

BEYOND NUMBERS



Performance of the Prosecution
in the fight against corruption

April 2017

Beyond Numbers

Performance of prosecution in the fight against Corruption*

April 2017

* The report is statistical. The statistics are checked and confirmed. The statistics in this report are official and obtained from Kosovo Prosecutorial Council (KJC).

This publication has been produced with the support of Democratic Society Promotion (DSP) project - financed by Swiss Cooperation Office Kosovo (SCO-K) and managed by Kosovar Civil Society Foundation (KCSF). The contents of this publication are the sole responsibility of ←name of the grantee organization→ and can in no way be taken to reflect the views of SCO-K or KCSF.



Beyond Numbers

Performance of prosecution in
the fight against Corruption

TABLE OF CONTENTS

Executive summary.....	6
Introduction.....	7
About the project.....	11
Courts.....	12
Prosecution.....	13
Visits in courts and prosecutions – Memoranda.....	13
Methodology.....	14
Presentation of findings.....	20
Basic prosecutions - data about all prosecutions.....	20
Figure analysis.....	30
Influx of cases.....	31
Clearance rate.....	32
Trend of leveling of cases based on 2016 performance.....	34
Case turnover ratio.....	35
Disposition time.....	36
Index of backlogged cases.....	37
Clearance Rate (for persons) in Seven Basic Prosecutions and in Special Prosecution...	39
Clearance Trend Based on 2016 Statistics in Seven Basic Prosecutions and in Special Prosecution (for persons).....	40
Case turnover ratio in seven basic prosecutions and in special prosecution (per persons)	42
Disposition time (DT) in seven basic prosecutions and in special prosecution.....	43
Index of backlogged cases in seven basic prosecutions and in special prosecution (per persons).....	44
Conclusions.....	50
Bibliography.....	52
Endnotes on prosecution.....	54

EXECUTIVE SUMMARY

Corruption in Kosovo has been classified as endemic by the European Commission in its Country Report. The fight against corruption is the key requirement of the international community in Kosovo, in order to open way towards social progress. The main job of the prosecution is to investigate corruption at all levels, especially the highest one, and this is the key concern of both the civil society and the international community.

This report reflects the commitment of justice institutions in the fight against corruption, by analyzing anti-corruption statistics published by Kosovo Prosecutorial Council (KPC). This report measures the performance of prosecution in the fight against corruption during 2016. KPC continuously published statistics on prosecutions, by contributing in this way in their transparency.

In this report Lëvizja FOL carries out an analysis of these figures by making them more comprehensible. The European Commission Methodology for the Efficiency of Justice has been used partially to analyze the figures. The findings show that prosecution has had a good performance in its fight against corruption in general in 2016, but the high number of backlogged cases continues to produce delays in reaching justice in some prosecutions. Basic Prosecution in Prishtina has the highest number of backlogged cases, but at the same time it showed a rather good performance in its management of influx of cases and in reducing backlogged cases.

On the one hand, the report aims to help prosecution improve its performance in the fight against corruption, while on the other hand it aims to help citizens to better understand the work of prosecution and its efforts to fight corruption.

INTRODUCTION

Corruption breaks the rules of justice and gives some people advantages that other people do not enjoy. There is few evidence which shows that countries can avoid the curse of corruption easily, or totally. (Uslaner, 2008)

Kosovo is no exception to this rule. Despite the strong desire to become free and build a democratic society, free of corruption, this phenomenon, however, emerged together with the establishment and the development of independent institutions of Kosovo. The more competences were transferred from internationals to locals, the higher was the level of corruption and the greed of public officials for a fast attainment of property.

In fact, fight and prevention of corruption remain amongst key challenges of Kosovo society.

Abuse of power or official duty is the most frequent type of corruption according to the findings of this report. The conditioning of public services by state officials for personal benefits, abuse of official position for personal benefits, exercise of pressure or influence from official duty and illegal acquisition of property are all criminal offences of corruption which hinder the rule of law and undermine the trust in public institutions.

The high perception of the presence of corruption in public institutions and among public officials makes the citizens turn their hope to prosecutions and courts as the only last institutions to provide justice and punish the corrupt. Before all, it is the independent prosecutors who have the courage to investigate corruption at all levels, and then judges who bring justice and decide whether the law is equal for all.

But the prosecution is among the institutions enjoying the lowest level of citizens' trust, according to a public pulse published by UNDP. In 2016, around 20% of citizens expressed their satisfaction with the work of prosecution (UNDP - Kosovo 2016, pp. 4,8).

The high presence of corruption in the society makes the trust towards all state institutions diminish, especially justice institutions.

The European Commission in its Country Reports continuously gave the alarm

about high presence of corruption in Kosovo, emphasizing that corruption is turning into a disease (COMMISSION 2015, pp. 6).

Having the power to condition the integration process, EU set clear criteria regarding visa liberalization process for Kosovo, and among key criteria was to provide proof with figures (European Commission 2016) regarding the punishment of high level corruption by the judiciary.

This produced results, since the efforts of the prosecution to show good performance are also reflected in this report.

However, the justice system suffers from the same syndrome, i.e. corruption. This was confirmed by European Commission which found that justice system is affected by corruption and political influence and that it lacks citizens' trust (European Commission 2016). The same concerns are also shared by US Department of State and other international and local organizations (Department of State 2015).

Independence and impartiality of prosecution are fundamental for the functioning of a democratic society. The confidence of citizens that they will not be prosecuted by prosecutors who are influenced by politics and corruption, or by prosecutors who follow certain interests, the confidence of businesses that they will not be prosecuted by prosecutors without well-founded evidence, only to eliminate the competition with groups linked to prosecutors, the confidence of activists and politicians that they will not be prosecuted if they speak openly against the government, are vital for the development of a democratic society.

The growth of citizens' trust in justice institutions is a process that should be continuously built and improved.

The first step is, undoubtedly, to increase excellence criteria which enable prosecutors to be professional and with integrity*.

* Lëvizja FOL is scanning different sectors to assess the level of integrity over the last two years. In 2017 this scanning will be carried out involving judges and prosecutors.

The second step is to increase accountability and transparency. Every year, courts reject numerous indictments as unfounded, mainly due to lack of professionalism as well as due to influence exercised by interest and political groups, which have ties with certain prosecutors. The duty of KPC is to break those ties by monitoring prosecutors' work.

Transparency implies that indictments are open to wider public, to law experts and lawyers, to media and civil society.

Prosecutorial service is still considered among the most secret sectors of society. Statistical data are unprocessed, unintelligible and discouraging for those who monitor this sector (European Commission 2016).

Lëvizja FOL continuously works to increase the transparency of public institutions, including prosecution. The publication of this report with statistics on the work and performance of prosecution is yet another step in this direction.

The report sheds light not only on the work of prosecution in the field of anti-corruption, hoping to help courts improve their performance, but also invites citizens to get acquainted with the work of prosecution in order to improve their trust and create a more accurate perception.

Prosecution itself did not do much to improve its image. Being criticized for lack of performance, numerous indictments were filed, and many of them were rejected by courts as ungrounded*.

We believe that this report will help reach the truth.

This report is a proof that prosecution is striving to contribute to the fight against corruption despite the lack of trust in this institution.

Lëvizja FOL is ready to echo the success of prosecution, just as it is committed to criticize this institution for its failures. We are allies of all institutions which are committed for a good and a transparent governance, in order to increase the freedom of citizens, develop economy, strengthen democracy and improve well-being.

* Only in 2016, around 207 persons were reported to have been resolved "in other ways" Based on interviews with KJC statistics officials and Presidents of courts it was confirmed that the most part of this figure relates to rejected indictments.

But in order to help prosecution and every other Kosovo institution, it is necessary for them to open to the public, since we are convinced that transparency is the most important step towards reaching the truth and reducing wrong perceptions.

Of course, transparency is not a panacea for all problems, but it could contribute so that the work of the institutions or the lack of it is seen by its citizens.

The report is of statistical character based on KPC's official statistics and as such it cannot conclude whether prosecution carried out professional, independent and unbiased work, uninfluenced by interest and political groups. For such analysis, concrete cases in their entirety ought to be analyzed.

This report is an attempt to increase the transparency of prosecution, and strengthen the impact for the improvement of performance of prosecution in its fight against corruption.

The first part of the report provides information about donors and the project, followed by presentation of methodology. Then, findings are presented using KPC's official statistics, and an analysis of these figures is carried out using CEPEJ methodology. In the end, the report draws conclusions.

We strongly believe that this report will help the very prosecution address the problems of efficiency in its work, by contributing in the overall improvement of its performance.

We all benefit from an independent, professional and efficient prosecution.

ABOUT THE PROJECT

In September 2016, Lëvizja FOL received support in the form of an institutional grant as part of Democratic Society Promotion (DSP) project - financed by Swiss Cooperation Office Kosovo (SCO-K) and managed by Kosovar Civil Society Foundation (KCSF).

Through this institutional grant, during 20 months Lëvizja FOL will monitor the work of prosecution and courts, and will measure their performance in the work against corruption*.

The expected results of this project are: a) increased impact on the performance of law implementation institutions in prosecution and courts to prevent, investigate and judge corruption cases, and b) increased impact on the improvement of legislation in the field of public procurement towards higher effectiveness and efficiency, as well as impact on the reduction of corruption in public procurement.

As part of the project, Lëvizja FOL, among others, will carry out following activities:

a) *Monitoring of Basic Courts and prosecutions regarding high-level corruption cases, measurement of performance and efficiency of Basic Courts and prosecutions regarding corruption cases, organization of roundtables on the work of courts and prosecutions regarding corruption cases;*
b) *Monitoring of the Law on Public Procurement and periodic trimester reports regarding the process of implementation of electronic procurement, regular six-month roundtables on the implementation of electronic procurement at the Ministry of Infrastructure, the Ministry of Economic Development, and the Ministry of Agriculture, publication of final reports on the monitoring of the Strategy and relevant legislation in the field of prosecution, courts and public procurement.*

* Judiciary is only part of the monitoring. Using this grant, Lëvizja FOL will also monitor public procurement in three ministries during a 20-month period.
http://www.kcsfoundation.org/dsp/repository/docs/Grant_institucional_DSP_II_GI_-_10_zbatuar_nga_Levizja_FOL-ENG.pdf

Courts

The project is focused on Basic Courts and Basic Prosecutions. The courts that were part of monitoring of this project are Basic Court in Pristina, Prizren, Peja, Gjakova, Ferizaj, Mitrovica and Gjilan. The project will measure courts' performance in the field of anti-corruption through a methodology of European Commission for the Efficiency of Judiciary. The performance will be measured by using statistics deriving from the very courts but also from other documents, such as the Anti-corruption Strategy 2013 – 2017*.

This strategy has four objectives within the implementation of law. The two objectives, i.e. **1)** Growth of level of efficiency of law implementation institutions in prosecution and courts to prevent, investigate and judge corruption cases, and **2)** Growth of professionalism, independence and integrity of law implementation institutions in prosecution and courts, will be part of monitoring of Lëvizja FOL. The monitoring will be carried out for the part of activities and time frames extending to 2017.

An assessment of the strategy for all objectives and activities in the field of corruption will be carried out in the first half of 2017, the period when the strategy will come to an end. Kosovo Judicial Council also drafted a strategic plan in 2013 called: "National Strategy for the Reduction of Old Cases (KJC 2013)."

Using this strategy, Lëvizja FOL in its future reports will measure the part of courts' commitment in the reduction of corruption cases.

* In February a new working group was formed to draft the new anti-corruption strategy. This report will not measure the meeting of objectives of the 2013-2017 Anti-corruption strategy.

** This report did not include the measurement of meeting of objectives deriving from the strategy for the reduction of cases.

PROSECUTION

As for prosecution, the project will monitor and measure the performance based on the statistics of the very prosecutions. Basic Prosecutions in Pristina, Prizren, Peja, Gjakova, Ferizaj, Mitrovica and Gjilan will be part of the measurement of performance and monitoring. In addition to its Anti-Corruption Strategy 2013-2017, State prosecution drafted a strategy called: “Priorities of Basic Prosecutions in Kosovo in the prosecution of Perpetrators of Criminal Acts and Investigation of Criminal Acts in General and the Reduction of the Number of Cases continue”^{*} which will be part of the monitoring. The first priority of this strategy is: “Criminal offences related to corruption and all other criminal acts where confiscation can be applied” (State Prosecutor 2015).

VISITS IN COURTS AND PROSECUTIONS - MEMORANDA

As part of the project, regular visits will be carried out in Basic Courts and prosecutions. In November, as part of the increase of cooperation between civil society and justice institutions, a meeting was held with the head of Kosovo Judicial Council, Mr. Nehat Idrizi, and he was informed about the project and its activities. As a result of this meeting, on January 30 2017, a Memorandum of Understanding was signed with Kosovo Judicial Council. The aim of this memorandum is to establish mutual cooperation between Lëvizja FOL and Kosovo Judicial Council for the monitoring of the implementation of law in the judgement of anti-corruption cases, implementation of Anti-Corruption Strategy, and monitoring of abuse of public money. Lëvizja FOL will provide professional cooperation to KJC in order to achieve joint objectives which are in the interest of both the judiciary and the public. In December 2016 a meeting was held with the Coordinator of Tracking Mechanisms for the Targeting of Anti-Corruption Cases, Mr. Agim Maliqi. This helped in better understanding the statistics of anti-corruption related to courts. During the meeting, Mr. Maliqi informed us about the strategy which they implement together with KJC, which has to do with the reduction of anti-corruption cases in courts. As part of this activity, the project visited Basic Court in Ferizaj, while during February it paid a visit to Basic Court of Gjilan. The Memorandum with KJC deepened the cooperation with Basic Courts, by contributing in the reduction of communication barriers and an easier exchange of information.

^{*} This report did not include the measurement of achieving the objectives of this strategy. FOL will also measure the performance of prosecutors and judges in seven basic courts and basic prosecutions. The measurement is mainly of statistical character and it implies the number of prosecutors/judges in basic prosecutions/courts during 2016-2018.

METHODOLOGY

It should be noted at the very beginning that the measurement of performance of prosecution is not an easy task. Unlike courts, whose work is measured by cases, the work of prosecutions is mainly measured by persons. This is because prosecution invests a lot of time to prepare a case for an individual. This comes as a result of the complexity of the actions that the Prosecutor has to undertake while investigating a certain case. One case will have involved a minimum of one person. Accordingly, in cases where multi-suspects are involved, the Prosecutor has to take individual steps to secure the evidence for each of them.

Of course, the investigation is never the same and it varies depending on the criminal offence and the complexity of the case. All these and many other factors have an impact on the duration of a case until it turns into an indictment. As was the case in the report on courts, Lëvizja FOL used CEPEJ formulas to assess the performance of prosecution (CEPEJ, 2015). CEPEJ itself did not assess the efficiency of prosecutorial service*.

However, after the analysis, FOL found that the CEPEJ formulae for courts are also applicable to the measurement of the efficiency of prosecution based on official statistics.

The assessment does not include the entire prosecutorial system and does not include all cases and types of criminal offences. The measurement is carried out only for a special group of criminal offences, precisely for those stipulated in Chapter XXXIV of Criminal Code of Kosovo - Official Corruption, as well as Criminal Offences Against Official Duty, Articles 422 - 437** .

The measurement is statistical and does not aim to measure the quality of cases, the quality of service of administration or the integrity and professionalism of prosecutors. The fields covered by Lëvizja FOL for the measurement of performance of prosecution are as follows: 1) Influx of Cases, 2) Clearance Rate, 3) Case Turnover Ratio, 4) Case Resolution Trend, 5) Disposition Time , and 6) Index of Backlogged Cases.

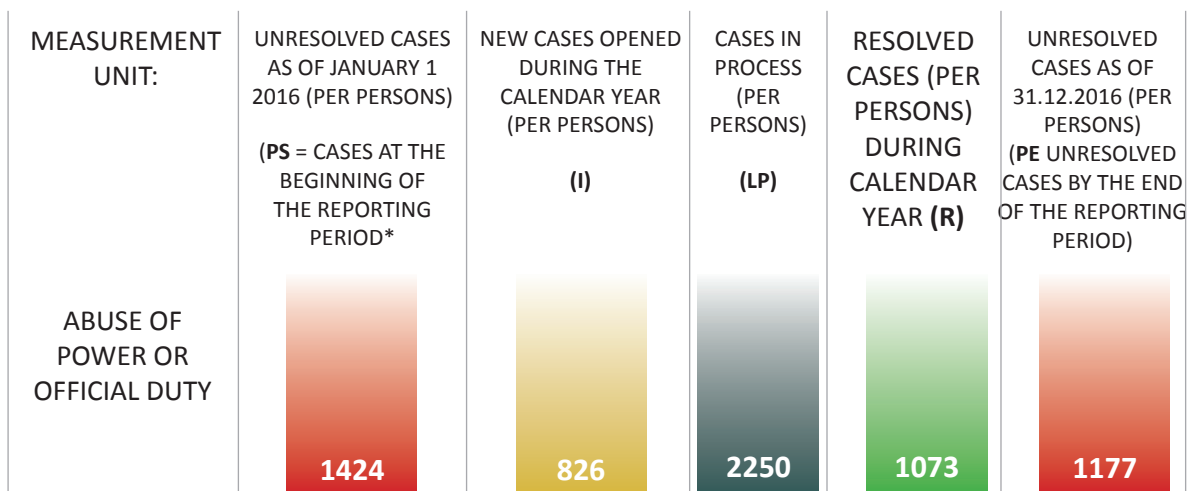
* Lëvizja FOL contacted Mr. Adis Hodzic - Senior Advisor on Statistics, High Secretariat of Courts and prosecutions, Council of Bosnia and Hercegovina, EU Expert. The response of Hodzic is that this is a matter to be discussed in the upcoming CEPEJ meeting in May. FOL did not find any publication by CEPEJ for the assessment of prosecutions.

** See Table 1 - Criminal Code of Kosovo Chapter XXXIV - Criminal Offences Against Official Duty;

INFLUX OF CASES

Influx of cases is an important indicator which shows the influx of cases and the way prosecutions manage the said influx. This involves new cases, resolved cases and those waiting to be resolved*. The number of new cases is the number of cases entering the system and requiring prosecutors' action; the number of resolved cases is the answer given by prosecutorial system, i.e. the number of cases that are handled. The cases waiting to be resolved is the number of cases which are still unresolved by a prosecution or a prosecutor at a certain time, and as such those cases are transferred. In this report, we do not include in the assessment the institutions that submit cases to prosecution, neither do we know if those cases are initiated by prosecutors. We also do not analyze nor assessthe initial phase, i.e. the information phase before cases turn into criminal charges. We only analyze criminal charges on corruption.

Example



$$LP=PS+I : PE=LP-R$$

* Handling and resolution can be used as words that complement one another. Courts use the word "resolve" while prosecutions use the term "handle". This is because a case in prosecution is not considered as resolved without a court's decision.

* Henceforth, the reporting period implies the period during one calendar year.

Clearance Rate (CR)*

It is a highly important indicator because it measures the relationship between resolved cases (R) and the number of new cases (I). As such, this indicator shows the performance of a prosecution expressed in percentage, by helping us understand the level of commitment.

$$\text{clearance rate \%} = \frac{\text{cases resolved by the end of the reporting period}}{\text{new cases during the reporting period}} \times 100$$

Example

CASES RESOLVED BY THE END OF THE REPORTING PERIOD (R) (31.12.2016)

1073

NEW CASES DURING THE REPORTING PERIOD (I) (01.01.2016 – 31.12.2016)

826

CLEARANCE RATE (CR)

129.9%

EXAMPLE: IN THIS SITUATION, IF THE NUMBER OF CASES IN THE SYSTEM REMAIN THE SAME, WITH THIS CLEARANCE RATE, THE LEVELING WILL BE REACHED IN 2026.

Case Turnover Ratio

It measures the relationship between the number of resolved cases and the number of unresolved cases. This report measures the frequency with which a judicial system or a court substitutes the number of received cases.

$$\text{case turnover ratio \%} = \frac{\text{number of resolved cases by the end of the reporting period}}{\text{number of unresolved cases by the end of the reporting period}}$$

* Clearance rate

Example

NUMBER OF RESOLVED CASES PER PERSONS DURING THE REPORTING PERIOD (01.01.2016 – 31.12.2016)

1073

NUMBER OF UNRESOLVED CASES BY THE END OF THE REPORTING PERIOD (31.12.2016)

1177

CASE TURNOVER RATIO

0,91

In this case, it shows that in 2016 the case turnover ratio is at the frequency of 0,91. As we will see further, such a ratio is low and as such it delays the justice and decelerates the reduction of backlogged cases.

Trend

It measures the relationship between cases in process and the number of resolved cases minus new cases. Trend is not part of CEPEJ formula; this formula is derived using other formulae. Trend in this report implies the performance of prosecutions in terms of clearance of backlogged cases. In order to simplify the measurement of trend in this report, it is calculated taking the performance of prosecution in 2016 as static.

$$trend = \frac{\text{Number of cases in process (LP)}}{\text{Number of resolved cases (R) - Number of new cases (I)}}$$

Disposition time

It is an indicator that measures the time for the completion of total number of cases. The formula considers the total number of cases for a certain period of time, and based on the performance in the relation of case turnover it gives the performance of the completion of cases in days. This indicator is important to see the time taken by each prosecution to give justice. Of course, the measurement does not present specific cases since, in fact, one case can take much more time than another, but the formula considers the entry and the exit of cases from the system based on the exercised performance. When a prosecution does not have transferred cases, it deals with them in the shortest time possible making it more efficient.

$$\text{Disposition time} = \frac{365}{\text{Case turnover ratio}}$$

Index of Backlogged Cases

Trend in this report implies the performance of prosecutions in terms of the clearance of backlogged cases. The high number of backlogged cases has direct impact on the performance of prosecution. A high value of index of backlogged cases shows that a longer time is needed to resolve cases. The more cases are transferred in the following year the more delays will incur in filing indictments.

$$\text{index of backlogged cases} = \frac{\text{number of transferred cases at the beginning of the reporting period}}{\text{Number of resolved cases during the reporting period.}}$$

These are the formulae and this is the assessment system that will be used to measure the performance of prosecutions in this report.

This is the first report published by Lëvizja FOL in measuring this level of performance and, as such, it is open to critics and suggestions. These findings will be discussed and analyzed in detail by prosecutors during joint roundtables.

Data Collection

Lëvizja FOL on three-month basis continuously collects data* from courts and prosecutions pertaining to the field of corruption. As part of this project, the collection of data continued for the group of data on anti-corruption, but on a selected basis.

Further, we will present graphs for all categories of criminal offences pertaining to “Criminal Offenses Against Official Duty, Articles 422 – 437, Chapter XXXIV of Criminal Code of Kosovo.”

* The data were obtained by e-mail from the KJC’s Statistics Office.

Article	Category	Article	Category
422	ABUSING OFFICIAL POSITION OR AUTHORITY	430	GIVING BRIBE TO A FOREIGN PUBLIC OFFICIAL
423	MISUSING OFFICIAL INFORMATION	431	TRADING IN INFLUENCE
424	CONFLICT OF INTEREST	432	ISSUING UNLAWFUL JUDICIAL DECISIONS
425	MISAPPROPRIATION IN OFFICE	433	DISCLOSING OFFICIAL SECRETS
426	FRAUD IN OFFICE	434	FALSIFYING OFFICIAL DOCUMENT
427	UNAUTHORISED USE OF PROPERTY	435	UNLAWFUL COLLECTION AND DISBURSEMENT
428	ACCEPTING BRIBES	436	UNLAWFUL APPROPRIATION OF PROPERTY DURING A SEARCH OR EXECUTION OF COURT DECISION
429	GIVING BRIBES	437	FAILURE TO REPORT OR FALSELY REPORTING PROPERTY, REVENUE/ INCOME, GIFTS, OTHER MATERIAL BENEFITS OR FINANCIAL OBLIGATIONS

TABLE 1 - CRIMINAL CODE OF KOSOVO. CHAPTER XXXIV - CRIMINAL OFFENCES AGAINST OFFICIAL DUTY;

In 2016 the following data on three-months and annual basis were obtained from prosecutions:

PRESENTATION OF FINDINGS

BASIC PROSECUTIONS - DATA ABOUT ALL PROSECUTIONS

During the collection of information and statistical data, Levizja FOL looked for general and specific information regarding the fight against corruption. General information is that which provides a general insight on the work of prosecution which are open to the public, while specific information is that which prosecution uses for certain priorities. For example, in fighting high level corruption the priority of prosecution was to perform better and meet visa liberalization condition (Maliqi 2016). We do not have access to these statistics.

In general, KPC Statistics Office was cooperative and we had no problems in terms of access to information.

Table 1 shows the categories of criminal offences pertaining to Chapter XXXIV.

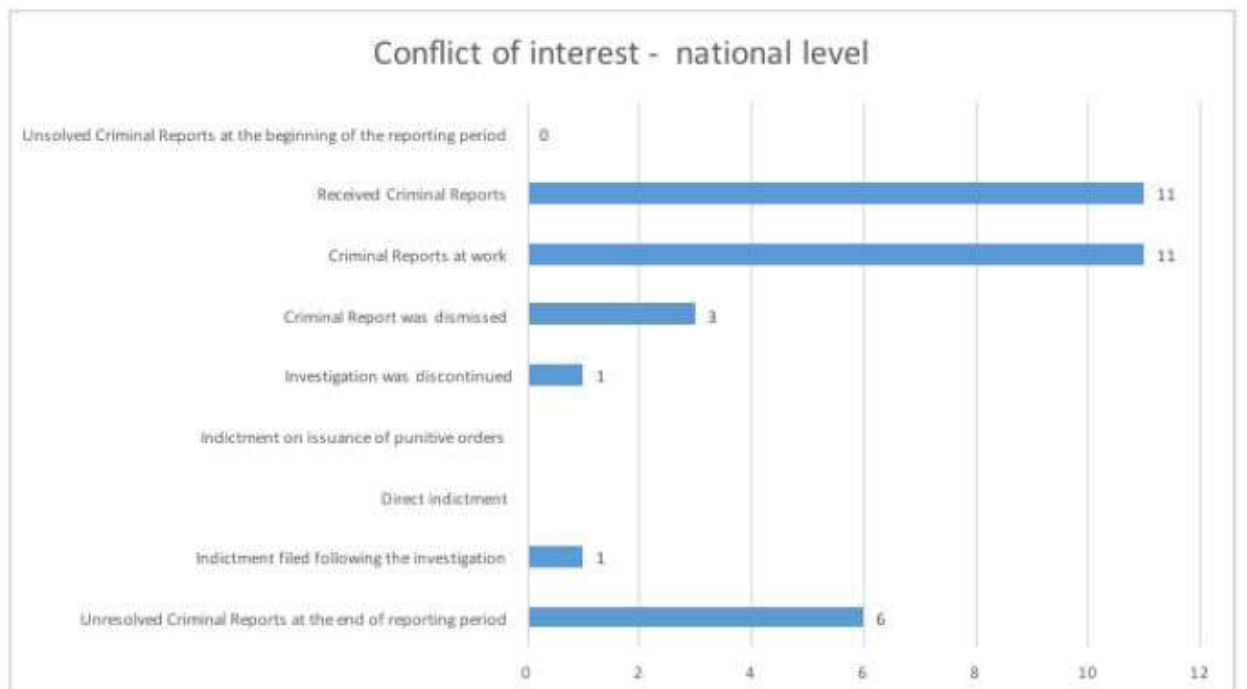
Further are the graphs with data on each category. The graphs will be then followed by data analysis.



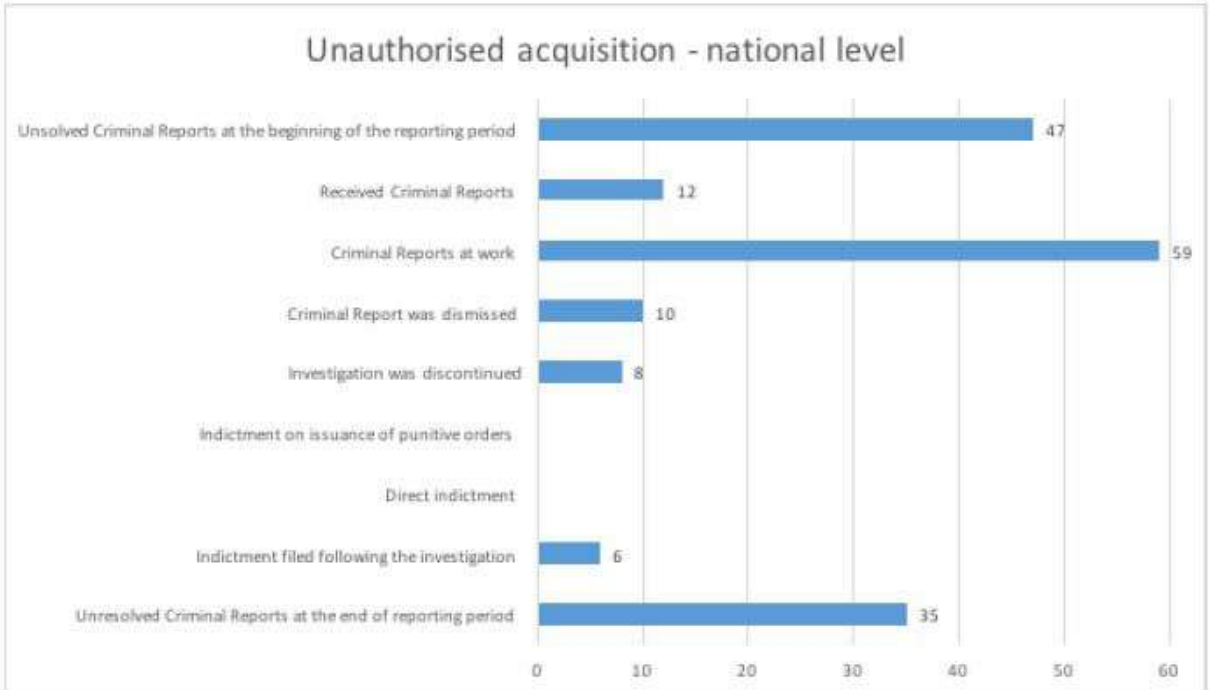
Graph 1



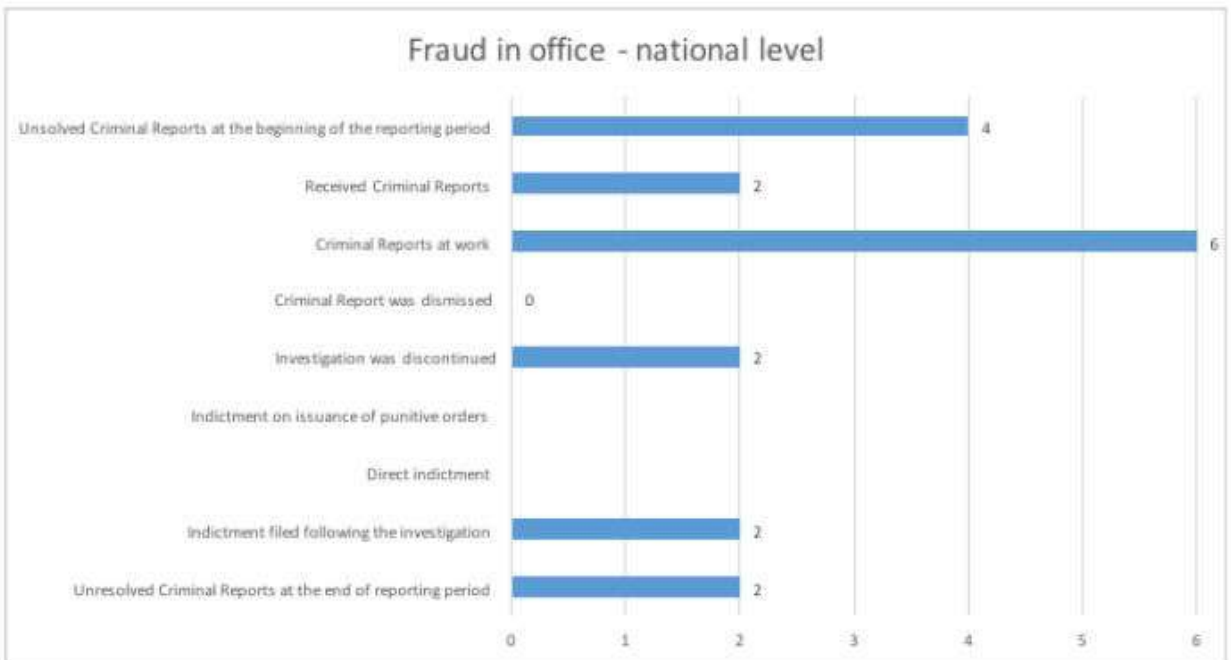
Graph 2



Graph 3

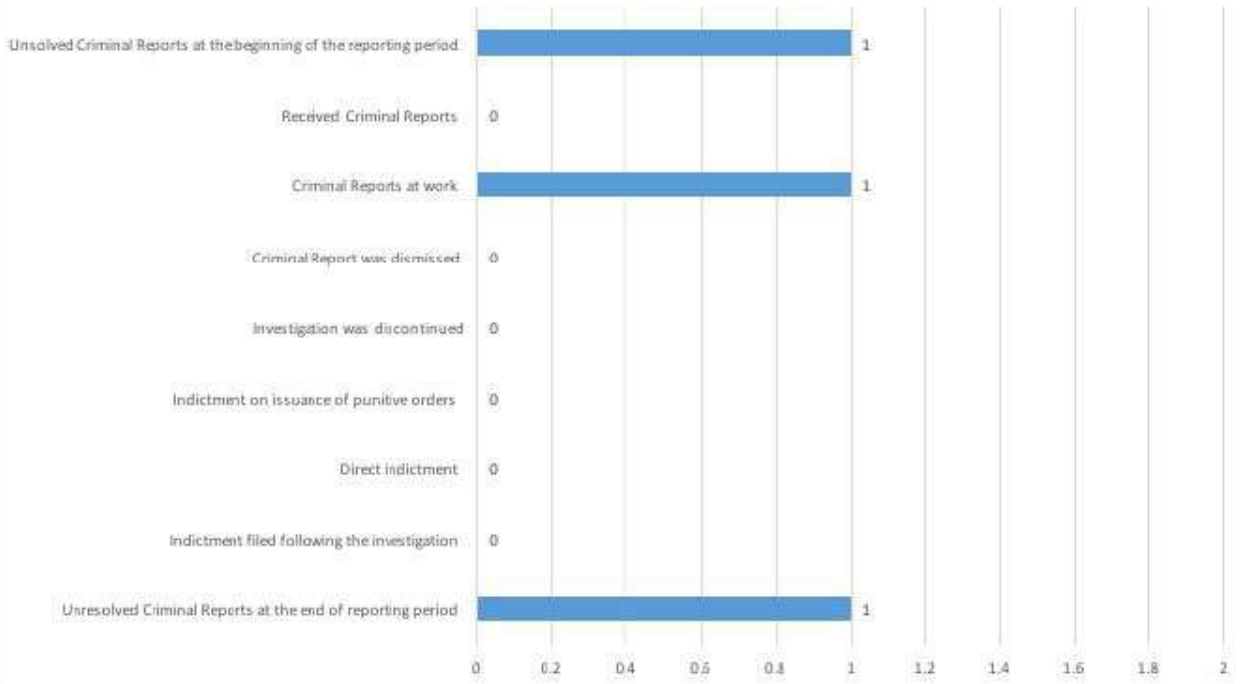


Graph 4



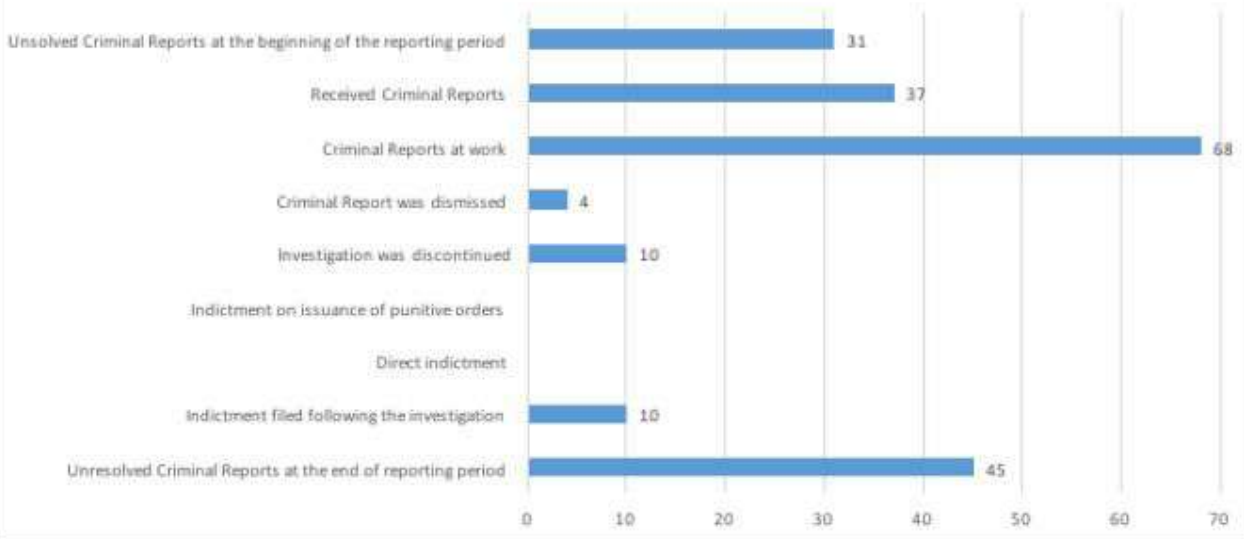
Graph 5

Unauthorised use of assets

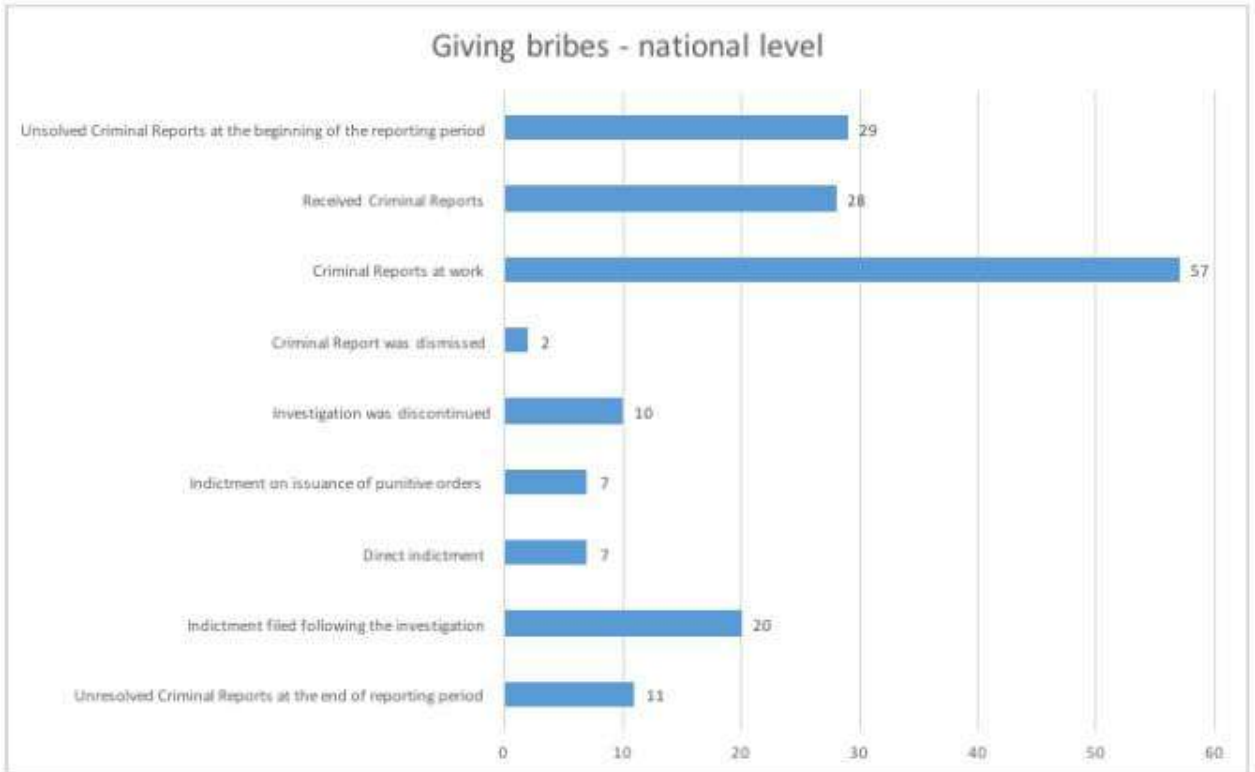


Graph 6

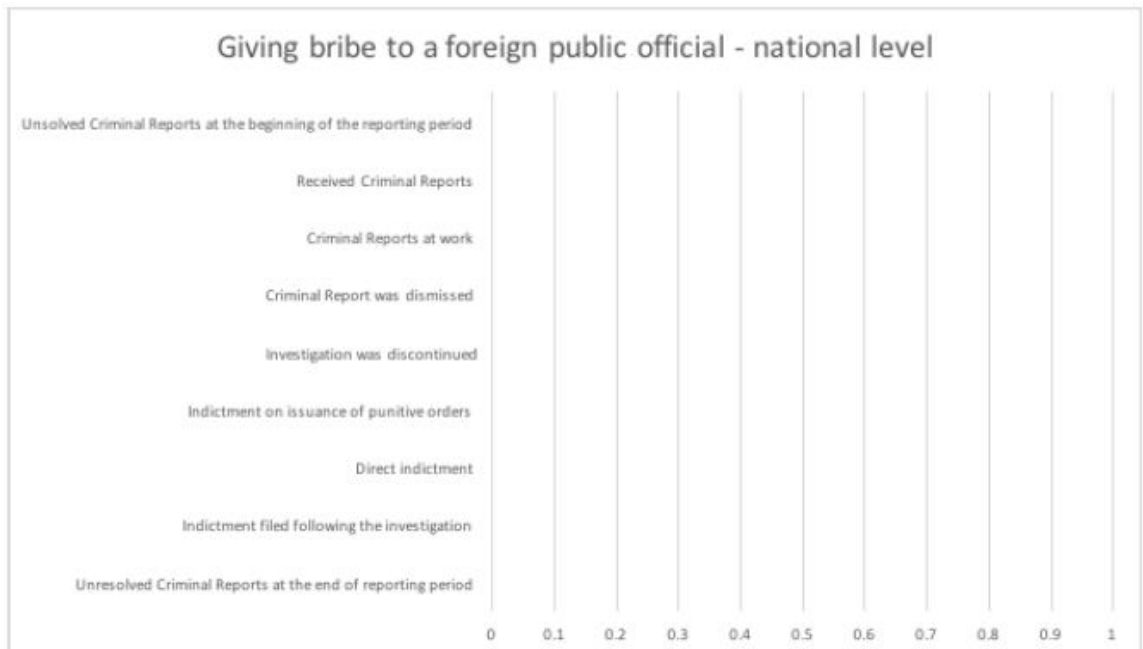
Accepting bribes - national level



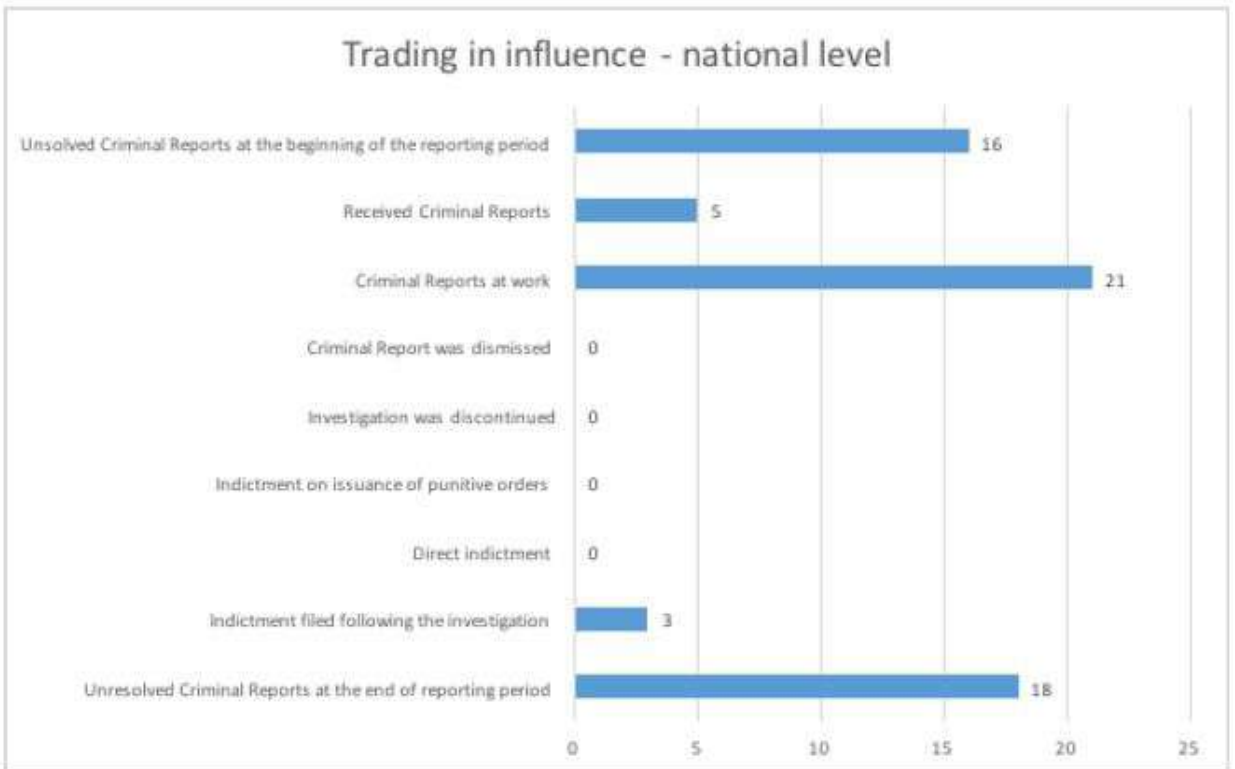
Graph 7



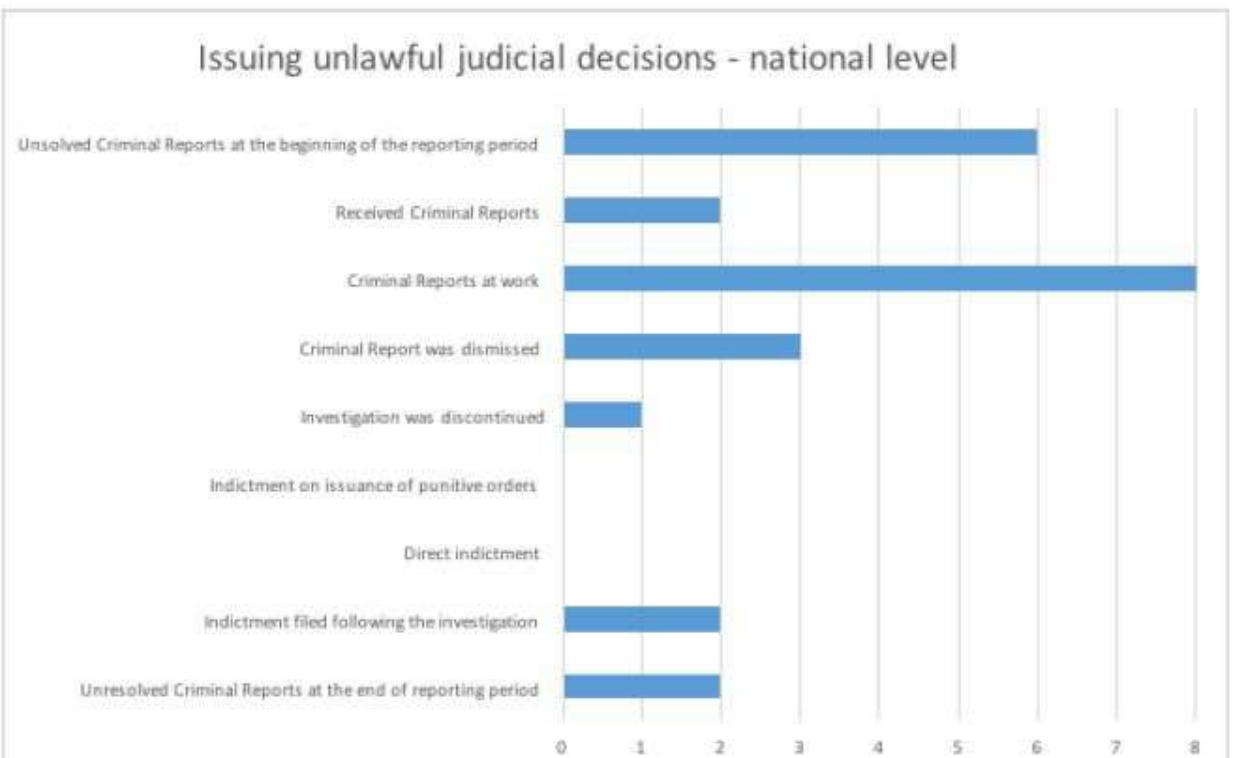
Graph 8



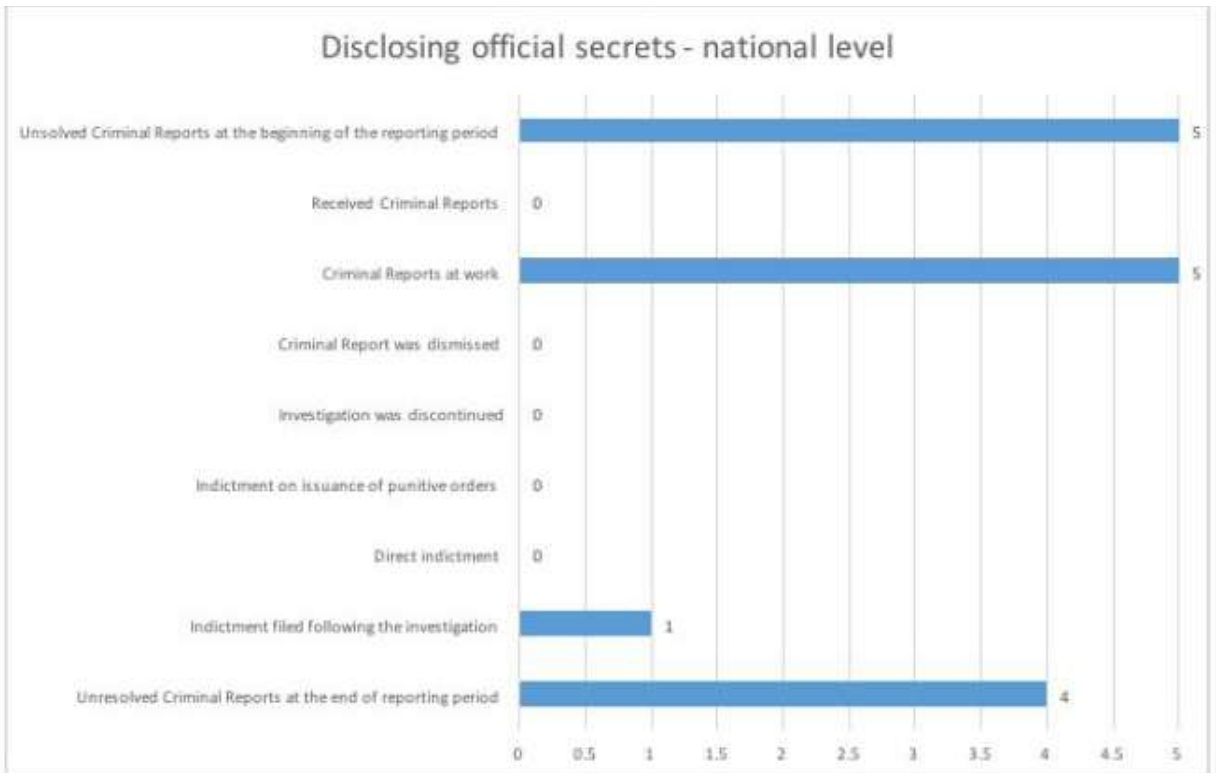
Graph 9



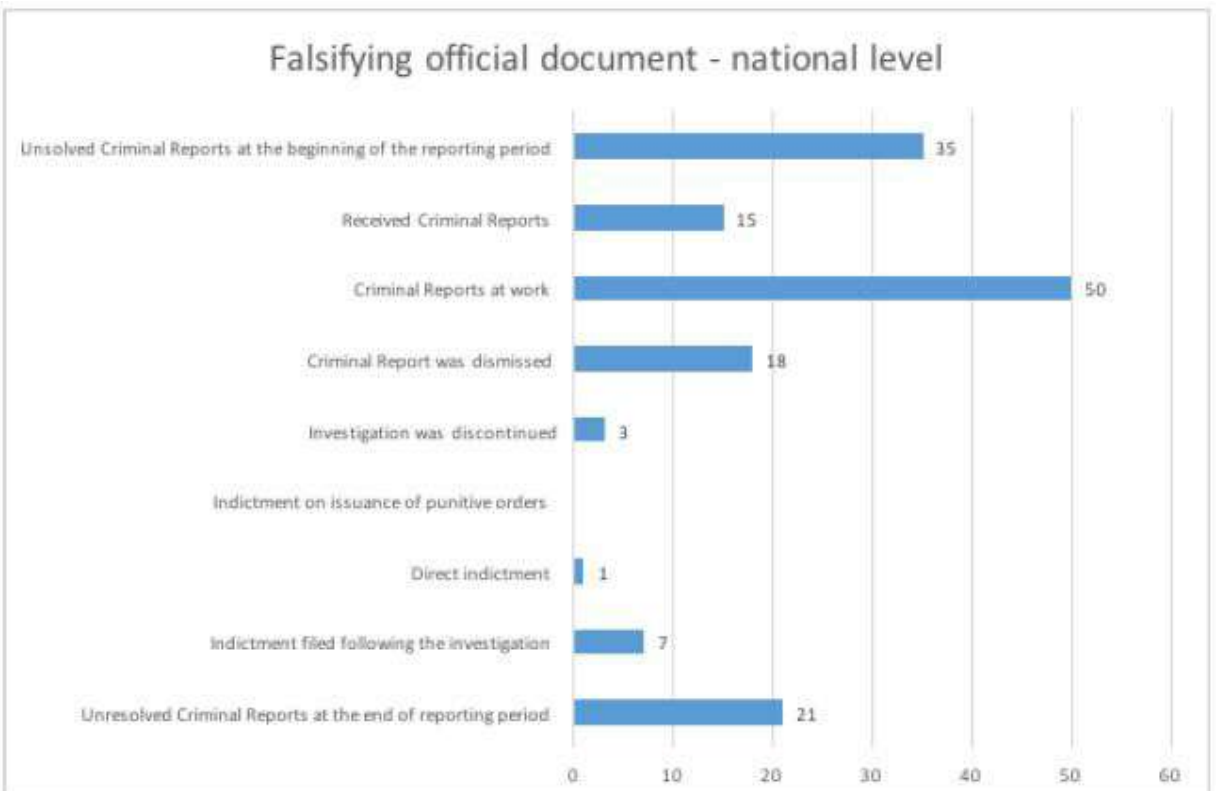
Graph 10



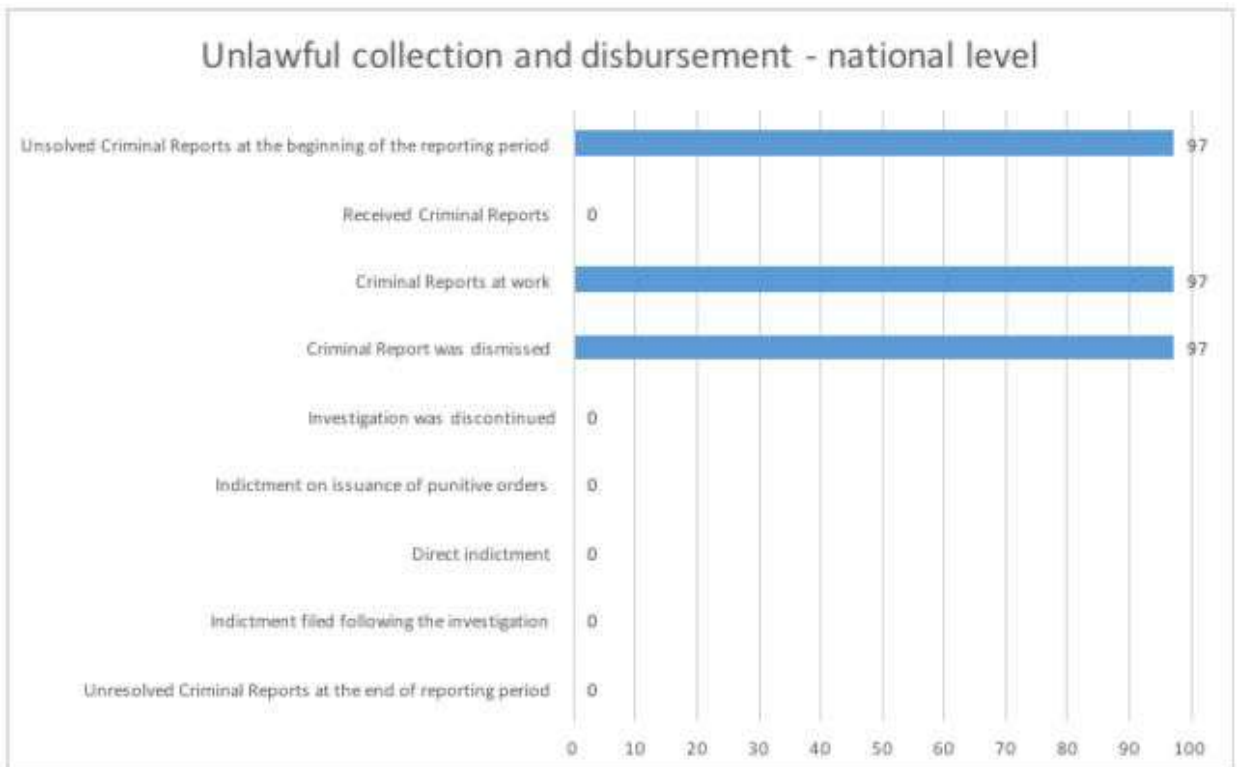
Graph 11



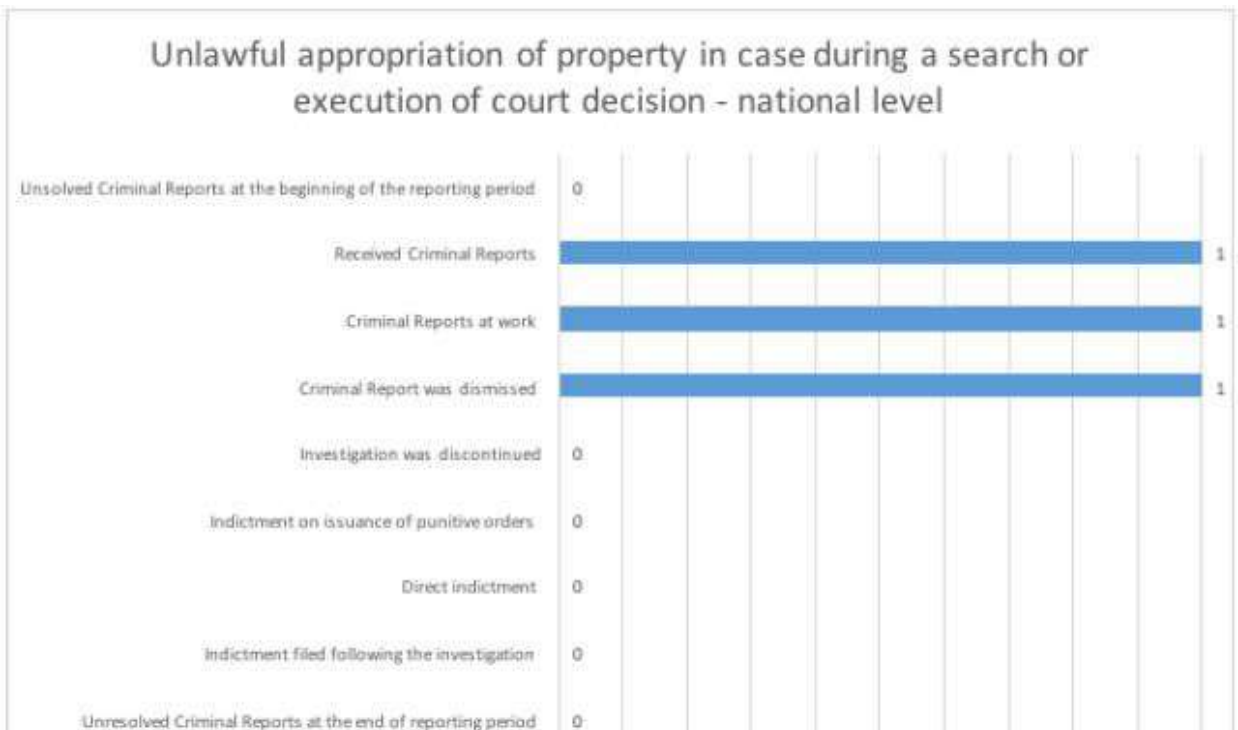
Graph 12



Graph 13

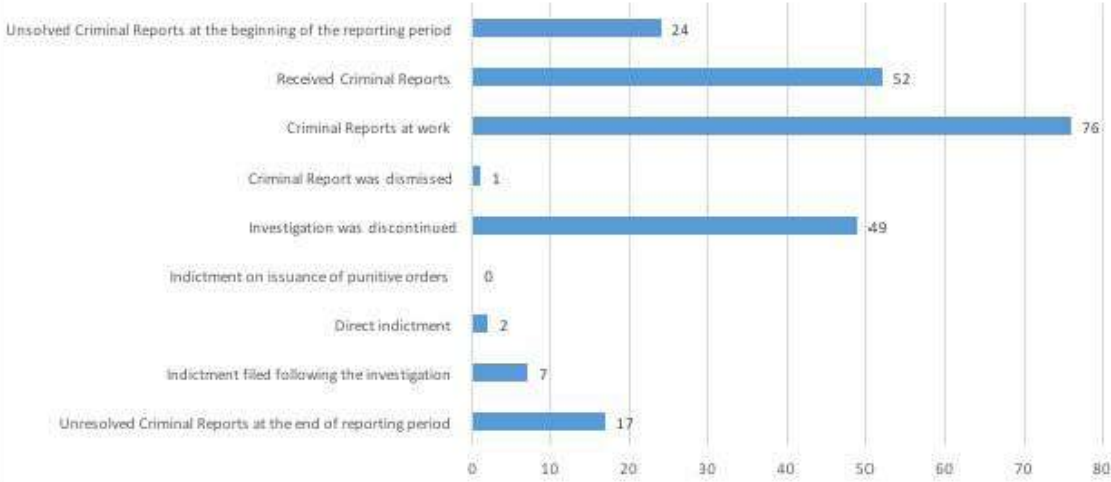


Graph 14



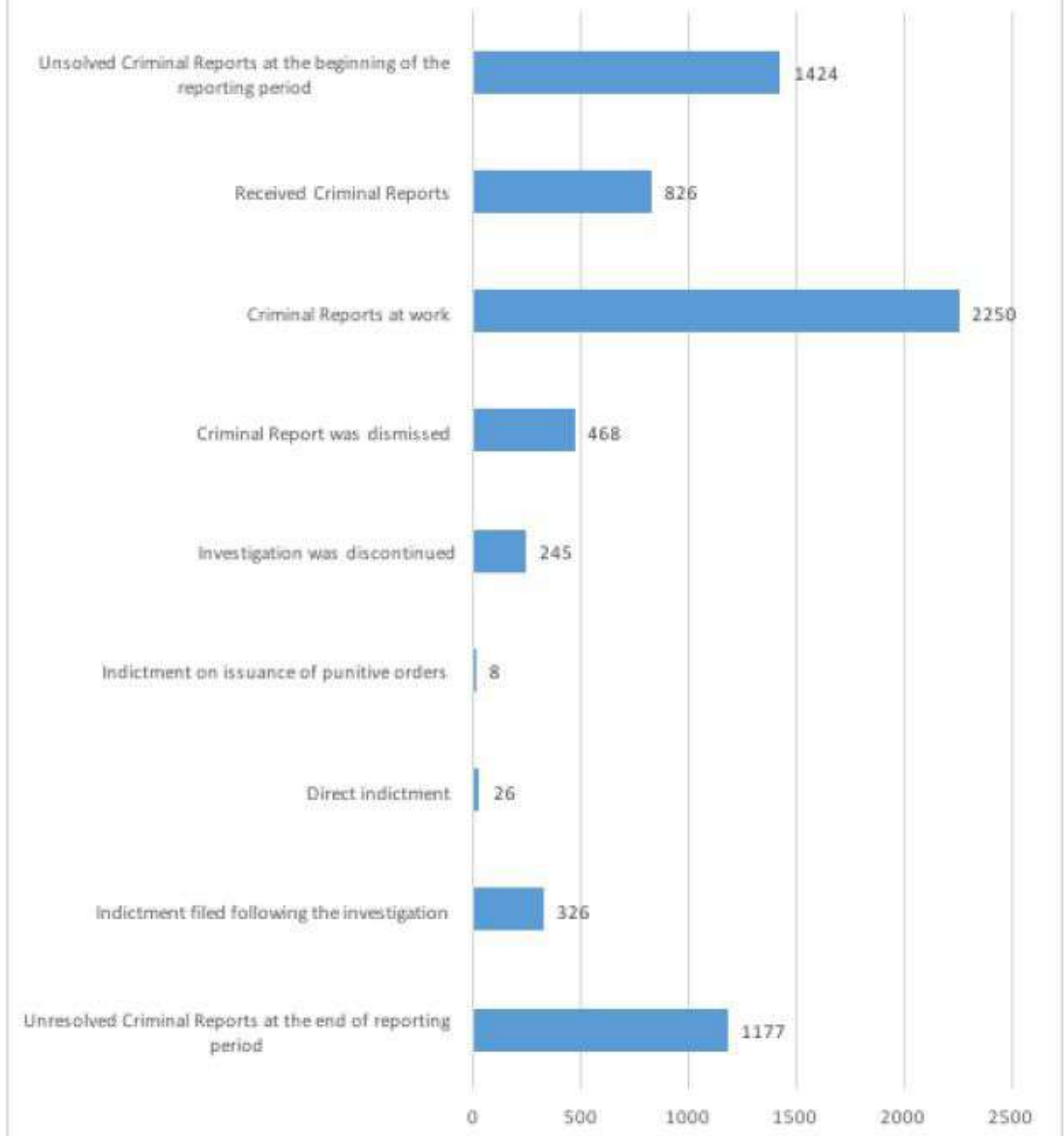
Graph 15

Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations - national level



Graph 16

Basic Prosecutions and Special Prosecution Anti-corruption Statistics for Persons, January-December 2016 - national level



Graph 17

FIGURE ANALYSIS

It is easy to lose interest in figures if we do not break down their meaning. What do the above graphs say about the performance of prosecution in the field of corruption? Did prosecutions do well? Did they fight corruption? What we can see from the above graphs is that prosecutions in the entire territory of Kosovo had a good performance in the fight against corruption, in the sense that they managed to resolve most cases in relation to the number of received cases.

Out of the entire group of corruption cases, abusing official position or authority is the offence which is most frequently repeated, which also indicates the type and the level of corruption.

Official corruption is the corruption carried out by an official person, who, by taking advantage of his office or official authority, exceeds the limits of his or her authorizations or does not abide to his or her official duties with the intent to acquire any benefit for himself or another person (Criminal Code 2012). In 2016, prosecutions had 1786 criminal charges in process related to abusing official position or authority.

Out of these 1786 persons, prosecutions handled only 772 persons and transferred a total of 1014 criminal charges or persons.

Despite this high number of cases handled concerning abusing official position or authority (772), and the number of persons with the regard to whom the prosecutor has undertaken actions where: in 330 cases, investigations were suspended in 159 cases - and the number of indictments (283) remains low compared to the total number of criminal charges (1786).

We are not able to tell the reasons why prosecutions rejected criminal charges for 330 persons, or why investigations were terminated, since this requires an access to files and information of prosecutions and prosecutors; but these figures definitely comprise the prescription of criminal offences. In fact, courts and prosecutions hide the true reasons on how some cases were resolved. The cases which were considered as solved due to statute of limitations should be reported separately because they tell us what happened with certain cases which, in themselves, do not say much about the process.

If we look at the corruption based on criminal charges, we could easily argue that the highest number of the corrupted persons in Kosovo are state officials and not ordinary citizens - a fact which determines the type and the level of corruption in Kosovo.

INFLUX OF CASES

Further we will carry out an analysis of these figures using formulae which show the capacity of basic prosecutions to handle corruption cases, as well as their performance during 2016.

Based on CEPEJ method, influx of cases will show us the relationship between new cases, resolved cases and those waiting to be resolved. As it was said above, the number of new cases is the number of cases entering the system and requesting justice; the number of resolved cases is the answer given by justice system, i.e. the number of cases that are resolved. Cases waiting to be resolved or unresolved cases is the number of cases which are still not handled by prosecution at a certain time, and as such those are cases that are transferred.

$$LP=PS+I : PE=LP-R$$

(**LP** = Cases in Process. **PS** = Unresolved cases at the beginning of the reporting period. **I** = New cases opened during the reporting period. **PE** = Unresolved cases at the end of the reporting period. **R** = Resolved cases during the calendar year).

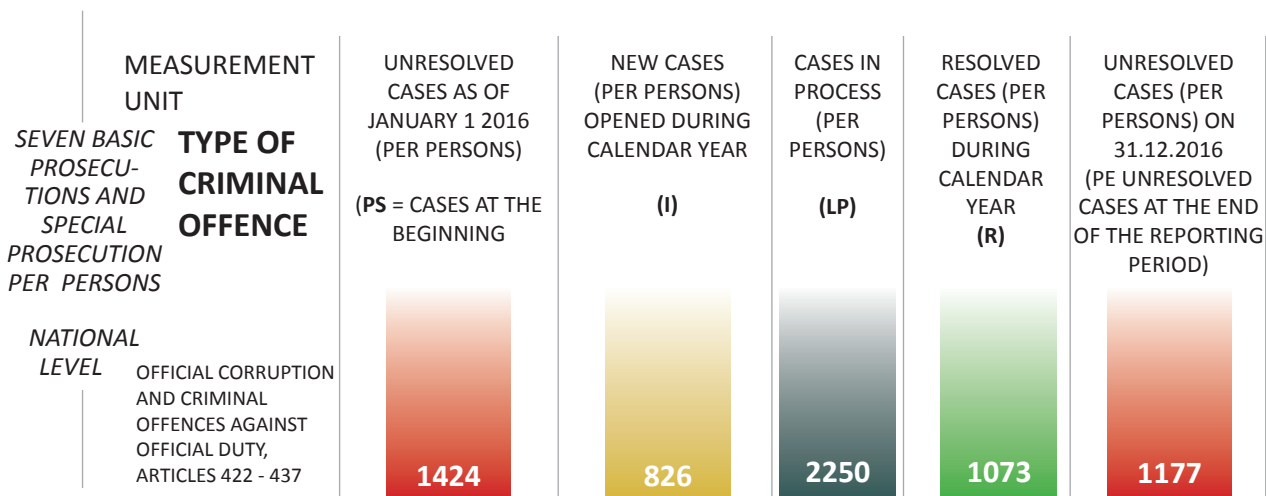


Table 2 Annual statistics for basic prosecutions and special prosecution for 2016 for criminal offences against corruption and official duty.

$$(LP) 2250 = PS 1424 + (I) 826$$

OR

$$(PE) 1177 = (LP) 2250 - (R) 1073$$

As we can see from the above table, for all categories pertaining to Chapter XXXIV of Criminal Code of Kosovo, during 2016 a total of 1424 cases (per persons) were transferred from previous year (2015). A total of 826 new cases (per persons) arrived during 2016, reaching a total of 2250 cases (per persons) in all prosecutions during 2016.

The number of cases in process (LP) is the result between the unresolved cases from previous year (PS) plus the number of new cases received during calendar year (I). The unresolved cases (PE) is the difference between the cases in process during calendar year (LP) and the resolved cases during calendar year (R).

CLEARANCE RATE (CR)

Formula (CEPEJ):

$$\text{clearance rate \%} = \frac{\text{cases resolved by the end of the reporting period}}{\text{new cases during the reporting period}} \times 100$$

Hence

$$\text{clearance rate \%} = \frac{1073}{826} \times 100 = 130\%$$



During 2016, seven Basic Prosecutions and Special Prosecution within Chapter XXXIV of Criminal Code of Kosovo - Official Corruption and Criminal Offences against Official Duty, Articles 422 – 437, received 826 cases (per persons) and managed to resolve a total of 1073 cases (per persons).

According to calculations, and based on CEPEJ formula, clearance rate (per persons) is 130% for 2016 on national level in the field of anti-corruption.

Clearance rate is a highly important indicator of performance of prosecutions because it shows the capacity of their work. Based on the calculated rate for 2016 prosecution worked efficiently reaching the level beyond 100%.

A 100% clearance rate would be desirable if prosecutions did not have backlogged cases. Such a performance shows that prosecutions resolved more cases (per persons) than they received during 2016, which is an indicator that prosecutions managed to resolve transferred cases.

But, as we will see further, it is the particular prosecutions which improve or worsen the performance of prosecution as a whole. We hope that this report will help the justice sector intervene in those prosecutions which featured problems in order to find the necessary solutions, especially in Basic Prosecution of Mitrovica, which has a rather poor performance compared to other prosecutions.

Out of a total of 2250 cases, prosecutions managed to resolve 1073 cases, while a total of 1177 cases were transferred for 2017.

TREND OF LEVELING OF CASES BASED ON 2016 PERFORMANCE

A high number of cases is still being transferred from previous year, making the system incur delays in giving justice. The number of transferred cases directly affects the performance of prosecution, despite the fact that the level of performance is above 100%.

If we consider the clearance rate for 2016, the calculation shows that prosecutions will manage to complete the transferred cases in 2026.

$$\text{trend} = \frac{\text{Number of cases in process (LP)}}{\text{Number of resolved cases (R) - Number of new cases (I)}}$$

Hence

$$\text{trend} = \frac{2250}{1073 - 826} = 9 \text{ (years)}$$



The leveling of cases with a clearance rate of 130% will be reached in 2026

The above formula considers the performance of prosecution in 2016 and is formulated on the assumption that in 9 years prosecution will continue to have the same clearance rate - 130%*.

The more cases prosecutions transfer, the lower will be the clearance rate and the system would feature more delays in giving justice*.

CASE TURNOVER RATIO

The European Commission for the Efficiency of Justice (CEPEJ) requires the justice system to report an indicator of disposition time which is calculated in two steps. **First**, the number of resolved cases during the reporting* period is divided with the number of unresolved cases by the end of the reporting period, known as “case turnover ratio”.

Secondly, this case turnover ratio is divided by 365* so that the disposition time can be expressed in the number of days, for which CEPEJ suggest that it simplifies the comprehension of the report between the number of the resolved cases during the reporting period and the number of cases waiting to be resolved

* What this report cannot do due to lack of data is calculate the case resolution trend in years, a shortcoming which will hopefully be addressed in future report.

** http://www.coe.int/t/dghl/cooperation/cepej/thematiques/Au_dela_rapport/Stawa_Adiz_general_en.pdf

*** Reporting period refers to the period in which statistics are reported. In our case, statistics are annual, and reporting period is the entire calendar year.

**** 365 is the number of days of a calendar year.

First step

Formula

$$\text{case turnover ratio} = \frac{\text{number of resolved cases by the end of the reporting period}}{\text{number of unresolved cases by the end of the reporting period}}$$

Hence

$$\text{case turnover ratio} = \frac{1073}{1177} = 0,9$$

Case turnover ratio on national level for prosecutions for 2016 is **0,9**.

Time or case turnover ratio helps us understand the management of influx of cases by prosecutions. In general, case turnover ratio and disposition time compares the number of resolved cases during the reporting period with the number of unresolved cases by the end of the reporting period. Case turnover ratio measures the speed with which the system (in this case prosecutions) handles cases it receives - in other words, it measures the time needed to resolve a case. In an indirect way, this indicator provides an answer to one of the most frequent and important questions of justice system, which is - court procedure, and in this case the duration of the procedure until the indictment is filed (Hodzic & Georg).

DISPOSITION TIME (DT)

Disposition time is an important indicator for the measurement of performance of judicial system. DT compares the number of resolved cases during the reporting period with the number of unresolved cases by the end of the reporting period. 365* is divided with the clearance rate, established in the first step, in order to translate time into the number of days. As we explained above, this indicator (DT) together with case turnover ratio shows the way in which prosecutions manage the influx of cases and the speed of giving justice.

Case turnover
ratio per persons
in 2016 is

0,9

* Number of days in one year.

Second step

Formula (CEPJ).

$$\textit{Disposition time} = \frac{365}{\textit{Case turnover ratio}}$$

Hence

$$\textit{Disposition time} = \frac{365}{0.9} = 405 \text{ days}$$

365 is the number of days of the year which is divided with the case turnover ratio from the seven Basic Prosecution and Special Prosecution in Kosovo which, for 2016, resulted in 0,9.

405 is the time the system took to give justice. I.e. the time expressed in the number of days needed by the system to give justice or complete a case .

INDEX OF BACKLOGGED CASES

One of the main problems reported in the justice system in Kosovo is the high number of backlogged cases throughout years. prosecutions, just like courts, continue to experience problems in this aspect. This high number of transferred cases produces growth of mistrust of citizens in justice institutions, since they have to wait long for justice.

A key indicator of the performance of judiciary is the number of backlogged cases. This indicator is established by the number of unresolved cases at the beginning of the reporting period, divided by the number of resolved cases during the reporting period. A high value of this number tells us that longer time is needed to resolve a case. For example, if this number is higher than 1.0, the court did not resolve as many cases as it had at the beginning of the reporting period. (Hall & Keilitz, 2012, pp. 27)

The index of backlogged cases of prosecutorial service on national level for 2016 is 1,32. This is a high value since prosecutions continue to transfer the unresolved cases.

As we can see from the Table 7 Gjilan has a record number of index of backlogged cases, which is at 0.1. At the beginning of the reporting period Gjilan had 17 transferred cases and managed to resolve 167 cases during the reporting period. On the other hand, a rather high value of this index is reported in Pristina, a 2.19. At the beginning of the reporting period Pristina had 884 transferred cases and managed to resolve 539 cases during the reporting period.

In 1999, in order to project in perspective the meaning of numbers, Maria Dakolias reported a value of 0.04 for Singapore and 0.25 for France. These values implied the short time needed to resolve cases compared to other countries such as Chile with 1.7 or Ecuador with a very high value of this index, as much as 7.87. (Hall and Keilitz 2012) (Hall & Keilitz, 2012)

Formula

$$\text{index of backlogged cases} = \frac{\text{number of transferred cases at the beginning of the reporting period}}{\text{Number of resolved cases during the reporting period.}}$$

Hence

$$\text{index of backlogged cases} = \frac{1424}{1073} = 1.32$$

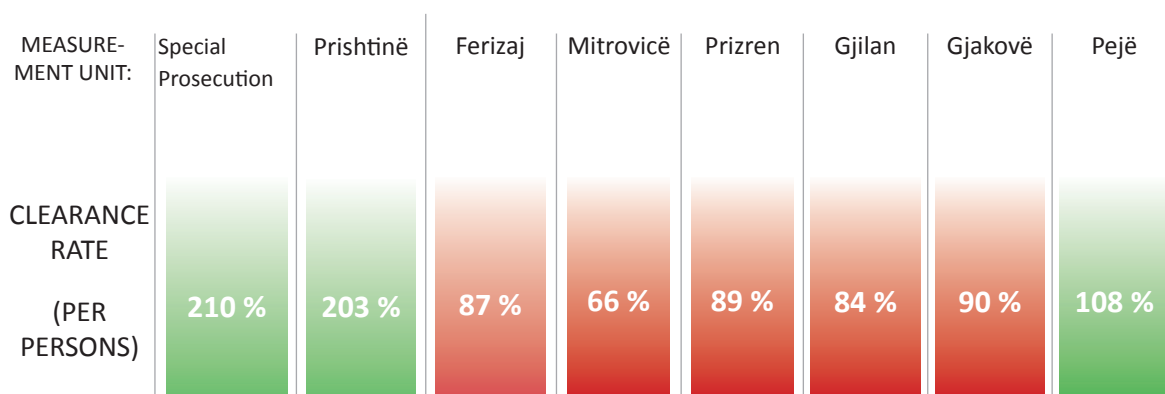
Based on 2016, statistics, the prosecutorial service has a high value of backlog index. What should be emphasized is that this index is derived only from cases pertaining to Chapter XXXIV of Criminal Code of Kosovo - Official Corruption, articles 422 - 437 based on official statistics of KPC, and as such it does not comprise all criminal offences.

Also, it should be pointed out that none of the above indicators shows the real duration of specific cases within the system until they are dealt with, since cases differ a lot in practice.

So far, we have presented the performance of prosecutions on national level. But how did certain Basic Prosecutions stand out individually? We can see the performance of individual Basic Prosecutions from the following statistics.

Basic Prosecutions	(PS = Cases at the beginning of the reporting period, transferred)	New cases opened during calendar year (I)	Cases in progress (LP)	Resolved cases during calendar year (R)	(PE unresolved cases at the end of the reporting period)
Prishtinë	884	265	1149	539	610
Ferizaj	41	32	73	28	45
Mitrovice	159	90	249	59	190
Prizren	60	80	140	71	69
Gjilan	17	198	215	167	48
Gjakove	32	31	63	28	35
Pejë	47	90	137	97	40
Special Prosecution	184	40	224	84	140

CLEARANCE RATE (FOR PERSONS) IN SEVEN BASIC PROSECUTIONS AND IN SPECIAL PROSECUTION



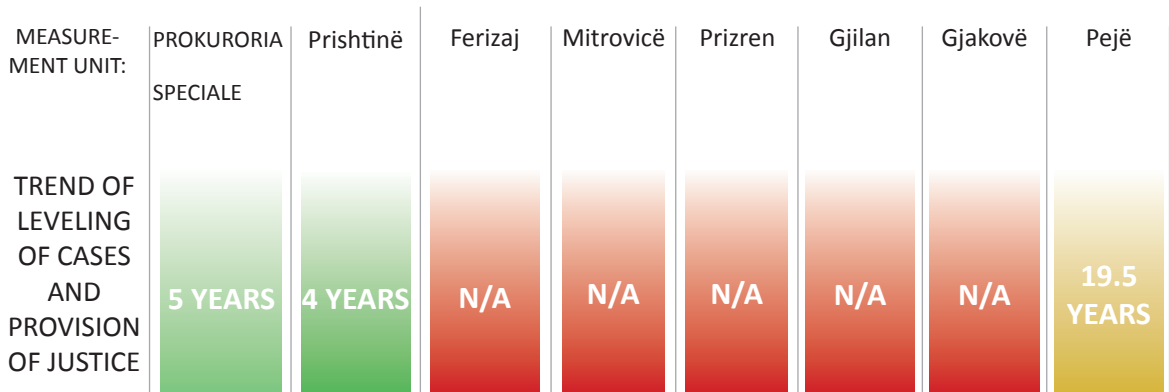
Based on case resolution formula, a good performance of a prosecution is when it resolves as many cases as it receives during the reporting period. The table above shows that Basic Prosecution in Mitrovica, followed by Gjilan and Ferizaj, showed the poorest performance in terms of ratio between handled cases divided by new cases, since they did not manage to handle as many cases as they received in the system in 2016.

On the other hand, Special Prosecution, Basic Prosecution in Pristina and Basic Prosecution in Peja had a better performance.

Special Prosecution and Basic Prosecution of Pristina had a better performance during 2016. Prizren, Peja and Pristina had the poorest performance.

In this report, Lëvizja FOL did not compare the clearance rate throughout years in order to see whether influx of cases was the same in the past*, ,but if such an influx continues during 2017 as well, Kosovo Prosecutorial Council may and should use these statistics in order to manage the process of reduction of backlogged cases in prosecutions which have a higher influx of cases and with a high backlog index.

CLEARANCE TREND (FOR PERSONS) BASED ON THE STATISTICS OF 2016 FOR SEVEN BASIC PROSECUTIONS AND THE SPECIAL PROSECUTION MEASUREMENT UNIT/ SPECIAL PROSECUTION TREND OF LEVELING THE CASES AND OFFERING JUSTICE / 19.5 YEARS



Based on statistics obtained from Kosovo Prosecutorial Council for 2016, clearance trend on central level is positive in the sense that the prosecutorial service on central level resolves more cases than it receives during one year. As mentioned above, with a ratio reaching 130%, on national level, prosecution would achieve the leveling in 2026, but this trend differs quite a lot among basic prosecutions.

*Such a measurement will be carried out in future reports

Expressed in years, Basic Prosecution in Pristina is the quickest in terms of leveling of cases, followed by Special Prosecution and Basic Prosecution in Peja. The reason behind this lies in the fact that Pristina handled the highest number of cases in process during 2016. Basic Prosecution in Pristina had a high influx during 2016, and nonetheless handled the highest number of cases. If influx of cases remains the same in 2017 with the trend showed in 2016, Special Prosecution and Basic Prosecution in Pristina would be the first ones to complete the transferred cases in the field of corruption and would be able to provide justice in the shortest time.

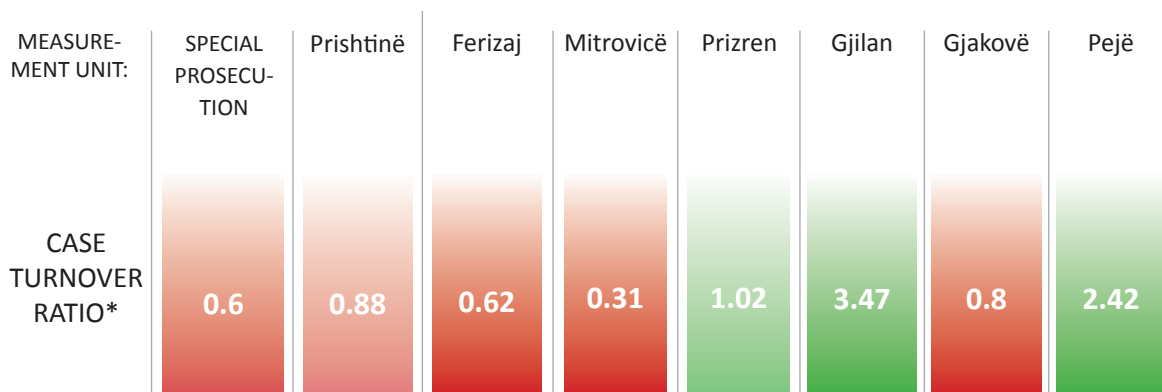
In terms of this indicator, Basic Prosecution in Mitrovica had poorer performance. This is because Mitrovica managed to handle few cases considering the number of transferred and new cases. Gjilan had a high ratio, but did not manage to handle the high influx of cases, transferring them for next year.

What is of concern is the negative trend of case resolution. The negative trend of case resolution means that prosecutions resolve fewer cases than they receive during one year. The highest negative trend had Mitrovica, since it transferred 31 cases, followed by Ferizaj with 14 transferred cases.

If we consider the influx of cases (new cases) and the clearance rate for 2016, Mitrovica, Ferizaj, Gjilan, Prizren and Gjakova would never achieve the leveling of their cases, i.e. resolve backlogged cases.

This is because, in order to resolve backlogged cases, these prosecutions should have a positive trend with a rate exceeding 100%. Consequently, for all prosecutions with a negative clearance trend the formula will not be applicable in this report.

CASE TURNOVER RATIO IN SEVEN BASIC PROSECUTIONS AND IN SPECIAL PROSECUTION (PER PERSONS)



Basic Prosecution in Mitrovica is below the performance level with a case turnover ratio of 0.31. This ratio is the result of poor performance of resolution of transferred cases. As we could see from the influx of cases, Basic Prosecution in Pristina received a total of 265 cases and resolved a total of 539 cases in 2016, handling in this way 274 more cases, while Basic Prosecution in Gjilan received a total of 198 cases and resolved 167 cases, transferring 31 cases in the following year.

However, Pristina has a lower ratio than Gjilan, because the total number of transferred cases over the years is higher in Pristina, prolonging the time taken to resolve the total number of cases.

* The higher the case turnover ratio, the shorter the time needed to give justice, or complete a case.

DISPOSITION TIME (DT) IN SEVEN BASIC PROSECUTIONS AND IN SPECIAL PROSECUTION

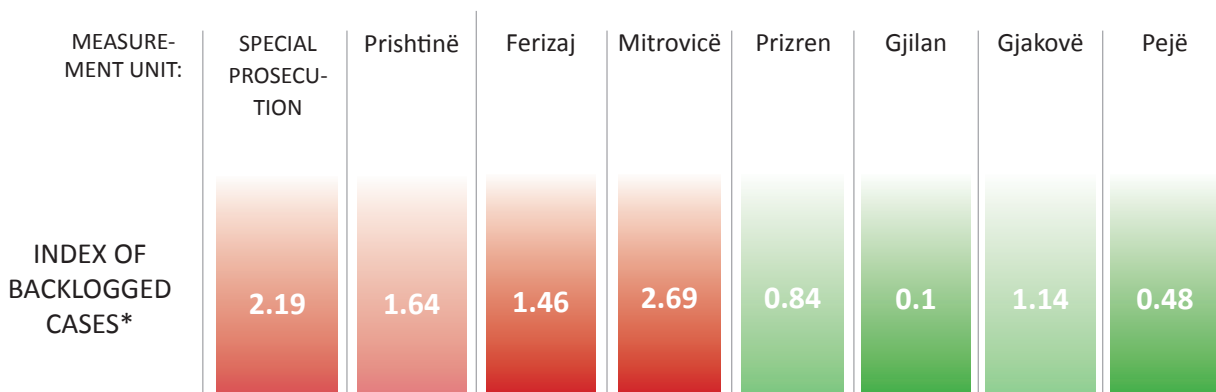
MEASURE- MENT UNIT:	SPECIAL PROSECU- TION	Prishtinë	Ferizaj	Mitrovicë	Prizren	Gjilan	Gjakovë	Pejë
DISPOSI- TION TIME IN DAYS	608 DAYS	413 DAYS	589 DAYS	1175 DAYS	354 DAYS	105 DAYS	456 DAYS	150 DAYS

Another indicator of the performance of prosecution is “Disposition Time (DT).” This is an important indicator since it translates the time needed for case resolution in days, simplifying further the comprehending of performance of prosecution.

In line with the formula recommended by CEPEJ and in line with the results of case turnover ratio, we can see that Mitrovica has the poorest performance compared to Gjilan and Peja. Disposition time considers the total number of cases waiting to receive justice. Due to high case turnover ratio in 2016, Gjilan needed the shortest time to handle cases.

For comparison purposes, based on case turnover ratio for 2016, Gjilan citizens can expect justice within 105 days, while those of Mitrovica should wait for a 1175 days’ period.

INDEX OF BACKLOGGED CASES IN SEVEN BASIC PROSECUTIONS AND IN SPECIAL PROSECUTION (PER PERSONS)



Considering the high number of backlogged cases in the prosecutorial system in general, one indicator is of particular importance which shows the performance of prosecutions in this direction. What we notice on national level is that the backlog index is rather high, reaching 1.32. But, why this high value of backlog index?

By analyzing data from basic prosecutions individually, we can see that certain prosecutions contribute to this high number based on their performance. For 2016, Mitrovica has the highest backlog index, followed by Special Prosecution, Pristina and Ferizaj. As we mentioned before, a high value of this number tells us that a longer time is needed to resolve a case, producing delays in handling cases. Mitrovica and Special Prosecution needed the highest number of days to handle cases, 608 days and 1175 days respectively.

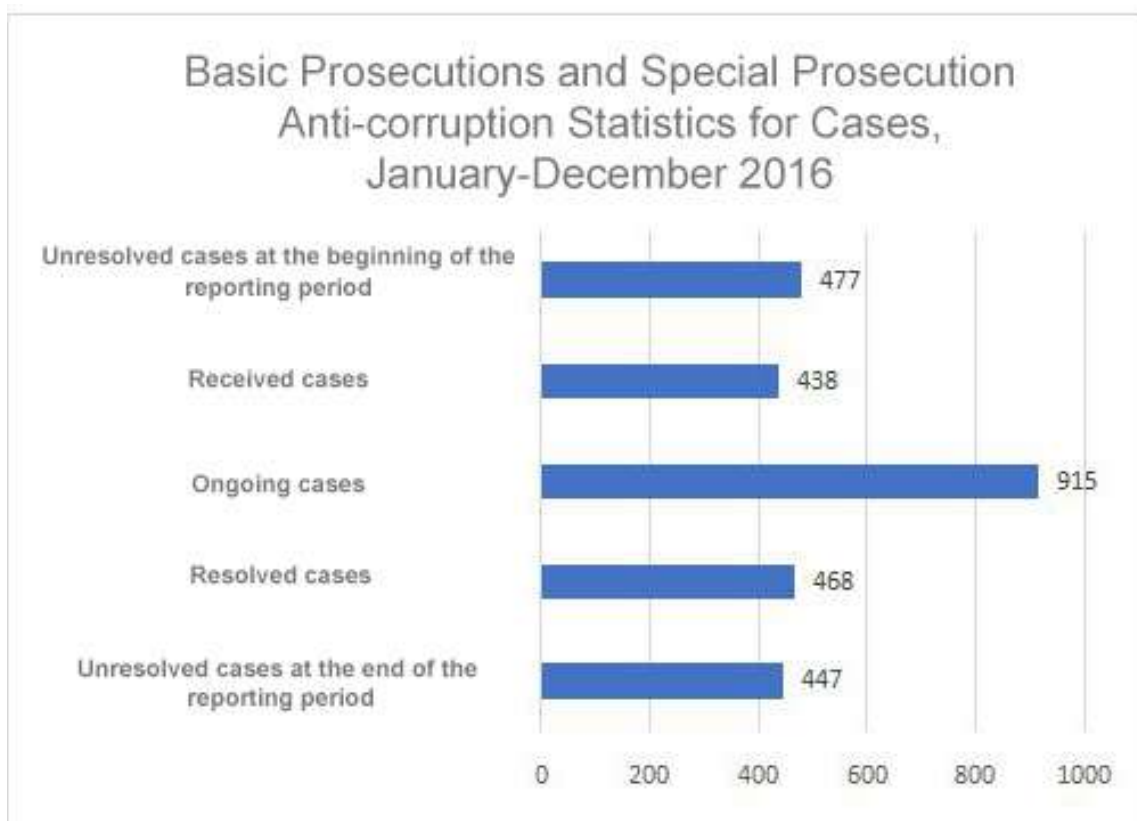
When the value is higher than 1.0 it means that a prosecution has resolved as many cases as it had at the beginning of the reporting period, making new cases enter and continue to be transferred and wait for justice for a certain period of time. Special Prosecution at the beginning of the reporting period had 184 cases and it handled 84 cases, while Mitrovica had 159 cases and handled 59 cases. On the other hand, Gjilan had 17 cases and handled 167 cases, reaching a very high case turnover ratio, and managing well the influx of new cases.

* The higher the case turnover ratio, the shorter the time needed to give justice, or complete a case.

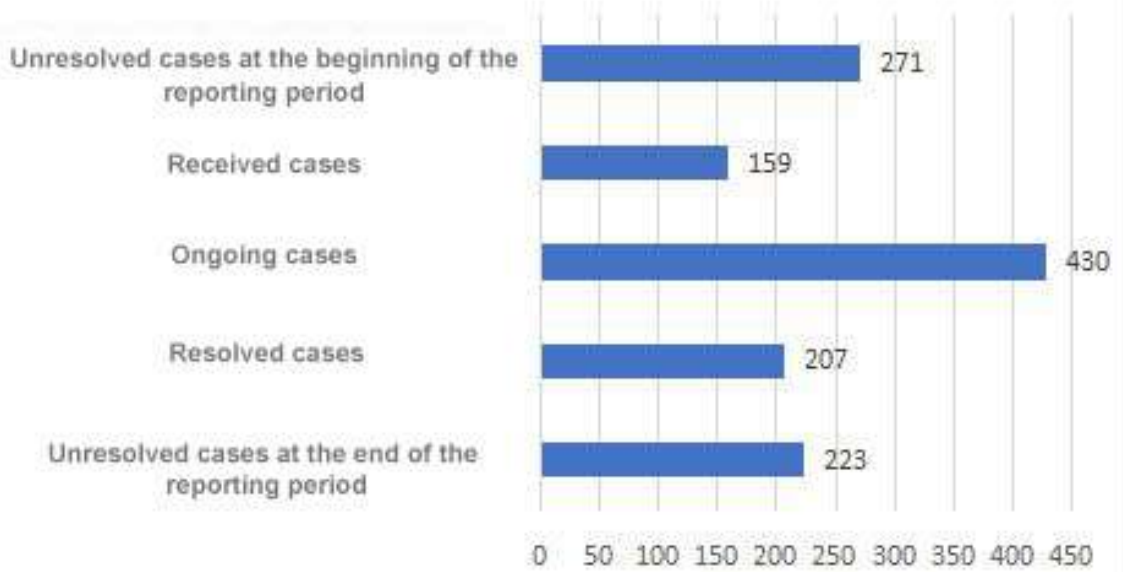
Basic Prosecutions and in Special Prosecution Anti-corruption Statistics for Cases - January-December 2016

Lëvizja FOL hopes that the above statistics will help the very prosecutions to see their work and increase the level of their performance.

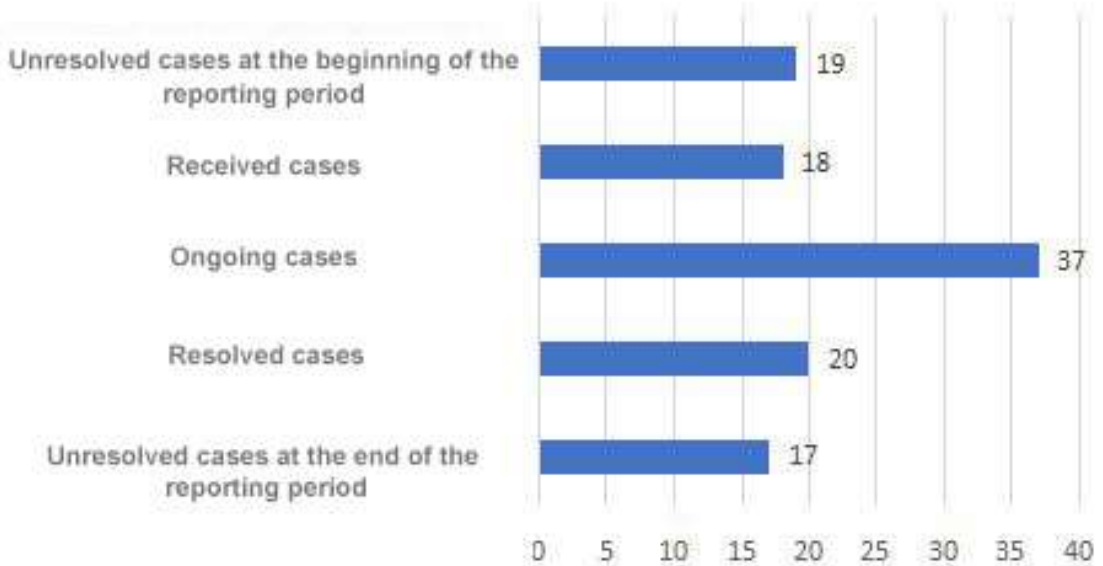
Out of 915 cases in progress during 2016, 2250 persons waited for justice. Due to specifics of the work of prosecutions, we used persons instead of cases in order to measure their performance. The following graphs show anti-corruption statistics, expressed in cases.



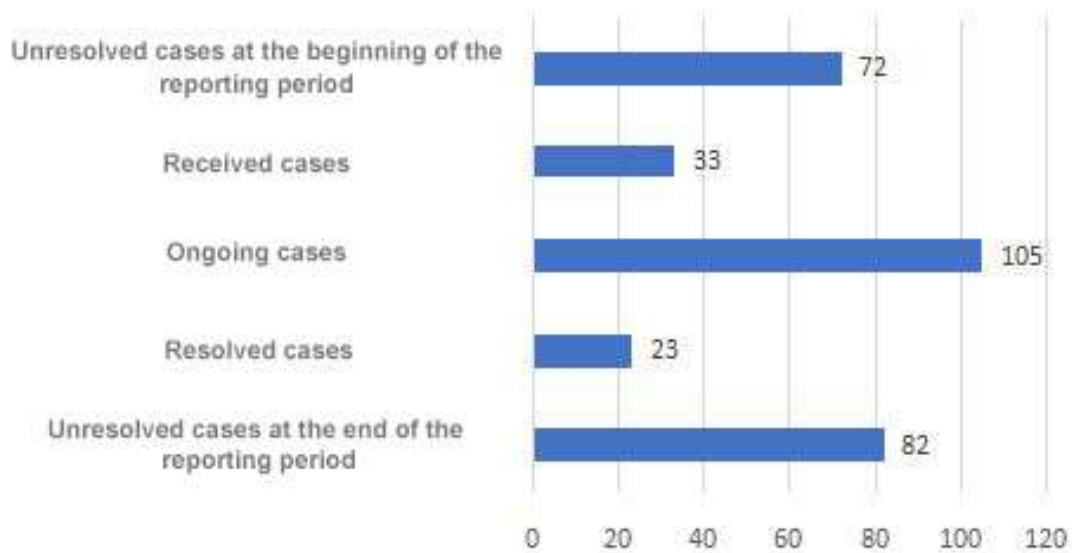
Basic Prosecution in Prishtina



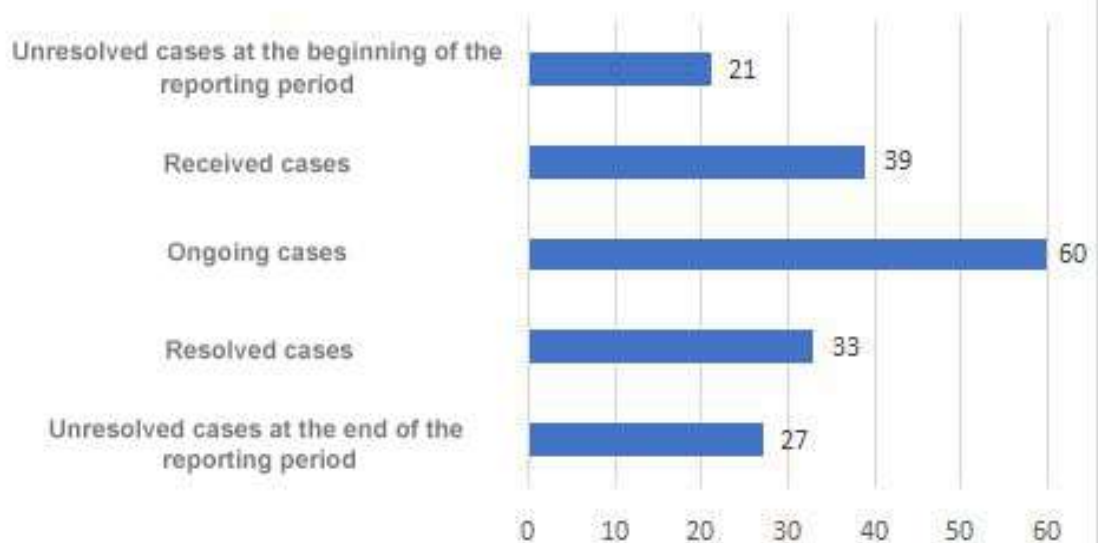
Basic Prosecution in Ferizaj



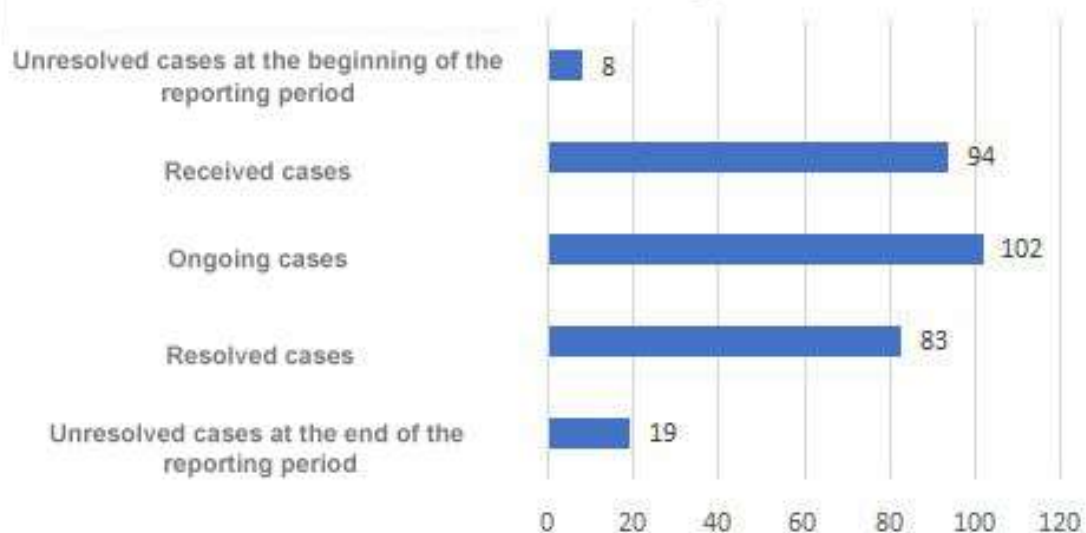
Basic Prosecution in Mitrovicë



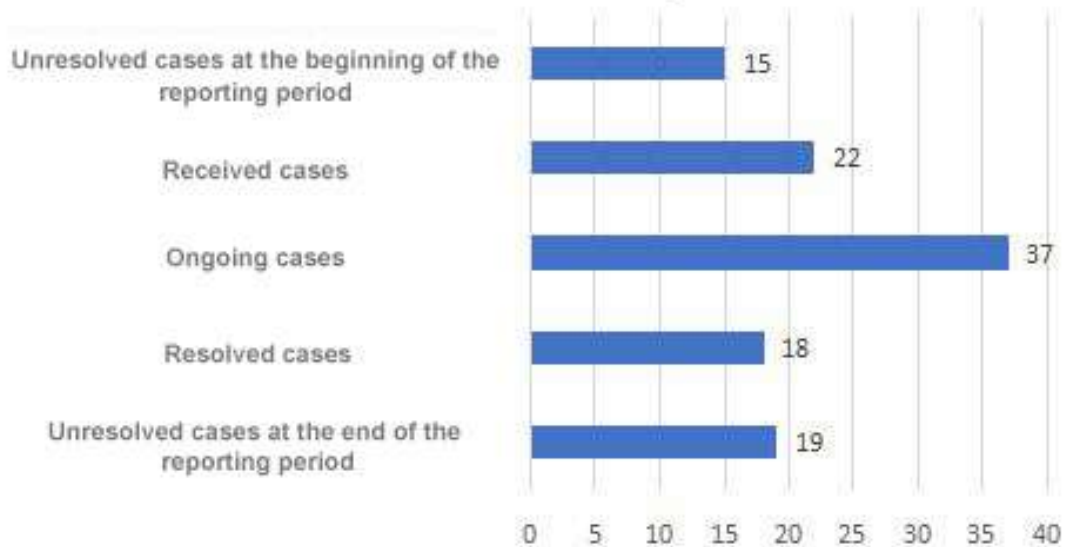
Basic Prosecution in Prizren



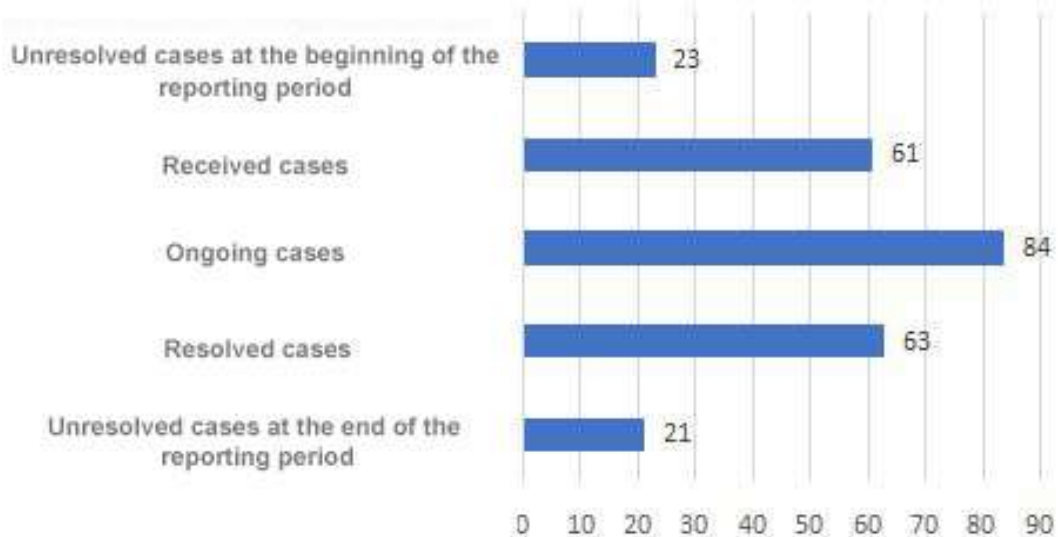
Basic Prosecution in Gjilan



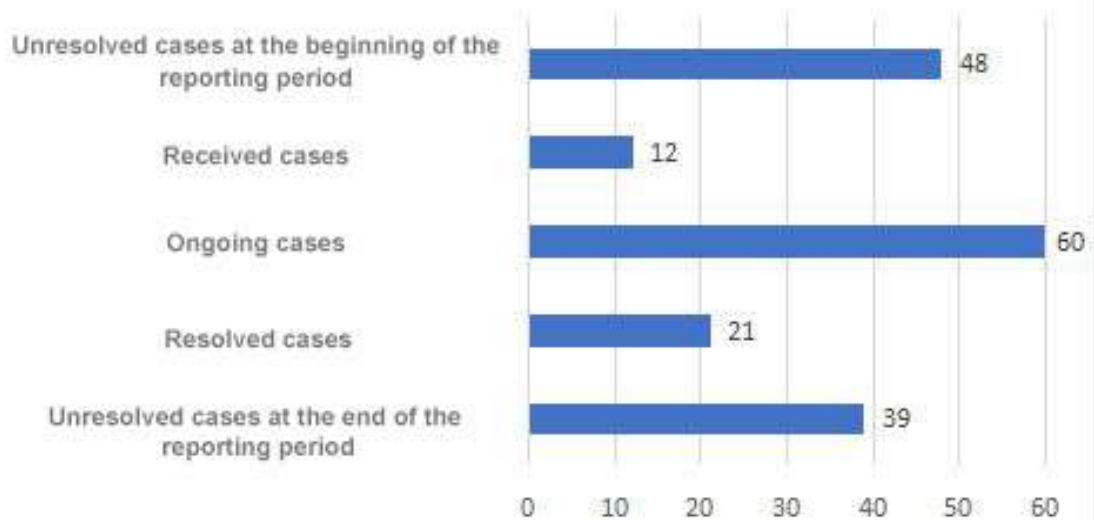
Basic Prosecution in Gjakovë



Basic Prosecution in Pejë



Special Prosecution



CONCLUSION

This is the first report of its kind by Lëvizja FOL which measures the performance of prosecution in its fight against corruption with numbers and accurate formulae.

Being an organization with a long experience in the fight against corruption, Lëvizja FOL shares the concern regarding high level of government corruption and poor performance of prosecution in its fight and prevention of corruption.

Despite good results shown during 2016 in handling a higher number of cases compared to cases received, the investigation of high level corruption is still a concerning matter.

Corruption should be investigated and punished at all levels, and prosecutors should find the courage to investigate grave cases of corruption by high level officials, by collecting enough evidence to file well-founded indictments.

Beyond Numbers is a call to look at the work of prosecution beyond unintelligible statistics. The report found that prosecution, in general, showed good performance in its fight against corruption in 2016, meaning that it managed to treat more cases than it received during the year.

However, figures fail to tell us how well criminal reports are prepared and submitted to prosecutions, and how well-prepared and well-founded are the indictments, and especially how well are they presented in courts. The report also cannot tell us whether indictments were intentionally produced as ungrounded, whether they were influenced by politics or corruption within the very prosecutions.

What this report shows is that prosecution was successful in dealing with anti-corruption cases, by reviewing a high number of those cases and by not prolonging justice.

This report simplifies the understanding of the performance of prosecution, by translating and analyzing the figures that carry meanings.

In this report, Lëvizja FOL made efforts to provide an insight, so that prosecution could see itself, assess itself and improve itself.

Pristina and Gjilan have a lot to teach to all other prosecutions in terms of management of influx of cases, but also in terms of clearance of remaining cases.

The citizens' trust in justice institutions cannot be reached overnight. For almost two decades, citizens were disappointed with the work of prosecution, waiting for years for corruption to be investigated. Therefore, much work is needed in order to gain this trust.

This report is only one of the many efforts in order to bring citizens closer to justice by explaining the work of the prosecutions to them.

The perception can be tackled only by using arguments based on facts.

This report does precisely this; on the one hand it helps citizens understand the work of prosecution, while on the other hand it helps prosecution improve its performance.

Lëvizja FOL will publish periodic reports on the work of the prosecution in the months to come.

Future reports will also include the three-month performance and a deeper analysis with additional indicators.

BIBLIOGRAPHY

European Commission. (2016, May 4). <http://europa.eu/rapid/search.htm>. Retrieved March 02, 2017, from <http://europa.eu>: http://europa.eu/rapid/press-release_IP-16-1626_en.htm

CEPEJ. 2015 CEPEJ Guidelines.

COMMISSION, E. 2015 COMMISSION STAFF WORKING DOCUMENT. KOSOVO* 2015 REPORT. EUROPEAN COMMISSION. Brussels: EUROPEAN COMMISSION.

Dakolias, M. 1999 Court Performance Around the World: A Comparative Perspective. Volumes 23-430.

Dakolias, M. (2014, 8 2). Court Performance Around the World: A Comparative Perspective. Yale Human Rights and Development Journal, Volume 2(Issue 1 Yale Human Rights and Development Journal), 57.

Department of State, U. 2015 Kosovo Human Rights Report.

Hall, D. H., & Keilitz, I. 2012 Global Measures of Court Performance. Discussion Draft Version 3. International Framework for Court Excellence.

Hall, D. H., & Keilitz, I. 2012 Global Measures of Court Performance. Discussion Draft Version 3 .

Hodzic, A., & Georg, S. (n.d.). What can be said on clearance rate and disposition time (and some more)?

KJC. 2013 “National Strategy for the Reduction of Old Cases”.

KJC. 2016 “Annual report on the group of criminal offences linked to corruption”.

04/L-082 Criminal Code of Kosovo. “Official Corruption and Criminal Offences against Official Duty”.

KPC2016 Annual report on the group of criminal offences linked to corruption.

Maliqi, A. 2016 Interview on the strategy for the reduction of anti-corruption cases in courts.

State Prosecutor Mr. 2015 “Priorities of Basic Prosecutions in Kosovo in the prosecution of Perpetrators of Criminal Acts and Investigation of Criminal Acts in General and the Reduction of the Number of Cases” Strategy

UNDP - Kosovo 2016 “Public Pulse XI”. Survey, UNDP - Kosovo, Pristina.

Uslaner, E. M. 2008 Corruption, Inequality, and the Rule of Law. New York: Cambridge University Press.

Endnotes on prosecution:

- In the chapter of corruption offenses, from the statistics sent by prosecution, there are offences which do not belong to this chapter. Such are the money laundering, unauthorized production, misuse of economic authorizations.
- Prosecution should publish also the dismissal of indictment by the courts because they show the qualitative performance of prosecutors. How they prepare the case and do they gather enough evidence
- The system of data collection is manual, causing often problems in matching numbers with other institutions, thus causing also confusion about what happened on some cases.

MINISTRY OF FOREIGN AFFAIRS OF DENMARK
DANIDA | INTERNATIONAL
DEVELOPMENT COOPERATION



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

This grant is funded by Democratic Society Promotion (DSP) project - financed by Swiss Cooperation Office Kosovo (SCO-K) in cooperation with the Danish Ministry of Foreign Affairs (DANIDA) and managed by Kosovar Civil Society Foundation (KCSF).

