



CASE STUDY

UNTANGLING KOSOVO'S CHALLENGES IN DEALING WITH CORRUPTION AND ORGANISED CRIME



BCSP



KCSS
Kosovar Centre for Security Studies

January 2021

UNTANGLING KOSOVO'S CHALLENGES IN DEALING WITH CORRUPTION AND ORGANISED CRIME



BCSP



KCSS
Kosovar Centre for Security Studies

January 2021

CASE STUDY

Untangling Kosovo's Challenges in Dealing with Corruption and Organised crime

January 2021, Belgrade

Publishers:

Belgrade Centre for Security Policy and Kosovar Centre for Security Studies

Authors:

Dr. Ramadan Ilazi, Teuta Avdimetaj and Mentor Vrajolli

Proofreading:

Alisa Koljenšić-Radić

Design:

Srđan Ilić



Norwegian Embassy
Belgrade

Opinions expressed in the publication do not necessary represent those of the Royal Norwegian Embassy in Belgrade, the Balkan Trust for Democracy, the German Marshall Fund of the United States, or its partners.

Kosovo and the broader region of the Western Balkans are highly relevant for EU's security and stability. If there was ever any doubt about this, the refugee crisis of 2014/2015 – when refugees and migrants used the Balkan route as the key transit pathway to EU countries – proved it wrong. While the EU Member States were slow in responding to the crisis and adopting a cohesive policy (some member States even kept their doors closed), countries in the Western Balkans struggled, with their strained and limited resources, to manage the massive inflow of people.

The EU's role has been crucial in ensuring that the Western Balkans takes significant steps in the right direction following the end of the war of 1999, and supported state-building/transformation efforts as well as democratic transition. However, amidst the growing influence of the far-right populism, especially towards the enlargement policy, the region's progress is hindered by domestic factors as well as challenges to a cohesive EU policy vis-à-vis the region. A weakened European enlargement perspective is likely to exacerbate bilateral disputes, embolden corrupt elites and undermine the civil society. Corruption and organised crime are the key challenges the region must overcome if it wishes to build democratic resilience through the rule of law.

This paper provides a brief overview of the challenges that Kosovo faces in dealing with corruption and organised crime in an effective manner. These are considered quintessential issues in moving the country forward in achieving the aspiration for Euro-Atlantic integration. Drawing from the existing research, as well as primary sources, such as interviews with rule of law officials and the civil society, this paper provides the context of the spread and impact of corruption and organised crime in Kosovo's institutions and economy. Its purpose is to inform the reader of the existing state of play and discuss the way forward in dealing with these challenges by focusing on strengthening the institutions of the rule of law. It argues that meaningful transformation of the fight against corruption and organised crime requires the ability of institutions to assume full ownership of the process, and that they be accountable to their own public, as well as the EU, in the framework of fulfilment of requirements in the accession process.

The first section of this paper summarises the key issues with respect to the challenge of corruption in Kosovo. It brings together different sources that have written on the subject and considers the consequences for Kosovo, especially for its economy and the democratic functioning of its public institutions. In the same spirit, the second section investigates the challenge of organised crime in greater detail, focusing particularly on understanding the nature of organised crime and its impact on institutions and the economy. It shows that political patronage has become a lifeline for organised crime, and that weak law enforcement thus serves the interest of the elite and organised crime networks. The third section provides a brief discussion of how to move forward, focusing on the rule of law. The main recommendation from this section is to decouple the judiciary from political patronage through a vetting process and allow for a meaningful local ownership to run the process.

The challenge of corruption is undermining progress

Corruption in Kosovo is considered widespread and endemic.¹ Although the country has established a sound legal and institutional framework to combat it – including alignment with the EU *acquis* – the abuse of public office for private gains persists. The manifestation of corruption ranges from petty (administrative) corruption to money laundering and high-level abuse of power by elected public officials. Public procurement is perceived as a highly corrupt sector tainted by mismanagement, abuse of public funds, lack of transparency and selective implementation of the laws. Abuses in public procurement facilitate monopoly by systematically discriminating against particular companies in the process of awarding public contracts.² This situation hinders the development of market-oriented economy and creates conditions that are ripe for organised crime and informality. Shadow, or informal, economy is one of the gravest consequences of corruption, while the weak rule of law makes it possible for organised crime to thrive. Similarly, public administration is prone to internalised corruption. Civil servants are recruited with blatant disregard for fairness and competence of candidates, to the detriment of merit-based principles. The public sector is considered to be the largest employer in Kosovo, as a result of a weak private sector. In addition to this, there is a significant wage gap between the two sectors, with salaries in the private sector being lower. While in public sector the average gross salary is considered to be around €550, in the private sector that salary is around €370.³ Because of this and the job security, the employment in the public sector is seen as very attractive by Kosovars but controlled by political groups in order to award loyalists and boost support during election cycles.

The public sector in Kosovo is further weakened by the considerable scope of the shadow economy in the country. According to the World Bank “it [the shadow economy] is estimated at 27 to 35 percent of the gross domestic product [GDP]”.⁴ Shadow economy prevents economic growth, hinders the development of the private sector, affects the ability of the state to raise taxes, and attracts ‘unfavourable investors’ looking for exploitation.⁵ In addition, detrimental effects of the informal economy on the society include workers’ exploitation – e.g. absence of legal employment contracts, unpaid labour, unsafe and unhealthy working conditions – which particularly affect marginalised groups such as women and youth. Baklouti and Boujelbene argue that shadow economy “magnifies the effect of corruption.”⁶

1 Pajaziti, M. (12 March 2019). Retrieved from Independent Balkan News Agency (IBNA): bal-kaneu.com/corruption-in-kosovo-is-endemic-report/

2 FOL. (October 2017). Public procurement monitoring in Kosovo: Increasing institutional accountability in spending public money. Retrieved from Levizja FOL: <http://levizjafol.org/wp-content/uploads/2017/10/Publik-Procurement-Monitoring-in-Kosovo-Increasing-Institutional-Accountability-in-Spending-Pubic-Money.pdf>

3 Ajtene Avdullahi and Qazim Tmava. (2018). Public-private wage gap: the effort of the private sector to attract, motivate and retain qualified staff in Kosovo. *Eurasian Journal of Economics and Finance*, 6 (3), pp. 59-71

4 World Bank. (January 2017). Republic of Kosovo Systematic Country Diagnostic. Retrieved from: <https://openknowledge.worldbank.org/bitstream/handle/10986/26573/Kosovo-SCD-FINAL-May-5-C-05052017.pdf?sequence=1&isAllowed=y> p.13; Mustafa, *et al.*, (2019). Analysis of the Shadow Economy in Kosovo. Pristina: Academy of Sciences and Arts of Kosovo; Peci, B. (25 June 2019). Opinion. Retrieved from Pristina Insight: <https://prishtinainsight.com/informal-economy-the-devil-on-kosovos-shoulder/>

5 World Bank. (January 2017). Republic of Kosovo Systematic Country Diagnostic.

6 Baklouti N, Boujelbene Y. (2020). Shadow Economy, Corruption, and Economic Growth: An Empirical Analysis. *The Review of Black Political Economy*. 47 (3): 276-294.

Worryingly, the shadow/informal economy creates an enabling environment for money laundering and financing of criminal activities. The European Commission notes that “the level of informality in the economy is still high and further coordination efforts are needed between relevant institutions and law enforcement bodies to fight the informal economy and customs fraud.”⁷ The Transparency International’s 2019 Corruption Perceptions Index shows that Kosovo is in the same group as the rest of the countries of the Western Balkans, scoring 36 points, in a system where 0 marks a highly corrupt country.⁸ With the score of 45, Montenegro has outperformed the rest of the countries of the region. However, this level of corruption is very concerning for a region that is undergoing the process of accession to the European Union (EU).

Studies conducted by local think tanks show that the experience of corruption is quite high; namely, 27 percent of the citizens state that they have at some point been asked for a bribe, while 22 percent claim that they have given a bribe.⁹ An important percentage of companies in Kosovo (40%) feel that tax evasion is justified in some circumstances.¹⁰ Despite a significant progress, the effective fight against informal economy is prevented by institutions that are weak because of corruption and have created the “clientelistic nature of public administration.”¹¹ Studies link the spread of informal economy with the quality and effectiveness of public administration as well as accessibility and delivery of public services, which in turn affects public confidence in the institutions.¹²

Public confidence in the institutions is very low, as clearly shown in the 2020 Kosovo Security Barometer of the Kosovar Centre for Security Studies (KCSS). The report shows that only 17% of the citizens trust the courts, 22 % the prosecutor’s office and 16% the Kosovo Anti-Corruption Agency, which all happen to be key institutions in the fight against corruption and organised crime.¹³ Furthermore, the report shows a very low level confidence in the main institutions of the state: the Kosovo Assembly is trusted by 13% of the population, President of Kosovo by 12%, and the Government by 9%.¹⁴

Consequently, the lower the level of confidence in institutions and the rule of law, the more pervasive corrupted practices become. In recent years, one positive development worth noting was the effort to depoliticise the Tax Administration of Kosovo (TAK), which resulted in 33 TAK officials resigning from their posts following the changes that were made to the legislation.¹⁵

7 The European Commission. (29 May 2019). Country Report Kosovo. Retrieved from: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf> p. 60

8 Transparency International. (2019). Corruption Perceptions Index . Retrieved from: https://images.transparencycdn.org/images/2019_CPI_Report_EN_200331_141425.pdf

9 Serhati, et al. (2016). Assessment of Corruption in Kosovo. Retrieved from RIINVEST INSTITUTE: https://www.riinvestinstitute.org/uploads/files/2016/September/20/Assessment_of_Corruption_in_Kosovo1474359621.pdf p. 12

10 Cojocar, A. (2017). Job Diagnostic Kosovo. Retrieved from International Bank for Reconstruction and Development / The World Bank: <http://documents.worldbank.org/curated/en/814361497466817941/pdf/ACS21442-WP-PUBLIC-ADD-SERIES-KosovoJDWEB.pdf> p. 25

11 *Ibid.*

12 *Ibid.*

13 Shpat Balaj. (2020). Kosovo Security Barometer - Tenth Edition. Kosovar Centre for Security Studies (KCSS). Retrieved from: http://www.qkss.org/repository/docs/WBSB_KosovoReport_Eng_final_844795.pdf p. 21

14 *Ibid.*, p. 27

15 Sylja, A. (2019). Interview with Kosovar Center for Security Studies (KCSS)

Corruption directly attacks the democratic functioning of public institutions. Kosovo's Criminal Code defines corruption as a criminal offence against official duty or abuse of official position for private gain or benefit to other person.¹⁶ However, the very institutions that have been established to fight corruption are a part of the problem. From the perspective of the European Union (EU): "The anti-corruption institutions in Kosovo are not well integrated, their remits overlap and the division of tasks needs to be clarified."¹⁷ The head of the Anti-Corruption Agency in Kosovo, on the other hand, complains that the problem lies with the judiciary, which fails to issue final verdicts against corrupt officials.¹⁸ This particularly seems to be the case with high level corruption involving senior public officials, the so called 'big fish'. Kosovo's civil society maintains that prosecutors and judges are focusing on low level corruption out of convenience.¹⁹

Although the Anti-Corruption Agency is authorised by law to investigate corruption, in practice this institution has been engaged mostly in preventive measures, including issues that concern conflict of interest, and implementing awareness raising campaigns against corruption. Corruption is a criminal offence, and fighting it is thus the exclusive competence of the judiciary. In this sense, the Anti-Corruption Agency can also be viewed as a tool that applies pressure on the prosecution to perform effectively and deliver results in the fight against corruption. Therefore, the only competency of the ACA in investigating corruption is to pressure the prosecutor's office to fight corruption. Accordingly, when the Kosovo Government approves the National Anti-Corruption Strategy, it is effectively adopting the strategic work plan of the Anti-Corruption Agency. This is in contravention with the proclaimed intention of the strategy to set-out a 'national' policy against corruption.

The hopes that EU's approach would include conditions for concrete benchmarks against corruption in the visa liberalisation dialogue with Kosovo have not yielded the expected outcomes. The EU considers Kosovo to be at the early stages of fight against corruption.²⁰ In an effort to meet the EU targets against corruption, in the period 2015-2019 Kosovo institutions prioritised 51 corruption cases that involved 372 people; however, by May 2019 "only 39% of the cases, i.e. 15 ended in a final verdict, while 61%, or 23 cases, are still pending in various courts."²¹ According to the assessment of the Kosovo Law Institute (KLI), the Special Prosecutor's Office, which was established mostly to fight corruption and organised crime, did not file a single indictment in the period January-September 2019.²² In the context of the EU's role, it is also worth noting that the European Union Rule of Law Mission (EULEX) has failed to produce any meaningful results, although it enjoyed executive competencies to undertake any necessary action. Confidence in the EULEX "has been consistently low among

16 Criminal Code of Kosovo. (14 January 2019). Retrieved from the Official Gazette: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>

17 The European Commission. (25 May 2019). Country Report Kosovo. Retrieved from: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf> p. 21

18 Miftari, E. (2019). Interview with Kosovar Centre for Security Studies (KCSS)

19 Musliu, B., Zekaj, Y., & Mehmeti, H. (November 2019). Special failures in fighting corruption. Retrieved from Kosovo Law Institute (KLI): <https://kli-ks.org/en/special-failures-in-fighting-corruption/>

20 European Commission. (6 October 2020). Kosovo* 2020 Report. Retrieved from: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

21 KLI. (25 June 2019). Retrieved from Kosovo Law Institute (KLI): <http://kli-ks.org/ikd-sistemi-i-drejtewise-ka-deshtuar-ne-trajtimin-e-rasteve-e-lendeve-te-shenjestrara/> para. 4

22 Musliu, B., Zekaj, Y., & Mehmeti, H. (November 2019). Special failures in fighting corruption...

Kosovar citizens,” the majority of which believe that the mission should leave the country.²³ The report of the European Court of Auditors on the EULEX mission holds that “despite significant EU assistance, progress in improving the rule of law is limited and levels of organised crime and corruption remain high.”²⁴

Another essential indicator of the system’s failure to deliver in the fight corruption and organised crime involves sequestration and confiscation of assets obtained unlawfully through corruption-related criminal activity. The Kosovo government made important progress in 2019, when it changed the existing legislation to empower the judiciary. According to these changes, the prosecutor must only prove that specific property subjected to verification belongs to the defendant, while it is the defendant’s obligation to prove that said property was acquired through legal means; otherwise the property is confiscated by the court.²⁵ However, the level of actual sequestration and confiscation remains low. This is a recurring criticism in the EU Country Reports for Kosovo and something that seriously undermines progress in the field of rule of law. Also, the assets that were confiscated to date could not be translated into Government’s revenue, although this is a regular process in most countries. The judiciary is perceived as the most corrupt institution in Kosovo.²⁶ Failure in fighting corruption and the lack of demonstrated political will to do so have created impunity and an enabling environment for organised crime.

23 Emma-Louise Rose. (August 2020). Legitimising external missions: Deconstructing citizens’ perceptions towards EULEX in Kosovo. Kosovar Centre for Security Studies (KCSS). Retrieved from: [http://www.qkss.org/repository/docs/Decon_eulex_paper_eng_\(2\)_635460.pdf](http://www.qkss.org/repository/docs/Decon_eulex_paper_eng_(2)_635460.pdf)

24 European Court of Auditors. (2012). European Union Assistance to Kosovo related to the Rule of Law. Special Report No 18. Retrieved from: https://www.eca.europa.eu/Lists/ECADocuments/SR12_18/SR12_18_EN.PDF p.15

25 Evropa e Lire. (29 January 2019). Retrieved from Evropa e Lire: <https://www.evropaelire.org/a/29730659.html>

26 Avdiu, P. (2019, March). Kosovo Security Barometer (Special Edition). Retrieved from Kosovar Centre for Security Studies (KCSS): http://www.qkss.org/repository/docs/Corruption_Rule_of_Law_ENG_Final_320893.pdf

The challenge of organised crime and regional interdependency

Causal explanations of corruption and governance are as well established in the existing research as are its effects on economic development and political stability.²⁷ Corruption undermines public confidence in the institutions and the system, which is an essential precondition for effective governance.²⁸ A particularly devastating effect of corruption is state capture – a “distinct network structure in which corrupt actors cluster around parts of the state allowing them to act collectively in pursuance of their private goals to the detriment of the public good.”²⁹ The Clingendael report highlights that “state capture is a key obstacle for EU accession” but also that “[s]olving state capture also requires recognition that state capture is not just a technical matter, but a political problem that is (inadvertently) supported by EU funds and legitimisation by EU politicians.”³⁰ In the 2018 enlargement communication to the Western Balkans, the European Commission stated that all the countries in the region “show clear elements of state capture, including links with organised crime.”³¹

Organised crime is considered the “foremost threat to public order and safety and has a direct impact on the rule of law,” with countries in the Western Balkans losing from “20 to 30 percent of annual revenue to organised crime.”³² Organised criminal groups, emboldened by weak institutions and impunity, are also important partners of international terrorists. For instance, weapons that were used by terrorists in the Paris attacks came from the Western Balkan countries and were manufactured in Serbia.³³ Kosovo is resolute in the fight against terrorism, despite the governing challenges in the North of Kosovo and the undermining influence of organised crime on this part of the country.

The report by the Global Initiative against Transnational Organised Crime highlights North of Kosovo as the hotspot of criminal activity, noting that “[s]muggling is so rampant that it is considered a regular economic activity” and that criminals from other countries of

27 Gerring, J., & Thacker, S. C. (2004). Political Institutions and Corruption: The Role of Unitarism and Parliamentarism. *British Journal of Political Science* Vol. 34, no. 2, 295-330

28 Clausen, B., Kraay, A., & Nyiri, Z. (2011). Corruption and Confidence in Public Institutions: Evidence from a Global Survey. *The World Bank Economic Review* Vol. 25, no. 2, 212-249

29 Fazekas, M., & Tóth, I. J. (2016). From Corruption to State Capture: A New Analytical Framework with Empirical Applications from Hungary. *Political Research Quarterly* 2016, 69(2), 320–334, p. 320

30 Maarten Lemstra. (September 2020). The destructive effects of state Policy Brief capture in the Western Balkans EU enlargement undermined. The Clingendael Institute. Retrieved from: https://www.clingendael.org/sites/default/files/2020-10/Policy_Brief_Undermining_EU_enlargement_2020.pdf p. 6

31 The European Commission. (6 February 2018). *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*. Retrieved from EU: https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf p. 3

32 Haziri, Fatos, Fighting Organized Crime in Kosovo (24 February 2017). Available at SSRN: <https://ssrn.com/abstract=2922972> or <http://dx.doi.org/10.2139/ssrn.2922972>

33 DW. (11 December 2015). Retrieved from <https://www.dw.com/en/weapons-linked-to-paris-attacks-made-in-serbia/a-18912675>

the Western Balkans view this region as a safe haven.³⁴ The report estimates that the budget of Kosovo is losing about EUR 1.5 million per week as a result of criminal activity in the north; the amount, however, should be much higher.³⁵ North of Kosovo continues to serve as a buffer zone for organised crime which, in addition to having strong ties with the ruling party in Serbia (SNS), is also reported to be connected with certain organised crime elements in the rest of Kosovo. The report lists three major cities in Kosovo – Pristina/ Priština, Peja/ Peć and Ferizaj/ Uroševac - as active locations of criminal activity. Pristina is noted for drug trafficking, loan sharking and forged documents, Peja for being an intersection of the trafficking routes, and Ferizaj as a hotspot for drug trafficking, human trafficking and extortion.³⁶

Money laundering, which is an important component of the organised crime activity, refers to the efforts to integrate income from criminal activity into the system, and thus legalise it. The challenges Kosovo is facing due to widespread shadow/informal economy were already mentioned in the previous section. Therefore, money laundering is a key concern for the institutions in Kosovo also because of its links with financing terrorism. In this context, cooperation with notaries is considered especially important, because construction contracts have been identified as most susceptible to money laundering.³⁷ The Financial Intelligence Unit (FIU) is Kosovo's independent national institution that is responsible for the fight against money laundering, and one of its recent cases involved a freeze on a transaction that was valued at around EUR 1 million.³⁸ In the Terrorist Financing Risk Assessment Guidance, Kosovo is mentioned as a positive example and stands better than other countries in the region with respect to reporting money laundering.³⁹

FIU is arguably efficient in combating and preventing terrorism financing, and so it is in investigating money laundering related to corruption, shadow economy and organised crime. Its staff is well trained, but there is a perception that its leadership is politically affiliated. However, when it comes to tracking down corruption money and the shadow economy, its results are limited. A senior official from FIU interviewed for this report stated that "their job is to track suspicious transfers and report them to the prosecutor's office and the police, and this is where their work ends. Neither the prosecution nor the police provides them with any feedback regarding the status of investigations of suspicious financial transactions that are flagged by the FIU, despite the persistence of the organisation to have such information reported back to it."⁴⁰ Lack of exchange of information makes it possible for follow-up instances to misuse their position without the instances that may have been involved in the initiation of the cases being able to detect it. Consequently, this may be one of the reasons why almost no funds gained through corruption or shadow economy have ever been confiscated in Kosovo.

34 Global Initiative. (May 2019). Retrieved from The Global Initiative Against Transnational Organized Crime: <https://globalinitiative.net/wp-content/uploads/2019/05/Hotspots-Report-English-13Jun1110-Web.pdf> p. 25

35 *Ibid.*, p. 26

36 *Ibid.*, p. 19

37 Xhema, B. (2019). Personal interview with the Kosovar Centre for Security Studies (KCSS)

38 *Ibid.*

39 See: Terrorist Financing Risk Assessment, available at: <https://www.fatf-gafi.org/publications/methodsandtrends/documents/terrorist-financing-risk-assessment-guidance.html>

40 Xhema, B. (2019). Personal interview with the Kosovar Centre for Security Studies (KCSS)

It is stated in Kosovo's National Strategy for the Prevention and Combating Informal Economy, Money Laundering, Terrorism Financing and Financial of Crime 2019-2023 that the state budget suffers a combined annual damage of EUR 21 million as a result of illegal activities in the construction and trade sectors.⁴¹ Among other issues, the Strategy lists lack of trust in official institutions, corruption in the public sector, and weak law enforcement as key reasons for the widespread informal economy. It also states that the fiscal evasion and corruption generate the most revenues – pinpointing public procurement as the key sector that is also associated with Politically Exposed Persons (PEP) – compared to revenues from other organised crime activities such as drug trafficking, smuggling, trafficking in human beings and prostitution.⁴² As for the financing of terrorism, which is considered a serious threat, the following sources are particularly relevant: self-financing, small donations from donors, and financing through non-government organisations (NGOs).⁴³ The Financial Intelligence Unit of Kosovo has partnered with NGOs and has organised trainings for them to prevent terrorism financing. It also imposed a rule stipulating that no financial transactions above EUR 1,000 could be processed in cash, having to go through official banking channels instead.

Political patronage of organised crime is a disturbing feature in the entire region, including Kosovo, but it explains both the absence of decisive actions against organised crime and the reported decline in democratic performance of the countries in the Western Balkans. For the first time since 2003, according to the Freedom House report *Nations in Transit*, Serbia and Montenegro, although both candidate countries for membership in the EU, are no longer considered democratic states and are now categorised as “governments in transition or hybrid regimes.” The same Democracy Status applies to all six countries of the region. This means that, as a result of incomplete democratic change, power in the Western Balkans is based on authoritarianism. Consequently, rule of law institutions such as the judiciary are weak, which allows for a culture of impunity for corruption and organised crime. Another noteworthy issue in this regard is the internal struggle with rule of law issues among the EU Member States, as witnessed by the democratic backsliding of Hungary and Poland.⁴⁴ There are high hopes that potential rule of law reforms within the EU will have a positive effect on the enlargement process and the manner in which the EU will utilise conditionality policy to ensure positive changes in the rule of law performance in the Western Balkans. The EU will remain a fundamental actor when it comes to the rule of law reforms and the results in the Western Balkans.

41 Ministry of Finance. (May 2019). Retrieved from Government of Kosovo: <https://mf.rks-gov.net/desk/inc/media/0211B611-A5EB-45F5-BE19-45A408D1DFA8.pdf>

42 *Ibid.*, p. 15

43 *Ibid.*

44 <https://www.politico.eu/article/historic-rule-of-law-deal-faces-challenges/>

Moving forward: Strengthening the rule of law

This paper shows that corruption and organised crime depend on weak institutions coupled with strong links to the political system. Corruption and organised crime affect all the sectors of any society. High unemployment rate, as in the case of Kosovo, weak judiciary and political corruption create a favourable and enabling environment for criminals to exploit. Shadow/informal economy profoundly impacts the revenue capacity of the state, which in turn hinders its ability to develop and deliver satisfactory services to its citizens. Political interference in public procurement further exacerbates the abuse of public office for private gain and prevents public funds from serving the public interest. Political interference in the judiciary creates a culture of impunity. Therefore, in moving forward, the focus must be placed on strengthening the rule of law and improving the agency of civil society organisations. Any policy solutions related to this approach must be local and locally owned.

Local ownership is imperative for a meaningful transformation of the rule of law in Kosovo. Previous approaches, including the EU's Rule of Law Mission – EULEX, proved “largely ineffective in using its executive authority to counter organised crime, and its capacity-building efforts have not led to significant local improvements in this area.”⁴⁵ The EU's own 2014 report on EULEX's conduct and performance states that “while no one expected EULEX to eradicate corruption, it was possible to lay the foundations of a system capable of fighting corruption.”⁴⁶ Corruption allegations within EULEX itself further undermined these efforts.⁴⁷ The more recent efforts through the European Reform Agenda (ERA) have shown more capacity for success, because they include a level of shared responsibility, whereby EU's expectations are translated into domestic priorities in implementing contractual obligations with the Union. It is essential, however, that the EU increasingly takes a supporting position when clarifying the local responsibility for fight against corruption and organised crime.

With respect to the rule of law, there are two essential undertakings: Kosovo, first and foremost, must undergo a process of vetting integrity and professionalism in the judiciary system. This is the area where the EU and the UK can provide substantial and meaningful support to ensure that the process is conducted in a transparent and independent manner that serves the public interest. Second, ending the culture of impunity is vital, and important results can be achieved through final verdicts by the judiciary in cases of corruption and organised crime and ordering confiscation of assets obtained through illegal or criminal activity. This is also an important condition in EU-Kosovo relations. Third, the EU and UK must pay more attention to the public administration. The Kosovo legislation has greatly advanced in terms of policies that have to do with recruitment in the public sector; however, ensuring their effective implementation requires support for local institutions and oversight. In this context, the institutional framework which has been established in Kosovo to fight corruption

45 Joschka J. Proksik (2017) 'EULEX and the fight against organised crime in Kosovo: What's the record', *Trends in Organised Crime*, available at: <https://doi.org/10.1007/s12117-017-9321-8>

46 Quoted in Andrea Capussela (24 October 2018). *Eulex report exposes EU failure in Kosovo*, Retrieved from EU Observer: <https://euobserver.com/opinion/128343>

47 Valerie Hopkins. (17 November 2017). EU courts trouble with Kosovo scandal. Politico. Retrieved from: <https://www.politico.eu/article/malcolm-simmons-eulex-eu-courts-chaos-with-kosovo-scandal/>

and organised crime should be reviewed to improve coordination and inter-institutional support. Last but not least, as countries that have invested the most, EU, UK and the US should actively support Kosovo's bid for membership in all regional and international rule of law and justice cooperation mechanisms.

Kosovo's lack of membership in the INTERPOL seriously hinders the country's capability and capacity to fight corruption and organised crime. Kosovo's efforts to secure membership have failed because of aggressive lobbying of Serbia and Russia. This situation diminishes efforts that were made to curb and prevent organised crime and corruption, both in Kosovo and the wider region of the Western Balkans. However, recently there have been some positive developments as a result of the establishment of direct cooperation with EUROPOL. The arrangement involves cooperation between Europol and Kosovo's law enforcement agencies, including police, tax administration, money laundering units and the Customs.⁴⁸

The 2012 agreement on regional cooperation, signed between Kosovo and Serbia and facilitated by the EU, was intended to support Kosovo's integration in regional and international mechanisms, including those related to the rule of law.⁴⁹ However, the EU is usually silent when it comes to Serbia's role in sabotaging or blocking Kosovo's efforts to secure membership in key rule of law institutions. This is especially worrying because of the transnational character of organised crime and corruption networks in the Balkans.

Another important concern is the lack of cooperation in the area of rule of law with Serbia, with whom Kosovo shares approximately 45% of its border. Therefore, bearing in mind the serious threat from organised crime and terrorism on the global level, it is very important to support Kosovo's integration in INTERPOL. It would be in everyone's interest if Kosovo were to become a member of all regional and international organisations, because this would help better coordination and cooperation among the rule of law mechanisms - all closely working with the EU with the common goal of becoming members of the Union. This can be achieved through strong engagement and support from the EU institutions, EU Member States such as Germany and France, the US and the UK, who are considered the main stakeholders which have contributed to the development of Kosovo's justice and rule of law institutions.

Along with the rule of law institutions, civil society is another essential pillar that deals with corruption and organised crime. Support should be focused on strengthening the monitoring and investigation capacities of NGOs, and on implementing educational activities to raise public awareness and establish a partnership between the citizens and public institutions. NGOs should be encouraged to take a more direct approach to exposing corruption.

48 Mladen Dragojlović. (12 June 2020). Croatia welcomes Europol's decision on cooperation with Kosovo. Retrieved from: <https://balkan.eu.com/croatia-welcomes-europols-decision-on-cooperation-with-kosovo/>

49 EU facilitated dialogue: Agreement on Regional Cooperation and IBM technical protocol, Brussels, 24 February 2012, https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/128138.pdf



BCSP

www.bezbednost.org