



Kingdom of the Netherlands

INSTITUTIONAL AND LEGAL
ASSESSMENT ON
INVESTIGATION AND
PROSECUTION OF
CORRUPTION IN ALBANIA,
KOSOVO AND NORTH
MACEDONIA

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This Regional Assessment has been prepared in the framework of the project “Strengthening the capacity for Investigation and Prosecution of Corruption in Albania, North Macedonia and Kosovo”, implemented by Albanian Legal and Territorial Research Institute (A.L.T.R.I) in partnership with Transparency International Macedonia and Kosova Democratic Institute, with the support of the Netherlands Ministry of Foreign Affairs. The opinions expressed in this study do not necessarily reflect the views of the donor.



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CORRUPTION IN ALBANIA, KOSOVO AND NORTH MACEDONIA*

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Abbreviations

- CoE - Council of Europe
- CPC - Commission for the Prevention of Corruption
- NAD- National Anti-Corruption Directorate
- EU- European Union
- EUROJUST - The European Union's Judicial Cooperation Unit
- GRECO - The Group of States against Corruption
- INTERPOL- International Criminal Police Organization
- IPCA - Integrity and Prevention of Corruption Act
- JIT - Joint Investigation Team
- MLA - Mutual Legal Assistance
- OSCE - Organization for Security and Cooperation in Europe
- PNUSKOK - Police National Department for the suppression of Corruption and Organized Crime
- RN- Macedonia - Republic of North Macedonia
- SELEC - The South European Law Enforcement Centre
- SIS - Supervisory and Investigation Service
- TI - Transparency International
- USKOK- Office for the Suppression of Corruption and Organized Crime

Albania

- GDPML- General Directorate for the Prevention of Money Laundering
- HCP- High Prosecution Council
- HIDAACI- High Inspectorate of Declaration and Audit of Assets and Conflicts of Interest
- HJC- High Judicial Court
- NSDI- National Strategy on Development and Integration
- SPAK- Special Prosecution against Corruption and Organized Crime
- SPO- Special Prosecution Office
- SSAI- The State Supreme Audit Institution

Kosovo

- CBK- Division for Prevention of Money Laundering and Financing of Terrorism of the Central Bank of Kosovo
- CPC- Criminal Procedure Code
- FIU- Financial Investigation Unit
- KACA- Kosovo Anti-Corruption Agency

- ✓ KBA- Kosovo Bar Association
- ✓ KCB- Kosovo Central Bank
- ✓ KFIU- Kosovo Financial Intelligence Unit
- ✓ KJC- Kosovo Judicial Council
- ✓ KP- The Kosovo Police
- ✓ KPC- Kosovo Prosecutorial Council
- ✓ KTA- Kosovo Trust Agency
- ✓ ODC- Office of Disciplinary Counsel
- ✓ SACD- Special Anti-Corruption Department
- ✓ SPRK- Special Prosecution of the Republic of Kosovo

Macedonia

- ✓ ARO- Asset Recovery office
- ✓ CARM- The Customs Administration
- ✓ FIO- Financial Intelligence Office
- ✓ MOI- The Ministry of Interior
- ✓ PPO- Public Prosecution Office
- ✓ PPOOCC- Public Prosecution Office for Organized Crime and Corruption
- ✓ PRO- Public Revenue Office
- ✓ SAO- State Audit Office
- ✓ SCPC- State Commission for the Prevention of Corruption
- ✓ UFP- Financial Police Directorate
- ✓ FID- Financial Intelligence Directorate

I. EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Eradicating widespread corruption constitutes a major shared challenge for Albania, the EN Macedonia and Kosovo. The very existence of this phenomenon hampers the economic growth, it corrodes the trust in the government and the judiciary, and as such, it constitutes a considerable threat to meeting EU accession requirements for all three countries. The three countries have demonstrated their commitments on the fight against corruption and have taken key steps in that respect. They are signatories of major international conventions of relevance in this area¹, members of GRECO, they have adopted and put in place national anti-corruption strategies, and have a relatively developed legislative framework covering different aspects of the fight against corruption. In Albania recent legislative changes in the framework of the justice reform, as well as other changes affecting corruption related legislation has aimed at significantly shaping a new approach towards tackling corruption. However, the legislation still remains highly complex and fragmented. As to Kosovo, in the last two decades, amendments to the laws were introduced very frequently, sometimes failing to provide sufficient time for those amendments to produce legal effects. The same applies to RN of Macedonia. There seem to be clear discrepancies between the legal provisions which prescribe certain actions that institutions must undertake on one side, and the inability of the same institutions to implement these actions in practice, on the other.

As to the institutional framework, all three countries there's a common pattern for establishing a rather extensive institutional architecture covering corruption investigation and prosecution, including regular law enforcement agencies and specific institutions dealing with issues of asset control, money laundering, prevention of conflict of interest in the exercise of official duty, etc. In the case of Albania, a new Special Prosecution for the fight against organized crime and corruption and the court was established. Moreover, a fully-fledged system of re-evaluation of judges and prosecutors was introduced and has started delivering tangible results. Nevertheless, the follow-up of identified potential corruption practices conducted by public officials remains concerning. As to Kosovo, there's a strong tendency to prolong the investigations up to the time limits and then submitting the indictment to the court, which constitutes a failure in bringing forward the proceeding in order to get a case decided on its merits. Moreover, the backlog of cases hampers the effectiveness of final conviction of investigated cases. In the RN Macedonia, it seems that there's a stagnation with regard to the functioning of the SPO, due to the fact that the Parliament did not extend the mandate of this institution.

In all three countries, despite the increase in the number of initiated corruption related proceedings and persons indicted, there is a lack of significant tangible success with respect to cases of prosecution and conviction of high- ranking state officials. The case of Kosovo has to be singled

¹ Kosovo's international legal status is regulated by the UNSCR 1244 and up to date the country it is not yet a member of the UN, Council of Europe (CoE) and other regional organizations. Therefore, conventions have not been ratified by the Parliament of Kosovo. However, they are generally accepted in the internal legal system as part of the international law (Article 16/3 of the Constitution of the Republic of Kosovo).

out with regard to the complexities encountered due to issues with the scope of territorial jurisdiction of law enforcement agencies, in areas such as Leposavic, Zubin Potok, and North Mitrovica, where the courts and the prosecution have never effectively extended their power and various acts that occur and reported are often neither investigated and nor decided on their merits.

As to the institutional capacities, there's a lack of overall human and technical resources as a predominant pattern throughout all three countries. The existing staff is not well-trained and well-equipped, and lacks necessary investigative skills. As to the scarcity of technical resources, there's a lack of a wide-ranging electronic case management system linking the police, the prosecution and other corruption related agencies.

With regard to investigative methods employed in detecting corruptive practices, they vary based on the mandate of the institutions and the extent to which the specific legislation has granted them either large or limited access to investigative tools. The institutions in all three countries are equipped by the respective Codes of Criminal Procedure, the legislation on control of assets, prevention of conflict of interest, tax legislation, and anti-money laundering with the necessary tools to enable investigation. For illustration purposes, it may be mentioned that the re-evaluation institutions were vested by the Constitutions with very large investigative powers, the HIDAACI or other corruption investigation related agencies have more limited access to relevant databases.

In all three countries there's shared concern with regard to the lack of disaggregated statistical data on the investigation, prosecution, and conviction of corruption, which would better inform the legislative decision-making and choices in this area.

As to positive examples and good practices in the region, in the case of Albania there has been one successful conviction of a High Court judge, and a few other cases of indictment initiated against few prosecutors and judges. It is noteworthy mentioning the good example of the thorough financial investigation conducted in the course of the re-evaluation process of the judges and prosecutors in Albania. The process has started to give its first results by dismissing a number of judges and prosecutors on the basis of non-provision of sufficient evidence for the trustworthy source of their income. Kosovo, on the other hand, seems to be at the forefront when it comes to the establishment of an integrated electronic system of case management. As to RN Macedonia, there are several prominent cases of the initiation of criminal proceedings for corruption including the former prime minister N.G, two former ministers, and the head of the Operational Technology Department within the Security and Counter intelligence Agency.

A number of regional and mutual agreements or international conventions have been signed in order to increase and facilitate the cooperation between the above countries. Whereas Albania and RN are signatories of the main international agreements within the UN context², on top of these

² Kosovo's international legal status is regulated by the UNSCR 1244 and up to date the country it is not yet a member of the UN, Council of Europe (CoE) and other regional organizations. Therefore, conventions have not been ratified

international agreements, bilateral agreements between all these the countries and other soft law mechanisms have been adopted in order to facilitate the exchange of information and providing a platform for sharing best practices. Moreover, the mutual agreements between the countries foresee the responsible institutions which have an essential role in the enforcement of cooperation. However, the current cooperation patterns are mainly related to exchange of information, and there has been no case of establishing joint investigations units for the corruption criminal offences.

Recommendations specifically refer to the common patterns as well as peculiarities of each country. In all three countries it is crucial to conduct a comprehensive review of the legislations in order to address lacunas as well as enable the harmonization of existing legislation. There's a pressing need to further strengthen the institutions investigating corruption in order to tackle the systematic occurrence of corruption practices in the government and the judiciary. There should be more effort being put in fostering institutional cooperation and ensure the very functioning of the already established institutions which are not yet fully operational. Also, a more coordinated and unified approach is needed in order to staff the relevant institutions and organize targeted trainings. Moreover, a proper electronic system of case management shall be established in order to facilitate the exchange of information between institutions involved in the investigation and prosecution of corruption. Finally, there's a pressing need to collect and elaborate disaggregated data that should be jointly coordinated by all the responsible authorities.

II. INTRODUCTION

2.1 Project background and objectives

This project is conducted in the framework of the Matra Regional Rule of Law Program. The overall goal of Matra is furthering a plural democracy, grounded in the rule of law, enabling room for dialogue between the government and civil society, building capacity and strengthening the institutions of civil society and government, and fostering bilateral relations. This program was initiated in 2014 considering the crucial importance of this policy area within the Western Balkan region. The Netherlands' embassies in Belgrade, Pristina, Sarajevo, Skopje and Tirana were collectively engaged to include dedicated rule of law policy advisors to develop a broader and more in-depth view on the rule of law situation in the region and to further regional cooperation and Dutch bilateral contributions in this field. Rule of law remains among the major challenges and priorities of the EU accession process for Western Balkan countries, including Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Freedom and Security) of the EU *acquis*.

by the Parliament of Kosovo. However, they are generally accepted in the internal legal system as part of the

Among other aspects of ensuring the respect for rule of law, it is crucial that the exercise of public power be free of any kind of influence exerted to and by public officials through corruptive practices. Widespread corruption is a major shared challenge for Albania, the Republic of North Macedonia and Kosovo.³ The very existence of this phenomenon threatens the core democratic values, the stability of institutions and economic growth, and as such, it consists in a considerable threat to meeting EU accession requirements. Defined as 'abuse of entrusted power for private gain' by Transparency International (TI), corruption is a phenomenon that undermines democracy and impacts on societies in a variety of ways. It has economic, political, social and cultural dimensions. Albania, RN Macedonia and Kosovo, as Western Balkan countries present a roughly uniform picture when it comes to their consistently high corruption levels. This can be attributed to region-wide causes, such as the geographical situation, sanctions and embargos on former Yugoslavia, the flourishing of smuggling channels, the legacy of communism, and the post-communist transition period. All of these combined have fueled the spread of corruption and its becoming a mainstream social practice.⁴

In this regard, Kosovo and RN Macedonia are ranked at the same level, compared to Albania ranking slightly lower. However, RN Macedonia has seen an improvement with 14 positions compared to the previous year's Perception Index, while Kosovo and Albania have both lost 8 positions.⁵ The TI's analysis underlines that even though the EU has set harsh conditions for the fight against corruption and providing institutions free from political influence, many governments of the region have failed to show real commitment regarding democracy and the rule of law in their countries.⁶

The three countries mentioned above have declared their commitments on the fight against corruption and have taken key steps in that respect. They are signatories to major international conventions of relevance in this area, as well as members of GRECO, responsible for monitoring compliance with the CoE's anti-corruption instruments. They have adopted and put in place national anti-corruption strategies, and have a relatively developed legislative and institutional framework covering this area.

The measures undertaken to address corruption cases in these countries show various similarities. At the very core of these practices is, among others, conducting effective financial investigations. Financial investigation is a very important tool to investigate and prosecute economic crimes. It can determine where money comes from, how it is circulated, and how it is used. Given the increasing risk of penetration of the licit economy by serious and organized crime, financial investigation is an essential tool of a modern and effective response to criminal threats. It can

³ European Parliament, Anti-corruption efforts in the Western Balkans, Brief, April 2017, pg. 1 [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599417/EPRS_BRI\(2017\)599417_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599417/EPRS_BRI(2017)599417_EN.pdf)

⁴ Ibid

⁵Corruption Perception Index 2018 <https://www.transparency.org/cpi2018>

provide new prosecutable evidence of criminal activities, map out entire criminal networks including their transnational ramifications and is a key element in developing preventive and proactive actions through the design of detection and monitoring tools.⁷

In order to fight corruption effectively it is necessary to understand its many facets, since there is no simple “one-size-fits all” solution to the problem.⁸ That is why investigators and prosecutors need to be equipped with solid knowledge of tools and mechanisms to conduct financial investigation as effectively as possible. However, that scarcity of qualified human resources and investments in this area in the three countries is still a concerning issue. That is why the main goal of this project is strengthening the capacity of public institutions that investigate and prosecute corruption in Albania, RN Macedonia and Kosovo. This goal is directly linked with the needs and problems that the project aims to address, such as:

- (i) lack of information and practice in conducting case investigations of corruption (especially complex ones);
- (ii) lack of information on implementing efficient techniques of corruption investigation;
- (iii) lack of cooperation between the responsible institutions, especially in conditions when new institutions are established following significant legal changes;
- (iv) insufficiency of relevant research work and recommendations by the staff working on this field.

In order to tackle each of the above issues, the project establishes specific objectives, and it is expected to have measurable results. The specific objectives are as follows:

- (i) providing a clear division of responsibilities between institutions at the national level and improving cooperation and coordination between them, enabling a clear division of responsibilities of national institutions and establishment of their cooperation;
- (ii) increasing the capacity and skills of responsible institutions in conducting successful financial investigations and in investigating complex corruption cases, which will make possible to enhance the skills of employees in conducting successful financial investigations and investigating complex corruption cases;

⁷ European Commission, Financial Investigation https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/financial-investigation_en

⁸ European Commission, Fight Against Corruption, European Semester Thematic Factsheet Pg. 15 https://ec.europa.eu/info/sites/info/files/file_import/european-se...

(iii) strengthening the cooperation and exchange of information, and share experiences between competent authorities in Albania, Kosovo and RN Macedonia, by facilitating effective cooperation between competent authorities in these countries.

The projects aim is to involve and welcome all necessary and relevant stakeholders. The solutions offered by this project aims to address the daily work challenges of dealing with high-ranking officials corruption cases, incentivize cross-border cooperation of the relevant institutions, and ultimately, introduce good corruption investigation practices to other countries in the region. The exchange of experience with regard to successes and failures, as well as the establishment of future cooperation in the inter-country fight against corruption would constitute a critical step towards establishing joint or concerted practices for a comprehensive fight against corruption throughout the region.

2.2 Methodology

The institutional and legal assessment on investigation and prosecution of corruption in Albania, RN Macedonia and Kosovo was conducted through a combination of various methods. Firstly, a desk research was aimed at drafting a comprehensive analysis on the existing legal and institutional framework for investigating and prosecuting corruption crimes in each country. This report was based on the existing legal framework and institutions involved in the fight against corruption, taking into consideration the recent developments in the area. Such analysis was followed by a comparative exercise once the respective country reports were assembled, in order to identify similar patterns and singularities of the legal, institutional setup, and operational aspects of investigating corruption in each country. Subsequently, a set of targeted interviews with key experts were conducted, in order to create a holistic and fully informed picture on the investigation and prosecution of corruption in the three countries. In the course of the projects senior officials were interviewed, including the representatives of the following institution in the three countries; as to Albania: the Ministry of Justice, High Inspectorate of Declaration and Audit of Assets and Conflict of Interests, Serious Crimes Prosecution, State Police, Court of First Instance, Albanian Financial Intelligence Unit; as to Kosovo: the Prosecutorial Council, the State Prosecutor General, the Special Court, State Police, and the Kosovo Anti-Corruption Agency; as to RN Macedonia: the Public Prosecutor's Office, Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of Illegally Intercepted Communications, Ministry of Justice, Ministry of Interior, Bureau of Public Security, State Commission for Prevention of Corruption, Financial Police Unit, Financial Intelligence Directorate, Academy of Judges and Public Prosecutors, and the Customs Administration. Through these semi-structured interviews valuable input was collected for the purpose of drafting section IV and V of the report, in order to identify best practices and innovative trends for investigating and prosecuting corruption in these countries. Through these interviews it was possible to single out good examples of successful implementation of methods or tactics for investigating and prosecuting corruption.

The analysis focuses on the existing legal and institutional mechanisms for investigating corruption cases involving high ranking public officials, including among others, judges,

prosecutors, members of the representative bodies, and members the government, many of whom are vested with immunity privileges. The analysis of the report will be structured in four core parts. The first one (section III) is country based, and it aims to provide an overview on the overall legal and organizational aspects of investigating and prosecuting corruption. This part aims at examining the existing strategic documents and legal framework on the provisions of investigating and prosecuting cases of corruption of high ranking state officials and elaborates on the institutional framework in combating corruption, including the main investigation institutions, as well as other institutions vested with auxiliary competences. A specific emphasis was given to the division of responsibilities, as well as inter-institutional collaboration for the sole purpose of consolidating and coordinating the efforts towards better addressing corruption cases. This section is finalized by a thorough diagnosis of the legislative and institutional gaps and various methods and practices on investigating corruption employed by these institutions in their everyday work.

The section IV consist in a comparative analysis, which scope is to identify similar patterns in fighting corruption, and innovative practices. The section aims to highlight positive regional examples in combating corruption, based on the efficacy of the legal framework and the institutional setting, as well as the adequacy of the methods employed.

The section V address regional cooperation, including mutual legal assistance, based on international conventions and/or bilateral agreements, including the provision of successful examples of cooperation in corruption cases having a transnational nature.

The sixth and the last part of the assessment contains the conclusions and both general and country-specific recommendations that will serve to institutions involved in investigating and prosecuting organized crime, to enhance and refine the tools of investigating corruption, improving standard operating procedures for the institutions involved in the fight against corruption, as well as increasing the capacities of these institutions.

III. COUNTRY ANALYSIS

Corruptions seems to be widely prevalent in all branches of government affecting primarily the decision-making process as well as service delivery of state institutions in all three countries. This chapter aims at presenting a country specific analysis with the purpose of shedding light on the existing legal and strategic framework, the institutional architecture, as well as the methods and resources employed in the fight against corruption.

3.1 ALBANIA

3.1.1 Introduction

Albania has suffered from widespread corruption, and corruptive practices remain a serious issue hindering the economic and social development of the country. In particular, there is a systematic occurrence of corruption practices in the government and the judiciary. Based on the Corruption Perception Index for 2018⁹, Albania ranks 99th out of 180 countries and territories. However, in recent years, several important steps forward have been taken in order to eradicate corruption. The EU Commission Report for Albania of 2019, on the one hand, acknowledges the progress of the ongoing efforts *“with the adoption of the new action plan 2018-20 for the implementation of the Inter-Sectoral Strategy against Corruption; the amendments to the Law on the Declaration and Audit of Assets; the Law on Public Procurement; and the adoption of the Code of Conduct for Members of Parliament. The establishment of an Anti-corruption Task Force has increased the proactivity of administrative investigations and is already producing its first concrete results. Good progress has continued through further consolidating efforts towards the establishment of a solid track record on investigating prosecuting and trying high-level corruption cases”*. On the other hand, it emphasizes the pressing need for *“further progress towards establishing a solid track record of seizure and confiscation/recovery of criminal assets resulting from corruption-related offences and further increase the use of financial investigations; ii. finalising the procedures for the establishment of the specialised anti-corruption bodies, composed of the Special Anti-Corruption and Organised Crime Structure (SPAK), the National Bureau of Investigation (NBI), and the Court to address high-level corruption and ensure adequate resources and cooperation between these new structures; iii. continuing to improve access to national electronic registries for law enforcement authorities”*¹⁰. With regard to convictions of high-level state officials, the EU Commission Report for Albania highlights that *“there were 102 new cases against high-level state officials sent to prosecution in 2018 (7 persons indicted), this has been an increase compared to 61 in 2017 (10 persons indicted). However, these frequent investigations in recent years have so far not resulted in a substantial number of final convictions of high-ranking state officials.”*. Also, the Department of State, in its Albania Human Rights Report for 2018 states that *“A number of*

⁹ Transparency International, <https://www.transparency.org/cpi2018>

¹⁰ European Commission Report for Albania of 2019, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-albania-report.pdf>, pg 18-19.

*government agencies investigated corruption cases, but limited resources, investigative leaks, real and perceived political pressure, and a haphazard reassignment system hampered investigations [...] While prosecutors made significant progress in pursuing low-level public corruption cases, including corrupt prosecutors and judges, prosecution of higher level crimes remained rare due to investigators' fear of retribution, a general lack of resources, and corruption within the judiciary itself"*¹¹. Both the European Commission and the State Department point out the lack of significant and tangible success with respect to cases of prosecution high- ranking state officials, and the need to further strengthen the institutions investigating corruption.

Data from the Attorney General's Offices reaffirm some the findings of the above-mentioned institutions. In 2018, it is noted that there is a 37% decrease in the total number of criminal proceedings registered by the Prosecution for corruption offenses, and an increase of 63 % of the number of initiated court proceedings compared to 2017. The highest number of proceedings registered for the criminal offenses of corruption for 2018 fall within the scope of the criminal offense "Passive corruption of persons exercising public functions", based on article 259 of the Criminal Code, with 74 proceedings registered for 2018, an increase of 21% of registered proceedings compared to the statistics of 2017. As for the corruption in the justice system, 3 criminal proceedings have been registered based on Article 319 of the Criminal Code "*Active corruption of judges, prosecutors and other justice officials*" and 29 criminal proceedings have been registered for the criminal offense based on article 319/ç of the Criminal Code "Passive Corruption of Judges, Prosecutors and other Officials of the justice system ", among which only 2 out of the 29 proceedings have been sent to court. During 2018, proactive investigations have been carried out using specialized investigative techniques in the context of 93 criminal proceedings, constituting an increase of 14.4%.¹² Based on the data published by the Ministry of Justice pertaining to the adjudication of criminal offences of corruption at large, during 2018, 294 persons have been convicted by the First Instance Courts, and the Courts of Appeal has declared 285 persons have been convicted. The Supreme Court has declared innocent 2 persons and 4 persons were convicted.¹³ There is a lack of disaggregated data based on the category of state officials indicted which constitutes an obstacle in properly assessing the progress being made.

¹¹Albania 2018 Human Rights Report, <https://al.usembassy.gov/wp-content/uploads/sites/140/2019-English-HRR.pdf>, pg 16-17;

¹² Attorney General's "Report on the State of criminality for 2018", http://www.pp.gov.al/web/raporti_vjetor_2018_1571.pdf, pg 9.

¹³ <http://drejtesia.gov.al/wp-content/uploads/2019/07/Vjetari-Statistikor-2018-PDF.pdf>, pg 86. Under Guideline 804/1, dated 23.12.2013 of the Minister of Justice, concerning the collection and processing of statistics, the criminal offenses of corruption are grouped as follows:

- Corruption in the public sector,
- Conflict of interest and asset declaration,
- Corruption of officials,
- Corruption in the judiciary
- Corruption in the private sector

Overall, the findings of the EU Commission and those of the State Department coupled with the data provided by the Prosecution and the Ministry of Justice resonate in showing that there's an increase in the number of investigated and adjudicated cases on corruption, however, impunity of high-ranking state officials largely remains the main concern.

3.1.2 Strategic documents and the legal framework on the investigation and prosecution of corruption

Tackling corruption has been an ongoing struggle of Albanian governments, mainly due to the strong correlation between corruption practices, and economic, political and social sustainable development in the country. In Albania, a consolidated range of policy and strategic documents and laws were adopted with regard to fostering the capacities for the investigation and prosecution of corruption.

3.1.2.1 Strategic documents

The main strategic documents tackling corruption are both of generic and sector-specific nature. To start with, the **National Strategy on Development and Integration (NSDI) 2015-2020** constitutes the main strategic document, coupling the EU integration agenda with the country's sustainable economic and social development. The strategy addresses the need for combating corruption as a key requirement for advancing the process of EU integration.

The most comprehensive strategic document covering anti-corruption efforts is the **Cross-cutting Strategy Against Corruption 2015-2020**¹⁴. The strategic objectives are divided in three main pillars: prevention, punishment, and awareness raising on corruption. These objectives shall be implemented throughout an extended period of time and they should be coupled with specific actions, as prescribed in the action plan. With regard to the first pillar, prevention of corruption, the Strategy aims at tackling corruption public administration institutions, and other sectors of the government, including service delivery agencies. As the punishment of corruption is concerned, the law enforcement agencies, especially independent institutions which play a key role in this process, should monitor the compliance with the law and the application of the principle of rule of law to ensure the transparency and integrity of government bodies. As to the third pillar, a wide-ranging awareness campaign shall be initiated, including education institutions, in order to engage citizens in understanding, reporting corruption cases, as well as participating actively in initiatives that aim to prevent corruption.

Lastly, the **Strategy of the Reform in the Justice System**¹⁵ is a strategic document tackling corruption in the judiciary. Based on the findings of the analytical document identifying the loopholes in the justice system and future challenges, the strategy envisages a set of

¹⁴ Decision of the Council of Ministers no 247, dated 20.3.2015 "On Approval of Inter- sectoral Strategy Against Corruption 2015-2020";

¹⁵ Decision of the Ad-hoc Parliamentary Commission, No. 15, on 30.07.2015 "For the approval in principle of the Strategy and Action Plan for the Justice reform in Albania".

https://reformatredjtesi.al/sites/default/files/draft_strategjia_versioni_shqip.pdf

“Anticorruption Measures”, which include, *inter alia*, encouraging public participation in fighting against corruption, establishing a team of judges and prosecutors with high ethical and professional integrity, improving performance by evaluating and reevaluating their performance, preventing corruption through increasing judges and prosecutor’s responsibility and strengthening administrative and criminal investigation on their assets, increasing punity of criminal offences of corruption, aiming to strengthen detection and proactive investigation by establishing special anticorruption units.

3.1.2.2 Legal framework

The legal framework for investigating and fighting corruption includes the Constitution and other legal acts which regulate in greater detail the institutional framework and the procedural aspects of investigating corruption.

The Constitution of the Republic of Albania, as recently amended¹⁶, establishes a fully-fledged system of institutions for combating corruption. Through these amendments a Special Prosecution Office and the Special Investigation Unit for criminal prosecution and investigation of criminal offenses of corruption, organized crime has been established.¹⁷ Both these institutions function independently from the Office of the Attorney General, and are not subordinated to the later. The members of the Special Prosecution are appointed by the High Prosecution Council, which is in charge for appointments, evaluation, disciplinary measures, transfers and dismissals of prosecutors. Also, the High Justice Inspector shall investigate and initiate a disciplinary proceeding for judges and prosecutors who have allegedly violated the Constitution and the law.

On top of the above, the constitutional amendments establishes for the first time a comprehensive system of re-evaluation of judges and prosecutors of all levels, including clerks assisting judges, and prosecutors at the Attorney’s General Office. The re-evaluation process was introduced in order to guarantee the functioning of the rule of law, the independence of the justice system, and to restore the public trust in the institutions of this system. The re-evaluation is carried out by the Independent Qualification Commission, while the appeals of the re-evaluation entities or the Public Commissioner are reviewed by the Special Appeals Chamber. Both these institutions are independent and impartial and are bound to respect due process rights. The assesses are subject to a three-fold system of re-evaluation. The revaluation involves the control of assets, integrity, and professional proficiency. As to the assessment on assets, the re-evaluation institutions engage in a thorough investigation in order to discover cases of hidden assets, false declaration of assets, lack

¹⁶ Official Gazette of the Republic of Albania, Year: 2016 - Number: 138, Law no. 76/2016 “On some additions and amendments to the Law no. 8417, dated 21.10.1998, “The Constitution of the Republic of Albania””, http://www.qbz.gov.al/botime/fletore_zyrtare/2016/PDF-2016/138-2016.pdf

¹⁷ Article 135, paragraph 2 of the Constitution-Special Courts shall adjudicate on the criminal offenses of corruption and organized crime, as well as criminal charges against the President of the Republic, the Speaker of the Assembly, the Prime Minister, members of the Council of Ministers, the Judge of the Constitutional Court and the High Court, the Attorney General, the High Inspector of Justice, the High Judicial Council’s and the High Council of the Prosecutor’s members, and the heads of central or independent institutions defined in the Constitution or the law, as well as the charges against the former officials of the aforementioned functions.

of lawful sources of income, eventual cases of conflict of interest, as well as inaccuracies in declaration. For the purposes of this investigation the Independent Qualifications Commissions is based on the reports compiled by the HIDCACI, which serves as an auxiliary institution in the re-evaluation process. Nevertheless, the re-evaluation institutions may extend the scope of their investigation by delving into the documents made available by the assessee himself/herself, as well as other documents or information as deemed relevant for the case. If the Independent Qualification Commission concludes that the assessee has failed to file a timely declaration of assets under the law, attempts to conceal or falsely declares assets in its possession, the principle of presumption in favor of the disciplinary measure of dismissal applies, and the burden of proof is shifted to the assessee who must prove the contrary. If the subject of reassessment fails to do so, the findings are considered valid and the subject is dismissed. These institutions are fully equipped with the means and sources for conducting thorough administrative investigations in order to discover possible corruption practices conducted by the assessees.

The Criminal Code of the Republic of Albania (amended)¹⁸, is the main piece of legislation establishing specific criminal offences, including a series of corruption related criminal offenses, and respective sanctions. These offenses are categorized into five main groups and they include:¹⁹

1. Corruption in the public sector, such as active corruption of persons exercising public functions (Art. 244), active corruption of foreign public officials (Art. 244/a-), exercising unlawful influence on public officials (Art. 245/1), misuse of power (A. 248), passive corruption by persons that exercise public functions (Art. 259) and passive corruption of foreign public officials (Art. 259/a)

2. Asset Declaration and Illegal benefit of interests, article 257 foresees the illegal benefit of interest, while Article 257/a the refusal for declaration, non-declaration, concealment or false declaration of assets, private interests of elected persons and public employees, or of any other person that is legally binding for the declaration.

3. Corruption of public officials including both active and passive corruption of high-ranking state officials and local elected representatives. (Art. 245 and Art. 260);

4. Corruption in the judicial system, including active corruption of witnesses, experts, or interpreters (Art. 312), both active and passive corruption of judges, prosecutors, other justice officials, including those of international courts, or arbitrators or foreign court officials (Art. 312, Art. 319, 319/a-e)

5. Corruption in the private sector, including both active and passive corruption (Art. 164/a and 164/b)

¹⁸ Law No. 7895, date 27.1.1995, “The Criminal Code of the Republic of Albania” (amended) has been published in the Official Gazette of August 2017, <http://www.qbz.gov.al/Kode/Kodi%20Penal-2017.pdf>

¹⁹ Guideline no. 804/1, dated 23.12.2013 of the Minister of Justice.

The Criminal Procedure Code of the Republic of Albania²⁰, as amended, constitutes the most important procedural law governing the actions carried out by all participants in a criminal proceeding, including state authorities and individuals. The procedural provisions of the Code determine detailed rules with regard to conducting criminal prosecution, the investigation of criminal offences, the judicial process, and the enforcement of judicial decisions.²¹ The most recent amendments to this Code, approved in 2017, affect numerous chapters of the Code, including the procedures conducted by the prosecutor, the judicial police, the court, the defendant, and the accusing victim. Furthermore, the amendments have brought changes on the provisions on acts, witnesses, and procedural timelines by aiming to improve the efficacy of the proceeding. The amendments have been tailored in order to comply with the new institutional set up on investigating corruption and organized crime established by the Constitution.²²

Law “On the organization and functioning of institutions for the fight against corruption and organized crime”²³. The purpose of this law is to define the rules for the organization and functioning of the Special Prosecution on corruption and organized crime and the Independent Investigation Unit, based on the latest constitutional amendments. The Special Prosecution is composed of various sections, two among which are crucial in performing its duties: The Financial Investigation Section and the Section for International Cooperation and Joint Investigations Liaisons Coordinator. The law also provides for the establishment, organization, and functioning of the National Investigation Bureau as a specialized unit of the Judicial Police, operating solely under the supervision of the Special Prosecution Office.

Law “On the temporary re-evaluation of judges and prosecutors in the Republic of Albania”²⁴. Following the Constitutional amendments establishing a system of re-evaluation of judges and prosecutors, the law aims at an in-depth regulation of the legal environment for the functioning of these institutions. The law establishes the principles and rules of organization and procedure of the re-evaluation process, as a *sui generis* type of disciplinary proceeding. This law underwent a process of consultation with the Venice Commission. According to the latter, the

²⁰ Law no. 7905, date 21.3.1995 has been published in the Official Gazette of July 2017, <http://qbz.gov.al/botime/Kodi%20i%20Proc.Penale,%20me%20ndreqje.pdf>

²¹ Article 2 of the Criminal Procedure Code of Albania.

²² Article 75 / a of the Criminal Procedure Code of Albania. The Court on Corruption and Organized Crime adjudicates: a) criminal offenses of corruption and organized crime; b) any criminal offense committed by a structured criminal group, criminal organization, terrorist organization and armed gang according to the provisions of the Criminal Code; c) criminal charges against the President of the Republic, the Speaker of the Assembly, the Prime Minister, the members of the Council of Ministers, the judge of the Constitutional Court and the High Court, the Attorney General, the High Inspector of Justice, the mayor, member of the parliament, deputy minister, the High Judicial Council and the High Council of Prosecutors’ members, and the heads of central or independent institutions defined in the Constitution or in law; ç) criminal charges against the former officials when the offense was committed during the exercise of duty.

²³ Law no. 95/2016, dated 6.10.2016 has been published in the Official Gazette no. 194, dated 20 October 2016.

²⁴ Law no. 8416/2016, dated 30.08.2016 has been published in the Official Gazette no. 180, dated 23 September 2016.

measures provided in the law were deemed justified, in order to “*protect Albania from corruption, which, if not handled carefully, may result to a completely destroy of the judicial system.*”²⁵

According to this law, members of the Independent Qualifications Commission, judges at the Appeal Chamber and international observers shall investigate on all facts and assess all necessary circumstances of the re-evaluation procedure. In the course of the administrative investigation, the Commission, the Appeal Chamber and the international observer may request information from any subject of public law according to articles 49 and 50 of this law.²⁶ These provisions set forth an obligation of state/private institutions to co-operate in the framework of the re-evaluation process. The refusal to cooperate, the delay in submitting information, or inappropriate conduct in providing the required information, constitutes a criminal offense for misuse of power or under the provisions of the Criminal Code,²⁷ or a disciplinary infringement. In the process of re-evaluation, special attention has been paid to the disclosure of facts by the public that may constitute evidence. Every person has the right to signal the institutions for concrete facts or evidence, and the latter institutions should preserve their anonymity. After the conclusion of the investigation, the Independent Qualifications Commission, discusses the case in closed session in the presence of the international observer and deliberates by deciding one of the following options: dismissal, confirmation in office, suspension from office coupled with obligation to attend a one year education program at the School of Magistrates.²⁸ In cases of dismissal, the assessee may not be appointed as judges, prosecutor of any level, member of the High Judicial Council, High Prosecution Council, High Justice Inspector, or Prosecutor General for a period of fifteen years²⁹.

Law “On Preventing and Combatting Organized Crime, Trafficking, Corruption and Other Crimes through preventive measures against assets, as amended” (the so-called “Antimafia Law”)³⁰, defines the competences, procedures, and criteria for the implementation of *ex ante* measures against the assets of persons who are subject to this law as suspects for participation in organized crime, trafficking, corruption and other crimes pursuant to the provisions of this law. One of the novelties brought by the recent amendments of this law is the reduction of the standard of proof required to establish the link between the assets and organized crime, trafficking or corruption, with regard to seizure and confiscation³¹. The law clarifies the standard as “*reasonable doubt based on indications*” with the purpose of applying its provisions to the assets of persons

²⁵ Commission for Democracy through Law (Venice Commission), Final Opinion on the revised draft Constitutional Amendments on the Judiciary CDL-AL (2015)045 and the final opinion CDLAD (2016) 009 pg. 12

²⁶ Law 84/2016 “On the transitional re-evaluation of judges and prosecutors in the Republic of Albania” art. 45

²⁷ Article 248 of the Criminal Code of the Republic of Albania

²⁸ Constitution. Annex, Article E

²⁹ The Constitution Annex, Art. G

³⁰ Law No. 10192, dated. 03.12.2009,

http://qbz.gov.al/Ligje.pdf/drejttesi/Ligj_10192_03122009_perditesuar_2017.pdf

³¹ Law No. 70/2017

who, according to this standard of proof, result to be involved as offenders of the crimes specified in the law.

The application of the provisions of this law extends beyond the suspected individual. A special feature of this law consists in its applicability towards the assets of persons who are closely blood related or other natural or legal persons linked with the person under investigation. The law also applies retroactively with regard to assets of persons created before the entry into force of the law, on the sole condition that these assets are created or acquired as a result of the involvement in criminal activities of the suspected individual.

Law “On the prevention of conflict of interests in the exercise of public functions”, as amended³², is the main piece of legislation aiming to guarantee an impartial and transparent decision-making in the best possible interest of the public, as well as restore the trust in the functioning of public institutions, through the prevention of conflicts between public and private interests during the exercise of official duty. The object of this law is the definition of rules, means, procedures, responsibilities, and competencies for the identification, declaration, registration, treating, resolution and punishment of the cases of conflict of interests. The law regulates the range of private interests, the public officials who are subjects of this law, the consequences of decision-making affected by conflict of interests, the categories of conflict of interests such as “actual conflict of interest”, “apparent conflict of interest”, “potential conflict of interest”, “case by case conflict of interest”, and “continuing conflict of interest”.

Law “On Whistleblowing and Protection of Whistleblowers”³³ sets out the rules for signaling a suspected action or practice by whistleblowers in the public and private sector, the protection mechanisms of whistleblowers and the obligations of public authorities and private entities with regard to whistleblowing. The law regulates in detail the principles of whistleblowing, the structures responsible for whistleblowing, the principles and procedures of the administrative investigation, the confidentiality and the manner of protection of whistleblowers. By the time this assessment was drafted, in public institutions 166 units have been established and became operational, and in the private sector 446 units established units are responsible for implementing this law. In 2018, in the course of the exercise of its legal competences, HIDAACI, as an external reporting mechanism for whistleblowing and requests for protection against retaliation, recorded and handled a total of 16 cases of external reporting and 3 requests for protection in the framework of the law no.60/2016.³⁴

³² Law No. 9367 dated 7.4.2005, <http://www.hidaa.gov.al/ligji-nr-9367/>

³³ Law no. 60/2016 has been published in the Official Gazzette no. 115, dated 23 June 2016. http://www.qbz.gov.al/botime/fletore_zyrtare/2016/PDF-2016/115-2016.pdf

³⁴ Annual Report of HIDAACI 2018, <http://www.ildkpkj.al/raporte-vjetore/>

Law “On the declaration and audit of assets, financial obligations of elected persons and certain public officials”, as amended³⁵. The purpose of this law is determining the rules for the declaration and audit of assets, the legitimacy of the sources of their creation, financial obligations for elected officials, public employees, their families, and persons related to them. The arithmetic and logical audit is performed for each declaration, in order to verify the accuracy of the assessment of the declared assets, accuracy of the financial sources declared, and the sufficiency of covering the assets with the sources declared. This auditing process is carried out on the declarations of private interests based on function of the declarants and the scheme provided in Article 25/1. Nevertheless, the Inspector General of HIDAACI initiates an administrative investigation when, based on the results of the verification of the declaration it turns out that the legal sources do not cover, or justify the assets, or when for a specific declaration existing data from legitimate sources show hidden interests or false declarations. The Inspector General carries out a complete investigation, when in possession of legitimate sources that question the authenticity and accuracy of the data in the declaration, and when discrepancies result from the arithmetic and logical control, which proves that the sources do not cover or justify the ownership rights of the declaring subject.³⁶

Law “On Public Financial Inspection”³⁷, aims to protect the financial interests of public entities against serious financial mismanagement, fraud, theft, destruction of property, abuse of office or corruption. The mission of public financial inspection is to guarantee the implementation of legality in the use of public funds and to provide assistance in improving public financial management. All government agencies, state-owned companies, non-profit organizations that are controlled or financed by the state, or those where the state retains a controlling part of shares, as well as any other natural or legal person, solely with regard to funds granted by the state budget, the EU, or other funds gained through an international agreement, where the Albanian state is a beneficiary. The financial inspection shall be carried out by the relevant unit subordinated to the Minister of Finance.

Law “On transitional and periodical evaluation of employees of State Police, Republic’ Guard and the Service for Internal Affairs and Complaints in Ministry of Interior”³⁸ aims to design principles, procedures, criteria and standards to evaluate the above-mentioned employees, in order to ensure the reliability of the professionals working in these institutions. The law establishes the institutions in charge of evaluation, such as the External Commission of Evaluation, the Central Commission of Evaluation and Local Commission of Evaluation. Those institutions will evaluate the assets declaration, the integrity and the professionals’ skills of employees. Based

³⁵ Law No. 9049, dated 10 April 2003,

http://www.qbz.gov.al/Ligje.pdf/administrata%20shteterore/Ligj_9049_10042003_perditesim.pdf

³⁶ Ibid, art. 25/1

³⁷ Law no. 112/2015 has been published in the Official Gazzette no. 186, dated 27 October 2015.

http://www.qbz.gov.al/botime/fletore_zyrtare/2015/PDF-2015/186-2015.pdf

³⁸ Law 12/2018 On the transitional and periodical evaluation of employees of State Police, Republic’ Guard and the Service for Internal Affairs and Complaints in Ministry of Interior

on the provisions of this law these institutions may carry out administrative investigations and may make use of a variety of fact-finding tools, as well as cooperate with other state institutions for the purposes of evaluation.³⁹

3.1.3 Institutional framework on the investigation and prosecution of corruption

Since corruption constitutes a severe failure of governance, and it weakens the functioning of the institutions, a multi-institutional approach is needed in the fight against corruption. For this purpose, both the traditional law enforcement agencies and specialized anti-corruption institutions have been established, for the purpose of identifying and handling corruption cases.

The Assembly, as the law-making body is responsible for adopting all legislation with regard to ensuring proper investigation on the fight against corruption, as well as ensuring the compliance of such legislation with ratified international agreements and other international commitments in this area. Apart from its legislative function, the Assembly is vested with special parliamentary investigative powers. The Constitution enables the Assembly to establish Investigation Committees in order to investigate an issue bearing special importance.⁴⁰ Since the adoption of the Constitution the Assembly has exercised this function several times, by conducting parliamentary investigation on several high profile alleged corruption cases, and their findings have been forwarded to the General Prosecution.

Courts. The Constitution stipulates that the judicial power is exercised by the Supreme Court, as well as by the courts of appeal, and the courts of first instance. Special Courts shall adjudicate on the criminal offenses of corruption and organized crime, as well as criminal charges against the President of the Republic, the Speaker of the Assembly, the Prime Minister, the Council of Ministers, the Judges of the Constitutional Court and the Supreme Court, the General Prosecutor, the High Justice Inspector the High Judicial Council and the High Council of Prosecutor's members, and the heads of central or independent institutions defined in the Constitution or the law, as well as the charges against the officials previously holding these positions. As regards the Special Courts adjudicating corruption and organized crime cases, the Constitution determines a three-tier system of review, where two levels of review function as Special Courts. There shall be a Special Court of First Instance, and a Special Court of Appeals,⁴¹ and appeals against the latter shall be heard by the Supreme Court. These courts have full jurisdiction to adjudicate in cases of corruption and other related crimes.

³⁹ Ibid. art. 48 and 49

⁴⁰ The Constitution . Art. 77/2

⁴¹ Article 75/a of the Criminal Procedure Code of Albania.

According to the Constitution, the **Prosecution**⁴² conducts the criminal prosecution and represents the accusation on behalf of the state before a court of law. Article 148/4 of the Constitution has established for the first time a **Special Prosecution Office** and a Special Investigation Unit, whose scope is the criminal prosecution and investigation of the criminal offenses of corruption, organized crime and criminal offences committed by high ranking state officials. The Special Prosecution has the power to investigate, and prosecute any other offense that is closely related to the investigation or criminal case within the competencies provided for above.

The Special Investigation Unit, alternatively named as the National Bureau of Investigation, is subordinated to the Special Prosecution Office. This is a specialized section of the judicial police which investigates criminal offences under the jurisdiction of the Special Prosecution in accordance with the provisions of Criminal Procedure Code. The National Bureau of Investigation shall also maintain judicial police services in accordance with this law. According to Law 95/2016 “On the organization and functioning of institutions for combating corruption and organized crime” both these institutions constitute the “Special Anti-Corruption and Organized Crime Structure” (SPAK).⁴³

The State Police’s mission, organization, functioning, and status is regulated by Law no. 108/2014 “On the State Police”. The State Police Directorate is organized into a hierarchical organizational structure both at the central and local level. Within the organizational structure of the State Police, the Department of Serious Crimes and Organized Crime is composed of the Directorate for Financial Crime, the Directorate for Serious Crimes, etc. These Units are crucial in spotting cases of corruption and managing information that will serve to the investigation by the Special Prosecution.

The Service for Internal Affairs and Complaints is a special unit of the Ministry of Internal Affairs directly subordinated to the Minister. This unit conducts intelligence activities, such as the collection, administration, evaluation, analysis, validation, dissemination and use of the information with the purpose of preventing, detecting and documentation of criminal offenses committed by employees of police units.⁴⁴

The External Commission of the Evaluation and the Service for Internal Affairs and Complaints. They are newly established and they operate in an independent, impartial and responsible for verification, evaluation, and obtaining decisions against employees within their jurisdiction.⁴⁵

⁴² Law no. 97/2016 “On the organization and operation of the prosecution in the Republic of Albania”

⁴³ Law No. 95/2016 “On the organization and functioning of institutions for combating corruption and organized crime;

⁴⁴ Law No. 70/20214 “For the internal affairs and Complaints Service at the Ministry of Interior”;

⁴⁵ Law 12/2018 On the transitional and periodical evaluation of employees of State Police, Republic’ Guard and the Service for Internal Affairs and Complaints in Ministry of Interior.

State Information Service functions based on Law No.8391, dated 28.10.1998, “On National Information Service”, as amended. The State Information Service exercises its activity in accordance with procedures drawn up by the Director and approved by the Prosecutor General of the Republic of Albania. The Prosecutor General exercises control over the implementation of these procedures. The latter refer to methods of finding information from the intelligence and counterintelligence, the use of physical and electronic control techniques, the ways to verify and validate information sources and collecting information on individuals who are expected to be sources of information. This institution plays an important role in providing intelligence in cases of allegedly corrupted high-ranking state officials.

The General Directorate for the Prevention of Money Laundering is the Albanian Financial Intelligence Unit, empowered by the Anti Money Laundering and Countering the Financing of Terrorism (AML/CFT) legislation to collect, manage and analyze reports filed by entities subject of reporting in order to prevent and combat money laundering and financing of terrorism. This institution conducts its activity in close cooperation with the Directorate of State Police and the Prosecution Office, and shall inform the latter on the information gathered, transactions conducted, as well as findings following its investigation. This institution’s expertise is particularly relevant for spotting high profile cases of money laundering as a result of a corruption practice, or overseeing suspicious transactions of politically exposed individuals, falling within the high-risk category of subjects for money laundering purposes.

The Supreme State Audit is the highest institution of economic and financial audit.⁴⁶ This institution is in charge of supervising the economic activity of state institutions and other state legal entities, the use and preservation of state funds by the bodies of central and local government, the economic activity of legal entities, in which the state owns more than half of the quotas or shares, or when their debts, credits and obligations are guaranteed by the state. Following its investigation, the Supreme State Audit may follow up with the case by sending the files to the Prosecution Office, if it reaches the conclusion that there has been a substantial violation in the course of the performance of the activities of any of the public institutions under its jurisdiction,

High Inspectorate of Declaration and Audit of Assets and Conflicts of Interest exercises its competences based on Law no. 9049 dated 10.04.2003 “On the Declaration and Audit of Assets, Financial Obligations of the Elected and certain Public Officials” and the Law no. 9367 dated 7.4.2005 “On the Prevention of Conflict of Interest in the Exercise of Public Functions”. The High Inspectorate, under the responsibility of the Inspector General, administers the declaration of assets, financial obligations, the audit of this declaration, according to the provisions of the laws on declaration and conflict of interests. HIDAACI collaborates with audit units and other institutions responsible for the fight against corruption and economic crime. Furthermore, HIDAACI leads and improves the policies regarding prevention of conflict of interests; offers

⁴⁶ The Constitution, Art. 162/1

technical assistance in providing advice and support of legal initiatives undertaken by public institutions in preventing conflict of interest.

Besides the above-mentioned responsibilities, HIDAACI has acquired an important auxiliary role in the process of re-evaluation of judges and prosecutors. Based on declarations of assets, HIDAACI shall conduct a full audit procedure in compliance with this law.⁴⁷ For this purpose the Inspector General has approved a Directive to facilitate the declaration.⁴⁸ Despite the active role of HIDAACI as a preliminary fact-finding mechanism, the re-evaluation institutions remain the responsible authorities to conduct a thorough investigation on each individual case.

Ad-hoc institutions for the re-evaluation of judges and prosecutors constitute a comprehensive institutional set-up as stipulated in the Constitution and the Law 84/2016 for the purpose of assessing judges, prosecutors and clerks on the judiciary and Attorneys General Office based on the criteria pre-defined in the Constitution. These institutions are principally responsible for conducting investigations and adjudicating on cases of officials of the judiciary owning or linked to suspicious assets, those who are found to have ties with the organized crime, or grossly lack of professional proficiency. These criteria are not cumulative, and the re-evaluation institutions may dismiss the assessee based on either one criteria or the other, or several criteria. The fully-fledged mechanism of re-evaluation consist of the following:

- a) **The Independent Qualification Commission** is a constitutional and *ad hoc* independent body carrying out investigation of an administrative nature based on the assessment criteria, aiming at identifying loopholes in the asset declaration, or other declarations submitted by the assessee. The Commission is granted access to all relevant government databases and files, including the assessee's personal files, statistical data, files selected for evaluation, self-evaluations, opinions of supervisors, training records and complaints, verification of complaints, disciplinary decisions against the assessee, data on the assessee's property, bank accounts, tax records, car registration data bases, data on border, as well as any other relevant documents.⁴⁹
- b) **The Special Appeals Chamber** is an independent *ad hoc* judicial institution that serves as an appellate body for the decisions of the Independent Qualification Commission, and it has full jurisdiction to decide on the case. The Special Appeal Chamber is granted access to all relevant documents of the file and it may order private individuals and companies to provide testimony

⁴⁷ Law 84/2016 "On the transitional re-evaluation of judges and prosecutors in the Republic of Albania" art. 33/1

⁴⁸ Directive "On the manner of declaration of assets, owned, possessed and used, sources of their creation, financial obligations from the assessee and related persons bearing the obligation to declare the assets" pursuant to Law no. 84/2016, dated 30.8.2016, "*On the temporary re-evaluation of judges and prosecutors in the Republic of Albania*"

⁴⁹ Law no. 84/2016 "On temporary re-evaluation of judges and prosecutors in the Republic of Albania" art. 49

or evidence in accordance with the law. The Chamber makes use of the same tools of collecting evidence as the Commission.⁵⁰

- c) **Public Commissioners** represent the public interest throughout the re-evaluation process and their duty consists in filing appeals to the Special Appeals Chamber, in case they find a violation of the Constitution, or the legal provisions on the re-evaluation process by the re-evaluation institutions.⁵¹

d) The Constitution regulates the exercise of the activity of the international observer, namely the **International Monitoring Operation**, which is an international independent body including representatives from partners within the framework of the European integration process and Euro-Atlantic cooperation. It is led by the European Commission and it oversees and assists the re-evaluation institutions.⁵² The international observers are entitled to file findings and opinions on issues examined by the Commission and the Special Appeals Chamber, submit a written recommendation to the Public Commissioners to file an appeal, have immediate access and full disclosure to all information available for each assessee.⁵³

Apart from the ongoing temporary process of re-evaluation of judges and prosecutors, the Constitution has established permanent institutions governing the judiciary, including the **High Judicial Council**, the **High Prosecution Council** and the High Inspector of Justice. Both councils investigate and adjudicate, *inter alia*, on cases of disciplinary misconduct by judges and prosecutors of all levels, whereas, the **High Justice Inspector** is responsible for the verification of complaints, the investigation of violations on its own initiative and the initiation of disciplinary proceedings against judges and prosecutors of all levels, including members of the High Judicial Council, High Prosecutorial Council and the Prosecutor General, in accordance with the procedure defined by law.⁵⁴ Disciplinary misconduct by members of the High Judicial Council/ High Prosecutorial Council shall be investigated by the High Justice Inspector but the disciplinary proceedings against members of these institutions shall be conducted by the Constitutional Court.⁵⁵

The Inter-Institutional Task Force against Corruption⁵⁶ was established for the purpose of strengthening the cooperation on the fight against corruption between various state institutions subordinated to the Council of Ministers. It aims at implementing the actions stipulated in the Cross-cutting Strategy on the Fight Against Corruption and its Action Plan. It is chaired by the Minister of Justice, as the National Anti-Corruption Coordinator. This structure aims at prioritizing and assigning specific inspection tasks for spotting corruption practices. Up to December 2018,

⁵⁰ Ibid. art. 49 and 50,

⁵¹ The Constitution art., 179/b Law no. 84/2016 “On temporary re-evaluation of judges and prosecutors in the Republic of Albania” art. 63

⁵² The Constitution, Annex, art. B

⁵³ Law no. 84/2016 “On temporary re-evaluation of judges and prosecutors in the Republic of Albania” art. 33/1, 45/2, 49, 65

⁵⁴ The Constitution art. 147/d

⁵⁵ Article 6 and 104 of the law no. 115/2016 “On governance institutions of the justice system”.

⁵⁶ Council of Ministers Decision no. 506, dated 13.09.2017 “On the definition of coordinate anticorruption efforts and policies among all the stakeholders at national and local level.”

the Task Force has conducted 58 inspections, which have resulted in 468 disciplinary measures and 36 cases sent to the Prosecution for further investigation.⁵⁷

3.1.4 Legal, institutional and capacities gaps assessment

Albania has made remarkable progress towards eradicating corruption. The *legal framework* in place is fairly comprehensive, including the latest adoption of amendments to the Constitution, those on the law on re-evaluation of judges and prosecutors, the law on evaluation of State Police employees, the Criminal Procedure Code, the law on the declaration and audit of assets, financial obligations of elected persons and certain public officials. Moreover, substantial work has been done to improve the legal framework on interceptions and surveillance, time limits for investigation, and admissibility of evidence before courts. The amendments to the Law on Electronic Interception extended the scope of application of interceptions to include corruption offences. What is more, as amended in April 2017, the Anti-Mafia Law now includes all passive and active corruption offences and defines the role of the prosecutor in more precise terms. The body of legislation is supported by secondary legislation on integrity, but it still remains highly complex and fragmented.

Along with the legislative developments, the implementation of the strategic framework has witnessed significant advancements. Referring to the annual monitoring report on the implementation of the measures provided in the strategy, 33% out of the preventive, 32% out of the punitive, and 42% out of the awareness-raising approach measures have been implemented. In total, 36% of the scheduled activities in the Action Plan have been implemented. Nevertheless, as the Monitoring Report points out, monitoring mechanisms and accountability needs to be strengthened.⁵⁸

From the *institutional point of view*, the changes in the institutional architecture of the judiciary following the constitutional amendments of 2016 constitute the most significant development. Nevertheless, there was an initial stalling in the process of establishing the institutions especially envisaged for the fight against corruption. Only in late 2018 the High Judicial Council and the High Prosecution Council have been set up. The process of appointment of the members of the Special Prosecution for Corruption and Organized Crime has started in the first weeks of 2019 and it was concluded in December 2019. Apart from the establishment of the new institutions of the judiciary, the functioning of the institutions re-evaluation of judges and prosecutors has shown

⁵⁷ Monitoring report on the implementation of the inter-sectoral strategy against corruption 2018, Ministry of Justice, <http://drejtesia.gov.al/wp-content/uploads/2019/04/Raporti-Vjetor-i-Monitorimit-t%C3%AB-SNKK-p%C3%ABr-periudh%C3%ABn-janar-dhjetor-2018.pdf>, pg.95

⁵⁸ Monitoring report on the implementation of the inter-sectoral strategy against corruption, January-September 2019, <http://www.drejtesia.gov.al/wp-content/uploads/2019/12/Draft-Raporti-N%C3%ABnt%C3%ABmujor-i-Monitorimit-t%C3%AB-SNKK-p%C3%ABr-periudh%C3%ABn-janar-shtator-2019.pdf> pg. 14-22

various initial problems. The re-evaluation process itself, was accompanied by significant delays in the establishment of the re-evaluation institutions, slow pace with which the process is progressing, contradictory standards in the adjudication of similar issues similarly, political pressures, the differences in judgment between re-evaluation institutions themselves, the majority of cases being decided on the analysis of the financial assets review by ignoring the assessment of integrity and proficiency, as well as the lack of a clear strategy on prioritizing complaints submitted from the public.⁵⁹ Out of the 800 assesses in total, 17 have resigned, 225 have undergone the re-evaluation process of the Independent Qualification Commission⁶⁰. The Special Appeals Chamber has issued 39 decisions this far, and 102 proceedings are still pending.⁶¹ From the investigation of corruption perspective, it should be noted that the re-evaluation institutions only conduct a disciplinary type of proceeding and do not perform criminal investigations tasks. In case it finds evidence and clues which may constitute a criminal offence, it submits the case to the Prosecution. Based on data published by the Independent Qualification Commission, there has been only a single case of a Constitutional Court judge being forwarded to the Prosecution for conducting further investigation. However, the latter has decided to dismiss the case and it did not initiate a criminal investigation.⁶² Besides the abovementioned institutions, for the purposes of the re-evaluation process, the General Directorate for the Prevention of Money Laundry has played a central role through controls and verifications for a large number of assesses including their family members. In 2017 only, GDPML based on the request of the HIDAACI, has made verifications in the database and has prepared answers for about 3000 persons including prosecutors, judges and their family members. The role in financial investigation of the GDPML is expected be strongly enhanced after the establishment of the Special Prosecution Against Corruption and Organized Crime (SPAK). The GDPML shall continuously monitor the transactions concluded by all members of SPAK, and it will also verify the transactions on behalf of the latter.⁶³ Apart from the work conducted for the purposes of the re-evaluation process, it is noteworthy that during the period 2014-2018 the GDPML has referred 1499 cases to the police and 552 cases to the Prosecution regarding suspicious money laundering activities, terrorism financing or just criminal activity linked with assets of unknown or suspicious source, about 45 cases out of which refer to cases of misuse of public power and corruption.⁶⁴

Besides judges and prosecutors, the employees of State Police, Republic's Guard and the Service for Internal Affairs and Complaints in Ministry of Interior are undergoing an evaluation of their

⁵⁹ Ibid pg..4

⁶⁰ <http://kpk.al/vendime/>, January 2019

⁶¹ <http://www.kpa.al/>, January 2019

⁶² Justice reform: balance, problematics, challenges. *Institute for Political Studies* (ISP). 2018, pg. 13. <http://isp.com.al/wp-content/uploads/2019/01/Reforma-ne-drejtisi-ISP-raport-2018.pdf>

⁶³ Annual Report of General Directorate for the Prevention of Money Laundry, 2017, http://fiu.gov.al/wp-content/uploads/2019/RaporteVjetore/Raporti_vjetor_shqip_2017.pdf, pg.9

⁶⁴ Annual Report of General Directorate for the Prevention of Money Laundry, 2018, http://fiu.gov.al/wp-content/uploads/2019/RaporteVjetore/Raporti_vjetor_shqip_2018.pdf, pg 10-12

assets, integrity checks, and proficiency review, to be performed by the review institutions⁶⁵. The transitional evaluation bodies are the External Commission of the Evaluation and the Service for Internal Affairs and Complaints and the process is monitored by a subcommittee of the parliamentary commission On National Security of the Albanian Assembly.⁶⁶ The process was impacted by significant delays mainly due to the need to lack of human and material resources needed to establish functioning institutions.⁶⁷ As a result, amendments were introduced in the Law with the view to enhance the re-evaluation procedure. The process of re-evaluation has started in May 2019 for 45 employees holding high ranking positions within the State Police, the Service for Internal Affairs and Complaints, and the Guard of the Republic. However, no decision has been taken so far from the responsible institutions.⁶⁸

With regard to capacities to conduct investigation and prosecution of corruption, there is an overall concern on the scarcity of qualified staff due to a high staff turnover in the Albanian public administration, and a lack of proper training of the existing staff in all law enforcement agencies/institutions vested with competences to conduct or assist investigations on corruption. For instance, the HIDAACI's capacities were strengthened with regard to prevention and fight against corruption in both the public and private sector, especially after the adoption of Law 60/201 "On whistle-blowing and whistle-blower protection" and with the implementation of the law on the transitional re-evaluation of judges and prosecutors. The number of HIDAACI inspectors was increased from 20 to 28 and HIDAACI is constantly working to further enhance its administrative, technical and financial capacities, in order to accomplish all the institutional functions. As to the role of HIDAACI in the process of re-evaluation, its reports serve as an initial basis for the investigation carried out by the re-evaluation institutions. It is noteworthy that HIDAACI investigation is based on tools and methods that are rather limited, whereas the re-evaluation institutions are empowered by the Constitution and the re-evaluation law for making use of new available and far-reaching methods, means of investigation and fact-findings techniques.⁶⁹ In its annual Resolution of 2017 on the activity of HIDAACI, the Assembly⁷⁰ has emphasized the importance of granting to HIDAACI the possibility to access the TIMS system as an investigation instrument for fostering its investigation scope. However, based on the HIDAACI report for 2018 the access to the TIMS database was not yet achieved.⁷¹ In its annual Resolution of 2018 on the

⁶⁵ Based on the amended Law no. 12/2018 on transitional assessment and periodic of employees of state police, the guard of the Republic and service for internal affairs and complaints in the Ministry of interior

⁶⁶ Established by Decision no. 87/2018 of the Assembly "On monitoring and overseeing the implementation of the Law no. 12/2018"

⁶⁷ The report on the draft law on amendments and additions to the Law no.12 / 2018,

[http://www.parlament.al/Files/ProjektLigje/20190319110036RELACION%20-](http://www.parlament.al/Files/ProjektLigje/20190319110036RELACION%20-%20NDRYSHIME%2012-)

[%20NDRYSHIME%2012-2018%20-%20VLERESIMI%20-%20POLICIA.pdf](http://www.parlament.al/Files/ProjektLigje/20190319110036RELACION%20-%20NDRYSHIME%2012-2018%20-%20VLERESIMI%20-%20POLICIA.pdf)

⁶⁸<https://mb.gov.al/2019/05/30/komisioni-i-vettingut-ne-polici-shcba-dhe-garde-ka-nisur-punen-me-45-dosjet-e-para/>

⁶⁹ Please refer to Section 3.1.5 below.

⁷⁰Resolution on the activity evaluation of HIDAACI, 2017,

http://www.ildkpi.al/wp-content/uploads/2018/11/Rezolut%C3%AB-kuvendi-ildkpi_2017-min.pdf

⁷¹ Annual Report of the HIDAACI, 2018, <http://www.ildkpi.al/raporte-vjetore/>

activity of HIDAACI, the Assembly⁷² requires from HIDAACI to carry on the work for the establishment and functioning of the electronic system of declaration of asset within 2021, as well as foster investigative capacities with special focus on the cases of hidden and non-declaration of assets, conflict of interests, or whistleblowers. Nevertheless, despite the lack of direct access, in an investigable instrument such as TIMS, with regard to the work conducted by HIDAACI as regards assets declarations by high state officials, for the period 2014 - 2018, HIDAACI has referred 315 cases to the relevant state institutions including the Prosecution Office, the General Directorate for the Prevention of Money Laundering and to the tax investigation units, with regard to officials of all categories including members of the parliament, mayors, directors in public administration institutions. It has initiated 53 criminal charges for high level officials. Despite the increase in the number of criminal cases initiated over the years, no case on high-ranking officials referred to the prosecution was concluded with a final conviction.⁷³

As the investigation by the Prosecution is concerned, the Serious Crime Prosecution has encountered significant problems with regard to infrastructure, financial, and qualified human resources. As per the number and the adequate training of prosecutors, there are no particular issues of concern. However, depending on the outcome of the progress of the re-evaluation process, the need might arise to conduct another assessment of the capacities. As the judicial police is concerned, the latter suffers from a lack of sufficiently qualified staff. The number of judicial police officers remains low and the actual staff employed is inefficient. Despite the continuous trainings conducted, there is a high level of staff turnover, which has hindered the course of the investigation process, including those regarding corruption⁷⁴.

The prosecution does not conduct proactive investigations on potential corruption cases for high-ranking officials. These types of investigations are initiated either through complaints by individuals/companies that are disappointed by the course of another investigation, or incidentally, while investigating another case, and during the interceptions new facts of alleged corruption come to light⁷⁵. This shows an inconsistency on the investigation and criminal prosecution corruption. Also, there is a discrepancy between the cases referred by the institutions which carry out financial and administrative investigation and the number of finalized cases in investigation and criminal prosecution by the Prosecution. This data could be interpreted from two different perspectives: Firstly, institutions which carry out financial and administrative investigation have a tendency to refer to the Prosecution a large number of investigated cases. As a consequence, the responsibility for non-initiation or termination of the case remains with the Prosecution. Looking at it from another angle, the Prosecution interprets the evidence received and evaluates and decides whether

⁷² Resolution on the activity evaluation of HIDAACI, 2018, <http://parlament.al/Files/Akte/20190624142417rezoluta%20e%20ILDKPKI-se,%20dt.%2017.6.2019.pdf>

⁷³ Data gathered through the interview conducted with the Inspector General of HIDAACI, on 18th of January 2019; [Annual Report of the HIDAACI, 2018, http://www.ildkpkj.al/raporte-vjetore/, pg.15](http://www.ildkpkj.al/raporte-vjetore/)

⁷⁴ Data gathered through the interview conducted with Prosecutors of Serious Crime Prosecution, on 5 February 2019;

⁷⁵ Data gathered through the interview conducted with Prosecutors of Serious Crime Prosecution, on 5 February 2019;

there is sufficient ground to indict potential offenders, based on the reliability of the data collected by the administrative institutions referring the case. The data collected by the administrative institutions might be scarce or incomplete to justify the continuation of a criminal proceeding.

As to institutional cooperation in cases of investigation and prosecution of corruption, it is noted that there's a lack of a system of case management. The Prosecution, HIDAACI, and other relevant institutions request information from other institutions that manage state database. During the year 2018 the State Police were granted access to the state electronic registers of General Tax Directory, State Cadaster Agency, National Centre of Business, General Customs Directory, Ministry of Finance and Economy etc. As per the General Prosecution Office, during the 2018, have been signed two memorandums of understanding, respectively with Immovable Property Register Office (now the State Cadaster Agency) and the Public Procurement Agency in order to ensure access in their electronic registers.⁷⁶

With respect to technical capacities, the Prosecution does not have in place an electronic case management system. Moreover, no direct access is granted to the prosecution on other system databases. The information exchange was handled based on an official request submitted to the institution that possesses it. Previous initiatives to establish an interconnected system with that of the police system of case management have not been successful⁷⁷.

Also, the lack of adequate capacities is increasingly affecting the court system too. Dismissals and resignations resulting from the re-evaluation process have created vacant positions in the judiciary, in particular at the High Court level. The High Court has currently only one member exercising his functions, and is awaiting new appointments from the High Judicial Council. At the High Court level the backlog is approximately 30,000 pending cases⁷⁸.

In conclusion, despite the significant progress made towards strengthening the legal and institutional framework and capacity building in the fight against corruption, there are various gaps hampering the handling of effective investigation and prosecution on corruption, including delays in establishing the new institutions in charge of investigating and prosecuting corruption, the availability of adequate human resources, the follow-up of identified potential corruption practices attributed to by public officials, as well as the lack of adequate and necessary technical resources.

3.1.5 Methods and practices employed in investigating and prosecuting corruption

⁷⁶ Annual Report of Monitoring the implementation of Inter-Sectorial Strategy Against Corruption 2015-2020.

⁷⁷ Data gathered through the interview conducted with Prosecutors of Serious Crime Prosecution, on 5 February 2019 and the representatives of the State Police on 6 February 2019;

⁷⁸ European Commission Report for Albania of 2019, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-albania-report.pdf>, pg 18.

Institutions involved in the fight against corruption, based on their profile, mission and competencies, make use of various methods and tools on financial and criminal investigation. The methods and tools to investigate and prosecute corruption may be divided into two categories:

The first category refers to methods of criminal investigation and prosecution of corruption employed by the Prosecution. In the course of the proceeding, the Prosecution makes use of an extended array of evidences, such as documents, testimonies, questioning of the defendant and of the private parties, cross examinations, expert examinations, experiments. As means and tools to collect evidence, the Criminal Procedure Code designates a diversity of mechanisms that may be employed in the process of criminal investigation and of corruption cases, including inter alia: examinations, searches, seizures, interceptions. What are particularly relevant for the purpose of corruption investigation and prosecution, the Prosecution may use "Special Investigation Techniques" which are legitimate investigative techniques under the Criminal Procedure Code, such as the review of various decisions in cases of investigations of corruption offenses, provision of evidence located abroad through rogatory letters, access to and use of information from foreign countries, provision of computer evidence, use of accounting expertise, electronic eavesdropping, the use of justice collaborators, or co-operation in plea-bargain agreements.

The second category includes methods of financial investigation employed by various agencies conducting investigative tasks, such as HIDAACI, the GDPML, the re-evaluation institutions in the process of fact-finding and supporting the outcome of their administrative investigation, in compliance with their respective competence, the High State Audit, tax investigation structures as part of General Tax Directory. etc.

As to GDPML, it initiates its financial investigations based on suspicious data, such as high and unusual circulation of funds, pouring or withdrawing money in high and unjustified values, high investment in immovable properties through unknown funding sources, suspicious incoming or outgoing transfers, etc.

The High State Audit (HSA) uses a multitude of methods of investigation based on financial audit of managing public funds.⁷⁹ HSA conducts its activity through the investigation of official documents, written or electronic, as well as any other information required by the institution being audited with regard to management of public funds. HAS is also entitled to request various legal entities, where the state owns more than 50% of the shares, or when their loans, credits and obligations are guaranteed by the state, to submit documents that they possess, considered necessary for carrying out the audit process. HSA may also ask from the Bank of Albania and second-tier banks to make available, within a reasonable time, the data related to the accounts of the institutions that perform public functions, independent institutions, as well as private

⁷⁹ For the year 2017 the High State Audit SA has filed 47 criminal offences to the prosecution offices and has passed to further evaluation to the prosecution office 4 audit files.

businesses and any other form of corporate organizations, in which the state owns more than 50% of the share, or when the loans, credits and other obligations are guaranteed by the state. In the course of its activity, HSA should be provided by the audited entities with the relevant premises and conditions and necessary logistics to properly perform their auditing activity.

Lastly, the Law 84/2016 “On the temporary re-evaluation of judges and prosecutors in the Republic of Albania” establishes innovative methods and means of financial investigation and fact-finding techniques available to the re-evaluation institutions. These investigation methods shall be used in the course of the financial investigation conducted by the Independent Qualification Commission, but also in the course of the judicial proceeding conducted by the Special Appeals Chamber. The methods of fact-finding may be summarized as follows: collect and review declarations, receive any sort of written document or photographic evidence, on-site inspection in order to find the factual support for the alleged violation. The re-evaluation institution may make use of findings or reports submitted these institutions by the International Monitoring Operation. In cases these institutions will reject an evidence submitted by the International Monitoring operation, they shall justify this in written form. Moreover, these institutions may request the collection of evidence from a foreign country.⁸⁰

Based on the above, it may be concluded that the legislation establishes the rules for the use of various investigation methods and tools, available to both the Prosecution office and other financial investigation authorities that are aimed at better serving the examination of corruption cases. Whereas the rules for the criminal prosecution of corruption by the Prosecution are clearly set in the Code of Criminal Procedure, other administrative institutions performing financial investigation tasks the methods they use to detect corruptive practices vary based on their mandate and the extent to which the specific legislation has granted them either large or limited access to investigation tools.

⁸⁰ Law 84/2016 “On the temporary re-evaluation of judges and prosecutors in the Republic of Albania” art. 49.

3.2 KOSOVO

3.2.1 Introduction

Kosovo continues to carry the heavy burden of a high level of corruption. After more than a decade since the declaration of its independence, all measures taken by the government and the key institutions (namely, the judiciary and Kosovo Anticorruption Agency) to address this negative phenomenon are reduced to the drafting of strategic documents (National Anti-Corruption Strategy) and respective action plans that remain wish-lists, rather than realistic set of activities that should lead to the reduction and ultimately eradication of this negative phenomenon.

Kosovo's Justice System, both the state prosecution and the court system, instead of being at the forefront of the battle against corruption are plagued with the serious shortages of resources, huge backlog of accumulated cases that brings in the lack of results in the prosecution of cases of corruption. This indicates that the justice system actors are not independent and capable of exercising their authorities in the fight against corruption. The latest UNDP Public Pulse⁸¹ (June, 2018) shows that in terms of large-scale corruption, the overall percentage of citizens who perceive that this type of corruption is present in various institutions has increased (31% in April 2018 as compared to 20% in October 2017). The biggest changes in citizen perceptions of corruption are also observed in courts (39% in April 2018 as compared to 25% in October 2017).

However, Kosovo has made progress as indicated in Kosovo Progress Report 2019⁸², particularly with the entry into force of the Law on the Disciplinary Liability of Judges and Prosecutors, the Law on Mediation, and the roll out of the electronic case management system. The number of judicial staff in both prosecution offices and courts increased in 2018, including in the Special Prosecution Office. The same report concludes that Kosovo is at an early stage in the fight against corruption, although it has move forward with legislative reforms in the rule of law area and in investigating and prosecuting of high-level cases.

Also, the U.S. Department of State Human Rights Report on Kosovo for the year 2018⁸³ states that government officials sometimes engaged in corrupt practices with impunity. A lack of effective judicial oversight and general weakness in the rule of law contributed to the problem. Corruption cases were routinely subject to repeated appeal, and the judicial system often allowed statutes of limitation to expire without trying cases.

On July 2014, the Kosovo Prosecutorial Council adopted "Standard Operating Procedures for the Selection of Serious Crimes Targets and Inter-Institutional Cooperation". Through them, the

⁸¹ Public Pulse XIV, June 2018, pg.13

<file:///C:/Users/Admin/Downloads/Final%20Public%20Pulse%20XIV.pdf>

⁸² European Commission Progress Report for Kosovo, 2019, pg.4 <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>

⁸³U.S. Department of State Human Rights Report on Kosovo for the year 2018, <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/>

institutions implementing the law in Kosovo aimed at preventing, detecting, investigating and adjudicating perpetrators of the most serious criminal offences, having in mind the final purpose – sequestration and confiscation of property acquired through criminal offences. From December 2014 to June 2019, 51 cases were targeted, involving a total of 372 individuals. Of these, 36 cases belong to corruption offences, involving 206 individuals, while 15 other cases involving 166 individuals belong to organized crime offences. The first targeted case was the indictment against the President of the Procurement Review Body, the case “Hysni Hoxha and others” filed on December 4, 2014, whereas the last targeted case is the “Veterans” indictment filed on December 7, 2018.⁸⁴ Out of 51 targeted cases, there are 38 indictments, eight (8) cases are under investigation, in four (4) cases the investigations have been terminated, whereas in one (1) case the investigations have been suspended.

On August 2019, Special Prosecutor Elez Blakaj, who was working on the “Pronto” case and a veteran’s pension fraud case, resigned citing political intimidation and anonymous death threats. Prior to the threats, Blakaj brought charges against high- ranking officials for their alleged role in fraudulently granting veteran status to approximately 20,000 unqualified beneficiaries. SPRK officials, President Thaci, and the mayor of Pristina condemned the threats. In September, police arrested Assembly member Shkumbin Demaliaj on suspicion of inciting violence against Blakaj, though no indictment was issued as of November. On September 14, the SPRK filed indictments against nearly a dozen officials in the veterans’ pension case.

3.2.2. Strategic documents and the legal framework on the investigation and prosecution of corruption

Eradicating corruption remains among the major challenges of policy and law-making in Kosovo. There is a variety of strategic and legal acts governing the principles of investigating and prosecuting corruption.

3.2.2.1 Strategic documents

National Strategy for Development 2016-2021⁸⁵ This act comprises the main strategic document in national level with specific provision for the vital sectors of public life in Kosovo, as well as facilitating the EU integration process. The fight against corruption, *inter alia*, draws a significant attention, in the framework of the rule of law enforcement and good governance for the citizens, which will by default contribute to an overall progress of the country.

State Strategy Against Corruption and the Action Plan 2018-2022⁸⁶ This strategy constitutes the most specific and detailed strategic act in Kosovo for the fight against corruption. Its drafting

⁸⁴ <https://kli-ks.org/deshtimet-ne-rastet-e-shenjestrudara/>

⁸⁵ http://www.kryeministri-ks.net/repository/docs/Strategjia_Kombetare_per_Zhvillim_2016-2021_Shqip.pdf

⁸⁶ <http://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=40299>

takes into consideration previous reports on this issue, in order to determine the institutions and public sectors where the phenomenon is more intense, and where by default the accountability and monitoring should be intensified. In the Action Plan there are prescribed the specific actions and timetable to implement the provisions of the Strategy during the given period.

Strategic Plan of the National Audit Office 2018-2021⁸⁷ The importance of this document consists on the crucial significance that the auditing institutions have in the fight against corruption. The audits of public institutions and their financial operations have a significant role in the signalization of corruptive behaviors. Therefore, the prescriptions of this plan related to the intensification of the cooperation with other institutions, or the improvement of the audit methods regarding corruption evidencing is an added contribution in this direction. Moreover, this plan also includes as an objective the drafting or update of the manuals regarding the fight against corruption in several public institutions.

3.2.2.2 Legal framework

Criminal Code of Republic of Kosovo (No. 04/L-082)⁸⁸, Chapter XXXIV (“Official corruption and criminal offenses against official duty”) defines official corruption as “an act of official person that takes advantage of his office or official authority, exceeds the limits of his or her authorization or fails to execute his or her official duties with the intent of acquiring any benefit for himself or another person or to cause damage to another person or to seriously violates the rights of another person”. The following types of official corruption are set out in Criminal Code of Republic of Kosovo⁸⁹:

- **Misuse of official information** occurs when an official person misuses official information,⁹⁰ aiming to acquire any undue gain or advantage for himself or herself or another person⁹¹.

⁸⁷ <http://www.zka-rks.org/wp-content/uploads/2018/09/Strategjia-2018-07-13-ALB.pdf>

⁸⁸ Official Gazette of the Republic of Kosova / Nr. 19/13, July 2012, Prishtina.

⁸⁹ Criminal Code of Republic of Kosovo, Chapter XXXIV, Article 422, Paragraph 1

⁹⁰ The official information is any piece of information that an official person has access to by means of his office or employment and which has not been made public.

⁹¹ Code No. 04/L-082 Criminal Code of Republic of Kosovo, Chapter XXXIV, Article 423, Paragraph 1, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2834>.

- **Conflict of interest** occurs when an official person participates⁹² personally in any official matter⁹³ in which he or she, a member of his/her family, or any related legal person⁹⁴, has a personal or financial interest⁹⁵.
- **Misappropriation in office** occurs when an official person aims to obtain an unlawful material benefit for himself, herself or another person, appropriates property entrusted to him or her because of his or her duty or position⁹⁶.
- **Fraud in office** occurs when an official person intends to obtain unlawful material benefit for himself, herself or another person, by presenting a false statement of an account or in any other way deceives an authorized person into making an unlawful disbursement⁹⁷.
- **Unauthorized use of property** occurs when an official person, without authorization, uses money, securities or other movable property which has been entrusted to him or her⁹⁸.
- **Accept bribes** occurs when an official person requests or receives, directly or indirectly, any undue gift or advantage for himself, herself or for another person, or accepts an offer or promise of such gift or advantage, so that the official person acts or refrains from acting in accordance with his or her official duties⁹⁹.
- **Bribes** can be initiated from whoever promises, offers or gives, directly or indirectly, any undue gift or advantage to an official person so that the official person acts or refrains from acting in accordance with his or her official duties¹⁰⁰.
- **Trade in influence** occurs when whoever requests or receives, directly or indirectly, any undue gift or advantage, for himself or herself or for another person, or accepts an offer or promise of such gift or advantage, to exert an improper influence over the decision making of an official person or foreign public official, whether or not the influence is exerted and whether or not the supposed influence leads to the intended result¹⁰¹.
- **Issue unlawful judicial decisions** occurs when a judge with the intent to obtain any unlawful benefit for himself, herself or another person or cause damage to another person, issues an unlawful decision¹⁰².

⁹² Participation is defined as exercising official authority through decision, approval, disapproval, recommendation, rendering advice, investigation, or otherwise exercising influence over an official matter.

⁹³ Official matter includes judicial or other official proceeding; an application, request for a ruling or other official determination; a contract or claim; a public auction or other procurement action; or, another matter affecting the financial or personal interests of the official or another person.

⁹⁴ Related legal person means any legal person in which the official or a member of the family has a financial relationship, including a relationship or a prospective relationship as a responsible person or employee.

⁹⁵ Code No. 04/L-082 Criminal Code of Republic of Kosovo, Chapter XXXIV, Article 424, Paragraph 1, available at <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2834>.

⁹⁶ Ibid, Article 425, Paragraph 1.

⁹⁷ Ibid, Article 426, Paragraph 1.

⁹⁸ Ibid, Article 427, Paragraph 1.

⁹⁹ Ibid, Article 428, Paragraph 1.

¹⁰⁰ Ibid, Article 429, Paragraph 1.

¹⁰¹ Ibid, Article 431, Paragraph 1.

¹⁰² Ibid, Article 432, Paragraph 1

- **Unlawful collection and disbursement** is considered any case when an official person collects from another fund that such person is not bound to pay or collects more than such person is bound to pay or who, in a payment or delivery pays or delivers less than what is required.¹⁰³
- **Unlawful appropriation of property during a search or execution of a court decision** occurs when an official person during a search of premises or a person or during the execution of a court decision takes movable property with the intent of obtaining an unlawful material benefit for himself, herself or another person.¹⁰⁴
- **Failure to report or falsely report property, revenue/income, gifts, other material benefits or financial obligations** occurs when a person, obligated by law to file a declaration of property, income, gifts, other material benefits or financial obligations, fails to do so.¹⁰⁵

New Kosovo Penal Code¹⁰⁶, Chapter XXXVIII (Official corruption and criminal offenses against official duty) adds another type of corruption:

- **The abuse and the fraud in public procurement** occurs when responsible persons violate the public procurement rules during a bid for awarding a public procurement contract, presenting false documentation, illegal secrecy agreement or undertakes any other illegal action for the purpose of fraud in public procurement procedures and for purpose of influencing the decision of a contracting authority in the public procurement procedure.

Law No. 05/L-096 on the prevention of money laundering and combating terrorist financing¹⁰⁷, stipulates measures and designates competent authorities and procedures for detecting and preventing money laundering and combating terrorist financing. The provisions of this law are obligatory to all institutions and their respective units, and to all non-public entities whose activities may relate to money laundering and terrorist financing.

Law No. 06/L-087 of extended powers on confiscation of assets¹⁰⁸ specifies extended powers for confiscation of property when the procedures detailed in the Criminal Procedure Code of the Republic of Kosovo are not sufficient. The extended confiscation as foreseen in this law applies

¹⁰³ Ibid, Article 435, Paragraph 1

¹⁰⁴ Ibid, Article 436, Paragraph 1

¹⁰⁵ Ibid, Article 437, Paragraph 1

¹⁰⁶ Code No. 06/L-074106, published in the Official Gazette, on January 14, 2019 will enter into force on April 14, 2019.

¹⁰⁷ Official Gazette of the Republic of Kosova / Nr. 18/15 June 2016, Prishtina.

¹⁰⁸ Official Gazette of the Republic of Kosova / Nr. 23/26, December 2018, Prishtina.

to the assets of persons who have been convicted of a criminal offence as prescribed by the Criminal Code of the Republic of Kosovo or other laws.¹⁰⁹

Law No. 06/L -011 on prevention of conflict of interest in conduct of a public function¹¹⁰ whose purpose is to strengthen the integrity of the public sector as well as guarantee the conduct of public duties in an objective, impartial and transparent manner, serving the public interest through identification, prevention, management and resolution of conflict of interests of officials. The provisions in this law define the principles, rules and procedures of permitted and prohibited activities of officials in the performance of public duties, as well as the measures foreseen for violation of provisions defined in this law. This law regulates also the procedures for reporting obligations, measures for prevention, identification, management and resolution of conflict of public and private interest during and after the conduct of official public duties and the obligations and responsibilities of competent authorities.

Suppression of corruption law (No. 2004/34)¹¹¹, that foresees anti-corruption measures within the scope of the anti-corruption strategy, particularly in the field of administrative investigation of public corruption, eliminating the causes of corruption, the incompatibility of holding public office and performing profit-making activities for official persons, restrictions regarding the acceptance of gifts in connection with their execution of office, supervision of their assets and those of persons from their domestic relationship, and restrictions regarding contracting entities participating in public tenders conducting business transactions with firms in which the official person or person from his/her domestic relationship is involved.

Law No. 06/L-085 on protection of whistle-blowers¹¹² with the purpose to enable the whistleblowing of violations in the public and private sector and the protection of whistle-blowers. This Law sets out the rules on whistleblowing, whistleblowing procedure, rights and protection of whistle-blowers and the obligations of public institutions and private entities regarding whistleblowing.

Law No. 04/L-050 on declaration, origin and control of property of senior public officials and on declaration, origin and control of gifts of all public officials¹¹³ defines obligations of senior public officials to declare their property, revenues and the origin and obligation of Agency to control declared property and origin of property as well as obligations of all public senior officials to declare gifts and the origin of gifts. This law regulates the procedure on declaration and

¹⁰⁹ Article 2 of the Law No. 06/L-087, <http://gzk.rks-gov.net/ActDetail.aspx?ActID=18337>

¹¹⁰ Official Gazette of the Republic of Kosova / Nr. 5/27, April 2018, Prishtina.

¹¹¹ Official Gazette of the provisional institutions of self-government in Kosovo / Prishtina: Year II / No. 10/01 March 2007

¹¹² Official Gazette of the Republic of Kosovo No. 22/2018.

¹¹³ Official Gazette of the Republic of Kosovo No. 16/14, September 2011, Prishtina.

control of property, declaration of revenues and obligations of senior public officials and of their family members and also regulates defined sanctions. This law regulates as well the procedure on declaration, control and origin of gifts received by all public officials.

3.2.3 Institutional framework on the investigation and prosecution of corruption

Kosovo has a mixed system of institutions responsible for investigating and prosecuting corruption with specialized anti-corruption institutions (Kosovo Anti-Corruption Agency – KACA), law enforcement institutions (judicial, prosecution system with special prosecution office) and preventive and policy coordination institutions (KACA Department for Prevention of Corruption). In addition to mandating anti-corruption bodies, these international conventions establish standards for their effective operation: these bodies should be independent from undue interference, specialized in corruption and have sufficient resources and powers to meet their challenging tasks.

The following sections provide a brief description of duties and responsibilities of institutions in Kosovo institutions for fighting and prosecuting corruption.

Kosovo Court System is composed of (7) basic courts¹¹⁴ as courts of first instance, the Court of Appeals (with competence to hear and determine appeals from decisions of basic courts), and the Supreme Court as the highest judicial authority in Kosovo. All judges are appointed and dismissed by the President of Kosovo on the proposal of the Kosovo Judicial Council¹¹⁵ (KJC). In addition to recruiting and proposing candidates for appointment to judicial office, the KJC is also responsible for a range of oversight and administrative tasks.¹¹⁶

The State Prosecutor whose role is to initiate criminal investigations, discover and collect evidence and information, and finally file indictments and prosecute suspected persons for criminal offenses. It consists of the Basic Prosecution Office, Special Prosecution Office, Appeal Prosecution Office and Chief State Prosecution Office. The Basic Prosecution Office consists of the general department and department for minor and serious crime. Prosecutors are appointed, reappointed and dismissed by the President of Kosovo upon the proposal of the Kosovo

¹¹⁴ The 7 Basic Courts in Pristina, Prizren, Peja, Mitrovica, Gjilan and Ferizaj each have several “Branch Courts”. The twenty (20) Branch Courts are in smaller municipalities.

¹¹⁵ Based on the Constitution, the mandate of the Council members is five (5) years and the Council consists of 13 members, eight of them are elected by the Assembly of Republic of Kosovo, while five (5) members are elected from among the judges. The Secretariat assists the Council in implementing the rules and its policies regarding the management, budget and courts administration. Within the Council, the Court Performance Review Unit (CPRU) and the Office of Disciplinary Prosecutor (ODP) are functioning.

¹¹⁶ The KJC transfers judges as needed, conducts and rules upon judicial disciplinary proceedings, conducts judicial administration and oversees the courts’ judicial audit function, develops court rules, hires and supervises court administrators, develops and oversees the judicial budget, determines the number of judges in each jurisdiction and recommends establishment of new courts to the assembly.

Prosecutorial Council¹¹⁷. The KPC proposes candidates based on merit and in a transparent manner, considering the gender equality and ethnic composition.

Special Prosecution of the Republic of Kosovo (SPRK) has the authority to act next to the Basic Courts regarding criminal offenses that are stipulated by Law No.03/L-052¹¹⁸, namely Law on Special Prosecution of the Republic of Kosova, and it has jurisdiction over the entire territory of the Republic of Kosova. The Special Prosecution is responsible, among others, to conduct investigation on serious offences related to corruption allegations against high ranking state officials.

Kosovo Anti-Corruption Agency (KACA) based on Law No. 03/L-159 on Anti-Corruption Agency¹¹⁹, has specific competences with regard to reporting, detecting and investigating corruption, within the framework of the implementation and monitoring of the Strategy and Action Plan against Corruption. The Agency conducts the procedure of preliminary investigation in cases of suspicion of corruption in the course of conducting official duties or based on the information received by natural and legal persons. For the implementation of preliminary investigation, the Agency seeks, collects, investigates and analyzes other information and the relevant documentation from persons involved in case and examines the circumstances relating to the case. If after completion of preliminary investigative procedures, it is ascertained that are sufficient data and reasonable suspects that the case could constitute a criminal offence, the Agency submits the case to the competent prosecutor office for further processing.

KACA also monitors and works towards preventing cases of conflict of interest and takes measures required by special law. It monitors the assets and the receipt of gifts of senior public officials and other persons as required by special law. Moreover, the Agency cooperates with public authorities responsible for the design, harmonization and implementation of legislation in preventing and combating corruption and provides advice on drafting a code of ethics in public and private sector;

Kosovo Financial Intelligence Unit (KFIU), is a central independent national institution responsible for requesting, receiving, analyzing and disseminating to the competent authorities,

¹¹⁷ The KPC is an independent institution responsible to “recruit, propose, promote, train, transfer, reappoint and discipline prosecutors.” Its composition expanded and reformed according to the changes made in the law in June 2015. The Council has 13 members and it is much more representative. Of those, 10 members are appointed from each prosecution office including one from the State Prosecution Office, seven from Basic Prosecution Offices, one from the Basic Appellate Prosecution Office, and one from the Special Prosecution Office.

The remaining three members come from other sectors. They include a lawyer appointed by the Chamber of Advocates, a professor from the Law Faculty, and a civil society representative. The minister of justice is no longer a member of the KPC, as was the case until June 2015. The three non-prosecutor members must be elected by the majority in the Assembly. In the changed law, the new requirement for the civil society representative is that he/she must have legal work experience of more than five years, have not been member or affiliate of any political activity in the last three years and have the support of more than five CSOs.

¹¹⁸ Law No. 03/L-052 “On the Special Prosecution Office of the Republic of Kosovo”, Official Gazette 27/2008, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2526>

¹¹⁹ Official Gazette of the Republic of Kosovo No. 65/2010.

disclosures of information which concern potential money laundering and terrorist financing. The mission of the Financial Intelligence Unit is through its legal mandate, to be leading the overall improvement of the government in preventing and combating money laundering and terrorist financing at the national level. The proper functioning of the system as a whole, through close institutional cooperation and activities of the Financial Intelligence Unit, is the main objective of the FIU-Kosovo.

Division for Prevention of Money Laundering and Financing of Terrorism of the Central Bank of Kosovo (CBK) which has the primary objective of maintaining a stable financial system. The duties of this Division subordinated to the CBK consist of overseeing financial institutions in terms of preventing money laundering and terrorist financing co-operation and participation in relevant international councils and organizations; and defining policies to promote and maintain the stability of the financial system. The task of preventing money laundering and terrorist financing is not specifically mentioned in the Law on CBK, but it is clearly stated in the Law on the Prevention of Money Laundering and Terrorist Financing that addresses this task and specifies the respective role of the CBK. In close cooperation with the Financial Intelligence Unit, as the primary authority in this area and with other relevant entities, this Division contributes to the development of adequate national risk management strategies.

The Kosovo Police (KP) is a law enforcement institution responsible for preserving public order and safety across the country. The Kosovo Police is organized in 5 (five) investigation departments, one of which is the **Special Anti-Corruption Department (SACD)** or so-called 'Anti-Corruption Task Force' which operates as a specialized unit within the Investigation Department and aims to prevent, investigate and detect the criminal offences on economic, financial and corruption matters. SACD's mission is the investigation and combating of criminal offences of high level corruption in the Republic of Kosovo. Together with the Special Prosecution of the Republic of Kosovo, the Department conducts investigation of perpetrators of criminal offences, documentation of criminal activity, and bringing suspects before a court of law.

Kosovo Police Inspectorate is an independent institution in charge of investigating high profile disciplinary offenses. High profile disciplinary cases include: conflicts between the police and community; the use of lethal force; death in police custody and fatal traffic accidents involving police staff. The Inspectorate is also responsible for preventing, investigating and documenting any criminal activity committed by police members for which they are not entitled to immunity.

The Kosovo Justice Council- Disciplinary Committee is an internal control mechanism of the Judiciary which investigates charges for misconduct of judges that can lead to serious allegations for corruption. In cases where misconduct is found to have occurred, the Disciplinary Committee may impose sanctions that include a warning, a fine, the transfer or suspension of the judge and, in particularly serious cases, the removal of the judge from their position.

Office of Disciplinary Counsel (ODC) is a separate and independent institution elected by the **Kosovo Judicial Council (KJC)** and the **Kosovo Prosecutorial Council (KPC)** responsible for investigating judges and prosecutors when there is a reasonable complaint or doubt of misconduct. ODC has the right to investigate all matters and from evidence obtained decide whether to present disciplinary action to the KJC and KPC Disciplinary Committee, respectively. In its last report it is clearly stated that the ODC continues to face insufficient professional and administrative capacities to fulfil its legal duties (to conduct investigations for any breach of conduct by a judge or prosecutor) and deal with the large number of complaints submitted by citizens, institutions and other legal entities.¹²⁰ The Office of Disciplinary Council will be dissolved during the first quarter of 2019 based on the new Law no.06/L-057 on the Disciplinary Liability of Judges and Prosecutors. With the entry into force of this law, complaints against a judge or prosecutor concerning an allegation of a disciplinary offense should be submitted to the Competent Authority. The competent authority depends on the addresses of the complaints, such as:

1. **The President of the Basic Court** is the competent authority in cases when the complaints are against a judge;
2. **The President of the Supreme Court** is the competent authority when alleged disciplinary offences are against the Presidents of the Basic Courts and the President of the Court of Appeals;
3. **The Kosovo Judicial Council** is competent authority in cases when the complaints are against the President of the Supreme Court;
4. **The Chief State Prosecutor** is competent in alleged disciplinary offences against Chief Prosecutors;
5. **The Chief Prosecutor** is competent in alleged disciplinary offences against prosecutors employed at the prosecution office for which the Chief Prosecutor is responsible;
6. **The Kosovo Prosecutorial Council** is competent when alleged disciplinary complaints are made against the Chief State Prosecutor.
7. Complaints against a judge or prosecutor can also be submitted to the **Minister of Justice**, or the **Ombudsperson**.

Kosovo Bar Association (KBA) Disciplinary Office There is an ethical framework and a discipline system embedded in the principles of disciplining from the Statute of KBA. The new system of discipline consists of the Investigation Disciplinary Commission, Disciplinary Review Committee and the Complaints Commission, whose members are appointed by the KBA Assembly upon the KBA Steering Board proposal. The new system expands the number of entities which can institute a disciplinary procedure against a lawyer, also setting the required guarantee for fair, unbiased and effective disciplinary procedures.

¹²⁰ Office of the Disciplinary Counsel (2017) , Annual Work Report 2016, page 6 In its 2016 Annual Report, ODC reports “five-hundred and fifty-six (556) complaints submitted by citizens, institutions, legal entities that compared to previous year is a slight increase of 7 per cent

3.2.4 Legal, institutional and capacities gaps assessment

Kosovo has been constantly criticized for insufficient efforts in the fight against corruption, due to the lack of political will and, at the same time, the strong interference in the work of justice system and other institutions responsible for the fight against corruption.

Kosovo is said to have a good *legal framework* for the fight against this damaging phenomenon, as well as a well structure of specialized institutions dealing with corruption. However, Kosovo in the last two decades, has been constantly confronting with a situation where the amendments to the laws are introduced very frequently, sometimes failing to provide sufficient time for those amendments to produce legal effects. In 2018, Kosovo has adopted the latest changes in the Criminal Code and the same amendments are expected to enter into force in January 2019, but the current Code entered into force only five years ago (in 2013). Frequent changes to the laws and by-laws and recurrent re-structuring of mechanisms for the fight against corruption are seen as a tactic from the government officials side to prolong the period of law implementation and ensuring the impunity of corrupt acts.

On the other hand, the creation of numerous mechanisms, bodies and task forces for the fight against corruption gives the impression that the intention of decision makers is only “to pay lip service” to the fight against corruption aiming to please the international community in Kosovo and not to sincerely engage in the fight against corruption. When the procedures for amendments commence, many judges and prosecutors become members of working groups, thus representing an additional burden to the already overloaded actors of justice system.

There is a large tendency of undertaking continuous legislative amendments in the field of anti-corruption. In 2018, the Ministry of Justice, initiated the so-called Functional Review of Justice System for the sole purpose of harmonizing principles, legislation and institutions across the justice sector and the rule of law. The European Union Progress Report for Kosovo in 2018 criticized local institutions for taking the decision to launch another functional review of the rule of law sector with no concrete action, similarly to the review initiated in 2017. What is more, the laws that are in force subsequently remain largely inapplicable in their key sections due to pending legislation still under consideration. An example of non-implementation is the Law on Extended Competencies for Confiscation of Property Benefited by a Criminal Offense as one of the laws that has been implemented the least, and its application has been repeatedly justified by the lack of clarity of the Law, but also the obstacles that this law puts to the prosecution and the courts under implementation. Prosecutors and Judges are inclined to interpret legal norms only in their strict sense (restrictive) and not in the broad sense of the law. Such manner of interpretation enables them to consistently reject cases related to corruption, or in other cases failing to award deserved punishments when they are found guilty.

Despite the frequent amendments and ongoing legislative reviews, there are several gaps identified in the way in which *institutions of investigating corruption* cases are empowered by the legislation to fully fulfill their competences. For instance, regarding the legal framework in fighting corruption, neither the Prosecutorial Council nor the Judicial Council have an effective mechanism to protect prosecutors and judges from political interference. KJC and KPC should establish mechanisms that advocate judges and prosecutors respectively during their work. This further affects the independence and impartiality of prosecutors and judges. Also, both KJC and KPC have in place ethic codes, but disciplinary proceedings against judges and prosecutors are often seen as ineffective and without any influence on prosecutors or judges. Although disciplinary proceedings have initiated for judges and prosecutors in 2017, none of them was finalized with dismissals.

The lack of effective mechanisms is also coupled with the tendency of prolonging the investigations up to the time limits and then submitting the indictment to the court, which constitutes a failure in bringing forward the proceeding in order to get a case decided on its merits.

In the fight against corruption, Kosovo still lacks a legal framework for the suspension and dismissal of public officials under indictments or sentenced for corruption. This has led to the situation when the indicted officials continued to hold their positions without being suspended from work. Even few ministers and deputy ministers with indictments continue to be part of the government while, at the same time, appearing before the court.

Another important feature playing a crucial role in the fight against corruption is that the efficiency of the justice system in Kosovo continues to face a significant backlog and delays caused by retrials. As it was rightly pointed out by the EU Progress Report on Kosovo, this backlog dislodges attention from high-profile and serious subjects. This report also notes the shortcomings of the criminal legislation, especially the complex and formalist Kosovo Criminal Procedure Code. In addition, judges are not even able to manage the court procedure so that their sessions may often fail in the absence of parties, but they are not adjudicating sanctions for the parties for these unnecessary delays in court proceedings. Moreover, in the course of its ongoing work with the victims of corruption, the Kosovo Democratic Institute has noticed that it is common place the retrial of cases, which causes delays to the parties in the proceedings, so that from the time the indictment is filed and the final decision can take years. This negligence in the performance of the work then sends to the statutory prescription of the cases in absolute terms and the absence of penalties for perpetrators of corruption offenses as well as other criminal offenses.

Kosovo also faces the gaps in *institutional capacities*, as evidenced by the interviews conducted with the respective institutions. The Kosovo Prosecutorial Council started with the implementation of SMIL system and that it is still under the initial phase. Cases are being registered in the new system and it is foreseen that the system would be able to be connected soon with the police and

court systems so that each case gets a unique reference number, and that it can be tracked easily.¹²¹ Nevertheless, the data from the interviews also show that it is not common for prosecutors to be familiar with the system and no proper training has been conducted for putting it in use.¹²² The scarcity of staff and the huge backlog of cases remains a pressing problem. Moreover, the existing staff is not well-trained and well-equipped, and lacks necessary investigative skills. There is also the phenomenon of negative selection due to nepotism and favoritism (hiring of family members and party militants) within the court and prosecution office administration. Prosecutors are often facing the challenge of leaking evidence for the cases of corruption, due to their complexities and sophistication of perpetrators' actions.¹²³ Difficulties encountered by the Prosecution are also related to the misconception of corruption by the judges. Many judges still comprehend corruption in terms of classical conception of bribery-giving and taking.¹²⁴

On top of the above mentioned gaps, Kosovo also faces a rather particular concern with regard to the territorial jurisdiction of law enforcement agencies. The largest legal area with the lack of law enforcement and the rule of law is the northern part of the state, namely the municipalities of Leposavic, Zubin Potok, and North Mitrovica, where the courts and the prosecution have never effectively extended their power and various acts that occur and reported are often neither investigated and nor decided on their merits.

3.2.5 Methods and practices employed in investigating and prosecuting corruption

In Kosovo, **criminal investigations** are conducted by the Prosecution according to the strict procedures provided for in the Criminal Procedure Code and their initiation, conduct and completion requires a special decision, continuous supervision and conclusion with an indictment for the persons investigated. It is very important to make a clear distinction between the criminal investigations carried out by the Prosecution with the assistance of the investigative police and the **administrative investigations** carried out by other bodies dealing exclusively with that particular issue. Investigations conducted by institutions such as the Kosovo Tax Administration, the Kosovo Central Bank or the Financial Intelligence Unit responsible for the declaration, financial control and money flow, carry out investigations or audits of natural and legal persons. During the investigation they may find that the legal entity has committed a criminal offense with his actions or inactions and therefore they initiate criminal charges at the state prosecution. Further, the State Prosecutor initiates the investigations officially and during the investigation can use the measures allowed by the Kosovo Penal Procedure Code. In the fight against corruption, state institutions should cooperate among themselves for achieving the ultimate goal, preventing corruption at all levels and punishing the corrupt.

¹²¹ Interview with Mr Lavdim Krasniqi, Director of KPC Secretariat, date: 16/01/20189

¹²² Interview with Drita Hajdari, Special Prosecutor, date: 17/01/20198

¹²³ Interview with Drita Hajdari, Special Prosecutor, date: 17/01/2019

¹²⁴ Ibid

Financial investigations outside criminal procedure

Financial Intelligence Unit (FIU) conducts its own research after detecting suspicious financial transactions or attempts for such transactions and that this transaction is a product of crime. After receiving the information, analysing it, it disseminates the information to the competent authorities. Within the competencies of FIU they may have to temporarily freeze transactions as a precautionary measure while other bodies are conducting their investigation. This freezing under the Law cannot last more than 48 hours.

The FIU, together with the Kosovo Central Bank, according to Article 34 of the Law on Money Laundering Prevention and Fighting of Terrorism have the right to oversee the immovable assets. Compliance supervision is performed as an inspection at the place of the reporting subject; or as remote oversight of the reporting entity.

In cases where violations are evidenced by the FIU or the CBK, the law allows for the imposition of administrative penalties mainly of financial institutions that have allowed such actions or such transactions. It is very important for these two institutions to verify the suspicion of non-implementation of the law and only when penalties follow the penalties.

From the authorizations that KTA has in the field of taxation it can file criminal charges in the Prosecutor's Office in cases when they during their investigations have come to the conclusion that a natural or legal person has committed the criminal offense of tax evasion, misuse of authorizations in the economy or organization of illegal gambling.

Investigative and prosecution procedures in the cases of corruption

The investigative and prosecution procedures in the cases of corruption are regulated with the Criminal Procedure Code (CPC) (No. 04/L-123). The most frequently used methods and practices applied when gathering information in these cases are:

1. The application of covert and technical investigative and
2. Surveillance measures

Covert and technical investigative measures may be authorized as measures taken prior to criminal proceedings (CPC, article 84), after an investigation has been initiated or concurrent with the state prosecutor's decision to initiate the preliminary investigation. The state prosecutor may request the pre-trial judge to authorize covert and technical investigative measures.

The CPC provides definitions for a range of covert and technical measures of surveillance and investigation:

1. **Covert photographic or video surveillance** means the monitoring, observing, or recording of persons, their movements or their other activities by a duly authorized police

officer by means of photographic or video devices, without the knowledge or consent of at least one of the person's subject to the measure;

2. **Covert monitoring of conversations** means the monitoring, recording, or transcribing of conversations by a duly authorized police officer by technical means without the knowledge or consent of at least one of the person's subject to the measure;
3. **Search of postal items** means the search by a duly authorized police officer of letters and other postal items which may include the use of X-ray equipment;
4. **Interception of telecommunication** means the interception of voice communications, text communications or other communications through the fixed or mobile telephone networks. This includes any similar technological device or system that carries information that is normally intended to be private;
5. **Controlled delivery of postal items** means the delivery by a duly authorized police officer of letters and other postal materials;
6. **Use of tracking or positioning devices** means the use by a duly authorized police officer of devices, which identify the location of the person or object to whom it is attached;
7. **Simulated purchase of an item** means an act of buying from a person suspected of having committed a criminal offence an item which may serve as evidence in criminal proceedings or a person suspected to be a victim of the criminal offence of trafficking in persons (as defined in article 170 of the Kosovo Criminal Code);
8. **Simulation of a corruption offence** means an act, which is the same as a criminal offence related to corruption, except that it has been performed for the purpose of collecting information and evidence in a criminal investigation;
9. **An undercover investigation** means the planned interaction of a duly authorized police officer or cooperative agent of the prosecution who is not identifiable as a duly authorized police officer or of a person acting under the supervision of a duly authorized police officer with persons suspected of having committed a criminal offence;
10. **Metering of telephone calls** means obtaining a record of telephone calls made from a given telephone number;
11. **Disclosure of financial data** means obtaining information from a bank or another financial institution on deposits, accounts or transactions;

The prosecutor may make use of a combination of methods and practices by tailoring them according to the needs of a specific corruption investigation case.

3.2 MACEDONIA, FYR

3.3.1 Introduction

In RN Macedonia, corruption remains prevalent in many areas and continues to be a serious problem. However, the EU Commission Report for the Republic of North Macedonia, 2019 states that *“good progress has been made through further consolidating a track record on investigating, prosecuting and trying high level corruption cases and through changes to the legislative framework. In this regard, the new legal framework for preventing corruption has improved and the appointment of the new members of the State Commission for Prevention of Corruption has been far more transparent than in the previous years. The Commission has taken important steps to proactively fight against corruption, involving high level officials across the political spectrum.[...]However, corruption is prevalent in many areas and remains an issue of concern”*.¹²⁵ In the Corruption Perception Index, the RN Macedonia shows improvement compared to previous assessment, however is still ranked in the 93d place out of 180 countries.

There is no unified statistical data on the investigation, prosecution, and conviction of corruption in RN Macedonia, which contributes to creating a rather non-realistic picture of corruption cases handled. Institutions involved in collecting and processing data use different methodologies and different nomenclatures for crime statistics. Data are often recorded and counted by various institutions and jurisdictions in different ways and at different stages of the respective criminal justice processes (e.g. offences reported, ongoing investigations, completed investigations, charges, suspects, victims and incidents, cases, conviction, sentences etc). This immediately creates difference between the official statistical data in the police and the prosecution. It also creates the difficulty to track a case sent from the police to the Prosecution offices. What adds to the complexity of acquiring accurate data is that corruption offences are not specifically classified. There is a list of 19 corruption related criminal offences that can be found in different chapters of the criminal law. Also in the criminal statistics there is no clear data on corruption related offences. The statistic on bribery are disaggregated by type of offence as passive and active bribery, which are distinct criminal offences in the criminal law.

The numbers have almost halved, mostly due to inefficiency of the institutions, especially with regard to the work of the Public Prosecutors Office (PPO). According to the new Criminal Procedure Code the Public Prosecution office is responsible for the pre-investigation and investigation, and the police is to be coordinated and officially guided through investigations by the basic PPO under which jurisdiction is the case.

The most common corruption related criminal offences are the misuse of power, tax evasion, and the negligent performance of duty. There is no difference between the number of bribery cases,

¹²⁵ European Commission Report for North Macedonia, 2019, https://ec.europa.eu/neighbourhood-enlargement/countries/package_en pg. 4

both active and passive bribery, and the number of embezzlement cases. However, figures shown are very low considering the magnitude of corruption within the society. The number of criminal offences classified as corruption have increased due to introduction of the new crimes stipulated in the criminal law such as for instance inappropriate enrichment. According to the statistics, the number of convicted private individuals is bigger than the number of convicted public officials.

Table no.1: Number of convicted perpetrators for specific criminal offences in the Chapter 30 Crimes against official duty

Crimes against official duty	2017	2016	2015	2014	2013
Total	96	113	201	243	137
Negligent performance of duty	18	8	34	9	12
Violation of guarding the state border	1	0		1	
Misuse of official position and authority	62	68	112	193	92
Embezzlement in the service	4	9	14	9	4
Fraud in the service				1	
Unauthorized use				2	
Receiving a bribe	3	12	13	10	9
Giving a bribe	3	5	4	7	5
Falsifying an official document	2	7	13	9	3
Other	3	4	4	7	

As the numbers of reports, indictments, and convictions is decreasing over the years, there is also a significant decline on the numbers of reports, indictments, and convictions in one calendar year. This has been a steady trend, also based on the character of the statistical data, where not all reported cases will end with indictment, and not all indictments are followed by a conviction.

3.3.2 Strategic documents and the legal framework on the investigation and prosecution of corruption

3.3.2.1. Strategic documents

Based on the legal competences prescribed on the Law on Prevention of Corruption and Law on Prevention of Conflict of Interests, the State Commission for the Prevention of Corruption (SCPC) coordinates the process of the drafting and adoption of the State Program's for Prevention and

Repression of Corruption and the State Program's for Prevention and Reduction of Conflict of Interests with Action Plans.

Between 2003 and 2019 the State Commission for the Prevention of Corruption (SCPC) has adopted various strategic documents entitled as State Program's to tackle and eradicate corruption. The latest, the State Program 2016-2019 is a National strategy for prevention and fight against corruption and conflict of interests, which is coordinated and in line with the strategic and reform processes in the country and it represents a general framework for a coordinated and comprehensive fight against corruption and conflict of interests.¹²⁶

The Judicial Reform Strategy has been adopted on November 28th 2017.¹²⁷ According to the Government, this strategy provides clear guidelines for improving the overall judicial sector by overcoming the existing shortcomings, both from a normative and an institutional point of view. The strategy is followed by an action plan containing activities, measures and deadlines with the implementation of which the goal of the strategy is expected to be achieved: restoring confidence in institutions by providing legal security and access to impartial and quality justice for citizens. Before submitting it to a government procedure for its adoption the Draft Strategy was sent to the European Commission for an opinion. The Government has already started activities in amendments to the Law on Courts, Law on Public Prosecution, Law on the Academy for judges and prosecutors; the Law for the Special prosecutor office; the Criminal Code and others.

Moreover, in February 2018, the Strategy for the financial investigations has been approved. The analysis of the situation in the legal framework and institutional capacities for conducting financial investigations and the confiscation measure contributed to identifying a number of measures that can be summarized in five (5) strategic goals:

- I. Effective authorities to conduct financial investigations,
- I. Enhanced and efficient cross-sectoral cooperation,
- II. Strengthening and harmonization of the legal framework,
- III. Capacity building through trainings and
- IV. Protection of human rights¹²⁸

For each of the pillars the Strategy provides the measures to be implemented. For instance, within the ambit of pillar I, investigative centers should be established in all public prosecutors' offices to deal with the basic courts with basic and extended jurisdiction; In the Public Prosecutor's Office and in the competent institutions that are part of the judicial police, separate organizational units will be established to conduct financial investigations; Provide a clear procedure as a basis for

¹²⁶ <http://www.dksk.org.mk/en/images/stories/PDF/stateprograme-eng-final.pdf>

¹²⁷ <https://meta.mk/vladata-gi-usvoi-strategijata-za-reformi-vo-pravosudstvoto-i-natsrt-zakonot-za-amnestija/>

¹²⁸ Strategy for the Financial Investigations

coordination by the Public Prosecutors who lead the pre-trial proceedings and investigations in order to provide precise instructions to the law enforcement agency; Strengthening the capacities for efficient and effective handling of the temporarily seized property and Establishment of an Asset Recovery office) ARO within the Public Prosecutor's Office that will also enhance international cooperation. A separate measure of Pillar II is to ensure full and timely access to the databases of all institutions that have data needed in the process of conducting a financial investigation, finding a property that should be confiscated and for confiscation using ncc in the direction of more efficient cooperation and data exchange.

3.3.2.2. Legal framework

The primary legal framework regulating corruption and bribery in Macedonia is contained in the following legislation:

Criminal Code of Republic of Macedonia¹²⁹ defines, in Chapter 25, the crimes against public finances, payment operations and the economy and in Chapter 30 the crimes against official duty. Corruption offences are not specifically classified. There is a list of 19 corruption related criminal offences that can be found in the abovementioned chapters of the Criminal Code.

Criminal Procedure Code¹³⁰ is the main procedural law establishing rules to be followed by the Prosecution, the courts and other actors of the criminal process, in order to ensure a fair, impartial and effective criminal investigation and proceeding.

The Law for the Prevention of corruption and conflict of interest,¹³¹ regulates the measures and activities for prevention of corruption and conflict of interest in the exercise of power, public authorizations, official duty and politics, measures and activities for prevention of conflict of interests, measures and activities for prevention of corruption in undertaking activities of public interest by legal entities related to execution of public authorizations, as well as measures and activities for prevention of corruption in trade companies. It is also responsible for the control over the political financing. The Law also stipulates provisions and criteria for election of the commissioners and establishment of the State Commission for Prevention of Corruption for the purpose of implementing the measures and activities referred to in the Law.

¹²⁹ Official Gazette of the Republic of Macedonia, no. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014, 199/2014, 196/2015, 226/2015 и 97/2017).

¹³⁰ Official gazette No. 150 from 18 November 2010

¹³¹ Official Gazette of the Republic of Macedonia, no. 12/2019. Previous Laws not in force from 19th January 2019:

1. Law for the Prevention of Corruption Official Gazette of the Republic of Macedonia“ no. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, 97/2015 и 148/2015);
2. Law for the Prevention of Conflict of Interests „Official Gazette of the Republic of Macedonia“, no 70/2007, 114/2009, 6/2012 и 153/2015).

Law for the Protection of the Whistleblowers¹³² provides procedures and measures for the protection of the whistle-blowers, the procedures for the accepting of the whistleblowers reports for the public and private sector and mechanisms for protection and retribution.

Law for the Free Access to the Public Information¹³³ aims to ensure transparency and openness of the operation of the holders of information, and shall enable the natural persons and legal entities to exercise their right for free access to public information. The holders of information are obliged to inform the public regarding their work. This law regulates the requirements, the manner and the procedure for exercising the right for free access to public information that the bodies of the state administration and other bodies and organizations determined by law, the bodies of the municipalities, the City of Skopje and the municipalities in the city of Skopje, the institutions and the public services, public enterprises, legal entities and natural persons performing public authorizations, have at their disposal. The Commission for Protection of the Right to Free Access to Public Information is the responsible institution for the implementation of this law.

Law for the Prevention of Money Laundering and Financing of Terrorism¹³⁴ lay down the measures and actions for detection and prevention of money laundering and other criminal proceeds and financing terrorism. A Financial Intelligence Office (FIO) has been established for collecting, processing, analyzing, keeping and providing data obtained from the entities which are bound to undertake measures and actions for detection and prevention of money laundering and financing terrorism, as a body within the Ministry of Finance¹³⁵.

3.3.3 Institutional framework on the investigation and prosecution of corruption

The Assembly has the primary role in appointing the members of the SCPC, the SAO, the State Prosecutor. The Assembly of RN Macedonia does not have a specialized anti-corruption commission. In the Parliament an inquiry commission may be established if 20 MPs raise questions to investigate the responsibility for corruption, involving the elected and appointed officials. This commission has the authority to request the submission of all documents and materials that may be relevant to the particular situation, from any relevant legal or responsible person. The sessions of the Inquiry Commission must be public and their decisions are adopted by a simple majority of votes.

Courts form a system which is composed of 5 types of courts: basic courts; courts of appeal; the Administrative Court; the Higher Administrative Court; and the Supreme Court of RN Macedonia. The Constitutional Court of RN Macedonia upholds the Constitution. There are 27 basic courts of the first instance operating in one or more municipalities, four courts of appeal, and the Supreme

¹³² Official Gazette of the Republic of Macedonia, no 196/2015 и 35/2018.

¹³³ Official Gazette of the Republic of Macedonia, no. 13/2006, 86/2008, 6/2010, 42/2014, 148/2015, 55/2016 и 64/2018).

¹³⁴ Official Gazette No. 4/2008, 57/2010, 35/2011 and 44/2012

¹³⁵ Please refer to section 3.3.3

Court, which is seated in the capital city of Skopje. Two of the basic courts are specialized courts. Skopje Basic Court I as a specialized criminal court in which a division was established in 2008 to adjudicate criminal offences concerning corruption and organized crime. There is a separate Administrative Court, the decisions of which may be appealed to the Higher Administrative Court, and both of these courts are seated in Skopje. The Supreme Court is the highest domestic court. Judges, presidents of courts and lay judges are appointed and dismissed by the Judicial Council, which is also responsible for disciplinary proceedings and promotion of judges.

Public Prosecutor's Office (PPO) whose operation is regulated by the Law on the Public Prosecution Office¹³⁶ and the Law on the Council of Public Prosecutors. The PPO is an autonomous state body with the primary aim of prosecuting perpetrators of criminal acts. **The Council of Public Prosecutors** was established in 2007 in order to ensure and guarantee the independence of public prosecutors in performing their duties. The Public Prosecutor's Office is the key institution responsible for investigating and prosecuting corruption. As an independent institution, the Public Prosecutor is appointed and dismissed by the Assembly.

The organizational structure of the prosecution mirrors the structure of the courts. The Public Prosecutor of RN Macedonia acts only before the Supreme Court of RN Macedonia. The Higher Public Prosecution Office has rights of audience before the appellate courts and is organized regionally in the same four regions as the Appellate Courts. The Basic Public Prosecution Office acts before the courts of first instance. Besides the public prosecutor of Macedonia, the system is organized in the way it is consisted of four senior prosecutors (linked to 4 appellate courts), 22 prosecutors (associated with the First Instance Courts in the country) and the Prosecution for the Organized Crime and Corruption, that covers the whole country and is connected to the Department of Organized Crime and Corruption at the Skopje Court 1 of First Instance.

Public Prosecution Office for Organized Crime and Corruption (PPOOCC) is reporting to the Chief Prosecutor on Organized Crime and Corruption and she/he is responsible for his work before the Public prosecutor of RN Macedonia and the Council of Public Prosecutors of RN Macedonia. Article 29 paragraph 4 of the Law on Public Prosecution stipulates that the Prosecution for Organized Crime and Corruption acts in front of a first instance court with a specialized department for judicial proceedings against organized crime and corruption. The Basic Public Prosecutor's Office for Prosecuting Organized Crime and Corruption is authorized to investigate, among others, offenses committed by a structured group of three or more perpetrators, which exists for a time period and act in order to commit one or more criminal offenses for which the predicted sentence is imprisonment of at least four years, with the intent to acquire financial or other benefit directly or indirectly, criminal offenses of abuse of official position and authorization referred to in Article 353 paragraph (5), receiving a bribe of a significant value referred to in Article 357 and the unlawful mediation referred to Article 359 all of the Criminal Code, carried out by an elected or appointed functionary, official or responsible person in a legal entity.

¹³⁶ Official Gazette of the RM, No. 150 from 12.12.2007 and No. 150 from 3.09.2008

The Ministry of Interior, the Financial Police and the Customs Administration are obliged to immediately submit the documents and other evidence to the public prosecutor, as well as any information that they have encountered in the detection of all crimes. The central government bodies, the bodies of the units of local self-government, the legal entities and people performing public authorizations are obliged to submit to the public prosecutor documents, objects and notifications necessary for carrying out the activities within its competence, in accordance with Article 33 of the Public prosecution law.

For the purpose of exercising the function of prosecution of criminal offenses in the field of organized crime and corruption and other crimes for which a minimum sentence of four years is prescribed or when this is required by special circumstances, the public prosecutor may order one or more specifically designated officials from the Ministry of Interior and other state organs should be made available for a certain period, as in pre-investigative, so and in the criminal procedure conducted upon his request, as determined by Article 34 of the Public prosecution law.

With the latest amendments of the Law for Public Prosecutor's Office adopted in 2018 new professional officials has been introduced in the PPO: public prosecutor's officers – investigators. They are employed in the Department for investigation and prosecution of criminal acts committed by people with police power and members of the prison police in the Public Prosecutor's Office for Prosecution of Organized Crime and Corruption.¹³⁷

Special Public Prosecutor's Office. The Public Prosecutor's Office for Prosecuting Crimes related and arising from the content of the unlawful interception of communications, also known as the Special Public Prosecutor's Office, was established by the Law on Public Prosecutor's Office for prosecution of related crimes and arising from the contents of the illegal interception of communications. The need for establishing this unique Public Prosecutor's Office was imposed by the announcement of the talks from the unlawful interception of communications in 2015, which revealed systemic problems in the domain of the rule of law, which were confirmed by the Priebe Report¹³⁸ and the Emergency Reform Priorities. The work of the Special Prosecutor's Office is an important contribution to the fight against high-level corruption. There are now several high level corruption cases before the courts. The draft reform strategy for the judicial sector for the period 2017-2022 determines that the Special Public Prosecutor will receive extended jurisdiction to prosecute high-profile criminal acts for corruption (white-collar crime).

State Commission for the Prevention of Corruption (SCPC) is the main anti-corruption body in RN Macedonia. The SCPC is composed of 7 full-time Commissioners appointed by Parliament.

¹³⁷ Law on amending the law for public prosecutor's service.

¹³⁸ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf

The SCPC submits its annual report to parliament, the President of the Republic and the Government, as well as releasing it to the media. The SCPC's competencies are established with the Law for the prevention of corruption¹³⁹, and they include among others the collection and review of asset declarations and statements of conflict of interest, control over the political financing, prevention, legal corruption risk assessment and other. Legislation underpins its powers to oblige any person to provide such information. The SCPC is also responsible for the preparation of the anti-corruption strategy as well as for monitoring its implementation. The first anti-corruption strategy was adopted in 2003, and the latest strategy covers the period 2016–2019. Every citizen, has the right to report an abuse of public office and other functions and duties that result in personal gain or damage to another person without suffering any harmful consequence to the SCPC. SCPC has authority for examining property and assets and has right to check different data bases and bank accounts. The SCPC also conducts anticorruption awareness-raising and encourages normative and institutional strengthening, as well as promoting inter-institutional and international cooperation. The new Law for the prevention of corruption and conflict of interest adopted in January 2019, enabled the selection and appointment of the new Commissioners in a participative and transparent manner.

The Ministry of Interior (MOI) is vested with large competences for investigating corruption based on the Law for the Police and Law for the Internal Affairs.¹⁴⁰ Between the central organs of the Ministry of Internal Affairs, the Department for suppression of organized and serious crime is responsible for investigating cases of corruption. This department has eight sectors, including the Sector for Corruption, within which operate two departments:

- Department of Corruption at Public Procurement; and
- Unit for Classical Corruption and Abuse in the Public and Private Sector.

Within the Ministry of Interior, there is a Sector for Internal Control and Professional Standards, in which responsibilities are the internal corruption and irregularities in the operations of the MOI. The department works on prevention and awareness-raising of police officials with cases of conflicts of interest, and undertake measures for developing a system for detecting and suppression of corruption. International standards require the internal anti-corruption control unit in the Ministry of Interior to be one of the strictest in the system, not just because of its own role to fight corruption in general, but also because of the higher average corruption risk in the police itself. In addition, there needs to be established very detailed rules for cooperation and work with the financial control agency and intelligence, so that the Ministry can prosecute cases of high-level corruption, which include financial transactions.

¹³⁹ The Law for the Prevention of Corruption and Conflict of interest, Official Gazette 12/19. Before, the Law for the prevention of corruption Official Gazette of the Republic of Macedonia“ No. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, 97/2015 и 148/2015).

¹⁴⁰ Law on Police, Official Gazette of the RM, No.114/2006, 6/2009, 45/2012, 41/2014, 33/2014 and Law on Internal Affairs, Official Gazette of the RM, No.42/14, 116/14, 22/2015.

The latest amendments to The Law for Internal Affairs¹⁴¹ there is a new Article 64/a that prescribes an obligation for the MOI for notifying the Department for the investigation and prosecution of criminal offenses committed by persons with police powers and members of the Prison Police in the Basic PPOOCC if the criminal proceeding is initiated ex officio.

Financial Police Directorate (UFP) is a body within the Ministry of Finance, with the capacity of a legal entity, who takes care of the consistent application of regulations in the field of financial, tax and customs operations. Financial Police Directorate is an integral part of the Judicial Police, as a body for the criminal prosecution of perpetrators of criminal acts in the area of organized financial crime and crimes that are prosecuted ex officio, aiming to prevent and combat corruption and organized financial crime. Therefore, it is an important link in the combat system against corruption. It also conducts financial control, monitors the application of tax, customs and other regulations in the field of finance, collects and analyses data on cash transactions and monitors the trail of money from punishable acts. Also gives initiatives, prepares and submits proposal for a strategy for financial protection of the interests of RN Macedonia, submits criminal charges, as well as captures and reporting perpetrators of criminal offenses, providing evidence, other measures and activities that can be used for the smooth conduct of the criminal procedure.

Financial Intelligence Directorate (FID) is a body of the Ministry of Finance and it functions as a separate legal entity. The Financial Intelligence Directorate submits his annual report to the Ministry of Finances and the Government of RN Macedonia. The responsibilities of FID include collecting and analyzing financial, administrative and other data that are related to money laundering and terrorist financing, as well as reporting misdemeanors and ordering termination of financial transactions. Also, in 2018 the Financial Intelligence Directorate adopted an Instruction for the implementation of the measures for prevention of money laundering and financing of terrorism for the holders of public functions.

The two Directorates cooperate with each other on issues falling within the scope of their competence, including dealing with corruption. Hence their cooperation with the public prosecutor's office and other state bodies is crucial for detection and punishment of corrupt behavior in high political and administrative circles.

State Audit Office (SAO) is an independent state body responsible for conducting a review of the regularity and success of public and state institutions. The SAO is also responsible for overseeing the financial and material operations of state institutions and political parties. The SAO has the authority to analyze documents and reports, as well as accounting and financial procedures and electronic data and information systems, in order to determine whether the financial statements represent the true financial condition and activities. The SAO also has the authority to investigate

¹⁴¹ Law on Internal Affairs, "Official Gazette of the Republic of Macedonia", No. 42/2014, 116/2014, 33/15, 5/16, 120/16, 127/16.

the reports of internal and public internal financial control and has access to the reports for the made financial control and management. Finally, the SAO can also review financial transactions that fall under public revenue and public expenditure and can evaluate whether the use of the funds was cost-effective and efficient and the measures that need to be taken by the body that is being audited. SAO submits to the Parliament an annual report for the undertaken audits and activities of the SAO, which the Assembly is considering, while the other audit reports are submitted, but they are not discussed in the Parliament.

Public Revenue Office (PRO) is a body of the Ministry of Finance with the status of a special legal entity. It is responsible for the implementation of the tax laws, registration of tax bonds, inspections, monitoring and analysis of tax reports. Within the PRO, there is a tax inspectorate for preventing corruption in the tax system. The PRO is also responsible for checking the asset declarations of the public officials on the request of the SCPC. The procedure for examining the property is regulated in Article 36 of the Law for prevention of corruption. This procedure is initiated against an elected or appointed official, and responsible person in a public enterprise or other legal entity that is owned by state capital, a procedure for can be initiated, if the person in the asset declaration did not provide data or gave false data or if it did not report change of the property or in the application or if it is determined that his property or property of a member of his family, during the term of office, in the course of the performance of duty, has disproportionately increased in relation to the regular income in the form of salaries, dividends and other income from the performance of activity or property.¹⁴²

Customs Administration (CARM) is a body within the Ministry of Finance with the status of a separate legal entity. The CARM is strongly fighting against corruption, is quite prevalent among customs officials. The more direct contacts imposed by the regulation and the system - the greater the scope for corruption and abuse of office; complex regulation with the necessary discretionary rights as a reason for corruption and abuse of office; missing or low transparency - more room for corruption and abuse of office; paying taxes in cash - more room for corruption and abuse of office.

3.3.4 Legal, institutional and capacities gaps assessment

As the EU Commission points out, while a track record on corruption cases was created years ago, there has been weak investigation, prosecution or convictions for high-level officials and political corruption cases. By December 2017, six investigations had been initiated by the PPOOCC. Since its establishment in September 2015 as per the "Pržino Agreement", the Special Prosecutor's Office has opened 26 investigations, and indictments were confirmed in 17 cases. On November 8th 2017,

¹⁴² The Law for the Prevention of Corruption, "Official Gazette of the Republic of Macedonia" no. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, 97/2015 и 148/2015).

a sentence of one and half years' imprisonment was pronounced in one case against one defendant. Also, the former PM has been sentenced with two years of imprisonment.

Overall, although there is a fairly comprehensive *legislative framework* in place with regard to the fight against corruption, there is clear discrepancy between the legal provisions which prescribe certain actions that institutions must undertake on one side, and the inability of the same institutions to implement these actions in practice, on the other. For instance, the SCPC has encountered various challenges hampering its leading role in preventing and fighting corruption, especially with regard to criticism on its lack of independence, and its weak mandate. In March 2018, five out of seven members of the SCPC resigned following public reactions to the findings of the State Audit Office on alleged financial irregularities.¹⁴³ This was overcome by the adoption of the new Law for the Prevention of Corruption and Conflict of Interest, as well as the appointment of the President and six commission members through a transparent parliamentary procedure.

On top of the above, serious concerns arise regarding the functioning of *institutions* that are established by law, but are entirely non-functional in practice. The SPO (Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communication), cannot process new cases since the Parliament did not extend the mandate of this institution. In these circumstances, SPO may only conclude the cases that are being handled before a court of justice. In addition, the Supreme Court adopted a Decision that the SPO has no mandate to submit any new indictments after the expiration of the 18th months from its establishment. Also, a property recovery office or Asset Recovery Office (ARO) has not yet been established, which is more necessary for the effective international cooperation in financial investigations and the fight against corruption.

With regard to *capacities* to perform sound and comprehensive corruption investigation and corruption, a large part of the agencies report the lack of professional staff as a predominant issue of concern throughout all of the bodies involved in the process of prevention and prosecuting corruption.¹⁴⁴ According to the Annual Report of the PPO, the budget of the Public Prosecutor's office is insufficient to perform its duties. There is a lack of staff in Public Prosecution offices, including not only an inadequate number of prosecutors, but also an insufficient number of advisers, trainees, administrative assistants, and technicians. Through the latest amendments to the Law for the Public Prosecutor's new professional officials have been introduced: public prosecutor's officers – investigators. They are employed in the Department for investigation and prosecution of criminal acts committed by officials vested with police power and members of the prison police in the PPOOCC. However, prosecutions still lack investigators in practice which is another obstruction for their effectiveness. The Investigative Centre within the PPOOCC formally

¹⁴³ European Commission Report for FYR Macedonia of 2018, pg 23, <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A8-2018-0341&language=EN>

¹⁴⁴ Interviews with the Public Prosecution – Skopje, Financial Police Unit, State Commission for Prevention of Corruption, Bureau of Public Security, Custom administration of Republic of Macedonia

established since 2011, became operational only in 2014 with 13 employees, and equipped with IT and audio-visual recording facilities.

The shortage on staff is also present at the main prosecution offices in the country. For instance, the Public Prosecution in Skopje stated that these institutions do not have a sufficient number of public prosecutors and expert associates. It still does not have the capacity for immediate verification so far. No system of support is operation, and checks are carried out through other competent institutions. This prosecution office, is in critical need of establishing an investigative centre, a sufficient number of Public Prosecutors and a budget for those investigations, and not for the Public Prosecution - Skopje to be a debtor and be used in front of competent authorities for illegal invoices.

Besides the institutions such as the Financial Police Unit, the State Commission for Prevention of Corruption, the Tax office, as one of the bodies which receives reports for the material possession from public elected officials, report a significant scarcity of staff in order to fully perform their tasks. Moreover, insufficient training with regard to conducting financial investigation, has been stressed by representatives of the Bureau of Public Security, and the custom administration. Whereas in some cases there is well-trained staff for conducting corruption investigations, nevertheless, a more coordinated and well-planned and a unified approach is needed in order to organize targeted trainings, adopt and update standard operational procedures.

The Ministry of Justice states some of the most needed measures in order to successfully fight corruption, apart from the capacity building capacity building of prosecuting authorities and law enforcement agencies, implementation of reforms in the justice sector, reduction of the discretionary powers of the officials, introduction of effective mechanisms for strengthening the integrity, professionalization and resistance to corruption in the institutions, as well as strengthening of public awareness.

3.3.5 Methods and practices employed in investigating and prosecuting corruption

The fight against corruption requires a multi-faceted approach that comprises prevention and repression based on administrative and criminal law procedures. The responsibility within this priority is shared between the MOI, the PPOOCC, the Ministry of Justice, the SCPC and other bodies, such as the PRO office and the SAO. The SCPC is the policy maker and implementer of the prevention activities, while the investigation of criminal offences of corruption is task for the Ministry of Interior and the Prosecutorial Office for the fight against organized crime and corruption.

The law enforcement agencies do not have any particular role in implementing the measure of confiscation. The focus is mainly on criminal investigations while the financial activities that are taking place in parallel with criminal activities or in the period after that are investigated only after the criminal charges are filed.

Special investigative measures may be ordered for crimes which based on a sentence of up to four years imprisonment, and crimes which hold a sentence of up to five years imprisonment, when there is reasonable suspicion that a crime is being prepared or perpetrated or has been perpetrated by an organized group, a gang, or another type of criminal organization as well as crimes against the state, crimes against humanity according to international law as stipulated in the Criminal Law.

The Criminal Procedure Code determines the types of special investigative measures as well as their purpose. According to the Law, they are taken when it is likely that their application will provide data and evidence, which are necessary for the successful course of the criminal procedure, and could not be provided otherwise. The following investigative methods may be used:

1. Surveillance and recording telephone and other electronic communications in a procedure determined by a special law
 2. Surveillance and recording in a home, closed or fenced area, belonging to said home or business premises marked as private, or a private vehicle and entrance into the same premises, for the purpose of creating conditions for surveillance of communications
 3. Secret surveillance and recording persons and items by technical means outside a home or business premises marked as private
 4. Secret insight and search in a computer system
 5. Automatic, or other, search and comparison of personal data
 6. Insight into realized telephone and other electronic communication
 7. Simulated purchase of items
 8. Simulated offering and receiving bribe
 9. Controlled delivery and transportation of persons and items
 10. Use of undercover persons for surveillance and collection of information or data
 11. Simulated opening a bank account
 12. Simulation of registration of legal entities or use of existing legal entities for collection of data
- Duration of application of special investigative measure is determined by law and may last no longer than four months.

The Public prosecutor or the judicial police, under the control of a public prosecutor, is by law the authorized authority for implementing special investigative measures. The special investigative measures terminate when the goals are achieved. Data, notifications, documents and items obtained by the application of special investigative measures may be used as evidence in a criminal

procedure.¹⁴⁵

Financial investigations are still far from being developed into standardized methods for the fight against corruption and organized crime. Most likely, this would be preceded by an analysis to amend the Criminal Procedure Code and other laws in order to introduce a procedure, and to create a legal possibility that the provisional measures can be imposed immediately when the conditions for the initiation of the criminal procedure and for initiation of the financial investigation in the beginning the pre-trial procedure.

¹⁴⁵ European Scientific Journal February 2014 /SPECIAL/ edition vol.1 ISSN: 1857 – 7881 (Print) e - ISSN 1857-7431

IV. OVERALL ASSESSMENT OF FINDINGS ON THE LEGAL AND INSTITUTIONAL FRAMEWORK

4.1 New trends in investigation and prosecution corruption in the region

4.1.1. Albania

The investigation and criminal prosecution of corruption offences has been considered for years as an intricate process and sometimes not effective as far the results are concerned. To enable a thorough and more efficient investigation against corruption, Albania has made considerable progress from the legal and institutional point of view. The legal framework on investigation and adjudication of cases of corruption has changed substantially in the recent years. The most important changes have affected the main procedural law regarding investigation, such as the Code of Criminal Procedure, Anti-Mafia Law, Electronic Communications Interception Law, Witness and Justice Associates Protection Law, Whistle blowing and Protection of whistle-blowers law, as well as the law on the re-evaluation of judges and prosecutors.

As far as the Code of the Criminal Procedure is concerned, the amendments that are closely connected to the investigation and prosecution of corruption were mainly aimed at: reinforcing the role of the prosecutor on the direction, control, and preparatory investigation progress; the judicial control of the prosecutor's actions during the preparatory investigations phase; guaranteeing the procedural instruments and reasonable deadlines for the investigations, according to the complexity of the case; the incorporation of new types of special trials such as plea bargaining.

The amendments of the law "On Interceptions of the electronic communications", were aimed at integrating this law to the whole package of laws of the justice reforms as well as improve the mechanisms that are used for the investigations of different criminal acts. Specifically, they stipulate that the person who gives the right to survey private electronic communications is no longer the General Prosecutor, but the Chairman of the Special Court of Appeals for Corruption and Organized Crime, or in his absence, the vice-Director. The reviewed law sets forth the procedures for the precautionary surveillances of electronic communications and the surveillance of conversations in private or public areas.

As to the amendments in Anti-mafia Law, they have reshaped the standard of proof required to establish the connection of assets with organized crime, trafficking or corruption and other crimes regarding its seizure and confiscation.

The amendments in the Witness and Justice Collaborators Protection Law, approved in 2017, were intended at including the newly established justice institutions in the witness protection procedures. Hence, the General Prosecutor or the Director of the Special Prosecution has the right to propose their involvement in the protection program, to secure the progress of the investigations. On the other hand, the High Judicial Council and the High Prosecution Council will each are

represented by a member and one substitute member in the Commission of the Evaluation of the Witness and Justice Collaborates Protection Program.

Another step forward was the adoption of the law “On Whistle blowing and Protection of Whistleblowers” which enables the functioning of another mechanism to combat the corruption in the public administration and in the private sector.

From the Institutional point of view, the establishment of the Special Prosecution for Corruption, National Investigation Bureau, the Special Court of First Instance Special Court and the Court of Appeals is still pending, due to the lengthy process of appointing the high-ranking officials of the newly established institutions of the judiciary such as the High Council of the Judiciary and the High Prosecution Council. Therefore, the efficiency of these institutions and their capacities to conduct comprehensive and skillful investigation is yet to be tested.

The re-evaluation institutions (the Independent Qualification Commission, Special Appellate Chamber and Public Commissioners) also carry out investigations concerning the assets of judges, prosecutors and other officials of the justice system, evaluating the legality of their source, their justification, etc. The investigation includes, among other, new techniques of fact-finding in the course of investigation, including financial investigation. The methods employed by these institutions have resulted quite productive in providing evidence in the process of re-evaluation.

4.1.2 Kosovo

Based on the Country Progress Report 2019¹⁴⁶, the Kosovo has some level of preparation in the fight against corruption. Progress is made in record tracking of the investigation and prosecution of high-level cases and on the preliminary confiscation of assets while the level of final confiscations remains very low. Concerted efforts are needed to change this picture in a comprehensive and strategic manner. Kosovo should in particular:

- with a view to continue progress on the track record, increase the number of prosecutors in the Special Prosecution Office investigating and prosecuting high-level corruption cases, and provide training to strengthen their capacity to conduct financial investigations, confiscate assets and effectively protect witnesses;
- amend the legal framework (on the suspension and removal of public officials indicted for and convicted of corruption, on declarations of assets and on whistle-blowers) bringing it in line with European standards;
- ensure that the financial reports and campaign disclosure reports of political parties are consistently published and audited, and sanctions applied for violations of relevant laws. Amend the legal framework governing political party and campaign financing on the basis

of an opinion of the Venice Commission to ensure effective enforcement, accountability and transparency.¹⁴⁷

Despite these gaps and shortcomings, Kosovo has made some legal and institutional changes recently, concerning combating corruption through new legal mechanisms. From the legal point of view, the legal framework on investigation and prosecution of corruption has undergone several changes recently. It needs to be mentioned the approving of the new Law of extended powers on confiscation of assets on 23 November 2018. The extended confiscation as foreseen in this Law applies to the assets of persons who have been convicted of a criminal offence as prescribed by the Criminal Code of the Republic of Kosovo or other laws, including, among others, criminal offences of official corruption and criminal offences related to official duty. On the other hand this law implements the Directive no 42/2014 dated 3 April 2014 of European Union on freezing and confiscation of crime assets in the EU. The latest declaration of assets law amendments are of technical nature. These amendments consist mainly on increasing the number of subjects that bear the duty to declare the assets.

The Law on State Prosecutor was adopted, in order to increase the number of prosecutors in the Special Prosecution Office investigating and prosecuting high-level corruption cases, the amended

The Law on Prevention of Conflict of Interest was revised, in order to bring it more in line with European standards. The amendments clarify the decision-making for an act and preliminary moments of decision-making, the obligatory restrictions for the high officials during exercising the duty and after leaving office.

From the institutional point of view, no changes are particularly noteworthy. The main body for prevention remains the independent and specialized Kosovo Anti-Corruption Agency. Law enforcement institutions are the National Coordinator against Economic Crime, the Anti-Corruption Coordinator appointed by the Chief State Prosecutor and the Police Directorate for the Investigation of Economic Crimes and Corruption, which maintains anti-corruption units at police stations and headquarters. The anti-corruption institutions in Kosovo are not well integrated, their remits overlap and the division of tasks needs to be clarified. Kosovo needs to strengthen inter-institutional coordination mechanisms and bodies and ensure that the institutions have access to the relevant databases (e.g. e-procurement).¹⁴⁸

4.1.3 RN Macedonia

As regards the fight against corruption, the RN Macedonia has made significant progress. The legislative and institutional framework is in place, as well as a record of accomplishment on both prevention and prosecution, although the final court rulings on high-level corruption cases remain limited. Corruption remains prevalent in many areas and continues to be a serious problem. The

¹⁴⁷<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf>

capacity of institutions to effectively tackle corruption has shown structural and operational deficiencies. Political interference remains a risk.¹⁴⁹ New trends for investigation and prosecution of corruption in Macedonia are related to the adoption or amendments of different laws, including the Law for the prevention of the Corruption and Conflict of interests, as well as establishment or enhancing the capacity of specialized bodies for preventing and fight against corruption through law enforcement.

From the legal point of view, the Law on the protection of whistle-blowers (in 2015) Law for the Prevention of corruption and Conflict of Interest in 2018 and the amendments to the Law for the Public Prosecutor's Office in 2019 were recently adopted. New members of the State Commission for the Prevention of corruption are selected and appointed in February 2019 and investigators as professional officials are introduced in the PPO. They are employed in the new Department for investigation and prosecution of criminal acts committed by police official's power and members of the prison police in the Public Prosecutor's Office for Prosecution of Organized Crime and Corruption.

From the institutional point of view, the Public Prosecutor's Office remains the key institution responsible for investigating and prosecuting corruption. The Prosecution for the Organized Crime and Corruption that covers the whole country and is connected to the Department of Organized Crime and Corruption at the Skopje Court 1 of First Instance. Another important body was the Special Prosecutor's Office that was formally and legally established with the adoption of the Law on the Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communication in the Assembly of the Republic of Macedonia on 2015. However important and the work of the Special Prosecutor's Office has been is an important contribution to the fight against high-level corruption, the institution has been seriously jeopardized by the case "Recket" for which the special prosecutor K.J. is under investigation for abuse of the official duty. There are several high-level corruption cases being brought before the courts but the proceedings are slow due to different obstacles based on the presence of the accused, statute of limitation, higher courts decisions for annulling the first instance decisions, etc.

4.2 Positive regional examples on investigating and prosecuting corruption in the three countries and across the region

4.2.1 Albania

Notwithstanding corruption persisting as a negative phenomenon, there has been progress in the fight against corruption among high-level state officials. The General Prosecution Office has indicted a member of the Supreme Court and her husband for the crime of passive corruption of judges. The investigation of this case was initiated based on indications, and led to a large number of defendants and convicted (five of them) including the judge of the Supreme Court M.A. and her

¹⁴⁹ http://europa.eu/rapid/press-release_MEMO-18-3405_en.htm

husband. Following this indictment, the Supreme Court after examining the case has sentenced judge M.A. with 3 years of probation, and suspending her from exercising public functions for a period of 5 years. This constitutes the most significant case of investigating and sentencing a high-level official for corruption offences in Albania in last years. In this case, the prosecution office used a combination of investigation techniques such as interceptions, surveillance, technical expertise of film footage and mobile phones, searches, automobiles control, control of TIMS data. Other cases of prosecution of judges and prosecutors accused of corruption have been concluded by sentencing of the accused.¹⁵⁰ Another prominent case of high level public officials being indicted for participating in corruption schemes is that of the vice general director of prisons. I.L was sentenced with imprisonment and suspension to exercise public functions by the Serious Crimes Courts.

It is noteworthy mentioning the good example of conducting thorough financial investigation in the course of the re-evaluation process of the judges and prosecutors in Albania. The process has started to give its first results, by dismissing a number of judges and prosecutors on the basis of non-provision of sufficient evidence for the trustworthy source of their income.

The latest developments in the framework of the justice reform have brought the establishment of two important institutions such as the High Prosecution Council and High Judicial Council. The establishment of the High Prosecution Council is considered very important, due of its role in appointing the General Prosecutor and members of the Special Prosecution against Corruption and Organized Crime. The Special Prosecution has the power to investigate and prosecute any other offense that is closely related to the investigation or criminal case within their competences. The establishment of the Special Prosecution will be followed by the establishment of the Special Investigation Unit, alternatively named the National Bureau of Investigation as a specialized section of the judicial police which will investigate criminal offences under the jurisdiction of the Special Prosecution in accordance with the provisions of Criminal Procedure Code. The National Bureau of Investigation shall also conduct judicial police services.

4.2.2. Kosovo

The provisions of the Law on Courts that entered into force on January 1, 2013 defined the new Court Structure and its hierarchy throughout Kosovo. This new structure has not only changed the old court organization, but it also regulated the establishment of the new courts located in both, larger and small municipalities. The aim of this restructuring effort was to build more efficient courts, and bring judges and court-houses closer to the citizens of Kosovo. From January 1, 2013 the new structure of Prosecution Offices in Kosovo also reflected the goal of the General Justice

¹⁵⁰ For example, in 2018, one Appeals Court judge, accused for corruption, was sentenced with 6 years of prison by the Serious Crime Court (case is currently being adjudicated at the appeal level) and one prosecutor was sentenced by the Court of Appeal for Serious Crimes (case currently being adjudicated at the Supreme Court).

Reform in Kosovo towards more efficient, modern and professional approach to prosecution services, and better access to justice for the citizens.

Three years after the finalization of re-structuring process of justice system in Kosovo (November 2016), the Government of Kosovo launched a Functional Review of the whole Rule of Law sector under the lead of the Ministry of Justice. The review was planned to cover all institutions related to the topic and seek to impose a comprehensive strategy for the development of effective Rule of Law in the country. In the late 2019, a new initiative was launched titled “Justice 2020”. Based on the statements from the officials within Ministry of Justice, the two main characteristics of these initiatives are the local ownership over the process and the focus on practical solutions to real problems in the Justice System.

With regard to inter-agency cooperation, KPC has integrated its electronic system for case management (SMIL) with Kosovo Police system¹⁵¹. KPC is planning next year to continue to enlarge the integrity of the system with other databases of important central institutions such as Agency for Cadaster, Agency for Business Registration and Kosovo Tax Administration. The most important improvement to the system would be the integration with the system of the Agency for Civil Registry that would provide the prosecutors with the full detailed information on the citizens under investigation¹⁵².

4.2.3 RN Macedonia

In the recent years, several cases of high-ranking state officials have been subject to criminal investigation and prosecution for abuse of official position, in breach of the public procurement legislation, by extending favors to specific individuals or companies. Such cases included among others, the investigation of the former prime minister N.G. as an official person-former Prime Minister there are two cases in process and five proceedings pending by the Special Public Prosecutor’s Office; the former Minister for transport and communication there are seven other proceedings pending in the Special Public Prosecutor’s Office and the head of the Operational Technology Department within the Security and Counter intelligence Agency. Another case refers to the investigation of the then Minister of Health for the procedure of public procurement of radiography apparatuses and other equipment for the radiology departments in four health care facilities in the Republic of Macedonia. In the same vein, the Special Prosecutor has initiated a proceeding against the head of the Ministry of Agriculture, Forestry and Water Economy at the time Abused the Official Position and Authorization contrary to the Law on Public Procurement and committed the offence of Abuse of Official for an agreement made by without implementing the procedure for public procurement.¹⁵³

¹⁵¹ http://www.kpk-rks.org/single_lajmi/2781/prokurorit-dhe-policia-e-kosovs-bjn-ndrlidhjen-e-sistemeve-e-elektronike

¹⁵² Interview with Mr. Lavdim Krasniqi, Director of KPC Secretariat, date: 16/01/2019

¹⁵³ A selection of cases presented by the Special Prosecutor Katica Janeva on the Press conference held on

Besides the area of infringements within procurement procedures based on corruption practices, another case refers to the member of the Parliament of the Republic of Macedonia, who committed malfeasance with regard to the right of reimbursement of travel/commuting expenses incurred with one's own vehicle.

4.2.4 Other examples across the region

Various methods of the state's response on the fight against corruption have been used throughout the Balkans. Examples from Slovenia, Croatia and Romania show that tangible results in the fight against corruption are possible.

To start with Slovenia the fight against corruption amongst high-level public officials has proven effective. The only specialized corruption prevention body in Slovenia is the Commission for the Prevention of Corruption (CPC)¹⁵⁴. The Commission is established with the adoption of the Integrity and Prevention of Corruption Act (IPCA) of 2010. The CPC is not part of the law enforcement or prosecution system, and its employees are not granted typical police powers. The CPC has a wide range of competences but does not have the power to investigate corruption practices, and it cannot use certain techniques, such as covert investigation measures, for which the police is the sole responsible. In any case, the Commission cooperates with the police and the prosecutor's office and keeps them informed on a regular basis about suspected criminal offences. Criminal investigations of cases of corruption are the prerogative of the Criminal Police and the Prosecutors office. Within the prosecutor's office operates a *specialized economic corruption department*, which deals with criminal cases from the legal field of corruption and economic crimes¹⁵⁵. Moreover, it is very important to be mentioned the *Section for the Investigation and Prosecution of Official Persons Having a Special Authority* (Special Section)¹⁵⁶ who operates as an independent internal organizational unit holding a special position within the Specialized State Prosecutor's Office. This Special Section has exclusive territorial and subject matter jurisdiction over criminal offences committed by officials: of the police, of internal affairs services with police authority to exercise supervision under the law regulating the police, of military police with police authority in pre-trial proceedings, of the Intelligence and Security Agency. The state prosecutors at this section are competent to prosecute such offences and to direct the activities of police officers of the special section and the police in detecting and investigating such offences.

The Commission supervises and deals with cases of suspicion of corruption based on the IPCA within *the Supervisory and Investigation Service (SIS)*¹⁵⁷. SIS also deals with the protection of

19 december 2017 <http://en.jonsk.mk/2017/12/19/>

¹⁵⁴ <https://www.kpk-rs.si/en/> available on [Internet].

¹⁵⁵ <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/slovenia> available on [Internet].

¹⁵⁶ <https://www.dt-rs.si/section-for-the-investigation-and-prosecution-of-official-persons-having-special-authority> available on [Internet].

¹⁵⁷ <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/slovenia> available on [Internet].

applicants, incompatibility of functions, restrictions on accepting gifts, restrictions on business, supervision over the property status of official, and it is the generator for administrative and minor offences proceedings.

Within its jurisdiction, the CPC may punish for various offences individuals, responsible persons, and holders of public authority and other legal entities of public or private law and interest organizations. Substantive decisions of the CPC (ruling of corruption, conflict of interest, violation of lobbying regulations etc.) are subject to judicial review of the High Administrative Court.

The CPC yearly investigates over 1300 cases under its jurisdiction and keeps and monitors declaration of assets of over 8000 officials. The CPC has shown good results related to the investigation and prosecution of corruption, especially against high ranking officials. The 2011 *Supervisor* web application, a result of the *Transparency Project*, made available to the general public the data on how the public money in Slovenia is spent by local communities and governmental bodies, and their representatives. The *2012-2013 Investigation Report on the parliamentary parties' leaders* revealed that Janez Janša, PM, and Zoran Janković, the head of the opposition, systematically and repeatedly violated the law by failing to properly report their assets.¹⁵⁸

Another good example related to successful investigating and prosecuting corruption in Western Balkan region is the case of *Croatia*. In the field of law enforcement, Croatia has centralized the fight against corruption under the Office for the Suppression of Corruption and Organized Crime (USKOK), established on 2001, with a broad political mandate to investigate, prosecute and prevent corruption based on its establishing legislation. Besides USKOK, there is the Police National Department for the suppression of Corruption and Organized Crime (PNUSKOK)¹⁵⁹ as a specialized unit within the police which conducts inquiries in cooperation with USKOK. Moreover, the prosecution department has detached special regional offices (departments) at competent county courts. Those specialized regional offices consist of judges with experience in working on more complex cases concerning the criminal offences under USKOK's competence.

USKOK has the mandate to direct police investigations and conduct prosecutions in corruption and organized crime cases within its jurisdiction. The USKOK does not have investigators and police officers permanently working within the office. Instead, USKOK prosecutors direct and conduct investigations through regular police forces. USKOK prosecutors have the authority to use special investigation methods, as the secret infiltration, surveillance of the telecommunications etc. Thus, the law grants prosecutors from USKOK a series of special powers, which in some cases exceed the powers of regular prosecutors in regular criminal proceedings including provisions relating to the collaborators of justice and special investigative means.

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https://en.wikipedia.org/wiki/Commission_for_the_Prevention_of_Corruption_of_the_Republic_of_Slovenia available on [Internet].

¹⁵⁹ <http://rai-see.org/croatia-anti-corruption-institutional-framework/> available on [Internet].

USKOK results related to investigation and prosecution of corruption especially against high ranking officials are impressive, with reaching the highest point by prosecuting the ex-Prime Minister Ivo Sanader. Besides Sanader, defendants have included a former deputy prime minister, a former vice president, three former ministers, a top general, the ambassador to the United Nations, and senior tax officials. In 2015, USKOK also arrested and indicted Zagreb's mayor on multiple charges of corruption and abuse of office. Over the last decade, USKOK has successfully prosecuted more than two thousand defendants, achieving a conviction rate of roughly 95 percent¹⁶⁰. The factors that contributed to USKOK's string of high-profile successes were among others the foreign training received by prosecutors that made them highly skilled at asset tracking and special surveillance methods and were cooperating better with police counterparts. Legal reforms made the trial process more efficient. Moreover, regional cooperation with Austria and other nearby countries that had found evidence of former Prime Minister Sanader's hidden assets, further contributed to the successful outcome.

The last successful example comes from **Romania**, which has in total 18 former ministers and one former Prime Minister¹⁶¹ sentenced for corruption. Adrian Nastase, Prime Minister of Romania from 2000 until 2004, was sentenced twice for two different corruption cases for a total of 6 years in prison. These processes have been initiated by the National Anti-corruption Directorate (NAD)¹⁶², a structure similar in organization and competences to the Croatian USKOK. NAD has jurisdiction to investigate and prosecute corruption (traditional corruption offences such as bribery offences, a number of corruption-related offences and offences against the financial interests).

NAD was established on 2002 and is a specialized anti-corruption prosecution structure within the Prosecutor's office, attached to the High Court of Cassation and Justice. The NAD is headed by a chief prosecutor who is assisted by two deputy chief prosecutors. It was set up to deal only with high and medium-level corruption crimes. Any corruption case may be investigated by the NAD if the one who commits the crime falls into one of these categories: Officials, Legal practitioners, Finance, Military and Police Officers, the Heads of the central and local public authorities and institutions, with the exception of the heads of public authorities and institutions at the level of cities and municipalities, persons with control functions within them, lawyers etc. In order to efficiently solve corruption cases and other specific activities related to criminal prosecution, the NAD prosecutors are supported by the officers and agents of judicial police, as well as other specialists qualified in other fields: economy, finance, banking, customs, etc. The NAD can be notified by the citizens, companies as well as public authorities.

¹⁶⁰https://foreignpolicy.com/2015/08/07/the-little-anti-corruption-agency-that-could/?fbclid=IwAR0zjCV5NoNHwfd_2aoRbk5-RfwT2Gy88RtkiPWpUqajzWDFD0zwY8WN2bo

¹⁶¹<https://www.greeneuropeanjournal.eu/a-whole-government-behind-bars-romania-fight-against-corruption/?fbclid=IwAR3HWJ2cgnOnurUnRApiN1IU9w7uUWYLAJpLjUrIuchvswvJJzuCdSk9h0>

¹⁶² 2014 Romania Anti-corruption report by the EU, Available on: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_romania_chapter_en.pdf

The 2014 Anti-corruption report of the European Commission has highlighted the Romanian NAD as one of 5 examples of good practices in anti-corruption agencies across the EU. NAD has built a notable track record of non-partisan investigations and prosecutions into allegations of corruption at the highest levels of politics, the judiciary and other sectors such as tax administration, customs, energy, transport, construction, healthcare, etc. In the past seven years, NAD has indicted over 4 700 defendants. 90.25% of its indictments were confirmed through final court decisions. Nearly 1 500 defendants were convicted through final court decisions, almost half of them holding very high level positions. Key to these results has been NAD's structure which incorporates, apart from prosecutors who lead and supervise investigations, judicial police and economic, financial and IT experts.

The examples from Slovenia, Croatia, and Romania undoubtedly evidence the meaningful efforts being made towards ensuring the well-functioning of the institutions designed specifically for the fight against corruption in all three countries.

V. REGIONAL COOPERATION IN FIGHTING CORRUPTION

The fight against corruption and organized crime constitutes the principal obligation that must be fulfilled by the respective governments. By default, a mutual cooperation in addressing those issues contributes in a better efficiency in the process of integration. In this regard, a number of regional and mutual agreements or international conventions have been signed in order to increase and facilitate the cooperation between the above countries. The agreements in force are concluded in a regional and inter-state level, and they regulate specific aspects of the above-mentioned issues.

5.1 Legal basis for the mutual legal assistance

5.1.1 International and regional agreements/conventions¹⁶³

United Nations Convention against Corruption, entered into force on 14/12/2005 and ratified by both the Republic of Albania and RN Macedonia¹⁶⁴.

The Convention covers five main areas: preventive measures, criminalization and law enforcement, international cooperation, asset recovery, technical assistance and information exchange. The Convention indicates many different forms of corruption, such as bribery, trading in influence, abuse of functions, and various acts of corruption in the private sector. This Convention aims:

- to promote and strengthen the measures for the prevention and fight against corruption efficiency and effectiveness;
- promote, facilitate and support the international cooperation and technical assistance in the prevention and fight against corruption;
- promotion of integrity, responsibility and correct administration of public cases and public assets;

The convention obliges the contracting parties to cooperate with each other and with international and regional organizations for the drafting and implementation of concrete actions for the fight against corruption. Some of the actions illustrated in the convention are: periodic evaluation of the legal instruments and administrative measures in order to determine their efficiency in the fight

¹⁶³ Kosovo's international legal status is regulated by the UNSCR 1244 and up to date the country it is not yet a member of the UN, Council of Europe (CoE) and other regional organizations. Therefore, conventions have not been ratified by the Parliament of Kosovo. However, they are generally accepted in the internal legal system as part of the international law (Article 16/3 of the Constitution of the Republic of Kosovo).

¹⁶⁴ UN Convention against Corruption. Accessed on: <https://www.unodc.org/unodc/en/corruption/uncaac.html>

against corruption; promotion of effective practices that aim to prevent corruption; coordination of effective policies in accordance with principles of the rule of law.

The Convention prescribes specific actions that must be taken in every sector for the fight against corruption, including the private sector, judicial sector, public procurement and money laundering. Regarding the latest, it is foreseen the establishment of a mechanism for the surveillance and regulation of the internal banking sector and other financial institutions, in order to prevent and reveal any case of money laundering. In this framework, those mechanisms should cooperate by exchanging information in national and international level in accordance with the internal legislation. The states can also implement possible measures for the surveillance of the money transfers abroad.

Chapter IV of the Convention sets forth a variety of possibilities for international cooperation between the states for criminal cases, by assisting each-other in the investigation and judgment of civil and administrative cases related with corruption. It is foreseen that the states should participate in the mutual legal assistance regarding procedures related to corruption. Legal assistance which among others consist on exchange of documents and information, identification of evidences, etc. should be in accordance with the internal law of the states and other international conventions or agreements. To improve the cooperation between the countries, the Convention requires the establishment of communication canals between their institutions and agencies, for a fast and secure exchange of information. Countries should also cooperate with each-other in the conduction of controls regarding the crimes of corruption. This Convention envisions that countries will conclude bilateral or multilateral agreements for setting up Joint Investigation Teams for the investigation of transnational crimes dealt with in this Convention. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis.

According to the 2016 Implementation Report¹⁶⁵, Albania and RN Macedonia have concluded several bilateral and multilateral treaties and also recognize the Convention against Corruption as a basis for mutual legal assistance (MLA). Requests are executed in accordance with domestic law and, where possible, procedures specified in the request. No corruption-related requests for MLA have been received or refused by Albania to date, including requests under the Convention. The RN Macedonia may provide assistance irrespective of the existence of a treaty. Furthermore, dual criminality is not a precondition to render assistance. MLA requests regarding physical and legal persons are treated equally.

Criminal Law Convention on Corruption¹⁶⁶ and its additional Protocol, signed on 27/01/1999, ratified by both the Republic of Albania and the RN Macedonia.

¹⁶⁵ Accessed on: <https://www.unodc.org/unodc/en/treaties/CAC/country-profile/index.html> [Internet].

¹⁶⁶ Criminal Law Convention on Corruption (1999) by the Council of Europe, Accessed on: <https://www.coe.int/en/web/impact-convention-human-rights/criminal-law-convention-on-corruption#/Italy>

This Convention is an ambitious instrument aiming at the coordinated criminalization of a large number of corrupt practices. It also provides for complementary criminal law measures and for improved international co-operation in the prosecution of corruption offences. Its implementation will be monitored by the "Group of States against Corruption - GRECO", which started functioning on 1st May 1999. As soon as they ratify it, states which do not already belong to GRECO will automatically become members.

After a detailed description of all the crimes of corruption and the obligation for the states to prescribe them in the internal legislation, this Convention in Chapter IV contains general principles regarding the international cooperation. In a similar way as the Convention of the UN analysed above, this one foresees the possibility for mutual cooperation in the proceedings related to the crimes of corruption. The parties should offer to each-other mutual assistance by a fast proceeding of the request of the authorities, in accordance to their internal laws, with exception when this assistance harms the national interest or security of the requested country. The communication between the authorities should be direct, or through the International Criminal Police Organization (INTERPOL). The additional Protocol has complemented the Convention by extending the required criminalization of corruption-related offences.

Civil Law Convention against Corruption¹⁶⁷, signed on 04/11/1999, ratified by both the Republic of Albania and the RN Macedonia.

This Convention aims to regulate the civil consequences of the crime of corruption, regarding damage compensation and protection of interests for the people harmed by corruptive actions. In this regard, the states are obligated to prescribe in their national legislation concrete measures for the damage compensation resulted by corruption.

The Parties shall co-operate effectively in matters relating to civil proceedings in cases of corruption, especially concerning the service of documents, obtaining evidence abroad, jurisdiction, recognition and enforcement of foreign judgements and litigation costs, in accordance with the provisions of relevant international instruments on international cooperation in civil and commercial matters to which they are Party, as well as with their internal law.

European Convention on Mutual Assistance in Criminal Matters and its additional protocols¹⁶⁸, ratified by both the Republic of Albania and the RN Macedonia.

This Convention sets minimum standards for the co-operation in the examination of witnesses or experts; service of official documents and judicial verdicts; summoning of witnesses, experts or persons in custody; and transmission of information from judicial records. The Convention was

¹⁶⁷ Civil Law Convention on Corruption (1999) by the Council of Europe, Accessed on: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/174> [Internet].

¹⁶⁸ Asset Recovery in the Western Balkans – Comparative Analysis of Legislation and Practice, (2018). *The AIRE Centre*. Available on: file:///C:/Users/user/Downloads/AssetRecovery_2018.pdf [Internet].

complemented by a first additional protocol which extended the material and procedural scope. Providing a more precise description of fiscal offences without, however, introducing a legal definition, it requires States to be restrictive in refusing assistance on the grounds of a fiscal offence.

The first additional protocol limits the possibility of refusing to provide assistance based on dual criminality requirements. The second additional protocol further complemented the Convention, and seeks to modernize the provisions for mutual legal assistance (MLA) between Member States, extending the range of circumstances under which assistance may be sought, thereby increasing the effectiveness of MLA. Moreover, it supplements the standard practice of transmitting requests for mutual legal assistance (MLA) via central authorities, by creating the possibility of direct communication between law enforcement authorities. The Convention also introduces additional investigative steps. To be mentioned in particular are the provisions allowing the use of video linkage or by telephone conference when interviewing witnesses, experts or accused persons; the spontaneous transmission of information and the use of joint investigation teams. A Joint Investigation Team is a tool for assisting and facilitating a specific investigation involving cross-border crime, and also for building mutual trust. While the Convention and its additional protocols do not deal directly with the asset recovery process, it is clear that they make mention of legal and operational tools which are of importance to it, in particular MLA, which is a fundamental step in the asset recovery process in order to restrain and confiscate assets outside the requesting jurisdiction, as well as to obtain evidence for the criminal procedure.

A Joint Investigation Team (JIT) is an investigation team set up for a fixed period, based on an agreement between two or more countries or other competent authorities, for the investigation of a specific criminal offence. The essence of Joint Investigation Teams is a need for an international investigation on a trans-border criminal activity. Joint Investigation Teams are not so much set up depending on the seriousness of a crime, but rather due to the crime's international and cross-border dimension.

A JIT agreement is a formal agreement between two or more countries or other competent authorities, which has to be prepared and signed by competent authorities. The agreement is formalized and has to have all the necessary elements in order to avoid later disagreements or misunderstandings. A formal agreement should always include:

- A) Firstly, as an international agreement between sovereign countries, it has to have all the elements of an international agreement determined;
- B) Secondly, on the basis of good practices, provisions of some countries and EUROJUST's recommendations to EU Member States;

As it has been mentioned earlier, the basic international legal framework for the establishment of JIT is the Second Additional Protocol of the European Convention for Mutual Legal Assistance on Criminal Matters. This Protocol has been ratified by Albania in 2002, and by RN Macedonia

in 2008. Moreover, the Police Cooperation Convention of Southeast Europe¹⁶⁹ provides the legal basis for the establishment of a Joint Investigation Team in cases where criminal offences involve difficult and demanding investigations having links with other countries, or where more countries are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the countries involved. This Convention has also been ratified by both Albania and RN Macedonia, in 2006 and 2007 respectively. The Convention contains provisions on seconded JIT members, execution of certain investigative measures, requests to third-party countries, information exchange rules, information application rules and participation of third parties in the investigative measures of the JIT.

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime¹⁷⁰, signed on 08/11/1990, ratified by both the Republic of Albania and RN Macedonia.

The purpose of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime are:

- (i) to facilitate international co-operation concerning search, seizure and confiscation from all types of criminality; and
- (ii) to complement existing instruments from the CoE, particularly from the Convention on Mutual Assistance in Criminal Matters mentioned above, which did not encompass the search and seizure of property with a view to its confiscation.

For the purposes of international co-operation, the Convention provides for:

- forms of investigative assistance (for example, assistance in procuring evidence, transfer of information to another State without a request, adoption of common investigative techniques, lifting of bank secrecy etc.);
- provisional measures: freezing of bank accounts, seizure of property to prevent its removal;
- measures to confiscate the proceeds of crime: enforcement by the requested State of a confiscation order made abroad, institution by the requested State, of domestic proceedings leading to confiscation at the request of another State.

Group of States Against Corruption (GRECO)¹⁷¹, created on 01/05/1999, where both the Republic of Albania and RN Macedonia are members.

The Group of States against Corruption (GRECO) was established in 1999 by the Council of Europe to monitor Member States' compliance with, and effective implementation of, the organizations anti-corruption standards. GRECO's objective is to improve the capacity of its

¹⁶⁹ Accessed on: <https://www.pccseesecretariat.si/> [Internet].

¹⁷⁰ Same.

¹⁷¹ GRECO, Council of Europe. Accessed on: <https://www.coe.int/en/web/greco/about-greco/how-does-greco-work>

members to fight corruption by monitoring their compliance with CoE anti-corruption standards through a dynamic process of mutual evaluation and peer pressure.

It helps to identify deficiencies in national anti-corruption policies, prompting the necessary legislative, institutional and practical reforms. GRECO also provides a platform for the sharing of best practice in the prevention and detection of corruption. In the area of international co-operation, GRECO encourages the authorities to consider ways of achieving more direct international communication between prosecutors across jurisdictions in order to optimize the use of direct communication in mutual assistance with regards to seizure and confiscation. One of the strengths of GRECO's monitoring is that the implementation of its recommendations is examined in the compliance procedure. The assessment of whether a recommendation has been implemented satisfactorily, partly or has not been implemented, is based on a situation report, accompanied by supporting documents submitted by the member under scrutiny 18 months after.

Agreement of cooperation between the Republic of Albania and RN Macedonia and the European's Union Judiciary Cooperation Agency (Eurojust)¹⁷².

Eurojust is an agency of the European Union (EU) dealing with judicial co-operation in criminal matters among agencies of the member states. Established in 2002, it was created to improve handling of serious cross-border and organized crime by stimulating investigative and prosecutorial co-ordination.

Eurojust is composed of a college formed of 28 national members - experienced judges, prosecutors, or police officers of equivalent competence from each EU member state. The terms and duties of the members are defined by the state that appoints them. Eurojust also co-operates with third states and other EU bodies such as the European Judicial Network, Europol and the OLAF. In this regard and in the scope of the European integration process, the Agency has signed agreements of cooperation with RN Macedonia in 2008, and with Albania in 2018.

Those agreements foresee an operational and strategic cooperation in the field of justice for a more efficient fight against trans-national crime. By these agreements both countries can profit from the institutional mechanisms of cooperation that Eurojust offers, and also strengthen the regional cooperation by contributing in common results in the fight against organized crime, corruption, terrorism, and increase the trust in the investigative capacities of Albania and RN Macedonia.

Both countries will profit by the access on the information system of Eurojust and the exchange of personal data and facts from the Prosecutions Offices across Europe. In this framework, the agreement prescribes the appointment of a prosecutor from Albania and RN Macedonia in the central offices of Eurojust in The Hague, to connect the parties and to ensure efficient cooperation.

¹⁷² Eurojust, Accessed on: <https://web.archive.org/web/20120209031522/http://www.eurojust.europa.eu/about.htm>

5.1.2 Bilateral Agreements

The Agreement between Albania and the RN Macedonia on mutual legal assistance on criminal and civil law

This agreement serves as good base for cooperation between the two countries for assisting in criminal procedures for crimes with inter-border nature that have brought consequences in both territories. Even though not in particular, this agreement can also provide a legal framework for the establishment of JIT case-by-case, in accordance with the Conventions analyzed above.

Agreement between the council of Ministers of the Republic of Albania and the Government of the Republic of Macedonia for the cooperation in the fight against terrorism, organized crime, illegal trafficking of drugs, psychotropic substances, illegal migration and other illegal activities, signed on 17/06/2004 and entered into force on 20/05/2005¹⁷³.

This agreement aims to increase the mutual cooperation and assistance for the prevention and identification of the crimes in fields mentioned above by a reciprocal exchange of information between the law enforcement institutions of the two countries. This document also stipulates the possibility for the exchange of specialized experts of the two countries in the respective sectors, documents and results of scientific researches conducted in the fields of mutual interest. The agreement also establishes the canals of communication between the countries by providing points of contact for the concrete fulfilment of the aimed cooperation. The competent institutes for the implementation of this agreement are foreseen to be the Ministries for Internal Affairs of the both countries.

This agreement has been strengthened with an additional protocol on 14/09/2007 signed in Ohrid, to complement and facilitate the obligations of both countries in the fight against terrorism and organized crime, trafficking of drugs, illegal immigration and other illegal activities. This agreement shall be relevant with regard to corruption investigation in case investigations for corruption charges are associated with the investigation of other severe crime's falling within the scope of this agreement.

Protocol for the immediate inter-border persecution between the Ministries for Internal Affairs of the Republic of Kosovo and the Republic of Macedonia¹⁷⁴.

This protocol aims to strengthen the cooperation between the two countries to fight organized crime, corruption, money laundering, etc. This protocol constitutes a legal basis to persecute the

¹⁷³ Ministry for Europe and Foreign Affairs of the Republic of Albania.
https://treaties.gov.al/Marrevshje_Nderkombetare/PAGE_Kryefaqe/TAMAAAINGwJhVmN1V3VQd29KCAA
[Internet].

¹⁷⁴ Ministry of Internal Affairs of the Republic of Kosovo.

responsible persons in the territories of the respective states, by respecting the national legislation of the contracting party in the territory of which the persecution has taken place.

The Agreement on Mutual Legal Assistance between Kosovo the Republic of North Macedonia

This agreement provides a concrete framework of cooperation in terms of legal mutual assistance in criminal cases, with exchange of information and facilitation of procedures. It can also serve as a legal mean for establishment of JIT if necessary and case by case.

Agreement on cooperation between the High Inspectorate of Declaration and Audit of Assets and conflict of Interest (Republic of Albania) and Agency Against Corruption (Republic of Kosovo)¹⁷⁵.

This agreement enables good opportunities for experiences exchange between the two institutions. It aims to strengthen the cooperation in improving the institutional operation in the framework of the fight against corruption, exchange of good practices in the solution of the conflict of interest cases and the declaration of assets of the elected and public officials. This agreement also prescribes concrete cooperation in the conduction of mutual investigations in specific cases when it is seen necessary by the two institutions. The signing of this agreement also facilitates the strengthening of professional capacities as a result of the experiences exchange. Furthermore, the agreement prescribes the harmonization of the internal legislation with the regional one in accordance with the international standards. This kind of agreements raise the commitment of the involved institutions to fight corruption and enforce the anti-corruption legislation.

Agreement between the Council of Ministers of the Republic of Albania and the Government of the Republic of Kosovo for Avoiding the Double Taxation and Prevention of Tax Evasion. Signed on 28/03/2014

This agreement aims among others the exchange of experiences, increase of cooperation and awareness in the fight against tax evasion and corruption. It also expresses the mutual will of both tax administrations to increase the level of cooperation in order to strengthen the rule of law and the prevention of corruptive practices in regard of the respective legislations enforcement¹⁷⁶. Moreover, a similar agreement with the same objectives and content has been also signed with the government of the RN Macedonia¹⁷⁷.

The Agreement between the Council of Ministers of the Republic of Albania and the Government of the Republic of Kosovo on mutual legal assistance in criminal matters

¹⁷⁵ Agency Against Corruption of the Republic of Kosovo. <https://www.akk-ks.org/lajmet/84/2010/84> [Internet].

¹⁷⁶ General Directorate of Taxes of the Republic of Albania. <file:///C:/Users/user/Downloads/Kosov%C3%AB.pdf>

The description and content of this agreement is similar to the analogue agreement between Albania and RN Macedonia mentioned above.

Agreement for cooperation of Police between the Ministries for Internal Affairs of the Republic of Kosovo and the Republic of Macedonia. Signed on 03/12/2009 in Pristina¹⁷⁸.

This agreement aims to raise the cooperation in the police sector between the two countries, to continue the fight against corruption, organized crime, etc. The cooperation consists on the establishment of direct contacts, share of experiences and information regarding the common security between the two countries. This exchange of experiences and cooperation serves as a good base for the involvement of Kosovo in the regional policies against those crimes, creating the necessary circumstances for the future membership in international organizations operating in those areas.

5.1.3 Bilateral, cooperation soft law mechanisms

Memorandum of understanding on cooperation between the General Prosecution Office of the Republic of Albania and General Prosecution Office of the Republic of Macedonia in the fight against inter-state crime, trafficking of human beings and illegal migration. Signed on 30/05/2007 in Ohrid¹⁷⁹.

This agreement aims to increase the cooperation between the two institutions by a mutual exchange of information and documents regarding the crimes with inter-state character and the persons involved. The two parties are obligated to undertake any necessary action within their jurisdiction to facilitate the implementation as more effectively as possible of the requirements for legal aid in crimes above mentioned, in case that those requirements are accepted by the competent authorities of the requested country. The parties are foreseen to establish professional relations between their representatives aiming to effectively update their experiences and data regarding the current legislation.

Memorandum of cooperation between the Ministries of Internal Affairs of the Republic of Albania and Republic of Macedonia on strengthening of the cooperation in the field of internal control. Signed on 15/12/2017¹⁸⁰.

This agreement aims to improve the cooperation regarding the operation of the internal control services of both countries, in order to efficiently address the corruption within police structures. In this framework regular exchange of information and experiences are foreseen in mutual meetings of experts, projects implementation, operation actions of both parties, reciprocal trainings, etc. It

¹⁷⁸ Radio Free Europe. *Police agreement Kosovo-Macedonia*, available on: <https://www.evropaelire.org/a/1894424.html> [Internet].

¹⁷⁹ General Prosecution Office of the Republic of Albania. http://www.pp.gov.al/web/memorandum_me_maqedonine0001_copy_1_425.pdf [Internet]

¹⁸⁰ Ministry of Internal Affairs of the Republic of Albania. <http://mb.gov.al/marveshje-te-nenshkruara/> [Internet].

should be mentioned that this memorandum is the first of its kind in a specific field like the internal control in police forces. Hence, it is prescribed to create advantages not only in raising of effectiveness in the prevention and fight against corruption in the security institutions, but also in the strengthening the organizational and functional capacities. A similar memorandum has been also signed with the government of Kosovo¹⁸¹ which among others stipulates preventive measures to fight corruptive actions of the police officers, especially those officers involved in the organized crime, trafficking of human beings and drugs, illegal migration and also to respect the fundamental human rights based on the laws into force.

Memorandum of understanding on cooperation in criminal field between the General Prosecution Office of the Republic of Albania and the Prosecution of State of the Republic of Kosovo¹⁸². Signed on 12/10/2010 in Tirana.

This agreement aims to address the cooperation of both state authorities with regard to specific phenomena like: corruption, organized crime, money laundering, drug trafficking, trafficking of weapons and human beings, international terrorism, illegal migration and other criminal actions, the fight against which is part of the jurisdiction of the above parties. A faster cooperation between the parties will contribute in their mutual interests for the prevention, investigation and proving of the crimes conducted by individuals or organized groups. It should be underlined that each party, without the necessity of a preliminary request, can transmit the information it possesses to the other party in any time for the purpose of starting or conducting further investigations.

Memorandum of understanding between the Albanian Parliamentary Commission for Legal Matters, Public Administration and Human Rights and Kosovo Parliamentary Commission for Legislation, Mandates, Immunity, Parliament regulation and Surveillance of the Agency Against Corruption. Signed on 25/06/2018¹⁸³.

This memorandum aims to raise the level of cooperation between the above commissions for cases with mutual interest, especially in the exchange of best practices in the fight against corruption and the reform in justice system.

Memorandum of understanding between the Prosecution of the State of the Republic of Kosovo and the Public Prosecution of the Republic of Macedonia¹⁸⁴. Signed on 30/12/2014 in Pristina.

This memorandum aims to a close cooperation in the fight against organized crime, terrorism, money laundering, etc. committed by individual or organized groups. The cooperation will be

¹⁸¹ Same.

¹⁸² Prosecution of the State of the Republic of Kosovo. https://www.psh-ks.net/repository/docs/Memorandum_mirekuptimi_mes_PSH-se_dhe_Prokurorise_se_Pergjithshme_te_shqiperise.pdf [Internet].

¹⁸³ Parliament of Albania. <http://www.parlament.al/Strukture?kategoria=1002&strukture=1042> [Internet].

¹⁸⁴ Prosecution of the State of the Republic of Kosovo. https://www.psh-ks.net/repository/docs/Memorandum_Kosove_Maqedoni_0501201509252500.pdf [Internet].

conducted by an exchange of information and documents that are related with the above mentioned crimes. The parties will undertake all the necessary actions to facilitate the immediate and effective address of each request for extradition, cooperation and legal assistance in criminal cases, provided that the required authorization for those proceedings has been taken by the responsible institutions. Both parties are requested to appoint a prosecutor who will be responsible for the engagements and obligations of this memorandum.

5.2 Institutions involved in the exchange of information and practices

In order to facilitate the exchange of information and to put in practice concrete cooperation between countries in international level, a number of organizations and structures have been established. Moreover, the mutual agreements between the countries foresee the responsible institutions which have an essential role in the enforcement of cooperation.

5.2.1 Institutions involved in the international cooperation

The international organizations established in the framework mentioned above are as follow:

Organization for Security and Cooperation in Europe (OSCE)

OSCE is the world's largest security-oriented intergovernmental organization¹⁸⁵. The main scope of the OSCE is to promote and strengthen the cooperation between countries in the fields of good governance, human rights, fight against corruption, fair elections, arm controls, trafficking of human beings, organized crime, etc. The cooperation is provided through the governing bodies of the organization, while the main political objectives are set by the forums of the head of governments of the member states. The General Assembly gathers lawmakers from the Parliaments of the member states in order to facilitate the dialogue and cooperation between them. Albania became a member of the organization in 1991, and the RN Macedonia in 1995.

International Criminal Police Organization (INTERPOL)

INTERPOL¹⁸⁶ is the international organization that facilitates international police cooperation. Its focus, among others, is the cooperation for the crimes related to corruption, money laundering, organized crime, human trafficking, etc. Albania became member of INTERPOL in 1991 while RN Macedonia in 1993. The role of INTERPOL is defined by the general provisions of its constitution where it is stated that its objectives are:

- 1- To ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights.

¹⁸⁵ What is the OSCE? By OSCE. Accessed on: <https://www.osce.org/whatistheosce/factsheet?download=true> [Internet].

¹⁸⁶ INTERPOL, Accessed on: <https://www.interpol.int/About-INTERPOL/Overview> [Internet].

- 2- To establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes.

The organization functions as an administrative liaison among the law enforcement agencies of the member countries, providing communications and database assistance, assisted via the central headquarters.

South European Law Enforcement Centre¹⁸⁷

The South European Law Enforcement Centre (SELEC) is a framework of cooperation between the member states which aims to provide support and enhance coordination in preventing and combating crime, including serious and organized crime, where such crime involves or appears to involve an element of trans-border activity. There are 10 countries of this part of Europe that participate in this organization after the ratification of the Convention of SELEC, including Albania and RN Macedonia.

The Convention provides for SELEC to:

- ✓ Coordinate regional operations and support investigations and crime prevention activities of the Member States in trans-border cases;
- ✓ Provide the Member States with the opportunity to exchange information and criminal intelligence and offer operational assistance in a quick and timely manner;
- ✓ Collect, analyze, process and disseminate information and criminal intelligence;
- ✓ Produce strategic analysis and threat assessments related to its objective;
- ✓ Establish, operate and maintain a computerized information system, which implies also to ensure the protection of personal data.

The beneficial gain for the Members States, as well as the Centre's partners, is expressed by the ability to handle result-oriented multinational investigations and operations in the South Eastern European region with a minimal investment. SELEC aspires to continue being a depository of good practices in law enforcement and providing awareness through multinational meetings and conferences, bringing together the representatives of Member States as well as its partners.

Moreover, SELEC has an organizational structure constituted by a Council, which consists of one representative by each member state and which elects the Director General, and a Secretariat. To concretize the cooperation prescribed by the Convention, it is foreseen the appointment of Liaison Officers by each member state and the designation by the latest of a national agency office as the

¹⁸⁷ Accessed on:

[http://www.selec.org/p521/Convention+of+the+Southeast+European+Law+Enforcement+Center+\(SELEC\)](http://www.selec.org/p521/Convention+of+the+Southeast+European+Law+Enforcement+Center+(SELEC)) [Internet].

National Focal Point. Both those structures will act as the point of contact between the states case by case for exchange of information and provision of data form criminal investigations.

5.2.2 Institutions involved in the bilateral cooperation

In the framework of the bilateral agreements analyzed above, there are a number of national central institutions in each country that are directly involved in the implementation of the required cooperation, for an efficient and successful fight against corruption, money laundering, organized crime, etc. The respective institutions are among the main governing bodies of those countries. Therefore, their role in this direction is not limited only in administrative procedures, but also in the political context of providing diplomatic communication between the governments. The fulfilment of the institutions' obligations is essential in achieving the goals of these agreements and conventions, and for concretizing the required cooperation for the fight against the crimes mentioned above. Specifically, the main institutions identified and their legal responsibilities are as following:

National Parliaments: Being parliamentary democracies in all three countries, the parliament is the main political institution at the national level. Its importance is related not only to the formation of the governing bodies of the state, but also to the constitutional competence for ratifying the international agreements and conventions. Its role is not only limited in the ratification process, but it extends to the legislative process at large, through the approval of complementary legal acts to facilitate their enforcement.

Council of Ministers/Governments: The Council of Ministers determines the principal general policies of the state. Therefore, it is the main institution that can evaluate the necessity for signing mutual agreements for cooperation in specific sectors. This is also illustrated in its constitutional right for signing such agreements with governments of other countries or international organizations. Furthermore, the Council of Ministers, based on the sectoral strategies that derive from the political programs, identifies the legal gaps that may exists and the possibilities for their fulfilment with laws and national/international agreements.

Ministries of Foreign Affairs: These institutions in each country are responsible for keeping the diplomatic relations and contacts with the other countries. Therefore, their role in strengthening of cooperation in the framework of the acts mentioned above, is essential. These ministries are oriented to be fully engaged in strengthening the good neighborly relations and regional integration. They play shall active, moderate and constructive role in the process of regional cooperation, supporting and promoting the principle of all-inclusiveness, as one of the basic principles of the regional cooperation process. Moreover, their principal objective is also related with strengthening the security dimension in the region, by ensuring peace and stability, the joint fight against organized crime and trafficking, circulation control and confiscation of these organizations' money, strengthening up until meeting the highest standards of security and integrated management of borders that can be implemented quicker, through a more coordinated

regional cooperation of law enforcement agencies, along with the assistance of the European Union.

Ministries of Internal Affairs: The focus of these institutions are all the issues related to the internal control of the territory of each country in terms of ensuring security, law enforcement, and drafting of policies within their scope of competence, etc. They also control the national police. According to the mutual agreements signed between the homologue ministries of internal affairs, but also to the conventions analyzed earlier, these institutions are obligated to conduct the exchange of information during different mutual criminal procedures, and also to enable the necessary official canals of communication between the parties. These prescriptions are essential to make the cooperation and the results in the fight against those crimes more concrete and successful.

The bilateral or multilateral cooperation is realized through meetings for exchange of practices. For instance, in the meeting of two vice ministers of interior respectively of Vice Minister of Interior of Albania and Vice Minister of Interior of RN of Macedonia held in Tirana on June 2018, the Macedonian part asked to know the police re-evaluation process in Albania, the details of the law “On temporary and periodical evaluation of employees of State Police, Republic’s Guard and the Service for Internal Affairs and Complaints”.

General/State Prosecution Offices: The General Prosecutions are the main legal bodies in carrying out investigation and criminal prosecution, represent the accusation in court on behalf of the state, safeguard public interest, assist judiciary bodies as well as guarantee the rule of law. Regarding the European integration process of Albania, RN Macedonia and Kosovo, the main goals of the respective general Prosecutions in those countries are the fight against organized crime and corruption. In this framework, a coordination of their work and close cooperation in criminal procedures and information exchange can contribute to more accurate and concrete results in the fight against corruption.

National State Police: The Police is the main law enforcement authority with the main objective in preventing crimes and putting in front of justice the responsible persons. Its success is based on the cooperation in national level with the other legal institutions like the Prosecution, and their homologue structures in regional level by exchanging information, or even in mutual operations on the ground. The importance of state police is noted by the mutual agreements that have been signed and the established collaboration with INTERPOL.

Independent bodies on control of assets and fight against corruption (ILDKPI in Albania, AKK in Kosovo and FID in RN Macedonia): These are independent institutions created by the law in the respective countries, aiming to verify the assets of high public officials and their sources and to address corruptive activities in this level of the administration. Specifically, the responsibilities of these institutions, as administrative bodies, consist on initiating and conducting administrative investigations on detection of corruption among public official and to apply administrative sanctions, or in case of element of criminal offences, to referee the case to the

competent authorities. Furthermore, they lead and improve the policies regarding prevention of conflict of interests; offer technical assistance to advice and support law initiatives undertaken by public institutions for preventing conflict of interest; monitor and audit the assets of public officials, etc. Cooperation between those institutions on exchanging experiences and good practices is an added value for the improvement of their performance.

VI. CONCLUSIONS AND RECOMMENDATIONS

6.1 Conclusions

ALBANIA

The legal and institutional Albanian framework concerning investigation and prosecution of corruption has been significantly reformed in the last three years. These changes consist on the constitutional and legal provisions in establishing the new justice system institutions such as the re-evaluation institutions, High Judicial Council, High Prosecutorial Council, High Justice Inspector, Special Court, and Special Prosecutor Office, and the National Investigation Bureau. The key institutions, such as the Special Court and Special Prosecutor Office are established since 19 of December 2019 and the process of setting up the National Investigation Bureau is ongoing.

The overall picture with regard to the capacities of the institutions which carry out investigations, of administrative or criminal nature, is quite complex. Reportedly, as to human resources, interviewed institutions assess that the number of their officials is enough to carry out corruption investigation. Nevertheless, in some cases trainings conducted are insufficient to raise their capacities or a continuous approach is lacking. Referring to the judiciary, there is substantial professional training for corruption investigation. However, the resignations and dismissals from the re-evaluation process has resulted in a general decrease in the number of the judges and prosecutors. The establishing of HJC and HPC had finally paved the road to the appointment of the new magistrates and the increase of the number of candidates for magistrate who will be recruited by the School of Magistrates in the coming years. However, the increase of the number of these candidates will begin to give tangible results only three years later, meaning as of 2022. Meanwhile, the increase of the backlog of cases still remains a concerning trend.

Referring to the training and the abilities of human resources dedicated to investigation and prosecution of the corruption, the situation seems to be problematic at the State Police. The recurrent changes in the leadership of this institution are reflected in the transferring of the police officials in different sectors for which they are trained. This situation results in a lack of stability of human resources by damaging the investigation processes.

As technical resources are concerned, different institutions possess different tools depending on the role and the competences that they are vested with according to the law. Some of these institutions, including HIDAACI, do not have noticeably technical tools or access to certain information systems that would enable them to make use of relevant information of investigation purposes. Whereas the re-evaluation institutions are largely granted extensive investigation powers and access to information means relevant for investigation purposes.

Most importantly, there's still a lack of a comprehensive and operational case management system. Apart from the State Police, which makes use of this system, other institutions including the Serious Crime Prosecution do not have such a system in place. An online platform of the information exchange through different investigation agencies does not exist, but co-operation in the framework of the exchanging of information is carried out by ensuring quick communication

The co-operation between agencies and institutions responsible for the investigation and prosecution of the corruption is conducted on a case by case basis, and it is not formalized.

Lastly, there's a lack of disaggregated data with regard to the initiated indictments and final adjudication on high-ranking state officials prosecuted for corruption charges.

KOSOVO

The phenomenon of corruption in Kosovo, similar to other countries in the Western Balkans, is ubiquitous and at very high level. Two decades following the conflict and a decade since the declaration of independence Kosovo society and its key actors still suffers from lethargy and chronic lack of will in the fight against corruption. Kosovo's Justice System, both the state prosecution and the court system, instead of taking the lead role in the fight against corruption are plagued with the serious shortages of resources, huge backlog of accumulated cases and the lack of independence in exercising their constitutional authority and competence.

The overall stagnation and regress in the fight against corruption is best epitomized in the process of drafting the National Strategy for Anti-Corruption for 2018 –2022. Although well within the second year of this 5-year period, the Strategy has not been approved yet and these delays will certainly cause further delays in drafting and the implementation of the consequent work plan for the Strategy.

Kosovo, due to the strong presence of international community and the fairly new legislation, is said to have a good legal framework and a well structure of specialized institutions dealing with corruption. However, Kosovo is constantly confronting with a situation where the amendments to the laws are introduced more often than usual without providing sufficient time for the last amendments to produce its desired legal effects. The latest amendments to the Criminal Code expected to enter into force in the first quarter of 2019 were not followed by the amendments to the Criminal Procedure Code that determines the rules of criminal procedure mandatory for the proceedings of the courts, the state prosecutor and other participants in criminal proceedings as provided for in the present Code. Frequent changes to laws and re-structuring of mechanisms for the fight against corruption are often seen as a carefully planned scheme from the government officials to prolong the period for imposing the law enforcement and end impunity to corrupt acts.

Kosovo has made some progress on tracking the procedures of the investigation and prosecution of high-level cases. Progress was also made on the preliminary confiscation of assets although

final confiscations remain low. The approval of the new Law of extended powers on confiscation of assets applies to the assets of persons who have been convicted for criminal offence as defined by the Criminal Code of the Republic of Kosovo or other laws, including criminal offences of official corruption and criminal offences related to official duty.

On the other hand, the financial investigations are carried out by other bodies responsible for very specific issues such as Kosovo Tax Administration (KTA), the Kosovo Central Bank (KCB) or the Financial Intelligence Unit (FIU). Financial Intelligence Unit (FIU) conducts its own investigation after a suspicious financial transactions or attempts for such transactions and may have to temporarily freeze transactions as a precautionary measure while other bodies are conducting their investigation. FIU, together with the Kosovo Central Bank have also the right to oversee the immovable assets.

RN MACEDONIA

As regards to the Institutional and legal possibilities for the effective fight against corruption in the Republic of North Macedonia, there has been some progress but still a lot to be done to enhance institutional cooperation and efficiency.

- The newly adopted Law for the prevention of the corruption and conflict of interest need to be fully implemented and it is of significance if the SCPC will be appropriately resourced with the appropriate office space; access to the databases and sufficient number personnel. The MoU's signed between the SCPC and other institutions need to be put in an effect.
- The Criminal Procedure Code provisions for establishing the Investigative unit in the PPOOCC. However, the unit has not been established and the PPOOCC has no capacity for the effective investigation of the corruption related cases.
- The SPO (Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communication), cannot process new cases since Parliament did not extended the mandate to this institution.
- The Asset Recovery Office (ARO) has not yet been established, which is necessary for effective international cooperation in financial investigations and fight against corruption.
- The implementation of the Strategy for the Financial Investigations has not started after 18 months from its adoption.

CONCLUSIONS FROM A COMPARATIVE REGIONAL PERSPECTIVE

From a regional cooperation perspective, despite the large body of multilateral and bilateral agreements and soft law mechanisms ratified and adopted, there's a lack of institutional cooperation between these three countries with regard to criminal offences such as the corruption,

whereas there's quite substantial cooperation in cases of other severe crimes such organized crime, trafficking etc. The current cooperation patterns are mainly related to exchange of information, and there has been no case of establishing joint investigations units for the corruption criminal offences.

6.2 Recommendations

ALBANIA

Based on the analysis of the legal and institutional framework and on the assessments and conclusions reached, in the end of this study we would recommend:

1. Amend the relevant legislation on the governance institutions and the status of judges and prosecutors to enable fast track procedures for accepting new candidates for magistrates;
2. Amend law on the jurisdiction of the Special Prosecution Office to make possible the investigation and the prosecution of the corruption only for high level officials;
3. Accelerate the establishment of the National Investigation Bureau;
4. Strengthen the capacities of the institutions involved on investigation and prosecution corruption, by providing continuous trainings related to investigation tools and international best practices in the fight against corruption;
5. Institutionalize the co-operation between different agencies involved in the investigation and prosecution of corruption;
6. Establish a unique national system of corruption case management where different law enforcement agencies will exchange information for the cases they investigate;
7. Enable useful tools of investigation, including access to state databases to the administrative institutions that investigate cases of alleged corruption;
8. Collect and elaborate disaggregated data based on the subjects involved in corruption related crimes.

KOSOVO

1. Ministry of Justice should initiate amendments to the legal framework that sanctions the removal of public officials indicted and convicted for corruption, the false declaration of assets or because of the information gathered by whistle-blowing, bringing it in line with European standards;
2. In the fight against corruption, all responsible institutions should increase their level of cooperation for achieving the ultimate goal, preventing corruption at all levels and punishing the corrupt.
3. Kosovo Prosecutorial Council (KPC) should increase the number of prosecutors and the respective financial recourse in the Special Prosecution Office responsible for investigating

and prosecuting high-level corruption cases, and provide training to strengthen their capacity to conduct financial investigations, confiscate assets and effectively protect witnesses;

4. Both KPC and KJC should immediately undertake specific measures to address the external influences in the work of the judiciary from political, commercial or other interests.
5. Kosovo Prosecutorial Council should continue, through the Secretariat, to oversee the application and implementation of the Electronic System for Case Management (SMIL) in all state prosecution offices in order to achieve the advancement and full integration of this work process with other relevant institutions such as Kosovo Police, Courts, Civil Registry Agency, Financial Investigation Unit, Kosovo Tax Administration etc. in compliance with the European level of information management of prosecutorial cases.
6. KPC and KJC should improve the process of case assignments, as they are critical in regaining public trust in the work of judiciary. Both Councils should take further actions to randomize case assignments.
7. Initial Case Assignments to a judge or prosecutor should be done through an electronic system and the initial selection may be adjusted by the court either to avoid potential conflicts of interest or to allow related cases to be handled by the same judge.
8. KPC and KJC should improve media and public relation by providing information regarding the case assignment. While initial assignments to a prosecutor are at the discretion of the Chief Prosecutor, the initial selection may then be adjusted by the prosecution office either to avoid potential conflicts or to allow related cases to be handled by the same prosecutor. Efforts should be made by both the KPC and KJC to communicate to the public reasons for re-assignment so they are understood as measures to mitigate conflicts of interest or improve efficiency rather than as means to manipulate case processing.
9. Trainings on Ethics for judges, prosecutors and investigative police officers should become mandatory and periodical.

RN MACEDONIA

1. The Parliament shall amend to the Law for the PPO, to ensure swift and efficient criminal processing of corruption cases as well as immediately remedy the lack of functioning of the SPO due to the termination of its mandate;
2. The Government shall provide all necessary resources and capacity for the PPOOCC to conduct effective investigations
3. The Government shall provide the State Commission for the Prevention of corruption with all necessary resources and capacity for the effective implementation of the Law for the prevention of corruption and conflict of interest;

4. The Government shall ensure effective implementation of the Strategy for the Financial Investigations
5. The Government shall gather and process the data for producing informed statistics on corruption cases.

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