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KOSOVO TO EU: THE CHALLENGE OF IRREGULAR MIGRATION

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I. Introduction

For Kosovo the EU perspective has continued to be bumpy. Kosovo's state building continues to be indeterminate, with 5 EU member states not recognizing its independence. Conditioned with the EU requirements for Kosovo and Serbia to normalize relations and enhance regional cooperation, Kosovo has been caught up in the dialogue process as of 2011,[1] often leaving many internal issues unresolved. On the other hand, Serbia has been able to capitalise from the dialogue, gaining the accession negotiations with the EU in December 2013.[2] Despite hopes of the Kosovo's political elite to speed up the liberalisation of free travel for Kosovo citizens with the EU, Kosovo continues to be the most isolated country of the region.

Kosovo awaits the beginning of the Agreement for Stabilisation and Association with the EU, and is the only country in the region outside of Schengen Area free travel zone. It was also the only country of the region left outside of signing the visa facilitation agreement, prior to the initiation of the visa liberalization process. Recently, in 2012, only one in ten Kosovars had mobility to move freely into the EU, meanwhile, with the countries of the region, Montenegro, Serbia, Albania and Macedonia, Kosovo does not have a visa regime.

The visa liberalisation continued to be unrewarded also hindered by the six-month long deadlock in creating the new government, which resulted from the constitutional ambiguity, as well as from the stubbornness of major political parties to seize power after the June 2014 national elections. The international community backed off from intervening on the institutional deadlock during the first six months, but it eventually intervened in order to create new institutions, when the presence of the Srpska Lista was jeopardised following the VLAN coalition.[3] The newly negotiated government was based on the model of the former coalition of two major political parties, that is, the LDK and PDK, by adding the 'Srpska Lista"[4] to the newly formed coalition. The new LDK-PDK coalition guaranteed the participation of the Srpska Lista in the government, but it ended any hopes for any changes in governance, given that Kosovo citizens experienced a similar coalition from 2007 until 2010.

There were different migration factors that have contributed to the massive migrants flow, which were interconnected with the level of isolation faced by Kosovo citizens. The visa free regime with EU member states would stop irregular migration, however not migration itself. Kosovars

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[1] Noted by the Council Conclusions on Enlargement/Stabilisation and Association Process, pg. 9 of the Council of the European Union, available at: http://eeas.europa.eu/delegations/kosovo/documents/eu_kosovo/118487_en.pdf

[2] Noted by the European Council of 27/28 June and of 19/20 December 2013 respectively, Serbia has been found to have achieved compliance with the membership criteria, i.e. "notably the key priority of taking steps towards a visible and sustainable improvement of relations with Kosovo" after the signing of the April First Agreement on Normalisation of Relations in between Kosovo and Serbia. Available at http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=AD%201%202014%20INIT.

[3] VLAN was a coalition of opposition parties Lëvizja Vetëvendosje (Self-Determination Movement), Lidhja Demokratike e Kosovës (Democratic League of Kosovo), Aleanca për Ardhmërinë e Kosovës (Alliance for Future of Kosovo), and Nisma për Kosovën (the Initiative for Kosovo). The coalition formed following the results of national elections in June 2014, as a post-election coalition aiming to form the government. However, the Kosovo Constitutional Court waived the possibility of a post-election coalition in Kosovo acknowledging only pre-election coalitions. See Constitutional Court of Kosovo, KO 119/14, dated 17 July 2014, at http://www.gjk-ks.org/?cid=2,57&page=8#new.

[4] After the April Agreement on Normalisation of Relations in between Kosovo and Serbia, the Srpska Lista was formed by Kosovo Serbs by close supervision of Belgrade, replacing the moderate Kosovo Serb parties such as the former government coalition party the Serbian Liberal Party (SLS).

would not be the only citizens of the region to migrate, given that the phenomenon of migration continued also in other states in the region, which had a substantial number of asylum seekers to EU member states once after granted visa liberalisation. Unfortunately, Kosovo citizen's mobility through visa liberalisation has been endangered by the recent massive migrants flux into the EU.

II. EU remarks on irregular migration, smuggling with migrants and readmission

The issues of border management, irregular migration and smuggling were reflected in the EU reports for Kosovo, namely in the 2014 EU progress report, and in the second monitoring report on the fulfilment of the EU requirements for visa liberalisation with Kosovo.

The 2014 Progress Report states that Kosovo has achieved considerable progress in relation to visa and border control with adopting sufficient legislation, but it lags behind in implementation. This requirement has been met by Government of Kosovo (GoK), but this was done passively, which was proven by the recent mass departure of Kosovo citizens to EU countries. In 2014 the EU requested from the GoK to address the dramatic increase in irregular migrants to the EU. In 2013 the number of Kosovo asylum seekers doubled in the EU member states, with 20.215 persons seeking asylum, in comparison to 10.210 from 2012 (EUROSTAT:2014). By end of the year 2014, the massive migration kicked off, finding the GoK unprepared.

Furthermore, the EU encouraged the government to increase its efforts to conclude readmission agreements with migrants' countries of transit and/or destination, in order for Kosovo to fulfil its "…challenges in conducting systematic risk analysis to prevent and detect illegal cross border activities effectively."[5] As of 2009 Kosovo signed in total 20 agreements with 22 countries, including Germany, France, Switzerland, Hungary, Austria, etc.[6] Kosovo has also developed a separate database on readmission and reintegration, but this database, however, does not have interoperability with other databases.[7] The new GoK continues to work with out-dated policies, with the Kosovo Migration Profile for the year 2014 missing. The Government approved the Migration Profile for the year 2013 only in March 2015.[8] The 2014 Migration Profile is still waiting to be drafted and approved by the Government, in spite of the fact that the EU required for this document to be regularly updated, by including all relevant data on migration and focusing particularly on its policy response.[9]

The EU has also been requiring from GoK the change of the timeframe, set for eligibility for the Reintegration Programme of readmitted persons.[10] This timeframe sets out the criteria that should be fulfilled by readmitted persons in order to benefit from the Reintegration Fund, and in the form in which it is,cuts off from assistance the migrants that left Kosovo after July 28th, 2010. Only persons that have left Kosovo before this date are eligible for receiving assistance

[5] See 2014 Progress Report on Kosovo, pg. 47-49 at http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-kosovo-progress-report_en.pdf.
[6] KIPRED E-mail communication with the Deputy Minister for European Integration, Kosovo signed 20 readmission agreements with 22 states, including 18 EU member states, two states associated with the EU and two Balkan states, February 2015.
[7] Pg. 49, 2014 Progress report on Kosovo.
[8] KIPRED E-mail communication with MIA senior official, March 2015.
[9] Pg. 49, 2014 Progress Report on Kosovo.
[10] Pg. 2 of the EC Second report on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap, at http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/second_commission_assessment_en.pdf.

from the Reintegration Fund. In light of the new migration influx, this timeframe is discriminatory and non-compliant to Kosovo's legislation, given that the Law on Readmission states that the right to readmission is guaranteed to all Kosovo citizens.[11] The cut-off year 2010 is set out by a legal sub-act, which goes beyond its aim by changing the law.[12] The date denies the newly migrated citizens sustainable reintegration. The existing eligibility criteria for reintegration also deteriorate the recent impoverishment of migrants leaving Kosovo, which will be dumped in expedited procedures of return by EU member states.

Further, the EU states that "Kosovo Police has thus far been unable to put in place a maintenance contract for the EU funded border management IT system," hindering its effective border control. Thus Kosovo continues to face challenges in systemic analysis of the risks in order to detect and prevent illegal cross-border activities effectively.[13] Following the Technical Dialogue agreement between Kosovo and Serbia on Integrated Border Management, concluded in December 2012, all six interim border crossing points with Serbia have been made operational. However, Kosovo and Serbia are still not conducting the joint police operations and patrols, due to the fact that Serbia is not recognising Kosovo as an independent state. The EU states that the border line between Kosovo and Serbia remains vulnerable to illicit activities, including smuggling, and particularly so in the north of Kosovo.[14] The EULEX Police patrols in the region of Northern Kosovo, in the Bernjak-Tabalje and Jarinje-Rudnica border points.[15] Serbia has also been urged to stop illegal border crossings, including smuggling of goods, in particular in the north of Kosovo.[16]

Similarly to the Progress Report, the **Visa Liberalisation Monitoring Report** lists a number of requirements for Kosovo on irregular migration and smuggling. Few of these requirements interact with the Progress Report, and, the government is recommended to provide sufficient border surveillance equipment, in order to enhance the use of the risk analysis for preventing the irregular migration in cross-border illegal activities. The GoK should also continue to develop the database on migration and asylum, by improving the interoperability of databases in the field of migration and asylum policy. An extended and updated migration profile is also required.[17]

Different EU requirements remain for Kosovo to follow up with implementation. The fulfilment of these requirements is a priority for the new government, in order to get the free travel regime within the Schengen zone. Nevertheless, the new GoK postponed the Report on Implementation Overview of Visa Liberalisation Roadmap.[18] Consequently, this will delay also the expert mission report of the EU on the implementation of these requirements.

The analysis below covers the period from September 2014 until mid-March 2015, by analysing the current level of implementation, set-backs in implementation in the light of current massive

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[11] Article 1 and 3 of the Law on Readmission, Law No. 03/L-208, states that returnees are citizens that do not fulfil criteria for entry or residence of the state that requests from Kosovo authorities their return. Available at https://www.mpb-ks.org/repository/docs/Ligji%20per%20Ripranim%20%28shqip%29.pdf.

[12] See Regulation No. 20/2013 on Reintegration of Repatriated Persons. Available at https://www.mpb-ks.org/repository/docs/RREGULLORE_QRK_NR_202013_PER_RIINTEGRIMIN_E_PERSONAVE_TE_RIATDHESUAR_DHE___100920121_(3)_13032014.pdf

[13] Pg. 48, 2014 Progress Report on Kosovo.

[14] Ibid, Pg. 33

[15] EULEX Executive Division mandate, at http://www.eulex-kosovo.eu/en/executive/

[16] Pg. 43, 2014 Progress Report on Kosovo.

[17] See pg. 4 of the EC Second report on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap.

[18] KIPRED interview with EU official, 14th January 2015.

migration of Kosovars to the EU members states, and it also provides several recommendations on how should Kosovo act promptly on these requirements.

III. Legal definitions and differences between smuggling, irregular migration and trafficking of human beings

Kosovo has a consolidated legal framework regarding the border management and illegal border crossing. Three main laws have been adopted on integrated management and control of borders, cooperation on Integrated Border Management (IBM), and on the management of the state border control and surveillance.[19] These laws were adopted for addressing the requirements of the EU integration processes, following specifically the requirements of the visa liberalisation roadmap with Kosovo. The laws address issues related to border management, and to prevention, detection and combating of illegal activities, including irregular migration and smuggling with migrants. Kosovo's government has also approved several sub-legal acts regarding state border control and management, in order to implement the above mentioned laws.[20] Furthermore, National Centre for Border Management formed in 2013, has approved seven Standard Operating Procedures[21] for implementing the respective legislation.

Differently, smuggling with migrants is defined as an act that has intent to obtain, directly or indirectly, a financial or other material benefit from illegal entry of a person, a national of Kosovo, into a state in which the person does not enjoy permanent residence or is not its citizen.[22] In the recent migration developments, illegal entries were taking place from Serbia into the EU member states. For the purposes of migrations into the EU states, Kosovo citizens were firstly crossing the border from Kosovo to Serbia. According to the Kosovo Criminal Code "illegal entry" occurs when a border or boundary is crossed without compliance with the necessary requirements for legal entry into that state.[23] Majority of migrants passed the border from Kosovo to Serbia with ID's, and after entering into the EU member states they usually

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[19] See Law No. 03/L-065 on Integrated Management and Control of The State Border, at http://www.kosovopolice.com/repository/docs/2008_03-L065_en5B5D.pdf; Law No. 04/L-216 on Cooperation between Authorities Involved on Integrated Border Management, at http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20cooperation%20between%20authorities%20involved%20on%20integrated%20border%20management.pdf and Law No. 04/L-072 on State Border Control and Surveillance, at http://www.kosovopolice.com/repository/docs/Ligji_Nr.04-L-72_per_kontrollin_dhe_mbikeqyrjen_kufirit_shtetror_31.Dhjetor_2011_Anglisht.pdf

[20] For example: Administrative Instruction (AI) Nr. 11/2013 on Cooperation Between Authorities Involved in Integrated Border Management, AI no. 14/2013 on the Functioning, Duties And Responsibilities of the National Centre for Border Management, AI no. 10/2013 on Determination and Categorization of Border Crossing Points, AI no. 09/2013 on Form, Content And Manner of Placing of Warning and Written Signs on Border Crossing Points and Border Crossing Zone, AI no.15/2013 on Prohibition, Limitation or Conditioning of Certain Activities Along the State Border Line, AI no. 08/2013 on the Construction of Buildings within the Zone of the Border Crossing Point.

[21] For example Standard Operating Procedure (SOP) on usage of the equipment within the framework of IBM 02/26/2014, Manual of communication between the authorities involved in IBM adopted 25 February 2014, SOP on common activities between authorities of IBM adopted 06 February 2014, SOP on profiling the Border Crossing Points adopted on 25 February 2014, SOP Kontrollimi në vijën e dytë (internal translation: Border check control-second line) 06 February 2014, SOP Zyrtari i parë në rast (Internal Translation: Responsible official on the case management) 25 February 2014, SOP on Common risk analysis at the BCPs & borderline 26 February 2014, SOP on Confiscation of goods and smuggled animals 2 July 2014. KIPRED E-mail communication with National Centre for Border Management officials, February 2015.

[22] Article 170, Paragraph 8.1 and 8.2 of the Kosovo Criminal Code

[23] Article 170, Paragraph 8.2 of the Criminal Code

claimed that they did not have any valid travel documents.[24] There is no universally accepted definition of irregular migration. [25] It refers to a movement taking place outside of regulatory norms of the sending, transit and the destination countries. The perspective of the destination countries is an entry or stay of a migrant who does not have the necessary documents required under immigration regulations. There is a tendency to restrict the use of the term "illegal migration" to the cases of smuggling of migrants and/or of trafficking of persons.[26]

In relation to irregular migration, the new Kosovo Criminal Code also defines the offence of smuggling with migrants. The crime of smuggling of migrants means any action with the intent of obtaining, directly or indirectly, a financial benefit, from the "…illegal entry of a person from Kosovo into a state in which that person is not a permanent resident or a citizen …"[27] The sentences differ, depending on the form in which this offence is committed. Sentences range from 2 years of imprisonment, for engaging in smuggling activities, and the organization and direction of the criminal group that commits smuggling is considered a more severe form, foreseeing punishments from 7 to 20 years of imprisonment.[28]

Smuggling of migrants differs from trafficking in human beings, even though these two notions are often perplexed and reported incorrectly in official communications. For example, in an awareness-raising leaflet prepared in the campaign against irregular migration, the KP confused the definitions of traffickers and smugglers when addressing smuggling of migrants.[29] Kosovo legislation defines the act of trafficking as recruitment, transportation, transfer, and harbour or receipt of persons, by using threat, force or coercion, abduction, and other means to achieve the consent of persons for the purpose of exploitation.[30] The trafficking crime consists of the act, the means and the exploitation purpose. At the end the exploitation is material, and it does not end with one-off payment as in the case of smuggling. Furthermore, the traffickers hold power over their victims by exercising control over the other person for continued exploitation.

Besides the legal framework on border management, other laws have been enacted to address cooperation and strategic response of law enforcement agencies on IBM in order to detect, prevent and investigate the criminal illegal activities, and to conduct the control and monitoring, as well as the related international cooperation, in an efficient manner.[31] Sub-legal acts were also enacted to implement laws, and these were followed by a number of extensive joint trainings of respective agencies, in order to enhance their response and effective work in combating the

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[24] See copy of temporary Resident stay permit, published in Telegrafi newspaper for Kosovo asylum seekers in Germany. Text reads "Ein identifications-nachweis durch Originaldokumente wurde nicht erbracht" The full identification of person cannot be verified as no original documents have been submitted by the person (Informal translation KIPRED). Available at http://www.telegrafi.com/lajme/kosove/viza-e-perkohshme-qe-gjermania-ua-jep-azilkerkuesve-nga-kosova-cfare-eshte-kjo.html.

[25] See International Organisation for Migration, Key Migration Terms, available at https://www.iom.int/cms/en/sites/iom/home/about-migration/key-migration-terms-1.html#Irregular-migration.

[26] Ibid.

[27] See Article 170, paragraph 8, subparagraph 1, of Criminal Code of Republic of Kosovo, at http://www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf

[28] If the offence results with death of one or more persons, the perpetrator may be sentenced by a fine and imprisonment of not less than ten years or lifelong imprisonment. See Kosovo Criminal Code, Article 170, Paragraphs 1, 5, 6.

[29] See Kosovo Police Leaflet on Illegal Migration-Risk to your future, Section What are the Risks of Illegal Migration, available at http://www.mpb-ks.org/repository/docs/BROSHURA_1.pdf

[30] Kosovo Criminal Code, Article 171, Paragraph 6.1.

[31] Law No. 04/L-216 on Cooperation between Authorities involved on Integrated Border Management, article 1, at http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20cooperation%20between%20authorities%20involved%20on%20integrated%20border%20management.pdf

organised crime and smuggling.[32] The new Law on State Border Control and Surveillance also requires that a set of analysis of threats and risks affecting Kosovo's security should be carried out, with the purpose of detecting and preventing the irregular migration and human trafficking.[33] These risks and threats include, but are not limited to, the detection and prevention of illegal migration, human trafficking and other risks to public and national order and national security.[34] Seven Standard Operating Procedures have been drafted and adopted to implement the above mentioned laws.[35]

Despite of the fact that the legal framework on smuggling, irregular migration and trafficking of human beings, including the criminalisation of such acts, is consolidated, the number of cases that were investigated in Kosovo for conduction or facilitation of the crimes of irregular migration and of smuggling with migrants, remains low.[36] The complex definitions and the scarce expertise of law enforcement agencies are reasons for inadequate implementation of these laws.

The readmission of returned Kosovo citizens is also defined in Kosovo's legislation. The Law on Readmission of Kosovo, adopted in 2010, determines that Kosovo's institutions are obliged to readmit Kosovo's nationals and third country citizens.[37] The Kosovo authority must readmit into its territory the citizens that do not fulfil, or no longer fulfil, the requirements for entry or residence that are applicable on the territory of the requesting State.[38]

For readmitted citizens Kosovo applies an extensive reintegration programme/fund, which includes material and financial assistance, and this issue is determined by the respective regulation.[39] This regulation sets the criteria for readmission assistance, which, unfortunately, cuts-off migrants from the state assistance if they have migrated after July 28th, 2010.[40] This cut-off date impedes citizens that have returned recently, or are expected to return, from benefiting from this reintegration fund. In the light of the new migration influx the timeframe set is discriminatory and non-compliant to Kosovo's legislation, as the Law on Readmission states that the right to readmission is guaranteed to all Kosovo citizens with citizenship or those that fulfill the right to citizenship.

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[32] See for example Administrative Instruction, Nr. 11/2013 on Cooperation between Authorities involved in Integrated Border Management, Article 6 and Article 11, at http://www.kryeministri-ks.net/repository/docs/UDHEZIM_ADMINISTRATIV_QRK_Nr._112013_PER_BASHKEPUNIM_NDERMJET_AUTORITETE....pdf

[33] See Law No. 04/L-072 on State Border Control and Surveillance, Article 2, Paragraph 2. Available at http://www.kosovopolice.com/repository/docs/Ligji_Nr.04-L-72_per_kontrollin_dhe_mbikeqyrjen_kufirit_shtetror_31.Dhjetor_2011_Anglisht.pdf

[34] Ibid. Article 2.

[35] See supra note at 17.

[36] FRONTEX Western Balkans Annual Risk Analysis 2014, cited by Second report on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap, Pg. 3, at http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/second_commission_assessment_en.pdf

[37] See Kosovo Law on Readmission, Law No.03/L –208, Article 1, paragraph 1. Available at http://www.kuvendikosoves.org/common/docs/ligjet/2010-208-eng.pdf

[38] Ibid. Article 3.

[39] See Regulation on Reintegration of Repatriated Person and Management of the Reintegration Program Regulation approved by GoK, Decision No. 01/143, 13 August 2013, at, http://www.mpb-ks.org/repository/docs/RREGULLORE_QRK_NR_202013_PER_RIINTEGRIMIN_E_PERSONAVE_TE_RIATDHESUAR_DHE_MENAXHIMIN_E_PROGRAMIT_TE_RIINTEGRIMIT_(2).pdf

[40] Ibid, Article 2 Scope of application and basic criteria for benefits, paragraph 1.

IV. Push and Pull factors of migration

Kosovo continues to suffer from systemic corruption, often exacerbated by bribery of high government officials, nepotism in employment, and an unsecure environment for businesses. According to Transparency International, Kosovo is ranked 110 with the score 33 at its corruption perception index, which ranks it together with the least developed countries, such as Ethiopia, Guatemala, Ecuador, Malawi, etc.[41] In the region Kosovo remains in the last place when compared to Serbia, FYR of Macedonia and Montenegro.[42]

Furthermore, Kosovo continues to be dominated by the politicisation of the public sector and the lack of equal opportunities in employment, which often leads its citizens to act as alienated from the state.[43] Public administration continues to be highly politicised by the two major political parties in power, PDK and LDK. Public sector employment continues to attract most of the employees, given that it doesn't have any competition by the private sector. The public sector continues to provide average salaries that are higher than those at the private one – the average salary in the public sector is 441€, and in the private sector 228€.[44] The state capture scenarios, not only in employment but also in the selection of businesses supported by the PDK ruling party, have been reported as well. Former structures of illegal intelligence agency known as SHIK (Shërbimi Informativ i Kosovës – Kosovo Information Service), continue to dominate the decision-making influenced by the PDK coalition party.[45] The limited employment opportunities mentioned, exacerbate the unsafe environment for smaller Kosovo businesses. The corruption, nepotism and limited opportunities continue to influence the foreign investments in Kosovo. Thus, the Kosovo's Central Bank reported that Foreign Direct Investments in Kosovo for the first half of 2014 were 110.1 million Euros, that is, 32.9 percent lower than the respective figure for 2013.[46]

In addition to systemic corruption, nepotism and limited equal opportunities, Kosovo faces the potential of social unrests. Several international representatives were expecting violent eruptions and instability in Kosovo triggered by these factors.[47] In January 2015 massive protests occurred in Pristina, following the lingering threat that erupted suddenly after the newly elected government decisions.[48] The protests ended violently, with the total number of 170 citizens

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[41] Scoring is measures from the scale 0 which is highly corrupt up to 100 meaning very clean. See 2014 Transparency International rankings, at https://www.transparency.org/cpi2014/results#myAnchor1

[42] Montenegro is ranked 76 with a score of 42, Bosnia and Herzegovina is ranked the 80 with a score of 39, Macedonia is ranked 64, score 45 and Serbia is ranked 78 with a score of 41. Ibid.

[43] See for example Paragraph E.10 of the European Parliament website Texts Adopted at the Sitting of Wednesday 11 March 2015, pg. 151, at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+20150311+SIT+DOC+PDF+V0//EN&language=EN

[44] Kosovo Agency of Statistics quoted in Koha Ditore Article " Sektori privat me paga më të ulëta se sektori publik" (internal translation: The Private sector has lower salaries than the public sector), 16 November 2014 at http://koha.net/?id=27&l=33465 See also Report "Business Climate in Kosovo – A cross-regional perspective, Riinvest Institute, pg. 29, at http://www.riinvestinstitute.org/publikimet/pdf/Business_Climate_in_Kosovo1421852590.pdf

[45] See latest allegations made by the former PDK Minister of Internal Affairs Bajram Rexhepi at Koha Television Programme Rubikon, at https://www.youtube.com/watch?v=OjzFjB5TPWA.

[46] Report on Macro-Economic Development, February 2015 by Kosovo Central Bank, available at http://bqk-kos.org/repository/docs/2015/BQK-Makro%202.pdf.

[47] Quoted in KCSS "Assessment on the rioting in Macedonia and Bosnia and Herzegovina and its implications in Kosovo," December 2014, available at http://www.qkss.org/en/Occasional-Papers/Assessment-on-the-Rioting-in-Macedonia-and-Bosnia-and-Herzegovina-and-its-Implications-to-Kosovo-%28Albanian-language-only%29-310.

[48] A number of civil society organisations called for the protests, to call for the Minister of Communities Aleksandar Jablanovic to quit, following his statements labelling some Kosovo Albanians as savages, after their attempts blocked a Serb pilgrimage in the city of Gjakova. The protests also called for the Trepca mine complex of Kosovo,

injured, 107 police officers, 53 protesters and 10 by-passers.[49] The ticking of this social bomb lingers over the newly elected government, amidst the large numbers of migrated persons that have left Kosovo recently. Expected massive returns by a number of EU states will further exacerbate the situation. Given that most of the migrants have paid substantial amounts of money to migrate from Kosovo, and the reluctance of the GoK to offer financial assistance to the newly returned, the situation will continue to stand as a potential risk for instability.

Furthermore, Kosovo's development according to the World Bank remains scarce, with the widespread unemployment and the lack of quality jobs contributing to poverty and income insecurity.[50] The strategy regarding migration of the Kosovo's government also lists unemployment as the main reason for migration of Kosovo citizens, and the unemployment rate quoted from the Agency of Statistics is 45%.[51] Kosovo continues to have one of the weakest employment records in Europe.[52] Using the Agency of Statistics' domestic poverty line from the year 2011 of €1.72 per day, the World Bank considers that 29.7 percent of Kosovo's population of 1.8 million are poor.[53] The migration profile of the Ministry of Internal Affairs for the year 2013, quotes the reasons for migration to be economic and family reunions.[54]

Yet another push factor mentioned is poor health services offered, as a consequence of which the Kosovo citizens seek better healthcare in the countries of the region, mostly in Macedonia, as well as abroad.[55] The situation is further hampered by the fact that Kosovo citizens are not enjoying health insurance as of 1999.

Among the pull factors, have been the decisions of some European states, such as Germany, France and Austria, to don't consider Kosovo as a safe country, due to various political, legal and human rights violations.[56] The concept of a safe country differs in different states of the European Union. For example, under German law a "safe country" is considered the one "... in which, on the basis of their laws, enforcement practices and general political conditions, it can be safely concluded that neither political persecution nor inhuman or degrading punishment or treatment exists".[57] On the other hand, in the first half of 2013, the Hungarian authorities waved

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to be taken under state control. However, the opposition political parties such as Lëvizja Vetëvendosje (Self-Determination Movement), Aleanca për Ardhmërinë e Kosovës (Alliance for Future of Kosovo) and NISMA hijacked the event with Kosovo Police using excessive force and protests erupted in destruction and violence of the Pristina capital.

[49] Clinical Centre of Kosovo, (Qendra Klinike Univerzitare e Kosovës) Press Statement: "Ndihmë mjekësore kërkuan 170 të lënduar," (170 persons injured required medical assistance), 28 January 2015, quoted in http://koha.net/?id=27&l=42517

[50] Pg. 9 of The World Bank Group in Kosovo, Country Snapshot, October 2014, at http://www.worldbank.org/content/dam/Worldbank/document/eca/Kosovo-Snapshot.pdf

[51] Pg. 14 of Strategjia Shtetërore për Migrim dhe Plani i Veprimit 2013-2018 (National Strategy for Migration and its Action Plan 2013-2018), at https://www.mpb-ks.org/repository/docs/Strategjia_per_Migrim_SHQ.pdf

[52] The World Bank Group in Kosovo, Country Snapshot, October 2014.

[53] Ibid.

[54] Page 88 of extended migration profile, Ministry of Internal Affairs, at http://www.mpb-ks.org/repository/docs/PROFILI__I_MIGRIMIT_2013_-_Shqip.pdf .

[55] IOM, Jorge Baca, Roundtable "Debate related with the emigration of the Kosovo citizens", February 19, 2015, organized by Kosovo Poverty Network (KPN) in cooperation with Friedrich Ebert Stiftung (FES)

[56] For example Germany added in November 2014 Serbia, Macedonia and Bosnia and Herzegovina to the list of safe countries. Additionally, as of 10 October 2014 the French Council of State withdrew Kosovo from the national list of safe countries of origin. See for example http://www.mpb-ks.org/?page=2,46,1341; and European Council on Refugees and Exile at http://www.ecre.org/component/content/article/70-weekly-bulletin-articles/861-france-withdraws-kosovo-from-list-of-safe-countries-of-origin.html.

[57] See more at: http://www.asylumineurope.org/reports/country/germany/asylum-procedure/safe-country-concepts#sthash.o23Yvm3g.dpuf.

the practice of detaining asylum-seekers, opening the opportunities for smugglers to direct Western-Balkan citizens, including the Kosovar ones, to other EU member states.[58]

This opportunity was not missed by Kosovar and Serbian smugglers, leading, at the end of 2014 and the beginning of 2015, to the increase of illegal border crossings and of asylum applications by Kosovar citizen's. These factors were used by smugglers to misinform citizens and increase their migration influx to EU states. Mass media, including social media, were utilised to spread non-factual and ambiguous information on several EU member states granting asylum for Kosovars.[59] Accordingly, the primary EU states of destination were Germany, France and Austria, and the major transit for this was through Serbia to Hungary.

Kosovo is also the only country left outside the visa facilitation agreement, which was signed with other countries of the region prior to the initiation of the visa liberalization process. The visa facilitation agreement would have eased the procedures for visa application.[60] Due to lack of visa facilitation during 2010-2012, there were 217.862 Kosovars applying for Schengen visas. Over 17% of visa applications were rejected by the states of the "Schengen area," with Kosovars spending 15 million euro's only for visa application procedures.[61] In 2013, in the EU countries with highest number of asylum seekers from Kosovo, the refusal rate was 20%.[62] In 2012 and 2013 the number of Kosovo citizens to whom the entry into the EU Member States was refused, increased from 625 to 1.400. This increase of the refusal rate was followed by an increase of the citizens from Kosovo illegally staying in the EU, from 5.200 to 7.870.[63] Based on the 2010-2012 figures, only one in ten Kosovars had the mobility to move freely into the EU.

In the midst of these pull and push factors, Kosovo citizens remain hostage of the lack of political willingness of the EU states to accelerate visa liberalisation for Kosovo. Only recently, in March 2015, the EU Parliament Resolution on the European Integration Process of Kosovo voted[64] against this isolation, by urging the EU Commission to undertake outmost efforts in accelerating the visa liberalisation for Kosovo. With an uncertain EU perspective, and with Kosovo remaining the only country without visa liberalisation in the region, Kosovo citizens continue to face isolation which has contributed to the massive irregular migration of Kosovars in the past months. On the other hand, the only profiteers from this isolation continue to be the smugglers and organised criminal groups of the region in both, Kosovo and Serbia.

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[58] See "Fifth Report on the Post-Visa Liberalisation Monitoring for the Western Balkan Countries in accordance with the Commission Statement of 8 November 2010," published 25 February 2015 at http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20150225_5th_post-visa_liberalisation_report_with_western_balkan_countries_en.pdf.

[59] See for example "Franca vendos të japë azil për kosovarët (Video)", (France decides to grant Kosovars asylum); Also Telegrafi, 26 November, 2014, at http://www.telegrafi.com/lajme/franca-vendos-te-jape-azil-per-kosovaret-video-2-54253.html

[60] See Action Paper on Schengen Visa Refusal Rate in Kosovo, Public Pulse, pg 15. Supported by UNDP and USAID, available at http://www.mei-ks.net/repository/docs/AP_on_Visa_eng.pdf

[61] "The Visa Business, Report on the Cost of Visas for Kosovars in the period 2010-2012: GAP Institute and GLPS http://www.institutigap.org/documents/91619_gap_visas_eng.pdf

[62] See KIPRED Table 1.1 analysis of visa applications for Belgium, Germany, Switzerland, Greece, Norway, Finland, Slovenia and Hungary (Annex).

[63] Commission Staff Working Document accompanying the 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.15 at, http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/accompanying_staff_working_document_en.pdf

[64] See European Parliament website Texts Adopted at the Sitting of Wednesday 11 March 2015, Pg. 151, at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+20150311+SIT+DOC+PDF+V0//EN&language=EN.

V. The response to the challenge of irregular migration

Intertwined with the six months long institutional deadlock and with the creation of the new government under the lead of LDK and PDK, the irregular migration from Kosovo to EU member states, hit its highest numbers starting from November 2014 until March 2015. The EUROSTAT data show that while in the first six months of 2014 the average number of asylum seekers from Kosovo in the EU was 950 persons per month, in the second half of 2014 this number increased to thousands for every month. The most recent EUROSTAT data show that during the period from November 2014 up to March 2015 the number of Kosovo asylum seekers in the EU member states was 57,945[65] (See Table 1.4). Additionally, EUROSTAT recent figures for the month of February 2015, excluding Germany, provide 13.805 citizens asylum seekers. At the same time, the number of Kosovo citizens living illegally in the EU member states remains unknown.

The Kosovo Intelligence Agency reported to the Kosovo Assembly that during the peak of migration from Kosovo, starting in November 2014 up to January 2015, the estimated number of irregular migrants who migrated from Kosovo to the EU was around 50.000 persons.[66] Several Kosovo Assembly MP's, citing various intelligence sources, including unofficial information from the Kosovo Police, have stated that the number of persons that left Kosovo only from the border crossings Merdare and Dheu i Bardhë with Serbia, may be higher than 113.000.[67]

The GoK Response: Amidst these extreme figures given in efforts to estimate the accurate number of people who left Kosovo, the newly elected government kicked off in dealing with this issue by choosing to respond with old priorities and budgeting strategies. Calls made to the government by the Kosovo Assembly, to prioritise economic development, the creation of new jobs, and the changes in fiscal policies in line with business requests, in order to halt irregular migration, were met lethargically.[68] The GoK chose to manage the new situation created by the irregular migration by initial vague and sporadic reaction. Until today there are no official data drafted by the Government on the number of people who left Kosovo. With the Government lacking its own data, only EUROSTAT figures are available.[69] The official figures remain unclear, and the only data provided by the GoK were those on the school-drop out numbers of pre-university students – with the estimation that 5.200 students have left Kosovo schools.[70]

The Kosovo institutions were warned and required by the EU to develop appropriate responses to irregular migration and readmission, in a situation in which the number of Kosovo citizens who were found to be illegally staying in the EU Member States doubled in 2013, and the

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[65] This number includes the total number of Kosovo Asylum Seekers to EU Member States for this period, regardless if they applied for the first time or not (last updated: 27 March 2015).
[66] Discussion of the Kosovo Assembly Committee for the Oversight of the Kosovo Intelligence Agency, quoted in Express "50 mijë qytetarë kanë ikur nga Kosova (50.000 Citizens have fleed Kosovo), http://express.mk/2015/02/50-mije-qytetare-kane-ikur-nga-kosova/, February 6, 2015.
[67] Vetëvendosje MP in the Kosovo Assembly, Ilir Deda, address at the Assembly Committee on European Integration, 16 February 2015. See Kosovo Assembly website Official Transcript at http://www.kuvendikosoves.org/common/docs/proc/proc__2015_02_16_13_5770_al.pdf.
[68] See Kosovo Assembly Resolution on halting illegal migration of Kosovo citizens, available at http://www.kuvendikosoves.org/common/docs/Rezolute_per_pengimin_e_migrimit_ilegal_te_qytetareve_te_Kosoves.pdf.
[69] KIPRED E-mail communication with MiA official, December 2014.
[70] KIPRED E-mail communication with Political Adviser to Minister of Education Azem Guri, February 2015.

number of rejected readmission applications tripled.[71] The new government continued with old habits, failing to understand the new situation that was evolving on the ground. Planning and budgeting remained inherited from previous governments, and, as a result, in the budget for 2014/2015, the fund for reintegration of the readmitted persons decreased, in spite of the fact that the number of irregular migrants was rapidly increasing. Therefore, the available budget for 2015, allocated for readmission, remains at the value of 2,112,671.00 Euros.[72] Furthermore, the Government continued to work with old policies, which qualified for the readmission financial assistance package, only the migrants who left Kosovo before 2010.[73] Consequently, tens of thousands of migrants who left Kosovo recently, are not eligible for assistance from this fund.

Old priorities of the new government continued with massive investments in capital projects. For example the recent allocation of millions of Euro's in expropriation of land for building the new highway between Prishtina and Skopje will have for Kosovo taxpayers an estimated cost of around 600 millions Euro's. Starting from 2015 up to 2017, this project will stretch out further the taxpayers' money with approximately 30 million Euros, only for the expropriation of the land.[74] Clearly the political agendas set by old political priorities are continuing to take precedence over the new challenges. Hence, the reactions of the newly appointed government to the newly confronted problem of massive migration were lethargic. The highway between Kosovo and Albania, highly advocated by the former PDK led government, has shown minimal return for Kosovo's economic development, and this was also followed by a substantial decline of the Foreign Direct Investment in the first half of 2014.[75]

The feeble government response was also justified with the Technical Agreement on Freedom of Movement reached in between Kosovo and Serbia in 2011.[76] The government claimed that there was not a lot that could have been done to stop irregular migration, given that this agreement guaranteed free movement of persons between Kosovo and Serbia, based on ID identification only. Even though smuggling with migrants is a criminal offence, the initial investigations were pitiable. Absence of proper investigations was accompanied by the hectic and panicked approach of the government in responding appropriately to the newly created situation.[77] Furthermore, the response of other Kosovo institutions lacked as well the appropriate strategic guidance by the government.

The Kosovo Police response: The EU noted that the KP should develop effective border control by expanding its systemic analysis of the risks, in order to detect and prevent illegal

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[71] See Pg. 49 of 2014 Progress Report on Kosovo.

[72] Ministry of Finance, Central Budget Tables 2015, available at https://mf.rks-gov.net/sq-al/Buxheti/Buxheti-i-Republikes-se-Kosoves/Buxheti-qendrore

[73] See GoK Regulation No. 20/2013 on Reintegration of Repatriated Persons and Management of the Reintegration Programme.

[74] The total of the 2015 budget for the Ministry of Environmental and Spatial Planning is 38,043,185.00 Euros. See Kosovo Budget Tables 2015.

[75] FDI has been lower for 32.9 percent respectively 110.1 million of Euro's, in comparison to 2013. See Report on Macro-Economic Development, February 2015 by Kosovo Central Bank, available at http://bqk-kos.org/repository/docs/2015/BQK-Makro%202.pdf

[76] The agreement was reached on 2 July 2011 and began to be implemented on 26 December, 2011. The aim of the agreement was to enable free travel within and through territory of Kosovo and Serbia. Amongst main points of this agreement are: the mutual use of ID card system and driving licenses for cross border/boundary travel. See pg. 7 of KIPRED Policy Paper No.2/13, June 2013 "The analysis of the implementation of the technical agreements in between Kosovo and Serbia" at http://www.kipred.org/advCms/documents/45012_Implementation_of_technical_agreements_Kosovo_and_Serbia.pdf.

[77] KIPRED interview with Ministry of Internal Affairs' senior official, December 2014.

cross-border activities effectively.[78] Accordingly, border police held regular coordination meetings, regional and local, with participation of customs to draft a risk analysis for illegal crossings of the border.[79] Gathering point of migrants was Subotica, in the village called Paliq in Serbia, where citizens from Kosovo spend the night in villas/hotels before heading to the Hungarian border.[80] According to reports from migrants, these hotels were run by smugglers from the central part of Serbia, Presheva and Kosovo, with KS car plates seen in front of the hotels. There were clear indications that massive irregular migration was happening between Serbia and Hungary, in close cooperation with Kosovo smugglers based in Serbia. However, in the light of recent migration, the border crossings into Serbia were not considered illegal.

Only after the numbers of irregular migrants increased rapidly, the Kosovo Police intervened to profile irregular migrants, and it also started to use "persuasion" tactics towards migrants at borders. In few cases this implied refusal for citizens to leave the country freely, by returning them from bus stations and/or border crossings. Kosovo Police estimated that it was able to 'persuade' a number of migrants not to leave Kosovo, with figures ranging from 10.000 up to 15.000 returned from the border.[81] The official statements given by the KP on the 'persuasion' tactics used, were not that citizens were returned or denied free movement, but that they were "persuaded" not to migrate illegally, by explaining risks from irregular migration. However, responding behind schedule, only in February 2015, the awareness campaigns on irregular migration, and the production of information leaflets were kicked off by the Ministry of European Integration, which provided support in detailing accurately the risks of irregular migration.[82] The persuasion tactics used by the Kosovo Police remained unclear, and the official awareness campaigns on irregular migration were minimal and belated.

The profiling response used by the Kosovo Police failed to acknowledge and profile potential smugglers, often also impeding citizen's right to free travel. Kosovo Police lacked operational plans to investigate promptly the smugglers, and its response had more of a reactive approach. During 2014, the KP reported that the total number of investigated cases of migrant smuggling for the year 2014 was 50.[83] In November 2014 the KP arrested 13 persons within Kosovo. In beginning of 2015, during the peak of irregular migration, Kosovo Police arrested only 5 persons for smuggling of migrants.[84] Recent figures have increased with 7 cases inherited from 2014, and 31 new ones. In total, there were 19 persons arrested, and 65 citizens were victims of smuggling.[85]

In parallel to these arrests, the Serbian police engaged in a number of arrests of migrants and smugglers, once after the EU member states put pressure on Serbian authorities to react promptly to the situation. Accordingly, a working arrangement was agreed with Serbian Ministry of Internal Affairs and Hungarian respective ministry, expected to be followed also by the Austrian state. The working arrangement sets out principles to further deepen cooperation

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[78] Pg. 48, 2014 Progress Report on Kosovo.
[79] KIPRED e-mail communication Customs official representative at the NCBM, February 2015.
[80] See Zeri Newspaper, 23 December 2014, "Vilat e Trafikimit" (The trafficking Villas).
[81] Kosovo Police official statement at KIPRED and SiV roundtable, 27th of January 2015 in Peja/Pec region.
[82] Minister of European Integration Address at the Assembly Committee on European Integration, 16 February 2015. See Kosovo Assembly website Official Transcript at http://www.kuvendikosoves.org/common/docs/proc/proc__2015_02_16_13_5770_al.pdf
[83] Kosovo Prosecutorial Council Annual Inter-Institutional Report 2014 of Harmonization of Statistics, Pg.41 at, http://www.psh-ks.net/repository/docs/RAPORTI_VJETOR_2014_I_MEKANIZMI_PERCJELLES.pdf
[84] See also Kosovo Police Press Releases Available at http://www.kosovopolice.com/?page=1,26,4768&offseti=8 , http://www.kosovopolice.com/?page=1,26,4752&offseti=20 , http://www.kosovopolice.com/?page=1,26,4723&offseti=44
[85] KIPRED E-mail Communication with Kosovo Police official, last communication 20th of March 2015.

against irregular migration, and to also facilitate readmission of Kosovo citizens via land routes through Serbia.

Often investigations were also made difficult by the tactics used by smugglers, and the migrants were claiming to leave Kosovo for Serbia for health or other reasons.[86] Additionally, migrants in cooperation with smugglers were not carrying big amounts of money when transiting through Serbia and Hungary. In most of the cases, the smugglers were being paid directly by close family members of migrants residing in the EU member states.[87] The transportation of migrants near the border with Hungary was arranged by smugglers that requested from migrants a sum of money of up to 250 Euros per person.[88] Smugglers would escort migrants approximately 20 km from the border with Hungary, and the migrants were afterwards instructed to walk for 5 hours or more by crossing the border illegally into Hungary.[89] These circumstances were given as obstacles to the law enforcement agencies in the investigation of smuggling with migrants, given that the money from smuggling was not easily traceable.

Furthermore, smuggling continued freely in front of Serbian authorities who lacked cooperation with Kosovo Police.[90] In spite of the fact that few border meetings between Kosovo's and Serbia's law enforcement authorities took place,[91] the initial reaction by Serbian authorities during this massive influx of migrants from Kosovo to the EU was minimal.[92] Only in March 2015, the Directors of Kosovo and Serbian Police met in Belgrade[93] to discuss the ways further on general cooperation including irregular migration response.

The lack of clear strategic guidance from the government level, made the Kosovo Police response reactive rather than proactive. Even though thousands of citizens were smuggled from Kosovo, the KP so far responded with investigation of smugglers identifying only 65 citizens as victims.[94] Given that irregular migration and smuggling with migrants is a cross-border crime, KP should further its efforts to enhance cooperation with regional countries, including Serbia. However, these efforts should be facilitated and assisted by the EU member states, by exploring modalities of cooperation with EUROPOL, and facilitating a cooperation arrangement, including that in the field of operational information and criminal intelligence, in order to prevent, detect and investigate serious crimes. The EULEX involvement in this regard had been foreseen also under the Visa liberalization Roadmap with Kosovo, but EULEX planned to transfer these arrangements to the EU Office.[95]

Kosovo Judiciary Response: In relation to the massive irregular migration of Kosovo citizens in the recent months, Kosovo courts choose to carry on with old sluggish response. The Kosovo courts continued to struggle in resolving the cases which were submitted by law enforcement agencies for final rulings. Appropriate court reaction and sentences foreseen under the applicable

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[86] KIPRED interview with Kosovo returned migrant, February 2015, Prishtina.
[87] KIPRED interview with Special Prosecutor of Kosovo Special Prosecution office, December 2014, Prishtina.
[88] KIPRED interview with Kosovo returned migrant, February 2015, Prishtina.
[89] Ibid.
[90] KIPRED interview with a MiA senior official, 18 December 2014.
[91] Kosovo institutions conducted a series of meetings with EU representatives in Kosovo and Embassy representatives expressing concerns in relation to Serbia's negligent response towards smuggling of migrants between Serbia and Hungary border line. KIPRED interview with MiA senior official, 18 December 2014.
[92] Ibid.
[93] See Kosovo Police statement at http://www.kosovopolice.com/?page=2,26,4772, 11 March 2015.
[94] KIPRED E-mail communication with Kosovo Police official, March 2015.
[95] KIPRED interview with EULEX prosecutor, September 2014.

laws, would have given a clear message for smugglers and organised criminal groups facilitating massive irregular migration of Kosovars. Whilst engaging in this crime represents an easier form of offense, punishable with at least two years of imprisonment, organizing and directing of a criminal group in committing such a crime is more severe form, punishable from seven up to twenty years of imprisonment.[96]

From the data available during 2014, the rate of unresolved cases by Kosovo's Basic Prosecution offices is high, with 59 or 63% out of the 94 cases received. Out of the total of 35 cases solved, there were 72 persons indicted with smuggling of migrants (See table 1.5).[97] Furthermore, during the year 2014, Kosovo judges continued to fail in reacting in timely manner in issuing sentences for smugglers, by deciding and sentencing only 16 persons indicted. From these 15 were found guilty, and one of them was acquitted.[98] Acquittal approaches were also confirmed by judges in the Peja/Pec region,[99] with other cases remaining in procedure.

The 2014 track record of judicial response failed to give a proper response to the activities of smuggling of migrants. Nevertheless, as there is a considerate number of 59 cases remaining in procedure, Kosovo prosecutors and judges should ensure a higher rate of appropriately sentenced cases for smuggling with migrants. Furthermore, Kosovo courts should react promptly to the new cases of irregular migration, in order to start investigation, indictment and appropriate sentencing, and show a clear willingness in fighting of this phenomenon.

The response on the readmission of Kosovo citizens: In ending, responding to the newly created massive influx of migrants to the EU member states, most affected EU member states, such as Germany, Austria and Hungary have announced massive returns of migrants to Kosovo in expeditious procedures. For instance, German Federal Office for Migration and Refugees (BAMF) dealt with applications from Kosovo citizens, by requiring that Kosovo asylum seekers stay in the first reception centres until the duration of proceedings for asylum are finished. In order to accelerate the process Kosovo asylum applications will be decided quickly, aiming to be finished within two weeks.[100]

In line with these accelerated procedures, the GoK should prepare for prompt and adequate response to the new situation of massive migrant returns announced. Migrants that left Kosovo during the past months will return with considerable financial losses, and they may, consequently, pose danger for the stability of Kosovo. Current preparedness of the Government to handle such massive returns seems pitiable. Current capacities of Kosovo in readmitting its citizens in recent years have been around 5.000 citizens annually.[101] However, in 2015 the government is continuing to work with the old budget of approximately 2 million Euros for the Reintegration Fund.[102] The reintegration fund had a lower budget allocated in 2015, in the value

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[96] If the offence results with death of one or more persons, the perpetrator may be sentenced by a fine and imprisonment of not less than ten years or lifelong imprisonment. See Kosovo Criminal Code, Article 170, Paragraphs 1, 5, 6.

[97] Kosovo Prosecutorial Council Annual Inter-Institutional Report 2014 of Harmonization of Statistics, Pg. 38-43 at, http://www.psh-ks.net/repository/docs/RAPORTI_VJETOR_2014_I_MEKANIZMI_PERCJELLES.pdf

[98] Ibid.

[99] Kosovo judge official statement at KIPRED and SiV roundtable, 27th of January 2015 in Peja/Pec region.

[100] See German Federal Ministry of Interior, News on "Sharp rise of asylum seekers from Kosovo," 13 February 2015. Available at http://www.bmi.bund.de/SharedDocs/Kurzmeldungen/EN/2015/02/sharp-rise-in-asylum-seekers-from-kosovo.html.

[101] Government State Migration Strategy and Action Plan 2013-2018, Pg. 19 and 20 at https://www.mpb-ks.org/repository/docs/Strategjia_per_Migrim_SHQ.pdf

[102] Pg. 27/43 on Budget of Republic of Kosovo for year 2015, Law No. 05/L-001 at http://www.kuvendikosoves.org/common/docs/ligjet/05-L-001%20a.pdf.

of 2,112,671.00 Euros, compared to 2014 and 2013, which were 2.372.400 Euro, respectively 3.170.150 Euro. These calculations were made even though the number of asylum seekers by the end of 2014 confirmed by the EUROSTAT data has reached the number of 35.970 persons (see Table 1.3). Furthermore, the current timeframe set for assistance of readmitted persons that will benefit from the Reintegration Programme, cuts out from assistance the migrants that left Kosovo after 28 July 2010, due to a government regulation non-compliant to the Kosovo Law on Readmission.[103] This timeframe continues to cut-off repatriated citizens from long-term reintegration services and should be promptly changed.

Other responses: As migration is considered to have a security impact for the EU, according to the Visa Liberalisation Roadmap with Kosovo,[104] the involvement and prompt response of EULEX is crucial. As Kosovo Police continues to remain outside of EUROPOL membership, EULEX involvement has been required to assist new modalities of cooperation with EUROPOL, whilst also establishing an arrangement for operational information and criminal intelligence in order to prevent, detect and investigate serious crimes.[105] These competences are planned for transfer to the EU office.

The interchange and convulsion of definitions related to irregular migration, smuggling and trafficking in human beings, affects also the response of law enforcement agencies including that of the EULEX. The EULEX role in investigation of these cases was minimal, by joining the cases of trafficking in human beings and smuggling of migrants, with only four cases indicted in 2014. From the communication with EULEX, there was no clear division of how many cases were those of trafficking with human beings, and how many were smuggling with migrants.[106]

The border points used mainly for migration were border crossings in Merdare, followed by Dheu i Bardhë, and, also, at a lesser extent, the one of Jarinje.[107] The EULEX Police in the region of Northern Kosovo patrols in Jarinje and Bernjak border points.[108] The EU Rule of Law Mission, in its border mentoring and advising capacity, only watched the increased migrants flow. Furthermore, the facilitation of bilateral cooperation with Serbian authorities, under the EULEX lead, in response to the migration flows, including the Northern part of Kosovo, has not been reported. The vague role and response of EULEX may be seen as a lesson learned by EULEX, which should have stepped up its efforts in facilitating the Kosovo Police for the new modalities of cooperation with EUROPOL or FRONTEX and EUROJUST, by enhancing its capacities to fight crimes such as the one of smuggling with migrants. Due to the unfinished task of EULEX this competence has been transferred to EU office.

The EU member states took the matter into their hands by giving clear messages to Kosovo citizens that their chances for asylums to be granted are minimal. Even though these messages arrived quite late, after thousands of Kosovars had already migrated, there was a number of visits from EU, and of diplomats accredited in Kosovo, to provide factual information related to asylum procedures in the EU.[109] After clarifications from the EU member states on the issue,

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[103] See Regulation No. 20/2013 on Reintegration of Repatriated Persons.
[104] See Pg.3 of Visa Liberalisation with Kosovo Roadmap, available at http://eeas.europa.eu/delegations/kosovo/documents/eu_travel/visa_liberalisation_with_kosovo_roadmap.pdf.
[105] See Pg.12 of Visa Liberalisation with Kosovo Roadmap.
[106] E-mail communication with EULEX spokesperson, 20th January 2015.
[107] KIPRED interview with MIA senior official, December 2014.
[108] EULEX Executive Division mandate, at http://www.eulex-kosovo.eu/en/executive/.
[109] The Minister of Interior of Austria Johanna Mikl-Leitner met with Kosovo's Minister of Internal Affairs, on 12th February 2015. Additionally a number of EU country ambassadors increased their visits to the MIA of Kosovo to

that Kosovo's migrants cannot be considered for asylum based on economic reasons, the number of migrants leaving Kosovo started falling. Other measures of surveillance and assistance were offered with German police officers dispatched to the Serbian-Hungary border to deal with the migrant's influx, and to address the failure of the Serbian and Hungarian authorities to stop the massive illegal border crossings.[110] As a result of the pressure by EU member states, the Serbian police finally started charging and fining for illegal border crossing several Kosovo migrants and arresting of smugglers.[111] As reported from Hungarian authorities, joint patrols by Hungarian, Austrian and German police officers were also launched to help identify illegal immigrants at major railway stations.[112] As of March 2015 the numbers of migrants from Kosovo in the EU member states have started decreasing.

Due to 5 member states of the EU not recognising Kosovo's statehood, Kosovo continues to be the most isolated country also in the cross-border cooperation and fighting of smuggling crimes, due to the missed opportunity of cooperating with EUROPOL. Accordingly, the EU member states should continue to actively support Kosovo in its European path by also providing clear incentives to Kosovo citizens. The visa free regime with EU member states would stop irregular migration, however not migration itself. As previous experiences in the countries with free visa travel to the EU have shown, the number of migrants increased in parallel to the visa liberalisation. For example in 2010 when Bosnia and Herzegovina was granted visa liberalisation, there were 1.330 citizens applying for asylum. In September 2014, the number increased to 7.300 citizens applying for asylum (Table 1.2). Kosovo would not be the only country in the region to have an increased trend of migration, given that irregular migration continued as well in other regional states, even after they were granted visa liberalisation. Therefore, the guaranteeing of the freedom of movement and granting the visa liberalisation for Kosovo would minimise the smuggling modus operandi in Kosovo and the region.

VI. Conclusion and the Way Forward

With uncertain EU perspective, and with Kosovo as the only country of the region remaining without visa liberalisation, Kosovo citizens continue to face isolation, which, in addition to internal socio-economic situation, has contributed to the massive irregular migration of Kosovars in the past months. On the other hand, the only profiteers from this isolation continue to be smugglers and organised criminal groups of the region, particularly in Kosovo and Serbia. The visa free regime with EU member states would stop irregular migration, without stopping the migration itself. As previous experiences of the countries with free visa travel to the EU have shown, the number of migrants increased in parallel to the visa liberalisation.

Different pull and push factors have contributed to the massive migration flows, and these were interconnected with the level of isolation faced by Kosovo citizens. These citizens continue to

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speed up the correct information flow for asylum seekers and provide accurate information through mass media. See http://www.mpb-ks.org/?page=1,46,1379.

[110] "German police sent to Serbia-Hungary border to stem Kosovo exodus" 12 February, 2015, at http://www.reuters.com/article/2015/02/12/us-germany-kosovo-migrants-idUSKBN0LG21H20150212

[111] See Ministry of Internal Affairs of Serbia Press Relaeases on 07.02.2015 "Sprecen ilegalni prelazak 159 migranata na granici sa Madarskom" (Ilegal border crossing stoped of 159 migrants on the border with Hungary), available at http://www.mup.gov.rs/cms_cir/saopstenja.nsf/saopstenja-MUP.h?OpenPage&ExpandSection=64%2C49%2C29%2C28#_Section64.

[112] "Hungarian, Serbian and Austrian Ministers of Interior met in Belgrade", 20 February, 2015 at, http://www.kormany.hu/en/ministry-of-interior/news/hungarian-serbian-and-austrian-ministers-of-interior-met-in-belgrade

suffer from systemic problems exacerbated by high official's bribery, limited opportunities for employment and for creation of a stable environment for businesses, due to widespread nepotism and corruption. Only in the first six months of 2014, investments in Kosovo were 110.1, million Euro's, which is lower for 32.9% in comparison to the respective period of 2013.

Amidst systemic corruption, Kosovo is at risk from social unrests, due to the socio-economic situation exacerbated by the six-month long institutional deadlock. Several international representatives were expecting violent eruptions and instability in Kosovo, triggered by these factors. The ticking of this social bomb lingers over the newly elected government, amidst the number of migrated persons that have left Kosovo recently. Expected massive returns by a number of EU states will further exacerbate the situation. Accordingly Kosovo Government needs to prepare appropriately for the returns of migrants, often less wealthy than when they left Kosovo, by acknowledging this return as a priority. Appropriate response would also speed up visa liberalisation.

The newly elected Kosovo government chose to respond with old priorities and weak budget strategies. Until today there are no official data drafted by the government on the numbers of Kosovars migrating, and the response has been based on outdated documents, such as the recently approved Migration Profile for the year 2013. The numbers provided by the EUROSTAT are worrisome, showing that from November 2014 up to March 2015 (excluding Germany for the month of February 2015) there were 57,945 persons from Kosovo who have requested asylum in the EU member states. Number of Kosovo citizens living illegally in the EU remains unknown.

Even though Kosovo institutions were warned and required to develop appropriate responses, the newly elected government continued with old habits failing to understand the situation evolving on the ground. For example the available budget for readmission in 2015 provided by the government remains the old one, with around 2 million Euros. The readmission package and qualification for financial assistance continues as well to be the old one, assisting only migrants that have left Kosovo until 2010.

A pull factor in irregular migration has also been the recent decision of several European states, such as Germany, France and Austria, to declare Kosovo as a non-safe country, due to various political, legal and human rights violations. This opportunity was not missed by Kosovar and Serbian smugglers, leading to an increase of irregular migration of Kosovars in the past months. These factors were used by smugglers to misinform citizens and increase their migration influx to EU states. Mass media including social media were utilised to spread non-factual information on several EU member states granting asylum for Kosovars.

The response of other institutions lacked appropriate proactive approaches and strategic guidance, remaining with reactive modus operandi. Investigations of smuggling were also hampered by the lack of regional cooperation, and particularly with Serbia. Whilst smuggling continued for months, and thousands of citizens were smuggled from Kosovo via Serbia to Hungary, the KP only recently arrested a small number of smugglers, identifying until 20th of March 2015 only 65 citizens as victims.

The 2014 track record of judicial response isn't promising for expecting a proper response to the recent arrests made by the KP. From the small numbers of cases indicted by Kosovo prosecutors in 2014, judges found guilty only 15 persons and one of them was acquitted. In 2014 Kosovo prosecutors had 63 percent of the cases of smuggling remaining unsolved. Nevertheless,

Kosovo courts should react promptly in investigating and indicting the new cases of irregular migration, in order to show appropriate willingness in fighting of this phenomenon.

The outcomes in fighting corruption could be effective in minimising the push factors of irregular migration. By reducing systemic corruption, nepotism and ensuring steady environment for businesses, Kosovo government would show signs of detachment from the old ways of governance, and start building a resilient state for its citizens.

At the end, KIPRED proposes the following recommendations to overall improve the fulfilment of the EU requirements in combating irregular migration:

- The government should urgently finalise the third Report on Implementation Overview on the Visa Liberalisation Roadmap, in order to speed up the monitoring and the evaluation of the EU on the fulfilment of the Visa Liberalisation requirements by Kosovo.
- The GoK should adopt an up to date Extended Migration Profile and provide its own official statistics for the number of persons that have migrated in the past months. Strategic analysis should be part of any future reaction of the government in addressing irregular migration.
- The government should increase immediately the budget on reintegration of readmitted persons, and change the discriminatory timeframe that continues to deny assistance to migrants leaving Kosovo after 2010. The financial assistance should be accordingly re-calculated in order to respond appropriately to the returns of migrants and speed up visa liberalisation.
- The government should be proactive rather than reactive, in providing regular information campaigns to travellers by also factually explaining risks from irregular migration and smuggling, including explanation of legal consequences. Additionally, regular information should be provided by utilising media, to offer explanation of the visa liberalisation process and consequences of its misuse by individuals.
- Kosovo law enforcement agencies, and specifically the Kosovo Police, should explore regular modalities of operational cooperation with countries of the region, including Serbia. These efforts should be facilitated and assisted with the persistence of EU member states for EULEX to deliver on its mandate by exploring modalities of cooperation, including cooperation with EUROPOL and/or FRONTEX, in order to respond to the crimes of cross-border and smuggling.
- Kosovo courts in close cooperation with law enforcement agencies should ensure a higher rate of appropriately investigated, indicted and sentenced cases for smuggling. Furthermore, Kosovo judges should respond promptly to the new cases of smuggling, in order to show appropriate willingness for fighting this phenomenon, in accordance with the sentences foreseen by applicable laws. Regional cooperation in between prosecutors and police should be expedited in fighting cross-border crimes.
- The EU States should accelerate visa liberalisation for Kosovo. The only profiteers from the isolation of Kosovo from visa liberalisation continue to be smugglers and organised criminal groups of the region, and particularly those from Kosovo and Serbia. The visa free regime with EU member states would halt illegal migration, indeed, without stopping the migration itself. As previous experiences of the countries with free visa travel to the EU have shown, the number of migrants increased in parallel to the visa liberalisation.

VII. Annex

Table 1.1. Rate of Visa issuance/rejected by EU Member States, 2012-2013

Year	Visa category	Belgium	Germany	Greece	Finland	Hungary	Slovenia	Switzerland	Norway	Average
2012	Total A, C visas issued	1,829.00	16,600.00	441.00	989.00	1,618.00	3,295.00	17,553.00	532.00	
	Total A,C visas applied for	2,774.00	25,733.00	485.00	1,282.00	2,289.00	4,631.00	22,131.00	759.00	
	% of visas issued	**66%**	**65%**	**91%**	**77%**	**71%**	**71%**	**79%**	**70%**	**74%**
	% of visas rejected	**34%**	**35%**	**9%**	**23%**	**29%**	**29%**	**21%**	**30%**	**26%**
2013	Total A, C visas issued	1,915.00	21,849.00	4,275.00	1,144.00	2,067.00	3,281.00	17,993.00	1,279.00	
	Total A,C visas applied for	2,823.00	26,071.00	4,556.00	1,314.00	2,819.00	4,415.00	23,917.00	1,496.00	
	% of visas issued	**68%**	**84%**	**94%**	**87%**	**73%**	**74%**	**75%**	**85%**	**80%**
	% of visas rejected	**32%**	**16%**	**6%**	**13%**	**27%**	**26%**	**25%**	**15%**	**20%**

Source: EC second report on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap (Working document)

Table 1.2. The trend of Asylum Seekers from countries in the region after Visa Liberalisation

States	Visa Liberalisation granted	Number of asylum seekers				
		2009	2010	2012	2013	Jan-Sep 2014
Kosovo	No Visa Liberalisation	14,275.00	14,310.00	10,210.00	20,215.00	11,880.00
Macedonia	At the end of 2009	930.00	7,550.00	9,625.00	11,060.00	7,105.00
Serbia	At the end of 2009	5,460.00	17,745.00	19,055.00	22,375.00	18,955.00
Albania	At the end of 2010	2,065.00	1,905.00	7,500.00	11,020.00	12,010.00
BiH	At the end of 2010	1,330.00	2,105.00	5,835.00	7,065.00	7,300.00

Source: EUROSTAT

Table 1.3. The trend of Asylum Seekers from Kosovo, 2009- up to January 2015

Number of asylum seekers in the EU Member States during 2009-2014	2009	2010	%	2011	%	2012	%	2013	%	2014	%	Jan 2015
Kosovo asylum seekers	14,275.00	14,310.00	0.24%	9,870.00	-44.98%	10,210.00	3.33%	20,215.00	49.49%	35,970.00	43.80%	13,200.00
Non EU citiznes	263,990.00	258,945.00	-1.95%	303,105.00	14.57%	335,290.00	9.60%	433,375.00	22.63%			
Non EU/ Kosovo in percentage	5%	6%		3%		3%		5%				

Source: EUROSTAT

Table 1.4. Number of Kosovo Asylum Seekers to EU Member States, November 2014-February 2015 (regardless if they applied for the first time or not)

No. of Kosovo asylum seekers to EU Member States	Nov-14	Dec-14	Jan-15	Feb-15	Total
	8,045.00	13,905.00	14,250.00	21,745.00	57,945.00

Source: EUROSTAT, last update 27 March 2015

Table 1.5. State of criminal charges of Smuggling with migrants for year 2014

Prosecutions	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	17	3	18%	14	82%
Basic Prosecution in Prishtina	21	7	33%	14	67%
Basic Prosecution in Prizren	9	4	44%	5	56%
Basic Prosecution in Peja	5	2	40%	3	60%
Basic Prosecution in Gjilan	22	17	77%	5	23%
Basic Prosecution in Mitrovica	7		0%	7	100%
Basic Prosecution in Ferizaj	7	1	14%	6	86%
Basic Prosecution in Gjakova	6	1	17%	5	83%
Total	**94**	**35**	**37%**	**59**	**63%**

Source: KPC Annual Inter-Institutional Report 2014

Table 1.6. The allocated budget for the reintegration of repatriated persons, 2010-2015

Year	The allocated budget for the reintegration of repatriated persons 2010-2015
2010	500,000.00 €
2011	3,420,150.00 €
2012	3,170,150.00 €
2013	3,170,150.00 €
2014	2,372,450.00 €
2015	2,112,671.00 €

Source: MFA Budget Tables 2010-2015

Table 1.7. Kosovo asylum applicants in the EU by destination country

Kosovo asylum applicants in the EU by destination country	Germany	Hungary	Austria
2014	8,923.00	21,453.00	1,901.00
Jan-15	3,630.00	10,188.00	1,029.00

Source: E-mail communication with Respective Embassies in Prishtina