



# CORRUPTION IMPUNITY

# ANNUAL COURT MONITORING REPORT 2021

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**BIRN**

Balkan Investigative Reporting Network

**I/KS**

Internews Kosova

**KJC**

Kosovo Judicial Council

**KPC**

Kosovo Prosecutorial Council

**General Guidelines**

The Supreme Court's Guidelines on Sentencing Policy

**Corruption Guidelines**

The Supreme Court's Specific Guidelines on Official Corruption and Criminal Offences Against Official Duty

## Introduction

Balkan Investigative Reporting Network (BIRN) and Internews Kosova (I/KS), the first organisations from Kosovo to monitor and evaluate the country's justice system, present the Annual Court Monitoring Report 2021, the 16th consecutive report of its kind.

The report is a result of the continuous monitoring of the judicial and prosecutorial systems at all levels. It aims to identify any threats to the justice system as a result of shortcomings and inconsistencies. It also aims to provide concrete recommendations to address these areas. The purpose of this monitoring is to improve efficiency, accountability and transparency in the justice sector, one of the key pillars of state-building.

The report focuses on sentencing policies and practices in corruption cases across all of Kosovo's courts, a key area of the justice system in terms of issuing merit-based and uniform sentences to all those convicted of corruption charges.

The courts have been continuously criticised for the way they handle corruption cases, such as allowing cases to drag out and surpass the statute of limitations, issuing judgements — usually acquittals — that are lacking in quality, and issuing sentences that are inadequate and disproportionate when compared to the corruption offence and that in turn do not fulfil the sentence's purpose.

The primary role of the courts is to issue adequate, justifiable, coherent, legal and transparent sentences to those who have been convicted of an offence. In corruption and abuse of duty cases, the courts need to be meticulous in their sentencing, knowing that society must fight this phenomenon, which is cited as a key barrier to social and economic development in the country. Almost all domestic and international reports, including those produced by BIRN and I/KS, reflect shortcomings in the investigative process in corruption cases that start during the very initial investigation phase. A worrying feature is the unsatisfactory quality of indictments, especially those concerning financial investigations and the identification of assets obtained via criminal means, while other concerns range from prolonged judicial processes to low-quality judgements that are later annulled by higher courts. The Supreme Court has also concluded that individuals accused of corruption have been unlawfully freed in certain cases.

These recorded deficiencies usually result in acquittals or dismissals, while the courts deem it sufficient to simply conclude that damage was caused, without addressing the issue of responsibility and repudiating the consequences.

As if this weren't enough, dissatisfaction with the performance of the judiciary is not only due to its failure to identify corruption perpetrators and hold them to account. There are plenty of cases in which courts have concluded that the actions of those accused of corruption both fulfilled the elements of a criminal offence and that they bore responsibility and yet the sentences issued are clearly noncompliant with the weight of the crime. What is even more alarming is that, in the majority of corruption cases, courts have delivered conditional sentences or symbolic fines. Even in cases where courts have ruled to imprison a perpetrator, the sentence severity has been less than what is foreseen in law, and guilty parties have been able to convert their prison sentences into fines.

In this regard, the judiciary, specifically the Supreme Court of Kosovo, produced Guidelines on Sentencing Policy (hereinafter the "General Guidelines") in 2018. Although not binding, the General Guidelines aim to provide solutions to problems identified when determining the type and duration of sentences, standardise judicial practice and support the issuing of adequate sentences that are proportionate to the weight of offence.

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<sup>1</sup>BIRN and I/KS's court monitoring report covering 2019 is accessible at: <https://kallxo.com/wp-content/uploads/2021/05/EN-RAPORTIO-I-MONITORIMIT-2020-WEB.pdf>

Furthermore, in aiming to standardise judicial practice on issuing sentences in corruption cases, in June 2021, the Supreme Court adopted Specific Guidelines on Official Corruption and Criminal Offences Against Official Duty (hereinafter the “Corruption Guidelines”).

The Corruption Guidelines aim to assist Kosovo’s judges in issuing proportional, meritocratic and well-reasoned sentences in corruption cases.

A key part of the guidelines is their reminder to judges that responsibility and damages caused are two key factors that ought to be considered when defining the type and length of a sentence. Further, the Corruption Guidelines present a table with types of sentences for each specific criminal offence foreseen in the Criminal Code while taking into account the individual circumstances of the case.

Through an analysis of the 40 corruption case judgements that have resulted in convictions since 2020, the report explores the extent to which the sentences handed out comply with the Criminal Code and the instructions in the guidelines that explain the Code’s provisions.

The first section of the report is dedicated to an analysis of statistical data from the past five years concerning cases from the Criminal Code’s chapter on Official Corruption and Criminal Offences Against Official Duty, and it reflects on the performance, or lack thereof, of judges and prosecutors within the Republic of Kosovo.

Further analysis of data from the past five years quantitatively indicates the shortcomings of Kosovo’s courts in dealing with corruption cases and the ever-decreasing efficiency of the State Prosecutor in fighting corruption.

The report also takes a comparative look at data from each of Kosovo’s courts from the past five years to gain insight into how each has performed in dealing with corruption cases over time. The same approach is used to review how individual courts have resolved cases over the past five years.

The report provides a summary of the results of internal mechanisms within the judiciary – performance assessment and disciplinary measures taken during 2021 – while also assessing the judiciary’s performance in sequestering, freezing and confiscating assets in corruption cases.

It concludes with a recommendations section that provides workable solutions to the identified shortcomings, with the intention of improving the performance of Kosovo’s justice system and fulfilling citizens’ justice sector expectations and needs.

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<sup>2</sup>The Corruption Guidelines document is accessible at: [https://supreme.gjyqesori-rks.org/wp-content/uploads/legalOpinions/5884\\_Corruption%20Specific%20Guidelines-%20June%202010.pdf](https://supreme.gjyqesori-rks.org/wp-content/uploads/legalOpinions/5884_Corruption%20Specific%20Guidelines-%20June%202010.pdf)

## Executive summary

An analysis of 40 judgements issued by Kosovo's courts on corruption cases in 2021 reveals that Kosovo's judiciary, including the State Prosecutor and particularly the courts, does not fulfil expectations.

In particular, non-uniform and disproportionate sentencing policies in corruption cases are worrying and cause uncertainty and dissatisfaction amongst citizens while sparking criticism from local civil society and international reports.

Supreme Court efforts to resolve the issue of adequate judicial sentences, particularly those relating to corruption cases, have proved unsuccessful.

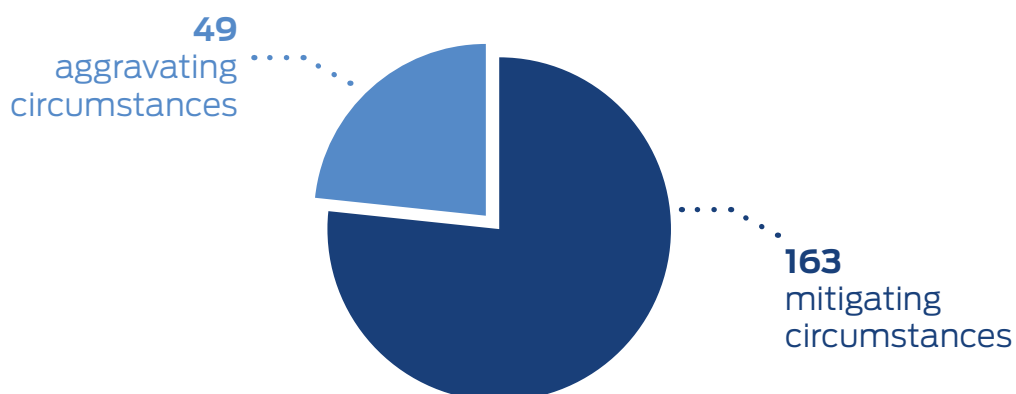
The Supreme Court's General Guidelines, Specific Guidelines on the Imposition of Fines and Corruption Guidelines clearly steer judges and prosecutors when it comes to issuing adequate and proportional sentences in corruption cases. However, information gathered during the analysis of the 40 judgements from 2021 reveals that such documents that are provided for judges and prosecutors are not taken into account as required. This is also reflected in the overall quality of corruption judgements, and the efficiency and efficacy of the judiciary as a result, which in turn affects the perception of the justice sector in public opinion.

This is further evidenced by the decreasing number of both new indictments filed and corruption cases resolved across Kosovo's courts, and it appears that the negative results overshadow efforts by the justice system to improve its image in the eyes of Kosovo's citizens.

The lack of concrete results in the fight against corruption in terms of adequate sentences, confiscation of assets, compensation for damage caused to public funds, and the fact that high-profile cases — including those highlighted for visa liberalisation — have passed the statute of limitations, leaves the impression that corruption has become immune to all efforts by the justice system.

The analysis of the 40 corruption case judgements reveals discouraging findings on the quality of reasonings related to the type and length of sentences issued in such cases.

In particular, the inflated and unjustified use of mitigating circumstances and the ignoring of aggravating circumstances are very worrying. In 38 out of the 40 judgements analysed, there was no measurement of mitigating versus aggravating circumstances, which in turn resulted in very soft sentences that represented the bare minimum foreseen by the Criminal Code.





**In 27 of the 40** judgements analysed, more mitigating than aggravating circumstances were presented.

**In only four of the 40** judgements analysed were the number of aggravating circumstances higher than the number of mitigating circumstances.



**In nine of the 40** judgements analysed, an equal number of mitigating and aggravating circumstances were recorded.

**In 18 of the 40** judgements analysed, no aggravating circumstances were recorded.



In parallel with the obvious discrepancy between mitigating and aggravating circumstances, an even more worrying issue noted in the analysis of the judgements was the lack of quality justification as required by the guidelines.





40 5

**Only 5 of the 40** judgements analysed were adequately justified in full compliance with the requirements of the Criminal Procedure Code and especially the guidelines issued by the Supreme Court on recording and justifying mitigating and aggravating circumstances, length of sentence, type of sentence, the issuing of suspended sentences, conversion of effective imprisonment into fines and accessory sentences.

**In only 12 of the 40** judgements analysed was the judgement issued in compliance with the guidelines regarding the length of sentence issued.



12 40



40 10

**In only 10 of the 40** judgements analysed were effective prison sentences issued, while the maximum sentence of three years' imprisonment was only recorded in one case.

**In 35 of the 40** judgements analysed, the sentence issued was at the minimum threshold, while some cases were even below the minimum sentence foreseen for the criminal offence.



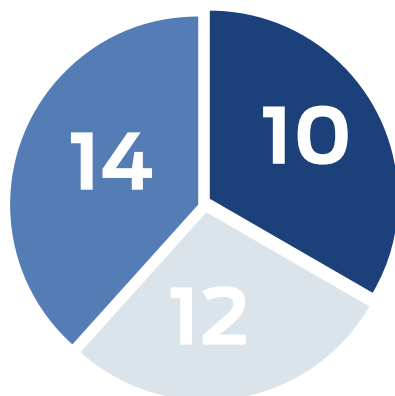
35 40



40 2

**In only 2 of the 40** judgements analysed was a sentence recorded that was higher than the starting point of the punishment foreseen by the General Guidelines.

Another concerning issue is the unjustified use of alternative sentences in corruption cases.



In **14 of the 40** judgements analysed, suspended sentences were issued, while none of those judgements contained sufficient justification as to why such a sentence was issued in order to be in full compliance with the guidelines.

On the other hand, only **10 of the 40** judgements analysed contained accessory sentences for people convicted of corruption charges, while one case analysed contained a rejection of a proposed accessory sentence with the justification that accessory sentences cannot be issued as part of a suspended sentence – which is in violation of the conditions stipulated in the guidelines.

Besides suspended sentences, in **12 of the 40** judgements analysed, conversion of effective imprisonment into fines was permitted, while only one of the 12 cases contained a justification that was in full compliance with the guidelines.

The analysis of statistical data from the past five years has also highlighted a lack of progress in handling corruption cases.

#### Statistics show that, in 2021, there was a

**18%**

decrease in the number of corruption indictments filed in Kosovo's courts compared to the previous year

**26%**

fewer corruption cases were resolved by the courts

**2%**

even though the number of unresolved corruption cases decreased by 2%.

Information from disciplinary and performance assessments of judges and prosecutors does not match the situation on the ground when it comes to corruption cases.

Analiza e të dhënave statistikore në 5 rastet e fundit po ashtu nuk evidenton progres në trajtimin e rasteve të korrupsionit.

Statistics show that, in 2021, there was a

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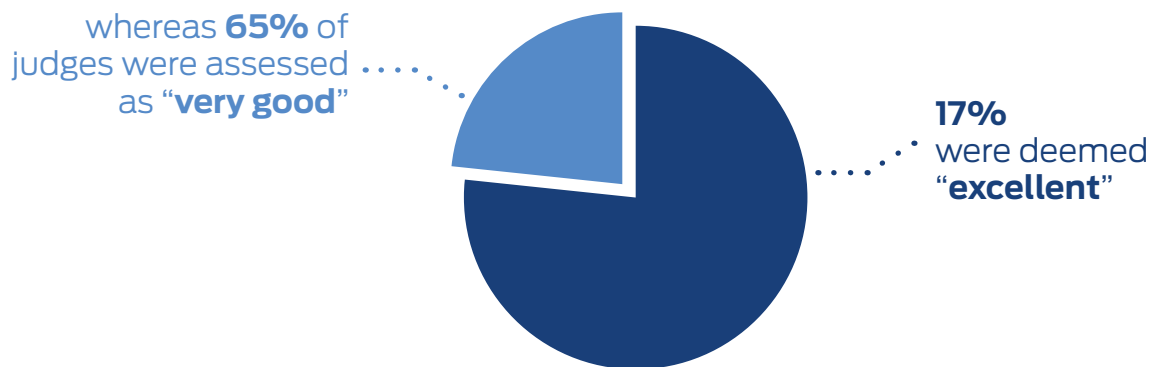
fewer corruption cases were resolved by the courts

**2%**

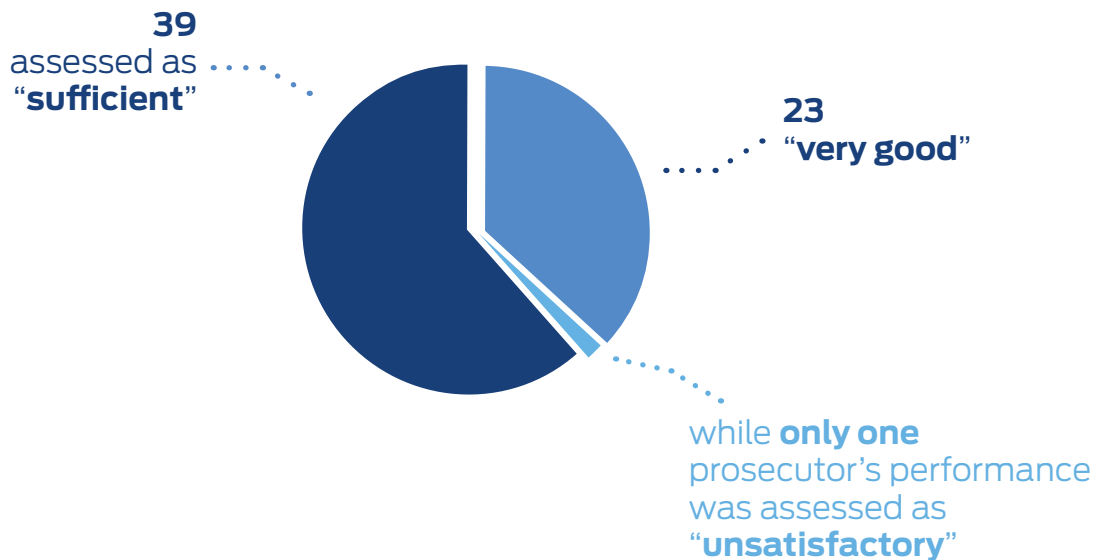
the number of unresolved corruption cases decreased

Information from disciplinary and performance assessments of judges and prosecutors does not match the situation on the ground when it comes to corruption cases.

**No judge's performance was assessed as "poor" during 2021**



**Somewhat poorer results were noted in the performance of the 64 prosecutors assessed during 2021**



In terms of disciplinary measures, as an accountability mechanism for judges, the most serious sanction issued by the Kosovo Judicial Council (KJC) was the temporary demotion of one judge, while in three cases "non-public written reprimands" were issued. There were four cases where "public reprimands" were issued, and in one case a "temporary salary decrease" was recorded.

On the other hand, only one prosecutor received a "non-public written reprimand", which was confirmed by the Supreme Court in 2021.

Lastly, the report provides recommendations aimed at seeing its findings addressed by relevant institutions.

## Methodology

BIRN and I/KS were the first civil society organisations in Kosovo to closely monitor and report on the country's justice sector. This was done by monitoring and publishing reports on the sector's functioning, management, efficiency and efficacy.

For the 16th consecutive year, BIRN and I/KS have monitored the justice sector and are publishing the findings in this Annual Court Monitoring Report, with particular attention paid to the sector's most current and crucial issues.

Corruption remains the focus of the 2021 report, in which we investigate the response of Kosovo's justice sector to this phenomenon.

Through an analysis of selected corruption case judgements by Kosovo courts in 2021, the report reflects on whether courts are issuing merit-based sentences in accordance with the weight of the criminal offence of corruption and whether sentences are being issued in compliance with the Criminal Code, the General Guidelines and the Corruption Guidelines.

The selection of the judgements referred to in this report followed a thorough analysis of Kosovo-wide court proceedings in 2021. Firstly, the category of criminal offence was determined, that is, Official Corruption and Criminal Offences Against Official Duty. Secondly, through an extensive search of public documents and the KJC's website, the final selection of 40 judgements that included a corruption conviction in 2021 was made.

BIRN and I/KS requested of the courts, and received, all judgements from corruption cases in 2021. Of these, a decision was made to focus solely on the 40 judgements where there was a conviction, excluding those with plea bargain agreements.

All judgements were analysed against the requirements of the Criminal Code and the provisions of the General Guidelines, to assess whether judgements had been compiled according to the law.

In this regard, some of the verdicts were issued before the adoption of the Corruption Guidelines, which occurred in June 2021. Nevertheless, the Corruption Guidelines only detail and clarify obligations derived from the Criminal Procedure Code and the Criminal Code, and thus do not issue any new obligations to judges. Since the Corruption Guidelines only serve to simplify specific obligations, verdicts issued before their adoption were analysed in their spirit.

Key identification features for all the cases analysed are presented in the General Table of Cases, which also contains the individual findings for each case. A full case analysis is presented as an annex to the report.

The report analyses convicting judgements by noting the sentence foreseen for a specific criminal offence and the sentence issued and assessing how the courts compiled each judgement; from considering the mitigating and aggravating circumstances recorded to the justification used in weighing these circumstances and whether the purposes and principles that must be considered when determining a sentence were properly recorded and justified.

Furthermore, particular attention has been paid to reviewing the quality of the reasoning of circumstances, the adequacy of sentences issued vis a vis the guidelines, the conversion of sentences from effective imprisonment to fines, including the range of fines, the issuing of alternative and accessory sentences, and whether asset confiscation and compensation orders were issued.

Information gleaned from analysing the elements used to determine the sentences issued in each of the monitored cases gives an overall impression of how Kosovo's justice system treats corruption cases, particularly when perpetrators are found guilty.

<sup>3</sup><https://supreme.gjyqesori-rks.org/2021/06/10/miratohet-udhezuesi-korrupsioni-zyrtar-dhe-veprat-pe-nale-kunder-detyres-zyrtare/>

The remainder of the report is dedicated to the direct monitoring of court hearings Kosovo-wide and at all levels of the justice system.

BIRN and I/KS monitored a total of 493 court hearings, for which they reported violations and irregularities in the actions of judges and prosecutors.

In this regard, an important segment of this report is dedicated to an analysis of statistical data on the handling of corruption cases by Kosovo’s courts. This offers an overview of trends in the filing of corruption indictments and the resolution of corruption cases as well as the methods used to resolve them.

Using official data obtained from KJC, the report presents a comparative analysis of the judiciary’s performance in resolving corruption cases against that of the past five years.

The analytical method has been applied to the analysis of the individual cases featured in this report, as well as to other sections where fair treatment of complex issues and themes is required. The comparative method has been used to draw parallels between the cases and thereby delve deeper into the issues at hand. The latter is a reliable method in establishing a clearer and more accurate overview of the implementation and functioning of procedural and technical rules. BIRN and I/KS have created an authoritative database, with 16 years’ worth of data generated from their court monitoring activities.

After adding the 493 court cases monitored in 2021, the total number of cases monitored within the court monitoring project is 13,391. This makes for a powerful database that enables comparative and trend analyses, as well as the measuring of progress over time.

2008 2009	2009 2010	2010 2011	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
<b>513</b>	<b>1,248</b>	<b>2,147</b>	<b>2,525</b>	<b>1,441</b>	<b>820</b>	<b>501</b>	<b>600</b>	<b>686</b>	<b>307</b>	<b>520</b>	<b>960</b>	<b>630</b>	<b>493</b>
<b>TOTAL</b>													
<b>13,391</b>													

*Number of hearings monitored by BIRN and I/KS’s monitors*

## **Sentencing policies in corruption cases**

In addition to ensuring quality, proven and well-argued investigations into criminal corruption offences, issuing meritocratic and proportional sentences for those convicted by courts on corruption charges are fundamental issues. The latter provide a measure of the courts’ decisions, the determination of the system to serve quality justice and the public’s trust in the judiciary.

The judiciary’s efficiency and efficacy are continuously identified as key issues that hinder Kosovo’s overall development, while a lack of results in holding criminal perpetrators to account has been particularly highlighted, together with issues relating to the confiscation of illegally gained assets and adequate punishments in line with the weight of crimes committed.

According to local<sup>4</sup> and international reports,<sup>5</sup> lenient sentences for criminal perpetrators are seen as one of the justice system's key flaws, even by the judiciary itself.

The U.S. Department of State specifically references the lack of convictions in 2021 – noting there is impunity in corruption cases<sup>6</sup>.

Furthermore, a report by the Advisory Commission on Sentencing Policies also notes the need to improve the justification of circumstances in convicting judgements.<sup>7</sup>

In 2021, BIRN and I/KS published the “Humouring Corruption” report, which is dedicated to analysing Kosovo courts' sentencing policies for corruption cases during 2020.<sup>8</sup>

Another major complaint is that Kosovo's judiciary appears to not be issuing sentences that are appropriate to the severity of the criminal offences committed. Consequently, the perception is such that corruption perpetrators are being “pampered” with lenient sentences, which are usually closer to the lower limit of the punishment foreseen for the criminal offence.

Applying quality sentences that align with the weight of the criminal offence fulfils the principle of legality, reflects judicial transparency, improves public trust in the justice system, and most of all deters unlawful and arbitrary sentencing.

In every democratic country, the judiciary aims to achieve and maintain consistency in sentencing practices. In Kosovo, however, sentencing practices in corruption cases are inconsistent, and punishments tend to be disproportionately lenient compared to the weight of the offence, which invites criticism from the public, civil society, and the local and international organisations that monitor the country's justice sector.

To address this, Kosovo's Supreme Court adopted the General Guidelines on Sentencing Policy on February 15, 2018, and it subsequently adopted the specific Corruption Guidelines, which together with the Guidelines on Imposition of Fines are aimed at further elaborating the existing provisions of the applicable criminal legislation on sentencing and punitive measures.

The aim of the guidelines is, through greater clarification, to practically address the problems mentioned as obstacles and the lack of a uniform approach in Kosovo.

The guidelines are not intended to provide legally binding instruction, nor do they define mandatory sentencing provisions. These guidelines are offered as a method of avoiding unwarranted disparity in sentencing, influencing judicial discretion in terms of structure without taking it away.

Therefore, on the one hand, the guidelines are ignored, while on the other hand there is a lack of genuine assessment by the KJC of judges' performances in issuing verdicts, thereby creating a judiciary that is impotent to fight corruption.

Convicting judgements that were analysed for the purposes of this report were analysed in terms of their compliance with stipulations in the guidelines, the 2012 Criminal Code (Law 04/L-082) and the current Criminal Code (Law 06/L-074).

<sup>4</sup><https://kallxo.com/wp-content/uploads/2021/05/RAPORTIO-I-MONITORIMIT-2020-WEB.pdf>

<sup>5</sup><https://freedomhouse.org/country/kosovo/freedom-world/2021>

<sup>6</sup><https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/kosovo/>

<sup>7</sup>[https://supreme.gjyqesori-rks.org/wp-content/uploads/legalOpinions/34027\\_Raport%20vjetor%20i%20Komisionit%20Keshilldhenes%20per%20Politike%20Ndeshkimore%20per%20vitet%202021.pdf](https://supreme.gjyqesori-rks.org/wp-content/uploads/legalOpinions/34027_Raport%20vjetor%20i%20Komisionit%20Keshilldhenes%20per%20Politike%20Ndeshkimore%20per%20vitet%202021.pdf)

<sup>8</sup><https://kallxo.com/wp-content/uploads/2021/05/RAPORTIO-I-MONITORIMIT-2020-WEB.pdf>

The following table, titled “General Table of Cases”, contains the 40 analysed convicting judgements issued by the courts during 2021, as received from the courts. The table presented shows the case number, number of defendants, offence they were charged with, sentence foreseen, sentence issued, whether an adequate justification for the sentence length was provided, whether the length of sentence was in line with the guidelines, whether accessory sentences were issued, whether confiscation or compensation orders for the alleged damage were issued and the amount of the alleged damage.

## BASIC COURT IN PRISHTINA

No.	Case no.	Indicted individuals	Offence	Mitigating circumstances	Aggravating circumstances	Sentence foreseen	Sentence issued	Was a justification provided in compliance with the guidelines?	Was the length of the sentence in compliance with the guidelines?	Was there an accessory sentence?	Was there confiscation of assets?	Was a compensation order issued?	What is the alleged damage?
1	PKR.nr .16/18	2 A A	Abusing Official Duty or Authority Article 422.1	2	2	6 months to 5 years' imprisonment	A1 – 3 years' imprisonment A2 – 3 years' imprisonment	YES Partially	Yes Minimum	YES 2-year prohibition from exercising public duties	NO	YES	€30,000
2	PKR.nr .36/21	1 C	Accepting Bribes Article 421.1	6	0	1 to 8 years' imprisonment and fine	- €200 fine and 6 months' imprisonment, converted to €1,000 (i.e. one-off fine of €1,200)	NO	NO	NO	NO	NO	N/A €20
3	PKR.nr .278/2021	1 C	Giving Bribes Article 429.1	6	1	Fine or up to 3 years' imprisonment	6 months' imprisonment, converted to €1,800 fine	YES Partially	YES	NO	NO	YES €50	N/A €2,000
4	PKR.nr .362/18	1 C	Misappropriation in Office Article 425.1	6	1	Fine or up to 3 years' imprisonment	6 months' suspended prison sentence and €500 fine	NO	YES	YES	NO	YES – returning €4,411	€4,411
5	PKR.nr .1098/20	1 B	Abusing Official Position or Authority Article 422.1	6	1	6 months to 5 years' imprisonment	6 months' imprisonment converted to €1,500 fine	NO	NO	NO	NO	YES €50	N/A
6	PKR.nr .50/21	1 A	Abusing Official Position or Authority Article 422.1	4	0	6 months to 5 years' imprisonment	6 months' imprisonment converted to €1,500 fine	NO	NO	NO	NO	YES €50	€1,440
7	PKR.nr .21/2021	1 C	Giving Bribes Article 422.2	4	1	Fine and 6 months to 5 years' imprisonment	8 months' imprisonment and €400 suspended fine	NO	YES	NO	YES €20	YES €50	N/A €20

# BASIC COURT IN PRIZREN

No.	Case no.	Indicted individuals	Offence	Mitigating circumstances	Aggravating circumstances	Sentence foreseen	Sentence issued	Was a justification provided in compliance with the guidelines?	Was the length of the sentence in compliance with the guidelines?	Was there an accessory sentence?	Was there confiscation of assets?	Was a compensation order issued?	What is the alleged damage?
8	PKR.nr .34/2021	1 C	Giving Bribes Article 422.1	1	0	Fine and 6 months to 5 years' imprisonment	€300 fine and 1-year suspended prison sentence	NO	YES Settlement	YES Deportation/Expulsion	YES €40	YES €50	N/A €40
9	PKR.nr .3/2021	1 A	Abusing Official Position or Authority Article 422.1	2	4	6 months to 5 years' imprisonment	10 months' imprisonment	NO	NO	YES 2 years prohibition to exercise public duties	NO	YES €50	€21,551
10	PKR.nr .10/2021	1 C	Giving Bribes Article 422.1	8	1	Fine and 6 months to 5 years' imprisonment	6-month suspended prison sentence and €500 fine	NO	YES Settlement	NO	YES €40	YES €50	N/A €40
11	PKR.nr .26/2021	1 C	Giving Bribes Article 422.1	4	2	Fine and 6 months to 5 years' imprisonment	6-month suspended prison sentence and €400 fine	NO	YES Minimum	NO	NO	YES €50	N/A €20
12	PKR.nr .42/2021	1 C	Giving Bribes Article 422.1	6	1	Fine and 6 months to 5 years' imprisonment	6-month suspended prison sentence and €350 fine	NO	NO Settlement	YES Deportation	YES €50	YES €50	N/A €50
13	PKR.nr .53/2019	2 B B	Abuse of Official Position or Authority Article 422.1, related to par. 2 sub-par. 2.2	6	0	6 months to 5 years' imprisonment	6-month suspended prison sentence for both defendants	NO	NO	NO	NO	YES €50	€11,400
14	PKR.nr .60/2019	1 B	Abuse of Official Position or Authority Article 422.1	3	1	6 months to 5 years' imprisonment	10 months' imprisonment	NO	NO	YES 3-years prohibition from exercising public duties	NO – for damages to the municipality	NO – for damages to the municipality YES – €50 to the Compensation Fund	€19,350
15	PKR.nr .82/21	1 C	Giving Bribes Article 422.1	4	1	Fine and 6 months to 5 years' imprisonment	6 months imprisonment, converted to €600 and €200 fine	NO	YES	NO	YES €10	YES €50	N/A €10
16	PKR.nr .94/2021	1 C	Giving Bribes	5	2	Fine and 6 months to 5 years'	€200 fine and €400 fine	NO	NO	NO	YES €10	YES €50	N/A €10
17	PKR.nr .230/2020	1 C	Giving Bribes Article 422.2	7	1	Fine and up to 5 years' imprisonment	1-year suspended prison sentence and €200 fine	NO	YES	YES deportation	YES €50	YES €50	N/A €50
18	PKR.nr .236/2020	1 A	Abuse of Official Position or Authority Article 422.1	4	7	6 months to 5 years' imprisonment	6 months' imprisonment, converted to €6,500 fine	NO	NO	NO	NO	YES €50	N/A



## BASIC COURT IN PEJA

No.	Case no.	Indicted individuals	Offence	Mitigating circumstances	Aggravating circumstances	Sentence foreseen	Sentence issued	Was a justification provided in compliance with the guidelines?	Was the length of the sentence in compliance with the guidelines?	Was there an accessory sentence?	Was there confiscation of assets?	Was a compensation order issued?	What is the alleged damage?
19	P.nr.41/19	1 – A 3 – B	4 – Abuse of Official Position or Authority Article 422.1	1	1	6 months to 5 years' imprisonment	<b>Defendant 1</b> – 6 months' imprisonment, converted to €7,000 fine <b>Defendants 2, 3 and 4</b> – 6-month suspended prison sentences	NO	NO	YES – for defendant 1 NO – for defendants 2, 3 and 4	NO	NO – for the municipality YES – €50 to the Compensation Fund	€11,929
20	P.nr. 17/2021	1 – B	Failure to Report or Falsely Reporting Property, etc. Article 430.1	4	0	Fine and up to 3 years' imprisonment	€300 fine	NO	NO	YES 1-year prohibition from exercising public duties	NO	NO	N/A
21	PKR.nr. 25/18	1 – A	Conflict of Interest Article 424.2	2	1	1 to 5 years' imprisonment	1 year's imprisonment	NO	NO	Prohibition from exercising public duties	NO	YES €50	N/A
22	P.nr.2/2021	1 – B	Failure to Report or Falsely Reporting Property, etc. Article 430.1	4	0	Fine and up to 3 years' imprisonment	€300 fine	NO	NO	YES 1-year prohibition from exercising public duties	NO	NO	N/A
23	PNR. 211/2020:	1 – B	Failure to Report or Falsely Reporting Property, etc. Article 430.1	3	2	Fine and up to 3 years' imprisonment	€300 fine	NO	NO	NO	NO	NO	N/A

## BASIC COURT IN MITROVICA

No.	Case no.	Indicted individuals	Offence	Mitigating circumstances	Aggravating circumstances	Sentence foreseen	Sentence issued	Was a justification provided in compliance with the guidelines?	Was the length of the sentence in compliance with the guidelines?	Was there an accessory sentence?	Was there confiscation of assets?	Was a compensation order issued?	What is the alleged damage?
24	I P.nr.69/2017	14 – B R	Receiving Bribes Article 428.1	7	9	Fine and 6 months to 5 years' imprisonment	<p><b>1 defendant</b> – 2 years and 6 months' imprisonment and €3,000</p> <p><b>2 defendants</b> – 2 years' imprisonment and €3,000 fine</p> <p><b>7 defendants</b> – 1 year's imprisonment and €1,000 fine</p> <p><b>4 defendants</b> – 8 months' imprisonment and €1,000 fine</p>	YES	NO	YES	NO	NO	N/A

## BASIC COURT IN GJILAN

No.	Case no.	Indicted individuals	Offence	Mitigating circumstances	Aggravating circumstances	Sentence foreseen	Sentence issued	Was a justification provided in compliance with the guidelines?	Was the length of the sentence in compliance with the guidelines?	Was there an accessory sentence?	Was there confiscation of assets?	Was a compensation order issued?	What is the alleged damage?
25	PKR.nr.11/2020	1 B	Abuse of Official Position or Authority Article 422.1	4	0	6 months to 5 years' imprisonment	6 months' imprisonment, converted to €2,000 fine	NO	NO	NO	NO	YES €50	N/A
26	PKR.nr.174/19	5 B	Abuse of Official Position or Authority Article 422.1	0	0	6 months to 5 years' imprisonment	<p><b>Defendant 1</b> – 6 months' imprisonment</p> <p><b>Defendants 2, 3 and 4</b> – 3 months' imprisonment</p> <p><b>Defendant 5</b> – 6 months' imprisonment</p>	NO	NO	NO	NO	YES €2,790 to the municipality	€2,790
27	PKR.nr.202/2019	1 B	Abuse of Official Position or Authority Article 422.1	0	0	6 months to 5 years' imprisonment	90 days' imprisonment, converted to €700 fine	NO	NO	NO	NO	YES €50	N/A
28	PKR.nr.66/2019	1 C	Misappropriation in Office Article 425.1	3	3	Fine and 6 months to 5 years' imprisonment	7-month suspended prison sentence and €500 fine	NO	YES	NO	NO	YES €50	N/A
29	PKR.nr.32/2019	1 C	Accepting Bribes Article 428.1	3	2	Fine and 6 months to 5 years' imprisonment	6 months' imprisonment, converted to €2,500 and €500 fine	NO	NO	NO	NO	YES €50	€260

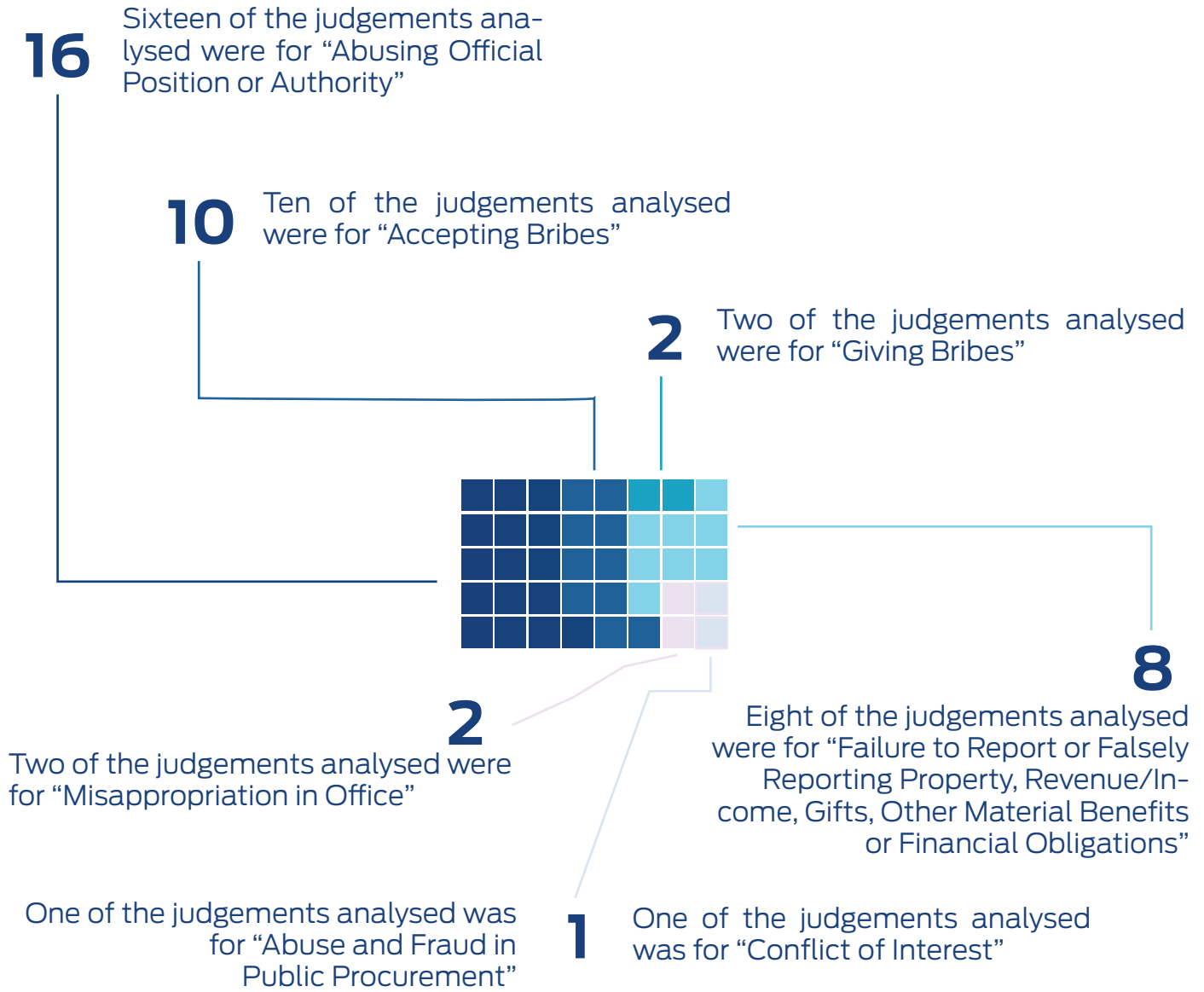
## BASIC COURT IN FERIZAJ

No.	Case no.	Indicted individuals	Offence	Mitigating circumstances	Aggravating circumstances	Sentence foreseen	Sentence issued	Was a justification provided in compliance with the guidelines?	Was the length of the sentence in compliance with the guidelines?	Was there an accessory sentence?	Was there confiscation of assets?	Was a compensation order issued?	What is the alleged damage?
30	01602216	1 B	Failure to Report or Falsely Reporting Property, Revenue/Income, etc. Article 437.1	4	0	Fine or up to 3 years' imprisonment	€300 fine	NO	YES Minimum	NO	NO	YES €50	N/A
31	125943	1 B	Failure to Report or Falsely Reporting Property, Revenue/Income, etc. Article 437.1	5	0	Fine or up to 3 years' imprisonment	Judicial reprimand	NO	NO	NO	NO	YES €50	N/A
32	2019:079817	1 B	Abuse of Official Position or Authority Article 422.1	3	4	Fine and 6 months to 5 years' imprisonment	1 year's imprisonment	YES	NO	NO	NO	YES €50 to the injured party €1,080	€1,080
33	PKR. nr. 169/20	1 B	Abuse of Official Position or Authority Article 422.1	0	0	Fine and 6 months to 5 years' imprisonment	6 months' imprisonment, converted to €6,000 fine	NO	YES Minimum	YES 1-year prohibition from exercising public duties	YES	YES €50	N/A
34	2021:026882	1 B	Abuse and Fraud in Public Procurement Article 415.1	0	0	Fine and 6 months to 5 years' imprisonment	1-year suspended prison sentence and €2,000 fine	NO	YES Settlement	YES 1-year prohibition from taking part in procurement activities	NO	YES €50	N/A

# BASIC COURT IN GJAKOVA

No.	Case no.	Indicted individuals	Offence	Mitigating circumstances	Aggravating circumstances	Sentence foreseen	Sentence issued	Was a justification provided in compliance with the guidelines?	Was the length of the sentence in compliance with the guidelines?	Was there an accessory sentence?	Was there confiscation of assets?	Was a compensation order issued?	What is the alleged damage?
35	PKR.nr .117/2020	2 B	Abuse of Official Position or Authority Article 422.1	5	2	6 months to 5 years' imprisonment	<b>Defendant 1</b> – 1 year's imprisonment and €2,000 fine  <b>Defendant 2</b> – 1 year and 3 months' imprisonment and €3,000 fine	YES	NO	YES 2-year prohibition from exercising public duties	NO	YES €50	N/A
36	PKR.nr .509/2021	1 B	Failure to Report or Falsely Reporting Property, etc.  Article 430.1	0	0	Fine or up to 3 years' imprisonment	Punitive order	NO	NO	NO	NO	YES €30	N/A
37	PKR.nr .64/2018	3 A	Abuse of Official Position or Authority Article 422.1	15	0	6 months to 5 years' imprisonment	<b>Defendant 1</b> – 1-year suspended prison sentence <b>Defendants 2 and 3</b> – 1 year and 6 months' suspended prison sentence	NO	NO	YES 2-year prohibition from exercising public duties	NO	YES €69,786	€69,786
38	PKR.nr .96/2020	1 B	Abuse of Official Position or Authority Article 422.1	6	0	6 months to 5 years' imprisonment	6 months' imprisonment, converted to €2,500 fine	NO	NO	NO <b>REJECTED</b>	NO	YES €50	N/A
39	PKR.nr .97/2021	1 C	Giving Bribes  Article 422.1	6	0	Fine and up to 5 years' imprisonment	3-month suspended prison sentence and €300 fine	NO	NO	NO	YES €5	YES €50	N/A
40	PKR.nr .421/2021	1 B	Failure to Report or Falsely Reporting Property, etc.	0	0	Fine or up to 3 years' imprisonment	Punitive order, €300 fine	NO	NO	NO	NO	YES €50	N/A

## Cases analysed according to criminal offence

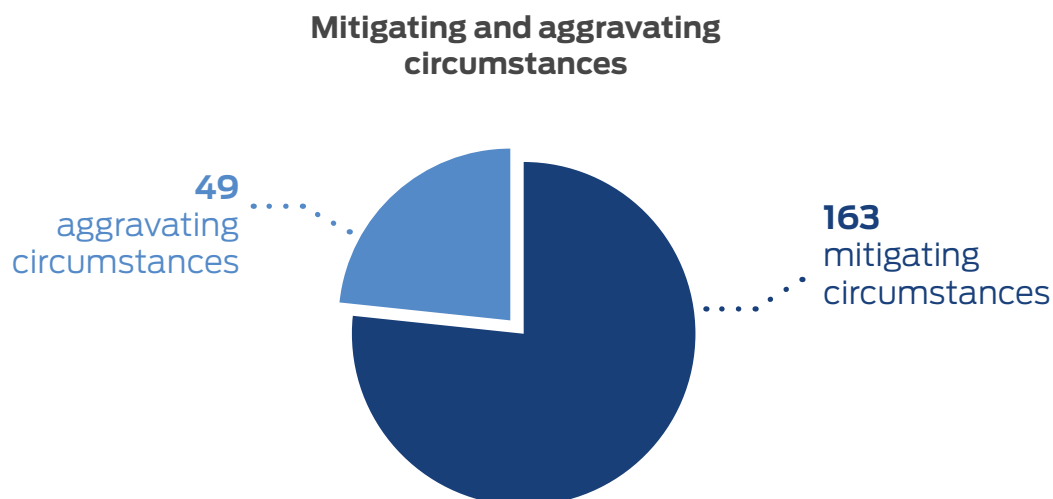


## Justification for the type and length of sentences in corruption judgements

Five of the 40 judgements analysed were adequately justified in full compliance with the requirements of the Criminal Procedure Code and the guidelines issued by the Supreme Court on recording and justifying mitigating and aggravating circumstances, type and length of sentences, the issuing of suspended sentences, permitting the conversion of prison sentences into fines and the issuing of accessory sentences.

In 12 of the 40 cases analysed, the judgements issued complied with the guidelines regarding the length of sentences.

In 10 of the 40 judgements analysed, prison sentences were issued, but only one was for the maximum sentence of three years' imprisonment.



In 27 of the 40 judgements analysed, more mitigating circumstances were recorded than aggravating circumstances.

In only 4 of the 40 judgements analysed were the number of aggravating circumstances higher than the number of mitigating circumstances.

In 9 of the 40 judgements analysed, the number of mitigating circumstances was equal to the number of aggravating circumstances.

In 18 of the 40 judgements, no aggravating circumstances were recorded.

In 5 of the 40 judgements analysed, no mitigating circumstances were recorded.

Recording mitigating and aggravating circumstances precedes setting the type and length of a sentence for those convicted of criminal offences.

Article 70 of the Criminal Code foresees 14 aggravating circumstances and the same number of mitigating circumstances, and it gives courts the discretion to record other mitigating or aggravating circumstances when setting the sentence.

As mentioned above, Article 70 of the Criminal Procedure Code sets out the court's obligation to reason in its judgement all mitigating circumstances that lead to mitigating the sentence as well as aggravating circumstances that influence the rendering of a harsher punishment.

However, court responsibilities do not end there, as the General Guidelines foresee the actions that ought to be taken by the courts to qualitatively reason the sentence rendered, which consequently impacts the entire judgement.

The guidelines envisage that, for each circumstance mentioned in the judgement, the court should lay out a relatively detailed summary of the evidence that it believes supports its findings.

After stating the facts supporting the circumstances, the court should then assign weight to each one. Then, the court must refer to the number of potential foreseen circumstances that do not exist, and state there are no facts supporting these.

Additionally, the guidelines indicate that for any evidence proposed in support of a certain mitigating/aggravating circumstance that is not found to be credible by the court, the court must express this explicitly and provide a short reasoning, as well as clarifying the circumstances that are equal, non-existent, or that carry considerable weight.

These requirements were only met in two of the 40 analysed corruption cases in Kosovo's courts in 2021.

### **Minimum and maximum penalty**

In 35 of the 40 judgements analysed, the sentence issued was the same as the minimum applicable penalty, or in some cases it was even below the minimum envisaged.

In only 2 of the 40 cases analysed was the sentence issued higher than the starting point foreseen by the General Guidelines.

The General Guidelines outline the steps that must be taken in determining the length of a sentence, which is the last step in rendering a punishment.

In order to provide judges with a mechanism to facilitate determining the length of a sentence, the General Guidelines created a visual table, the Table for Determining Punishments, which is divided into columns that define all the sentencing limits, including the limits for imprisonment, the starting point for each of the foreseen sentences and the mitigating/aggravating circumstances that determine the length of the sentence.

Column 9 - "Factors justifying the maximum aggravation within the limit";  
Column 8 - "Factors indicating greater aggravation than mitigation";  
Column 7 - "Starting point (Aggr. = Mit.)";  
Column 6 - "Factors indicating greater mitigation than aggravation";  
Column 5 - "Factors justifying the maximum mitigation within the limit"; and  
Columns 4 and 3 - "Maximum mitigation when Article 75 is applied", and "Partial mitigation when Article 75 is applied".<sup>9</sup>

Depending on the mitigating and aggravating circumstances decided upon in the judgement, a situation/column is consulted accordingly. Using the sub-points listed within each column of the Table for Determining Punishments, the length of a perpetrator's sentence may be found, as each column and relevant sub-point generates the minimum and maximum sentence length and severity, based on the circumstances of the specific case. The General Guidelines foresee that the final limits are set out in the judgement together with the final sentence.

Furthermore, mitigated sentences from Article 75 (or Article 72 in the new Criminal Code) must include more specific clarifications as to which Code provisions the court used when mitigating the sentence. For a judicial judgement to be of a good quality, it must be perceived by the parties in the procedure and by society to be the result of adequate application of judicial rules, fair procedure, adequate factual assessment, and to be effectively applicable. Only then will the parties be convinced that their case was tried adequately and will society perceive the judgement as a factor in re-establishing social harmony.

<sup>9</sup>Full and detailed meanings of each column are set out in the Supreme Court's Guidelines on Sentencing Policy, while the manner of implementation is further elaborated in Annex 1 of the document. The full document is accessible at: [https://supreme.gjyqesori-rks.org/wp-content/uploads/legalOpinions/Udhezues%20per%20Politiken%20ndesh-kimore\\_Shkurt%202018.pdf](https://supreme.gjyqesori-rks.org/wp-content/uploads/legalOpinions/Udhezues%20per%20Politiken%20ndesh-kimore_Shkurt%202018.pdf)

For the judgements analysed in this report, an assessment on the circumstances used by the court was made based on the length of the sentence rendered, taking as read the circumstances concluded in the judgements, without discussing their merit or weight.

### Justification of suspended sentences

In 14 of the 40 judgements analysed, the sentences were suspended, with none issued in full compliance with the guidelines in terms of justifying why an alternative sentence was issued.

The General Guidelines explain that suspended sentences are important and beneficial to human rights when applied in appropriate situations, but that they become contradictory if they appear to completely free the perpetrator from any responsibility or consequence for the criminal offence committed.

*The guidelines note that “suspended sentences with no conditions other than a general prohibition on re-offending should be rare occurrences and reserved for the most minor of situations where there are strong indicators of remorse, restitution to any victim and cooperation with courts and law enforcement”.*

Defined in Sentencing  
Guideline Policy

Article 50 of the Criminal Code foresees that the purpose of suspended sentences is to not impose a punishment for a criminal offense that is not severe and where a reprimand with the threat of punishment is sufficient to prevent the perpetrator from committing a criminal offence.

Meanwhile, the General Guidelines stipulate that whenever the court renders an alternative sentence, it is crucial to provide comprehensive reasoning for the suspended sentence, and it asserts that the court should automatically return the case to the lower-level court if this criterion, which is provided in law, is not fulfilled.

### Issuing fines without reasoning

In 12 of the 40 judgements analysed, the conversion of effective imprisonment into a fine was permitted, while in only one of the 12 judgements was this justified in full compliance with the guidelines.

### Accessory sentences

In 10 of the 40 judgements analysed, accessory sentences were issued to corruption convicts.

In one of the cases analysed, the proposal of an accessory punishment was rejected under the justification that it could not be applied when a suspended sentence had been issued.

Accessory punishments cannot be rendered on their own. These punishments can only be rendered with principal or alternative punishments, as foreseen by the Criminal Code.

This type of punishment is issued when it is assessed that the purpose of the punishment cannot be satisfactorily achieved through rendering a principal or alternative punishment alone.

Kosovo's Criminal Code foresees a total of eight accessory punishments, as stipulated in Article 59.



There are two accessory punishments in particular that could be issued when defendants are found guilty of corruption-related criminal offences:

- Prohibition on exercising public administration or public service functions;
- Prohibition on exercising a profession, activity or duty.

The Criminal Code foresees a prohibition on exercising public administration or public service functions, which can be imposed on perpetrators who have abused these functions and are sentenced with punishments of imprisonment, while the length of the accessory punishment could last for a period of one to five years.

Furthermore, according to the Criminal Code, the courts may prohibit perpetrators of a criminal offence from exercising a profession, activity or any managerial or administrative duties related to the systematisation, management and utilisation of assets connected to public property, or to the protection of public assets if the person abused their position, activity or duty with the purpose of committing a criminal offence, or if there is reason to expect that the exercising of a profession, activity or duty may be abused to commit a criminal offence.

### **Statistical data on corruption cases kosovo-wide for 2021**

2021 was a difficult year for the justice sector, similarly to the previous year. Apart from the problems identified during previous years, the system was also challenged by the COVID-19 pandemic, which affected all spheres of life across the world and undoubtedly limited the provision and quality of judicial services offered to Kosovo citizens.

This exacerbated the situation, and statistical data shows that the result was an increase in the number of unresolved corruption cases, a decrease in the number of corruption indictments and a decrease in the number of cases resolved in court.

Bearing in mind the existing negative trends from the previous four years and the nature of the pandemic, the slow progress in handling corruption cases can be somehow understood, yet the trend over the past five years is very worrying.

This report, compiled by BIRN and I/KS, uses statistical data to show that Kosovo's courts received far fewer corruption cases in 2021 compared to previous years, but surprisingly had an increase in the number of unresolved cases.

The data indicates that even in those cases where courts ruled on a corruption conviction, the trend was to issue the perpetrators with lenient punishments that were not proportionate to the weight of the criminal offence, nor reflective of the consequential damage or financial loss. These were usually in the form of conditional sentences and symbolic fines.

**18%**

18% fewer corruption-related indictments filed in Kosovo's courts

**26%**

26% fewer corruption cases completed

**2%**

2% decrease in unresolved corruption cases.

The following table shows the undisputed decrease in the level of efficacy among prosecutors and judges in Kosovo in 2021, compared to the three previous years.

It highlights the annual performance of individual courts in dealing with corruption cases. Furthermore, it shows the frequency of each sentence issued, indicating no improvements in harshening punishments for those accused and found guilty of criminal offences.

Courts 2017–2021	Inherited cases	Received cases	Resolved cases	Imprisonment	Fine	Suspended sentence	Acquittal	Dismissal	Other method	Unresolved cases
2017	336	223	254	32 (12.4%)	58 (22.8%)	56+3 (22.0%)	40 (15.7%)	21 (8.2%)	44 (17.2%)	305
2018	305	165	207	22 (10.6%)	37 (17.8%)	38 (18.3%)	61 (29.4%)	20 (9.6%)	29 (14%)	263
2019	263	156	150	30 (20%)	32 (21.3%)	27+2 (19.3%)	28 (18.6%)	18(+7) <sup>10</sup> (16.6%)	6 (4%)	269
2020	269	125	112	17 (15.1%)	33 (29.4%)	13 (13.6%)	30 (26.7%)	9 (8%)	10 (8.9%)	282
2021	281	102	108	22 (20.3%)	31 (28.7%)	6 (5.5%)	26 (24%)	4 (3.7%)	13 (12%)	275

Statistical data on corruption cases, 2017-2021

## Number of corruption indictments raised in 2021

The year 2021 saw a continuous decline in the efficiency of the State Prosecutor when it came to prosecuting corruption offenders through the filing of indictments for this category of criminal offences.

By comparison, Kosovo's courts accepted 223 new cases with corruption indictments in 2017, and this number significantly reduced in subsequent years. In 2018, there were 165 indictments filed for corruption offences, in 2019 there were 156, in 2020 there were just 125, while in 2021 there were 102 – a 20% decrease compared to the previous year.

### Number of corruption indictments filed, 2017–2021



### Increased number of unresolved cases

Reading and understanding the numbers connected to corruption cases for the past five years sheds light on a worrying decrease in the number of resolved cases.

In 2021, Kosovo's courts received fewer corruption cases than in the previous year, and despite a larger number of judges being assigned to resolve these cases, fewer cases were resolved than in previous years.

Kosovo's courts resolved 254 corruption cases in 2017, 207 cases in 2018 and 150 cases in 2019, while in 2020 the courts resolved only 112 cases – 25% fewer than in 2019 and 55% fewer than in 2017, which represents a drastic decrease in the number of resolved cases. In 2021, they resolved 108 cases, which represents a 4% decrease in the number of resolved cases compared to the previous year.

<sup>10</sup> Seven cases reached the stature of limitations across Kosovo's courts during 2019.

Other data that points to the poor performance of courts in resolving corruption cases is the ratio of resolved cases to active cases.

In 2017, Kosovo courts processed a total of 559 active corruption cases, of which 254 (or 45%) were subsequently resolved. In 2018, they processed a total of 470 corruption cases, with 207 (or 44%) subsequently resolved. In 2019, the courts processed a total of 419 corruption cases, of which 150 (or 36%) were subsequently resolved. In 2020, they processed a total of 394 corruption cases and managed to resolve only 112 (or 28%), a decrease in the number of resolved cases compared to previous years. In 2021, Kosovo courts resolved only 26% of the 383 active corruption cases, representing a further decrease in resolved corruption cases compared to previous years.

Year	Inherited cases from the previous year	Received cases processed	Total cases processed	Resolved cases <sup>11</sup>	Cases remaining at the end of the year
2017	336	223	559	254 (45%)	305
2018	305	165	470	207 (44%)	263 (-13%)
2019	263	156	419	150 (36%)	269 (+2%)
2020	269	125	394	112 (28%)	282 (+5%)
2021	281	102	383	108 (26%)	275 (-2.4%)

*Cases resolved by Kosovo courts compared to cases received, 2017–2021*

## Methods of resolving corruption cases at the country level

Year	Cases resolved	Imprisonment	Fine	Suspended sentence	Acquittal	Dismissal	Other method
2017	254	32 (13%)	58 (23%)	59 (23%)	40 (16%)	21 (8%)	44 (17%)
2018	207	22 (11%)	37 (18%)	38 (18%)	61 (29%)	20 (10%)	29 (14%)
2019	150	30 (20%)	32 (21%)	29 (19%)	28 (19%)	25 (17%)	6 (4%)
2020	112	17 (15%)	33 (29%)	13 (12%)	30 (27%)	9 (8%)	10 (9%)
2021	108	22 (20%)	31 (29%)	6 (6%)	26 (24%)	4 (4%)	19 (18%)

*Performance of the judiciary in corruption cases according to courts 2017– 2021*

### Punishments by imprisonment

An analysis of the statistical data on the manner in which Kosovo’s courts resolve corruption cases shows that there was an increased number of judgements that issued prison sentences for corruption offences in 2021 compared to 2020, although the number was still very low. Out of 112 corruption cases completed in 2021, only 22 (20%) resulted in a prison sentence being issued.

This data shows that prosecutors’ corruption indictments lead to prison sentences in only 20% of cases, even when defendants are found guilty. This clearly shows a soft sentencing policy for this type of cases, especially when comparing the number of prison sentences to the number of fines, which are issued in about 30% of corruption cases.

### Suspended sentences and fines

By issuing fines and suspended sentences for corruption and abuse of duty offences, the courts indicated an unwillingness to give punishments that fit the weight of this type of criminal offence, despite having convicted the accused. Such “soft” handling of perpetrators through a lack of proportional convictions clearly violates the General Guidelines, which were approved by the judiciary but are not being followed when it comes to setting the type and length of sentences.

<sup>11</sup> Percentages were calculated in terms of the number of cases resolved compared to the total number processed.

Out of 108 corruption cases resolved in 2021, suspended sentences were issued in six cases (or 6%), while fines were issued in 31 cases (or 29%).

The high number of fines issued as punishments in corruption cases is up 8% compared to 2019, and it is concerning that almost a third of corruption cases are being treated with such leniency.

### Acquittals and dismissals

The high number of acquittals and dismissals used as a method to resolve corruption cases is worrying.

High acquittal rates indicate that indictments are of poor quality and that courts are processing them inefficiently. For an indictment to result in an acquittal, it must go through multiple legal phases, such as being tried in the basic courts and the Court of Appeals, which is an extensive use of judicial resources only to have all charges dropped.

Thus, it is of great concern that from a total of 108 corruption cases resolved in 2021, 26 (24%), or almost a quarter, resulted in acquittal, while four (4%) were dismissed by the courts, including those cases that exceeded statute of limitations deadlines.

## Performance of the judiciary in corruption cases according to courts 2017–2021

### Basic Court in Prishtina

Year	Inherited cases	Received cases	Resolved cases	Imprisonment	Fine	Suspended sentence	Acquittal	Dismissal	Other method	Unresolved cases
2017	198	73	88	14 16%	14 15%	22 25%	9 10%	9 10%	20 23%	183
2018	183	67	86	10 11.6%	14 16.2%	16 18.6%	20 23.2%	8 9.3%	18 20.9%	164
2019	164	55	66	10 15%	19 28%	8 (+2) 12%	13 19.6%	6 (4) 15%	4 6%	153
2020	153	46	42	3 7%	8 9%	16 38%	16 38%	4 10%	5 12%	157
2021	157	40	34	8 24%	5 15%	9 26%	9 26%	1 3%	9 26%	163

*Statistical data on the handling of corruption cases by the Basic Court in Prishtina, 2017–2021*

The Basic Court in Prishtina started 2021 with 157 cases inherited from the previous year, while during the year it received a total of 40 new cases, bringing the total number of corruption and abuse of official duty cases in process to 197.

Out of a total of 197 cases, the Basic Court in Prishtina resolved 34 cases, which is fewer than the 88 cases resolved in 2017, the 66 cases resolved in 2018 and the 66 cases resolved in 2019. The Basic Court in Prishtina resolved fewer than half the number of cases it resolved in 2017, which represents a 61% decrease in its efficacy during this period. The court also saw an increase in its number of unresolved cases in 2021, from 157 unresolved cases in 2020 to 163 unresolved cases at the end of 2021.

When it comes to the manner of resolving corruption cases, the Basic Court in Prishtina issued more acquittals than imprisonments, while the number of suspended sentences and fines recorded was lower.

Basic Court in Prishtina	Inherited	Received	Resolved
2017	198	73	88 – 32%
2018	183	67	86 – 34%
2019	164	55	66 – 30%
2020	153	46	42 – 21%
2021	157	40	34 – 17%

*Efficiency of the Basic Court in Prishtina – cases resolved compared to cases processed, 2017–2021*

The data from the table above shows that the Basic Court in Prishtina resolved only 17% of its active corruption cases in 2021 and that the number of resolved cases is decreasing over time.

## Basic Court in Prizren

Year	Inherited cases	Received cases	Resolved cases	Imprisonment	Fine	Suspended sentence	Acquittal	Dismissal	Other method	Unresolved cases
2017	23	27	36	7 19%	7 19%	8 22%	10 27%	1 2.7%	3 3%	14
2018	14	19	24	5 20.8%	5 20.8%	6 25%	5 20%	2 8%	1 4.1%	9
2019	9	36	20	5 25%	4 20%	4 20%	2 10%	2 (3) 25%	0 0%	25
2020	25	18	17	3 18%	7 41%	1 6%	3 18%	2 12%	1 6%	26 +4%
2021	26	17	23	7 30%	8 35%	1 4%	7 30%	0 0%	0 0%	20 -23%

*Statistical data on the handling of corruption cases by the Basic Court in Prizren, 2017–2021*

The Basic Court in Prizren was able to reduce the number of unresolved corruption or abuse of official duty cases in 2021 by 23% and increase the number of resolved cases to 35% in 2021.

The court started the year 2021 with 26 unresolved cases inherited from 2020 and closed the year with 20 unresolved cases.

Basic Court in Prizren	Inherited	Received	Resolved
2017	23	27	36 – 72%
2018	14	19	24 – 72%
2019	9	36	20 – 44%
2020	25	18	17 – 40%
2021	26	17	23 – 53%

*Efficiency of the Basic Court in Prizren – cases resolved compared to cases processed, 2017–2021*

The Basic Court in Prizren resolved only 53% of its active corruption cases, and consequently the number of unresolved cases decreased by 23%.

When looking at the method of resolving cases, the court almost doubled its number of prison sentences from 18% to 30% of cases, however it also increased its number of acquittals compared to the previous year.

## Basic Court in Peja

Year	Inherited cases	Received cases	Resolved cases	Imprisonment	Fine	Suspended sentence	Acquittal	Dismissal	Other method	Unresolved cases
2017	22	30	37	2 5.4%	11 29.7%	12 32.4%	4 10.8%	1 2.7%	5 13.5%	15
2018	15	15	17	1) 5%	2 11.7%	3 17.6%	5 29.4%	2 11.7%	4 23.5%	13
2019	13	9	10	1 10%	1 10%	5 50%	2 20%	1 10%	0 0%	12
2020	12	7	9	2 22%	2 22%	3 33%	0 0%	0 0%	2 22%	10 -16%
2021	10	7	6	2 33%	3 50%	0 0%	1 17%	0 0%	0 0%	11

*Statistical data on the handling of corruption cases by the Basic Court in Peja, 2017–2021*

In 2021, the Basic Court in Peja was not able to reduce the number of unresolved corruption and abuse of official duty cases. The court started the year with 10 unresolved corruption cases and ended it with 11.

In terms of the number of resolved cases compared to the number of active cases during 2021, the Basic Court in Peja did not improve its performance, which has been on the decline.

Basic Court in Peja	Inherited	Received	Resolved
2017	22	30	37 – 71%
2018	15	15	17 – 56%
2019	13	9	10 – 45%
2020	12	7	9 – 47%
2021	10	7	6 – 35%

*Efficiency of the Basic Court in Peja – cases resolved compared to cases processed, 2017–2021*

Data shows that, in the past five years, the Basic Court in Peja has seen a continuous decrease in the number of resolved corruption cases. Compared to 2017, it has seen an 84% decrease (37 cases in 2017 compared to six cases in 2021).

A potential reason for the drop in the number of resolved cases could be the decreasing number of new corruption cases being received each year.

The Basic Court in Peja received 30 cases in 2017, compared to half that amount (15) in 2018, nine in 2019, and only seven in each of 2020 and 2021.

The notable decrease in the number of resolved corruption cases is alarming, considering the court still has 11 old cases waiting to be resolved.

In terms of sentencing methods used, out of six resolved cases, prison sentences were issued in only two, while fines were issued in three.

## Basic Court in Mitrovica

Year	Inherited cases	Received cases	Resolved cases	Imprisonment	Fine	Suspended sentence	Acquittal	Dismissal	Other method	Unresolved cases
2017	19	20	12	1 8.3%	5 41.6%	1 8.3%	1 8.3%	1 8.3%	2 16.6%	27
2018	27	23	11	1 9%	4 36.3%	1 9%	3 27.2%	2 18.1	0 0	39
2019	39	19	18	5 27.7%	0 0%	5 27.7%	1 5.5%	6 33.3%	1 5.5%	40
2020	40	13	13	15 15%	1 8%	3 23%	5 38%	2 15%	0 0	40
2021	40	14	11	1 9%	3 27%	1 9%	3 27%	2 18%	1 9%	43 8%

*Statistical data on the handling of corruption cases by the Basic Court in Mitrovica, 2017–2021*

The Basic Court in Mitrovica was not able to decrease its number of corruption and abuse of official duty cases in 2021, and on the contrary, the number of unresolved cases increased.

The Basic Court in Mitrovica started 2021 with 40 cases, while by the end of the year it had 43 unresolved cases, contributing to fewer cases resolved compared to previous years. Only 11 corruption cases were resolved compared to 13 cases in the previous year.

This means that the court resolved only 20% of active cases in 2021 which represents its poorest efficacy in the past five years.

Basic Court in Mitrovica	Inherited	Received	Resolved
2017	19	20	12 – 31%
2018	27	23	11 – 22%
2019	39	19	18 – 31%
2020	40	13	13 – 25%
2021	40	14	11 – 20%

*Efficiency of the Basic Court in Mitrovica – cases resolved compared to cases processed, 2017–2021*

Of the 11 resolved cases, only one resulted in a prison sentence, three resulted in fines being issued, three ended with an acquittal and two cases were dismissed.

## Basic Court in Gjilan

Year	Inherited cases	Received cases	Resolved cases	Imprisonment	Fine	Suspended sentence	Acquittal	Dismissal	Other method	Unresolved cases
2017	45	37	38	1 2.6%	10 26.3%	4 10.5%	11 28.9%	11 8.3%	8 21%	44
2018	44	16	40	3 7.5%	7 17.5%	4 10%	21 52.5%	5 18.1	0 0	20
2019	20	22	22	6 27.2%	2 9%	2 9%	9 40.9%	3 33.3%	0 0%	20
2020	20	15	17	3 18%	8 47%	0 0	4 24%	1 6%	1 6%	18 -10%
2021	18	9	14	2 14%	5 36%	0 0	5 36%	0 0%	2 14%	13 -28%

*Statistical data on the handling of corruption cases by the Basic Court in Gjilan, 2017– 2021*

The Basic Court in Gjilan was able to close 2021 with fewer unresolved cases than 2020, which represents a relatively satisfactory result. The number of unresolved cases decreased by five (28%).

That said, the court also resolved fewer cases in 2021 than in any of the four previous years.

Just 14 cases were resolved in 2021, compared to 38 cases in 2017, 40 in 2018, 22 in 2019 and 17 in 2020.

Basic Court in Gjilan	Inherited	Received	Resolved
2017	45	37	38 – 46%
2018	44	16	40 – 67%
2019	20	22	22 – 53%
2020	20	15	17 – 49%
2021	18	9	14 – 51%

*Efficiency of the Basic Court in Gjilan – cases resolved compared to cases processed, 2017–2021*

The table above highlights that the Basic Court in Gjilan resolved fewer cases in 2021 than in previous years. The court resolved three fewer cases in 2021 than in 2020, eight fewer cases than in 2019, 26 fewer cases than in 2018 and 24 fewer cases than in 2017.

When looking at the manner in which cases were resolved, the Basic Court in Gjilan resolved more than one third of its 2021 corruption cases with acquittals. Of the 14 resolved cases, only two resulted in a prison sentence, five resulted in acquittal and five resulted in fines being issued.

### Basic Court in Ferizaj

Year	Inherited cases	Received cases	Resolved cases	Imprisonment	Fine	Suspended sentence	Acquittal	Dismissal	Other method	Unresolved cases
2017	17	19	27	7 25.9%	6 22.2%	5 18.5%	2 7.4%	2 7.4%	2 7.4%	9
2018	9	11	9	1 11.1%	2 22.2%	3 33.3%	2 22.2%	1 11.1%	0 0%	11
2019	11	9	7	1 14.2%	3 42.8%	2 28.5%	0 0%	0 0%	1 14.2%	13
2020	13	16	9	4 44%	2 22%	0 33%	2 22%	0 0%	1 11%	20 +53%
2021	20	10	13	1 8%	4 31%	0 0%	1 8%	1 1%	6 46%	17 -15%

*Statistical data on the handling of corruption cases by the Basic Court in Ferizaj, 2017–2021*

The Basic Court in Ferizaj was able to decrease its number of unresolved corruption cases during 2021 by three – or 15%. It also resolved more cases than in each of the previous three years, including 43% more than in the previous year.

Basic Court in Ferizaj	Inherited	Received	Resolved
2017	17	19	27 – 75%
2018	9	11	9 – 45%
2019	11	9	7 – 35%
2020	13	16	9 – 31%
2021	20	10	13 – 43%

*Efficiency of the Basic Court in Ferizaj – cases resolved compared to cases processed, 2017–2021*

The Basic Court in Ferizaj issued a high proportion of fines during 2021, with four cases being resolved through fines compared to one with a prison sentence.



## Basic Court in Gjakova

Year	Inherited cases	Received cases	Resolved cases	Imprisonment	Fine	Suspended sentence	Acquittal	Dismissal	Other method	Unresolved cases
2017	12	17	16	0 0%	5 31.2%	4 25%	3 18.7%	0 0%	4 25%	13
2018	13	14	20	1 5%	3 15%	4 20%	5 25%	1 5%	6 30%	7
2019	7	6	7	2 28.5%	3 42.8%	1 14.2%	1 14.2%	0 0%	0 0%	6
2020	6	10	5	0 0%	5 100%	0 0%	0 0%	0 0%	0 0%	11 +83%
2021	10	5	7	1 14%	3 43%	2 19%	0 0%	0 0%	1 14%	8

*Statistical data on the handling of corruption cases by the Basic Court in Gjakova, 2017–2021*

The Basic Court in Gjakova was able to decrease its number of unresolved cases in 2021 while also increasing its efficiency in handling corruption cases. Its efficiency went from 31% in 2020 to 47% in 2021.

The court started 2021 with 10 corruption cases inherited from the previous year and received five cases during the year, while it ended the year with eight unresolved cases.

Basic Court in Gjakova	Inherited	Received	Resolved
2017	12	17	16 – 55%
2018	13	14	20 – 74%
2019	7	6	7 – 54%
2020	6	10	5 – 31%
2021	10	5	7 – 47%

*Efficiency of the Basic Court in Gjakova – cases resolved compared to cases processed, 2017–2021*

In terms of resolving corruption cases, the Basic Court in Gjakova continued to issue a high proportion of fines. Three cases (or 43% of resolved cases) resulted in fines, whereas only one resulted in a prison sentence.

# Assessment of judges and prosecutors' performance in 2021

## Assessment of judges' performance

Based on data received from the KJC and Kosovo Prosecutorial Council (KPC), judges and prosecutors continue to receive “excellent” scores in their performance assessments despite the mistakes recorded in their work.

From the data obtained, one can see that, despite continuous reports by BIRN and I/KS and other local and international organisations that assess the performance of Kosovo’s judiciary as “poor”, judges and prosecutors are assessed as “very good” and “excellent” in their own assessment reports.

BIRN and I/KS’s teams monitored 394 corruption cases during 2021.

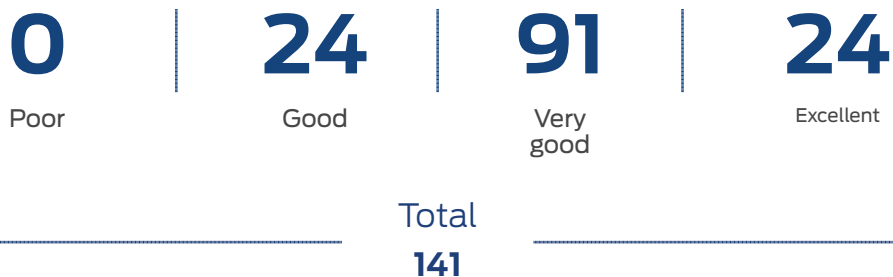
Data from monitoring court hearings shows that the performance of judges and prosecutors cannot be deemed “excellent” when in reality it is very far from it.

Data obtained from KJC shows that performance assessments were carried out for 141 judges in 2021, with none of their performances assessed as “poor”.

Assessments conducted by the Judicial Performance Evaluation Committee showed that the performance of 24 judges was assessed to be “good”, while that of 91 judges was assessed as “very good” and the performance of 24 judges was assessed as “excellent”.<sup>14</sup>

In the beginning of 2021, the State Prosecutor inherited 424 cases involving 708 individuals. By the end of 2021, the State Prosecutor had 421 active, unresolved cases involving 610 individuals.

### Assessment of judges' performance in 2021



An analysis of the data shows that, in the past five years, 300 judges have undergone a performance evaluation, with none receiving a “poor” assessment, despite the continuous lack of results in the country’s judiciary.

<sup>14</sup> All data presented in this section have been obtained through requests for access to public documents and received from the Kosovo Judicial Council.

## Assessment of prosecutors' performance

The data obtained from KPC shows that 65 prosecutors underwent performance evaluation in 2021.

The assessments saw the performance of 39 prosecutors assessed as “sufficient”.

The performance of 24 prosecutors was assessed as “good”.

One prosecutor’s performance was assessed as “very good”, while one prosecutor’s performance was assessed as “insufficient”.



Total  
65

## Disciplinary procedures against judges and prosecutors in 2021

BIRN and I/KS monitored 394 corruption cases during 2021.

Even though the monitoring shed light on the failures and prolongation of many court cases, failures with indictments for high profile corruption and organised crime cases and negligence by judges and prosecutors, it appears these failing went unpunished.

### Disciplinary procedures against judges



Data found on KJC’s website shows that, during 2021, the competent authority (heads of courts) received 121 complaints against judges.

Of the 121 complaints received, 106 were dismissed.

In 11 cases, requests were made to initiate an investigation, while 16 final decisions were issued, and one judge was temporarily suspended.

Of the 16 final decisions, nine cases resulted in reprimands and seven resulted in acquittal.

Three decisions resulted in non-public written reprimands, four resulted in public written reprimands, one resulted in a temporary 50% salary reduction for a period of up to a year, and one resulted in a temporary or permanent transfer to a lower-level prosecution.

## **Disciplinary measures against prosecutors**

Based on the data received from KPC, during 2021, it received 14 requests to initiate disciplinary procedures against prosecutors.

The competent authority (chief prosecutors of prosecutions) established 13 investigation panels, while one was awaiting establishment.

The data shows that as a result of these 14 requests for disciplinary procedures, two non-public written reprimands were ordered, including one case where the subject of investigation was subsequently absolved of responsibility.

An analysis of the requests to initiate disciplinary procedures shows that KPC, through investigative panels, issued the following disciplinary procedures against prosecutors that have become final:

- Non-public written reprimand confirmed by the Supreme Court;
- Non-public written reprimand where the subject of the investigation was subsequently absolved of responsibility by the Supreme Court;
- In three cases, the subjects were found not to have been responsible and were absolved of responsibility;
- One case was dismissed until the criminal procedure has been resolved;
- One case was suspended until the criminal procedure has been resolved;
- Two cases were deferred to 2022 with panel reports;
- Five cases are in process with the investigation panels.

## Recommendations

- The Criminal Procedure Code should oblige the holding of specialised hearings related to the type and length of convictions issued;
- Judges should fully comply with the provisions of the Criminal Code and Criminal Procedure Code relating to corruption cases and strive to take account of the Guidelines on Sentencing Policy;
- Judges should record, justify and weigh all mitigating and aggravating circumstances in line with the provisions of the Criminal Code and Criminal Procedure Code and bear the Guidelines on Sentencing Policy in mind;
- Judges should provide a justification when rendering suspended/conditional sentences in corruption cases;
- Judges should provide a specific justification in corruption cases where they allow a prison sentence to be converted into a fine;
- Judges should justify the setting of a fine and the amount of the fine in line with the Guidelines on Imposition of Fines;
- To avoid arbitrary sentencing, when determining the length and type of a sentence, judges should provide a justification, referring to the guidelines and applying their mechanisms;
- When assessing judges' performances, the quality of justification for the decision on the type and length of sentence in corruption cases should also be assessed;
- The Justice Academy should organise training for judges and prosecutors on sentencing policies in general, with additional training specifically on sentencing in corruption cases;
- Judges should record and justify the aims of the sentence as set out in the Criminal Code when rendering sentences in corruption cases;
- Judges should record, justify and apply the principles of the Criminal Code when rendering sentences in corruption cases;
- The Court of Appeals should pay particular attention to the quality of the justifications used in rendering sentences; and
- Judges should understand that the overall quality of a judgement is dependent on the quality of the justification of the sentence itself.



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