



**POLICY BRIEF**

**No. 2/14 – November 2014**

# **FULFILLING THE EU REQUIREMENTS IN ANTI-CORRUPTION AND ORGANISED CRIME**

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## Contents

I.	Introduction.....	4
II.	The EU Requirements in the fight against corruption and organised crime .....	5
III.	Kosovo's efforts: The struggle between political will and weak results in the fight against corruption and organised crime.....	6
	a) Updated Anti-Corruption Legal Framework.....	7
	b) The response by rule of law bodies in fighting corruption and organised crime .....	8
	c) The institutional capacities to combat corruption .....	12
IV.	Conclusions and Recommendations .....	13

## I. Introduction

Stuck in a limbo between declarative willingness to fight corruption by its current political elite and actual results on the ground, Kosovo remains captured by affairs of corruption awaiting further investigations. An overall mantra of the government as of 2008, the fight against corruption, will continue as long as the investigations and prosecutions of high profile cases would not involve the major political figures of the current government.<sup>1</sup>

In addition, as of 15<sup>th</sup> of June 2014, the EULEX Rule of Law Mission in Kosovo has transferred its competencies to their local counterparts, decreasing further any hope that high profile cases implicating also the current government will be trialed. The transfer of competencies has already shown weak results as evidenced by the low number of corruption cases dealt by the Anti-Corruption Task Force with only five criminal cases initiated by special prosecutors within this body.<sup>2</sup> With the ongoing allegations of corruption for the largest EU civilian mission- EULEX- of their former and current EULEX judges and prosecutors, and joint investigations as of 2013 by EULEX and Kosovo judicial authorities into these allegations, the hopes of Kosovo tackling high profile corruption keeps fading away.<sup>3</sup>

The presence and the need to combat corruption in Kosovo has been a continuous requirement of the EU. Few of the recommendations for Kosovo are requirements for many years now with Kosovo institutions continuously failing to implement these recommendations. In 2014, Kosovo was again valued by the EU to have had made limited progress and is at an early stage in the fight against corruption.<sup>4</sup> Furthermore, the second monitoring report on progress by Kosovo in fulfilling the requirements of the Visa Liberalisation Roadmap has indicated that there have been improvements in the fight against corruption, but there still appears to be a lack of actual results in courts.

Furthermore, the EU encourages cooperation of Kosovo institutions with the CSO's sector in order to increase the communication of the government with its citizens as well as share of different experiences including analysis of on-going efforts and lessons learned by Kosovo institutions in the fight against corruption and organised crime. This commitment is also shown by the EU support to a number of civil society organisations to monitor and report on the corruption efforts ongoing in Kosovo.<sup>5</sup>

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<sup>1</sup> See KIPRED's report: "Investigation of Corruption Kosovo: (Miss) Cooperation between police and prosecution", April 2014  
[http://www.kipred.org/advCms/documents/64358\\_Investigation\\_Corruption\\_Kosovo\\_Mis\\_Cooperation\\_Police\\_Prosecution\\_KIPRED.pdf](http://www.kipred.org/advCms/documents/64358_Investigation_Corruption_Kosovo_Mis_Cooperation_Police_Prosecution_KIPRED.pdf)

<sup>2</sup> See Kosovo Progress Report 2014, pg.16 .

<sup>3</sup> See "Statement by the spokesperson on allegations of corruption involving EULEX Kosovo", at, <http://eulex-kosovo.eu/en/news/000527.php>, 29 October, 2014.

<sup>4</sup> See Kosovo Progress Report 2014, at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-kosovo-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-kosovo-progress-report_en.pdf) , pg. 16, October 2014.

<sup>5</sup> KIPRED and Syri i Vizionit in the Peja/Pec region have been funded to develop a tool to monitor the efforts of the Kosovo institutions in the following areas: Democracy and Rule of Law; Combating Money Laundering; Preventing Corruption and Organized Crime; Judicial System-cooperation in criminal matters; Border Management and Law Enforcement Cooperation. In this regard KIPRED developed a monitoring barometer to cover the above mentioned areas, through indicators that follow what has been undertaken so far and what remains to be done published in a form of recommendations. The barometer is published in a website prepared and managed by KIPRED and SiV. Furthermore, the support of the EU foresees the publication of eight policy briefs in the above mentioned areas, developed in close cooperation with Kosovo key stakeholders.

The brief below is a result of a joint quarterly monitoring of KIPRED and SiV from July-October 2014.<sup>6</sup> The brief offers an overview of the current findings on the fulfilment of the EU criteria in the fight against corruption and organised crime by analysing the capacities of current structures mandated to fight these phenomena's, focusing on the courts and law enforcement agencies. The brief provides also a number of recommendations in line with the EU requirements for Kosovo institutions needed for Kosovo to demonstrate willingness to administer the state based on rule of law principles and strengthen its fight against corruption and organised crime.

## **II. The EU Requirements in the fight against corruption and organised crime**

The EU Progress Report for Kosovo 2014 and the second monitoring report on the fulfilment of the EU requirements for visa liberalisation by Kosovo, enlist a number of requirements deriving from law and policy implementation to the creation of appropriate structural responses and political willingness in order for Kosovo to start offering results in its current efforts to fight corruption and organised crime.

In the area of corruption the EU Progress Report for Kosovo 2014 notes that even though there has been a prioritisation of corruption cases by the judicial and prosecutorial services, track records of convictions are still missing.<sup>7</sup> Corruption is observed as a serious problem in many areas however public procurement remains still a major concern for Kosovo as majority of the public budget is spend in procurement related activities. Without real commitment from Kosovo's political elite that should translate their efforts into actual results, Kosovo remains at its earliest stages in the fight against corruption. Kosovo institutions should also further strengthen their inter-institutional cooperation with the judiciary enabled and made accountable in order to offer effective results in the fight against this phenomena.<sup>8</sup>

In regard to organised crime cases and corruption, even though few human trafficking groups have been dismantled and drug-related investigations have shown moderate results, the low numbers of convictions and drug seizures continue to position Kosovo at an early stage in comparison to the region with minimal drug seizure and trafficking related convictions.<sup>9</sup> Furthermore, the EU notes that with the reluctance of the law enforcement agencies including of the prosecutorial services, to initiate financial investigations, the freezing and confiscation of assets required by the law, continues to be very low.<sup>10</sup>

Overall, the implementation of the anti-corruption policies and mechanisms have failed to deliver concrete results as there has not been sufficient political support in offering for example budget support in implementation of these policies. Even though laws have improved to some extent regarding the wealth declaration of the public officials, results remain scarce with low number of convictions and sanctions imposed. The lack of tradition to provide transparent and accountable governance is also followed through by the general reluctance of Kosovo's political parties to meet the obligations of Kosovo's laws on political party financing. Overall, Kosovo's

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<sup>6</sup> KIPRED and SiV conducted a desk analysis by undertaking over 50 semi-structured interviews with key stakeholders and in September 2014 organised a roundtable in Prishtina, with 34 participants, in order to discuss the majority of the findings and recommendations with Kosovo institutions.

<sup>7</sup> Kosovo Progress Report 2014, pg. 16 at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-kosovo-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-kosovo-progress-report_en.pdf)

<sup>8</sup> Ibid, pg. 16.

<sup>9</sup> Kosovo Progress Report 2014, pg. 2 at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-kosovo-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-kosovo-progress-report_en.pdf)

<sup>10</sup> Ibid, pg.2.

political elite is failing to oppose the criminal infiltration into the political, legal and economic system deriving from organised crime and corruption.<sup>11</sup>

On a similar matter, the EU monitoring on the fulfilment of the Roadmap for Visa Liberalisation for Kosovo, notes that in the area of corruption and organised crime, implementation of laws and policies remains the major challenge. Related to implementation the second monitoring report goes beyond some of its initial recommendations, due to poor results offered in practice.<sup>12</sup> The report notes that even though a tracking mechanism has been set up, the poor prioritisation in targeting high profile corruption and organised crime cases, shows the reluctance of the current prosecution and courts to deal with such cases.

Furthermore, the report requires that Kosovo institutions should further strengthen intelligence led policing and analytical skills to counter corruption and organised crime cases. The EU finally notes that even though there have been improvements in the fight against corruption, Kosovo should integrate financial investigations into all investigations of organised crime and corruption and establish a comprehensive system to track all cases of final court rulings including corruption and organised crime cases with criminal penalties executed and criminal assets recovered. The implementation of laws and policies remains a major concern for the EU in Kosovo's path towards Visa Liberalisation with the EU countries.

Therefore, the EU recommends that the new government and parliament that will be created after the central elections held on 8<sup>th</sup> of June, 2014, should show clear political will and zero tolerance towards corruption and organised crime with effective results in these areas, in order for Kosovo to approximate itself with the EU requirements.

### **III. Kosovo's efforts: The struggle between political will and weak results in the fight against corruption and organised crime**

A number of laws and policies have been enacted by Kosovo institutions in order to respond to the EU requirements in the fight against corruption and organised crime. From the updating and aligning the anti-corruption legal framework with the new Criminal Code to increasing the number of judges and prosecutors and inventing a number of perplexed mechanisms to fight corruption. The creation and appointment of various mechanisms also served as a tactic to outsource the budget in different directions jeopardising the implementation of the existing laws and policies.<sup>13</sup> In the midst of these circumstances Kosovo judicial and prosecutorial structures with its law enforcement agencies have been continuously pushed to fight corruption and organized crime. The analysis below offers an overview of the updated legal framework in the anti-corruption areas followed by an analysis of the on-going efforts of the Kosovo prosecution and courts to fight corruption and organised crime.

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<sup>11</sup> Kosovo Progress Report 2014, pg. 3 at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-kosovo-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-kosovo-progress-report_en.pdf)

<sup>12</sup> See Report from the Commission to the European Parliament and the Council, Second report on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap, pg.7 at, [http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/second\\_commission\\_assessment\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/second_commission_assessment_en.pdf)

<sup>13</sup> See KIPRED policy paper “ The Fight Against Corruption: A Comparative Analysis between Kosovo and Croatia,” 2014, at [http://www.kipred.org/advCms/documents/59249\\_The\\_Fight\\_Against\\_Corruption\\_A\\_Comparative\\_Analysis\\_Between\\_Kosovo\\_and\\_Croatia.pdf](http://www.kipred.org/advCms/documents/59249_The_Fight_Against_Corruption_A_Comparative_Analysis_Between_Kosovo_and_Croatia.pdf)

## a) Updated Anti-Corruption Legal Framework

Kosovo consolidated its anti-corruption legal framework with amendments of three major laws i.e. the Law on Financing of Political Parties<sup>14</sup>, the Law on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Official Persons (hereinafter referred to as the Law on Declaration of Property)<sup>15</sup> and Law on Prevention of Conflict of Interest in the Exercise of Public Functions.<sup>16</sup> Through alignment with provisions of the Criminal Code,<sup>17</sup> these laws ensure that corruption related offences are criminalized.

In addition, the Kosovo legal framework has been updated following the renewed mandate of the EULEX mission, foreseeing that all rule of law institutions will be headed by Kosovo officials and is based on the "normally no new case" policy, meaning that EULEX will deal only with the cases received before 15<sup>th</sup> of April, 2014 and consider new cases only upon the request by its local counterparts. The EULEX prosecutors will not be taking on new investigations except in extraordinary circumstances.<sup>18</sup> These "extraordinary circumstances" have yet to be defined.<sup>19</sup>

Other amendments have been also made to the Law on Declaration of Property by senior officials, detailing the obligation of the reporting official. For example, the personal income in the old law was defined as 'annual revenue,' whilst the new law details personal income as "...income for the year, from the salary or participation in boards, commissions or any other activity resulting in personal income."<sup>20</sup> In relation to the control of declared property the law implies for the Anti-Corruption Agency in controlling and verifying the declaration of property of however only of twenty per cent each year. The selection is made by a draw, whilst the exercise of a full verification by the Agency over the official can be conducted also at the request of public or interested persons.<sup>21</sup> Moreover, the law also makes mandatory that senior officials will provide detailed explanations in relation to the source of their property.<sup>22</sup>

Another law amended within the anti-corruption legal framework is the Law on Financing of Political Parties. From its approval in 2010, this law has been amended twice. However, as

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<sup>14</sup> Law No. 04/1-212 On Amending And Supplementing The Law No. 03/1-174 on the Financing of Political Parties, Amended And Supplemented By Law No. 04/1-058, at, <http://www.assembly-kosova.org/common/docs/ligjet/Law%20on%20amending%20the%20law%20on%20the%20financing%20of%20political%20parties.pdf>

<sup>15</sup> Law No. 04/1-228 on Amending and Supplementing the Law No. 04/1-050 on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Officials at <http://www.kuvendikosoves.org/common/docs/ligjet/04-L-228%20a.pdf>

<sup>16</sup> Draft Law on Amending and Supplementing The Law No. 04/1-051 on Prevention of Conflicts of Interest in the Exercise of Public Office, at <http://www.kuvendikosoves.org/common/docs/ligjet/04-L-227.pdf>

<sup>17</sup> The Law on Prevention of Conflict of Interest in the Exercise of Public Functions even though amended its still remains a draft law awaiting the new Assembly to be functionalized. The majority of changes are of technical nature, mainly terminology-related. Nevertheless, the amendments have provided several positive changes comparing to the former version of this law, specifically stating time limits to prevent conflict of interest. Of similar importance is also the amendments to the role of the staff of the Anti-Corruption Agency to participate in the capacity of observer in all public procurement activities and issue recommendations to heads of institutions if any case of conflict of interest is found.

<sup>18</sup> See the Law No. 04/L-274 on Ratification of the International Agreement between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo, at <http://www.kuvendikosoves.org/common/docs/ligjet/04-L-274%20a.pdf>

<sup>19</sup> KIPRED interview with KPC officials, September 2014.

<sup>20</sup> Ibid, Article 3, paragraph 1.7.

<sup>21</sup> Ibid, paragraph 7.

<sup>22</sup> Ibid, Article 9, paragraph 5.

indicated also by the EU 2014 progress report, the implementation of this law will remain weak until the human capacities of the Kosovo Central Election Commission are not strengthened.<sup>23</sup> The law has further amended the definition of contributions given to political subjects. The amendments prohibit donation to be made directly to the candidate, as they must pass through a political entity, while respecting the provisions of this law.<sup>24</sup> The new law, in order to fight corruption practices, and increase and strengthen the financial and transparency management, states that political entities should develop mechanisms of internal financial control.<sup>25</sup> The amended law also specifies the punitive provisions involving cases when political entities accept and execute donations in contradiction with the law, and cases where they cannot prove the origin of the received and executed incomes.<sup>26</sup>

Albeit the amendments of the package of laws in line with the EU requirements, implementation of these laws will remain an issue. The issue of inexplicable wealth continues to prevail in the asset declarations of senior public officials continuously showing an increase on wealth without properly justifying the sources, as often stated to have been inherited from various family sources.<sup>27</sup> No follow up verification of these statements are done accordingly. Further, the current draft Law on Prevention of the Conflict of Interest in the Exercise of the Public Office awaits Assembly's approval, but seems it will not put an end to the practices of holding of multiple functions held by public officials, seen as a potential risk of conflict interest for judges, prosecutors and senior officials.<sup>28</sup> Furthermore, the implementation and enforcement of the Law on Political Party Financing remains weak, with political parties not meeting their obligations under this law,<sup>29</sup> whilst the Central Election Commission office in charge of monitoring implementation, continues to lack capacity and resources to fulfil their legal responsibilities.

## **b) The response by rule of law bodies in fighting corruption and organised crime**

Kosovo prosecution offices in the first half of this year stepped up their efforts in order to tackle the anti-corruption requirements of the EU. The Chief State Prosecutor instructed its prosecutors by defining "high-level corruption" and also assigning special prosecutors within the Special Prosecution Office (SPRKO) to deal with corruption cases.<sup>30</sup> Furthermore, the Chief State Prosecutor appointed anti-corruption focal points in each prosecution office in November 2013.<sup>31</sup> Similar instructions were issued to the courts by the Kosovo Judicial Council (KJC).<sup>32</sup> However, overall the results remain very limited with more than half of the cases investigated by law enforcement agencies terminated by prosecutors. The cases investigated include official investigations of prosecutors as well as of the Kosovo Police.

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<sup>23</sup> See Report from the Commission to the European Parliament and the Council, Second report on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap, pg.7 at, [http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/second\\_commission\\_assessment\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/second_commission_assessment_en.pdf)

<sup>24</sup> Supra Note at 11, Article 6, paragraph 3, subparagraph 4.

<sup>25</sup> Ibid, Article 9, paragraph 1.

<sup>26</sup> Ibid. Article 12, paragraph 1. Article 21, Punitive Provisions, paragraph 5.

<sup>27</sup> See KIPRED's report "The Impunity in Kosovo: Inexplicable Wealth" at, [http://www.kipred.org/advCms/documents/42734\\_Investigating\\_inexplicable\\_wealth\\_ENG.pdf](http://www.kipred.org/advCms/documents/42734_Investigating_inexplicable_wealth_ENG.pdf) and the yearly asset declarations of senior public officials at, <http://akk-ks.org/?cid=1,1>

<sup>28</sup> Kosovo Progress Report, 2014, pg.15..

<sup>29</sup> Ibid.

<sup>30</sup> Kosovo Progress Report 2014, pg.15 at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-kosovo-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-kosovo-progress-report_en.pdf)

<sup>31</sup> KIPRED interview with KPC officials, September 2014.

<sup>32</sup> KIPRED interview with KJC officials, September 2014.

For example from the total of handled cases by Kosovo prosecutors against 556 persons, the prosecutors indicted less than half of the cases i.e. 248 persons or 45% out of the total 556 cases. More than half of cases were either dismissed or closed from further investigation with 308 persons or 55% of cases terminated. (see table 1.1) Further, the special prosecutors of the SPRKO have lowest rate of effectiveness with rate of 68 cases or 89% of 76 cases in total, were dismissed/closed or terminated from further investigation. The SPRKO is closely followed by the basic prosecution in Mitrovica with a rate of 26 or 76% of 34 cases in total and the basic prosecution in Peja that dismissed/closed and terminated further investigations for 47 or 72% of 65 cases in total. Differently, the basic prosecution in Ferizaj issued the highest number of indictments with 24 cases or 75% of 32 cases in total. Prishtina and Gjilan have had an indictment rate of 58%. (see table 1.1).

Majority of the criminal reports were send to prosecution by the Anti-Corruption Agency and Kosovo Police. The number of criminal reports offered by the Anti-Corruption Agency were in total 133 criminal reports or 45% of the total against 156 persons, closely followed by the Kosovo Police submitting 102 criminal reports or 35% against 234 persons.<sup>33</sup>

First half 2014	In total number of persons with criminal charges handled by prosecution	Criminal reports dismissed/closed and investigation terminated	%	Total indictments	%
	persons				
Special Prosecution	76	68	89%	8	11%
Basic Prosecution in Prishtina	109	46	42%	63	58%
Basic Prosecution in Prizren	151	72	48%	79	52%
Basic Prosecution in Peja	65	47	72%	18	28%
Basic Prosecution in Gjilan	53	22	42%	31	58%
Basic Prosecution in Mitrovica	34	26	76%	8	24%
Basic Prosecution in Ferizaj	32	8	25%	24	75%
Basic Prosecution in Gjakova	36	19	53%	17	47%
<b>Total</b>	<b>556</b>	<b>308</b>	<b>55%</b>	<b>248</b>	<b>45%</b>

In relation to the cases received in total by prosecutions and opened for further investigation or indictments the Kosovo prosecutorial services including the SPRKO, during January-June 2014, there were 753 of corruption cases handled whilst only 27% or 207 cases were opened. More than half of cases remain unresolved of 73% or 546 cases.<sup>34</sup> Majority of the cases were processed/opened in Prishtina with 52% or 389 cases. Furthermore, Prishtina based prosecution were least effective from all regions with only 11% rate or 43 cases processed/opened from 389 cases in total. Another least effective prosecution service were the special prosecutors of the SPRKO that were able to open only 16% or 8 cases out of 49 cases in total. The highest effective prosecutors in handling of corruption offences were in Gjilan region with 20 cases out of 27 in total, followed by the basic prosecution in Prizren that managed to open 69% or 61 out of 88 cases (see table 1.2)

<sup>33</sup> See Kosovo Prosecutorial Council, Bi-annual Report-2014 for (January – June) prepared by the Inter-institutional Mechanism for Harmonization of Statistics for Characteristic Criminal Offences, pg. 42 and 43. Available at [http://www.psh-ks.net/repository/docs/Bi-annual\\_Report\\_of\\_the\\_Tracking\\_Mechanism\\_2014.pdf](http://www.psh-ks.net/repository/docs/Bi-annual_Report_of_the_Tracking_Mechanism_2014.pdf)

<sup>34</sup> Ibid.

Table 1.2: State of criminal charges of corruption according to KPC Bi-Annual Report 2014					
First half 2014	In total cases received	Solved cases	% of solved cases out of total	Unsolved cases out of total	% of unsolved cases out of total received
Special Prosecution	49	8	16%	41	84%
Basic Prosecution in Prishtina	389	43	11%	346	89%
Basic Prosecution in Prizren	88	61	69%	27	31%
Basic Prosecution in Peja	44	20	45%	24	55%
Basic Prosecution in Gjilan	27	20	74%	7	26%
Basic Prosecution in Mitrovica	81	20	25%	61	75%
Basic Prosecution in Ferizaj	47	20	43%	27	57%
Basic Prosecution in Gjakova	28	15	54%	13	46%
<b>Total</b>	<b>753</b>	<b>207</b>	<b>27%</b>	<b>546</b>	<b>73%</b>

During the six month period of January-June 2014, in total 48 persons received court decisions regarding their indictments for corruption. Out of this number only 34 persons were found guilty while 5 persons were acquitted of any charges.<sup>35</sup> There are 200 persons still awaiting to be issued their indictments by courts.

This tendency of handling poorly the processing of cases will continue firstly to burden the prosecutorial services with backlog of cases, and directly influence the effectiveness of prosecution services required in policies issued by the Kosovo Prosecutorial Council as the the Action Plan for Increasing the Efficiency of the Prosecutorial System in Fighting of Corruption.<sup>36</sup> Secondly, as shown from the data more than half of cases (55%) processed by the prosecutors Kosovo wide were either dismissed or closed from further investigations. Even though prosecutorial services claimed that often cases are not well evidenced the high number of terminated cases is worrisome.<sup>37</sup>

This phenomena has been pushed upon by the Kosovo Prosecutorial Council upon the prosecutors by pressuring prosecutors in being more effective in the fight against corruption by the above mentioned Action Plan. The Action Plan sets a deadline for all cases reported until November 2013 by different agencies including reports of the Agency against Corruption and criminal proceedings filed by the police to be indicted or terminated by June 2014.<sup>38</sup> Whether, this deadline was imposed to prosecutors against the Kosovo Criminal Code legal requirement to file an indictment after two years of initiating the investigation remains unknown.<sup>39</sup> Furthermore, the imposed deadline has raised concerns of whether these terminated indictments also include selective cases of termination by prosecutors influenced politically during the period before the Kosovo general elections in June 2014. Furthermore, as previously reported by KIPRED, the number of persons against whom the criminal reports were filed at with such a high rate of terminated cases shows that the deadline requirement has increased the unprofessional handling of cases by prosecutors opening further doubts for miss-management and selective justice.<sup>40</sup>

<sup>35</sup> Ibid, pg. 46.

<sup>36</sup> Action Plan for Increasing the Efficiency of the Prosecutorial System in Fighting of Corruption, entered into force on November 4, 2013 until June 30, 2014, available at [http://www.psh-ks.net/repository/docs/Action\\_Plan\\_-\\_Corruption.pdf](http://www.psh-ks.net/repository/docs/Action_Plan_-_Corruption.pdf)

<sup>37</sup> KIPRED interviews with prosecution services, September 2014.

<sup>38</sup> See Article 3, paragraph 1, Article 4, paragraph 2 and Article 8, Paragraph 5 on prioritizing cases and deadlines of the Action Plan, and At: [http://www.psh-ks.net/repository/docs/Nr.1285.2013-Plani\\_i\\_Veprimit\\_per\\_Rritjen\\_e\\_Efikasitetit\\_te\\_Sistemit\\_Prokurorial.pdf](http://www.psh-ks.net/repository/docs/Nr.1285.2013-Plani_i_Veprimit_per_Rritjen_e_Efikasitetit_te_Sistemit_Prokurorial.pdf)

<sup>39</sup> The Criminal Procedure Code of Kosovo, Article 159. Available at <http://www.kuvendikosoves.org/common/docs/ligjet/Criminal%20Procedure%20Code.pdf>

<sup>40</sup> See KIPRED's report Section IV. Conclusions and Recommendations in "Investigation of Corruption Kosovo: (Miss) Cooperation between police and prosecution", April 2014.

Nevertheless, the upcoming Assembly of Kosovo could monitor to ensure quality handling of these cases that have been terminated until June 2014 in order to avoid future political interferences in delivery of justice.

In relation to organised crime cases, even though few human trafficking groups have been dismantled and drug-related investigations have shown moderate results, the low numbers of convictions and drug seizures continue to position Kosovo at an early stage in comparison to the region with minimal drug seizure and trafficking related convictions.<sup>41</sup> Furthermore, the law enforcement agencies including state prosecution have been reluctant to initiate financial investigations, the freezing and confiscation of assets required by the law.

As shown from the data below the handling of these criminal offences remains very low (see table 1.3 and 1.4).<sup>42</sup> Kosovo institutions still seem to lack the statistics of the prosecutors requests to confiscate from corruption cases, organised crime and including cases of drug and human trafficking.<sup>43</sup> Kosovo Police seems to lead on the number of cases submitted on drug investigations with criminal reports to prosecutors with 260 cases reported against 395 persons from January-June 2014.<sup>44</sup> Prosecutors were able to open/process only 61 % of these cases, whilst courts have been able to convict only 33% of the cases indicted.<sup>45</sup> This shows ineffectiveness of courts to timely respond to the indictments as well raises concerns on the capacities of courts to handle these cases.

Table 1.3.: State of criminal charges of drugs according to KPC Bi-Annual Report 2014					
First half 2014	In total cases received	Solved cases	% of solved cases out of total	Unsolved cases out of total	% of unsolved cases out of total received
Special Prosecution	16	1	6%	15	94%
Basic Prosecution in Prishtina	229	35	15%	194	85%
Basic Prosecution in Prizren	79	32	41%	47	59%
Basic Prosecution in Peja	53	24	45%	29	55%
Basic Prosecution in Gjilan	33	32	97%	1	3%
Basic Prosecution in Mitrovica	78	17	22%	61	78%
Basic Prosecution in Ferizaj	46	18	39%	28	61%
Basic Prosecution in Gjakova	15	2	13%	13	87%
<b>Total</b>	<b>549</b>	<b>161</b>	<b>29%</b>	<b>388</b>	<b>71%</b>

Table 1.4: State of criminal charges of THB according to KPC Bi-Annual Report 2014					
First half 2014	In total cases received	Solved cases	% of solved cases out of total	Unsolved cases out of total	% of unsolved cases out of total received
Special Prosecution	2		0%	2	100%
Basic Prosecution in Prishtina	24	2	8%	22	92%
Basic Prosecution in Prizren	5		0%	5	100%
Basic Prosecution in Peja	3		0%	3	100%
Basic Prosecution in Gjilan	2	1	50%	1	50%
Basic Prosecution in Mitrovica	5	2	40%	3	60%
Basic Prosecution in Ferizaj	9	1	11%	8	89%
Basic Prosecution in Gjakova	2	2	100%		0%
<b>Total</b>	<b>52</b>	<b>8</b>	<b>15%</b>	<b>44</b>	<b>85%</b>

[http://www.kipred.org/advCms/documents/64358\\_Investigation\\_Corruption\\_Kosovo\\_Mis\\_Cooperation\\_Police\\_Prosecution\\_KIPRED.pdf](http://www.kipred.org/advCms/documents/64358_Investigation_Corruption_Kosovo_Mis_Cooperation_Police_Prosecution_KIPRED.pdf)

<sup>41</sup> Kosovo Progress Report 2014, pg. 2 at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-kosovo-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-kosovo-progress-report_en.pdf)

<sup>42</sup> Ibid, pg.2.

<sup>43</sup> KIPRED E-mail communication with National Coordinator on the fight against Economic Crimes, Shqipdon Fazliu, 30 October, 2014

<sup>44</sup> Kosovo Prosecutorial Council, Bi-Annual Report 2014.

<sup>45</sup> Ibid.

Furthermore, in relation to the seizure and freezing of assets from crimes of corruption and organised crime including cases of drug and human trafficking, according to the Kosovo Agency for the Management of Sequestrated and Confiscated Assets (AMSCA) the overall amount of temporary sequestrated assets in 2013 was approximately 1.5 million Euro. However, these cases are pending final court judgements and might not be permanently confiscated and transferred into the Kosovo budget.

The value of income from crimes of corruption, organised crime including drug and human trafficking confiscated were only 6.700 thousand Euro in 2013. In the first six months of 2014 the amount of money confiscated with final court judgements are around 3.540 thousand Euro.<sup>46</sup>(see table 1.5). These low figures on amounts confiscated show reluctance of Kosovo institutions to move forward the EU requirements in relation to criminal penalties executed and criminal assets recovered.

*Table 1.5 Temporary sequestrations and permanent confiscations*

Legal measures in relation to crime revenues	Year 2013	Jan-June 2014						
	Total	January	February	March	April	May	June	Total
Temporary Sequestrations	1,555,258.43 €	71,411.00 €	65,890.85 €	20,000.00 €	60,229.00 €	36,021.00 €	43,400.00 €	296,951.85 €
Confiscations	6,700.00 €	866.45 €	0 €	822.00 €	1701.00 €	141.00 €	0 €	3,530.45 €

The reluctance to initiate financial investigations, the freezing and confiscation of assets required by the law, have shown that law enforcement agencies and state prosecution lack willingness to fully implement the legislation followed by lack of capacities to deal with such cases. 'This lack of willingness is also often followed by a 'hands-off' tactic to delay handling of high-profile cases' often implicated in organised crime and corruption, due to insufficient institutional independence not guaranteed by the current political elite of Kosovo.

### **c) The institutional capacities to combat corruption**

The poor results of the law enforcement agencies and state prosecution is also followed by the weak capacities of courts to deal with corruption and organised crime cases, highlighting further the need to increase the capacities of these rule of law bodies. The considerate percentage of cases from criminal charges to closing of investigations or terminated followed with a moderate percentage of indictments shows the necessity to increase the quality of investigation work and the capacities of bodies mandated to perform such functions. The capacity building needs were also confirmed in interviews with KIPRED by all stake-holders, requiring support in the areas of qualitative investigations, intelligence-led policing and closer coordination of all bodies involved in order to increase the quality and effectiveness of investigations.<sup>47</sup>

In relation to the increase of capacities within the rule of law bodies, overall, there have been numbers of staff increased during 2014 when compared to the previous years. In 2014 the number of judges increased from 258 to 322 judges when compared to 2013. Also, the number of prosecutors increased in 2014 from 146 to 171 when compared to 2012.<sup>48</sup> Moreover, the number of prosecutors in charge of tackling corruption cases increased from 13 to 42. Even though there has been an increase of staff in prosecution services the number is still low as in countries per 100.000 inhabitants, Hungary has 17.3 prosecutors, Montenegro 13.4 and Croatia 11.0, whilst Kosovo has 9.8 prosecutors. Also, both prosecutions and courts, continue to face

<sup>46</sup> Ibid.

<sup>47</sup> KIPRED workshop with key stakeholders from courts, prosecution and police, held in Prishtina on 15<sup>th</sup> of September 2014.

<sup>48</sup> KIPRED e-mail communication with Ministry of Internal Affairs, Final Implementation Overview on the Visa Liberalisation Roadmap, August 2014.

difficulties in recruiting staff from minority groups particularly of Serb minority, even though this number is reflected in the above mentioned figures.<sup>49</sup>

In order to further increase the efficiency of prosecutors in dealing with corruption cases, Kosovo Prosecutorial Council (KPC) intends to specialise a number of prosecutors to deal specifically with corruption cases. They also plan, in the long-run, to have prosecutors specialised by type of offence. This will ensure a better understanding of cases by prosecutors and subsequently increase their professionalism and efficiency in dealing with cases.<sup>50</sup>

Apparently, the high number of cases of corruption still awaiting to be processed including other cases as well, should not be observed only as a result of poor performances of prosecutors and judges. A factor contributing to such imbalance is also the inappropriate electronic case management and a centralised criminal record database. As a result a similar case is counted several times due to the different codes of different rule of law administration bodies.

To improve this situation, the Norwegian Embassy in Kosovo is supporting the establishment of an ICT based case management system that will help improve efficiency, accountability and transparency of these rule of law bodies.<sup>51</sup> To facilitate this database several trainings are planned for relevant actors within the rule of law bodies, so that the implementation of such an important project runs without any setbacks.<sup>52</sup> As previously reported by KIPRED, Kosovo institutions should carefully examine and evaluate these trainings as they do not have the luxury to fail in the implementation of this project, due to the consequences that such a failure may cause to the overall administration of the rule of law in Kosovo and its progress towards visa liberalization and the EU integration process.<sup>53</sup>

Apart from the insufficient number of staff and the lack of a proper case management system, the prosecutions and courts also continue to face inappropriate work conditions mainly due to lack of appropriate infrastructure with old buildings and lack of appropriate working equipment.<sup>54</sup> The Kosovo Judicial Council continues for years now to work in containers as improvised offices and it seems that this problem will not be solved in the near future.

#### **IV. Conclusions and Recommendations**

The implementation of laws and policies remains a major challenge for Kosovo institutions noted also by the EU in its Progress Report. Albeit the amendments of the package of laws in the anti-corruption area in line with the EU requirements, implementation of these laws remains an issue. In order for Kosovo to advance in its EU integration processes and fulfilment of the

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<sup>49</sup> KIPRED interviews with officials from KJC and KPC, September 2014.

<sup>50</sup> KIPRED interview with Kosovo Prosecutorial Council officials, September 2014.

<sup>51</sup> The Norwegian Ministry of Foreign Affairs has divided 6.6 million Euros for a project that foresees an advanced Information and Communication Technology (ICT)-based Case Management and Information System (CMIS) for the Kosovo judiciary and prosecution. The Norwegian Embassy in Prishtina, Events, 16 September, 2013: "Norway Supports Case Management and Information system for the Kosovo Judiciary" at, [http://www.norway-kosovo.no/News\\_and\\_events/Policy/Norway-Supports-Case-Management-and-Information-system-for-the-Kosovo-Judiciary/#.VDU8qVfyQ5Y](http://www.norway-kosovo.no/News_and_events/Policy/Norway-Supports-Case-Management-and-Information-system-for-the-Kosovo-Judiciary/#.VDU8qVfyQ5Y)

<sup>52</sup> KIPRED interviews with KJC and KPC officials, August and September 2014.

<sup>53</sup> The Norwegian Ambassador to Kosovo Mrs. Ian Braathu has made clear to Kosovo authorities that in the case of lack of progress in the first phase, the Norwegian government will reconsider the continuation of supporting this project. See pg. 8 of KIPRED's report: "Investigation of Corruption Kosovo: (Miss) Cooperation between police and prosecution", April 2014.

[http://www.kipred.org/advCms/documents/64358\\_Investigation\\_Corruption\\_Kosovo\\_Mis\\_Cooperation\\_Police\\_Prosecution\\_KIPRED.pdf](http://www.kipred.org/advCms/documents/64358_Investigation_Corruption_Kosovo_Mis_Cooperation_Police_Prosecution_KIPRED.pdf)

<sup>54</sup> KIPRED interview with officials of Kosovo Judicial Council, August 2014.

Visa Liberalisation requirements, Kosovo institutions should move beyond its declarative willingness to fight corruption and offer actual results on the ground.

Further, Kosovo remains captured by affairs of corruption awaiting further investigations. An overall mantra of the government as of 2008, the fight against corruption, will continue as long as the investigations and prosecutions of high profile cases would not involve the major political figures including of the current government.

The transfer of competencies with EULEX is already delivering weak results, evidenced by the low number of corruption cases dealt by the special prosecutors of the SPRKO Task Force on corruption with only five criminal cases initiated by this body. With the ongoing allegations of corruption for the largest EU civilian mission- EULEX- for their former and current EULEX judges and prosecutors, the hopes of Kosovo tackling high profile corruption keeps fading away.

Overall the results remain very limited with more than half of the cases investigated by law enforcement agencies terminated by prosecutors. During January-June 2014 Kosovo prosecutors terminated from further investigation criminal charges for 55% of cases or against 308 persons. The cases investigated include official investigations of prosecutors, Anti-Corruption Agency and of the Kosovo Police. Further, the special prosecutors of the SPRKO have lowest rate of effectiveness with the rate of 89% of cases dismissed/closed or terminated from further investigation. On a positive rate are Prishtina and Gjilan regions with an indictment of 58%.

In relation to drug seizure and human trafficking cases Kosovo Police has led on the number of cases submitted on drug investigations with 260 cases reported against 395 persons. However, the conviction rate has been very low with courts being able to convict only 33% of the cases indicted.

The value of income for Kosovo state deriving from corruption and organised crime cases including drug and human trafficking, were only 6.700 thousand Euro in 2013. During 2014, the amount so far confiscated with a final court judgement are approximately 3.540 thousand Euro. Such low incomes confiscated show reluctance of Kosovo institutions to move forward the EU requirements in relation to criminal penalties executed and criminal assets recovered. Furthermore, the reluctance to initiate financial investigations, the freezing and confiscation of assets required by the law, have shown that law enforcement agencies and state prosecution lack willingness to fully implement the legislation followed by lack of capacities to deal with such cases.

This lack of willingness is also often followed by a 'hands-off' tactic to delay handling of high-profile cases' often implicated in organised crime and corruption, due to insufficient institutional independence and budgetary support not adequately guaranteed by the current political elite of Kosovo.

KIPRED proposes the following recommendations to overall improve the fulfilment of the EU requirements in the fight against corruption and organised crime:

- The future Assembly and government should overall enhance the legal and constitutional guarantees for ensuring independence and autonomy of prosecutors with appropriate specialisation and budget increase of prosecutors in order to open the venues for Kosovo prosecutors to start initiating pro-active investigations implicating high-profile figures in corruption and organised crime;
- In order to further increase the efficiency of prosecutors in dealing with corruption cases, Kosovo Prosecutorial Council (KPC) also should speed up its plans to specialise a

number of prosecutors to deal specifically with corruption cases. This would ensure a better understanding of cases by prosecutors and subsequently increase their professionalism and efficiency in dealing with cases. Furthermore, the KPC should also seek from the future Assembly to provide special prosecutors of the SPRKO with sufficient number of prosecutors and increase overall the budget of the office;

- The considerable percentage of cases from criminal charges to closing of investigations or terminated followed by a moderate percentage of indictments shows the necessity to increase the quality of investigation work and the capacities of bodies mandated to perform such functions. Kosovo institutions should offer on regular basis specialised trainings including on financial investigations, confiscation and asset recovery to its law enforcement agencies in order to increase their investigative capacities.
- Confiscation and asset recovery from crimes of corruption and organised crime including drug and human trafficking cases, continue to be at its lowest despite many efforts of Kosovo institutions to create a number of additional mechanisms. Kosovo should consider the need to enhance its legal regulation, by considering to shift the burden of proof to the suspected party temporary in order to enhance the probability of implementation of laws for confiscation by the rule of law institutions.
- EULEX and Kosovo institutions should continue their investigations into alleged affairs of corruption by its judges and prosecutors. Furthermore, the appropriate handling of the investigation should be transparent, promptly and ensure accountability towards the EU taxpayers and Kosovo citizens by reporting the results of the investigation to the future Kosovo Assembly. This way of proceeding would offer the possibility for EULEX mission to deliver in line with its mission mandate and its often preached accountability to Kosovo institutions.
- Kosovo institutions should carefully examine and evaluate capacity buildings needs and on-going trainings for case management system based on the ICT, as they do not have the luxury to fail in the implementation of this project, due to the consequences that such a failure may cause to the overall administration of the rule of law in Kosovo and its progress towards visa liberalization and the EU integration process;