

Fighting corruption by justice authorities in Prizren

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Abstract

Corruption is the use and abuse of public power for private purposes manifested in various ways. The most common are fraud, bribery, nepotism, abuse, favoritism, etc.

As a negative phenomenon of society, it is widespread in all countries of the world, but the rate of its rise differs. Corruption is more widespread in Southeast Europe and especially in the Western Balkans where we also are an integral part of these countries. In order to investigate this phenomenon, we have focused on the fight against corruption by the justice institutions in the Prizren region.

The objective of the research is to highlight the work of the justice authorities, that is of the Basic Prosecution and the Basic Court of Prizren in their proceedings related to the prosecution and conviction of perpetrators of criminal offenses sanctioned as "Official corruption and criminal offenses against official duty". The research targeted the time period of 2017 and 2018.

The methods used in conducting the research are qualitative and quantitative, analytical, and comparative.

Based on the foregoing, the focus of the paper is to clarify the efficiency of the Prizren Basic Prosecution's work in prosecuting perpetrators of corruption offenses as well as the sentences imposed by the Basic Court as the preventive and punitive purpose of punishment was achieved. Based on the research conducted it was concluded that although a considerable number of criminal cases of corruption were resolved, however, the sentences imposed did not achieve the specific and general purpose of the sentence, which had an impact on the efficiency of criminal prosecution developed. The tightening of punishment policies would affect the strengthening of the fight against corruption.

Keywords: Corruption, prosecution, court, criminal prosecution, punishments.

Introduction

Corruption is the abuse of official position and public authorizations with the intent to illegally acquire any material benefit. Among the official persons and the persons in position, this is primarily performed by taking bribes, gifts, abusing official duty or authority, and exerting influence (Kabashi 2008: p.2).

According to Transparency International, the country of Kosovo in 2015 was ranked the 85th compared to the previous year when it was ranked the 95th which was a progress, but again remained within the countries considered as the most corrupted in Europe. The legal and institutional frameworks are the key targets in fighting corruption. By more or fewer differences the criminal offenses against official duty are sanctioned in all contemporary criminal legislations (Salihu & Zhitija & Hasani 2014: p.1203). The Republic of Kosovo also has quite an advanced legal infrastructure regarding sanctioning of corruption. The Criminal Code of the Republic of Kosovo that entered into force in January 2013, in chapter XXXIV sanctioned the criminal

offenses categorized as “The official corruption and criminal offenses against official duty”. By specifying these criminal offenses their defensive subject is the normal, regular, and legal exercise of official duty by persons that by law were entrusted with various public and state authorizations (Salihu 2014: p. 651).

By the people, corruption is perceived as a vital phenomenon, present in all the aspects of their daily activity when very often they become its generator and inciter. If this phenomenon is also associated with problems of bureaucracy, professional incapacities, and state negligence, it is the main reason for the loss of trust of the citizens towards the state authority (Tanzi : p. 38).

Legislative changes in the Republic of Kosovo about criminal offenses of corruption

Concerning corruption in Kosovo, the respective legislation was constantly subject to supplement and amendment. Such amendments lately were applied in many of the laws named “Package of judiciary laws”. Some of the main issues supplemented and amended related to corruptive criminal offenses are:

1. The period of investigation is extended, so that the time period of investigation is two years, but can be extended to a possible maximum of four years under some specific circumstances (Project-Code no. 06/L-151 of Criminal Procedure 2019 of Republic of Kosovo [PCCPRK]: Article 157.4). This amendment was made because the current period for investigation is considered to be very short, especially for the criminal offenses related to organized crime and corruption. At the same time, this amendment will enable State Prosecutors to conduct efficient and effective investigations to discover the perpetrators of criminal offenses. “Extension of investigations is necessary especially for the criminal offense or bigger complex cases that need international expertise and legal support” (Shala, A, personal communication, 18 January 2019). Thus it is concluded that this should have an impact on reducing the decisions of dismissing criminal reports and increase the number of indictments.
2. The period of statutory limitation of the criminal offenses has been extended producing consequences in solving a greater number of cases (Code no. 06/L-074 Criminal Code of the Republic of Kosovo 2019 [CCRK]: Article 99). This way it would be reasonable to even be efficient to also determine the suspension of the period of statutory limitation only for these criminal offenses.
3. Adding of the new provisions related to the suspension of the high public officials for whom a convicting judgment has been announced related to criminal corruptive offenses and abuse of official duty, chapter XXXIII of the Criminal Code (CCRK: Article 62.3 & 63.4) respectively.
4. Also with the New applicable Criminal Code of the Republic of Kosovo, the punishments related to criminal corruptive offenses are harsher, thus the minimum imprisonment sentence for these offenses is 6 (six) months, and the maximum is 15 (fifteen) years (CCRK: Articles 414, 416, 420, 421, 422, 423, 429)
5. At the same time, it has been decided that the court judgments are to be published (PCCPRK: Article 373). Publication of these judgments will increase the transparency and accountability of Basic Courts, and “at the same time will

facilitate the work of the monitors who will not have to disturb the judges nor the court assistants to provide the final court decision but they will find it on the web page of the Court" (Lekaj, M, personal communication, 16 January 2018). All this will directly increase the transparency of the work of the competent courts in decision-making and publishing of their judgments.

Most of the aforementioned amendments are part of the Project Code of Criminal Procedure that was planned to enter into force on January 1, 2020, except for the harshening of the punishments and extension of the period of statutory limitation that are amendments sanctioned by the Criminal Code that have entered into force in April 2019 (CCRK: Article 343). It is important to point out that this Project Code of Criminal Procedure has not entered into force at the predicted period as a consequence of the inability of the constitution of public authorities until the end of December 2020, (Assembly of the Republic of Kosovo: 2019) even though the extraordinary elections due to the dispersal of the Kosovo Assembly were held in October 2019 (President of the Republic of Kosovo: Decision no. 236/2019). Although the Assembly was constituted the political institutions again did not demonstrate stability either in 2020 and as a result of this the Criminal Procedure Code Project passed only in the first review in May 2019 (Assembly of the Republic of Kosovo: Decision no. 06-V-361) and since then until May 2020 was not proceeded for further reviews (<http://www.kuvendikosoves.org/shq/projektligjet/projektligji/?draftlaw=176>), therefore in this situation it is not certain when exactly this code will enter into force.

Prosecution of the perpetrators by the Basic Prosecution Office in Prizren

The Constitution of the Republic of Kosovo (published in 9 April 2008) and Law No. 03/L-225 on State Prosecution [LSP] defines that the State Prosecutor is the independent institution with authority and responsibility for the prosecution of persons charged with committing criminal acts and other acts specified by law (Official Gazette of the Republic of Kosovo/Pristina: Year V/No. 83/29 October 2010).

The State Prosecutor of the Republic of Kosovo has the following organizational structure:

the office of the Chief State Prosecutor, Special Prosecution Office, Appellate Prosecution and Basic Prosecution Offices in the territory of seven (7) regions of Kosovo (LSP: Article 14), including Prizren, since our study is limited to the activity of fighting corruption by the judicial authorities in this city in 2017 and 2018.

From the analysis of the statistical report of the Basic Prosecution in Prizren for the year 2017, it resulted that this prosecution office reviewed a total of seventy-seven (77) criminal reports, of which until December of the same year fifty-six (56) criminal reports were completed and twenty-one (21) criminal reports remained uncompleted. In 2018 the Basic Prosecution Office in Prizren handled a total of sixty-nine (69) criminal reports and forty-four (44) criminal reports were completed and twenty-five (25) uncompleted criminal reports remained uncompleted that were transferred to the year 2019.

If these statistical data are compared, from the chart below we observe a trend of decrease of criminal reports in 2018, but is typical that the greatest number of criminal

reports that remained uncompleted are of the end of the year 2018, “probably because these cases were quite complex to be investigated and take time due to expertise about disclosure and their verification” (Shala, A, personal communication, 18 January 2019).



Figure 1: Statistics of the total number of received criminal reports resolved and unresolved during 2017 and 2018 by Basic Prosecution Office in Prizren

I would like to point out that the State Prosecutor after receiving the criminal report he/she evaluates it and based on specified conditions can decide to dismiss the criminal report, to ask for additional information, to commence the application of investigations or to file an indictment (Sahiti & Murati, 2013: p. 308). If the prosecutor dismisses the criminal report than the case is considered settled. But if the prosecutor decides to carry on the investigations, following their conclusion the prosecutor decided if he/she will file an indictment or dismiss the investigations as a result of insufficient evidence that does not prove that the criminal offense was committed and only in this situation the prosecutor informs the court about the interruption of the investigations. As in the case of dismissing the criminal report and in the case of interruption of investigations, the appeal to these decisions of the State Prosecutor is not allowed by any of the parties to evaluate if the decision made is just and pursuant to the law and that there is no evidence proving that the criminal offense was committed. Even the court as the entity of the criminal procedure cannot control these decisions during the investigation stage or otherwise known as the pretrial criminal proceeding. So the decision of the prosecutor is non-appealable and final (Miftaraj & Musliu 2018: p.13-14).

As for the same situation in the Republic of Albania, the Criminal Procedure Code has sanctioned the right to appeal against the decision for dismissal of the indictment (Criminal Procedure Code of the Republic of Albania: Article 329). While analyzing the legal provisions it can be concluded that such decisions are not published. Failure to appeal and failure to publish them combined directly influences the lack of transparency and accountability of the prosecutor. In these situations, with these guarantees offered to the prosecutors, room for suspicion is created that they can close the cases in contradiction to the law, so even if there is evidence that argument that the an unlawful act was committed.

So, to avoid the abuse of the State Prosecutor in these cases when his/her decision of dismissing the indictment, the interruption of investigations respectively due to the lack of evidence, with the purpose of subjugation of this decisions to the legal supervision like with the decision of the highest courts, it is necessary that in Criminal

Procedure Code Project to be approved soon, the institution of the subsidiary indictments re-established from the Provisional Criminal Procedure Code of Kosovo that was in force from 2004 to December 2012 (<https://gzk.rks-gov.net/ActDetail.aspx?ActID=8675>) by which it was established that the injured party within thirty (30) days from the day he/she was informed by the public prosecutor that the criminal report was dismissed, he had the right to file a criminal prosecution with a private subsidiary indictment and to prosecute the perpetrator of the criminal offense. Also during the main trial when the public prosecutor dismissed the indictment, the injured party continued the criminal prosecution immediately at the trial or ten (10) days later in writing when he evaluated that the subsidiary claiming party had the right of criminal prosecution. By this, the supervision of the decisions of the State Prosecutor is provided by the competent court at the subsidiary procedure carried on by the injured party (The Provisional Criminal Procedure Code of Kosovo: Chapter V, Articles 53-68).

It is also immediately needed to sanction the publication of all the decisions of the Basic Prosecution Offices and to enable assailing with legal means the decisions on the dismissal of criminal reports or termination of investigations by one party as it is in its interest or also by the court, as I already elaborated above with the private indictment and subsidiary indictment which supervision institutions should be taken from the Provisional Criminal Procedure of Kosovo 2004.

It is significant to treat the manner how these criminal reports were resolved that were treated by the Basic Prosecution Office in Prizren in 2017 and 2018.





Figure 2: Statistics related to the manner the criminal reports were resolved in 2017 and 2018

From the above statistics, we concluded that the State Prosecutors were challenged by a large number of criminal reports that they handled, but during their treatment, they filtered them for the year 2017 too and we notice that there was a small difference between the indictments filed, in 2017 we had more indictments filed respectively, while in 2018 there was a tendency of decrease of the number of indictments and decisions for dismissal of criminal reports and termination of investigations. These statistics do not include criminal reports sent to incompetence (when a prosecution office of another region is competent to resolve them). Although in 2018 the decisions for dismissal of criminal reports and the decisions for termination of investigations prevailed, so more cases were closed than the indictments filed, the Chief Prosecutor of this Prosecution Office estimated that “this Prosecution Office was quite efficient in solving cases in 2018 related to criminal offenses abuse of official duty or corruption” (Personal communication, 18 January 2019).

In these circumstances from the entire above elaborated situation, to increase the efficiency of the Basic Prosecutions, including the one in Prizren, it is necessary that a certain number of state prosecutors are specialized for prosecution and professional investigation of only the criminal offense of corruption. The Chief Prosecutor of the Basic Prosecution in Prizren agrees with such conclusion who related to this issue pointed out “this is a good opportunity, but due to the small number of the prosecutors of the Serious Crimes Department the possibility of specialization and allocating of prosecutors only for this kind of criminal offenses causes problems at work. But the specialization of the prosecutors is more than necessary” (Personal communication, 18 January 2019).

Therefore a challenge for this Basic Prosecution in treatment of corruption cases is that the small number of state prosecutors engaged will continue and as a result of this measures should be taken in future and at the same time for the increment of the number of state prosecutors as well as their specialization in prosecuting and investigating criminal offenses of corruption.

Trial of criminal offenses of corruption by the Basic Court in Prizren

Following termination of investigation or when the state prosecutor considers that the information he has for the criminal offense and the perpetrator present a well-grounded suspicion that the defendant committed the criminal offense or the criminal offenses, the proceeding before the trial can be applied only based to the indictment filed by the state prosecutor (Code no.04/L-123 Criminal Procedure Code: Article 240). So we concluded that the filed indictments for the criminal offenses of corruption by the Basic Prosecution in Prizren in 2017 and 2018 were tried by the Basic Court in Prizren. As a result, in the paper, the subject of investigation and study are the criminal offenses of corruption tried by the Basic Court in Prizren during 2017 and 2018. Regarding the period January – December 2017, from the statistical data provided by the Basic Court in Prizren it results that a total of fifty (50) criminal cases classified according to the Criminal Code of Kosovo in chapter XXXIII “Official Corruption and Criminal Offenses against Official Duty” have been treated. While for the same period in 2018 the statistics show that a total of thirty (30) criminal cases of corruption were tried. In the table below the data relating to the criminal offenses of corruption tried by the Basic Court in Prizren in 2017 and 2018 were presented.

Statistics for the criminal offenses “Official Corruption and Criminal Offenses against Official Duty”		
Year	2017	2018
Cases inherited from previous year	23	14
Ne cases received during eh current year:	27	16
Total cases handled during the year:	50	30
Judgment - punished by imprisonment	8	4
Judgment - punished by fine	7	4
Judgment - punished by a suspended sentence	9	6
Acquitting Judgment	9	4
Rejecting Judgment	1	2
Resolved in another way	2	0
Relative / absolute bar	0	1
Total cases resolved for the year:	36	21
Unresolved cases at the end of the year:	14	9

Table 1: Statistical data for the Basic Court in Prizren related to the criminal offenses “Official Corruption and Criminal Offenses against Official Duty” in 2017 and 2018

Based on statistical data it can be concluded that there are no criminal cases with statutory limitations in 2017 but in 2018 we have only one criminal case with a statutory limitation that makes us realize that this court was efficient in treating the corruption cases with priority.

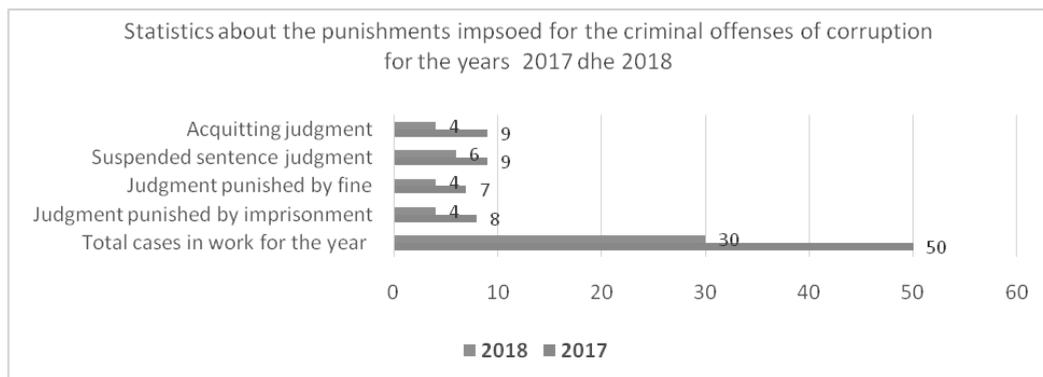


Figure 3. Statistics related to punishments imposed for the criminal offenses of corruption for the years 2017 and 2018.

Based on the purposes of the punishment that according to the applicable legislation consist of punishing and preventing the perpetrator from coming criminal offenses in the future and rehabilitating him/her, the general prevention to prevent other persons from committing criminal offenses and to express the social condemnation for the criminal offense, to increase the morale and strengthen the obligation to obey the law (CCRK: Article 41), we can conclude that the Basic Court in Prizren in 2017 and 2018 in the trials of criminal offenses of corruption applied more punishments by fine and suspended sentences that for such a rank of criminal offenses such punishments are considered very light punishments and that by imposing the punishment the purpose was not achieved with the punished person, the preventing and punishing purpose respectively, that conveys a negative message to the people regarding strengthening the obligation of obeying the law.

If we refer to the resolved cases in 2018, the Basic Court in Prizren with twenty-one (21) judgments is the most successful in the country regarding resolved cases. But regarding punishments, if the above statistical data is analyzed about criminal offenses of corruption, it results that the Court did not take respective legal decisive measures regarding ample legal punishments of the perpetrators of criminal offenses of corruption, because the low or formal punishment policy does not prevent committing criminal offenses of corruption (Lekaj, M. personal communication, January 16, 2019).

Then it should be pointed out that the criminal offenses sanctioned within the chapter of the Criminal Code of the Republic of Kosovo "The official corruption and criminal offenses against official duty", from statistical data we observed that in 2017 and also in 2018 the criminal offense abuse of official position and public authorizations was the most reviewed but what it specifies it is the sanctioning of the same when in 2017 most of the judgments by imprisonment were imposed for committing this offense, while in 2018 there isn't a single judgment by imprisonment. This result is another fact that the purpose of punishment imposed by the judgments of the Basic Court in Prizren, Serious Crimes Department is not realized and it is followed by the criminal

offense: appropriation on dutyreceiving and giving bribes.

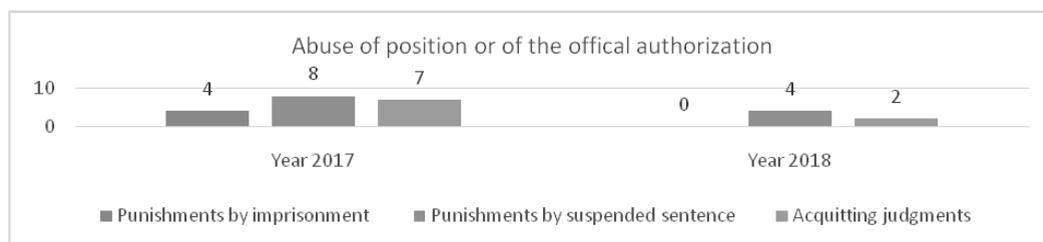


Fig. 4: Punishments imposed for committing the criminal offense abuse of position or the official authorization in 2017 and 2018

Although by entering into force of the last legal amendments soon the sanctions for criminal offenses of corruption have distinctly increased, but if the practice of the Basic Court in Prizren imposing low punishments continues, it seems that this amendment will not be applied as a result of the domination of the punishments by fine, of suspended sentences and acquitting judgments, that will directly reflect in undermining the trust of the people of Prizren in prosecuting and fighting corruption by the justice authorities. Only the meritorious punishments of the perpetrator of the criminal offenses would regain the trust of the people in the justice authorities of Kosovo, including the ones in Prizren. At the same time, this would produce consequences also in the perception of the European Commission that in the future Reports on the Progress of Kosovo, corruption is not defined as an endemic occurrence in Kosovo any more (Kosovo Report: 2016, 2018).

Conclusions and recommendations

Based on the research related to the fight of corruption in general in Kosovo, especially by the justice authorities in Prizren, we came to the conclusion that:

- By Code no. 06/L-74 Criminal Code the Republic of Kosovo the sanctions against the criminal offenses of corruption have harshened and by the Criminal Procedure Code of the Republic of Kosovo the period of investigation was extended.
- Based on the statistical data of the Basic Prosecution in Prizren in 2018 a trend of decrease of the criminal reports was observed, but we noticed that a greater number of criminal reports were not completed at the end of this year.
- At the Basic Prosecution in Prizren, during 2018 more cases were closed than indictments filed and as a result of this the decisions for dismissal and termination of investigations dominated.
- Failure to appeal and to publish the decisions of the state prosecutor regarding the dismissal of the criminal report and termination of the investigation made a direct impact in the lack of transparency and accountability.
- The small number of state prosecutors for handling the cases of corruption will continue to remain a challenge for the Basic Prosecution in Prizren.
- According to statistical data the Basic Prosecution in Prizren in 2017 and 2018 when judging the perpetrators of the criminal offenses of corruption we see that the Basic Court in Prizren applied more punishments by fine and suspended sentences that for the hazardousness of the criminal offenses of corruption are considered

as low punishments and as a result, the Court by its judgment did not realize the preventive and punitive purposes of the punishment imposed.

From the analysis conducted with the above conclusions the following recommendations result:

- It is an urgent need that the publishing of all decisions of the State Prosecutors of the Basic Prosecution Offices are sanctioned by law especially the legal determination of attacking by legal means the institution of private and subsidiary indictment of decisions regarding the dismissal of criminal reports or suspended sentences by the injured party and the court.
- To analyze the causes that have impelled the persecution authorities, the State Prosecutor in Prizren to terminate the investigations and dismiss the criminal reports of the perpetrators of the criminal offenses of corruption and at the same time the reasons that the Court in Prizren imposes suspended sentences.
- Measures should be taken to increase the number of state prosecutors as well their specialization in prosecuting and investigating criminal offense of corruption by Basic Prosecution Offices, including the one in Prizren.
- The punishment policy by the Basic Court in Prizren should be harshened in order to realize the legal purpose of the special and general punishment imposed.

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