goal of hiding real embezzlement from public opinion. Transparency in elected officials' incomes, funding of political parties and relations between public and private companies' management and politics attract the interest many civil society watchdogs, and reports are frequently uploaded on many CSOs/NGOs websites.

Issues such as missing persons and property rights emerged as the first fields of actions suggested to be tackled by the Mission.

<sup>34</sup> EULEX. July 2009. Available at: / <http://www.eulex-kosovo.eu/docs/justice/annual>

## X. Recommendations

24

- It is necessary to complete the legal infrastructure to prevent and successfully fight organized crime and the illegally acquired assets. This can be done by building the adequate legal infrastructure which enables the responsible institutions to conduct their activity.
- The responsible institutions should pay special focus to approve the law on fighting organized crime and that for the confiscation of illegally acquired assets.
- To successfully fight organized crime, it is imperative that responsible institutions have enough human resources, which are trained and specialized for an efficient fight against organized crime. Due to the complexity of organized crime it is important that the structures that deal with prevention and fight against organized crime to have the technical equipment and standard modern technology.
- It is necessary to develop the current technology and equip with necessary technical and information technology tools, to achieve the goal of prevention and fight against organized crime and illegal enrichment.
- The following instruments of monitoring and evaluating should become functional: The standard system of collection and processing of data; Administrative and statistical data of MIA (Police), MoJ, MH, MEF (Customs, KTA), MEST, Prosecution, Courts, MLSW; Polls and observations of the population regarding the level of awareness on issues of organized crime and raising awareness for the ways of acquiring assets illegally.
- The competent prosecution institutions as well as the EULEX Mission in Kosovo should give immediate result in pursuing cases of political corruption. This would send a strong signal to the elected authorities and would increase the overall political will of the Kosovo institutions to support fight against corruption and organized crime.
- The competent institutions should take preventive measures in prevention of organized crime in all its forms and to minimize the penal cases that are connected with organized crimes and illegal trafficking, as well as the fight against corruption, thus achieving the standards of developed countries.



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