



**ORGANIZATION FOR DEMOCRACY,
ANTI-CORRUPTION AND DIGNITY– ÇOHU!**
OFFICE FOR ANTI-CORRUPTION INFRASTRUCTURE AND LEGAL ADVISORS

MONITORING REPORT:

*Prescription of Penal Prosecution and
Prescription of Verdict Execution in the
Municipal Courts of Kosovo during the
years 2001-2011*

SERIES OF ANALYSIS # 1

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Monitoring Report

Prescription of Penal Prosecution and Prescription of Verdict Execution in the Municipal Courts of Kosovo during the years 2001-2011

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(CRD)

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METHODOLOGY:

This Monitoring Report is a result of qualitative and quantitative research, based on primary and secondary sources. As regards the primary sources, methods of direct interviewing of relevant actors of judicial areas have been used (municipal courts, Disciplinary Prosecutor, Head of the Supreme Court, Kosovo Police and State Chief Prosecutor), as well as the analysis of the data by municipal Courts of Kosovo. Furthermore, for the needs of this report, penal Laws have been consulted (Kosovo Penal Code, Kosovo Penal Law), and other judicial acts.

As regards the secondary sources, other policy analysis have been taken as basis, opinion polls and reactions which are focused in the area of the judiciary, with a special emphasis in the penal area (prescription of penal cases). Additionally, other sources of information have been consulted, such as electronic and print media.

This monitoring report has taken 14 municipal courts as basis. 5 municipal courts have been chosen as representing the largest number of inhabitants (Prishtina Municipal Court, Prizren, Peja, Gjakova and Ferizaj), 4 small courts with a smaller number of cases prescribed (Municipal Court of Glllogoc, Lipjan, Skenderaj and Malisheva), and 5 small courts with a bigger number of cases prescribed (Municipal Court of Kacanik, Suhareka, Decan, Klina, and Istog).

The purpose was to classify the collected data according to the municipality, in order to differentiate which municipal courts hold the most of the prescribed cases. Furthermore, the classification of the cases prescribed throughout the years has been done in a manner to reflect which years hold the most of the cases. And in the end, the prescribed cases have been separated according to chapters of KPK, in order to identify which chapter has the most of prescribed cases, and which penal cases have been mostly prescribed.

ABBREVIATIONS:

CRD- Civil Rights Defenders

KPK- Kosovo Penal Code

LPK-Kosovo Penal Law

ZPD- Office of the Disciplinary Prosecutor

KGJK- Kosovo Courts Council

GJK- Municipal Courts

PQP- Prishtina District Prosecution

PSH- State Prosecution

GJKGJ- Gjakova Municipal Court

PK- Kosovo Police

GJSK- Kosovo Supreme Court

PTK- Post and Telecom of Kosovo

General Summary:

Kosovo continues to undergo through a turbulent transition and with serious drawbacks in building democratic institutions. The “rule of law” maxim continues to dominate in the rhetoric of the public officials, but it does not serve as a defining rule in functioning of the public institutions. In this respect, the justice system in Kosovo, despite having attracted a special and systematic focus in the public discourse and of other resources in building it, continues to face heavy challenges and quite often insurmountable problems.

The aspect of prescription/ageing of penal cases is quite worrisome for the Kosovo courts. From 2001 to 2011, a large number of penal cases which have been prescribed, and as consequence, the courts cannot undertake any action to prosecute and convict the suspected, or to arrest the convicted.

From the total of 4197 penal cases prescribed by 14 Municipal Courts which have been reviewed, over 54% of those categorized being to the relative prescription, whereas 46% belong to absolute prescription. For cases prescribed in the relative aspect, the judges themselves should be held accountable, since they have allowed for this backlog to become possible. Instead of prosecuting the various cases convicted with the laws in power, prosecute and convict violators of the laws in power and the Penal Code of Kosovo, through these actions the courts have pardoned these violators and violations. Through keeping their cases in the shelves (not reviewing them), and at the same time through allowing these cases to be prescribed, they have made it impossible to undertake any penal actions against the various violations. Through this, the judges have gravely violated the principle of fair and just trials, enabling thus the establishment of a dangerous precedent in this field.

The data which have been collected from municipal courts show that the number of prescribed cases are far larger than those collected from the Supreme Court. The data of the Supreme Court show that in 21 municipal courts, 6358 cases have been prescribed. Whereas, from 14 municipal courts which have been taken as basis for this monitoring report, there are in total 4197 prescribed cases. The trend of data collected by Organization ÇOHU!, show that most of the 14 municipal courts reviewed in this report have increased the number of prescribed cases compared to the data of the Supreme Court, excluding Prizren which has a decrease of approximately 50%,

compared with the data of the Supreme Court. This trend shows that the total number of prescribed cases by the municipal courts throughout 2001-2011 can be around 7000.

This monitoring report shows that within the prescribed cases, there are also cases which belong to chapter of KPK: "Actions against official duty", which are classified as corrupt actions. Furthermore, this monitoring report shows that there are actions which have been prescribed and which belong to the chapter of KPK: "Actions against international law", prescriptions which in reality are in contradiction with the Penal Code of Kosovo and the international law.

Despite the fact that the National Strategy on Decreasing Backlogged Cases was approved in October 2010, the trend of prescribed cases has continued also in 2011. Furthermore, there are clear tendencies that the prescription of cases will continue even in the future unless disciplinary and penal measures are undertaken against those judges who allow the ageing of cases for which they have been in charge of reviewing.

As pertains this issue, several times it has been mentioned that investigations have been launched by the Office of Disciplinary Prosecutor at the Kosovo Courts Council regarding judges who have allowed the ageing of cases, but "none have resulted with discharging any of them"¹. Several times it has been emphasized that the fact that courts are intentionally allowing the prescription of penal cases according to a specific interest, and that measures will be undertaken against them, in reality we have seen no results yet. Up to now, we have no single case of a judge who was discharged due to allowing the ageing of cases for which he/she has been in charge to review.

According to the penal legislation in force, the courts are responsible for the cases which have been prescribed in the relative aspect (the Competent Judges), and disciplinary and penal measures should have been undertaken against them for abuse of official duty, and intentionally allowing the prescription of thousands of penal cases for which they were responsible.

¹ Progress Report of European Commission 2011.

Introduction:**a) Prescription of Penal Prosecution and****b) Prescription of Execution of Penalties**

“The prescription or ageing is an judicial institution which leads to the banishment of penal sanctions due to exceeding of time as foreseen by the law. When prescription is occurs, the state loses the right of implementing penal sanctions against the perpetrator of penal actions”².

The prescription of the case occurs when the perpetrator of the penal action cannot be discovered, or when it happens that the perpetrator is identified but the competent bodies cannot locate him/her. Also, it can happen that the perpetrator is confined, but after the verdict there are real or judicial barriers which make the execution of the verdict impossible, for example (the convict is seriously ill or escapes after the issue of the verdict).³

In all these cases, if from the moment of the perpetration of the crime/issue of the verdict, up to penal prosecution there has passed a particular period of time, according to the law no penal prosecution can be undertaken/the issued verdict cannot be executed. With the passing of time, from the moment of the perpetration of the crime up to the beginning of the prosecution, the prescription of the crime takes place, whereas with the passing of the time from the issue of the verdict the prescription of the verdict execution takes place. According to the laws in force, the state in these cases loses the right to issue or execute a verdict.⁴

The Penal Right in general recognizes two types of prescriptions: **1. Prescription of penal prosecution** and **2. Prescription of the execution of verdict**. Both types of prescription can be separated in relative and absolute prescription. The relative prescription⁵ implies that with the exceeding of the timeframe as foreseen by the law from the time of the perpetration of the crime, up to the moment when the prosecution or execution cannot begin as regards the prescription of the verdict execution. Whereas, the absolute prescription⁶ means the double exceeding of the timeframe foreseen by the law, from the moment of the perpetration of the crime up to the moment when

² Salihi, Ismet; “**Penal Right**”; University Fama, Prishtina, 2008, page 558.

³ There.

⁴ Salihi, Ismet; “**Penal Right**”; University Fama, Prishtina, 2008, page 559-560.

⁵ There, page 563

⁶ Prevention and interruption of prescription could lead to practically never causing prescription. Especially in prevention there can always be measures taken which would make it impossible for prescriptions to arise. In order to avoid this possibility, the contemporary penal right foresees the absolute prescription. There page 563.

prosecution cannot proceed, or the execution of the issued verdict cannot be executed as regards the case of the prescription of verdict executions.

According to the Kosovo Penal Code (KPK), there is: **a)** prescription of penal prosecution and **b)** prescription of verdict executions.

The timeframe for the prescription of penal prosecution begins from the day when the perpetration of the crime was committed. If there occurs an interruption of the prescription timeline, then the penal prosecution is stopped in each case when the double deadline has passed for the prescriptiophn (the absolute limitation on penal

According to article 90 of KPK, penal prosecution cannot be undertaken if the following deadlines have passed:

- 1) Thirty five years** from the perpetration of the crime punishable with long-term imprisonment;
- 2)) Fifteen years** from the perpetration of the crime punishable with more than ten years of imprisonment;
- 3) Ten years** from the perpetration of the crime punishable with more than five years of imprisonment;
- 4) Five years** from the perpetration of the crime punishable with more than three years of imprisonment;
- 5) Three years** from the perpetration of the crime punishable with more than one year of imprisonment and;
- 6) Two years** from the perpetration of the crime punishable with more than one year of imprisonment or fine.

prosecution).⁷

The timeline for the prescription of verdict execution commences from the day when the verdict becomes enforceable. If the deadline for the prescription of the verdict execution is interrupted with a decision or according to the law, then the execution of the verdict is stopped when the double of the time has passed according to the law for the deadline for prescription (the absolute limitation of verdict execution).⁸

No deadline is applied for prescriptions of verdict executions on genocide, war crimes and crimes against humanity, as well as other crimes pertaining to the international right.⁹

⁷ Kosovo Penal Code article 91.

⁸ Kosovo Penal Code article 94.

⁹ Kosovo Penal Code article 95.

According to article 92 of KPK, the issued verdict cannot be executed when the following has passed:

- 1) *Thirty five years from the verdict punishable with long-term imprisonment;*
- 2) *Fifteen years from the verdict punishable with over ten years of imprisonment;*
- 3) *Ten years from the verdict punishable with over five years of imprisonment;*
- 4) *Five years from the verdict punishable with over three years of imprisonment;*
- 5) *Three years from the verdict punishable with over one years of imprisonment and;*
- 6) *Two years from the verdict punishable with over one year of imprisonment or fine.*

GENERAL FINDINGS:

From the total of 14 municipal courts¹⁰ which have been taken as basis for this monitoring report, it appears that since 2001 up to 2011 there have been 4197 penal cases which have been prescribed, including here also the prescription of penal prosecution and prescription of penal executions.

From the total of the prescribed cases, 1955 cases belong to the relative prescription, meaning that the judges have not undertaken any action to prevent the relative prescription or ageing of the cases, but instead have allowed these cases to be prescribed/aged. Regarding these cases which have been prescribed in the relative aspect, the judges can be held accountable for not undertaking any legal action through which they could stop the deadline for the relative prescription of the cases. "The relative ageing can be hindered at least with a particular procedural act. If a specific procedural act can be undertaken then the relative prescription can be delayed, in

¹⁰Data from the Municipal Court of Kacanik concern only years 2010 and 2011. This is because the court has asked for a longer period of time (several months) in order to process the data requested for years 2001-2011.

other words, through a minor act the prescription is delayed, such as sending an invitation, or an information required by the police”¹¹ etc. Through this actions, the judges can delay the prescription of the case up to the double time of the deadline (the absolute prescription).

Table: 1 – Court Prescription of Penal Cases under Review and Execution during the years 2001-2011 in Kosovo Municipal Courts.

Municipal Courts	Relative Presc.	Absolute Presc.	Uncategor- ized	Total number of prescribed cases
Mun. Court of Ferizaj	400	470	-	870
Mun. Court of Prizren	194	487	-	681
Mun. Court of Deçan	508	6	-	514
Mun. Court of Gjakova	137	20	304	461
Mun. Court of Peja	374	61	-	435
Mun. Court of Klina	-	-	299	299
Mun. Court of Prishtina	47	229	-	276
Mun. Court of Istog	212	30	-	242
Mun. Court of Malisheva	45	169	-	214
Mun. Court of Kaçanik	2	91	-	93
Mun. Court of Suhareka	34	44	-	78
Mun. Court of Lipjan	-	17	-	17
Mun. Court of Skenderaj	1	12	-	13
Mun. Court of Glogoc	1	3	-	4
TOTAL	1955	1639	603	4197

¹¹ Interview with Kadri Begollin, prosecutor in the Disciplinary Commission in the Kosovo Courts Council. On 18-01-2012.

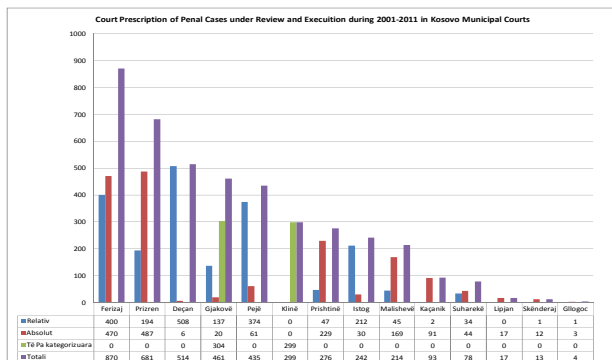


Diagram 1. Here is the diagram of cases prescribed both in the relative and absolute aspect, and the total of cases prescribed in some municipal courts in Kosovo.

As regards the format of the relative prescription, the responsible ones are the ones in charge of the cases, although it cannot be denied that there might be a possibility of facing a large number of cases. Nevertheless, the greatest blame sits upon the persons in charge of these cases.

Table. 2 – The Prescription of Penal Cases separated in years.

Years	Relative Presc.	Absolute Presc.	Uncategorized	Total of Cases
2001	17	1	5	23
2002	27	2	4	33
2003	81	57	13	151
2004	92	260	39	391
2005	456	289	57	802
2006	155	180	41	376
2007	254	62	49	365
2008	167	25	91	283
2009	19	37	-	56
2010	28	120	-	148
2011	12	63	-	75
Uncategorized in years			1494	1494
TOTAL	1308	1096	1793	4197

If we separate the prescribed cases throughout the years, it shows that most of the prescribed cases are penal from 2004 up to 2008. From the total of 4197 cases which have been prescribed from 2001 to 2011, 802 cases have been prescribed only in 2005. If we take the cases which have been prescribed since 2004 to 2008, it shows that 2217 cases have been prescribed during those years. This implies that more than half of the cases from the total of prescribed cases belong to the years after the promulgation of the Kosovo Penal Code. KPK has come into force in April 2004, and half of the cases which have been prescribed belong to the years after 2004. KPK stipulates also the deadlines for prescription, and the courts have done nothing to prevent the prescription of cases which risked of being prescribed. This implies that half of the cases have been prescribed four years after KPK has come into force.

The trend of the prescription of penal cases has been larger after KPK has come into power rather than before it. This shows that the judges, instead of undertaking

measures for preventing the prescription of penal cases, they have allowed the number to grow bigger.

Although the inventory of the cases began in 2010 according to the Strategy on Diminishing the Backlogged Cases¹², still the trend of prescription of cases continued to a large extent and in 2010 we have a number of 148 prescribed cases, and in 2011¹³ we have 75 prescribed cases. This implies that even after the beginning of the inventory of cases, a process that began in 2011¹⁴, there still has been a large number of prescribed cases.

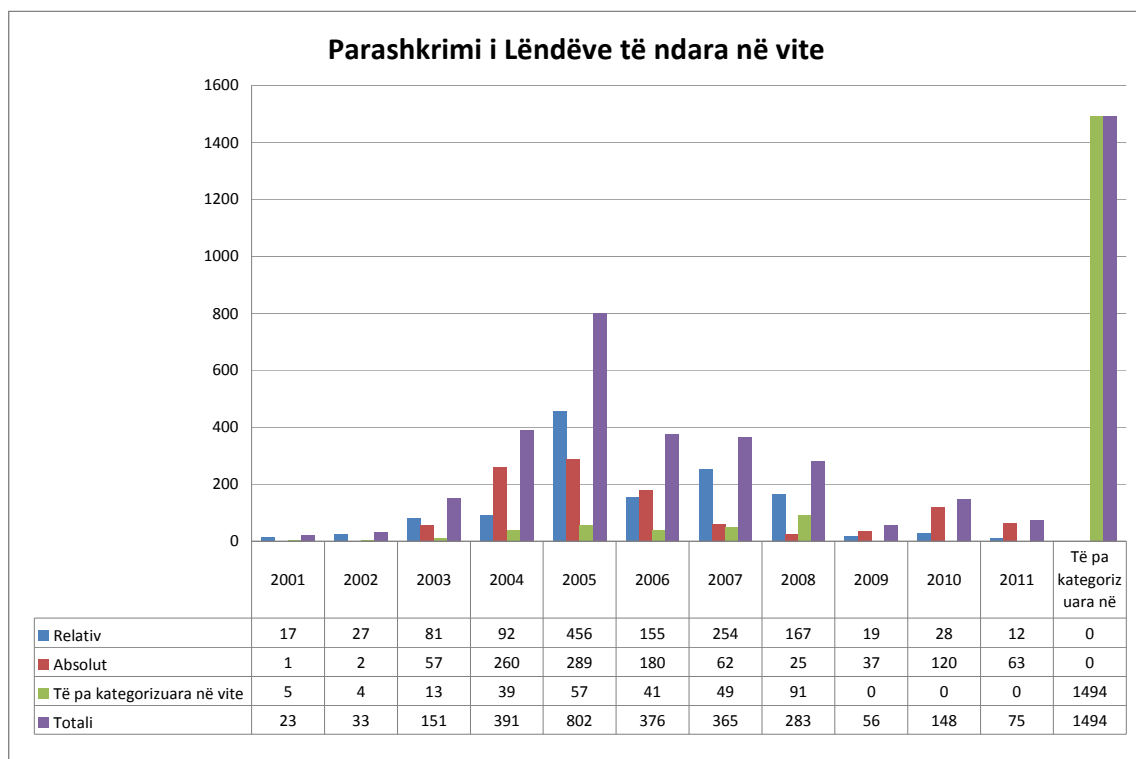


Diagram 2. This diagram shows the trend of the prescription of cases throughout the years.

¹² This strategy has been approved on November 8 2010, and it aimed at inventory of the cases in courts and the signing of memorandums of cooperation between the courts and the police, PTK etc. In order to increase the efficiency of the work of the courts so that to prevent the prescription of the cases.

¹³ This might not include the total number of the cases prescribed for 2011, because the data from the courts have been obtained from June to December of 2011, meaning that there could be other cases which have been prescribed this year, but the data have not been released by the courts yet.

¹⁴ Drafting of a plan for each court which would define:

Inventory, which should include all the data of the case: number of the case, type of the case, value, parties, etc. **To immediately commence and to be completed within the months in the courts which have an existing inventory, 3 months in the small courts and 6 months in the large courts. Decided by the Collegium and Implemented by the Head and Administrator.** State strategy on Reducing the Accumulated Aged Cases, approved on November 8 2010.

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Penal cases which have mostly been prescribed belong to chapters: **23-Penal Cases Against Wealth, 24-Penal Cases Against Environment, Animals and Cultural Object, 28-Penal Cases Against Public Order and Judicial Actions, and 15-Penal Cases Against Life and Body.** Taken as a total, only within four of these chapters of KPK there have been 2146 prescriptions of penal cases, which is more than half of the total of prescribed cases from 17 chapters which is part of the special part of KPK.

Table 3. Prescription of Penal Cases separated according to chapters of Penal Code of Kosovo (KPK).

Chapters according to KPK	Relative Presc.	Absolute Presc.	Un categorized	Total of Cases
Chap.13 <u>Penal Cases Against Kosovo and its Inhabitants,</u> Articles 108-115	8	-	-	8
Chap.14 <u>Penal Cases Against the International Right</u> Articles 116-145	-	4	-	4
Chap.15 <u>Penal Cases Against Life and Body</u> Articles 146-157	103	132	-	235
Chap.16 <u>Penal Cases Against Rights and Freedoms of People</u> Articles 158-181	46	80	-	126
Chap.17 <u>Penal Cases Against Rights in Labour Relations</u> Articles 182-186	4	31	-	35
Chap.18 <u>Penal Cases Against Honor and Authority</u> Articles 187- 191	6	6	-	12
Chap.19 <u>Penal Cases Against Sexual Integrity</u> Articles 192- 204	14	1	-	15
Chap.20 <u>Penal Cases Against Marriage and Family</u> Articles 205- 214	2	3	-	5
Chap.21 <u>Penal Cases Against Public Health</u> Articles 215- 231	2	2	-	4
Chap.22 <u>Penal Cases Against Economy</u> Articles 232- 251	28	21	-	49
Chap. 23 <u>Penal Cases Against Wealth</u> Articles 252-275	463	337	-	800
Chap.24 <u>Penal Cases Against Environment, Animals, Plants and Cultural Objects.</u>	432	177	-	609

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Articles 276-290				
Chap.25 <u>Penal Cases Against General Security of People and Wealth.</u> Articles 291-296	31	57	-	88
Chap.26 <u>Penal Cases Against Traffic Security</u> Articles 297-302	27	19	-	46
Chap.27 <u>Penal Cases Against Administration of Justice</u> Articles 303- 215	11	6	-	17
Chap.28 <u>Penal Cases Against Public Order and Judicial Actions.</u> Articles 316-338	319	183	-	502
Chap.29 <u>Penal Cases Against Official Duty</u> Articles 339-351	6	3	-	9
<u>Saccording to other Penal Laws (LPK)</u>	-	-	107	107
<u>Uncategorized in articles according to KPK</u>	400	470	656	1526
TOTAL	1902	1532	763	4197

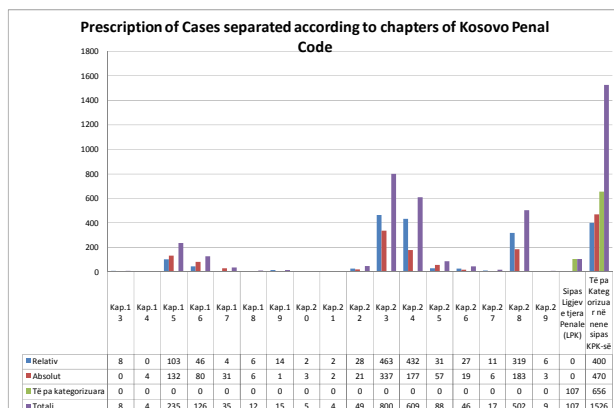


Diagram 3. This diagram shows the distribution of cases prescribed according to chapters of KPK

Prescription of cases against official duty/corruption:

Despite statements of the courts, but also of the public officials that the cases against official duty/corruption have a priority and that there cannot be a prescription of penal cases against official duty¹⁵, we have prescriptions of cases of this nature also. There are altogether 9 cases against official duty/corruption which have been prescribed, from which 6 are prescribed in the relative aspect, for which the courts should be held accountable, and three cases have been prescribed in the absolute aspect. This means that the municipal courts of Kosovo have not undertaken any measure for preventing the prescription of cases against official duty, which directly

{There are altogether 9 cases against official duty/corruption which have been prescribed, from which 6 are prescribed in the relative aspect, and for which the courts have to be held accountable, and 3 cases have been prescribed in the absolute aspect }

damage the budget of the country and have a direct impact in the life of the citizens. The penal cases against official duty which have been prescribed are: **article 339 abuse of official duty or authorization 8 cases**¹⁶, 5 of which have been prescribed in the relative aspect and 3 have been prescribed in the absolute aspect. And **article 348 forfeiting of official document** has 1 case¹⁷ which is prescribed in the relative aspect.

The penal cases which have mostly been prescribed belong to chapters of KPK which also has the most of prescribed penal cases. 1742 cases which have been prescribed belong only to five penal cases which are: Article 285- **Theft of Forrester** with 595 cases, Article 252 – **Theft** with 360 cases, Article 332 – **Forfeiting of Document** with 285 cases, Article 261 – **Fraud** with 270 cases, and Article 153 – **Light Body Injury** with 232 cases. This means that close to 40% of all prescribed cases belong only to five penal cases.

¹⁵ In an interview given to Organization ÇOHU! the head of the Supreme Court, Mr. Fejzullah Hasani, has stated that there cannot be a prescription of cases against official duty/corruption, since the deadline for the prescription is longer. He has stated that the cases which could be prescribed are mainly light criminal acts which have a short prescription deadline. The interview took place in the Supreme Court on 17-06-2010.

¹⁶ From 8 cases prescribed from article 339 of KPK, there is 1 case of abuse of official duty or authorization from Prishtina, 1 from Malisheva, 4 from Gjakova, and 2 from Istog.

¹⁷ The case from article 348 of KPK, forfeiting of official document is from Suhareka.

Table 4. Penal Cases which have been prescribed the most.

Chapters according to KPK	Article and Penal Case	Number of Cases
Chap. 28 of KPK	Article 332 – Forfeiting of Document	285
Chap. 24 of KPK	Article 285 – Theft of Forrest	595
Chap. 23 of KPK	Article 2261 - Fraud	270
Chap. 23 of KPK	Article 252 - Theft	360
Chap. 15 of KPK	Article 153 – Light Body Injury	232
TOTAL		1742

If we are based in the table of the prescribed cases separated according to chapters of KPK, it shows that 4 cases have been prescribed which belong to chapter 14 Penal Cases Against International Right. These cases are: **article 130** Incitement on aggressive war or armed conflict¹⁸ 2 cases, **article 132** abduction of aircraft¹⁹ 1 case, and **article 134** endangering of security of sea sailing²⁰ 1 case. The prescription of these cases by the

¹⁸ **Kosovo Penal Code, Article 130 INCITEMENT FOR AGGRESSIVE WAR OR ARMED CONFLICT**

Whoever, in public manner, in a meeting or through writings, audiovisual recordings, or in any other manner calls for aggressive war or armed conflict, is sentenced from one to three years of imprisonment. This penal case has been prescribed in the Municipal Court of Prishtina in 2006, and in the Municipal Court of Malisheve in 2005, with case number 175/05.

¹⁹ **Kosovo Penal Code Article, 132 ABDUCTION OF AIRCRAFT**

(1) Whoever, in contradiction with the Convention on prevention of illegal abduction of aircraft of date December 16 1970, illegally controls or benefits from aircraft, through threats or violence, or in any other manner, is sentenced to at least one year of imprisonment.

(2) If the case from paragraph 1 of this article results with the death of one or more persons or the destruction of aircraft, the suspect is sentenced to at least five years of imprisonment.

(3) Whoever intentionally deprives another person from life, through committing act from paragraph 1 of this article, is sentenced to at least ten years of imprisonment or long-term imprisonment. This case was prescribed in the Municipal Court of Malisheve in 2007, with case number 42/07.

²⁰ **Kosovo Penal Code, Article 134 ENDANGEREMENT OF SECURITY IN SEA SAILING**

(1) Whoever in violation of the Convention on prevention of illegal acts against security of sea-sailing of date March 10 1988, commits a dangerous act of threatening the security of sea-sailing, is sentenced to ten years of imprisonment.

(2) Act of threatening the security of sea-sailing means one or more of the following acts:

- 1) Abduction of ship or exercise of control through violence or threats or any other form of intimidation;
- 2) Committing an act of violence against a person leading the ship, if that act constitutes a threat to the safe sailing of that ship;
- 3) Destruction of the ship or causing damage to the ship, or to the contingents which could endanger the safe sailing of that ship;

Municipal Court of Prishtina and the one from Malisheva are in violation of the Kosovo Penal Code and the international right. "No deadline is applied on prescription of the execution of verdicts on genocide, war crimes and crimes against humanity, as well as other penal cases which cannot be prescribed according to the international right"²¹.

Contradictions between the Supreme Court and Municipal Courts

The high number of the prescription taken into review throughout the years has come to happen also as a consequence of the tendency to fill-in the norm of the cases which should be reviewed and closed throughout one year by a judge. In order to complete this norm, the judges have neglected the legal deadlines, running to complete the numbers/norms without taking into account also the risk of ageing of cases. "If they were more cautious, the prescription would not have happened due to the fault of the judges, since in the end the one accountable for absolute prescriptions is not us".²²

Despite the fact that 54% of cases which have been prescribed belong to relative prescription, without taking into account the uncategorized ones, there still has not been any action against the persons accountable for these prescriptions.

From 4197 cases in total prescribed by municipal courts in Kosovo which have been reviewed for the purpose of this analysis, 1639 cases belong to absolute prescription, which means that the double of the deadline for prescription/ageing foreseen by KPK has been exceeded. For these 1639 cases which have been prescribed in the absolute aspect, there is no possibility to undertake any action by the courts, since regarding the absolute prescription of the cases, the responsibility does not lie with the courts, since

4) Placement or the possibility of placing in the ship any tool or substance which may result with the destruction of that ship or its shipments, which could endanger the safe sailing of that ship;

5) The destruction or damaging of the navigating equipment or heavy damage in their operation, an act that could endanger the safe sailing of that ship;

6) Information communication for which the suspect is aware to be false, which could endanger the safe sailing of that ship.

(3) If the penal case from paragraph 1 of this article results with the death of one or more persons or with the destruction of the ship, the suspect is sentenced with at least ten years of prison.

(4) Whoever intentionally deprives another person from life by committing a criminal act from paragraph 1 of this article, is sentenced with at least ten years of prison or long-term imprisonment.

(5) Whoever by lack of caution commits a criminal act from paragraph 1 of this article is sentenced to three years of imprisonment.

(6) If the penal case from paragraph 5 of this article results in the death of one or more persons or the destruction of the ship, the suspect is sentenced to one to eight years of imprisonment. This case has been prescribed in the Municipal Court of Malisheva in 2005, with case number 180/05.

²¹ Kosovo Penal Code article 95.

²² Interview with Fejzullah Hasani-Head of Supreme Court of Kosovo, 19-01-2012.

the double of time has exceeded as foreseen by the law on penal prosecution or verdict execution. This is because it was either impossible to recover the suspected party, or it was not possible to recover the convict.

The heads of most of the municipal courts have said that the large number of prescription of cases has happened due to the small number of judges and administrative staff of the courts. This is as regards the prescription of penal prosecution. The objective factor, the lack of judges, for a long time now has impacted in the increase of cases, which then result in their ageing. The Office of the Disciplinary Prosecutor at the Court Council of Kosovo has focused on those manipulative cases, where the judge, by neglecting his/her judicial function has contributed to a large extent to the ageing of a case. "Our suspicions are that there have been intentional cases of ageing of cases, but in all this misfortune there is another misfortune, that all accountable for those cases are no longer on duty. We are investigating the cases and we are coming to an evidence that this could be intentional, but the result is zero since we cannot initiate any procedure against ex-judges".²³

The impossibility of initiating a procedure by the Office of the Disciplinary Prosecutor is leaving space for judges to allow the prescription of penal cases and to resign from the position of the judge and never account for their work or lack of work. The intentional allowing of relative prescription of cases could account for a criminal offence of abuse of official duty and for this judges should be penally prosecuted.

The Chief Prosecutor of the District Prosecution of Prishtina Mr. A. Lumezi states that "I know that in courts there has been a large number of unfinished cases due to the heavy backlog which has led to prescriptions. Up till now, we have no information that there has been abuse of official duty. If we had information that the prescription of cases has been done intentionally, we would certainly investigate those judges"²⁴.

The persons responsible for the prescription of thousands of cases could pass without being held accountable due to the fact that the majority of judges who have committed such actions are no longer serving as judges, and have either continued as lawyers or have not been reenacted during the process.²⁵ For Begolli, the fact that they no longer serve as judges does not pose a big problem. The Office of the Disciplinary Prosecutor does not have a mandate to exercise sanctions for judges who no longer serve in the justice system, but according to Begolli this cases could be related to the State Chief

²³ Interview with Kadri Begollin, prosecutor in the Disciplinary Commission in the Court Council of Kosovo. 18-01-2012.

²⁴ Kosova Sot "*Some judges under investigation*", 9-December 2011, page 5.

²⁵ Kosova Sot, "*In June begins the investigation for the ageing of cases*", 13 May 2011, page 9.

Prosecutor, who can seek penal responsibility for the eventual violations. Neither the Office of the Disciplinary Prosecutor, nor the State Prosecution have undertaken any measure in investigating and sanctioning the responsible persons for such a large number of cases prescribed in the relative aspect. Although it is emphasized that 9 judges are under investigating procedures due to the prescription of cases, no concrete action has yet been undertaken.

It is absurd how ex-judges who have allowed the prescription of penal cases for years, now have the right to exercise the profession of the lawyer. Those who have pardoned crime and criminals for years, now have the right to defend the right of citizens!

As regards the prescription of verdict execution, the judges justify that there is no willingness by the Kosovo Police in responding to the requests of the courts in arresting the convicts. Furthermore, the judges claim that in many cases there are problems with addresses of the suspects and convicted, since they cannot be reached in those addresses. "The addresses for courts have posed a problem because this has impacted the courts in the lagging behind of cases, delay of deadlines and has created large costs, since the party had often to be sought three-four times. As regards the police, this does not hold, because they are accountable to find the addresses, and they have their own operative in finding the addresses."²⁶

Also, a problem in initiating the prosecution and beginning of the verdict execution is also the escaping of suspects and convicts. A large number of suspects and convicts are outside the country and cannot be arrested and brought to the court or in serving the jail term.

The Municipal Court of Gjakova and the one of Klina together have 603 cases which have been prescribed and have not been separated in the relative or absolute aspect. From these cases, 304 are from the Municipal Court of Gjakova, and according to Rudin Elezi, administrator of this court, these are cases which belong to the prescription of verdict execution, meaning that the court has reviewed the cases, has issued the verdicts, but the suspects could not be arrested by the Kosovo Police in order to be brought in the correctional institutions in order to serve the issued verdicts. Their not being arrested in time has made possible the prescription of verdict execution. The courts blame the police for this, "it happens that the request is sent three times to the

²⁶Interview with Fejzullah Hasani-Head of the Supreme Court of Kosovo, 19-01-2012.

police and they do not respond”²⁷. Despite this, the head of the Supreme Court Fejzullah Hasani says that the cooperation with the police has been correct, but it can be said that there has been problematic segments. There was the unit dealing with court orders, here we have problems, and this can be proved by the absolute prescription, since the absolute prescription does not happen due to the courts.

Additionally, the problem is that the police in the case of accepting a penal lawsuit, it does not take into consideration all the necessary data as obliged by the law, which then leads to the problem of the addresses²⁸ of the suspects.

Taken in general, the reasons of judges for the ageing of penal cases are as follow:

- **Large number of cases,**
- **Small number of judges,**
- **Lack of finding the suspects either from courts, or the police,**
- **Wrong addresses,**
- **Hide-out of suspects in order to avoid the penal responsibility,**
- **Lack of enforcement of court orders by the police,**
- **Incomplete cases by the prosecutions,**
- **Lack of additional court staff,**
- **Prescriptions in the para-penal procedure in the police,²⁹**
- **Lack of replacement of judges etc.**

The reasons of the courts regarding the prescription of cases could be real as regards the cases which have been prescribed in the absolute aspect, but they are not real as regards the relative prescription, since the courts have not undertaken any legal action in order to prevent the prescription deadline. This implies that the courts have not reviewed the cases which

{The claims of the courts regarding the prescription of cases could be real as regards the cases prescribed in the absolute aspect, but they cannot be real as regards the prescription in the relative aspect, since the courts have not taken any legal measure to prevent the prescription deadline }

²⁷ Ms. Safete Tolaj, Head of the Municipal Court of Deçan in an interview given to Organization ÇOHU! states that they have problems with the police regarding the execution of court orders, since the police do not respond to court orders. We have sent three orders for the same case and we have not received a response.

²⁸ It is truly a complex problem, this problem of prescription of penal cases. The court system is facing problems which could be called banal, for example the naming of streets. Kadri Begolli 18-01-2012.

²⁹ Peja Municipal Court claims that most of the prescribed cases have arisen as prescribed in the para-penal procedure in the police.

have been prescribed in the relative aspect, and have thus allowed their prescription without having them reviewed. "The relative prescription leaves for suspicions whether something has happened here, these are not good signals, if it becomes obvious that the relative prescription has taken place due to abuse of official duty, then there will be measures"³⁰. And the judges have to be held accountable for these cases. "It does not hold that the judges have been overloaded with cases, because no matter how overloaded a judge is with cases, he/she should not allow for the ageing of a case due to his/her lack of work. And this can be easily proved, that if a judge has dealt only with cases which were not close to being aged, and has dealt with numbers and not with cases risking ageing, it implies that he/she has neglected the case."³¹

Conclusion

Thousands of penal cases are prescribed/aged in the courts of Kosovo with the justification of having a large number of cases and a small number of judges and administrative staff of the courts. Nevertheless, up till now there has not been any measure undertaken by competent bodies in order to increase the number of judges and the court staff in order to prevent such a large number of ageing cases.

The biggest number of cases prescribed in the municipal courts belong to the relative aspect of prescription, implying that the deadline foreseen by the law is passed as regards the undertaking of any penal measure against the suspects/convicts. Regarding the large number of cases prescribed in the relative aspect, it is the judges that have to be held accountable, because of the lack of taking legal measures for the prevention of the deadline of prescription. Although the judges are blamed for the relative prescription of cases, up till now no measure has been taken against them, be that penal or disciplinary..

A part of the prescribed cases belong to the prescription of verdict execution. This means that the courts have prosecuted the cases and have issued the verdicts, but the suspects have not been arrested in order to be sent to correctional institutions to serve the terms. It is the police that is to blame for this, which has not executed the court orders for arresting the convicts. This shows for a lack of cooperation between the Kosovo Police and the courts, especially in the aspect of executing court orders.

³⁰ Interview with Fejzullah Hasani-Head of the Supreme Court of Kosovo, 19-01-2012.

³¹ Interview with Fejzullah Hasani-Head of the Supreme Court of Kosovo, 19-01-2012.

As regards the prevention of the prescription of such a large number of penal cases (in the relative aspect), it is necessary that in the future the number of judges and court staff be increased, an increase in the cooperation between the police and courts, and ultimately the increase of the level of responsibility by the judges. If a case is prescribed, then the reasons should be made known, and if the judge is to blame, then penal and disciplinary measures should be taken against him/her.