



*Duke Mbështetur Qeverisjen e Mirë dhe Qytetarinë Aktive  
Supporting Good Governance and Active Citizenry*

# Policy Brief

The Impact of Government Decisions in the Fight Against Corruption  
2010-2011

**SOROS**  
Fondacioni i Kosovës për Shoqëri të Hapur

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## List of acronyms / Abbreviations

**ACA** - Anti-corruption Agency

**ADSCP** - Agency for the Administration of Seized or Confiscated Property

**FVA** - Food and Veterinary Agency

**KC** - Kosovo Customs

**ASP** - Anti-corruption Special Department

**EULEX** - European Union Rule of Law Mission in Kosovo

**PGFAC** - Prosecutors Group in Fight against Corruption

**KDI** - Kosovo Democratic Institute

**ICMM** - Independent Commission for Mines and Minerals

**PCCK** - Provisional Criminal Code of Kosovo

**LPI** - Law on Protection of Informants

**LFPP** - Law on Financing Political Parties

**MJ** - Ministry of Justice

**MCYS** - Ministry of Culture, Youth and Sport

**MH** - Ministry of Health

**SPRK** - Special Prosecutor of the Republic of Kosovo

**KP** - Kosovo Police

**KPT** - Kosovo Post and Telecom

**ACTF** - Anti-corruption Task-Force

**TI** - Transparency International

## Executive summary

This policy research reveals a lack of seriousness of the Government to issue sustainable decisions regarding prevention and fighting corruption. The six analyzed decisions, two issued to consolidate the institutional framework and four of them to complete the anti-corruption legal framework, show a general lack of the impact they should have had to reduce the level of corruption in public institutions.

The research findings prove that the numerous gaps that accompanied the phase of issuing the decisions have later produced malfunctioning of institutions in the fight against corruption, and have made it impossible for the applicability of legal provisions in preventing and fighting corruption.

Among the major weaknesses that have accompanied the first decision on the Establishment of the Anti-Corruption Task Force are:

- a. lack of preliminary analysis and studies that would justify the establishment of such a mechanism in the fight against corruption;
- b. variable names and other ambiguities about the character of this mechanism;
- c. mixed inclusion of local and international prosecutors (non-coordination and not allowing local prosecutors to solve cases related to high-level public officials);
- d. undefined legal area framework and its functioning within SPRK;
- e. low-profile of the officials accused of corruption offenses; and
- f. lack of transparency and non-publication of their work in the fight against corruption.

In the second case, that of the Completion of the Staff (17 positions) for the Agency for Administration of Seized or Confiscated Property, the major weaknesses that accompanied the Agency during its three-year operation are:

- a. lack of expertise in the management of the property resulting mainly from corruption, organized crime and money laundering;
- b. mungesa e ekzekutimit të vendimeve për konfiskim apo sekuestrim të pasurisë; dhe lack of enforcing confiscation or seizure of property;
- c. lack of communication and coordination between the Agency and prosecution offices, courts and other relevant institutions.

Regarding the third decision, amending the Law on Disclosure, Origin and Control of the Property and Gifts of Senior Public Officials, the main problems with this law that still remain:

- a. lack of severe sanctions regarding the non-declaration of the property;
- b. lack of verification of the accuracy of the statements; and
- c. inability to control the origin of the property that may have been obtained by unlawful actions.

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Numerous weaknesses have accompanied the decision of the Law on the Protection of Informers as well.

- a. the initial disadvantage of this law has to do with its own name. Instead of being called the Law on Protection of the Officers who report corruption, the law is called the 'Law on Protection of Informers'. Such a label is associated with people who operate within the intelligence / secret services;
- b. Second, the law in question does not specify any special institution or a commission to be reported to about the suspected abusive practices by institutional officials; and
- c. third, but most importantly, the law does not clarify the protection of the informant's identity and neither penalize the situation where an institution or relevant official reveals the anonymity of the informant who denounces an abusive action.

In the case of the fifth decision, regarding the amendment of the Law on Financing Political Parties, the changes made have affected some important areas. While according to the former law "the amount of budgetary resources dedicated to Political Parties Support Fund can not exceed 0.17% of the Budget, with the new law this amount is doubled - 0.34%. In addition, the penalizing provisions of the new law are more severe compared to the ones of the former law. While in the previous law the sanctioned amount was 3,000.00 - 10,000.00 € in current law it is 5,000.00 - 50,000.00€. Another important penalizing provision is the one on non-reporting the finances within the time specified by law. "If a political party fails to write an annual financial report (...) loses the right to benefit from the fund in the next year" (Article 21, paragraph 2).

While regarding the sixth decision, the one of the Law on Prevention of Conflict of Interest, two positive amendments have been done:

- reduce of the percentage of shares (from 20% to 5%) that a public official may possess; and
- stricter sanctions in cases where public officials are in conflict of interest (dismissal of public function and / or a fine of 500.00 € to 2500.00 €).

Based on the report of the Anti-Corruption Agency (2011), which by the way is the main instance to implement the provisions of this law, it turns out that in 2011 there were 54 cases of the conflict of interest. In 23 cases, the conflicts of interest has been avoided; 13 cases proved to be without a conflict of interest; 7 cases resulted in opinion; while in three (3) cases treated resulted with discharge from the position;, and one (1) case was sent to minor offences court. 7 Cases are in the process of trying and unclosed, they were transferred to 2012.

## I. Introduction

Shortly after coming to power in January 2008, Prime Minister Thaçi had promised that "his governmental cabinet will be more dedicated in fighting corruption".<sup>1</sup> This, according to him, "would be part of the philosophy of the new government, and part of the battle against corruption and other negative phenomena".<sup>2</sup> A year later, precisely in January 2009, Prime Minister Thaçi repeated publicly his government's priority for "zero tolerance against corruption and organized crime".<sup>3</sup> In the following year, ie in 2010, Prime Minister Thaçi yet again expressed commitment that "Kosovo's institutions will lead the fight against corruption, organized crime and all other negative phenomena".<sup>4</sup> Moreover, during that year he had promised that "I will continue to be the leader of this battle with full support of all Kosovo institutions of rule of law and order, and I'll be in charge for close cooperation with all international authorities".<sup>5</sup> This 'priority', fighting corruption and organized crime is not left aside in 2011 either. Prime Minister Thaçi himself had declared "zero tolerance for corruption and misuse of official position for the purpose of personal obtaining...".<sup>6</sup> Five years later, since 2008, Prime Minister Thaçi did not hesitate at all to say it again that "the main priorities for 2012 will remain the fight against corruption, and organized crime".<sup>7</sup>

Sipas përkufizimit të fjalorit të Oxfordit, "prioritet konsiderohet një fakt ose një gjendje që trajtohet si më e rëndësishme sesa të tjerat As we can see from the above statements, since 2008 until now the main 'priority' of Prime Minister Thaçi and his government 'has been and continues to be fighting and preventing corruption'. On the other hand, how could fighting a phenomenon (corruption) be prioritized in 2008, and continue thereafter during the years 2009, 2010, 2011 and 2012, while corruption in public institutions is still in its highest levels? If such a fight has been set as a priority in 2008, and continued to be again in 2012, we realize that the fight against corruption was not a priority neither in 2008, and nor can be in 2012. According to the Oxford dictionary "priority is considered a fact or a condition that is treated as more important than others".<sup>8</sup> If fighting corruption would be a priority of the government indeed, its level in public institutions would be in minimum and our country would not be ranked as the most corrupted country in the Balkans and Europe.

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<sup>1</sup> Government of Kosovo. "100 days of Prime Minister Thaçi." Prishtina, 2008, p. 8.

<sup>2</sup> Ibid. p. 11.

<sup>3</sup> Government of Kosovo. <http://www.kryeministri-ks.net>. January 9, 2009. <http://www.kryeministri-ks.net/?page=1,104,38>.

<sup>4</sup> Government of Kosovo. <http://www.kryeministri-ks.net>. May 31, 2010. <http://www.kryeministri-ks.net/index.php?page=1,9,1358>.

<sup>5</sup> Ibid.

<sup>6</sup> Democratic party of Kosovo. Speech of the Prime Minister of the Republic of Kosovo, Hashim Thaçi, on the occasion of reelection as a prime Minister of the Republic of Kosovo. 02 22, 2011. <http://sq-al.facebook.com/notes/partia-demokratike-e-kosoves-pdk/fjalimi-i-kryeministrit-t%C3%AB-repuPartia Demokratike e Kosovës>. Democratic party of Kosovo. Speech of the Prime Minister of the Republic of Kosovo, Hashim Thaçi, on the occasion of reelection as a prime Minister of the Republic of Kosovo. 02 22, 2011. <http://sq-al.facebook.com/notes/partia-demokratike-e-kosoves-pdk/fjalimi-i-kryeministrit-t%C3%AB-republik%C3%ABs-s%C3%AB-kosov%C3%ABs-hashim-tha%C3%A7i-me-rastin-e-rizgje/203125783033302>. blik%C3%ABs-s%C3%AB-kosov%C3%ABs-hashim-tha%C3%A7i-me-rastin-e-rizgje/203125783033302.

<sup>7</sup> Newspaper Zëri. [www.zeri.info](http://www.zeri.info). January 5, 2012. <http://www.zeri.info/artikulli/1/1/41430/thaci-2012-vit-i-luftimit-te-korrupsionit/>.

<sup>8</sup> Oxford Dictionary. <http://oxforddictionaries.com/definition/english/priority> (accessed on 2 October, 2012).

### 2. Methodology

This policy research shows the impact of key decisions of the government in the fight against corruption that have been approved over the years 2010 and 2011. The methodology used in this research was built on the use of different instruments: analysis of documents, activities and government policies, carrying out interviews with prosecutors and representatives of non-governmental organizations, research of international evaluations of the level of corruption in public institutions, as well as continual monitoring of the institutional activities in the fight against corruption.

The research is divided into two phases: a) institutional framework research and b) anti-corruption legislation. Within the first phase, the institutional framework, an analyzing of the government's decision is carried out regarding the establishment of the Anti-Corruption Task Force and one about the increase of the positions in the Agency for Administration of Confiscated or seized Property.

In the first case, that of ACTF, it was explored the legal infrastructure of its scope, including the government's decision on its establishment, Law on Special Prosecution and Provisional Criminal Code of the Republic of Kosovo. Here it is investigated whether the Government's decision was previously based to any proposal identified by the relevant institutions, or it was simply an instant decision and not attentive by the Government. Afterwards we analyzed the Law on Special Prosecution within which institution operates ACTF, and Chapter XXIX of KPCC which rates all the categories of violations of corruption. Here we have looked whether the legal powers of the Special Prosecution are in accordance with the mission of the Anti-Corruption Task Force, and also if the charges that Anti-Corruption Task Force has raised include higher level of public officials than those raised by the Group of Prosecutors in the Fight against Corruption (which operates within district and municipal prosecutions). During this phase, there were carried out also several interviews with prosecutors and representatives of civil society organizations, in order that the findings of the research are as objective and sustainable as possible.

In the second case, that of the Agency for Administration of Seized or Confiscated Property, it's been noticed that the agency is specialized in administration of the property that derives mainly from organized crime and money laundering. Here we have looked into the values administered by this Agency, carried out during the years 2010-2012, as well as qualitative aspect of managed property. And the next phase of the research has included legislation on fighting and preventing corruption. In this phase was analyzed the legislative package proposed by the Government and approved by the Assembly of the Republic of Kosovo. Laws that previously were not part of the legislation were analyzed, and also the laws that have been part but have been amended. In the first part, regarding the new laws that have been added to the anti-corruption legislative package, only Law on Informants is analyzed.<sup>9</sup> Here we have looked into the weaknesses of this law, starting with its name, information flow channels and protective measures provided to officials who report vari-

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<sup>9</sup> Assembly of Kosov. August 31, 2011. <http://www.assembly-kosova.org/?cid=1,191,674> (accessed on 7 June, 2012).

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ous corruption affairs. We have also made a comparison with the standards and practices of the countries in the region regarding the regulation of this issue.

In the second part, the laws that have been amended, we analyzed the Law on Declaration, Control and Origin of the Property, Law on Prevention of Conflict of Interest, as well as the Law on Financing Political Parties. Analysis shows the new provisions that have come into force after their amendment in 2011, and also if the amendments are made only for show or such amendments have been based on the best international practices and standards. At the end of this analysis also a series of recommendations have been provided, which if they would be considered by respective institutions could influence in reducing the level of corruption in public institutions.

### 3. Government decisions in the Fight Against Corruption 2010-2011

Shortly after coming to power in January 2010, Prime Minister Thaçi had promised that "Kosovo institutions will lead the fight against corruption, organized crime and all other negative phenomena".<sup>10</sup> Moreover, during that year he had promised that "I will continue to be the leader of this battle with the full support of all Kosovo institutions of rule of law and order and I'll be responsible for close cooperation with all international authorities".<sup>11</sup> A year later, ie in 2011, the Prime Minister had declared "zero tolerance for corruption and misuse of official position for the purpose of personal obtaining ...".<sup>12</sup>

In spite of the continual rhetoric against corruption, Prime Minister Thaci and his government have approved a number of decisions in the fight against corruption, these decisions have been used to show the pretended 'commitment' in fighting corruption and organized crime. Among the most important decisions to consolidate the institutional framework that have been approved during 2010 and 2011 are 2 (two): a) the establishment of the Anti-corruption Task Force and b) increase of the budget and the number of the staff (17 positions) for the Agency for Administration of the Seized or Confiscated property. Meanwhile, 4 (four) other decisions have been for the completion of legislation in the field of preventing and fighting corruption: a) Law on Declaration, Origin and Control of the Property and Gifts of Senior Public Officials; b) Draft Law on Protection of informants (whistle blowers law); c) Draft Law on Prevention of Conflict of Interest; and d) Draft Law on Financing Political Parties. At first glance, a large number of these decisions<sup>13</sup> could be understood as a serious commitment of the government fighting corruption, but the research

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<sup>10</sup> Kosovo Government. <http://www.kryeministri-ks.net>. May 31, 2010. <http://www.kryeministri-ks.net/index.php?page=1,9,1358>.

<sup>11</sup> Ibid

<sup>12</sup> Democratic party of Kosova. Speech of the Prime Minister of the Republic of Kosovo, Hashim Thaçi, on the occasion of reelection as a prime Minister of the Republic of Kosova. 02 22, 2011. <http://sq-al.facebook.com/notes/partia-demokratike-e-kosoves-pdk/fjalimi-i-kryeministrit-t%C3%AB-repu> Democratic party of Kosova. Speech of the Prime Minister of the Republic of Kosovo, Hashim Thaçi, on the occasion of reelection as a prime Minister of the Republic of Kosova. 02 22, 2011. <http://sq-al.facebook.com/notes/partia-demokratike-e-kosoves-pdk/fjalimi-i-kryeministrit-t%C3%AB-republik%C3%ABs-s%C3%AB-kosov%C3%ABs-hashim-tha%C3%A7i-me-rastin-e-rizgje/203125783033302>. [blik.com/ABs-s%C3%AB-kosov%C3%ABs-hashim-tha%C3%A7i-me-rastin-e-rizgje/203125783033302](http://blik.com/ABs-s%C3%AB-kosov%C3%ABs-hashim-tha%C3%A7i-me-rastin-e-rizgje/203125783033302).

<sup>13</sup> Except these decisions, during 2010 and 2011 the government has approved several decisions fighting corruption. Among these decisions are discharge of vice prime minister of Ministry of Transport and Telecommunication, initiation of the approval of the draft law on seizure of illegally obtained property, he also supported the request of Special Prosecution for financial aid for prosecutors and the staff.



shows that all the above mentioned decisions are associated with multiple weaknesses, since their issuing phase until their practical implementation level.

### 4. Decision I: Establishment of Anti-corruption Task Force

Faced with criticism because of the lack of results in the fight against corruption, Thaçi government (through a decision in February 2010) had asked the Special Prosecutor of the Republic of Kosovo to establish a Special Anti-Corruption Department (SACD). Such a decision was taken at that time "as a strong signal of the government in fighting corruption".<sup>14</sup> Thaçi himself had promised that "Anti-Corruption Task Force will have all the political support without any political interference." Further, he had stated that "Anti-Corruption Task Force will specifically fight the high-level corruption cases, while the review of common cases of corruption belongs to municipal and district prosecutors. It means that Kosovo prosecutors, and not those of EULEX, should deal with such crimes".<sup>15</sup>

Having established such a mechanism, and considering it as a merit and his direct contribution, the government tried to create the impression that it really is committed to fighting and preventing corruption. However, three years later (since its foundation) ACTF not only didn't affect the fight against senior public affairs, but rather its own chief is being charged with corruption offenses.

Among the major weaknesses that accompanied such a mechanism are:

- g. lack of preliminary analysis and studies that would justify the establishment of such a mechanism in the fight against corruption;
- h. various names and other ambiguities about the character of this mechanism;
- i. mixed inclusion of local and international prosecutors (non-coordination and not allowing prosecutors to solve cases related to high-level public officials);
- j. undefined legal area framework and its functioning within SPRK;
- k. low-profile of the officials accused of corruption offenses; and
- l. lack of transparency and non-publication of their work in the fight against corruption.

#### 4.1. Lack of preliminary analysis and studies

Even though the initiative to establish the Anti-Corruption Task Force should have been based on preliminary analysis and studies, Kosovo government did not do it. According to the researcher of ÇOHU!, Lorik Bajrami, "The establishment of this mechanism should have been

*"Institutions of Kosovo have never established mechanisms to respond to the actual situation".*

(Lorik Bajrami, researcher of ÇOHU!)

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<sup>14</sup> EU Rule of Law Mission in Kosovo. April 23, 2010. <http://www.eulex-kosovo.eu/al/news/000218.php> (accessed on 7 June, 2012).

<sup>15</sup> Ibid.

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preceded with preliminary analysis, research and studies that will examine whether our country needs new mechanisms to fight corruption”.<sup>16</sup> According to him, “Kosovo institutions never established mechanisms that would respond to the actual situation, but their establishment was a result of external pressure” (ibid). The same opinion also shares another researcher of Democratic Institute for Justice, Adem Gashi, who claims that “the establishment of the Task Force has been an ad hoc initiative; without any proper preliminary analysis”.<sup>17</sup> According to him, “Kosovo government never approved any decision based on relevant research and studies, but all its decisions are result of internal pressure: to create the impression among citizens that the government is fighting corruption and external pressure: to create the impression to relevant international mechanisms that the government is committed to fighting corruption.” He further adds that “the government at any time takes the credit for Anti-Corruption Task Force, while in the case of Mustafi’ it immediately withdraw clearing itself from any responsibility”. According to him, “the government has established such a mechanism in order to fail the whole justice system (ibid).

### 4.2. Various names for Anti-corruption Task Force

No other mechanism in the fight against corruption has been labeled in different ways than the Anti-Corruption Task Force. While in the government's decision it is referred to as Anti-Corruption Special Department', in public discourse it is mostly known as the Anti-Corruption Task Force. Meanwhile, the European Union (Feasibility Report) labels it as Special Investigation Task Force. However, according to the prosecutor Faik Halimi, who works in ACTF since its founding, “the names Task Force or Anti-Corruption special Department do not match with the work that it does. the most adequate name is Financial Crime Fighting Department”.<sup>18</sup> Such diverse names have led the Task Force from a mechanism in the fight against corruption become “a mechanism for fighting financial crimes” (Halimi, 2012), and its scope becomes even more obscure and ambiguous regarding fight against corruption affairs.

#### *Various names:*

- a. *Anti-corruption Special Department (government)*
- b. *Anti-corruption Task Force (civil society)*
- c. *Financial Crime Fighting Department (SPRK)*
- d. *Special Investigation Task Force (Feasibility Report)*

the most adequate name is Financial Crime Fighting Department”.<sup>18</sup> Such diverse names have led the Task Force from a mechanism in the fight against corruption become “a mechanism for fighting financial crimes” (Halimi, 2012), and its scope becomes even more obscure and ambiguous regarding fight against corruption affairs.

### 4.3. Mixed inclusion of local and international prosecutors

Anti-Corruption Task Force, which operates within the Special Prosecution of the Republic of Kosovo, consists of 8 prosecutors: 5 local and 3 others from EULEX.<sup>19</sup> Except these pros-

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<sup>16</sup> Bajrami, Lorik, interviewd by Armend Mazreku. (08 07, 2012).

<sup>17</sup> Gashi, Adem, interviewd by Armend Mazreku. (09 07, 2012).

<sup>18</sup> Halimi, Faik, interviewd by Nora Bajrami and Armend Mazreku. (08 29, 2012).

<sup>19</sup> “Although Nazmi Mustafa in the media is seen as a leader of the Anti-Corruption Task Force actually he never was one officially. He has been leading “in the shade”, in case that internationals leave he would be prepared to take that position, but he never was chief of ACTF “(Faik Halimi).

ecutors, under its authority operate thirty (30) investigating officers of Kosovo Police, who are directly engaged in the investigation of the cases investigated by Special Anti-Corruption Department. Part of this Task Force are 5 (five) experts who are well experienced in the field of taxation and other issues in fighting negative phenomena. These

*Profile of the officials who are investigated and prosecuted by the Task Force:*

- High profile (EULEX prosecutors)
- Medium profile (lokal and EULEX prosecutors)
- Low profile (only locals)

five experts work exclusively on matters that are within the competence of ACTF. This mix of local and international prosecutors made the local prosecutors deal only with cases of low-profile public officials, while those of EULEX deal with high-profile cases. Such profiling is contradictory with the statements of Prime Minister Thaçi, who had stated that "Anti-Corruption Task Force specifically will fight high-level corruption cases, and the review of the common cases of corruption belongs to the municipal and district prosecutors. It means that Kosovo prosecutors, and not those of EULEX, must deal with such crimes".<sup>20</sup> Thus, instead that local prosecutors work in high-profile cases they work mainly in cases dealing with low-profile officials, and normally such cases should have been assigned to municipal or district prosecutors. (Acting) Head of the Task Force Sevdije Morina, admits such a claim and then she states that "there is no reason why local prosecutors are not engaged in fighting high-level political corruption".<sup>21</sup> In addition, local prosecutors also lack information about the cases handled by international prosecutors, because of the lack of coordination and communication between them. According to Gashi "The internationals could assist and locals were supposed to bear the burden of the system, otherwise it will fail" (Gashi, 2012).

#### 4.4. 5.1.4. Undefined legal framework of Task Force operation

Legislation of the Task Force consists of the Law on Special Prosecution and the Provisional Criminal Code of Kosovo. Its legal powers in the fight against corruption ACTF conducts under Chapter III - Additional Powers SPRK Law (based on corruption offenses under the Provisional Criminal Code of Kosovo). As part of these responsibilities are included:

- signing harmful contracts (article 237, PCRK);
- unjustified acceptance of gifts (article 250, PCRK);
- unjustified giving of gifts (article 251, PCRK);
- abuse of authority (article 339, PCRK), taking bribe (article 343, PCRK);
- giving bribe (article 344, PCRK);
- embezzlement while on duty (article 340, PCRK).

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<sup>20</sup> EU Rule of Law Mission in Kosovo. April 23, 2010. <http://www.eulex-kosovo.eu/al/news/000218.php> (accessed on 7 June, 2012).

<sup>21</sup> Morina, Sevdije, interviewed by Nora Bajrami and Armend Mazreku. (08 29, 2012).

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However, according to the Article 10 of this Law, it is specified that "SPRK will force its additional competence related to offenses provided in paragraphs 1 and 2 of the Article 9 of this law (...) if one of the criteria following is met:

*a) it is reasonable to believe that the alleged criminal conduct is part of a serious criminal phenomenon that is occurring or has occurred in different places in Kosovo and can be within the area of responsibility of different courts according to the law, in order to ensure a unique coordination of the investigation or prosecution;*

*b) it is reasonable to believe that the alleged criminal conduct is part of a broader criminal activity beyond national borders which makes it necessary for international co-operation to achieve a thorough investigation and prosecution of crime;*

*c) There is a strong suspicion of illegal attempts to influence the investigation or prosecution of the alleged criminal conduct;*

*d) alleged criminal conduct endangers or has endangered the functioning and stability of the state or its bodies, or the functioning and stability of public institutions or their bodies that operate in Kosovo;*

*e) there is a suspicion that SPRK, because of special circumstances, or complexity, or the nature of the alleged criminal conduct, is the only body that can carry out an investigation or prosecution of the crime.<sup>22</sup>*

According to the Coordinator of the Prosecutors in the Fight Against Corruption, Drita Hajdari, "the Task Force is not supposed to be part of the Special Prosecutor of the Republic of Kosovo, because the 11 corruption offenses fall within the municipal and district prosecutions".<sup>23</sup> Further she adds that "according to LSP, the Task Force has additional powers only in terms of fighting corruption, but no exclusive powers as it should have" (ibid). Similarly is the prosecutor of this Task Force, Faik Halimi, who admits that "ACTF accomplishes its responsibilities based on" additional or subsidiary powers of the Law on Special Prosecution "(Halimi, 2012). While such a mechanism is thought to be specialized for the investigation of corruption violations, its function within the Special Prosecution of the Republic of Kosovo has prevented the fulfillment of the mission for which it was created - fighting serious cases of corruption. Indeed, most of the cases investigated by the Task Force (see below section 4.5) do not meet any of the conditions provided in the Article 10 of the Law on SPRK.

### 4.5. Low profile of the officials accused of corruption offenses

The level of public officials involved in the investigation conducted by Anti-Corruption Task Force is far from the expectations of citizens, civil society organizations and international mechanisms. If we consider only some of the charges (most important ones), which are raised at different times, we see that the level of officials is very low:

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<sup>22</sup> Law on Special Prosecution, Assembly of Kosovo, [http://psh-ks.net/repository/docs/T-Ligji\\_per\\_Prokurorine\\_Speciale\\_te\\_Republikes\\_se\\_Kosoves-shqip\\_i\\_lekturuar\\_me\\_07.05.pdf](http://psh-ks.net/repository/docs/T-Ligji_per_Prokurorine_Speciale_te_Republikes_se_Kosoves-shqip_i_lekturuar_me_07.05.pdf).

<sup>23</sup> Hajdari, Drita, interviewd by Nora Bajrami and Armend Mazreku. (05.23, 2012).

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- Charges against 4 (four) defendants: Kole Puka (former judge - at present a lawyer); Lon Palushaj (lawyer); Bedri Bakalli (orthoped-traumatology) and Isa Salihi (Guarantee Fund representative in Prishtina)<sup>24</sup>;
- Charges against 10 lawyers: Sadik Tanyol from Prizren, Shefqet Ibrahim from Sкендерaj, Prenk Pepaj from Gjakova, Mustafe Musa from Gjlane, Xhafer Maloku from Klina, Fahire Qeko Kabashi from Prizren, Muharrem Ramadani from Mitrovica, Xhavit Krreku from Gjakova and Haxhe Nikqi from Peja<sup>25</sup>; and
- Charges against 20 persons (Fatos Salihaj, Astrit Dema, Ranadan Myrtar, Mustafë Murselaj, Bislam Haklaj, Arif Lokaj, Arben Sadija, Nexhat Idrizi, Fitim Ramadani, Agim Spahiu, Avdullah Gjajkaj, Ardian Koci, Shukrije Bekteshi, Shaqë Fetaj, Islam Duqi, Lavdi Avllaj, Bali Mahmuti, Afërdita Berishën, Isak Gjinovcin and Mehmet Duqin)<sup>26</sup>.

While high-profile cases can be considered charges brought against:

- Officials of the Ministry of Health (MH): Bujar Bukoshi, Ilir Tolaj, Arbenita Pajaziti, Nexhat Shabani, Ismet Hysenit, Hajrullah Fejzën, Zenel Kuqin, Bekim Fushën, Alban Thaçin, Basri Asllanin and Imer Ajetinin<sup>27</sup>; and
- Officials of KPT: Leme Xhema and Ove Johansen (manager of Norway Invest R&O AS), Shyqri Haxha - director of KPTK and Rexhë Gjonbalaj - Head of the Board of Directors of KPT ( Signing Harmful Contracts, Abuse of Authority and Abuse of Authority in Economy); Ismet Bojku - legal representative of Dardafon and Dardafon.net, and Shkëlqim DEVOLLI and Blerim DEVOLLI, owners of private companies belonging to DEVOLLI GROUP (embezzlement, Signing harmful contracts, Abuse of trust, Forging documents, Special cases of forging documents, and Organized Crime).<sup>28</sup>

However, in two of the biggest cases, that of the former Ministry of Transport and Telecommunications, and that of former governor Hashim Rexhepi, the Task Force has failed completely. The charges against them initially were too heavy, later to be reduced and

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<sup>24</sup> The charges are related to "organized crime" under Article 274 of the Criminal Code, concerning offenses "misuse of official position or authority" under Article 339 para. 1 on par 3. and "illegal extraction of judicial decisions" under Article 346 of the CCK. Meanwhile, against defendants Kole Puka and Lon Palushaj the charges are related to a specific criminal offense "Special Cases of falsification of documents" in Article 333, paragraph 1 concerning sub paragraph. 1, in conjunction with Article 23 of the CCK. For further details see shih <http://www.psh-ks.net/?page=1,8,154>.

<sup>25</sup> The defendants are charged as from 2003 onwards, representing their clients, some with authorization and some without authorization after completion of proceedings concerning compensation for damage to the insurance company "Kosova ne Likuidim" in Pristina, the same have suggested that funds be transferred to the accounts of lawyers rather than clients. Defendant lawyers in many cases falsified authorizations on behalf of their clients.

<sup>26</sup> All persons concerned are accused of "abuse of official duty" and "acquisition in the exercise of public functions". For further details see <http://psh-ks.net/?page=1,8,181>.

<sup>27</sup> Akuzat që rëndojnë mbi ta kanë të bëjnë me shpërdorim të detyrës zyrtare e autorizimit, keqtrajtim gjatë ushtrimit të detyrave, keqpërdorim i autorizimeve në ekonomi, lidhje të kontratës së dëmshme, nxjerrje të kundërligjshme të vendimeve gjyqësore, marrje ryshfeti dhe shmangie nga tatimi. Charges fallin upon these people deal with abuse of official authorization, during their ill-treatment, abuse of authority in economy, signing harmful contracts, illegal extraction of judicial decisions, taking bribe and tax evasion. See Gazeta JnK. 09 20, 2012. <http://gazetajnK.com/?cid=1,3,3244> (accessed on 8 October, 2012).

<sup>28</sup> Charges against five defendants are raised in the context of an investigation about Mobile Virtual Network Operator Agreement between of KPT and Dardafon and subsequent transfer of the license to Dardafon.net in 2008 and 2009. Koha.net. June 8, 2011. <http://www.kohaditore.com/index.php?page=1,13,58030> (accessed on 14 July, 2012).

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yet later (in the case of Hashim Rexhepi) the defendant is found not guilty<sup>29</sup>. Another case of high level is that of Kosovo Customs Director, Naim Huruglica and former director of Legal Department in KC, Lulzim Rafuna, who were later found not guilty by a panel consisting of two EULEX judges and a local one.<sup>30</sup>

Comparing the level of charges raised by the Task Force with District Prosecution in Pristina we see that the latter has included a higher political level:

- Charges against former ministers of Ministry of Culture, Youth and Sport (MCYS), Astrit Haraqija<sup>31</sup> and Valton Beqiri<sup>32</sup>;
- Charges against Ekrem Rexha, Ridvan Shahini, Refik Sadiku, Halil Fejziu, Qazim Bajrami and Hazir Krasniqi (officials of Municipality of Prishtina)<sup>33</sup>;
- Charges against the mayor of Drenas Nexhat Demaku<sup>34</sup>
- Charges against procurement officer in Kosovo Police, Xhevahire Potovci<sup>35</sup>, and several other charges in other district and municipal prosecutions.

Considering such a situation, where the Task Force deals with low-profile political cases, which fall in the domain of municipal or district prosecutions, the chief prosecutor has issued an administrative order, which requires the "Kosovo Police to submit them to the district or municipal prosecution, depending on the cases, any initial report, preliminary information or criminal charges - no matter if the perpetrators are identified or unidentified regarding all offenses under Article 9 of the Law on SPRK, regarding offenses which are within the competence of that prosecution ". Further it has been requested that "all initial reports, preliminary information or criminal charges before this day that are sent to SPRK and dealing with its complementary jurisdiction shall immediately be sent a copy to the

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<sup>29</sup> Preportr. 10 04, 2012. <http://preportr.com/sq/Siguri-dhe-Gjyqesi/Lufta-kundr-korrupsionit-me-televizor-211> (accessed on 10. 09, 2012).

<sup>30</sup> [www.kosovotimes.net](http://www.kosovotimes.net). 05 17, 2012. <http://www.kosovotimes.net/?page=1,17,6659> (accessed on 08 18, 2012).

<sup>31</sup> According to the charges the defendant Astrit Haraqija, at the time of exercising the function of the Minister, has committed two offenses of abuse of official position or authority under Article 339 par. 3 in relation with paragraph 1 of the Criminal Code of Kosovo. The first charge deals with illegal contract with the company "Concordia Pictures", in that case the defendant Haraqija, by abusing official position and surpassing powers, has harmed the budget of the Republic of Kosovo in the amount of € 188,000.00. Meanwhile, the second offense deals with illegal contract with the company "Morina Films", in that case the defendant Haraqija, again abusing official position and overstepped its authority has harmed the budget of the Republic of Kosovo in the amount of 100.000.00 €.

<sup>32</sup> According to the charges the defendant Valton Beqiri charged for the offense of abuse of official position or authority under Article 339 par. 3 on the (1) PCC. the defendant at the time exercising the function of the Minister, has misused official position, surpassing powers although was aware that the contract that the previous minister Haraqija had signed was illegal, signed a follow up contract with the company "Morina Films", harminë the budget of the Republic of Kosovo in the amount of 100.000.00 €.

<sup>33</sup> Six defendants, according to the contract for the construction of atmospheric collector on the river "Prishtina", in Calabria neighborhood in Pristina, with the purpose of illegal gain for private enterprise "Çlirimi" from Korisha-Prizren, exceeding official powers, the contractor paid or ordered to be paid 846.712.80 euro on behalf of purchased material even though it was not in the contract and was contrary to the Law on Public Procurement. State Prosecutor. 06 26, 2011. <http://psh-ks.net/?page=1,8,147> (accessed on 09 13, 2012).

<sup>34</sup> The mayor of Drenas, Nexhat Demaku (1976), who is a member of the Democratic Party of Kosovo, is alleged to have committed this offense, by not respecting the decisions of the Supreme Court, which force him to recognize the property right of a land in Drenas belonging to Has family. Along with him were charged the director of Cadastre, Mehdi Kurrumeli (1960), and the clerk at the Department of Cadastre, Shefqet Morina (1958). Koha.net. Qershor 8, 2011. <http://www.kohaditore.com/index.php?page=1,13,58030> (accessed July 14, 2012).

<sup>35</sup> The defendant Xhevahire Vatoci, an official in the Kosovo Police in Pristina, in order to gain illegally for a private enterprise "HIB Petrol" SH.PK Ferizaj, as a procurement official and head of evaluation committee, abused the official authority and exceeding official powers, acting in violation of the Law on Public Procurement in Kosovo, which consequently resulted in unlawful benefit for the private enterprise "HIB Petrol" in amount of € 280,370.91, an amount which has harmed the budget of Kosovo Police. state Prosecutor. 10 25, 2011. <http://psh-ks.net/?page=1,8,172> (accessed 07 12, 2012).



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municipal or district prosecutions depending on their area of responsibility and the nature of the violation”.<sup>36</sup>

### 4.6. The lack of transparency of the (in) activity of Task Force

No other institution in the fight against corruption has been more closed to public opinion than the Anti-Corruption Task Force. Since its foundation in 2010 until now not a single report has been released to the public. If we ask for statistics about the performance of this institution in the fight against corruption, local prosecutors would ask you to apply to EULEX officials, while the latter would reply: 'questions are too political' or 'harm the investigation'. Political questions are considered even questions such as: "How many EULEX prosecutors are working in Task Force?", "How many charges has the ACTF has raised since its foundation?", "How much is the budget value delivered by Task Force"?, etc.<sup>37</sup> According to Bajrami, "the accountability of the system lacks in general and particularly of Task Force" (Bajrami, 2012). The same opinion shares also the researcher Gashi, who claims that "the Task Force has been closed to the public in purpose in order to hide its failure" (Gashi, 2012). Except the lack of transparency in relation with citizens, the media and civil society organizations, it lacks transparency in relation with institutions as well. According to the coordinator Hajdari, "there is a lack of communication and reporting between the Anti-Corruption Task Force and State Prosecutor's Office" (Hajdari, 2012). Furthermore, from the interviews that we have conducted we have noticed that there is a lack of transparency even within the institution itself, where local prosecutors do not know exactly on what cases are EULEX prosecutors working and their processing.

## 5. Decision II: Agency for the Administration of Seized or Confiscated Property

Confiscation of assets acquired through criminal offenses is an excellent tool to sanction perpetrators and also for compensation of the generated damages. In every crime there is an injured party or a victim who could be an individual or a legal entity. Therefore, society as a whole has a great interest in the confiscation of illegally acquired assets of suspected or convicted criminals, in order to compensate for the damages caused. Beneficiaries of the seizure are not limited only to direct victims. These can be marginalized groups or groups that serve the public interest, including persons with disabilities, the poor and even civil society organizations which contribute with their services to the state or are directly involved in the

### *Types of the administered property:*

- *Animals*
- *Vehicles*
- *IT equipments*
- *Cash, etc.*

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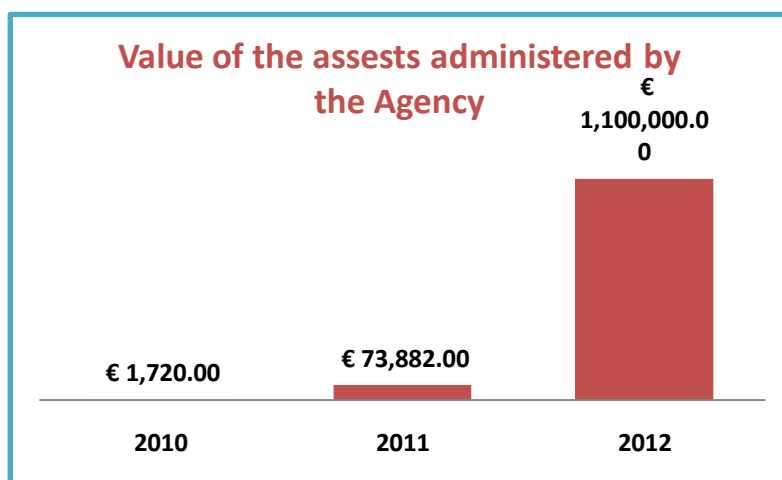
<sup>36</sup> This request of State Chief Prosecutor's Office was made 15 August 2011.

<sup>37</sup> Except that they did not answer on time in accordance with the Law on Access to Public Documents, they did not either provide a single answer to the questions raised. According to the Chief of SPRK, Signe Justesen, "such questions are political and jeopardize the ongoing investigation process." Special Prosecutor of the Republic of Kosovo. Ref.:SPRK/lett/LV/170/2012. 28 September, 2012

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fight against criminal activities.<sup>38</sup> Në shkurt të vitit 2010 Qeveria pati nxjerrë vendim për të rritur buxhetin dhe numrin e stafit (17 pozita) për Agjencinë për Menaxhimin e Pasurisë së Sekuestruar apo Konfiskuar. Në këtë vendim thuhet se “janë krijuar parakushte dhe rekuizita më të favorshme për ngritjen e cilësisë dhe eficensën e punës së këtij institucioni”.<sup>39</sup> Statistics show that increasing the number of the staff has contributed over the years to increase the value of assets managed by the Agency. While in 2010 the value of assets was only 1,720.00 Euro, in 2011 it was 73,882.00, euro in the last year it has grown manifold: 1,100,000.00 Euro. However, observing from the qualitative aspect it is not that the Agency for the Administration of Confiscated or Seized Property marked any progressive. Most of its assets under management consist of animals (cows, horses, and calves), transport vehicles (trucks, cars), IT equipment, cash, etc.<sup>40</sup>

Here lies the main weakness of this Agency, which continues to be unspecialized in the field of corruption, money laundering and organized crime. Instead of the government, namely the Ministry of Justice (MJ), make specialization its priority sooner, it only has decided to do that in 2012. In the document of this min-



istry it is specified that "we will make profiling of the Agency to administer assets seized or confiscated without justification primarily derived from the offenses of organized crime, money laundering and terrorist financing".<sup>41</sup> Another weakness of this agency is that durable sentences have not led to the confiscation of assets. Such is the case of Qamil Shabani from Ferizaj. Since November 2009, the Supreme Court affirmed the judgment of the District Court in which case Shabani was sentenced to 15 years in prison and 100 thousand euro fine for unauthorized manufacture of narcotics. The fine is never executed although it has been almost three years. Shabani along with 8 other people were charged with trafficking 130 kg of heroin in European countries. The verdict was confirmed in the third degree and according to his lawyer, Fazli Balaj, Shabani is already serving a sentence in prison but will not pay the fine (JNK Gazette, 2012). Another weakness has to do with the lack of communication between the Agency and other relevant institutions. According to the head of this agency, Rrahim Rama, "judicial and prosecutorial systems are not in-

<sup>38</sup> KIPRED. April 2011. [http://www.kipred.org/advCms/documents/52145\\_Konfiskimi\\_i\\_pasurive%20\(1\).pdf](http://www.kipred.org/advCms/documents/52145_Konfiskimi_i_pasurive%20(1).pdf) (accessed 09 23, 2012).

<sup>39</sup> Government of Kosovo. 03 08, 2010. [http://www.kryeministri-ks.net/repository/docs/Vendimet\\_e\\_Mbledhjes\\_se\\_113-te\\_te\\_Qeverise\\_2010.pdf](http://www.kryeministri-ks.net/repository/docs/Vendimet_e_Mbledhjes_se_113-te_te_Qeverise_2010.pdf) (accessed 05 09, 2010).

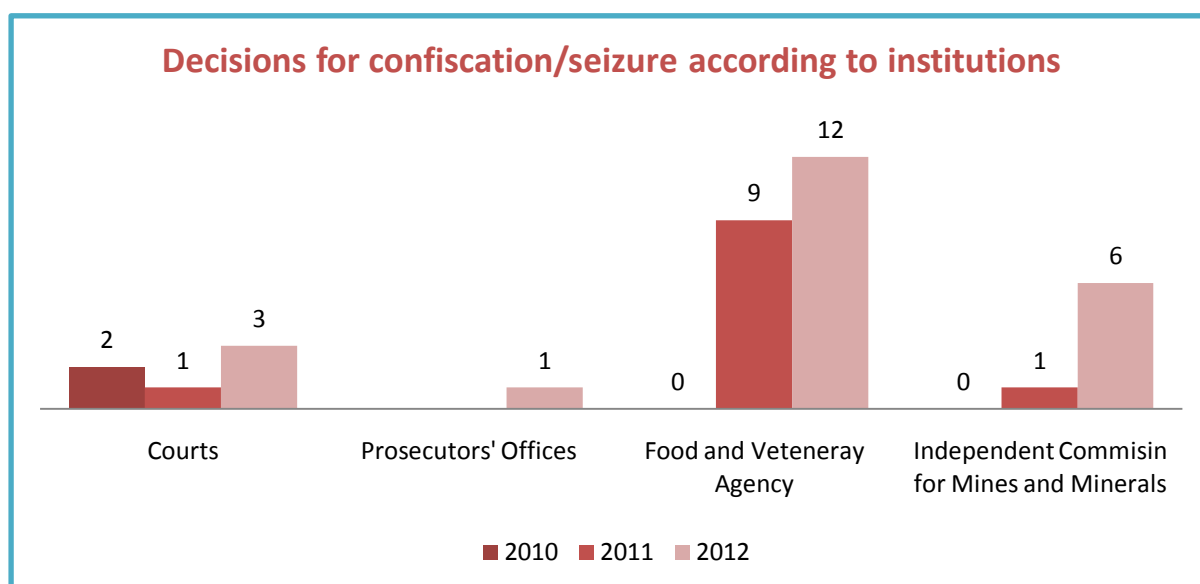
<sup>40</sup> Gazeta JnK. Maj 21, 2012. <http://www.gazetajnK.com/repository/docs/RAPORTI.pdf> (qasur me 10 07, 2012).

<sup>41</sup> Ministry of Justice. January 2012. [http://www.md-ks.org/repository/docs/Prioritetet\\_e\\_MD\\_per\\_vitin\\_2012\\_-\\_Konf\\_per\\_shtyp\\_17\\_01\\_12.pdf](http://www.md-ks.org/repository/docs/Prioritetet_e_MD_per_vitin_2012_-_Konf_per_shtyp_17_01_12.pdf) (accessed 09 03, 2012).



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formed that the confiscated items shall be reported to the Agency for the Administration of Seized or Confiscated Property”.<sup>42</sup> According to the statistics of this Agency, by April 2012 the number of decisions on confiscation or seizure is 34. A larger number (21 decisions) is from the Food and Veterinary Agency, the Independent Commission for Mines and Minerals 7 of them, 6 from courts and from prosecution only 1 decision. While most of these decisions (19) have been in 2012, in 2011 were 11 and only 2 decisions in 2010.



### 6. Decision III - Amendments to the Law on Declaration, Origin and Control of property and Gifts of Senior Public Officials

Two months before the Progress Report (2011) was published by the European Commission, Kosovo government had approved a decision<sup>43</sup> to amend partly to the legal framework in the field of fighting and preventing corruption. One of the laws that were to be amended at the time was the aforementioned law, even though it was approved only a few years ago. This law "defines the duties of senior public officials to declare assets, income and origin, the task of the Anti-Corruption Agency to examine the declaration and audit of assets and liabilities of all the officials to declare gifts and their origin".<sup>44</sup>

But with all the amendments made, the substantive content of this law still remains the same. The only changes that have been made are within the chapter VI - Punitive provisions. While in the previous law the sanctioned amount of non-declaration has been 150.00-1000 .00 Euro at the applicable current law sanctioned amount has been determined to be between 1000.00 - 2500.00 Euro. However, the amount determined is still low, which has been criticized in the European Union Feasibility Report. In addition to the

<sup>42</sup> Rama, Rrahim. Interviewed by Nora Bajrami and Armend Mazreku. (09 07, 2012).

<sup>43</sup> Government of Kosovo. 07 13, 2011. [http://www.kryeministri-ks.net/repository/docs/Vendimet\\_e\\_mbledhjes\\_se\\_23-te\\_te\\_Qeverise\\_2011.pdf](http://www.kryeministri-ks.net/repository/docs/Vendimet_e_mbledhjes_se_23-te_te_Qeverise_2011.pdf) (qasur me 08 17, 2012).

<sup>44</sup> Assembly of Kosovo. 08 31, 2011. <http://www.assembly-kosova.org/common/docs/ligjet/Ligji%20per%20deklarimin%20e%20pasurise%20se%20zyrtarve%20te%20larte.pdf> (qasur me 09 15, 2012).

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amount in funding, the law defines the "prohibition of the exercise of public function up to a year" (ibid). However, such sanctioned measures are too small compared to other countries in the region, not to mention international practices and standards.

The main problem of this law is not declaring the property, but the origin of the property of senior public officials, as well as the inability to control its origin. Although the law in force obliges the Anti-Corruption Agency to make "control for the accuracy of the declaration of assets"<sup>45</sup>, the agency never did such a thing. Eg by the total number of senior public officials who were obliged to declare their property in 2011, 1483 senior public officials have fulfilled the legal obligation, and 77 senior public officials did not carry out such an obligation. However, the 77 officers who did not declare their property are not in the highest political level in the country and the highest amount of imposed sanctions against them does not exceed the figure of 1000.00 Euro.<sup>46</sup> Therefore, the change of the law has not changed at all the substance of the previous law, but only the less important part - the monetary amount of sanctions of officials who do not declare their property.

### 7. Decision IV: Approval of the Law on Protection of the Informants (LPI)

Prevention of the corruption at all levels in the institutions is the key of an anti-corruption policy. Huge impacts in this aspect in particular have the officers working in public institutions. Considering that all the countries in the region regulate such an issue of protection of the reporters of corruption who are in public office, in July 2011 Kosovo government had approved the decision on Draft Law on the Protection of Informants<sup>47</sup>, a draft law which a month later was approved by the Assembly of Kosovo. Although its approval is a positive step, numerous vulnerabilities that accompany this law make the officials not to report corruption cases they encounter in their respective institutions.

The first weakness of this law has to do with its own label. Instead of being called the Law on Protection of the Officers who Report Corruption, the law is called the 'Law on Protection of Informants'. According to the definition of this law, "the informant is any person who, as a citizen or employee in good faith informs the relevant authority within public institutions at central or local level, institutions, public or private enterprise for any reasonable doubt about the existence of unlawful action".<sup>48</sup> Considering that "informants" mainly relates to various intelligent or secret services, affects institutional officials, when they notice any suspicious abusive practices to be reluctant to report them because it will make them feel (unintentionally) like informants or 'spies'.

Second, the law in question does not specify any institution or a special commission where the suspected abusive practices could be reported by institutional officials. According to this law, "informants who suspect illegal actions must submit the information (within the

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<sup>45</sup> Ibid.

<sup>46</sup> Anti-corruption Agency. "REPORT: INITIATED CASES OF NON-DECLARATION OF THE PROPERTY AND SANCTIONS 2010-2011." Prishtine, 2012.

<sup>47</sup> Government of Kosovo. 07 06, 2011. [http://www.kryeministri-ks.net/repository/docs/Vendimet\\_e\\_mbledhjes\\_se\\_22-te\\_te\\_Qeverise\\_2011.pdf](http://www.kryeministri-ks.net/repository/docs/Vendimet_e_mbledhjes_se_22-te_te_Qeverise_2011.pdf) (qasur me 10 11, 2012).

<sup>48</sup> Assembly of Kosovo. 08 31, 2011. <http://www.assembly-kosova.org/common/docs/ligjet/Ligji%20per%20mbrojtjen%20e%20informatoreve.pdf> (qasur me 10 03, 2012).

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institution where they work), and the employer or one of the supervisors must provide protection, anonymity and integrity of any form of abuse" (Article 5). However, the law does not provide the situation where the reporter may denounce the superior and / or his employer, because otherwise the superior and / or employer can take punitive measures against the official who reports a corrupt or abusive action.

Third, but most importantly, the law does not clearly protect the informant's identity and neither penalizes the situation where an institution or relevant official reveals the anonymity of the informant who reports an abusive action. In the case of Croatia, for example, reporters are protected from any attempt to be fired because of reporting, them and their family members as well. Also, to ensure the protection of the reporters they have established free telephone lines as "Ethical Line", "Whistleres' Channel", "anonymous reporting system", etj.<sup>49</sup> Ndërkaq, Sllovenia, bazuar në ligjin e saj për mbrojtjen e zyrtarëve që raportojnë korrupsionin, përcakton edhe shumën financiare sanksionuese në rast se identiteti i një raportuesi zbulohet: nga 400.00 deri në 4000.00 Euro për persona fizikë, ndërkaq nga 400.00 - 100,000.00 Euro për entitete juridike.<sup>50</sup> Therefore, the change of this law by regional best practice is more than necessary, so that institutional officials who report are ensured lasting protection.

### 8. Decision V: Law on Financing Political Parties (LFPP)

Considering that political parties are key players of power, regulation of their legal scope is more than necessary. Even though the Law on Financing Political Parties was approved in September 2010, a year after the government of Kosovo issued another decision<sup>51</sup> to change the law in question again, which in December 2011 was approved by the Assembly of Kosovo.

The changes made have affected several key areas. While in the previous law "the amount of budgetary resources dedicated to Political Parties Support Fund could not exceed 0.17% of the Budget, with the new law this amount is doubled - 0, 34%.<sup>52</sup> In addition, the sanctions provisions of the new law are more severe compared with the former law. While in the previous law sanctioned amount was 3,000.00 (three thousand) to 10,000.00 (ten thousand) euros, in the current law it is 5,000.00 (five thousand) euros to 50,000.00 euro if:

- Receiving funds in violation of the provisions of this Law and other applicable legislation;
- Maintain notes on their records contrary to the provisions of this law; and

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<sup>49</sup> Vasiljevic, Snjezana. 2009. <http://www.whistleblowing-cee.org/countries/croatia/research/>.

<sup>50</sup> Association for Ethics in Public Service. "Whistleblowing Protection - Republic of Slovenia." <http://www.whistleblowing-cee.org/countries/slovenia/research/>.

<sup>51</sup> Government of Kosovo 08 03, 2011. [http://www.kryeministri-ks.net/repository/docs/Vend.e\\_mbl\\_29-te.pdf](http://www.kryeministri-ks.net/repository/docs/Vend.e_mbl_29-te.pdf) (qasur me 09 25, 2012).

<sup>52</sup> Assembly of Kosovo. 12 21, 2011. <http://www.assembly-kosova.org/common/docs/ligjet/Ligji%20per%20ndrysh%20e%20ligjit%20per%20financimin%20e%20subjekteve%20politike.pdf> (qasur me 08 19, 2012).

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- Do not comply with the provisions of this law and other laws in force for general and local elections (ibid).

Another important provision is the one for non-financial reporting within the time specified by law. "If a political party fails to file an annual financial report (...) lose the right to benefit from the fund in the next year" (Article 21, paragraph 2).

According to a survey by CRINIS, the legislation of the Republic of Kosovo for financing political parties is valued with an average grade of 6.6. There are three categories of evaluation: poor (0 to 3.3), average (3.4 to 6.7) and good (6.8 to 10). This result puts Kosovo in the second category, considering the legislation on financing political parties as average. Preventive and punitive measures (sanctions) are two of the categories that are assessed with the lowest grades, with an average of 3.2, respectively 3.3. Results for the first category show that regarding the financing political parties in Kosovo, lacks the necessary legal infrastructure which regulates the preventive mechanisms such as the centralized banking transactions system, cash deposit ban and the preventive measures against misuse of government resources. However, the completion of the legal framework with provisions that regulate preventive measures will not solve the problem, if they are not implemented in practice. The second category has to do with whether the legal framework is adequate, and whether the existing laws for annual funding of political parties are properly implemented in practice.<sup>53</sup>

### 9. Decision VI: Amendments to the Law on Prevention of Conflict of Interest (LPCI)

Law on Prevention of Conflict of Interest is one of the basic laws in the field of preventing and fighting corruption. This law approved for the first time in 2007, to be changed again in 2011 - after a government's decision.<sup>54</sup> Although the law remains generally the same, two addition / positive changes in the new law are:

- Reduce the percentage of shares that a public official may possess; and
- Harden of sanctions in cases where public officials are in a conflict of interest.

In the first case, the percentage of the shares, the previous law has enabled senior public officials to own shares up to 20% in private enterprises,<sup>55</sup> while according to the current law they are able to have upto 5 %.<sup>56</sup> Also, in cases where senior public officials are in a conflict of interest, the previous law had not provided any sanction against them. The only measure provided by the previous law was 'resignation', but such an action, being entirely an act of man's moral conscience, can not be categorized as a legal obligation or a pressure measure. While the new law specifies two types of sanctions in cases where public officials are in a conflict of interest:

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<sup>53</sup> KDI dhe Transparency International. " Legislation and Practices in Financing of Political Parties." 2011, fq. 8.

<sup>54</sup> Government of Kosovo. 07 13, 2011. [http://www.kryeministri-ks.net/repository/docs/Vendimet\\_e\\_mbledhjes\\_se\\_23-te\\_te\\_Qeverise\\_2011.pdf](http://www.kryeministri-ks.net/repository/docs/Vendimet_e_mbledhjes_se_23-te_te_Qeverise_2011.pdf) (qasur me 08 17, 2012).

<sup>55</sup> Assembly of Kosovo. 11 2, 2007. [http://www.assembly-kosova.org/common/docs/ligjet/2007\\_02-L133\\_al.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2007_02-L133_al.pdf) (qasur me 10 19, 2012).

<sup>56</sup> Assembly of Kosovo. 08 31, 2011. <http://www.assembly-kosova.org/?cid=1,191,678> (qasur me 09 13, 2012).

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- Ndalim i ushtrimit të funksionit publik në kohëzgjatje prej 3 (tre) muaj deri në 1 (një) vit (Neni 20, paragrafi 2); si dhe Prohibition of public office for a period of 3 (three) months to 1 (one) year (Article 20, paragraph 2);
- A fine of 500 (five hundred) euros to 2500 (two thousand five hundred) euro (Article 20, paragraph 1).

Despite that the court may impose the first measure -ban of public function up to a year, it may required by the Anti-Corruption Agency as well. In Article 18, paragraph 8 specified that "If a senior person continues to perform incompatible activities or functions under this law, despite the warning of the Agency, the Agency requires the institution where senior exercises the function to start the procedure for his dismissal".<sup>57</sup>

Another positive point of the new law is that in cases where "the enterprise in which the senior official is the owner or owns some of the shares (...) it is not appropriate to sign a contract or benefit from central or local institutions where senior official in decision-making position. On the contrary, "the Agency should require the competent institution for cancellation of the contract with the company or compensation of any material benefit of the company from the institution in which the senior official is in a decision-making position".<sup>58</sup>

Based on the Report of the Anti-Corruption Agency (2011), which is the main instance to implement the provisions of this law, it turns out that in 2011 there have been 54 cases of conflict of interest. in 23 cases the conflicts of interest is avoided; 13 cases proved without a conflict of interest; 7 cases resulted with opinions; while three (3) cases resulted with dismissal;, and one (1) case is sent to minor offenses court. Cases that are being processed and unfinished are 7, and they were transfered in 2012.<sup>59</sup>

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<sup>57</sup> Ibid.

<sup>58</sup> Assembly of Kosovo. 08 31, 2011. <http://www.assembly-kosova.org/?cid=1,191,678> (qasur me 09 13, 2012).

<sup>59</sup> Agjencia Kundër Korrupsionit. "Raporti Vjetor i Punës." Prishtinë, 2011, fq. 28.

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### Recommendations:

#### Decision I - Anti-corruption Task Force:

- Conducting research and studies for a thorough institutional review, defining clearly all the rights and obligations of each institution responsible for fighting corruption;
- Specialization of the Anti-Corruption Task Force in the area of persecuting and investigating serious cases of corruption, building a better coordination with district and municipal prosecutions; and
- Openness of Anti-Corruption Task Force, increasing transparency between prosecutors of this Task Force, but also in relation to other institutions and citizens.

#### Decision II - Agency for the Administration of Seized or Confiscated Property:

- Specialization of the Agency in the management of assets deriving mainly from corruption, organized crime and money laundering;
- Increasing the cooperation with prosecutors, courts and other relevant institutions.

#### Decision III - Law on Declaration, Origin and Control of the Property of Senior Public Officials and Gifts:

- Hardening of sanctions for non-declaration of the property by senior public officials;
- Verification of statements of the property and control of the origin of the property declared;
- Involvement of the civil society in the process of amendments, and observance to the recommendations identified by the sector in question.

#### Decision IV - Law on Protection of Informants:

- Changing the name of the law and definitions;
- Identifying the responsible institution that receives the information of public officials;
- Establishing separate phone lines that would ensure the protection of the anonymity of officials who report cases of corruption;
- Specifying more powerful protective measures regarding possible penalties that can take the reporters of the corruption; and
- Defining sanctioning measures for officials and institutions that disclose the identity of reporters.

#### Decision V - Law on Financing Political Parties:

- Strengthening and implementation of sanctions for political parties that do not submit their financial reports on time, or submit false information;
- Greater control of individual and business entities that finance political parties during their campaigns; and
- Strengthen supervising and implementing capacities of Central Election Commission.

#### Decision VI - Law on Prevention of Conflict of Interest:

- Increasing the duration of the discharge of public function;
- Increasing the penalty sanctions for officials who are in a conflict of interest and immediate measures for their dismissal; and
- Obligating institutions to report cases of conflict of interest when finding it out.

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### Rreth Lëvizjes FOL

Movement FOL is engaged to empower the civilian impact on decision - making process, responsible and efficient governance. FOL is deeply devoted to work on improvement and attainment of a better civil representation in public life. FOL works for a good governance and grounded on democratic principles, for responsible, transparent and accountable institutions, and for application and compilation of laws with participation. Therefore, expenditure of public funds, conflict of interest, negligence and institutional responsibility and access to official information, are the main components of FOL engagement. FOL attempts to fulfill these goals by fighting the citizens' apathy and indifference and make citizens more active and more voiced, in order to serve the community interests and always alert to oppose abuse, misuse, corruption and other malpractices of governance.

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