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STRENGTHENING RULE OF LAW IN KOSOVO: THE FIGHT AGAINST CORRUPTION AND ORGANISED CRIME

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CONTENTS

I.	Introduction	5
II.	Short background	7
III.	The institutional overview.....	8
	a) Kosovo institutions	10
	b) Judicial and Prosecutorial services.....	11
	c) EULEX support.....	14
	d) Judicial services.....	15
	e) Police capacities.....	17
IV.	The state of corruption and organised crime	19
V.	Recent developments in the fight Against Corruption	20
	a) Confiscation of material benefits gained from criminal activities.....	23
VI.	The Fight Against Organised Crime.....	25
VII.	Main findings	27
VIII.	Recommendations.....	30

Abbreviations

EC	European Commission
ESDP	European Security and Defence Policy
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
EUSR	European Union Special Representative
ICO	International Civilian Office
ICR	International Civilian Representative
IJPC	Independent Judicial and Prosecutorial Council
ISG	International Steering Committee
KACA	Kosovo Anti-Corruption Agency
KIPRED	Kosovar Institute for Policy Research and Development
KJC	Kosovo Judicial Council
KP	Kosovo Police
KPC	Kosovo Prosecutorial Council
MMA	Monitoring Mentoring Advising
MoJ	Ministry of Justice
MTPT	Ministry of Transport and Post-Telecommunication
OECD DAC	Organisation for Economic Co-operation and Development
PVPT	Centre to Protect Victims and Prevent Trafficking in Prishtina
SPKO	Kosovo Special Prosecution Office
Task Force	Anti-Corruption Task Force
THB	Trafficking in Human Beings
TIP	Trafficking in Persons
UN	United Nations
UNMIK	United Nations Administration Mission in Kosovo
UNSCR	United Nations Security Council Resolution

I. INTRODUCTION

Since its declaration of independence in 2008, Kosovo has undergone a number of state-building processes. In strengthening its capability and legitimacy towards citizens, it has been failing to meet up with societal expectations, particularly in ensuring rule of law governance. Fragile states struggle with development, weak economic investments and face difficulties in their democratic performances. In order to build a resilient state for its citizens, states should undertake continuous check efforts and evaluations to measure the level of their performance.¹ In this regard, KIPRED has analysed Kosovo's current response to organised crime and corruption, in order to support the process of building a resilient state for its citizens.

The past United Nations administration (UNMIK) failed to offer Kosovo's citizens an administration that prioritised respect for the rule of law. In the post-independent Kosovo there are increasing calls by civil society, media and international community players that Kosovo should strengthen its rule of law performance in order to strengthen its capability and legitimacy. Societal expectations in particular have been rising with the recent developments in the investigation of organised crime and corruption in Kosovo. The raising of expectations has come as a consequence of almost 10 years of hesitation by the UN mission to investigate and fight organised crime and corruption leading to the impunity of criminals. The UN justified its failure to fight organised crime and corruption because of the pressures exercised by powerful foreign countries in order to preserve 'peace and stability' in Kosovo.² In addition, the recent investigations kicked off by the EULEX Rule of Law Mission in Kosovo and their declarations on the hunt against 'big fishes' further increased social expectations and support for their acts.³ These actions also spurred debates around the will and the capacities of the mission and of Kosovo authorities to end almost 10 years of impunity in fighting organised crime and corruption.

KIPRED has undertaken this analysis in order to evaluate the current response of Kosovo's authorities and the EU Rule of Law Mission towards organised crime and corruption in ensuring full respect for rule of law in Kosovo. At this crucial phase of its state building process, Kosovo

¹ Organisation for Economic Co-operation and Development (OECD DAC), *State Building in Situations of Fragility*, August 2008.

² See UNMIK former Special Representative of Secretary General Mr. Soren Jessen Petersen interview for Balkan Investigating Reporting Network 'I was stopped from investigating corruption' at <http://www.balkaninsight.com/en/article/jessen-petersen-i-was-stopped-from-investigating-corruption> (accessed June 21, 2010).

³ See for example the petition in support of the work of then Acting Chief Prosecutor of EULEX Mr. Johannes Van Vreeswijk with more than 5.000 online petitions and changing the name table in one of the main Prishtina streets by a group of unknown with the name of Johannes Van Vreeswijk. At <http://www.facebook.com/home.php?#!/group.php?gid=120818897938391> (accessed September 7, 2010)

will need to seriously show that it will tackle the problems of organised crime and corruption. This all has to happen in order to ensure full respect for rule of law that will remain as one of key priorities for a Kosovo aiming European Union accession in the coming years.⁴

This policy paper looked at the level of current response by analysing the regulation and enforcement capacities existing in Kosovo' judicial, prosecutorial and police services to investigate and fight organised crime and corruption. It closely looked at the executive government response and support provided to judicial, prosecutorial and police services. It does not evaluate the administrative capacities to fight corruption in depth but rather focuses on the judicial and prosecutorial capacities. The paper also identifies main challenges and proposes practical ways forward in overcoming the gaps identified.

METHODOLOGY

The research for this paper was conducted from April 2010 until November 2010. During this period, KIPRED met with stake-holders in Kosovo involved in rule of law issues by conducting semi-structured interviews. The main informants were officials from the government, judicial, prosecutorial and police services including staff of international missions and donors. The drafters also collected and consulted secondary data and materials, such as (1) the relevant literature, reports and statistics on rule of law in general and on the situation in Kosovo; (2) strategic papers and legislation; and (3) information available from international donors supporting rule of law related projects in Kosovo. The report also looked at the ongoing developments at the central level including the legislative and executive initiatives and their implementation.

The paper firstly looks at the current structural capacities of the main stake-holders. It follows with a section analysing current developments on the fight against organised crime and corruption by focusing on senior level corruption and trafficking in human beings for purposes of sexual exploitation. The policy paper ends with main findings and recommendations for stake-holders based on the deficiencies identified.

⁴ See Commission of the European Communities Report "Kosovo under UN SCR 1244/99 2010 Progress Report" (November 2010).

II. SHORT BACKGROUND

The international community and Kosovo government acknowledged that rule of law should be a priority for Kosovo after its declaration of independence. UNMIK's legacy of almost 10 years of impunity in fighting organised crime and corruption ended with the deployment of a EU Rule of Law Mission - EULEX. The deployment of the mission started in 2008 and was also supported by the newly elected Kosovo authorities acknowledging the weaknesses of Kosovo's state in ensuring the rule of law and inviting the international community to deploy a rule of law mission.⁵ Accordingly, EULEX has been mandated to “monitor, mentor and advise the competent Kosovo institutions on all areas related to the wider rule of law,” as described in the mandate, “whilst retaining certain executive responsibilities” and “execute these jointly with Kosovo government support in the fight against corruption and organised crime in Kosovo.”⁶ The mission should also ensure that Kosovo will properly investigate, prosecute, adjudicate and enforce the law in war crime cases, terrorism, organised crime, corruption and other serious crimes.

However, almost three years after Kosovo's declaration of independence, rule of law continues to be seen as one of the weakest areas of governance in Kosovo. In particular, the fight against corruption and organised crime has been evaluated amongst weakest processes Kosovo has been undergoing affected by lack of political will contributing to Kosovo's weak performance in fighting organised crime and corruption.⁷ Lack of track records on the investigation, prosecution and convictions in corruption and organised crime cases have been identified as weaknesses for Kosovo in ensuring and upholding rule of law.⁸ The situation created increasingly affects on foreign investment and on Kosovo's overall economic development.⁹ There is a growing feeling of distrust by Kosovo's citizens in the will of Kosovo's institutions to fight corruption and organised crime.

⁵ Paragraph 5 of Kosovo's Declaration of Independence, 17 February 2008 at http://www.assembly-kosova.org/common/docs/Dek_Pav_e.pdf

⁶ See *The Joint Action Plan of the Council of European Union, 2008/124/CFSP* (2008) and Comprehensive Status Settlement Proposal for Kosovo, Chapter II. Paragraph 12 and Article 3, paragraph 3 of the Kosovo Assembly Law No.03/L-053 on the Jurisdiction, Case Selection and Case Allocation of EULEX judges and prosecutors in Kosovo.

⁷ Commission of the European Communities Report “Kosovo under UN SCR 1244/99 2010 Progress Report” (November 2010).

⁸ *Supra* note at 7.

⁹ See for example Information by the US Department of State, 2009 Investment Climate Statement for Kosovo-Bureau of Economic, Energy and Business Affairs at <http://www.state.gov/e/eeb/rls/othr/ics/2009/117388.htm>, February 2009 (accessed September 14, 2010).

III. THE INSTITUTIONAL OVERVIEW

Mixed and perplexed structures exist in Kosovo in safeguarding the function and delivery of the rule of law. Kosovo's law enforcement agencies, judicial and prosecutorial institutions have the lead supported by the EULEX-Rule of Law Mission as a European Security and Defence Policy Mission (ESDP). The EU structures are also supported by the International Civilian Representative (ICR) heading the International Civilian Office with a double-headed mandate as EU Special Representative (EUSR) to Kosovo. The level of accountability gets even more perplexing with the ICR enjoying certain corrective powers and reports to the International Steering Group,¹⁰ whilst the EUSR reports to Brussels. Even though EULEX is a technical mission, it receives political guidance on the implementation aspects of its executive mandate from the EUSR.¹¹ The mission is 'status neutral' towards Kosovo's independence, in accordance to the UN Security Council Resolution 1244, as five European Union states have still not recognised Kosovo as an independent state.

The largest mission ever of the ESDP kicked off very slowly, facing multiple challenges most of which the mission has been learning to deal with. The EULEX mission declared to have become fully operational on April 6, 2009, four months after beginning its operational phase.¹² Its final target staff was planned to be around 3200 with 1950 international judges, prosecutors, police and customs officers including 1250 of local staff.¹³ Due to the slow pace of deployment and especially due to the global financial downfall, the current "full operational capacity" contains 1382 international staff and 1100 local staff, showing a decreasing tendency.¹⁴ Struggling with its political framework and operating as a technical mission it is the leading international mission in Kosovo in relation to rule of law.

Ownership and sustainability of both MMA and executive powers will be guaranteed through the lead by Kosovo institutions on rule of law issues in Kosovo.¹⁵ The mission's current operational

¹⁰ The ISG was formed after the formal request of Kosovo leaders in February 2008. It is formed of 25 states that have recognized the independence of Kosovo including main western powers that also should encourage rule of law governance in Kosovo. The ICR amongst other can annul decisions or laws by Kosovo authorities and remove public officials if their actions are inconsistent with the settlement provisions. See <http://www.ico-kos.org/pdf/presseng28.pdf> and 'Comprehensive Status Proposal' at <http://www.ico-kos.org/d/Ahtisaari%20Comprehensive%20Proposal%20in%20English.pdf>

¹¹ See Council Decision 2010/466/CFSP on "Extending the Mandate of the European Union Special Representative in Kosovo," (11 August 2010) at <http://www.eusrinkosovo.eu/d/LexUriServ11082010.pdf>

¹² EU Press Release at <http://www.eulex-kosovo.eu/en/pressreleases/0049.php> (accessed October 3, 2010)

¹³ At <http://www.eulex-kosovo.eu/en/info/whatisEulex.php> (accessed August 27, 2010)

¹⁴ An illustrative example is the United Kingdom, one of key supporters to the EULEX mission, which decided to cut its staff by half. See *Global Crisis Boosts Kosovo Independence*, *Balkan Insight*, March 27, 2009, <http://www.balkaninsight.com/en/article/global-crisis-boosts-kosovo-independence> (accessed September 29, 2010). KIPRED e-mail communication with EULEX Programme Office, May 2010.

¹⁵ See EULEX Programme Report 2009.

structures have 62% of its international staff engaged in various executive responsibilities including crowd/riot control and policing. Practicing a double-headed mandate in the MMA and executive areas,¹⁶ their judges and prosecutors jointly with Kosovo judges and prosecutors should uphold the fight against organised crime, serious financial crime and war crimes amongst other.

With its current structure, the prosecution services and courts in general, as one of the main rule of law pillars in Kosovo, continue to be heavily neglected with EU member states bringing to Kosovo only around 60 judges and prosecutors. In comparison, the special police department has more than 550 police officers deployed in EULEX containers prepared to react for crowd and riot control if needed. On one hand, the current support by the EULEX mission with judges and prosecutors composes less than 10% of its international staff and on the other hand more than 550 police officers remain in Kosovo for crowd and riot control.¹⁷ Kosovo police capacities have been evaluated by the recent EU Progress Report as increased in riot and crowd control¹⁸ whilst the judiciary and prosecution struggles to deliver on its mandate.

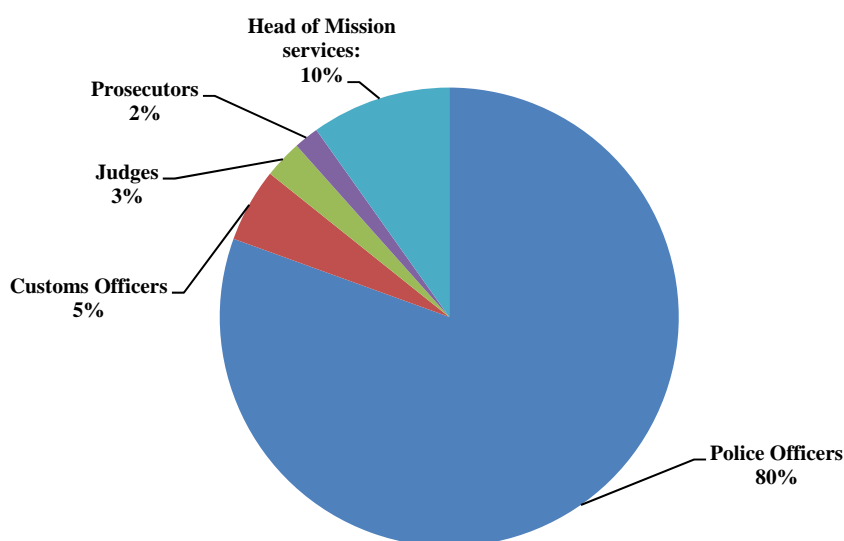


Figure 1 - EULEX staff

The mission claims to have faced difficulties in the recruitment of a higher numbers of judges and prosecutors, as individual EU member states face difficulties in the recruitment or

¹⁶ The mission also drafted MMA Tracking Mechanisms in areas of police, justice and customs with specific objectives and recommendations for Kosovo institutions to fulfil in line with European Best Practices. See EULEX mission website at <http://www.eulex-kosovo.eu/en/tracking>.

¹⁷ See Table 1. Figures taken from KIPRED e-mail communication with EULEX programme office, May 2010 and October 2010.

¹⁸ Commission of the European Communities Report “Kosovo under UN SCR 1244/99 2010 Progress Report’ (November 2010), pg 55.

deployment of judges and prosecutors for lengthier periods.¹⁹ The current staff structure of EULEX is different from the priorities of the mission. Its MMA activities can have more long-term impact turning into more durable and sustainable efforts whilst the executive competencies are less durable in impact.

a) Kosovo institutions

The judicial, prosecutorial and police are amongst the main institutional pillars in Kosovo mandated with the investigation, prosecution and sentencing of war crimes, organised crime, economic crimes and corruption, amongst others. By 2006, Kosovo had also created the Anti-Corruption Agency which was made functional in February 2007. This independent agency reports to the Kosovo Assembly by also requesting and managing its budget independently.²⁰ By the end of 2009 the Agency's staff has been approved for additional financial remuneration to enable them to deliver on their role. The Agency conducts administrative investigations into official's or public servants' activities by also referring cases for prosecutorial investigations if suspicion of corruptive behaviour exists. In the past months the challenges that the Agency was facing by lacking support by the executive and legislative bodies in funding its human and financial resources have been overcome.²¹ The Kosovo Assembly approved higher funding of the Agency by also increasing substantially the financial remuneration of staff.²² The Agency has advanced its role by also signing memorandums of understanding with various institutions such as the Kosovo Police. There is increasing understanding of the role and mandate of the Agency.

For example, the Kosovo Police recently cancelled a tender call after the Agency expressed concerns that the case was suspected of corruptive behaviour.²³ The Executive Director of the Agency, Mr. Preteni, and a Senior EULEX Prosecutor supported the preventative role that the Agency has to play in reducing the impact on Kosovo's budget if potential corruption

¹⁹ KIPRED interview with Deputy Head of EULEX Mr. Roy Reeve, May 2010.

²⁰ See also the Kosovo Assembly Law on Suppression of Corruption Law Nr. 2004/34 and Kosovo Assembly Law on Anti-Corruption Agency, Law. No 03/L-059 at <http://www.assembly-kosova.org/?cid=2,193>.

²¹ The Assembly of Kosovo approved the Strategy and Action Plan against Corruption and promulgated Law on Anti-Corruption Agency, Law on Amending and Supplementing the Law No. 02/L-133 on Preventing Conflict of Interest in Exercising Public Function, and Law on Declaration and Origin of the Property and Presents of Public Senior Officials. See Kosovo Assembly website at <http://www.assembly-kosova.org/?cid=2,193>.

²² Executive Director of Kosovo Anti Corruption Agency, Mr. Preteni, appraised to KIPRED the promulgation of necessary laws, approval of the budget in total by the Kosovo Assembly as suggested by the agency in the value of € 514,338, the reallocation of the Agency from rented premises in state owned premises. From beginning of 2010 officials of the Agency receive additional monthly payments due to their exposure to risk.

²³ The case involved the purchasing of new vehicles for the Kosovo Police through a public procurement procedure. The officials of Kosovo Agency Against Corruption after analysing the tender call noticed that the specifications for the tender and the design of criteria were drafted in such a way that would have led to the procurement committee deciding upon and promoting a specific dealer/producer of vehicles. As contrary to the Kosovo Law on Public Procurement, the Agency called for the tender call to be cancelled which was followed through by the KP management.

behaviours are observed and prevented in a timely manner.²⁴ Accordingly, the provision of the human and financial resources to support the preventative role of the agency is appraisable.

Differently, even though its human and budgetary resources have been adequately met during 2009, the Agency failed to react timely in conducting its administrative investigations over the declaration of assets by senior officials. The discrepancy in between senior-official incomes and declared assets has also been reflected in the EU 2010 Progress Report. The development of administrative investigations has been limited and shows the difficulties of the Agency to adapt accordingly to new legal requirements as foreseen by the Law on the Declaration of Assets of Public Officials.

Furthermore, the reimbursement of losses to the Kosovo budget, which have occurred or may occur from corruptive behaviours, should be investigated properly. In KIPRED's view, the administrative investigative capacities within Kosovo in recent years have been gaining increased attention rather than the judicial, prosecutorial and police services. Kosovo's government failed to ensure sufficient human and financial resources for the judiciary and prosecutors in order to enable them to deliver independently and professionally on their competencies.

b) Judicial and Prosecutorial services

Kosovo's justice system is managed by the Kosovo Judicial Council (KJC) as an independent body that should ensure the independence and impartiality of the judicial system.²⁵ The KJC is also in charge of the prosecutors, as only recently the Kosovo Assembly promulgated the Law on Kosovo Prosecutorial Council (KPC) which is still not operational. Until the KPC is not functioning, the Ministry of Justice (MoJ) continues to manage the administration of the prosecutorial services together with the KJC in charge of prosecutorial services.

The slow response by the Kosovo government and Kosovo Assembly to promulgate the basic laws on the judiciary and prosecution such as the Law on Courts, Law on Kosovo Prosecutorial Council, Law on State Prosecution have hampered the development of these crucial institutions in the last three years. With this said, Kosovo has managed to kick-off a reform of its judicial and

²⁴ KIPRED interviews with Executive Director Mr. Hasan Preteni, May 2010 and Senior EULEX prosecutor, June 2010.

²⁵ For more detailed overview of the judicial and prosecutorial services mandate see KIPRED Policy Brief 'The Fragile Triangle: Police, Judges and Prosecutors coordination during criminal proceedings in Kosovo' (February 2010) at http://www.kipred.net/web/upload/The_Fragile_Triangle.pdf.

prosecutorial system. The implementation of these recently promulgated laws²⁶ has increased considerably the financial remuneration for judges and prosecutors. It remains to be seen whether these commitments will be projected in the Kosovo Annual Budget for 2011, by the new government set to be elected²⁷ at Kosovo's Parliamentary elections. Public prosecutors complain that they will have to continue to work without genuine and professional guidance as the Kosovo Prosecutorial Council has yet to be made functional, foreseen to be created under Kosovo's Constitution already in 2008.²⁸

Post-independence, Kosovo's prosecutorial services have continued to deliver their functions with around 70% of its foreseen human capacities.²⁹ By 2008, Kosovo had approved 122 prosecutorial positions. The vetting and re-appointment process of judges and prosecutors was set to be finalised by end of 2010.³⁰ As of June 2010,³¹ there were 78 prosecutors working at municipal, district and Public Prosecution of Kosovo including the Special Prosecutors Office of Kosovo *with 3.53 prosecutors per 100.000 inhabitants*. During 2009, the District Public Prosecution Office in Prishtina, one of the key prosecutorial services in investigating and prosecuting the majority of complex cases in Kosovo,³² has been operating with only 3 prosecutors *with 1.57 prosecutors per 100.000 inhabitants covering Prishtina's District*.³³ In comparison to other countries, Kosovo remains with the lowest percentage of prosecutors per 100.000 inhabitants. KIPRED has also observed that there has been a decline in the numbers of prosecutors during 2010, impacted by the vetting and re-appointment process pointing to a decrease from 88 to 78

²⁶ Kosovo Assembly enacted the Kosovo Law on Prosecutorial Council, Law on State Prosecution, the Law on Kosovo Judicial Council and Law on Courts during July-October 2010. At <http://www.ks-gov.net/GazetaZyrtare/GZ2010.aspx>

²⁷ The new parliamentary elections have been set for 12 December 2010, after the voting of the vote of no-confidence by the Kosovo Assembly on 2 November 2010. The no-confidence vote was followed with the Kosovo Assembly disbursement, a result of the political crises occurring in Kosovo after the withdrawal of the Democratic League of Kosovo (LDK) party from the governing coalition with Democratic Party of Kosovo (PDK) in October 2010.

²⁸ KIPRED communication with the Kosovo State Prosecutor, October 2010.

²⁹ Out of this number only 78 prosecutors are working with 3 prosecutors under suspension, 2 Serb prosecutors left the services after the declaration of Kosovo's independence. Also the District Court of Mitrovica continues to be non-functional as a result of Kosovo Serb riots in the aftermath of Kosovo's declaration of independence. See 'Annual Report' 2009 of the Kosovo State Prosecutors Office and 'Report on Human Resources of the Public Prosecution of Republic of Kosovo - 2nd quarter of 2010', Statistical and Analysis Office, Ministry of Justice.

³⁰ Delays for entry of new generation of judges and prosecutors were also caused by two years and a half delays of the Kosovo Assembly in functionalizing the conditions for the bar exam procedure. Interview with Kosovo Bar Exam Commission member and Head of Independent Judicial and Prosecutorial Commission, August 2010.

³¹ Ministry of Justice, six months report

³² The District Court of Prishtina covers the largest territorial jurisdiction with an approximate number of 1 million inhabitants. See OSCE Legal System Monitoring Section Monthly Report June 2009, pg.2.

³³ In accordance to the 'annual norm' calculated by the Ministry of Justice based on the number of criminal charges and number of inhabitants covered by respective courts, Kosovo Recent Ministry of Justice (MoJ) calculations suggest that Kosovo should have 171 prosecutors in total at all instances with 7.74% prosecutors for 100.000 inhabitants. The calculations are approximate to regional practices of neighbouring countries such as Montenegro that has 13.4, Bosnia and Herzegovina with 7.3 and Hungary with 17.3 prosecutors per 100.000 inhabitants. ³³ Only France has 2.9 prosecutors per 100.000 inhabitants. See further KIPRED Publication "The Fragile Triangle" February 2010.

prosecutors. This is a worrisome fact for the efficient delivery of prosecutorial functions and safeguarding of rule of law.³⁴

Number of Prosecutors		
	Dec 2009	June 2010
Public Prosecution Office	6	5
Municipal Prosecution Office	48	37
District Prosecution Office	28	26
Special Prosecution Office	6	10
TOTAL	88	78

Table 1 - Total Number of prosecutors 2009 and 2nd Quarter 2010

The lack of prosecutorial staff further hampers the development of specialized prosecutors on investigating and prosecuting specific crimes in relation to corruption and organised crime. The current prosecutorial system is more or less generic with few special prosecutors appointed as members of the Kosovo Special Prosecution Office (SPKO). Additionally, ten public prosecutors have been appointed to be part of the Anti-Corruption Task Force (Task Force) within the SPKO.

Key prosecutorial institutions continue to work in inadequate buildings such as the Kosovo Judicial Council placed in former UN containers or continue to rent inadequate buildings. In the words of the Kosovo State Prosecutor, human and financial resources are more than important to enable prosecutors to deliver on their mandate ‘... [t]he work of my office costs the Kosovo institutions approximately 6.094 Euro per month...I don’t understand how a battle can be fought without ‘soldier[s]’...’³⁵ KIPRED also observed a decrease in the budgetary support after 2008 in strengthening the judicial and prosecutorial institutions. For example the Kosovo Judicial Council support decreased annually on average in between 0.10-0.15 % from the total budget.³⁶ The average Kosovo annual budget as of 2008 for the KJC amounted approximately 1% of the total annual budget. During 2010, the KJC was supported with 1.16% of Kosovo’s total budget. In comparison, the Ministry of Transport, Post and Telecommunication, which is currently

³⁴ Ensuring sufficient human and financial capacities of prosecution is requirement in strengthening prosecutorial capacities to safeguard rule of law. See Council of Europe, Recommendation (2000) 19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System, 6 October 2000.

³⁵ KIPRED interview with the Kosovo State Prosecutor, June 2010. This statement was quoted from the meeting of the State Prosecutor with the Kosovo Prime Minister on discussing the needs of the prosecutorial services in Kosovo.

³⁶ See Table 2.

under investigation by the EULEX Mission in Kosovo for suspected corruptive behaviours of some of its officials, in 2010 was allocated with 17% of the Kosovo's total annual budget.

In reality, the governmental priorities have been directed at a different level by increasing capital investment projects in road building and reconstruction leaving amongst others the support for efficient judicial and prosecutorial services for another possible term in the 12th December 2010 parliamentary elections.

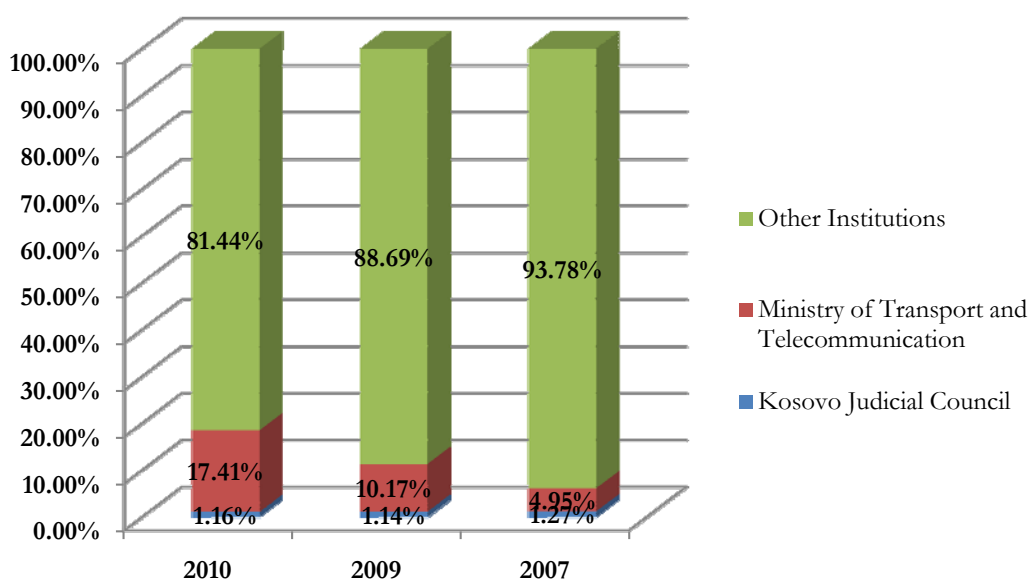


Figure 2 - Kosovo Annual Budget, 2007-2010

Conditions ranging from the insufficient number of staff, inadequate financial remuneration and financial stimulus for special prosecutors including inadequate working conditions will continue to follow the work of the prosecutorial services that will have to work with what they have at disposal which is the current much criticised system. Adequate political attention and support of the government and the legislative branch should set the conditions for prosecutors to deliver on their mandate and safeguard the rule of law in Kosovo.

c) EULEX support

The mission currently accounts for 20 prosecutors that also practice their MMA mandate. Out of the total number of 1382 international staff, less than 20% of the mission is composed of judges,

prosecutors and executive police staff working directly on its exclusive mandate.³⁷ Even though the lead on the investigation and prosecution of serious crimes is with the Kosovo authorities, due to the sensitivity of the cases involved as well as past unwillingness of Kosovo prosecutors to deal with major organised crime and corruption cases, the numbers that the EULEX mission currently has at their disposal is very low. This fact has been acknowledged by the mission that has aimed to increase and recruit a higher number of prosecutors.³⁸ The recruitment process has been slow and has not yielded with the intended result. Furthermore, the rotation of international judges and prosecutors has been an obstacle to the efficient investigation and prosecution of crimes, in particular of organised crime cases. As stated to KIPRED one prosecutor had been the fourth prosecutor to go through a file of an investigated organised crime case.³⁹ In average one EULEX prosecutor stays in Kosovo from six to twelve months causing delays in timely investigation of cases.

Further, breaking up family links that have been build up for years with many interests at stake involving the investigation and prosecution of senior-officials have been evaluated amongst some of the obstacles to fight corruption in particular of senior-officials.⁴⁰ Witness cooperation in cases of corruption is essential. With Kosovo lacking the law on witness protection and the geographic size of Kosovo being small, it will be an obstacle to further deliver results without documented evidence and strong intelligence investigations. The mission has also continued to work mainly independently on investigating cases of corruption in particular. The Kosovo State Prosecutor stated to KIPRED that the investigation against the officials of the Ministry of Transport and Telecommunication were communicated by EULEX the same day when the investigation was starting.⁴¹ This negligence of EULEX towards Kosovo state prosecution is worrying, as it doesn't align with the EULEX mission to build capacities of Kosovo rule of law institutions.

d) Judicial services

KIPRED has viewed similar problems for judicial services as insufficient number of judges and professional support staff, inadequate financial remuneration and working conditions. Even with

³⁷ There are 199 international staff working in the Justice Component of EULEX mission. E-mail communication with Chief Prosecutor Office of EULEX October 2010.

³⁸ KIPRED interview with EULEX former deputy-head, Mr. Roy Reeve, May 2010.

³⁹ KIPRED interview with a EULEX former Justice policy advisor, October 2010.

⁴⁰ KIPRED e-mail interview with Chief Prosecutor of EULEX, June 2010.

⁴¹ Interview with Kosovo State Prosecutor, July 2010.

the vetting and re-appointment process almost at end,⁴² Kosovo remains with an insufficient number of judges. With the ending of the vetting procedure, Kosovo has 12.41 judges per 100,000 inhabitants. In comparison to other countries in the region, Kosovo continues to have almost three to four times less judges.⁴³ Further, EULEX judges face similar difficulties in staffing within courts. There are in total 37 of EULEX judges supporting the Kosovo judicial authorities.⁴⁴ In Peja/Pec, Gjilan/Gnjilane and Prizren courts EULEX during 2009 has had only one EULEX criminal judge working, which impacted the establishment of trial panels. The initially intended number of judges within the EULEX mission is far from being reached. In most regions there is not sufficient space in district court buildings and some of EULEX judges stay in former UNMIK building away from their local counterparts.⁴⁵ These inadequate number of staff and working conditions have affected the team-work and coordination of cases with local judiciary.

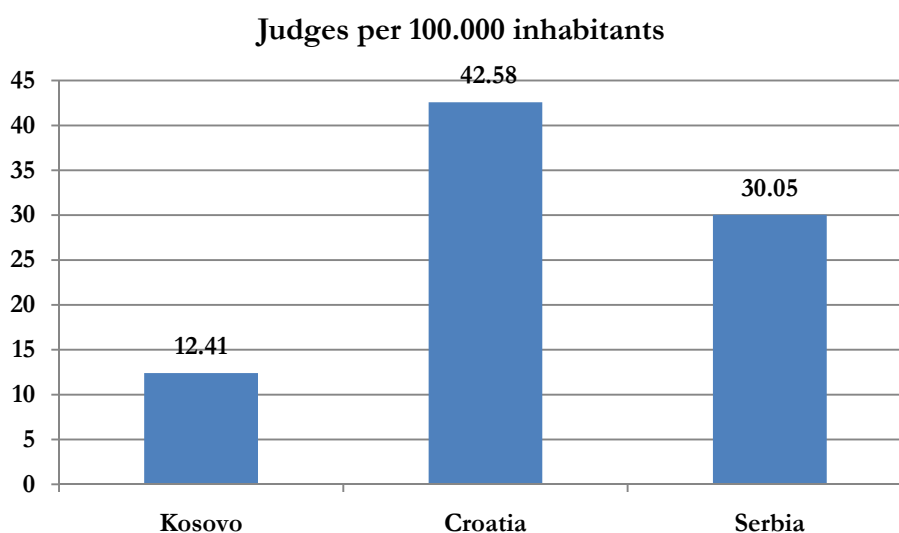


Figure 3 - Comparison of number of judges with countries in region

Kosovo has also finished the vetting and re-appointments process of judges and prosecutors.⁴⁶ The foreseen effects of the vetting and re-appointment process have also been to reduce the negative perceptions of citizens for judges in particular, as they are often perceived as least satisfying amongst Kosovo institutions, susceptible of corruptive behaviours and of political

⁴² The KJC jointly with the International Judicial and Prosecutorial Commission has finalised the re-appointment of the judges throughout Kosovo. More than half of judges have been newly selected at different levels.

⁴³ For example Croatia at the end of 2009 had 42.48 judges and Serbia had 30.05 judges per 100.000 inhabitants.

⁴⁴ The whole Justice Component of the mission includes judges, prosecutors and executive police which make only 16% of EULEX's total capacity.

⁴⁵ EULEX Judges Annual Report 2009, at <http://www.eulex-kosovo.eu/docs/justice/annual-report2009/ANNUAL%20REPORT%20English%20FINAL.pdf>.

⁴⁶ The last appointments finished by the KJC in October 2010.

interferences.⁴⁷ The detailed vetting procedures included by the IJPC investigation into the immovable property owned by judges and prosecutors, bank-accounts and in-depth interviews with candidates and witnesses.⁴⁸ Set as a positive example, in overcoming the often perceived role of corrupt judiciary, the process will create additional effects in the human and professional capacities of judges.

The vetting and re-appointment process has left the judicial system fragile with a considerable number of newly appointed judges and prosecutors. This will imply additional trainings under the direction of the Kosovo Judicial Council that will need to be coordinated with the Kosovo Judicial Institute. It will however cause considerable time delays for courts to become efficient. In supporting the development of knowledge on special crimes such as organised crime and corruption cases is a continuous challenge for the KJC as well. The KJC will have to develop a training strategy for newly appointed judges in order to meet to the new requirements of the judicial reform.

e) Police capacities

Among the main state pillars on rule of law, the Kosovo Police (KP) has been so far most praised for its commitment and professionalism, in international and national reports. As a young service, the KP has reached a satisfactory level in overall policing and also recently in riot control.⁴⁹ The EU has rated the KP in its recent 2010 report in regards to maintaining public peace and order and combating minor crimes as satisfactory. Despite the above mentioned deficiencies of the judicial and prosecutorial services, a considerable number of the personnel that the EU continues to keep in Kosovo continue to be police officers for riot and crowd control.

In spite of the above and of the MMA activities of the EULEX Mission, in past months the KP professional performance has been declining. This has also been affected by the weakly planned structure of EULEX that continues to support the police mainly in the executive areas.⁵⁰ In comparison, the EU has brought into Kosovo only 48 customs officers,⁵¹ despite the fact that the absolute majority of Kosovo's budget is collected from taxes applied in the customs, and

⁴⁷ UNDP Kosovo Quarterly Early Warning Reports and EC Progress Report for Kosovo 2010.

⁴⁸ Interview with Head of KJC and IJPC, September 2010.

⁴⁹ *Kosovo 2010 Progress Report, Commission of the European Communities, Brussels, November 2010*

⁵⁰ Some 563 EULEX police officers out of 1382 international staff remain based in EULEX containers waiting to act on crowd and riot control. In total there are 1,100 EULEX police officers out of the total of 1382 international staff of the mission. KIPRED communication with EULEX Programme Office, October 2010.

⁵¹ There are 72 customs staff deployed out of which 48 are executive and 24 MMA. Communication with EULEX Programme Office, October 2010.

despite criticism of Kosovo authorities⁵² to crack-down organised crime smugglings. These failures are causing considerable damages to Kosovo's budget and upholding of effective rule of law in Kosovo.

The KP's biggest challenges in the fight against organised crime and corruption remain its structural and professional capacities. This has been affecting their crime investigation that remains limited in intelligence-lead investigation, proactive investigations and covert operations in investigating organised crime cells.

From 2009, the EULEX police component has worked on implementing through its MMA activities an UNMIK sponsored programme⁵³ aiming to increase intelligence lead policing capacities of the KP and the creation of a single crime intelligence strategy. A detailed programme plan aims to enhance the intelligence gathering culture, use of forms and collection including collation of data and analysis to plan proactive operations. The importance of data collection and standardization of data management is crucial, however, the KP has continuously faced difficulties in its structural and professional capacities in relation to investigations.

The lack of adequate equipment and staffing within its recently created Directorate Against Economic Crime and Corruption and Directorate Against Organised Crime has been observed.⁵⁴ Additionally, proactive planning and execution of intelligence-lead operations including covert operations and use of covert methods such as mobile tapping remains impossible for all mobile phone providers in Kosovo.⁵⁵ In 2010, the European Commission reported that the Directorate Against Economic Crime and Corruption that should lead on police investigations on economic crimes and corruption, has been prone to political interferences.⁵⁶ KIPRED also observed changes in the KP management structure and appointments of senior management within the respective directorates, influenced by nepotism or connections to the main political party in charge of the Ministry of Internal Affairs.⁵⁷ Complaints have arisen also on the internal restructuring and promotions which have been made based on political preferences and not based on professional experience or performances.⁵⁸

⁵² Supra note at 49.

⁵³ MMA on Intelligence Lead Policing has been developed on a model of OSCE Mission in Kosovo part of UNMIK administration in Kosovo.

⁵⁴ Forum for Civic Initiative and Kosovo Law Institute, 'Rule of Law: institutional capacities and functioning', November 2010.

⁵⁵ There is still no possibility to tap mobile phones of IPKO operator in Kosovo for investigative purposes.

⁵⁶ Pg.12 and 56 of EC 2010 Kosovo Progress Report.

⁵⁷ KIPRED interview with former Acting Director of Kosovo Police and representative of foreign embassy in Kosovo, September 2010.

⁵⁸ KIPRED interview with two mid-level management officers of KP, August 2010.

The EULEX mission with its mentoring, monitoring and advising mandate was not able to prevent or point out to the occurrence of these situations in order to ensure ways that such re-appointments within the KP occurred based on professional criteria's, free of political interferences. The situation should be remedied by the implementation of the MMA tracking actions specifically drafted for KP on performance based promotions.⁵⁹ In addition to this performance based promotion and restructuring, the KP supported by its partner EULEX, should be more proactive in finding necessary human and financial resources to support the work of the Directorate of Economic Crime and Corruption and Directorate Against Organised Crime.

These direct ways of support by EU member states would contribute proactively in strengthening the mandate of KP in the investigation of organised crime and corruption and may become one of the major contributions to Kosovo's success in the rule of law area. If the contrary happens, these weaknesses identified within the police, be it structural or professional, will continue to undermine police performance.

IV. THE STATE OF CORRUPTION AND ORGANISED CRIME

The current state of the judicial and prosecutorial response to organised crime and corruption comes due to a previous wrongly projected structure, the one of the UNMIK, which until June 15, 2008, was solely responsible for the domain of war crimes, inter-ethnic crimes and organised crime, all three being crucial threats to the rule of law in Kosovo. As a result of UNMIK's inefficiency, some 500 files out of which 150 criminal files, remained unresolved for years. Most of the 150 files that EULEX inherited from UNMIK are within the domain of EULEX's exclusive competence, meaning they are war crime, organised crime or inter-ethnic crime cases. During 2009, EULEX mission focused mainly on war-crime cases, murder and other crimes. Only 1 corruption case and 4 organised crime cases were reported.⁶⁰ These old files alone have been enough to keep the EULEX Justice Component busy for 2009, leaving lesser space for fast processing and new investigations. During 2010, the mission has paced his investigations on corruption and organised crime.

⁵⁹ The KP developed job descriptions of its senior management and the new structure of the police that were approved and signed by the Minister of Internal Affairs after the internal promotions occurred. Ibid.

⁶⁰ See pg.51 of EULEX Judges Annual Report 2009, at <http://www.eulex-kosovo.eu/docs/justice/annual-report2009/ANNUAL%20REPORT%20English%20FINAL.pdf>

The level of corruption and organised crime in Kosovo is ambiguous as often supported by anecdotal information due to lack of track records of investigations, charges and verdicts.⁶¹ Further, corruption is reported to be prevalent in different areas in Kosovo remaining as a serious concern for Kosovo's state-building processes. The recent 2010 Progress Report for Kosovo points out to some of these deficiencies by concluding that the recent asset declarations of high officials in Kosovo have shown "...discrepancies between the income and properties of senior Kosovo officials. *This indicates widespread corruption at high levels in Kosovo persist.*"⁶² Main stakeholders interviewed by KIPRED, viewed that anti-corruption efforts so far have been minimal in its aims and results. There is an impression that senior-officials or their associates have been immune from investigation and prosecution. As one Kosovo Special Prosecutor stated:

'...[K]osovo has had many reporting's by media on the abuse of the public procurement system especially with tenders...It has created a state of tender mania... the investigations we have seen in that regard have been minimal, we only see some small fishes being investigated and sentenced in order to fill out the norm...'

Other international reports have also continuously pointed out to deficiencies deriving from policy, legislative and institutional framework which needs strengthening with multi-faceted structures requiring better co-ordination and communication mechanisms.⁶³ Lack of political will to tackle corruption and organised crime as well as political interferences with the structures to tackle corruption are worrisome.

V. RECENT DEVELOPMENTS IN THE FIGHT AGAINST CORRUPTION

In November 2009, the EULEX Rule of Law Mission narrowed down its focus to deal mainly with corruption and organized crimes cases, announcing its 'big-fish' hunt, after almost 10 years of impunity of investigation and prosecution of organised crime cases.⁶⁴ In moving from words to action, on 28 April 2010, the mission raided premises of the Kosovo Ministry of Transport and Post-Telecommunications (MTPT).⁶⁵ The actions came at the time when EULEX was being criticized for adapting itself to Kosovar reality, instead of delivering concrete results in

⁶¹ US State Department HR Report 2008.

⁶² *Supra* note at 46, pg. 12.

⁶³ See "Rule of Law in Post-Independent Kosovo," ICG July 2010.

⁶⁴ On November 3 2009, in an interview with Koha Ditore local newspaper, the EULEX Chief Prosecutor Theo Jacobs announced that the mission is hunting 'the big fish' and that the results will be shown in spring of 2010. Interview available at <http://www.koha.net/index.php/?cid=1,7,17622>

⁶⁵ Private premises of than Minister Limaj, his family and his associates were also raided. EULEX stated that Minister Limaj and Head of Procurement, Nexhat Krasniqi, could face up to 55 years in jail, if found guilty on corruption charges. Interview with Acting EULEX Chief Prosecutor Johannes van Vresswijk at <http://www.balkaninsight.com/en/main/news/27936>

combating corruption.⁶⁶ These spectacular raids, conducted by heavily armed EULEX police, were lead solely by EULEX, with no involvement of local prosecution representatives. The Kosovo State Prosecutor stated to KIPRED, that when the investigation started, on 28 April 2010, he had received a phone call from EULEX Acting Chief Prosecutor that informed him that the investigation into the premises of the MTPT will start. EULEX justified this initial approach of an independent operation due to the sensitivity of the case in matter.

EULEX actions were followed with different sentiments and statements of Kosovo officials. The original statements by the Kosovo Prime Minister and the President of the Assembly of Kosovo appeared that the government would open a new front with EULEX and ICO instigation involving senior-officials. However, after almost a month a sudden alternation of the political discourse by the Kosovo government and its legislative branch underwent change. The Kosovo Prime Minister declared to fully support EULEX investigations and that himself personally is leading on the fight against corruption in Kosovo.⁶⁷ The investigated minister did not resign or was called in for resignation, but quite the opposite, the officials of the leading political party in government announced the creation of a fund for protection of the Minister under investigation subsequently confirmed by senior party officials.⁶⁸ Further, ministers or associates under investigation, have also been put on the political party lists for the early general elections of 12 December 2010. This has been seen as a move by parties to ensure moral immunity from the public.⁶⁹

From words to action the Kosovo Prime-Minister decided the creation of an Anti-Corruption Task Force within the Kosovo Special Prosecution Office in order to lead with the investigations and combating corruption trends in Kosovo. Differently, the EULEX Programmatic Report 2010 states that the Task Force was created by the SPKO on the same date when the Prime-Ministers decision was issued i.e. 26 February 2010.⁷⁰ Nevertheless, the recently created Anti-Corruption Task Force within the Special Prosecutors Office of Kosovo (SPRKO) involved

⁶⁶ Letter of 14 Kosovo NGO's to the High Representative of European Union for Foreign Affairs and Security Policy Lady Catherine Ashton on the rule of law in Kosovo <http://kipred.net/web/eng.php?cid=2,10&id=23>

⁶⁷ This switch came as a result of convincing of the diplomatic missions in Kosovo. For example on two consecutive days after the raid happened, a number of meetings were held including Kosovo Government meeting and a meeting of Prime Minister Thaci with international diplomats in Kosovo including US Ambassador in Kosovo Mr. Chris Dell and Minister Limaj. "Extraordinary meeting of Government and PDK", *Koha.net* [KS], April 28, 2010, (<http://www.koha.net/index.php?cid=1,7,19712&sqr=limaj>)

⁶⁸ Democratic Party of Kosovo (Partia Demokratike e Kosoves-PDK) member and Member of Parliament Mr. Nait Hasani, "PDK sets up a fund for protection of Mr. Limaj", *Koha.net* [KS], April 28, 2010, (<http://www.koha.net/index.php?cid=1,22,23043&sqr=limaj>)

⁶⁹ KIPRED interview with former Balkan diplomat/civil society expert, November 2010.

⁷⁰ Decision 02/110, passed by the Government of Kosovo and signed by the Prime-Minister Hashim Thaci, on February 26, 2010. See also EULEX Programmatic Report 2010, pg.43.

minimal consultation with Kosovo's state prosecution services.⁷¹ The Task Force has 30 police investigators and 10 special prosecutors. The police investigators to the Task Force have been seconded by the KP Directorate on Economic Crime and Corruption. The 2010 EC Progress Report has found the Directorate to be prone to political interference in conducting its investigations.

Securing the independence of the investigations that the Task Force will undertake will remain a challenge. In its initial investigations initiated by the Task Force, the information on on-going investigations leaked into media.⁷² The professionalism and independent work of prosecutors and police investigators will continue to face many challenges with the structures at disposal in ensuring efficient investigations and prosecution including sensitive cases of alleged senior-officials corruption behaviours.

Slowly the Task Force overcame its initial difficulties and coordination between EULEX, Kosovo Police and SPKO. Its role got clarified step by step with Kosovo Police investigators and prosecutors of SPKO supported with international prosecutor's part of the Task Force. A joint investigation with the Kosovo institutions has led to the charging and arrest of Kosovo's Bank Governor. As the independence of the Task Force has been jeopardised by the decision issued by the Prime Minister with minimal consultation of the Kosovo's state prosecution, its terms of reference and structure will have to be reconsidered once the Kosovo Prosecutorial Council is made functional.

Furthermore, KIPRED has observed that the requirements for the establishment of the Task-Force have been followed through only partially. The government has been reluctant in providing financial and other types of support to this task force almost eight months after its establishment. The special prosecutors continue to face challenges of logistical nature by lacking appropriate vehicles in conducting investigations.⁷³ Physical protection in order to ensure independent and autonomous investigations into serious crimes of corruption can be done on case by case basis. Financial stimulation divided for special prosecutors was not delivered in accordance to the government decision of 26 February 2010.

⁷¹ KIPRED interview with Kosovo State Prosecutor and KJC Head, June and September 2010.

⁷² KIPRED interview with Special Prosecutor, June 2010.

⁷³ KIPRED interview with special prosecutor of Anti-Corruption Task Force, July 2010.

Further, the 2010 Kosovo Progress Report⁷⁴ critiques the lack of investigations into the declared assets of senior-officials that revealed discrepancies between income and properties owned. This has so far not been followed-up by the Task Force showing a lack of willingness of existing structures to investigate corruption in particular the cases involving senior-officials.

During 2009-2010 the EULEX mission delivered 3 verdicts in organised crime cases and 4 cases of corruption.⁷⁵ The expectations rising with the hunting of the 'big fishes' declared by the mission so far have proven to be minimal in results. The governor of the Bank of Kosovo has been charged for abuse of an official position including money-laundry, bribery, trading influence and tax evasion.⁷⁶ In regards to the Ministry of Transport investigations one IT administrator has been charged with obstruction of evidence. The long-awaited charges of investigated current or former senior-officials have yet to occur.

The current structure and operational trends of EULEX will need to be adapted with its mandate. KIPRED is concerned that following the current trend the mission may become just another money-spending international mission funded by taxpayers of EU member states or yet another peace-keeping mission. Further, as primary responsibility lies with Kosovo institutions, holding them accountable will be difficult with the executive competencies played by the EULEX rule of law mission. The current structure and operations will need to show results by making charges against the investigated 'big fishes' and drafting of an exit strategy after some track records of charges and verdicts in organised crime and corruption are made. The mission will slowly need to restructure to act solely in the MMA component by reducing its executive competencies. In KIPRED's view this will increase the level of direct accountability to Kosovo's institutions that will need to be accountable towards their citizens and show political willingness to uphold rule of law in Kosovo.

a) Confiscation of material benefits gained from criminal activities

The material benefits gained from criminal activities cannot be retained and should be confiscated.⁷⁷ The money or property that is acquired from criminal activities by Kosovo applicable law can be confiscated either by a court judgement establishing the commission of a

⁷⁴ Ibid.

⁷⁵ KIPRED email communication with Chief EULEX Prosecutors office, October 2010.

⁷⁶ EULEX official website.

⁷⁷ Kosovo Criminal Code, CHAPTER VII on Confiscation of Material Benefits Acquired by the Commission of Criminal Offences and grounds for Confiscating of Material Benefits, Article 82, paragraphs 1 and 2. Article 82

criminal offence or by a request of a public prosecutor before a panel.⁷⁸ Police and other authorities can also participate in the investigation of circumstances that can determine the profits of the crime.⁷⁹ Money or property that has been rewarded, accepted or benefited from the commission of a criminal offence by, for example, unjustified acceptance of gifts, taking or giving of bribery and trading in influence over the decision making of an official person, shall be confiscated.⁸⁰ If the proceeds of the crime get transferred to close relatives they should be confiscated as well.

These measures have not been used in any of the cases under investigation or trial by the local judiciary or EULEX. Prosecutors claim that there is hesitance by judges to apply such measures due to potential security threats they might occur and lack of interest, whilst for judges such measures are not being proposed by prosecutors for similar reasons.⁸¹ Lack of a special law on the confiscation of property from criminals, has also often been mentioned as a reason of hesitance by courts to apply such measures, even though sufficient legal provisions exist. The Ministry of Justice is currently working on drafting the special law and has created an organisational structure of the agency that will be responsible for managing the confiscation and sequestrated criminal assets.⁸² The agency, however, still has to be made functional.

In this regard, the capacities of courts and prosecutors should be strengthened to work on the confiscation of material benefits from criminals or criminals charged when investigation and prosecution of corruption cases start. This seems to have not been the practice so far for Kosovo institutions or the EULEX mission. Confiscation of a material benefit gained by the commission of criminal activities should be seen as a punitive measure to ensure that proceeds of crime will not be used against the financial interests of the state of Kosovo but also preventative in order not to leave these proceeds in the hands of criminals to commit other crimes. Confiscation of the materials of benefit also gives a clear message to the persons proceeding from crime that crime will not pay off.

⁷⁸ Kosovo Criminal Procedure Code, Article 498.

⁷⁹ Ibid. Article 499, paragraph 3.

⁸⁰ Article 83 of the Kosovo Criminal Code.

⁸¹ KIPRED interviews with special prosecutor and head of KJC, July and October 2010.

⁸² 2010 Progress Report, pg. 56.

VI. THE FIGHT AGAINST ORGANISED CRIME

From 1999 onwards, Kosovo continues to be a transit, destination and origin country for trafficking in persons (TIP).⁸³ Kosovo's Criminal Code requires higher sanctions for persons committing trafficking in persons and organizing of groups with the sentence ranging to a fine up to 500.000 euro and by imprisonment from seven to twenty years. As most lucrative business together with arms and drugs trafficking,⁸⁴ financial interests are vast and Kosovo is no exception to the rule.⁸⁵ Kosovo has been predominantly seen as a country whereas trafficking of persons for purpose of sexual exploitation has particularly targeted women and girls.

In particular, the fight against trafficker's part of organized crime cells, confiscation of property acquired from this type of criminal acts, and reparation and compensation for victims of trafficking has been paid minimal attention.⁸⁶ Kosovo has enacted a number of policies, protection mechanisms and legal guarantees in order to react to the phenomenon of trafficking. However, reactions have been reactive rather than proactive. Despite Kosovo's Strategy and Action Plan to Combat Trafficking (2008-2011), set to end soon, results have been scarce. In order to prevent and eliminate this type of organised crime, Kosovo authorities should speed up their fight against trafficking through the aggressive prosecution of organised criminal networks. Aggressive investigation, prosecution and higher sentencing by local prosecution and judiciary with appropriate sentencing are seen as means to prevent and eliminate the occurrence of the TIP crime.⁸⁷ Further, international and regional investigations of and fighting organized crime remains at low levels. Local prosecutorial services and judiciary seem to be hesitant in providing the adequate investigation, prosecution and sentencing of traffickers.

Women NGOs continue to provide alarming figures on the level of trafficking of women and girls in Kosovo. The centre to Protect Victims and Prevent Trafficking in Prishtina (PVPT) sheltered 19 victims of trafficking during 2009 and assisted another 32 potential victims in its day-care centre with a slight increase in comparison to 2008. As the identification of victims of trafficking remains a challenge, the numbers are much higher.

⁸³ Kosovo has been reported for Trafficking in Persons of women and girls for purposes of sexual exploitation and child labour. See US State Department Global Report on Trafficking in Persons, 2010 at <http://www.state.gov/g/tip/rls/tiprpt/2010/>

⁸⁴ See for example the UNODC website at <http://www.unodc.org/>

⁸⁵ In 2008, the US State Department reported that anecdotal evidence existed in financial and kinship relations between few political leaders and organised crime networks in trafficking of persons in Kosovo. See US State Department Bureau of Democracy, Human Rights and Labor, 2008 Country Reports on Human Rights Practices, 2009.

⁸⁶ Ibid.

⁸⁷ US State Department Global Report on Trafficking in Persons, 2010.

Results in the prosecution of organised criminal cells of traffickers remain low. For example, during 2009 there have been only 4 cases of sentenced traffickers with over five years of imprisonment whilst out of 22 sentenced traffickers only two began to serve their prison sentences with others remaining free on appeal.⁸⁸ Further, EULEX mission approaches the crime as a subsidiary competence on trafficking in human beings in accordance to the Law on Kosovo Special Prosecutors Office.⁸⁹ However, in cases when there is reasonable belief or facts pointing out to an organised crime case, the Head of SPKO can exercise the exclusive competencies in accordance to the law on SPKO.⁹⁰ It has acted so in few recent cases of trafficking with organs in Kosovo however, has been hesitant to act pro-actively in investigating cases involving trafficking of women and girls for purpose of sexual exploitation.

Other factors that have contributed to the low number of aggressive prosecution of the crime of trafficking for purpose of sexual exploitation include the low capacity of the Kosovo police in intelligence-based policing to actively identify the strategies used by organized crime networks. For example, it took several months in the past for the police to respond to the trafficking pattern changed by traffickers in keeping victims in hotels or bars but rather in private homes.⁹¹ During the first six months of 2010, the Kosovo Police was less efficient in submitting cases to Prosecutors as they have submitted only 22 cases during this period, while in 2009 during the same period of year KP submitted to prosecutors' offices 32 cases. During first six months of 2010, the police conducted 373 raids with only 7 private homes searched. The classic methods of bar raids are not showing sufficient results for investigating and discovering organised crime networks as traffickers change into trafficking methods constantly.

Further, the existence of a witness protection programme for victims of trafficking would encourage victims to cooperate with authorities and also allow for investigation into alleged links between trafficking organised criminal cells. Lack of a special law on witness protection does not allow for witness statements to be free of any outside interference or fear of possible consequences. Intelligence led policing and joint actions between Kosovo police and EULEX mission to investigate and prosecute the crime of trafficking of women and girls continue to be missing. It is of serious concern lack of readiness of Kosovo judges and prosecutors for years now to act pro-actively in the prosecution and appropriate sentencing of organised criminal cells of traffickers.

⁸⁸ Supra note at 21.

⁸⁹ In accordance to Article 9.1, paragraph (f) of the Law on SPRKO.

⁹⁰ Sub n) of paragraph 1 of Article 5, of the Law on SPRKO.

⁹¹ KIPRED interview with shelter provider.

VII. MAIN FINDINGS

The justice system in Kosovo continues to be affected by structural weaknesses, fragile from political and other interferences. There are more than 200.000 civil and criminal cases that remain unresolved. The checks and balances system is weak, with the government branch often interfering in the initiatives of the legislative branch and judicial institutions. The corruption debate dominated the public discussions of Kosovo's society throughout 2010. Lack of track records in the prosecution and sentencing of organised crime and corruption cases continued throughout 2010.

Anecdotal information exists on the level of corruption in Kosovo. The debates have been partially fuelled with the statements and investigations of the EULEX mission, namely on the hunt against the 'big fishes' alluding to high-profile cases involved in corruption activities. While this mission has continued to struggle in between its political and technical mandate, the European Commission Progress Report for Kosovo reaffirmed the persistence of high level corruption. Attempts to eliminate the involvement of the political elite in the economic life and investigations of senior official's corruptive behaviours have been overall weak.

Albeit the existence of mechanisms and strategies against corruption and organised crime, the political will to support effective implementation remains weak. The Anti-Corruption Agency has not succeeded in following administrative investigations into the discrepancies of public officials' asset declarations and their actual incomes. Follow up investigations and prosecution by the police and prosecutorial services has not been observed so far. Sanctions for corrupt behaviours foreseen by the law are weak as sentences are only of administrative nature and need to be amended to become a criminal offence. This contributes to the lack of anti-corruption mechanisms to hold officials accountable for their actions, as administrative and prosecutorial investigations overlap without a clear cut division of responsibilities and mandates. Due to weak legal provisions and overlap in mandates, the suspicion of involvement of administrative and political staff in corruptive behaviours will continue.

Although rule of law remains a priority for Kosovo's EU perspective and the fight against corruption and organised crime are seen as weakest link in the effort to create and uphold effective rule of law in Kosovo, the authorities invested only 1,5 per cent of the budget for Kosovo's judiciary. This budget allocation is minuscule when compared to the 17 per cent of the budget invested in infrastructure capital investments run by the Ministry of Transport, Post and

Telecommunications that is currently under investigation by the EULEX mission in Kosovo for abuse of Kosovo's budget.

The societal expectations for a successful fight against corruption and organised crime have been rising, especially following the spectacular raids and initiation of investigations by EULEX. The results in this aspect, however, have been minimal. By October 2010, the EULEX mission delivered verdicts only in 3 cases of organized crime and 4 cases of corruption.

The current Anti-Corruption Task Force within the SPKO has been jeopardised in its independence by the decision issued by the Prime Minister with minimal consultation of the local prosecutorial services. Its current composition might be fragile from political interferences as the secondment of the police investigators has been done by the Directorate of Organised Crime and Corruption which's investigations have been found prone to political interferences by the 2010 EU Progress Report.

Kosovo continues to lack legislation on witness protection and regional cooperation agreements for witness protection involving cases of trans-national organised crime and corruption. The confiscation of material benefits gained from criminal activities including high-profile corruption has not occurred in any of the cases investigated or prosecuted by Kosovo's institutions or the EULEX mission.

Kosovo managed to adopt a number of important laws that were hampering the independence and autonomy of judicial and prosecutorial services. The laws also started Kosovo's in-depth judicial reform. The Law on Courts, Law on State Prosecution, Law on Kosovo Prosecutorial Council and Law on Kosovo Judicial Council were adopted almost three years after the requirements foreseen by Kosovo's Constitution. The Law on Courts has created conditions for in-depth structural and court system reforms however the new structure of courts will start implementation only in 2013. The Kosovo Judicial Council continued to work on the management of the judicial and prosecutorial services as the Kosovo Prosecutorial Council has yet to be put into function.

Part of the judicial reform will start in January 2011. It includes higher financial remuneration for judges and prosecutors equalizing their salaries to the salaries of the executive branch. The increase of salaries will directly influence the situation of judges and prosecutors. In 2011,

however, necessary arrangements will have to be made by the government to allocate sufficient budgetary resources for implementing the reforms.

The Kosovo Judicial Council and its autonomous body the Independent Judicial and Prosecutorial Commission continued the vetting and re-appointment process of judges and prosecutors in Kosovo. By end of October 2010, the vetting and re-appointment process officially ended. Nevertheless, the process will not resolve the insufficient number of judges and prosecutors in Kosovo's courtrooms. Kosovo will continue to have 3 to 5 times less judges and prosecutors compared to other countries in the region such as Serbia, Montenegro or Croatia. The KJC will need to strategically assess the capacities of Kosovo's judiciary and come up with a budget proposal and planning to support the effective work of the judiciary in Kosovo. Until October 2010, the KJC failed to act upon strategic issues such as the huge backlog of cases, staffing, budget and training needs of judges and prosecutors. The future Kosovo government formed after the 12 December 2010 general elections will need to fully support the KJC and KPC strategies on human and budgetary resources to implement the judicial reform by also increasing the number of judges and prosecutors.

EULEX judges and prosecutors continue to have an executive mandate in the fight against organised crime, war crimes and corruption. The main verdicts recorded so far by EULEX judges were war-crime cases inherited by the former UN administration. The mission's proactive investigations into cases of corruption and organised crime have been very slow in delivering results. The investigation of senior-officials has been announced by the mission as a priority for 2010 and 2011. The EULEX justice component is not sufficiently resourced with some 20 prosecutors and 30 judges deployed throughout Kosovo. With its current operational structure it will struggle to deliver of what it is mandated to deliver.

Judges and prosecutors continue to work under weak protection system, based on case by case requests. This has led to a situation where judges and prosecutors, due to outside interferences or fear of possible repercussions, hesitate to initiate sensitive cases, in particular cases related to war-crimes, organised crime and corruption. The judicial system continues to be dependent of the executive mandate of EULEX judges and prosecutors. Overall, the vision to strengthen the independence of the judiciary and autonomy of the prosecutorial services seems to have improved slightly due to the recently initiated judicial reforms. However, these processes predominantly depend on the will and support of donors. The government has failed to provide

sufficient budgetary support to increase the capacities of judicial and prosecutorial services, showing the lack of will to strengthen the judicial framework and its independence.

Other law enforcement agencies such as the Kosovo Police have struggled with the lack of expertise, equipment and professional independence in conducting investigations into organised crime and corruption cases. Investigation of trafficking in human beings for sexual exploitation as part of organised crime or senior-official corruption remains a challenge. Recent changes in the senior-management of the police tasked to investigate suspected cases of corruption and organised crime will continue to hamper the independence of the investigations. Appropriate restructuring and performance-based promotions lacked. Weighting and ensuring balanced investigations into cases of corruption including investigations into corruptive behaviours of senior-officials will be difficult to achieve. Kosovo will need to re-assess its current structures it has developed on prosecutorial investigations, in order to strengthen the role of its prosecutorial services and of Kosovo Police to fight corruption and organized crime. It currently stands at a cross-road in offering its citizens a resilient state based on rule of law principles. The fight against organised crime and corruption should stay free of political interferences.

VIII. RECOMMENDATIONS

The EU member states should double the number of judges and prosecutors for the EULEX mission in order to match the executive and MMA functions of the ESDP mission. This should serve as a part of strategy to increase both executive and MMA operations in order to proceed with high-profile cases investigation and prosecutions. At the same time they should enable Kosovo judges and prosecutors to continue their work independently with the mission drafting an exit strategy by withdrawing from its executive powers by end of 2012 and beginning of 2013.

The EU member states should decrease the role of anti-riot and crowd control police by end of 2011. At the same time, the EU states should strengthen the role of specialised police on investigation of organised crime and corruption by increasing deployment of police officers from countries with experience in combating organised crime and corruption.

EULEX should immediately deliver results in prosecuting cases of political corruption. This would send a strong signal to the newly elected authorities and increase the overall political willingness of Kosovo institutions to support combating corruption and organised crime. The

development of track records on charges and verdicts in these cases will support Kosovo to improve its rule of law performance and not to become a failed state.

EULEX should refrain from making analysis of short-term political stability and not allow political influence in their work against corruption and organised crime. Short-term stability will cause longer-term effects on Kosovo's statehood. By strengthening of mechanisms for proactive investigation and prosecution including intelligence led policing mechanisms Kosovo could benefit from the rule of law mandate of the mission.

The Kosovo Judicial Council should be strengthened with adequate budgetary support to deliver on its mandate. The support amongst other should include adequate office spacing, adequate financial remuneration for judges, judicial protection and proactive strategies of the judicial services.

The KCJ should re-assess its current approach and structures at disposal in the fight against corruption and organized crime. This should include developing of a strategy in lieu of current findings and results in the fight against organised crime and corruption. The strategy should also consider appointments of judges that should prioritise cases on organised crime and corruption including offering of special protection to judges. The initiative should go hand in hand with KJC's human and budgetary strategy to increase the number of judges in Kosovo as per their estimations.

The Kosovo Prosecutorial Council should immediately be operational with adequate human and budgetary resources in order to deliver on its mandate. Its autonomous budgetary planning should be followed through by the Ministry of Economy and Finance in line with the provisions of the new law on the KPC. Further, the KPC should revise and accordingly draft new terms of reference and structure for the Anti-Corruption Task Force after made functional.

The Ministry of Justice should immediately proceed for adoption the draft law on witness protection. The adoption of the law should also include detailed planning on bi-lateral and multi-lateral agreements for cooperative witnesses with sufficient budgetary resources. The budget collected from confiscation of material benefits gained from criminal activities should support the programme for witness protection.

The use of legal provisions on confiscation of material benefits from criminal activities should start immediately. The Agency for Management of Confiscated and Sequestered Criminal Assets should be immediately made operational. The appointment of staff for the Agency should be free of political interferences.

Works cited:

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- Law No.03/L-059 on Anti-Corruption Agency
- Law No.03/L-151 on Declaration and Origin of the Property and Presents of Public Senior Officials
- Law No.03/L-199 on Courts
- Law No.03/L-223 on Kosovo Judicial Council
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