



The Monitoring Report of the Activities of the Institutions in the Fight Against Corruption

Second Report | Mach 2010

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KOSOVO CIVIL SOCIETY STRENGTHENING PROGRAM



ABOUT FOL MOVEMENT

FOL is engaged for empowering the influence of the citizens for decision-making, accountable and effective governance. FOL works to improve and achieve a better level of representation of citizens and their interests in decision-making institutions. FOL is working for good governance based on democratic principles, for responsible, transparent and accountable institutions as well as for drafting and implementation of laws with citizen's participation.

FOL's main work is to monitor the spending of public funds, conflict of interest, negligence and institutional responsibility and access to official information. In order to fulfill these goals, FOL aims to fight apathy and civic indifference in decision making and make the voice of the citizens more active and more obedient, make it an active part of community's interest and always willing to oppose the abuse, misuse, corruption and other forms of government's distortion.

FOL through research, mobilization and networking, will implement activities that will increase public pressure on decision-making processes, political, economic and social issues to push forward with other alternatives and better opportunities for solving the problems of the citizens.

FOL means a call for critics and constructive opposition against dysfunctional policies, abuse of power and political power. FOL requires from citizens of already an independent state to react to protect the state by themselves for which they have sacrificed and worked.

FOL provides and supports individuals and organizations working to advance efforts to develop and build open and democratic society. We will deliver and support non-violent and constructive actions to oppose actions that degrade and threaten the individual rights, groups, ethnicities and communities regardless of their religion and national background.

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INTRO

March have characterized a series of accusations of corruption by international reports, but also by the opposition.¹ The International reports such as the one of the U.S. State Department on the situation of human rights, have assessed the situation of corruption in Kosovo as very serious: "The law foresees penalties on corruption for officials, but government has not effectively enforce the law. Officials involved in corrupt practices have passed with impunity "- the report said. U.S. Department also highlighted the presence of corruption in all segments of life, the effects of the Government and the lack of results to law enforcement in Kosovo to fight the phenomenon of corruption. According to the report with particular emphasis, corruption is also present in court.

On the other hand, during March there were a lot of international calls to fight corruption. Foreign Minister of France, Bernard Kushner during his visit to Kosovo has mentioned a fact: "The danger for

¹ *Thaci the cause of corruption, "Kosova Sot"[Prishtine] 11 March 2010, political section, page 55.*

Kosovo's independence does not come from outside, it comes from within, from corruption". This statement was raised by one of the deputies in one of the plenary sessions.²

The media also frequently reported that representatives of the International community have urged the Prime Minister Thaci to remove a minister of his cabinet, because there is multiple evidence of misuse of position. The Head of the International Civilian Office, Pieter Feith, in one of his statements to the International media had declared that Kosovo can not reach the EU if it doesn't fight corruption and organized crime. It was discussed for many times for the possibility that Mr. Feith has information about government corruption, while also had asked to fight it "within the inner circle of power. From a high *EULEX* official, the FOL Movement confidentially has learned that investigations are underway in the highest political level. ³

Government officials many times during the month of March have denied that they have received any specific information related to corruption affairs. In fact, at the end of this month the head of the executive decided to make changes in the cabinet of the government, but by not explaining the real reasons for the dismissal of ministers. Prime Minister has assessed this decision as a reform not as a penalty against a particular *minister*.⁴

² From the visit of Bernard Kouchner in Kosovo, see the statement made by the deputy, Lulzim Zenel, Plenary session, 4 March 2010.

³ The meeting with closed doors between FOL and other NGO-s with EULEX high official

⁴ Limoni, Shpend" Reshuffling without penalty", "Express"[Prishtine],19 March 2010, political section, page4



THE ASSEMBLY

During the March three (3) plenary sessions were held in total. In these sessions is not noted any major commitment of MPs to discuss specific issues against corruption. However, in one of the March 11 plenary sessions during the first reading of the Draft Law on Prevention of Money Laundering and Terrorist Financing, many deputies attributed the draft law of great importance for many reasons and especially because this would strengthen the fight against corruption and criminal activities. The interest and the question of the deputy Naim Rustemi for the former Interior Minister, Zenun Pajaziti regarding that have the evidence been stolen from the police, through which it could have been proven the corruption business case of the drug theft in the police station, and was this done by powerful people just to they can prevent this crime

from being solved, this question remained unanswered during the session because Minister Pajaziti was not present.⁵

While from the package of laws against corruption it could be specified that at the beginning of the month the Law on Property Declaration by the Senior Public Officials and its Origin was signed by the President of Kosovo, Fatmir Sejdiu. Meanwhile the legal deadline for senior officials to declare the origin of their property was 31 March. The Kosovo Anti-Corruption Agency has indicated that these data will be published in early April, which was made fourteen days later.

THE GOVERNMENT

The government also this month continued to declare zero priority to the fight against corruption, but always blaming the courts and prosecution.⁶ At the meeting of 26 February, the Government has approved the decision to establish a separate department for anti-corruption in the context of strengthening the support of the Special Prosecutor of the Republic of Kosovo who will deal with investigations and proceedings of corruption cases. However, in the total seven (7) meetings of the Government is not seen any recent discussion of international reports which emphasize high levels of corruption and the Government influence.⁷

March also marked the beginning of a plea for full support to the decision to establish the anti-corruption Task Force. Government of Kosovo and chief of EULEX, in a joint meeting have vowed for further cooperation in the fight against corruption. But it remains to be seen if in the coming months any concrete action will be taken by EULEX and the Special Prosecutor.

During March the Deputy Prime Minister, Hajredin Kuqi had stated that: "Every statement is taken seriously by the Government of Kosovo and the Government is interested to fight all the negative phenomena in the country." However, despite many statements in the media that there is corruption in Kosovo, the government and EULEX have not revealed any corrupted protagonists. The warnings scandal of EULEX that they will arrest high-profile officials in the spring have not occurred. But in the end of the month the Government has taken the decision to change the Cabinet, which the International officials and locals have considered it as part of the fight against corruption, including the statement of the American ambassador in Prishtina, Christopher Dell.⁸

⁵ See the transcript of the Kosovo Assembly session held on 11 March 2010

⁶ Daily newspaper "Infopress" 5 March 2010, p. 3

⁷ Monthly report 2009 of the Department of the United States of America, 11 March. This report also specifies that corruption is present also in the judiciary, while the court system is not efficient.

⁸ Isufi, Albana. "Appealing for fight against corruption – Radio Free Europe 2010". Free Europe. N.p. 6 April 2010. Web. 6 April 2010. <http://www.evropaelire.org/content>

But it is never actually stated whether any of the former ministers had been involved in any corruption affair.

During March, requests and polemics have continued by non-governmental organizations and the Parliamentary Committee on Budget and Finance regarding the mystery of 260 million euros of the Kosovo Budget which are located outside the banking system of Kosovo, arguing that this violates the Law of Public Financial Management.⁹ Although the work of media is seen, but there was no institutional work for further elaboration of this case, or the start of the investigation or something similar.

Adoption of the Law on the Court is also another part of the challenges found by the European Commission's Progress Report. At the beginning of the month, the Government of Kosovo has adopted the Law on Courts, from which law, reforms and reorganization of the entire judicial system depends on.¹⁰ Through this law it is aimed to create an organization different from the current one, which is inherited from the former Yugoslavia's system.

Despite the continuous efforts of monitors of FOL to mark the activities of the Office for Good Governance and Anti-corruption within the Office of the Prime Minister, its officials have not given any response. This office in its mandate has a duty to tackle corruption activities and is responsible for implementing the objectives and activities foreseen in the Action Plan for Anti-Corruption Strategy. Within the activities of this office the inter-ministerial Anti-Corruption Group is including. According to the first annual report of the OPM the purpose of this group is to support and have close cooperation with the Kosovo Anti-Corruption Agency (KCA) in formulating policies, reviewing the legal infrastructure, etc. Therefore, FOL has considered that the activities of this office would be interesting to be shown under the efforts in fighting corruption also in this report.

⁹ *From the monitoring of the Commission of Budget and Finance and the media.*

¹⁰ *From the meeting held on 1 March 2010, the Government of the Republic of Kosovo.*



JUDICIARY: KOSOVO JUDICIAL COUNCIL

The power of the judiciary, the Kosovo Judicial Council during March has not marked any specific event to be emphasized in efforts to combat corruption. Furthermore, during this month members of this Council have taken a decision that is categorically rejected by the Office of the Disciplinary Attorney (ODA), which was entered into war with the KJC. The KJC has decided to reject a series of cases of the ODA, prescribed them as (old) ones. Under this decision, which is not specified it is expected that records of all the judges and prosecutors for whom the ODA has found ethical violations of duty to be rejected. And just below the cover of these ethical violations it is suspected that there are hidden corrupted activities. Consequently, under this decision the violators of the law will be apprehended if they are in one or another form related to corruption.¹¹ The KJC decision assessed as scandalous, it was rejected by the ODA, which has warned that if executed as such, then ODA will file a lawsuit against KJC in the Constitutional Court of Kosovo.

¹¹ *The office of the Disciplinary Prosecutor has offered files of few judges and prosecutors, for whom was concluded that they have done violation ethics and law. The most obvious violation and publicly testified also in the media is the case of a civil judge at the District Court of Prishtina. She has finished cases without them being registered first at the court, she has performed the work of the law representatives at her office among that also other violations. And if the decision of the KJC will be implemented, then a number of violations will be apprehended, where are also some corrupted affairs hidden.*

Otherwise, the KJC has that manages the courts working in adverse working conditions, which prevents the collection of information on time and electronically.

FOL has insisted to have the information for each trial that was held in the Kosovo courts dealing with offenses related to corruption. Despite the best efforts of KJC officials, respectively the Office of Statistics in this institution so they can provide information about the work of judges in the trials of corruption cases, a real presentation of their work or lack of their work has been impossible to do. The reason for this is that the data from the Courts of Kosovo are still provided manually, and their collection is not done every month. Therefore, it has prevented the accurate information about the trial for all cases of corruption by judges. However, the Statistical Office has offered to FOL some trial data for three types of criminal acts of corruption, taking and giving bribes also abuse of official duty for the months of January and February 2010. According to these data it shows that over the past two months there were thirteen (13) new cases received, and thirteen (13) cases were solved, while at the end of these two months there remains a total of 147 unsolved cases of corruption.

Inherited criminal cases and accepted and resolved in accordance with the chapter

| | | JANUARY-FEBRUARY-2010 | | | | |
|-------------------------------|--|---|----------------------------------|----------------------------|---|---|
| Court appointment | | | | | | |
| TOTAL MUNICIPAL COURTS | | | | | | |
| Article | <i>Description of the acts</i> | <i>Pending cases at the beginning of the reporting period</i> | <i>Subjects received at work</i> | <i>Total cases at work</i> | <i>Resolved cases during the reporting period</i> | <i>Pending cases at the end of the reporting period</i> |
| | 343 | <i>Taken bribes</i> | 17 | 4 | 21 | 3 |
| 344 | <i>Giving bribes</i> | 13 | 0 | 13 | 0 | 13 |
| 339 | <i>Abuse of Official Position or Authority</i> | 117 | 9 | 126 | 10 | 116 |
| | In total | 147 | 13 | 160 | 13 | 147 |

Table 1: Statistics of cases for the months January-February 2010, for criminal acts and grant making to bribery, abuse of official duty or authority.

THE STATE PROSECUTOR OF THE REPUBLIC OF KOSOVO

The Kosovo prosecution when it comes to the working conditions they do not stand any better. Despite this fact during March, the newly appointed chief prosecutor of the state, Ismet Kabashi, has made an important step in identifying the war that was done and what is being done to fight corruption. For the first time, Mr. Kabashi has collected the editor, in which everything was reported by all the chief prosecutors of the municipal and district level for showing the efforts done in solving the cases of corruption.

The Kosovo Anti-Corruption Agency (KACA), since 2007, had sent in Kosovo some 150 prosecutions of corruption cases, which allegedly involved various officials exercising public functions. Since then the relations between the KACA and the State Prosecutor had never been good, as officials of both institutions had exchanged charges for non-performance and non-professionalism. In a large number of cases the State Prosecutors did not give any response to the KACA. Therefore, the initiative of the prosecutor Ismet Kabashi has uncovered the prosecutor's non-performance in cases of corruption filed by the Agency. So the discovery and disclosure of non-performance was made public for the first time by the chief of state prosecutor.

Statistics speak for corruption cases in which prosecutors have closed eyes and have not taken any legal action, this troubling fact because among the cases there are cases of ex-ministers and prosecutors have not even had the courage watch. Below are the official data presented by the State Prosecutors for corruption cases received by KACA, these data were provided by the prosecutor Kabashi. Based on these statistics it shows that prosecutors have "slept" in the corrupt files. The example that illustrates this fact are the cases accepted by Prishtina District Prosecution. Prosecutors of the prosecution, since the cases have been presented they have not taken any legal action or investigation for solving the allegations against the two suspected former ministers of the Government. These are the highest profiles untouched by prosecutors with or without purpose. But cases of other public officials did not remain untouched, as the position of permanent secretaries and directors of a number of other ministries and institutions, leading to various institutions including the central and municipal level. Cases that are also classified as untouched are those of the representatives of the judiciary itself, so judges and prosecutors for which the agency has submitted allegations based on that that they are corrupted. Moreover, the table below reflects the real situation of the cases, in

which cases are missing completely and the results of which have been handed to EULEX, as the investigation of a former minister. These statistics have been presented as scandalous in one of the dailies in Kosovo.¹²

| | No. of cases | Rejected | Information gathering | Accusations* | Investigations | Nothing | Case closed | No information |
|--|--------------|-----------|-----------------------|--------------|----------------|-----------|-------------|----------------|
| PDP in Prishtina | 161 | 27 | 111 | 0 | | 22 | | 1 |
| Handed over to EULEX from the SDP in Prishtina | 4 | | | | | | | 4 |
| PDP in Mitrovica | 10 | 5 | | | | | | 5 |
| MPP in Mitrovica | 2 | | 2 | | | | | |
| PDP in Prizren | 7 | 7 | | | | | | |
| MPP in Prizren | 12 | 3 | | 4 | 4 | | | 1 |
| PDP in Gjilan | 3 | 1 | | | | 1 | 1 | |
| MPP in Gjilan | 1 | 1 | | | | | | |
| MPP in Gjakova | 5 | | | 5 | | | | |
| MPP in Peja | 2 | 1 | | | | 1 | | |
| PDP in Peja | 1 | 1 | | | | | | |
| MPP in Prishtina | 6 | | 5 | 1 | | | | |
| Total | 214 | 46 | 118 | 10 | 6 | 22 | 1 | 11 |

Table 2: The statistics of the KACA cases received at work from Kosovo prosecutors during the year 2007.

¹² Musli, Betim, "Files of ministers are untouchable", 'Lajm'[Prishtine], 7 April, 2010, p. 3

The structure of cases raised at the Kosovo prosecutors

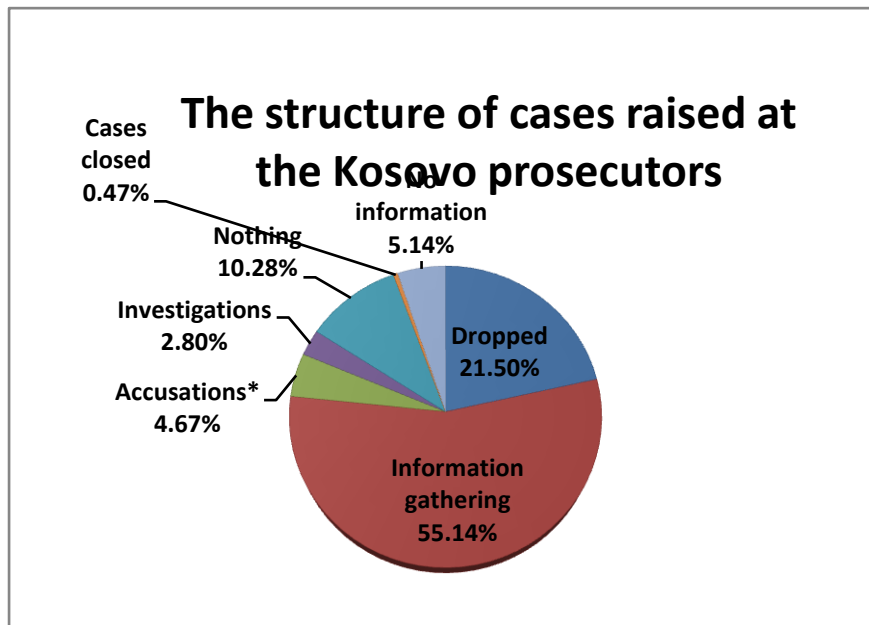


Table 3: The statistics in percentage for the KACA cases received by the Kosovo prosecutors from year 2007

The structure of the corrupted cases submitted at the District and Municipal Prosecution

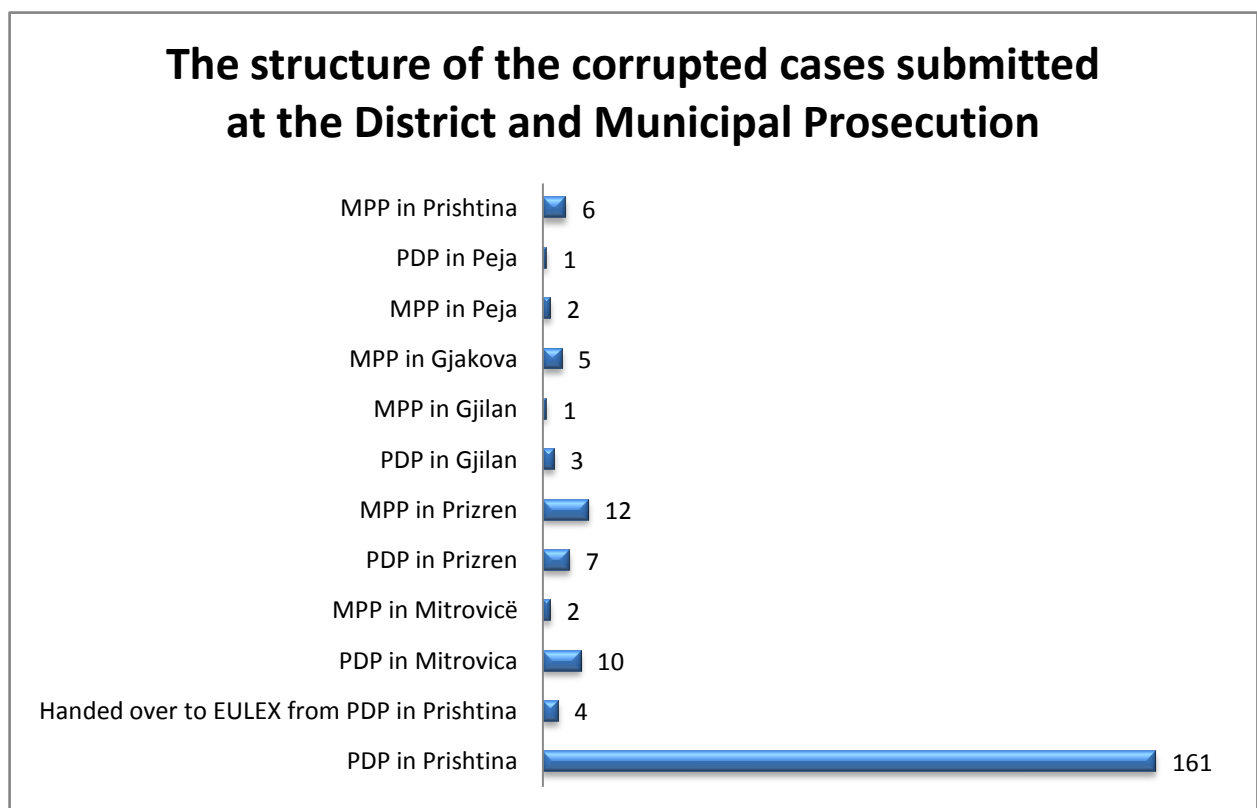


Table 4. The structure of the corrupted cases submitted at the District and Municipal Prosecution from year 2007

The structure of the submitted cases in the SDP in Prishtina ¹³

| | | Cases | Rejected | Nothing |
|----|--|------------|-----------|-----------|
| 1 | Ministers and former Ministers | 6 | 1 | 2 |
| 2 | Permanent Secretaries in the Ministry | 9 | 1 | 1 |
| 3 | Advisors at the Ministry | 3 | 1 | |
| 4 | Directors of Departments at the Ministry | 1 | | 1 |
| 5 | Mayors and former Municipal Mayors | 7 | 1 | 1 |
| 6 | Chief Executive | 7 | 1 | 2 |
| 7 | Director of Directorates of Cadastral | 8 | 3 | 1 |
| 8 | Cadastral Officials | 2 | 1 | 1 |
| 9 | Officials of the Directorates of Geodesy | 2 | 1 | |
| 10 | Directors of other Directorates | 11 | 1 | 2 |
| 11 | Judges | 14 | 10 | |
| 12 | Prosecutors | 1 | | 1 |
| 13 | Directors of Public Enterprises | 12 | | 1 |
| 14 | Directors of other Enterprises | 3 | | |
| 15 | Officials of Public Enterprises | 6 | | 2 |
| 16 | Officials of other Enterprises | 3 | | |
| 17 | Procurement Officers | 47 | | 6 |
| 18 | Chairmen of the assessment panels | 5 | | |
| 19 | Officials of the Agencies for Medical Products | 5 | | 1 |
| 20 | Kosovo Tax Administration | 1 | | |
| 21 | Unions | 3 | | |
| 22 | Officers at TMK (Kosovo Protection Corps) | 1 | | |
| 23 | Police Officer | 3 | 1 | |
| 24 | Custom Official | 8 | 3 | |
| 25 | Administrator of Enterprises | 3 | | |
| 26 | Lay Judge | 2 | | |
| 27 | Public Lawyer | 1 | | |
| 28 | Lawyer | 1 | | |
| 29 | Civil staff at the courts | 1 | 1 | |
| 30 | Other officials | 1 | 1 | |
| 31 | Work supervisor | 2 | | |
| 32 | Project Manager | 2 | | |
| 33 | Other | 3 | | |
| | Total | 184 | 27 | 22 |

Table 5: The statistics in percentage for the KACA cases received by the Kosovo prosecutors from year 2007

The next step in the interest of effectively combating corruption cases, the co-operation between the State Prosecutor and KACA may eventually be considered. Chief Prosecutor, Kabashi has announced that these two mechanisms will now establish cooperation on a regular basis, where there

¹³ The data shown on this table have been presented in the same form as they were collected by the FOL movement.

will be meetings of prosecutors and officials of KACA. Three officials from the two institutions would sit every week and will analyze in detail all the corruption cases that are presented to the Agency, which must be processed through prosecution for criminal investigation authorities. This action is considered appropriate, because the experiences of inter-institutional communication in the past have not been very good. Furthermore, as mentioned above there have consistently been mutual accusations.¹⁴

OFFICE OF THE DISCIPLINARY PROSECUTOR

The mandate of the ODP includes the investigation of complaints against judges, lay judges and prosecutors and it presents the recommendation to impose disciplinary action by the Kosovo Judicial Council (KJC). Based on the legal competence, ODP deals with the investigation of improper conduct that are defined as violations of ethical conduct to criminal offenses, including those of corruption.¹⁵ Besides the usual activities of the ODP the thing that is considered as a serious effort in implementation of law in function for combating corruption is the strong objection against the decision of the KJC to drop its cases of judges and prosecutors who have folders with ethical and legal violations. While based on the routine work of this institution, during March during work they have received a total of 29 complaints.¹⁶ Four of these have been submitted to the KJC.

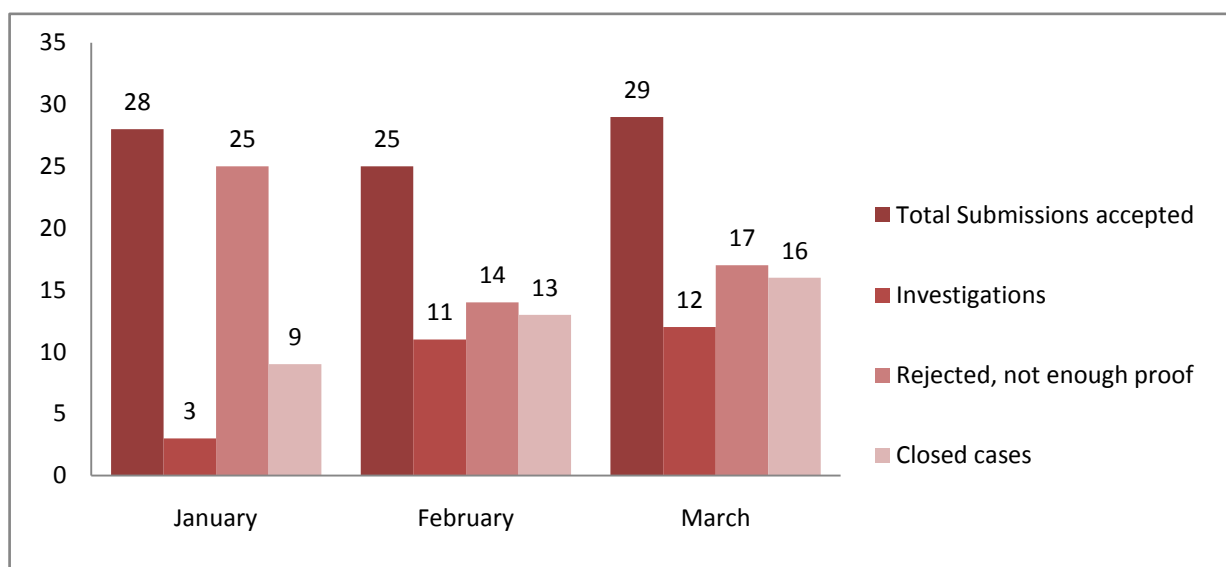


Table 6: (ODP) The number of complaints received from different sources, January- March 2010

¹⁴ Lack of cooperation between these actors, the Agency and the Prosecutors office is also mentioned in the Progress Report 2009.

¹⁵ Based on the legal competence, ODP deals with the investigation of misconduct cases that are defined as criminal conduct, disregard of the judicial function / Prosecutorial conduct that is incompatible with the duty of a judge to be independent and impartial, any violation of the Code of Ethics and Conduct, in accordance with inaction and orders of decisions issued by the Kosovo Judicial Council in accordance with UNMIK Regulation on the Establishment nr.2005/52 Kosovo Judicial Council, or providing information false or incomplete for any issue of competency of the Kosovo Judicial Council, including the granting of these data in an application for appointment as a judge or prosecutor during the search of advancement in position or in the context of a disciplinary matter.

¹⁶ Municipal Court leads with 14 submissions, the District Public Prosecutor 5, and the 4 District Court and other

Otherwise, due to malfunctioning of the KJC for several years, the work of the ODP has been without results. Cases have remained in drawers of the KJC, with not reviews and with no decisions taken for alleged violations that judges or prosecutors have made as ODP claimed that they have done so. Exactly, KJC with the old team, with the chief leader of the Supreme Court of Kosovo, Rexhep Haxhimusa was not functional from September 2008 until January 2009. So during this period there were no activities marked and no KJC meetings. While de jure, from 1 February until 25 August 2009 the Kosovo Judicial Council had no composition because in January it was abolished with the decision made by the President of Kosovo. At the end of August a provisional composition of the KJC was appointed, which yet has not been able to have its full composition and be fully functionalized in order to conduct the ODP cases, for which these complain constantly.

THE AUDITOR UNIT OF KJC

The AUKJC analyzes and evaluates the operation of general and specific activities of courts and prosecutors. This institution after reports to the management of justice as it is based on law about how much have their goals been achieved, to ensure that all citizens are offered the service of impartial, independent and transparent. Final reports with findings and relevant recommendations are sent to Kosovo Judicial Council (KJC), Ministry of Justice, the Kosovo Assembly and the justice component of EULEX as successor to the Department of Justice of UNMIK.

AUKJC in a routine audit reveals numerous violations, which are made in the daily work of judges and prosecutors, and generally it detects problems in the main function of the judiciary. In this context, this mechanism explains the concrete problems of non-enforcement of laws, which relate to one or another form of illegal activity and corruption. These are developed in a series of court proceedings, in which judges and prosecutors use conditions and especially lack of control mechanisms for work to nest overnight. AUKJC has unveiled concrete cases and the factors that influence and affect the age of criminal acts resulting in the release of corrupt criminals or their criminal liability. So, this institution has shown the foreseen limitation of cases reflecting a very disturbing problem in Kosovo's judiciary, which occurs consistently in the courts.¹⁷ That is addressed to the respective institutions, which for years have neglected and have not considered AUKJC and so they made continuing violations. Courts have made similar violations by stalling for years the cases and allowing them to be old, with which they have contributed to the judiciary to be on the "top list" of the most failed and corrupted systems.¹⁸

AUKJC publishes regular reports of problems with concrete findings and recommends the judicial institutions to take necessary measures to improve the existing situation. Officials of this

¹⁷ Prescription data for cases

¹⁸ Local and international reports all have listed the judiciary as corrupt. See the European Progress Report; UNDPS warnings.

institution/body even during march said that they are concerned with the non-implementation of their recommendations.¹⁹

AUKJC since 2006 has made 232 recommendations for the judiciary, recommendations remain only on paper. Therefore, their implementation should be the priority of the judiciary in order to create an efficient system to serve the citizens and do not create the image which it currently carries.

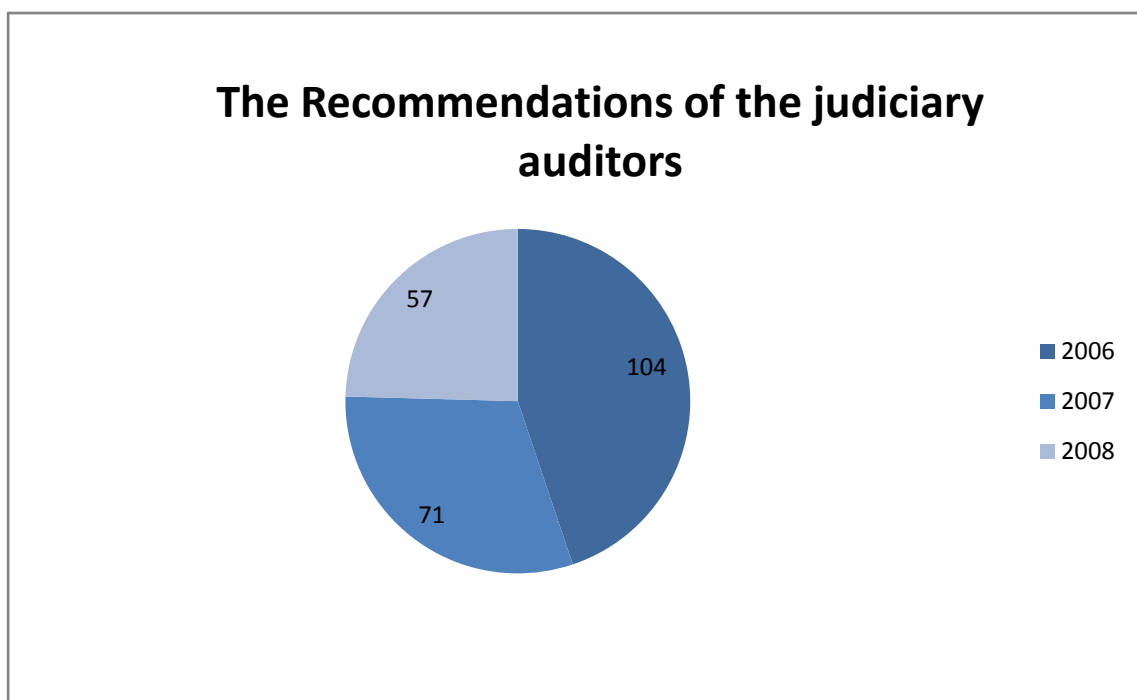


Table 7. The Recommendations of the judiciary auditors from the year 2009

¹⁹ Release of the recommendations of the Audit Unit in the Judiciary regarding the functioning of the courts they were not defied by the Kosovo Judicial Council, this was noted in the Progress Report 2009



THE KOSOVO ANTI-CORRUPTION AGENCY

The relationship of the Kosovo Anti Corruption with other institutions is considered as one of the key issues in fighting corruption in Kosovo. So far the agency has not been answered in many cases that were submitted to the prosecutors. This issue is expected to be resolved after the recent initiative to coordinate work between the KACA and the State Prosecutor's Office, discussed this problem in the prosecution.²⁰

In March, KACA has introduced the annual report for 2009, according to which it shows that there has been an increase of information on cases of alleged corruption. During this month the KACA officials have reported about the annual report before the Committee for Legislation and Judiciary and the Budget and Finance Committee of the Assembly of Kosovo.

Starting from March of this year, KACA, as it is responsible for overseeing the new law, it has begun to implement the Law on Property Declaration and the Origins of Senior Public Officials. All officials were required to declare their property until March 31 of this year. Even though the law foresees the verification of declarations of assets, the right to investigate and inspect whether the statements are true or not is not given the Anti-Corruption Agency, the Prosecutor, but also to any other inspectorate. However, the decision for all declarations of assets by high public officials to be published on the website of the Agency with a deadline of 60 days is to be greeted. The public report on the number of officials who have declared their property is released fourteen (14) days thereafter.

²⁰ Lack of cooperation between the Prosecutors and the Kosovo Anti-Corruption Agency, is also mentioned in the Progress Report.