

Fighting Corruption in Kosovo: International and Local Efforts at a Crossroad

Policy Paper

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March 2021



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Title:

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Published by:

Kosovo Foundation for Open
Society

Prishtina,
March 2021

This publication has been produced
with the support of the Kosovo
Foundation for Open Society, KFOS.
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EXECUTIVE SUMMARY

Kosovo has received vast amounts of funding and technical assistance from the international community in recent years as part of efforts to combat rampant corruption. However, despite this support, Kosovo is still often described as a 'captured state',¹ while corruption has become endemic.

The complex, cross-sectoral nature of this corruption has affected the functioning of key state institutions and political processes, causing a serious impediment

to the advancement of democratization, the functioning of transparent and accountable institutions, and efforts to establish Kosovo as a rule governed state. Furthermore, it has completely undermined public confidence in both politics and governmental policy within Kosovo.

In order to address this situation, the European Union (EU) and other international actors such as the Council of Europe (CoE), the United Nations Development Programme (UNDP), and the Organization for Security

¹ Gashi and Emerson 2013 provide a detailed argument on this. See Gashi, D., and S. Emerson. 2013. A class of its own – Patronage and its impact on social mobility in Kosovo. Pristina: Democracy for Development.

and Cooperation in Europe (OSCE), as well as other foreign missions, embassies and civil society organisations, have closely cooperated with locals to provide assistance to Kosovo at various levels.

This assistance ranges from legislative and policy-drafting support to designing and establishing key institutions, as well as carrying out training programmes and delivering monitoring schemes. Efforts have also been undertaken to mobilize local civil society organisations to act as a watchdog.

Some progress has been seen in regard to establishing the legal framework, improving institutional structures and enhancing local capacities through tailor made training. Yet, corruption is far from being defeated.

In this context, this policy paper seeks to provide a meaningful oversight of international actors' engagement with local stakeholders in combating corruption in Kosovo.

Specifically, the paper aims to identify areas of strength and weaknesses in terms of international-local cooperation, and propose a number of key policy initiatives that would streamline and coordinate their mutual efforts. To this end, it mainly relies on insightful interviews with key local and international stakeholders² and analysis

of documents from various local and international sources.

Amongst other remedies, the paper underlines the need to boost the sense of local ownership, and proposes the establishment of a locally owned mechanism to coordinate foreign assistance.

The complex, cross-sectoral nature of this corruption has affected the functioning of key state institutions and political processes, causing a serious impediment to the advancement of democratization, the functioning of transparent and accountable institutions, and efforts to establish Kosovo as a rule governed state. Furthermore, it has completely undermined public confidence in both politics and governmental policy within Kosovo.

² See Appendix I for a list of interviewees.

2

INTRODUCTION

Kosovo has received considerable international attention, assistance and funds in support of building its state institutions and establishing mechanisms of good governance free from corruption.

Combating corruption first entered international and local agendas in 2003, as part of the UN's 'Standard Before Status' policy.³

Kosovo's Provisional Institutions of Self-Governance (PISG)⁴ were established under

the surveillance of the United Nations Interim Administration Mission in Kosovo (UNMIK), so as to ensure the implementation of an anti-corruption strategy and adoption of public awareness measures.

Later, following Kosovo's unilateral declaration of independence on February 17, 2008, the EU, through its enlargement framework and the European Union Rule of Law Mission in Kosovo (EULEX),⁵ also played a key role in tackling corruption.

3 The Standards for Kosovo are a set of UN-endorsed benchmarks of good governance to be achieved prior to a decision of Kosovo's international status. They cover eight key areas of development related to functioning democratic institutions, rule of law, rights of communities, returns of displaced persons, the economy, dialogue with Belgrade, property rights and the Kosovo Protection Corps.

4 The establishment of PISGs in May 2000 marks the beginning of institutionalisation of local governance in Kosovo under international surveillance. Following the first elections, which were held on the 17th of November 2001, UNMIK began the gradual transfer of certain administrative competencies to the PISGs.

5 Deployed in 2008, pursuant to CJA 124/2008/CFSP, in conformity with the UNSC Resolution 1244 (1999). See Nicasia Picciano. 2016. The European Union State-Building in Kosovo. Challenges and Lessons Learned: An Assessment of EULEX, Hamburg: Dr Kovač.

Until its downsizing in 2018, EULEX retained executive functions through its judges and prosecutors, who were an integral part of the Kosovo's judiciary. The mission still continues exercising some *monitoring*, *mentoring* and *advisory* roles, working alongside local authorities operating in the fields of rule of law and the fight against corruption.

Combating corruption and organised crime also became a key criterion of Kosovo's European Perspective. This was first specified by the European Commission in 2005,⁶ pursuant to the European perspective outlined for the Western Balkans, which was confirmed in the 2003 Thessaloniki Declaration⁷ and entered into the agenda of the Berlin Process.⁸

Recently, in the Zagreb Declaration of May 2020, the parties reaffirmed their reciprocal commitment to rule of law, while reiterating the centrality of the fight against corruption and organised crime.

Alongside the EU, many international organisations with offices in Pristina also list strengthening the rule of law and combating corruption as a key priority.

These organisations' engagement is diverse, multi-layered and often overlapping. Some, such as the CoE and the UNDP, provide legislative and policy drafting support to align the local legal framework with best international practices. Others, such as the OSCE, provide monitoring and mentoring schemes to support the functioning of anti-corruption institutions and judicial processes.

Moreover, there is a multitude of training programmes run by international agencies as well as by some embassies. Additionally, international institutions and agencies support local civil society initiatives aiming at monitoring the local situation, while running awareness raising campaigns.

Despite this steady international assistance and Kosovo's enduring commitment, 22 years after the conflict and 12 years since its declaration of independence, the country remains a captured state. These claims are well founded, underpinned by politicians' inexplicable wealth, frequent abuses of public office, and tight control over emerging state institutions and decision-making processes.

6 2005 was a crucial year for Kosovo, considering that UNMIK was going to carry out a comprehensive review of the implementation of the Kosovo standards, so as to facilitate Kosovo's progress towards the creation of a democratic and multi-ethnic society.

7 Communication from the Commission. A European Future for Kosovo, COM(2005) 156 final, Brussels, 20 April 2005. Available at: [http://aei.pitt.edu/38837/1/COM_\(2005\)_156.pdf](http://aei.pitt.edu/38837/1/COM_(2005)_156.pdf)

8 See the full text of the Berlin summit; 'Final Declaration by the Chair of the Conference on the Western Balkans available from: <https://berlinprocess.info/wp-content/uploads/2017/11/Final-Declaration-by-the-Chair-of-the-Conference-on-the-Western-Balkans.pdf>

Kosovo ranked 101 out of 198 countries and territories on the Transparency International Corruption Perception Index (CPI) in 2019, scoring 36 points – three fewer than in 2017.⁹

The latest public survey conducted by the UNDP in 2019¹⁰ also paints a dispiriting picture, with 16.6% of respondents identifying corruption as the second biggest problem facing the country after unemployment and 30% of respondents stating that they believe large-scale corruption exists within both public and international institutions in Kosovo.

Corruption in Kosovo takes on various forms of abuse of public office, where bribery, clientelism and nepotism are prevalent. Common practices include appointing members of political parties and relatives of senior politicians to the boards of publicly owned enterprises, and employing family members or close associates to senior government positions.

Over the years, some progress has been made in strengthening key legal instruments and building core state institutions, under strict international surveillance. International assistance has also been instrumental in investing in capacity-building training.

However, progress has been slow and unsatisfactory. European Commission reports repeatedly warn that corruption is endemic and the country is still at an early stage of adopting the EU *acquis* and the European standards required to develop effective mechanisms to fix the situation.

Judicial, customs and public procurement processes remain the most affected by corruption.¹¹ The independence of the judiciary is hampered by political influence,¹² and high-level corruption remains immune to prosecution.¹³

It is evident from this limited progress that there is an urgent need for a renewed approach, and a better coordinated mechanism to combat corruption in Kosovo. Therefore, this policy paper's key question is as follows: ***How can international and local efforts be boosted so as to assist Kosovo in the fight against rampant corruption?***

Due to the complex nature of corruption, the international community pursues a multi-dimensional and cross-sectoral engagement to assist Kosovo. While there have been some efforts to address specific aspects of the international community's assistance to Kosovo in this particular field, we believe the breadth of such engagement

9 CPI uses 'a scale of 0-100 where 0 equals the highest level of perceived corruption and 100 equals the lowest level of perceived corruption'. For more on the scaling of CPI see https://images.transparencycdn.org/images/2019_CPI_methodology.pdf

10 UNDP 2019 Public Pulse XV. Pristina, Kosovo. Available from; https://www.ks.undp.org/content/kosovo/en/home/library/democratic_governance/public-pulse-xv.html

11 For a detailed analysis of corruption per sector, see Kosovo corruption report by Risk and Compliance Portal. Available from; <https://www.ganintegrity.com/portal/country-profiles/kosovo/>

12 See BTI Report 2020, available from; https://www.bti-project.org/content/en/downloads/reports/country_report_2020_RKS.pdf

13 See Qosaj-Mustafa, A., V. Haxholli and N. Sejdullahu 2016. Impunity in Kosovo: The Fight Against High Profile Corruption. KIPRED Policy Paper; Conde, A. 2016. The situation in Kosovo* and the role of the Council of Europe. Committee on Political Affairs and Democracy. Doc. 13939. 08 January.

cannot be fully comprehended with such a narrow focus.

Therefore, this policy paper presents a broader, cross-sectoral analysis of international-local cooperation in Kosovo, in an attempt to capture this multi-layered and multi-faceted engagement. Although broad, such a review is essential to understand the issues, challenges and pitfalls in this particular field.

The paper relies mainly on data collected through documentary analysis and interviews conducted with key stakeholders, which were then analysed to craft a number of policy recommendations. The paper proceeds in three parts. First, it provides a brief overview of the current state of affairs while highlighting avenues of local-international cooperation, before identifying the underlying causes of the lack of progress.

Finally, it suggests a number of remedies to enhance the impact of locals and international actors' engagement, with a view at improving local-international cooperation and encouraging local ownership of the process.

The complex, cross-sectoral nature of this corruption has affected the functioning of key state institutions and political processes, causing a serious impediment to the advancement of democratization, the functioning of transparent and accountable institutions, and efforts to establish Kosovo as a rule governed state. Furthermore, it has completely undermined public confidence in both politics and governmental policy within Kosovo.

3

MOVING AT A SNAIL'S PACE: AN OVERVIEW OF KOSOVO'S PROGRESS

Kosovo has come a long way since its declaration of independence on February 17, 2008, and UNMIK's gradual downsizing as a result. It has developed key legislation and established core institutions almost completely from scratch.

Yet, further efforts must be undertaken to turn written prescriptions into deeds. This section scrutinises the progress Kosovo has made under international guidance through four dimensions: the legal framework, institutions and infrastructure, human capital and public awareness/engagement.

3.1 Legal Framework

Despite the country not being party to most international anti-corruption conventions due to its international status (including the United Nations Convention Against Corruption), legislative reform is where local and international authorities have worked together most effectively.

Much of the progress made has been achieved through high-level dialogue between Kosovo and the European Commission as part of the *European Reform Agenda*,¹⁴ as well as through extensive technical support provided by international institutions, primarily the CoE, the OSCE, UNDP and the EU itself.

The new *Law on the Protection of Whistle-blowers*, enacted under the guidance of the CoE's PECK II project¹⁵ significantly improves the legal framework¹⁶ and extends the scope of whistle-blower protection to the public and private sector, making it the most progressive law in the region.

The *Law on the Extended Powers of Confiscation* is believed to have provided additional instruments to investigators and the prosecution to weaken criminal groups,¹⁷

while preventive measures have also been strengthened through the adoption of the *Law on the Prevention of Conflict of Interest*, the *Law on the Declaration, Origin and Control of the Property of Senior Public Officials*, the *Code of Ethics for Civil Servants* and amendments to the *Law on Public Procurement*.

The *Law on the Prevention of Conflict of Interest* in particular provides a sound legal basis to boost the integrity of public institutions, by combating various forms of abuse of power and position.¹⁸ Amongst other benefits, the law prohibits public officials from holding more than one position unless required by law.¹⁹

Moreover, the amended *Law on the State Prosecutor* increased the number of state prosecutors, reducing staff shortages,²⁰ while intensive training has been provided to strengthen prosecutors' capacity to effectively conduct financial investigations, confiscate assets and implement the witness protection scheme.²¹

Additionally, with the new *Law on Courts*, enacted in December 2018, corruption cases, which were formerly handled by the

14 For detailed information on the European Reform Agenda, see [http://www.eramonitoring.org/en/#:~:text=The%20European%20Reform%20Agenda%20\(ARE,by%20the%20end%20of%20202017](http://www.eramonitoring.org/en/#:~:text=The%20European%20Reform%20Agenda%20(ARE,by%20the%20end%20of%20202017)

15 Project against Corruption in Kosovo. For details see: coe.int/en/web/corruption/-/legislation-on-protection-of-whistleblowers-enters-into-force-in-kosovo-

16 Hogić, N. 2019. EU Integration and Fight Against Corruption: The Saga of Kosovo's Whistleblowers, March 14. European Western Balkans. <https://europeanwesternbalkans.com/2019/03/14/eu-integration-fight-corruption-saga-kosovo-whistleblowers/>

17 Minister Tahiri: The power of criminal groups in business and politics weakens only by confiscating their assets. Available from: <https://md.rks-gov.net/page.aspx?id=2,15,1947>

18 KLI et al. 2019. Preventing and Fighting Conflict of Interest in Kosovo. Pristina. Available from: <https://kli-ks.org/wp-content/uploads/2019/09/FINAL-ENGLISH-Preventing-and-fighting-Conflict-of-Interest-in-Kosovo-ENG.pdf>

19 Ibid.

20 European Commission 2018 Kosovo Report

21 European Commission 2019 Kosovo Report

Serious Crimes Department of Kosovo's basic courts, have been transferred to the Special Departments of the Basic Court of Pristina and the Court of Appeals. This move has centralized the system and made it easier for judges to professionalize and specialize in high profile cases, money laundering and economic crimes.²²

Last but not least, the new *Criminal Code*²³ is a clear upgrade all things considered, and introduces mandatory removal from office for public officials convicted of corruption. In regard to this, it should be stated that Kosovo has continually received *ad hoc* feedback and criticism from other specialised international institutions, which helped expedite reforms.

Organizations like Reporters without Borders,²⁴ Human Rights Watch²⁵ and the European Broadcasting Union (EBU)²⁶ played a key role in exercising pressure on local authorities, helping bring forward reforms to the *Criminal Code* and ensuring it is in line with international standards.

3.2 Institutions and Infrastructure

Kosovo's institutional set-up has undergone considerable reform since the establishment of the PISGs in the early 2000s, and even

more significant change following the country's declaration of independence in 2008. Since then, Kosovo has developed a complex institutional structure with a number of major and minor units, some with overlapping competences.

The European Commission's latest report on Kosovo identifies the existence of 19 different anti-corruption institutions, some with overlapping duties. However, amongst these numerous bodies, the *Anti-Corruption Agency* (ACA), the *Kosovo Police* (KP), the *Prosecution* and the *courts* are the key institutions and comprise the system's backbone.

Other bodies with jurisdiction or coordinating functions in the fight against corruption include: the President's *National Anti-Corruption Council* (NACC), the *Office of the Auditor General*, the *tax authorities*, and *customs*.

The last few years have seen efforts to restructure and reorganize key anti-corruption institutions. However, some reforms are still required for a smoother functioning of Kosovo's justice system in the fight against corruption. Here, attention is focused on the main institutions.

22 Interview with Reze H. Zhuja from GLPS

23 Official Gazette of the Republic of Kosovo. 2019. Code No. 06/L-074. Criminal Code of the Republic of Kosovo, available from; <https://md.rks-gov.net/desk/inc/media/A5713395-507E-4538-BED6-2FA2510F3FCD.pdf>

24 See Reporters Without Borders 2012. *New Criminal code poses threat to fundamental journalistic principles*, April 24, available from; <https://www.ecoi.net/de/dokument/1323242.html>

25 Human Rights Watch. 2012. *Kosovo: Draft Criminal Code Undermines Media Freedom*, May 10. <https://www.hrw.org/news/2012/05/10/kosovo-draft-criminal-code-undermines-media-freedom#>

26 EBU asked for a review of Articles 37 and 38 of the Code, whose application would have jeopardized investigative journalism, with a focus on the fight against corruption. See Aliu, F. 2012. *EU Backs Kosovo Media on Contested Criminal Code*, Balkan Insight, June 15, <https://balkaninsight.com/2012/06/15/ebu-supports-kosovo-media/>

The Anti-Corruption Agency (ACA)

The ACA was established in 2007 as an independent body accountable to the Kosovo Assembly. According to its mandate,²⁷ it functions as the main preventive body, monitoring cases involving potential conflicts of interest and the assets of senior public officials and developing procedures for investigating corruption.

Just like the Police, the Agency has the mandate to file criminal reports to the Prosecution on the basis of 'reasonable suspicion' of administrative violations. At the request of both the Prosecution and Kosovo Police, the ACA can provide expertise on criminal offences that these institutions are investigating in the fields of asset declaration, preventions of conflict of interest, and other similar matters.²⁸

The ACA can only fulfil its mandate by improving its cooperation and coordination with other law enforcement institutions. Hence, a recent memorandum signed with both the *Police* and the *Special Prosecution* intends to strengthen cooperation amongst these key institutions in the fight against corruption.

The ACA also works closely with civil society and international agencies, coordinating

training sessions and awareness raising activities, and organising working groups and consultation meetings. These activities have also been utilized when drafting proposed laws and national anti-corruption policies – such as the national anti-corruption strategy²⁹ or the implementation of the law on the protection of whistle-blowers.³⁰

Since its establishment, the Agency has sent more than 1,000 cases to the prosecution, including more than 100 referrals in 2019.³¹ Of the 126 cases pending in 2019, the prosecution has filed indictments in 42. There were 11 court decisions in 2019. The Agency has 974 officials under the full assets control procedure and more than 62 cases under investigation for false declarations.³²

However, the ACA also suffers from certain weaknesses. Firstly, its reporting capacity is still poor, and the institution struggles to fully implement the anti-corruption strategy.³³ Secondly, its mandate is limited to conducting only preliminary investigations on suspected cases, forwarding the file to the prosecution for further action.

Last but not least, the ACA is answerable to the parliament, increasing the risk of political influence over the institution.³⁴

27 See the Law on Anti-Corruption Agency.

28 Interview with Shaip Havolli, ACA's Director

29 For further info see European Commission 2020. *Commission Staff Working Document Kosovo* 2020 Report*. SWD 356 final: 25.

30 CoE provided expert advice and intensive mentoring to ACA's staff on implementation of the new law. For further details see; <https://www.coe.int/en/web/corruption/-/peck-ii-supports-the-kosovo-anti-corruption-agency-to-foster-the-protection-of-whistleblowers>

31 For further info see European Commission 2020. *Commission Staff Working Document Kosovo* 2020 Report*. SWD 356 final: 25.

32 *Ibid.*

33 See Freedom House. *Nations in Transit 2020*. Available from; <https://freedomhouse.org/country/Kosovo/nations-transit/2020>.

34 Interview with Kreshnik Gashi from BIRN

Kosovo Police (KP)

The KP was created in 1999 following the end of the war and subsequent withdrawal of Yugoslav forces from Kosovo. Pursuant to United Nations Security Council Resolution 1244, UNMIK had been mandated to establish a new police force, while maintaining civil law and order. It included a large international policing component, known as UNMIK Police.³⁵

Overall, Kosovo's police officers are relatively well trained and equipped, and have a modern IT infrastructure.³⁶ The KP is one of the most trusted institutions by the public³⁷ and perceived to serve the public interest rather than that of political parties, the government, clans or senior officials – especially in comparison with the country's courts and prosecution.³⁸

The KP handles the investigation of all criminal offences and its cooperation with the ACA is critical on matters related to corruption. The two bodies recently improved this cooperation with the aforementioned memorandum.³⁹

The KP also underwent a significant organizational restructuring in February 2019, setting up the Economic Crimes Directorate. The new department has

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already conducted some investigations into corruption at Kosovo's institutions, presenting some high-profile cases to the prosecution.⁴⁰

In a dramatic development, the KP arrested 59 of its own officers on corruption charges in 2016.⁴¹

Meanwhile, in October 2020, controversy arose after the Hoti government decided to dismantle the KP's Anti-Corruption Task Force, responsible for investigating high level corruption and financial crimes. Some politicians, including Ramush Haradinaj, the leader of Hoti's coalition partner, the Alliance for the Future of Kosovo (AAK), argued that such a move may be interpreted as political interference.⁴²

35 See para. 9 (l) United Nations Security Council Resolution 1244. Available from; https://peacemaker.un.org/sites/peacemaker.un.org/files/990610_SCR1244%281999%29.pdf

36 European Commission 2019. *Commission Staff Working Document Kosovo* 2019 Report*. {COM(2019) 260 final}: 34.

37 See UNDP 2019 Public Pulse Report.

38 Special Edition of Kosovo Security Barometer. 2019. *Corruption, Rule of Law and Police Integrity in Kosovo*, March, Pristina. Available from; http://www.qkss.org/repository/docs/Corruption_Rule_of_Law_ENG_Final_320893.pdf

39 Interview with Shaip Havolli, ACA's Director.

40 European Commission 2020:26-27.

41 See Reuters 2016 available from; <https://fr.reuters.com/article/us-kosovo-corruption-idUSKBN14822W>

42 Qalliu, B. 2020. *Kosovo Coalition Partners Clash over Disbanding of Anti-Corruption Department*. Exit News, Oc-

Some members of the cabinet, including AAK's Minister of Justice Selim Selimi abstained from the government's vote, arguing that there is a risk of damaging investigations into high-profile cases.⁴³

Prime Minister Avdullah Hoti defended his decision by arguing that the Task Force was established on an unconstitutional basis,⁴⁴ and claiming that corruption investigations would continue uninterrupted.

Among interviewees, opinions vary. The unit was carrying out investigations into high profile cases involving figures from the Prime Minister's party, LDK, and some saw the move as having been grounded on the Task Force creating discomfort for certain local politicians.⁴⁵

Others believed that since corruption is an economic crime, the establishment of a Task Force was never necessary, as the KP's Department for Economic Crime can easily handle these cases.⁴⁶ Regardless of the reasons that caused its removal, the KP needs a plan B to handle the magnitude of the cases the Task Force left behind.⁴⁷

Prosecution

An independent prosecutorial institution was established pursuant to Kosovo's 2008 Constitution, although EULEX has been providing its considerable expertise, and exercising monitoring, mentoring and advisory competencies through its own prosecutors even after the declaration of independence, focusing particularly on war crime cases.

The Prosecution is a key institution in the fight against corruption and organized crime, whose overall independence, professionalism and impartiality is pursued and guaranteed by the Kosovo Prosecutorial Council (KPC).

The KPC is an independent institution, overseeing the Prosecutorial System and reporting to the Assembly. It is responsible for recruiting, appointing, training, evaluating, disciplining, transferring, dismissing and promoting prosecutors, as well as for administering prosecution offices all over Kosovo. Developing policies to effectively combat crime and producing statistics constitutes the rest of the KPC's remit.⁴⁸

tober 25. Available from; <https://exit.al/en/2020/10/25/kosovo-coalition-partners-clash-over-disbanding-of-anti-corruption-department/>

43 Morina D. 2020. *Kosovo Government Ends Anti-Corruption Task Force*. Available from; <https://exit.al/en/2020/10/19/kosovo-government-ends-anti-corruption-task-force/>

44 European Western Balkans 2020. *Concerned over abolishment of anti-corruption task force in Kosovo*. October 22. Available from; <https://europeanwesternbalkans.com/2020/10/22/eu-concerned-over-abolishment-of-anti-corruption-task-force/>

45 OSCE Interviewee

46 Interview with Visar Duriqi, Insajderi investigative journalist

47 Interview with Kreshnik Gashi from BIRN

48 Art. 110 Constitution. Full text of the Constitution is available from; <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>

The Special Prosecution Office (SPO) is a permanent and specialized prosecutorial office operating within the Office of the State Prosecutor of Kosovo. It is composed of ten Public Prosecutors, whose role it is to conduct criminal investigations and prosecute corruption cases. Whenever a case is exercised under its full authority, all other enforcement agencies are required to provide assistance.⁴⁹

Despite some progress, the SPO suffers from a shortage of specialised staff with the right competences and the required level of training.⁵⁰ This weakness particularly affects the conducting of financial investigations and procurement cases.⁵¹

Additionally, the SPO is still awaiting to be connected to the Case Management Information System,⁵² which was planned to take place in 2020.⁵³ Limited cooperation between the police unit and the prosecution, as well as the prosecution's inability to pay due attention to ACA's reports⁵⁴ results in most of the cases submitted by the Agency to the Prosecutor's Office being dismissed in the initial phase.

With weak investigations leading to a high number of acquittals,⁵⁵ some have argued

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that a special task force for analysing deep procurement issues may handle case investigations more efficiently.⁵⁶

The new director of the ACA Shaip Havolli, in office since 2016, explains that he took a number of steps, such as holding frequent and regular meetings with other units and organising joint training for staff of the Prosecution, the ACA and Police in anti-corruption related topics.

Havolli argues that the move has improved the cooperation between ACA and the Prosecution, and now approximately 70% of cases filed by the Agency to the Prosecutor's office are accepted and proceeded.⁵⁷

49 Law No. 03/L-052 on the Special Prosecution Office of the Republic of Kosovo, http://jus.igjk.rks-gov.net/244/3/2008_03_ENG_LAW%20ON%20THE%20SPECIAL%20PROSECUTION%20OFFICE%20OF%20THE%20REPUBLIC%20OF%20KOSOVO.pdf

50 See European Commission 2020 Report. And Interview with Kreshnik Gashi from BIRN

51 See European Commission 2020 Report.

52 The CMIS project is funded by the Government of Norway with a total of approx. 10 Mill EUR in order to improve efficiency, accountability and transparency in the justice system. KPC and KJC are responsible for the implementation of the Project.

53 European Commission 2020: 27.

54 Interview with Kreshnik Gashi, Florent Spahija, and Rreze H. Zhuja, GLPS

55 OSCE interviewee

56 Interview with Florent Spahija

57 Interview with Shaip Havolli

Courts

Courts⁵⁸ are the key bodies carrying out judicial proceedings in Kosovo.

According to the 2008 Constitution⁵⁹ the judicial system is composed of: 1) the Supreme Court, the highest judicial authority in Kosovo in charge of requesting extraordinary legal appeals against final decisions of the courts of the Republic of Kosovo and revising against second instance decisions of the courts on contested issues as provided by Law; 2) the Court of Appeals or second instance court and its Serious Crimes Department, which deals with corruption cases. The Court of Appeals handles all appeals from decisions of the Basic Courts; deciding at third instance, upon the appeal that is permitted by Law and over conflicts of jurisdiction between basic courts, as well as other cases as provided by Law; 3) subordinated courts (basic courts⁶⁰) act as first instance judicial bodies and each basic court handles corruption-related cases through its Serious Crime Department.

These courts are administered by the Kosovo Judicial Council (KJC). The KJC is the highest oversight body and an independent institution within Kosovo's judicial system aiming at ensuring its independence and impartiality, and the

administration of justice in the Republic of Kosovo. It is responsible for selecting and proposing judges for appointment, as well as for elaborating policies for the overall management and reform of the judicial system.⁶¹

International assistance is available to courts too. For instance, UNDP's *Support to Strengthening the Rule of Law in Kosovo* project (which ran from October 2014 to December 2020) contributed to a backlog reduction by 18% of civil and criminal cases from the Basic Court of Pristina, and the Court of Appeals.⁶²

However, courts are often considered as the most corrupt institutions in Kosovo, followed by the prosecution.⁶³ The real weakness of the judiciary is undue political influence and the lack of will to pursue serious investigations into high-profile corruption cases.

58 Kosovo Law on Courts No. 03//L-199

59 See Constitution

60 There are seven basic courts in the seven largest municipalities in Kosovo: Prishtinë/Priština, Gjilan/Gnjilane, Prizren, Gjakovë/Djakovica, Pejë/Peč, Ferizaj/Uroševac and Mitrovicë/Mitrovica.

61 Art. 108, Constitution

62 UNDP Kosovo. *Support to Strengthening the Rule of Law in Kosovo*, <https://www.ks.undp.org/content/kosovo/en/home/projects/support-to-strengthening-the-rule-of-law-in-kosovo.html>

63 Special Edition of Kosovo Security Barometer. 2019. *Corruption, Rule of Law and Police Integrity in Kosovo*, March, Pristina. Available from; http://www.qkss.org/repository/docs/Corruption_Rule_of_Law_ENF_Final_320893.pdf

3.3 IT and Advanced Technological Transparency Tools

In addition to the benefits brought about by the revised legal framework, Kosovo's anti-corruption institutions are also utilising various digital tools to archive, access and monitor important information.

The implementation of the Case Management Information System (CMIS) enables both the judiciary and prosecution to process all cases electronically, bringing an end to manual registration. Kosovo Police is yet to utilise the new system, but efforts to do so are underway.⁶⁴

Moreover, a digital procurement system has significantly reduced the space for corruption. Anybody applying for a tender at any of Kosovo's public institutions is now required to do so online. This increases transparency by allowing everybody to see who the applicants are, their proposals, and the results of the tender.⁶⁵

The digitization process of Kosovo's judiciary, pursuant to its transparency and accountability agenda, also extends to online accessibility. Since last July, *court service fees* and *criminal fines calculators* have been available through the website of the Kosovo Judicial Council (KJC).

The innovative, easy-to-use calculators enable Kosovo's citizens to estimate the costs of service fees and criminal fines from the convenience of their home, and enhances citizens' understanding of the methodology judges use to issue them.

These efforts, supported by the United States Agency for International Development (USAID) through its *Justice System Strengthening Program*⁶⁶, the United States (US) Department of Justice's Office of Overseas Prosecutorial Development (OPDAT), and the International Narcotics and Law Enforcement Affairs (INL), make the Kosovo judiciary more accessible to its citizens.

The KJC website also includes a court judgment database, a record of judges' disciplinary complaints, and a performance dashboard. As a result of transparency tools developed by USAID, the number of published court decisions increased from 87 in October 2016 to over 31,700 as of August 2020, making the KJC website's judgement database one of the largest public databases of institutional decisions.⁶⁷

Last but not least, under the UNDP's *Support to Strengthening the Rule of Law in Kosovo* project, the Academy of Justice's e-learning tool, which benefits 357 judges, prosecutors, and administrative staff, has been upgraded.⁶⁸

⁶⁴ European Commission 2020:20-21.

⁶⁵ Interview with Evliana Berani

⁶⁶ USAID's *Justice System Strengthening Program* available from; <https://www.usaid.gov/kosovo/news-information/fact-sheets/justice-system-strengthening-program>

⁶⁷ See US Embassy 2020. *Toward a more transparent and accessible judiciary*, July 8. Available from; <https://xk.usembassy.gov/to-ward-a-more-transparent-and-accessible-judiciary/>

⁶⁸ UNDP Kosovo. *Support to Strengthening the Rule of Law in Kosovo*, *ibid*.

All of the aforementioned mechanisms help the justice system be more accessible to the public and are based on recently adopted Supreme Court Guidelines and provisions in the Criminal Code.

3.4 Human Resources and Capacity Building

Digital innovation enables easier access to information, boosts inter-institutional cooperation, ensures monitoring of cases and increases accountability. However, investing in human resources and capacity-building is also critical in making the entire system function effectively.

Compulsory training for judges and prosecutors is delivered by the Kosovo Justice Academy. The Academy has integrated an anti-corruption programme into its training curriculum, including a specialised capacity-building training programme on combating corruption, sequestration and confiscation, public procurement, financial investigations and money laundering.

International actors' engagement has also been influential in this aspect, with training having been provided by a multitude of international organisations. Amongst recent examples is USAID's Justice System Strengthening Program, which required all judges to attend the Mandatory Continuing Legal Education (MCLE) training course annually.⁶⁹

Digital innovation enables easier access to information, boosts inter-institutional cooperation, ensures monitoring of cases and increases accountability. However, investing in human resources and capacity-building is also critical in making the entire system function effectively.

The OSCE also uses data obtained through its regular monitoring of prosecution and trial processes, police investigations, financial investigations and procurement office activities to develop thematic reports. It informs local institutions about their weaknesses and provides training where it is most needed.⁷⁰ In 2019, 49 officers from the Kosovo Police Inspectorate completed a two-month training course organized by the OSCE to advance investigative capacities and protect whistle-blowers.⁷¹

At the UNDP's request, in February 2020 the International Centre for Asset Recovery delivered a five-day training programme, funded by the Swiss Development and Cooperation Agency, to officials from Kosovo's law enforcement agencies including prosecutors, anti-corruption investigators, representatives from the Financial Intelligence Unit, police officers from the Police Directorate for the Investigation of Economic Crimes and

69 See *USAID'S Justice System Strengthening Program*, *op. cit.*

70 OSCE interviewee

71 For details see <https://www.osce.org/mission-in-kosovo/412922>.

Corruption, tax administration employees and customs officials.⁷²

The EU has invested a lot in capacity-building, training and consultancy, and provided expertise to institutions and actors dealing with corruption.⁷³ Between May 2016 and April 2020, the CoE also provided technical assistance and expertise to Kosovo's anti-corruption institutions through its Horizontal Facility for the Western Balkans, which had a budget of 25 million euros.⁷⁴

The existing training courses are typically well received, but the approach is often piecemeal.⁷⁵ The UNDP, under phase three of its SAEK project, plans to institutionalize training on prevention and corruption through the Academy of Justice, but more effort is needed to coordinate the training and avoid overlaps.

Meanwhile, some interviewees were convinced that local people were already perfectly well qualified, educated and technically able to do their job⁷⁶, with the occasional exception of elderly people in senior positions without an institutional memory beyond UNMIK's post-war institution-building efforts.⁷⁷ Therefore,

some international agencies, like Helvetas Swiss Intercooperation, expressed their unwillingness to continue exercising control over Kosovo institutions.⁷⁸ They would rather carry out *ex ante* controls and grant funds to municipalities that perform well in auditing reports.⁷⁹

3.5 Public Awareness and Civic Engagement

Alongside a robust legal framework, efficient digital solutions and increasing local capacities, awareness raising and public engagement are another key component in the fight against corruption.

With two thirds of Kosovars reporting that corruption is one of the major problems facing their country, Kosovo has a high level of perceived corruption, which diminishes citizens' trust in the public sector. Although demand for good governance has been reinforced since the early 2000s, with Kosovo scoring 39% in recent polls, citizens' acceptance of corruption is still high and the recorded progress is behind the regional average.⁸⁰

72 Basel Institute on Governance 2020. *Kosovan anti-corruption officials explore new asset confiscation law during ICAR training workshop*. Available from; <https://baselgovernance.org/news/kosovan-anti-corruption-officials-explore-new-asset-confiscation-law-during-icar-training>

73 Interview with Evliana Berani

74 European Union Kosovo. *Council of Europe Horizontal Facility for the Western Balkans and Turkey*, <https://kosovo-projects.eu/project/european-union-council-of-europe-horizontal-facility-for-the-western-balkans-and-turkey/>

75 Interview with Mato Meyer

76 Interview with Norbert Pijls

77 Interview with Mato Meyer

78 Interview with Norbert Pijls

79 The audit is carried out by the National Audit Office, checking all the budget, including the municipalities', according to international and European standards.

80 Kosovo is two points behind BiH (41%) with Albania, Montenegro and Serbia performing 'better', respectively 35%, 26% and 24%. See SELDI. 2019. *Corruption in the Western Balkans: Trends and Policy Options*. Policy Brief 9. Available from: https://idscs.org.mk/wp-content/uploads/2019/12/Corruption-in-the-Western-Balkans-2019-Trends-and-Policy-Options_fin.pdf

NGOs play a key role in various forms of awareness raising and public engagement in the fight against corruption. For instance, the Kosovo Democratic Institute (KDI) closely works with the EU on state-capture and the fight against corruption, running *ad hoc* programs such as the *Transparency and Anti-Corruption program*.⁸¹ It also proactively encourages every citizen to report on corruption by directly contacting the institute on a free number.⁸²

Meanwhile, the Kosovo Law Institute (KLI) drafts reports of every hearing and act of monitoring⁸³, which are then published on its website, in order to inform the public and key stakeholders in the field.

ÇOHU (the Organization for Democracy, Anti-Corruption and Dignity), in cooperation with Communication for Social Development (CSD) executes the EU funded *Open Justice project*,⁸⁴ creating a database of findings from monitoring court hearings of Kosovo's three basic courts (i.e., the Basic Court of Prishtinë/Priština; the Basic Court of Gjilan/Gnjilane and the Basic Court of Mitrovicë/Mitrovica). Their data has identified various

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violations within those courts, of both a technical and procedural nature.⁸⁵

ÇOHU also organized a focus group in July 2018 with other civil society representatives⁸⁶ on the Declaration of Wealth of Public Officials and the Anti-Corruption Agency, providing a review of the legal basis for public officials' assets declarations and the mandate of the Anti-Corruption Agency in handling them. The discussion also addressed the lack of harmonization between asset declaration registers.⁸⁷

The Balkan Investigative Reporting Network (BIRN)⁸⁸ Kosovo is also committed to serving as a watchdog of public institutions,

⁸¹ They also advise procurement bodies, monitor big ministries such as the Ministry of Infrastructure, the Ministry of Health and cooperate with the ACA on knowledge transfer to local institutions. Interview with Florent Spahija, legal adviser at the KDI.

⁸² Kosovo Democratic Institute. 2019. *CPI 2018: The Fight Against Corruption in Kosovo goes into Decline*, January 29, available from; <https://kdi-kosova.org/en/activities/cpi-2018-kosova-peson-regres-ne-luften-kunder-korrupsionit/>

⁸³ The Institute monitors the work of the KPC, the KJC and the Ministry of Justice and provides recommendations. It deals with asset confiscation and conflict of interest cases and provides comments. The KLI disposes of around 50 monitors who undergo a deep training on legislation and procedures. Interview with Ehat Miftaraj

⁸⁴ For more information, see <http://opendata.cohu.org/openjustice/lendet-gjykata>

⁸⁵ See <http://opendata.cohu.org/openjustice/>

⁸⁶ Other participants were representatives of relevant institutions from: Kosovo Assembly-Committee on Legislation, Mandates, Immunities, Rules of Procedures of the Assembly and oversight of the ACA, Ministry of Justice, State Prosecutor's Office and other relevant institutions. The roundtable was supported by the project Promotion of a Democratic Society (DSP) – funded by the Swiss Agency for Development and Cooperation (SDC) and the Danish Ministry of Foreign Affairs (DANIDA) and managed by the Kosovo Civil Society Foundation (KCSF).

⁸⁷ Çohu. 2018. *Deklarimi i pasurisë së publikë dhe Agjencia Kundër Korrupsion*, July 18, Available from; <http://cohu.org/sq/zyre-antikorrupsion-aktivitete/Deklarimi-i-pasurise-se-zyrtareve-publike-dhe-Agjencia-Kunder-Korrupsion-211>

⁸⁸ A non-governmental organisation providing information to the citizens, promoting accountability, rule of law and policy reforms. For more information, see <https://birn.eu.com/network/birn-kosovo/birn-kosovo-about/>

monitoring their work and supporting reforms that meet the criteria and standards of the EU. BIRN and Internews Kosova⁸⁹ have also been monitoring Kosovo's judicial system at every level for 12 years, assessing its performance in respecting legality, work ethics and judicial proceedings.⁹⁰

BIRN's recent report *Corrupted Liberalization* – published on its website – focuses on targeted cases of corruption and organized crime that are still open in Kosovo courts, with a particular focus on the Basic Court of Prishtina, which is handling the largest number of these cases.⁹¹

Additionally, some NGO-led investigative journalism and awareness raising campaigns have generated national buzz and requested accountability from the government.⁹²

International donations play a key role in nearly all of these activities, as without international contributions it is hard to speak of an empowered civil society in such a young polity.⁹³

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89 Primarily provides support to civil society and promotes development of an independent media in Kosovo. See <https://internewskosova.org/en/>

90 For more information, see <https://birn.eu.com/network/birn-kosovo/birn-kosovo-about/>

91 For the full report, see <https://birn.eu.com/wp-content/uploads/2018/04/BIRN-Raport2018-LiberalizimiiKorrupuar-Final-ENGWEB.pdf>

92 Interview with Norbert Pijls

93 Interview with Norbert Pijls and Kreshnik Gashi, BIRN

4

UNDERLYING CAUSES OF LACK OF PROGRESS

Corruption is a complex, cross-sectoral phenomenon involving various institutions and endeavours, and requires a multi-layered approach of actions and measures.

In Kosovo, despite a sound institutional and legal framework, effective digital tools, well-trained professionals, significant awareness raising activities and continuous civic engagement, the fight against corruption is far from being won.

Key reasons behind this lack of progress are outlined below.

4.1 Political Parties' Campaign Financing and Weak Implementation of the Law

Kosovo has been quite receptive to international assistance in its legal reform and often praised by the European Commission for adopting the required legislation to combat corruption. But efforts must be sustained to strengthen the legal framework and address the pressing necessity to enact an updated version to regulate political party and electoral

campaign funds. Some amendments were made to the law on the financing of political parties in 2015, but the issue remains one of the weakest aspects of Kosovo's legal framework to combat corruption.

According to legislation, Kosovo's political parties can receive contributions from individuals (up to a limit of 2,000 euros per year) or legal entities (1,000 euros per year). When a party receives a donation, the tax administration must be informed.

However, European Commission reports raise warnings that political parties fail to publish consistent financial reports and disclosure statements, while election candidates are also not required to declare the origin of donations received for their campaign. Nothing specifies how the funds, in particular those coming from the public budget, should be distributed among the candidates at elections, and is therefore left to the discretion of the parties.

In fact, parties spend an unprecedented number of unaccounted euros on election campaigns, and only report the funds granted by the state budget.⁹⁴ These legislative loopholes prevent

any transparency and create the ideal conditions for the exchange of favours.⁹⁵

Due to mounting pressure by international organizations, the draft law on the financing of political parties now awaits parliamentary approval. In a recent webinar, jointly organized by the EU and the UNDP to publicly discuss political parties' financing, the European Union Special Representative (EUSR) Tomas Szunyog congratulated the government and the parliamentary groups for voting in favor of the draft in the first reading.

Szunyog urged local authorities to pass the legislation in line with the Venice Commission's recommendations.⁹⁶ However, interviewed experts have raised concerns that good draft laws are often altered beyond recognition during the parliamentary process if political interests are at stake.⁹⁷

Finally, Kosovo also suffers from a weakness in implementation of the law.⁹⁸ Freedom House⁹⁹ and representatives from NGOs¹⁰⁰ warn that laws countering corruption in particular meet serious implementation problems.¹⁰¹ In fact, Kosovo's public sector lacks an internal mechanism to seriously

94 Interview with Kresnik Gashi, BIRN

95 Cvetanoska, L., and Arolda Elbasani. 2020. *Au Kosovo, corruption, clientélisme et machisme vont très bien ensemble*, Le Courrier des Balkans, July 20. Available from; <https://www.courrierdesbalkans.fr/Au-Kosovo-corruption-clientelisme-et-machisme-vont-tres-bien-ensemble?fbclid=IwAR2e%20jkBXlw2RI27blQaiqjKGaTal9O1bxJ2hV4pTiO6A3HrihT008T12c>

96 Full text of his speech is available from; https://eeas.europa.eu/delegations/kosovo/90464/transparent-and-accountable-party-finance-necessary-healthy-democracy_en

97 Mato Meyer and Rreze H. Zhuja

98 See Council of Europe 2019 Report on Compliance with International Anti-Corruption Standards, compiled as part of the PECKII Project.

99 Freedom House. *Nations in Transit 2020*. Available from; <https://freedomhouse.org/country/kosovo/nations-transit/2020>

100 Spahija from the KDI acknowledges that: 'We have a problem as far as the laws' implementation is concerned.'

101 See ACA's Anti-Corruption Strategy 2021-2023.

monitor whether the adopted laws are adequately implemented, and the public often lacks awareness about who is doing what.¹⁰²

4.2 Lack of Institutional Integrity and Inter-Institutional Coordination

One cannot fight corruption with corrupt institutions,¹⁰³ and building institutional integrity is a crucial element in the state-building process. Failure to do so makes both public institutions and the people prone to mismanagement and corruption.

In other words, independent institutions are a key component of a functioning democracy¹⁰⁴ and issues of institutional integrity and weak inter-institutional cooperation need to be tackled in order to boost local capacities.¹⁰⁵

EC Reports on Kosovo¹⁰⁶ warn that anti-corruption institutions are not well integrated, their remits overlap and the division of tasks needs to be clarified. Meanwhile, the 2018 BIRN report *Corrupted Liberalization*, detected inconsistencies

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in data among key judicial institutions in Kosovo (KJC, KPC and the Basic Court of Pristina) in regard to handling corruption and organized crime-related cases.¹⁰⁷

Some steps have been undertaken to improve institutional coordination, but with meagre results.

For instance, the NAAC, set up on February 14, 2012, was aimed at functioning as a coordination mechanism. At the start it seemed a promising move, as the Council brought together all key anti-corruption institutions' heads, aiming to coordinate their activities.¹⁰⁸ It was also ambitiously tasked with coordinating activities in support of the implementation of the national strategy; determining the priorities

102 Interview with Evliana Berani

103 Interview with Ehat Miftaraj

104 OSCE. 2012. *The State of Independent Institutions in Kosovo*, July, 6. Available from; <https://www.osce.org/files/f/documents/6/5/92050.pdf>

105 Former Minister of Public Administration Edita Tahiri on the occasion of a roundtable organized by the Kosovo Democratic Institute (KDI) *Implementation of the Law on Declaration of Assets of Public Officials* held in Pristina on the 14 September 2010. Transparency International. Kosovo: Irresponsibilities in the Declaration of Assets by Public Officials, 14 September 2020. Available at: <https://www.transparency.org/en/press/kosovo-irresponsibilities-in-the-declaration-of-assets-by-public-officials#>

106 European Commission 2020

107 For more information, see <https://birn.eu.com/wp-content/uploads/2018/04/BIRN-Raporti2018-LiberalizimiiKorrup-tuar-Final-ENG-WEB.pdf>

108 I.e., ACA, Auditor General, KPC, KJC and Kosovo Police.

for the implementation of the legislative agenda against corruption and raising awareness among the wider populace for preventing and fighting corruption.¹⁰⁹

Unfortunately, the NAAC has so far remained a reporting mechanism of a highly political nature, answering to the government and the President.¹¹⁰

Some improvements have been made, however. These include: the signing of memoranda of understanding (MOUs) between key institutions,¹¹¹ increased dialogue between bodies (i.e., prosecutors and the police having joint investigation teams), and a more active role taken by the KPC and the KJC.

Sadly, these positive changes are still yet to result in increased prosecution and conviction rates.¹¹² Additional effort is also needed to ensure that institutions have access to the relevant databases.¹¹³

In terms of institutional integrity, progress has been made in the field of assets declaration, which has been accompanied by the potential to impose stricter preventive measures on public servants.

Judges and prosecutors are obliged by law to declare their assets and any gifts received, and report any possible conflict of interest to the Anti-Corruption Agency. In 2019, they did so in a timely manner. However, the ACA still lacks the tools and resources to verify these asset declarations.¹¹⁴

Kosovo police, meanwhile, has set its own internal control mechanisms in this endeavour. Externally the KP is answerable to the Assembly of Kosovo and functions under the authority of the Ministry of Internal Affairs (MIA). Internally the KP's supervision is carried out by the Kosovo Police Inspectorate.¹¹⁵

Inevitably, there is still much to be done to make all these mechanisms more professional and stronger, all while building institutional integrity so as to prevent and fight corruption.

Specifically, criticism has been raised over the Police lacking an Integrity Plan of its own, as well as an Action Plan for its implementation.¹¹⁶ The fact that its own budget is allocated by the Government of Kosovo through the MIA also means that there are concerns about

109 The Rules of Procedure for the National Anti-Corruption Council, https://president-ksgov.net/repository/docs/THE_RULES_OF_PROCEDURE_FOR_THE_NATIONAL_ANTI-CORRUPTION_COUNCIL.pdf

110 See Brady, S. 2016. *Anti-corruption justice and collaboration in Kosovo. Challenges and recommendations*. U4 Brief, October. Available from; <https://www.u4.no/publications/anti-corruption-justice-and-collaboration-in-kosovo-challenges-and-recommendations>; Council of Europe 2019 Report. *ibid*.

111 For instance, the Anti-Corruption Agency (ACA) has signed MoUs with institutions such as the police, the prosecutors, the European Union Rule of Law Mission in Kosovo (EULEX), the Customs Office, the Tax Office, the Financial Investigations Unit. See Brady, S 2016. *ibid*

112 See Brady, S. 2016, *ibid*.

113 See European Commission 2019:21.

114 European Commission 2020: 25-26.

115 Art. 65, Constitution.

116 Point Pulse. 2016. *Assessment of Police Integrity in Kosovo*, Kosovar Center for Security Studies, 6 & 10. Available from; <https://pointpulse.net/wp-content/uploads/2017/01/Assessment-of-Police-Integrity-in-Kosovo-2016.pdf>

the impartiality of the KPI during criminal investigations into misdeeds that may happen within the police force.¹¹⁷

4.3 The Weakest Link: Prosecution and Judiciary

Despite improvements to the institutional setup and the provision of a robust legal framework and training opportunities, the prosecution and the courts system remain Kosovo's weak link in the fight against corruption.

Key issues include unsatisfactory investigations, few and low-quality indictments, a weak witness protection system and the inability to pursue high profile corruption cases. Meanwhile, very little has been done to boost institutional accountability.¹¹⁸

The prosecution suffers from filing poor quality indictments, overdue investigations and a lack of courage. A number of well known public scandals has reinforced this reputation amongst the public and reduced faith in the unit. In particular, the infamous *Pronto case* raised the question of the unit's inefficiency on the one hand, and of deficiencies of international institutions on the other.

The scandal erupted when wiretapped recordings featuring senior Democratic Party of Kosovo (PDK) officials discussing the distribution of key posts on the boards of public enterprises, at ministries, and in the offices of the attorney general and the police were leaked to the public.¹¹⁹ The first leaks surfaced in 2012, but no inquiry into the case was launched.

In 2016, the Pristina-based independent media outlet Insajderi published more of the tapes in a series called *Dosja e shefit* (The Boss' File), following which the prosecution initiated an official investigation.

Victims of this incident were obviously those who applied for the positions in public enterprises and did not get them due to evident nepotism.¹²⁰ However, the prosecution could not identify any victim, another sign of the low quality of their indictments.¹²¹

After all of the defendants in the case were acquitted, the Special Prosecution Office received a fierce backlash over the way the case was managed. Even Besnik Berisha, a lawyer of one of the defendants blamed the prosecution for being selective in its accusations and evidence.¹²²

117 Pointpulse. 2016. *ibid.*, 11.

118 Interview with Ken Taylor

119 Adem Grabovci, then deputy and head of the PDK parliamentary group, the former PM Hashim Thaçi, and the chairman of PDK Kadri Veseli were suspected of abuse of official position by placing those close to them in key posts on the boards of public enterprises. However, the accusation has been difficult to prove, as there was a lot of innuendo and unfinished sentences in the recordings. Lechosovo.fr. 2020. '*Pronto*', *l'affaire qui met en lumière la corruption au Kosovo*, February 5.

120 Interview with Visar Duriqi

121 Interview with Rreze H. Zhuja

122 He was the lawyer of Besim Beqaj, a former Minister of European Integration from PDK. Details about his statements are available from; <https://prishtinainsight.com/all-defendants-acquitted-in-pronto-case/>

In August 2019, the Special Prosecution Office (SPO) initiated an investigation into government officials relating to a payment of 53.1 million euros to the construction company Bechtel-ENKA, an apparent surcharge imposed on the government for a delayed payment for construction of the highway between Pristina and Skopje, allegedly ordered by the Mustafa government. The reasons and individuals behind the delay were still unclear at the year's end.¹²³

Meanwhile, data backs up the notion that Kosovo's courts are failing to get adequate results in the fight against corruption. A lack of convictions, especially in high-profile cases, is a particular issue of concern.¹²⁴

In 2018, following the monitoring of 520 court hearings, a BIRN report identified a drop in the number of resolved cases, as well as in verdicts that imposed effective prison sentences and in verdicts that imposed fines or suspended sentences. The report also points to a drastic increase in acquittals and dropped cases. A total of 152 people accused of corruption received no sentence in 2018, either due to acquittal or because the cases were dropped. Only 65 people were sent to prison.¹²⁵

This lack of convictions is partly related to the quality of indictments. In 2012, the SPO filed 40 indictments in high-profile cases,

but these resulted in only 2-3 convictions. This poor ratio between indictments and convictions is another indicator that investigations have lacked quality.

Meanwhile, in September 2020, two judges and a police officer were arrested on charges of corruption and misconduct. Both judges were suspended; one is in pre-trial detention, and the other judge and police officer are under house arrest until further notice.¹²⁶

Kosovo's weak witness protection system has also contributed to the vicious cycle of failing to prosecute corruption. Under the current conditions there is no space for in-depth investigations, and cases are often dropped due to a lack of evidence.¹²⁷

In some cases, the transfer of competences from EULEX to local authorities is also causing delays, including in the *KEK* case. After hearing 20 witnesses and holding 16 hearings, the KJC approved EULEX's request to transfer the case to local courts. However, this meant that the case began from scratch and all 20 witnesses would have to be heard again by local judges.¹²⁸

A related issue of concern is the length of the cases' handling by the judicial system, and BIRN has criticized judicial institutions' negligence regarding this point. BIRN's findings highlighted that the average

¹²³ Freedom House 2020, *op. cit.*

¹²⁴ Interview with Visar Durij

¹²⁵ Begisholli. B. 2019. *op. cit.*

¹²⁶ Freedom House 2020, *op. cit.*

¹²⁷ Interview with Kreshnik Gashi and an OSCE employee

¹²⁸ See BIRN's report *Corrupted Liberalization*, *op. cit.*: 8.

timespan, from filing indictments until the initial hearing, is 110 days per case. On average, each of the 17 targeted cases for visa liberalisation had been in the system for almost two years, or 710 days to be precise, from the moment the indictment was filed until March 23, 2018, when the data was processed.¹²⁹

Courts are also ineffective in using some of the tools available to them. Preliminary asset confiscations have increased over the years, yet final confiscations are still low. Of the 27,867,583 euros that were sequestered in total by the judicial authorities in all cases in 2018, only 49,393 euros, or 0.1 per cent of the total amount, were confiscated. No money was confiscated in corruption cases.¹³⁰

In 2018, the total value of assets preliminarily confiscated was slightly over 28 million euros (compared to 10.9 million euros in 2017), while the value of finally confiscated assets amounted to only 49,394 euros, as compared to 700,000 euros in 2017.¹³¹

Judges are reluctant to confiscate illegally obtained assets even after having found defendants guilty.¹³² The OSCE organized a training on the matter in 2016,¹³³ reinforcing the notion that confiscation is a powerful tool in depriving criminals from their illegally acquired wealth and can potentially hamper

the functioning of criminal networks.

Alongside structural and politically-driven impediments, the COVID-19 pandemic has also limited the holding of court hearings in Kosovo. Meanwhile, the Criminal Procedure Code specifies that a trial has to restart if no hearings are held for three months. The current stalemate may affect an important number of criminal trials, including corruption cases.

4.4 Undue Political Influence, Lack of Political Will and Political Instability

A lack of political will, clientelism, undue political influence and political instability are also key obstacles to progress.

Despite the fact that the rule of law sector has received a huge amount of financial and technical assistance, there is an impression that institutions are unwilling to change.¹³⁴ Political will is the engine to drive this change, but it is absent in Kosovo. In fact, a lack of willingness on the part of politicians and senior public employees is the biggest threat hampering progress in the fight against corruption.¹³⁵

Mainstream political parties, apart from the

129 For more information, see BIRN Report *Corrupted Liberalization*: 8. Available from; <https://birn.eu.com/wp-content/uploads/2018/04/BIRN-Raport2018-LiberalizimiiKorrupuar-Final-ENG-WEB.pdf>

130 Begisholli, B. 2009. *Kosovo's Anti-Corruption Efforts Inadequate*. BIRN Report says, May 23. Available from; <https://balkaninsight.com/2019/05/23/kosovos-anti-corruption-efforts-inadequate-birn-report-says/>

131 European Commission 2019: 20.

132 Interview with Rreze H. Zhuja

133 Details on the OSCE training are available from; <https://polis.osce.org/node/103>

134 OSCE interviewee

135 Interview with Rreze H. Zhuja

left-wing nationalist Vetëvendosje, function on clientelism, and buy votes, or assure votes by channelling funds to municipalities, who hire a vast range of public sector workers in the local area.

There is then an understanding that all those people then vote for the party that ensured they got a job in that school or hospital, for example. Parties are able to monitor the voting per polling station, and can see if they don't receive this vote. In short, there is a very strong network of dependency in the country.¹³⁶

These circumstances result in undue political influence for politicians and a pervasive political instability that hampers institutions' motivation. For instance, in a direct breach of institutions' independence, alongside the scrapping of the KP's Anti-Corruption Task Force, the prime minister also dismissed the KP General Director Rashit Qalaj in October 2020.¹³⁷

The influence of political parties over the police and alleged connections between the two justify claims of structural corruption.¹³⁸ Continuous changes of government (there have been four governments in the last four years) have also caused political instability and *de facto* hampered progress in legislative reforms.¹³⁹

Under these circumstances reforms either

remain incomplete or stay cosmetic. For instance, the late Kurti government, in coalition with the Democratic League of Kosovo (LDK), promised the adoption of a vetting process and established a group of experts from civil society and academia to conduct a study to develop recommendations on how to set up the process.

The process was then hampered, when the Hoti government decided to include the Kosovo Judicial Council and the Kosovo Prosecutorial Council, institutions that would be subject to the vetting process, into the group. Consequently, some experts resigned over this potential conflict of interest undermining the quality of the work. There has been no progress on the matter yet.¹⁴⁰

When a lack of political will is accompanied by politicians' disproportionate influence over the police force, the judiciary, the prosecution and other anti-corruption agencies, it creates a chain reaction that renders these institutions unwilling to target high-profile cases. There are too many vested interests, and things stay as they are.¹⁴¹

136 Interview with Norbert Pijls

137 Avdiu, P. and Balaj, S. 2020. *State of Play of Integrity Policies in Kosovo Police*. Kosovo Centre for Security Studies. Available from; <http://www.qkss.org/en/Policy-Papers/State-of-play-of-integrity-policies-in-the-Kosovo-Police-1394>

138 Interview with Florent Spahija

139 Interview with Mato Meyer

140 Interview with Rreze H. Zhuja

141 Interview with Mato Meyer

International Engagement's four Handicaps: Postponing problems, Politicization, Distraction over Priorities and a Lack of Coordination

A combination of *myopic* international and local policies and a lack of coordination has slowed down progress in the fight against corruption and organized crime.

The EU is often accused of postponing the problem and of providing impunity to key stakeholders by prioritising regional stability over other matters. Therefore, it fails to use the tools in its possession more effectively.

*Local politicians in the Western Balkans are well aware that ongoing conflicts and tensions are there to distract internationals and locals away from urgently needed domestic reforms and they use this tool efficiently. For instance, when an ambassador reports on the issue of corruption, local politicians start problems with other issues, such as the dialogue with Serbia. They thus divert internationals and the public from the real issues: corruption and organized crime.*¹⁴²

The European Commission's Progress Reports often point to the legislative progress and institutional reforms, but tackle the subjects superficially by focusing on factors hampering laws'

implementation.¹⁴³ A lot of advocacy and political decision-making is involved in drafting Progress Reports, which are viewed as having turned into a politicized vehicle, no longer concerned with tackling obstacles at the local level.¹⁴⁴

In the field of local government for instance, there is no formal donor coordination, so the largest donors in each sector have a responsibility to coordinate with one another. According to interviewees, this coordination is not well developed. There is a single meeting per year, described as "people just sitting around a table and repeating what projects they have."¹⁴⁵

In the meantime, commitments towards better international coordination are in place. The European Commission has sponsored the establishment of a proper mechanism for inter-institutional coordination of the many rule of law programmes supported by various donors, in order to avoid inefficiencies, incoherence and duplication of efforts.¹⁴⁶

The UNDP has also been organizing partnership briefings twice a year, where all embassies and international organizations are invited to discuss what the organization is doing, as well as to see if there is anything in need of coordination.

This seems to be working fairly well. Informally, only the UNDP, the CoE and

142 Interview with Kreshnik Gashi

143 Interview with Ehat Miftaraj

144 Interview with Norbert Pijls

145 Interview with Evliana Berani

146 European Commission 2019

the US Embassy deal with corruption. Consequently, the UNDP has been dividing training duties with the other two actors and they are all coordinating with each other.¹⁴⁷

Some other international agencies are also coordinating their efforts at project level.¹⁴⁸ For instance, Assiom International Ltd., which has been active in Kosovo for the last two years, recently had a meeting with one of the other delivering partners, the US. Once it became clear that they were engaging in similar projects, they agreed to help each other instead of repeating the same thing.¹⁴⁹

However, these *ad hoc* attempts currently fail to provide adequate coordination to international assistance and funding. International institutions often observe and draft something that they recognize as a need and hand it in to local institutions.¹⁵⁰ However, there is not a system whereby you can tell the Americans to focus on x issue, the British on y, and the Italians to focus on something else, so as to cover the whole spectrum.¹⁵¹

Local authorities lack a sense of ownership of the process and just let any mission in, to do their stuff.¹⁵² Weak coordination also results in having multiple projects

addressing the same issue, but not tackling the one which really deserves attention.¹⁵³ Neither the Kosovo government, nor other local actors have managed to coordinate donations or external support in the field of rule of law between different actors.¹⁵⁴

147 Interview with Mato Meyer

148 Interview with Norbert Pjils

149 Interview with Ken Taylor

150 Interview with Ken Taylor

151 Interview with Alastair Butchart Livingston

152 Interview with Norbert Pjils

153 Interview with Ken Taylor

154 OSCE Interviewee

RECOMMENDATIONS

- Approval and implementation of **the draft law on political parties' financing**, aimed at addressing loopholes in the current system that enable parties to circumvent funding disclosure, is vital.
- Steps must be taken to improve weaknesses identified in **local inter-institutional coordination**. This role can easily be performed by the ACA via the establishment of a panel to design a coordination unit with the participation of all stakeholders from the public sector engaging in anti-corruption activities. On the whole, strengthening inter-institutional coordination, including securing all institutions's access to relevant databases, will efficiently support preventive measures. This interconnectedness is also key to improving investigative capacities of the prosecution office and the police.
- **Institutional integrity** is a matter that needs to be addressed urgently. The first Kurti government's proposal of adopting a vetting process¹⁵⁵, if implemented properly, can significantly downsize clientelism in public employment, which is a commonplace¹⁵⁶, and craft a merit-based recruitment process in all public institutions. International guidance is crucial in early days of such an endeavour, until local institutions are ready to fly solo.¹⁵⁷
- Alongside a vetting process, **an improved internal system of reporting and monitoring** can significantly address the weak implementation of the law and contribute to institutional integrity. A monitoring mechanism of this nature should be accompanied by the assistance of civil society, with the purpose of making information visible and accountable.¹⁵⁸

155 Interview with Rreze H. Zhuja

156 Interview with Ehat Miftaraj

157 Interview with Visar Durqiq

158 Interview with Evliana Berani

- **Improve final assets confiscation**, by implementing the suggestions the OSCE made in its training course back in 2016.
- The **fragmented nature of donor's involvement** needs to be addressed. This initiative should be locally-driven.¹⁵⁹ The ACA is ideally positioned to establish a mechanism for coordinating and streamlining international engagement so as to cover the whole spectrum. Such an initiative will bring in long-term planning and be accompanied with the potential to boost local institutional integrity and unearth a sense of local ownership.
- **Providing training programmes** is where international assistance is abundant and strong. However, investment in human capital and locals' professionalisation is an ever-continuing necessity. As Kosovo advances its legislation, institutional practices and IT tools, involved units will require further training and capacity-building programmes to address newly emerging needs. Training must be coordinated under the ACA's led initiative to avoid overlaps, and be institutionalised under the Academy of Justice as suggested by the UNDP's proposal in its SAEK III programme.
- Much has been invested in guidance, monitoring, training and capacity-building with little accountability.¹⁶⁰ Therefore, **international donors should ask for deliverables** more often and provide a stricter monitoring of policy implementation.
- As **Kosovo's European Perspective** continues to serve as a motivation for adopting international best practices in tackling corruption, the EU must keep this perspective alive and prioritise combating corruption.

159 Interview with Mato Meyer

160 Interview with Kreshnik Gashi

APPENDIX I: INTERVIEWS

Berani, Evliana. InfoGlobi Chief Editor and consultant, October 5, 2020

Butchart Livingston, Alastair. Senior Adviser, Office of the Kosovo Prime Minister at Community Affairs Department, October 17, 2020

Duriqi, Visar. Investigative journalist at Insajderi, November 17, 2020

Gashi, Kreshnik. Investigative Journalist, BIRN, November 18, 2020

Havolli, Shaip, Anti-Corruption-Agency Director, 23, January 2021

Hoxha, Rreze. Research Fellow, Group for Legal and Political Studies, November 4, 2020

Meyer, Mato. Chief Technical Adviser Anti-Corruption, UNDP, November 16, 2020

Miftaraj, Ehat. Executive Director at the Kosovo Law Institute, November 15, 2020

Interview with an official from OSCE Kosovo, November 11, 2020

Pijls, Norbert. Project director at Helvetas Swiss intercooperation, November 13, 2020

Spahija, Florent. Legal Adviser at Kosovo Democratic Institute, October 3, 2020

Taylor, Ken. Project director at Assiom international Ltd, October 26, 2020

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Her research focuses on peace- and state-building, ethnic conflict, EU enlargement and corruption in Kosovo and the Western Balkans.

Nicasia holds a BA in international and diplomatic sciences from l'Università Orientale, Naples in Italy, an MA in geopolitics from Società italiana per l'organizzazione internazionale, Naples in Italy, an MA in peacekeeping and security studies from Università degli studi di Roma Tre, Rome and a PhD on the state-building process under UNMIK and the EU in Kosovo from Universität Flensburg in Germany. On the subject she has also published a book: *The European Union State-Building in Kosovo. Challenges and Lessons Learned: An Assessment of EULEX*, Hamburg: Dr. Kovać, 2016. She previously worked as a research assistant at the University of Flensburg, Germany, as a research fellow at the department of international relations and European studies, Central European University, Budapest. She has also been a Kurt Tucholsky Fellow, Hungarian Scholarship Board's Fellow and a Kosovo Foundation for Open Society Fellow. She has published various articles and papers on peace- and state-building, post-war education-building and corruption in Kosovo in outstanding international outlets over the years. She is also a member of the London Institute of Peace Research and the Politikon (IAPSS Journal of Political Science).

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