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REPORT WITH RECOMMENDATIONS

OF THE OMBUDSPERSON OF THE REPUBLIC OF KOSOVO

Related to

Prescription of judicial proceedings and execution of decisions of Basic Courts in minor offence cases

Addressed to:

- Mr Kadri Veseli, President of the Assembly of the Republic of Kosovo
- Ms Lirije Kajtazi, President of the Commission for Human Rights, Gender Equality, Missing Persons and Petitions
- Ms Albulena Haxhiu, President of the Commission for Legislation, Mandates, Immunities, Rules of Procedure of Assembly and Supervision of the Anti-corruption Agency
- Ms Selvije Halimi, Deputy president of the Commission for Legislation, Mandates, Immunities, Rules of Procedure of Assembly and Supervision of the Anti-corruption Agency
- Mr Armend Zemaj, Chairman of the Working Group for the Draft Law No. 05/L-87 on Minor Offences

Prishtinë, 25 April 2016

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PURPOSE OF REPORT

The Law which is currently regulating the prescription of minor offence cases in the Republic of Kosovo is Law No. 011/15-79 KSAK on Minor Offences ("*Law of 1979*"). This Law prescribes three possible types of prescription of minor offence cases. First, "procedure of minor offence cannot be taken if one year has expired from the date of the commission of minor offence" (*id.*, Article 27, par. 1). Secondly, "prescription shall start to count again on any interruption, but prescription shall be done in all cases when two years have expired from the date of the commission of minor offence" (*id.*, Article 27, par. 4). Thirdly, "the fine rendered and the protective measures given cannot be executed if 1 year has expired from the date when the decision on minor offence has taken its final form" (*id.*, Article 28, par. 1).

This report has four main purposes:

(1) To prove the seriousness of the prescription problem in minor offences cases;

(2) To draw the attention to harmful consequences caused by prescription of minor offence cases to the state budget of the Republic of Kosovo, and the respect of human rights;

(3) Provide an assessment on the solutions to this problem proposed in the Draft law no. 05/L-087 on Minor Offences;

(4) To provide recommendations to the Assembly of the Republic of Kosovo for a fair and more efficient solution of the problem.

LEGAL GROUNDS

Pursuant to Law no. 05/L-019 on Ombudsperson, the Ombudsperson, among others, has the following competences and responsibilities:

- "to provide general recommendations on the functioning of the judicial system" (article 16, par 8).
- "to make recommendations to the Government, the Assembly and other competent institutions of the Republic of Kosovo on matters relating to promotion and protection of human rights and freedoms, equality and non-discrimination" (Article 18, par 1, subpar 5);
- "to publish notifications, opinions, recommendations, proposals and his/her own reports" (Article 18, par 1, subpar 6);
- "to recommend promulgation of new Laws in the Assembly, amendments of the Laws in force and promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo" (Article 18, par 1, subpar 7);
- "To prepare annual, periodical and other reports on the situation of human rights and freedoms, equality and discrimination and conduct research on the issue of human

rights and fundamental freedoms, equality and discrimination in the Republic of Kosovo" (Article 18, par 1; subpar 8);

- "To recommend to the Assembly the harmonization of legislation with International Standards for Human Rights and Freedoms and their effective implementation" (Article 18, par 1, subpar 9).
- Upon the submission of the report to competent institution and the publication of the report in the media, the Ombudsperson aims at conducting the following legal responsibilities.

A SUMMARY OF FACTS

A. Legal provisions for regulation of judicial proceedings and execution of decisions in minor offence cases

Minor offence cases in the Republic of Kosovo are mainly regulated by a legal instrument dating from the time of former Yugoslavia, Law no. 011/15-79 of KSAK on Minor offence ("*Law of 1979*"), however, some details of judicial procedures, and execution of decisions and other measures are regulated by subsequent laws in the Republic of Kosovo.

In respect of the judicial proceedings pursued in the minor offence cases, Law of *1979* stipulates that "bodies developing the minor offence procedures are municipal courts as a first instance body" (*id.*, Article 30, par. 1). However, this provision was abrogated by another law, Law No. 03/L-199 on Courts. Law on Courts stipulates that minor offence cases are treated at the first instance, rather than by the Municipal Court on Minor Offence, but they are treated by Basic Courts of the seven regional centres: the Basic Court of Prishtina Gjilan, Prizren, Gjakovë, Pejë, Ferizaj and Mitrovicë (*id.*, Article 9, par. 2). See also *id.*, Article 39, par. 2 ("All cases which on 31 December 2012 are cases of first instance of . . . Municipal Courts for Minor Offence and are not resolved by a final form decision, on 1 January 2013, they are treated as cases of Basic Court which has the relevant territorial jurisdiction").

In case the defendant is found guilty for an act of a minor offence, Law *of 1979* sets forth a number of penalties and other measures. Penalties foreseen are "imprisonment penalty" (*id.*, Article 2) and "fine" (*id.*, Articles 3-4), while the protective measures include "confiscation", "confiscation of pecuniary benefit", "suspension of exercise of the independent activity", "prohibition of driving", "departure of a foreign citizen" and "obligatory healing of alcoholics and drug-addicts" (*id.*, Article 16).

In respect of execution of these penalties and other measures, Law no. 04/L-076 on Police stipulates that the body entrusted with the enforcement responsibility is the police of the Republic of Kosovo: "The Police shall apply the orders and instructions lawfully issued by a … competent judge" (*id.*, article 6, par. 1). Based on this provision, the Police are the competent body for execution of decisions and other measures in minor offences cases.

Law of 1979 provides for strict deadlines in minor offences cases, thus determining three possible types of prescription.

(1) "Procedure of minor offence cannot be taken if one year has expired from the date of the commission of the minor offence" (*id.*, Article 27, par. 1);
(2) "Prescription shall start to count again on any interruption, but prescription shall be done in all cases when two years have expired from the date of the commission of the minor offence" (*id.*, Article 27, par. 4); and
(3) "The penalty imposed and the protective measures given cannot be executed if 1 year has expired from the date when the decision on minor offence has taken its final form" (*id.*, Article 28, par. 1).

Two first types of prescriptions can be called procedure *statutory limitation*, while the third type can be called the execution *statutory limitation.* Consequences caused from the prescription of minor offence cases constitute the main topic of this report.

B. A statistical overview of the problem of prescription of minor offence cases under the stage of judicial proceedings and execution of sanctions

In order to reveal the measure and the degree of the problem of prescription, the Ombudsperson asked the following detailed data for the calendar year 2015, from state bodies responsible for the conduct of judicial procedure of these cases and execution of penalties and other measures. As explained above, these bodies are, Basic Courts and Departments of Police of the Republic of Kosovo in seven regional centres. From the statistics gathered, the Ombudsperson revealed that both problems of prescription, that of statutory limitation of procedure and statutory imitation of execution are widespread throughout the Republic of Kosovo[1].

In respect of statutory limitation of procedure, statistics obtained from Basic Courts indicated that in 2015, the number of minor offence cases in courts was in total **26,266**. Basic Courts in all regional centres had their cases prescribed; the problem seems to be larger in Basic Courts of Prishtinë and Gjakovë, where the number of minor offence cases was namely, **11,860** and **9,492**. This means that approximately **83%** of minor offence cases prescribed in 2015 were from these two Courts.

Furthermore, statistics gathered indicate that the problem of prescription of procedures is likely to worsen more with the time passing. In 2015, a total of **305,860** of minor offence cases are resolved by all Basic Courts of the Republic. However, **327,162** minor offence cases are received in 2015. This means that Basic Courts in 2015 received **7%** more minor offence cases than they resolved and, as a result, the net increase of the overload of Basic Courts during 2015 was **21,302** of minor offence cases. If the overload of courts in the area of

[1] For all statistics collected in a tabular form, see Annex 1. When statistics submitted by Basic Courts differed from the official statistics of the *Annual Statistics Report of Courts – 2015*, published by Kosovo Judicial Council, advantage was given to those of Judicial Council. Report of Judicial Council does not include data for prescription of minor offence cases, while data for prescription that Ombudsperson received directly from Basic Courts, in some cases, lower figures were presented than expected, based on other statistics of the Judicial Council Report. For example, Judicial Council Report indicates that Basic Court of Mitrovica had 64,362 unresolved cases at the end of 2015, more **than** in any other Court of the Republic, while the Basic Court of Mitrovica declared that it only had five cases prescribed in the entire 2015, **less** than in any other Court. This discrepancy raises the possibility that data from some of Basic Courts for prescription of cases underestimates the real number of cases prescribed. If so, the problem of prescription, and its harmful consequences may be more serious that shown in this Report, which takes for granted, the data of Courts on this issue.

minor offences continues to raise with the same rhythm in the upcoming years, the problem of prescription of procedures will become more serious with the time passing.

Unfortunately, statistics submitted by the Police branches indicate that the problem of prescription of execution is even more serious than the one of the prescription of procedures. Gathering these statistics, we revealed that in 2015, there were in total **32,860** ordinances received by Basic Courts in minor offence cases prescribed. Figures collected also indicate that the risk for extreme worsening of this problem in the upcoming years. During 2015, Police branches received 96,848 ordinances for execution of minor offence cases from Basic Courts, while they executed only **37,016** ordinances in the same period. This means that during this period, Police received **262%** more ordinances than they executed, thus increasing the net overload of ordinances by **59,832** minor offence cases. With this extreme increase, the problem of prescription of execution ultimately becomes more serious with the time passing.

Merging the number of cases of prescription of procedure with the number of cases of prescription of execution, it results that during 2015, there were in total **26,266 + 32860 = 59,126** cases prescribed. If this number is kept constant from year into year, we could expect that out of **327,162** cases received by Basic Courts in 2015; about **20%** of them will be prescribed, be it at the judicial procedure stage or at the execution stage.

HARMFUL CONSEQUENCES OF THE PROBLEM OF PRESCRIPTION

The tremendous dimensions of the problem of prescription of minor offence cases be at the stage of procedure or at the stage of execution cause a number of serious consequences for the Republic of Kosovo.

A. Harmful consequences of the prescription for state budget of the Republic of Kosovo

First, although *Law of 1979* stipulates some penalties and different measures in minor offence cases, the main penalty especially for road traffic minor offence, is rendering the fine. Therefore, the negative impact for the state budget when thousands of minor offence cases are prescribed every year should be extraordinary. This budget impact may be calculated approximately. As is proved above, the number of cases prescribed at the stage of execution in 2015 was **32,860**, while the number of cases prescribed at the stage of procedure during the same period was **26,266**. To be as conservatory as possible in our calculations, we suppose that if these cases were not prescribed, Basic Courts would have delivered judgments for a big proportion of them **5,253** cases (20%) we suppose, that fines were wrongly rendered by traffic Police officers, and as a result, the fined would be freed form their liability. Based on this assumption, the number of cases in which the state, due to prescription of procedure and execution, lost the possibility to collect fines in 2015 would be **32,860 + 21,013 = 53,873** in total. Then, let us observe that the Law no. 02/L-70 on Road Traffic Safety, stipulates 15 € as a minimum fine for violation of its provisions (see *id.*, Article 141, par. 6; Article 146, par. 7; article 147, par. 2; Article 148, par. 4; Article 149, par. 2; Article 153, par. 2; Article 164,

par. 2; Article 168, par. 2; Article 197, par. 2; Article 305, par. 7; and Article 363). To be again conservatory we may suppose that **53,873** lost fines totalled the amount of only 15 € each.

Although with these very conservatory assumptions, we may conclude that the problem of prescription of minor offences cases only during 2015, cost at minimum **€808,095** to the Budget of Kosovo. And since the problem of prescription may worsen in the upcoming years, then this harm to the state budget is likely to increase even more.

B. Harmful consequences of the prescription for the respect of human rights

1. Harmful consequences of the prescription for the respect of right to life and right to security

Other than the extraordinary budget impact, the problem of prescription of minor offence cases have also harmful consequences in the respect of human rights set out by the Constitution of the Republic of Kosovo *("Constitution").*

Constitution stipulates that "Every individual enjoys the right to life." (*id.*, Article 25, par. 1) and "Everyone is guaranteed the right to … and security" (*id.*, Article 29, par. 1). In addition, European Convention on Human Rights ("ECHR"), whose rights, according to Article 22 of the Constitution, "are guaranteed by this Constitution", stipulates that: "Everyone's right to life shall be protected by law" (ECHR, Article 2, par 1) and "Everyone has the right to liberty and security of person" (*id.*, Article 5, par. 1). See also Universal Declaration on Human Rights, Article 3 ("Everyone has the right to life, liberty and security of person").

To understand the connection between these rights and the problem of prescription, one should pay attention to article 53 of the Constitution which stipulates that; "Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights" ("ECtHR").

Court decisions of ECtHR clearly define that all states, not only they have **negative** obligations not to violate the rights set out in the Convention, but they also have **positive** obligations which is to protect these rights from the risk of violations from other persons. For example, in the case *Osman vs. United Kingdom*, ECtHR, Application No. 23452/94 (1998), par. 115, the court declared that "first sentence of Article 2, par 1 [right to life], not only prohibits the state to take life deliberately and unlawfully, but it also obliges it to undertake appropriate steps to protect the life of persons within the state's jurisdiction". Moreover, the Court referred expressly to "primary obligation [of State] to ensure the right to life by establishing criminal efficient provisions to prevent and discourage the commission of acts against a person, with the support of police mechanisms for the prevention, extinction and sanctioning violation of such provisions" (*id.*). See also *Mahmut Kaya vs. Turkey*, ECtHR, application no. 22535/93 (2000), par. 85, *Kilic vs. Turkey*, ECtHR, Application no. 22492/93 (2000), par. 62 and *Kontrova vs. Slovakia*, Application no. 7510/04 (2004), par. 49.

Based on these precedents, the Republic of Kosovo has constitutional obligation, according to ECHR and Article 53 of *Constitution,* to ensure efficient implementation of legal provisions,

through the execution of sanctions, to prevent and discourage acts of minor offences risking the life and security of citizens of the Republic, especially in the area of road traffic. Police statistics indicate that the riskiness of road traffic has been increasing in an alarming manner. According to the *Annual Work Report of the Police of the Republic of Kosovo* for 2015, "During 2015, there were 17722 accidents registered, which compared to 2014 marks an increase by 8.72%" (*id.*, p. 11). Moreover, "an increase is marked by all types of accidents, the fatal accidents by 5.41% [and] accidents with injuries by 8.18% . . . . Out of this number of accidents, 129 persons lost their lives, which compared to 2014 marks an increase by 1.57%. Unfortunately, the increase is also highlighted by the number of persons injured in road traffic accidents by 9.86%" (*id.*). See also "Kosovo, police: Road traffic accidents are increased frighteningly", *Top Channel*, 25 October 2015.

Taking into account the high number of deaths and body injuries caused by road accidents, and the increase of this number during the previous year, it is clear that Republic of Kosovo has a "Primary obligation … to secure the right to life by establishing efficient criminal provisions to prevent and discourage [dangerous driving], with the support of mechanisms of Police, for prevention, extinction and sanctioning the violations of such provisions".

However, the fact that almost 20% of minor offence cases end in prescription, means that irresponsible drivers remain not penalised and are completely free to continue with their dangerous behaviours into the streets of the Republic. Under these circumstances, the preventive effect of "sanctioning of legal provision" for these drivers and the discouraging effect of these sanctions for drivers in general are not functioning properly. Because of this reason, the prescription of minor offence cases, be it at the stage of court procedures or at the stage of execution of sanctions, not only does it have a huge impact to state budget, but also prohibits Republic of Kosovo in meeting its "primary" obligation to ensure the right to life and security of its citizens and inhabitants, by providing a preventive and discouraging effect of the minor offence rules of road traffic.

2. Harmful consequences of the prescription for the respect of the right to property

Article 46, par. 1 of Constitution stipulates that: "The right to own property is guaranteed". In addition, in accordance with Article 1, par. 1 of the First protocol of ECHR, "Every natural or legal person is entitled to the peaceful enjoyment of his possessions". This does not mean that application of fines for minor offence cases is prohibited categorically. On the other hand, Article 1, par. 2 of the first protocol stipulates expressly that "The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary … to secure the payment of ….penalties".

However, the constitutional authorisation to secure payment of penalties is not limitless. The convention stipulates that "No one shall be deprived of his possessions except … **according the conditions foreseen by the Law**" (ECHR, First protocol, Article 1, par.1, additional emphasis). In the same way, Article 55, par. 1 of the Constitution stipulates, for all human rights in general, that "rights and fundamental freedoms guaranteed by this Constitution, may be limited **only by Law**" (additional emphasis).

According to court decisions of ECtHR, phrasal verbs "Foreseen by law' and "Authorised by law", mean the principle of legal security. The principle of legal security, among others, requires that deprivation of an individual of his possessions "shall not be arbitrary" (*Winterwerp vs. Netherlands*, ECtHR, Application no. 6301/73 (1979), par. 45, additional emphasis). In this manner, phrasal verbs, "Foreseen by law' and "Authorised by law", require that the execution of penalties shall be done in a non-arbitrary manner. This principle is confirmed also by the *Constitution*, which expressly stipulates that "No one shall be arbitrarily be deprived of property" (*id.*, Article 46, par. 3).

Based on these principles, the prescription of minor offence cases, be it at the stage of procedure, or at the stage of execution, considerably constitutes a violation of the right of property of those paying the penalties, as under the current circumstances, where about 20% of penalties rendered are prescribed, the issue who pays the penalty and who does not, becomes completely arbitrarily. Let us suppose a hypothetical case that three persons are fined by the Police for the same act of a minor offence on the same date, but in different regional centres of the Republic. The case of the first person is heard by the relevant Basic Court and the fined person pays the penalty without delay. The case of the second person is also heard by the Basic Court in the regional centre where he lives, and like the case of the first person, the fine is confirmed by the Court. However, the fined person in this case does not pay the penalty on his own initiative, and further, he has no accurate address. For this reason, the Police cannot find him, one year expires and the fined person is freed from the payment of penalty due to the prescription of execution of sanction. While, the case of the third person is not considered at all by the Court for more than a year, as the Basic Court where he lives is overloaded with case minor offence cases. As a result, the case is not heard, it is prescribed at the very procedural stage and the third person, like the second person, is freed from the payment of the penalty imposed. This hypothetical case clearly indicates that serving the penalty of fine, when the prescription of the minor offence case occurs considerably as in the current circumstances of the Republic of Kosovo, is arbitrarily and as such, it does not meet the criteria of legal security. Therefore, the problem of prescription of cases hinders the complete respect of the right of the property, in order not to be deprived of the property arbitrarily.

POSSIBLE SOLUTION OF THE PROBLEM OF PRESCRIPTION

Since the problem of prescription of minor offence cases constitutes not only a huge harm to the budget of the Republic of Kosovo, but also a violation of human rights, the Ombudsperson has found it indispensable that competent authorities should find an efficient solution to this problem as soon as possible.

A. Proposed solutions from the Draft law No. 05/L-087 on Minor offences

A source of solution may be the Draft law no. 05/L-087 on Minor offences ("*Draft law of 2016*"), which aim at completely substituting the *Law of 1979* and bringing necessary reforms to the system of minor offences. This Draft law is now being reviewed by the Assembly of the Republic of Kosovo. On 9 February 2016, *The draft law of 2016* was reviewed in principle by the commission for Legislation, Mandates, Immunities, Rules of Procedure of

the Assembly and supervision of Anti-corruption Agency ("*Commission for Legislation"),* which unanimously recommended to the Assembly to adopt the draft law in principle (see Minutes of the meeting of the *Commission for Legislation*, held on 9 February 2016, p. 2). Implementing the recommendation of the *Commission for Legislation*, the Assembly in its plenary session held on 19 February 2016, adopted the Draft law of 2016 in principle (see transcripts of the plenary session of the Assembly of the Republic of Kosovo, held on 19 and 24 February 2016, p.46). Then, on 11 March 2016, the *Commission for Legislation* appointed a working group and decided to have a public hearing on the *Draft law of 2016* on 21 March 2016 (see Meeting minutes of the *Commission for Legislation*, held on 11 March 2016, p.5). On 21 March 2016, as promised, public hearing was held, in which the deputy president of the Commission Ms *Selvije Halimi* declared that "We decided to establish a working group that will deal with the amendment of the Draft law and we also will initially organise a public hearing" (Transcript from the public hearing of the Commission for Legislation, held on 21 March 2016, p. 2).

Although *Draft law of 2016* does not expressly declare the purpose of solution of the problem of prescription, in particular two proposals seems as attempts in this matter. One part of the Draft law proposed to transfer the competence to judge a percentage of the minor offence cases from Basic Courts to Administrative Bodies, while another part of Draft law proposed to provide citizens with a 50% deduction on the penalty rendered if they pay it within the deadline set.

1. Transfer of the competence of judging of one part of minor offence cases from Basic Court to Administrative Bodies

As we have seen above, Law no. 03/L-199 on Courts stipulates that minor offence cases shall be exclusively under the competence of Basic Courts of the seven regional centres of the Republic of Kosovo. *Draft Law of 2016* proposed a big change in this area, by stipulating that "On certain minor offences determined under the Law or Regulation of the Municipal Assembly, the minor offence proceeding may be held, and minor offence sanctions may be imposed, by the state administration body, or the body holding a public authorization (hereinafter: the body on minor offence) to supervise the implementation of the law, which foresees minor offences" (*id.*, Article 55, par. 4).

In respect of case jurisdiction of bodies for minor offences, Draft law of 2016 foresees that the body shall carry-out the minor offence proceeding, if the law provides for exclusive competences on such proceedings" (*id.*, Article 56, par. 1), and "according to all minor offences for which is foreseen the sanction by fine in a clearly defined amount; for which is foreseen a fine up to 500 Euro against a natural person; for which is foreseen a fine up to 1000 Euro against a legal person; and is foreseen the imposing of a fine at the site. (*id.*, Article 56, par. 2, subpar 1-4).

In terms of the composition of the body on minor offence hearing the case, the draft law of 2016, leaves this issue relatively open: "Members of the committee from paragraph 1 of this Article shall be officials bearing an authorization with a respective grade of professional preparation and necessary work experience, whereby at least one of the members shall be a graduated lawyer who passed the bar exam. (*id.*, Article 61, par. 2).

The decision of the body on minor offence, is however, not foreseen to be final: "Against the decision on minor offences rendered by the body on minor offence a claim may be filed for conducting an administrative dispute. (*id.*, Article 64, par. 1) and "The competent court to decide on the administrative dispute shall perform the judicial protection procedure according to the Law on Administrative Dispute" (*id.*, Article 64, par. 4).

Certainly, transfer of a big part of minor offence cases from the Basic Court to "bodies on minor offence" would facilitate the problem of prescription of judicial procedure, while one of the causes of this problem is overloading of Basic Courts with such cases. However, the fact that these bodies are not Courts, but are administrative bodies, immediately raises the concern that such reform conflicts with the right to a fair and impartial trial.

According to Article 31, par. 2 of *Constitution,* "Everyone is entitled to a fair and impartial public hearing … to any criminal charges within a reasonable time by an independent and impartial tribunal established by law". Similarly, ECHR stipulates that: "In the determination… of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law" (*id.*, Article 6, par. 1).

To make a distinction whether the transfer of competences of Basic Courts, in respect of minor offence cases, to administrative bodies constitutes a violation of human rights, one should initially raise a question, whether, in minor offence cases, we have to do with a "criminal charges' within the meaning of Article 6 of ECHR. If not, then the right to a fair and impartial trial shall not be applicable here. According to court decisions of ECtHR, the concept of criminal charges "should be interpreted in order to have 'an autonomous' meaning within the context of the Convention, rather than based on its meaning on domestic laws" of a state (*Adolf vs. Austria*, ECtHR, Application no. 8269/78 (1982), par. 30). Therefore, the fact that legal system of the Republic of Kosovo criminal charges and cases of minor offences are separate categories is not determinant. Rather than base on classification of actions on domestic laws of the Republic of Kosovo, we should raise a question, whether, according to court decisions of ECtHR, actions for a minor offence case can be qualified as a "criminal charges' in the context of the right to a fair and impartial trial.

Precedents of ECtHR indicate that an act for minor offence, even for a minor act with a minor punishment, is considered a kind of criminal charges and, for this reason, the procedure for judging the cases of minor offence should be subject to criteria set out in Article 6, par. 1 of ECHR. See, e.g., the case *Öztürk vs. Germany*, ECtHR, Application No. 8544/79 (1984), par. 53-54, in which the Court found that a minor offence in road traffic, associated with a minor penalty, was considered "criminal charges" in the context of Article 6 of ECHR ("The fact that it was . . . an act of minor offence that does not stand the chance to harm the reputation of the perpetrator, does not remove from the scope of Article 6 [and] . . . lack of seriousness of the penalty in question cannot remove from the act, its nature which is essentially criminal").

Therefore, one should raise a question, whether the review of minor offence cases by administrative bodies, as foreseen by *Draft Law of 2016*, is allowed according to Article 6, par. 1 of ECHR. In order to meet the criteria of Article 6, the body on minor offence should be "an independent and impartial tribunal, established by Law".

In this context, the most relevant criterion is the one of independence: are bodies on minor offence, as foreseen by *Draft Law of 2016, "*independent" in the meaning of Article 6, par. 1? ECtHR decisions found that concept of independence is comprised of a number of different elements: "in order to determine whether a tribunal can be considered to be 'independent' in the context of Article 6, par. 1, among others, one should consider, the way how members and their term his assigned, the existence of protection from external pressure and the issue if it constitutes an appearance of independence" (*Incal vs. Turkey* ECtHR, Application no. 22678/93 (1998), par. 65). Independence from the executive branch is considered of special importance. See *Belilos vs. Switzerland*, ECtHR, Application no. 10328/83 (1988), par. 64.

The most relevant case for assessment of *Draft law of 2016* is *Lauko vs. Slovakia*, ECtHR, Application No. 26138/95 (1998). The applicant in this case was accused of the act of minor offence, according to Law on Minor Offence of Slovakia (*id.*, par. 12). Based on this Law, responsible authorities for judging the case in the first instance and second instance were namely administrative office at the municipal level and the one in the regional level (*id.*, par. 35). Both decided against the applicant, finding him liable with a penalty (*id.*, par. 13-14).

The Court found that the procedure of judging of the case did not meet the criterion of independence defined in Article 6 of ECHR. Initially, the Court found that municipal and regional offices "are charged with the discharge of state administration under the Government control" and "the appointment of heads of these bodes is controlled by the executive" (*id.*, par. 64). Based on these elements, the Court concluded that "the way of appointment of officials of municipal and regional offices, along with lack of whatever security from external pressures and whatever appearance of independence clearly indicates that these bodies cannot be considered 'independent' from the executive within the meaning of Article 6, par. 1 of the Convention" (*id.*).

For same reasons, bodies on minor offence foreseen by *Draft law of 2016* do not meet the criterion of independence. The same like in the case *Lauko*, bodies on minor offence shall be "charged with the discharge of state administration". See *Draft Law of 2016*, Article 55, par. 4 ("the minor offence proceeding may be held, and minor offence sanctions may be imposed, by the **state administration body**, or the body **holding a public authorization** … **to supervise the implementation of the law**, which foresees minor offences", additional emphasis). In this way, *the Draft law of 2016* makes it clear that the body on minor offence is part of state administration with the responsibility to implement the law. Therefore, the body on minor offence, not only is not independent from the executive, but it will also be an integral part of the executive. The same like in the case *Lauko*, thus, "lack of whatever security from external pressures and whatever appearance of independence clearly indicates that [bodies on minor offence] cannot be considered 'independent' from the executive within the meaning 6, par. 1 of the Convention" (*Lauko*, ECtHR, *op. cit.*, par. 64).

However, despite the failure of the bodies on minor offence to meet the criterion of independence according to Article 6, par. 1 of ECHR, "belief of persecution and punishment of a minor offence to administrative authorities is not in conflict with the Convention", at least in itself. If he body on minor offence fails to meet the criteria of Article 6, par. 1, then it suffices that the defendant "has the possibility to dispute ... the decision against him before a

tribunal providing guarantees of Article 6" (*Lauko*, ECtHR, *op. cit.*, par. 64). Same position was confirmed by the Court in the case *Öztürk*, ECtHR, *op.cit.*, par. 56 ("Taking into consideration the high number of minor offences, in particular in the area of road traffic, a Contracting State may have good reasons to facilitate its courts in the work of persecution and penalty. Belief of persecution and punishment of a minor offence to administrative authorities is not in conflict with the Convention, **provided that the person in question is able to dispute whatever decision against him before a tribunal providing guarantees of Article 6**", additional emphasis).

Therefore, the key question for assessment of the Constitutionality of transfer of competences of judgment to the bodies on minor offences is, can a decision of the body on minor offence be disputed "before a tribunal which provides all guarantees of Article 6 of ECHR? As mentioned above, Draft law of 2016 stipulates that "Against the decision on minor offences rendered by the body on minor offence a claim may be filed for conducting an administrative dispute" (*id.*, Article 64, par. 1) and "The competent court to decide on the administrative dispute shall perform the judicial protection procedure according to the Law on Administrative Disputes" (*id.*, Article 64, par. 4).

In order that the competent court for application of administrative dispute meets conditions of Article 6, the court, according to ECtHR shall have "full jurisdiction", including "the right to cancel the decision of the following instance body, in all aspects, regarding factual and legal issues" (*Schmautzer vs. Austria*, ECtHR, Application Nr. 15523/89 (1995), par. 36). Unfortunately, according to the Law on Administrative Conflict, the court does not have this right. Namely, "The court shall decide on the administrative conflict issue, **based on the facts ascertained in the administrative proceeding**" (*id.*, Article 43, par. 1, additional emphasis). Therefore, despite the fact that the court may annul the administrative act if "of the ascertained facts an inaccurate conclusion is concluded in the factual state viewpoint" (*id.*, Article 43, par. 2), again it should take as granted the ascertained facts at the first instance. Based on this fact, only conclusion may be put to question, but not the facts itself. Even worse, the *Draft law of 2016* stipulates that "in the claim cannot be stated new facts and propose new evidences, and if the claimant, without his fault, cannot propose them in the proceeding" (*id.*, Article 66, par. 1, subpar. 3).

Taking these elements into consideration, the competent court for the review of the lawsuit against the body on minor offence cannot be said to have "full jurisdiction", including "the right to annul, in all aspects, regarding factual and legal issues, the decision of a lower instance" (*Schmautzer vs. Austria, ECtHR, op. cit.*, par. 36). In the case of *Schmautzer*, Administrative Court of Austria, same as foreseen in the *Draft law of 2016*, was entitled to annul the administrative decision, if the administrative body "has ascertained facts which in an important aspect fall in contradiction with the case file" or "facts require further researches on an important item" (*id.*, par. 17). Nonetheless, ECtHR again concluded that there was violation of Article 6 of ECHR, because Administrative Court of Austria "was limited in the factual findings of administrative authorities" and "was not entitled to obtain evidence, nor to ascertain facts, nor to consider new issues" (*id.*, par. 32). For the same reasons, the competent court for the review of decisions of the body on minor offence, which as is foreseen by *Draft*

law of 2016 is not entitled to obtain evidence, nor to ascertain facts, nor to take in consideration new facts, it cannot be considered a tribunal with full jurisdiction on all factual and legal issues.

For this reason, transfer of competences for judging cases minor offence cases from Basic Courts to the body on minor offence, although it may facilitate the problem of prescription of procedure, constitutes a violation of the right to a fair and impartial trial. Such a transfer of competences from the judiciary to the state administration can be done only if the defendant is able to dispute the decision of the administrative body before a tribunal meeting the criteria of Article 6, par. 1 of ECHR and has full jurisdiction on all factual and legal issues. *Draft law of 2016* does not provide for such a possibility.

2. Providing 50% deduction on the penalty rendered in case of payment within the deadline set by the Court or the Administrative body

Creating an administrative body on minor offence aims at facilitating the charges of the court and subsequently, the decrease of the number of cases prescribed at the stage of procedure. While, the intention of provision of a 50% deduction on the penalty rendered to those paying within the deadline is the increase of the penalties paid and consequently decrease of the number of cases prescribed at the stage of execution.

Certainly, with the provision of 50% deduction, will manage to decrease the number of cases prescribed, at least to a certain degree. However, the main risk of such a solution is that the amount of money to be lost as a result of the 50% deduction of penalties may exceed the amount of money to be gained as a result of the increase of the number of penalty payments. In this case, the 50% deduction not only would it not help the state budget, but would also damage it even more.

What are the chances that this solution would bring improvements to budget? Mathematically, if we keep the value of penalties rendered constant, the number of the fined persons paying for the penalty within the deadline would **at least** be duplicated, in order that the profit from the increase of the number of penalty payments compensates losses to result from the fact that each penalty payer would pay only 50% of the penalty rendered.

If we do not keep the value of penalties rendered constant, there is another way in which profits could exceed losses: those penalty payers stimulated to pay penalties within the deadline may have penalties rendered higher in amount than the average. In this case, even if the number of penalty payers does not duplicate, profits from the increase of the number of penalty payers again could exceed losses, because more persons with higher penalties would be stimulated to pay. At least we could hope so. .

Nevertheless, we have sufficient grounds to be sceptical on the possibility that the number of penalty payers would increase more than double, so that sufficient persons with high penalties would be stimulated to pay. The reason is that current statutory limitation of fines and other penalties according to *Law of 1979* is too short: one year after the date when the decision on minor offence has taken a final form (see *id.*, Article 28, par. 1), even more the *Law of 2016* leaves this deadline unchanged. See Article 43, par. 1 (“A sanction rendered for

a minor offence cannot be executed if one (1) years has passed from the date when the Decision on the minor offence has become final").

With such a short statutory limitation, the fined persons are little stimulated to pay the penalty rendered, **especially,** if they have high penalties, taking in consideration the deduction that they could benefit according to the proposed reform. We have seen above that the number of cases prescribed in 2015, at the stage of execution, was **32,860**, while in total there were **96,848** ordinances for execution of decisions on minor offence received. According to these statistics which shows how many obstacles there are in the execution process of sanctions on minor offences, the most irresponsible fined persons would simply wait until their penalties would be prescribed, knowing that Police has little chances to take them in within the deadline. Therefore, they would receive deduction not only 50% but 100%, while responsible fined persons, who would pay even 100% of the penalty in the current system, now would pay only 50% of their penalty in this system established by the *Draft law of 2016.*

Because of this, the Ombudsperson considered that the 50% deduction of penalties rendered if paid within deadline is not a right solution to the problem of prescription of execution. Such a solution risks causing more harm to state budget, than the problem itself, which pretends to be a solution.

B. Prolongation of the statutory limitations

For reasons mentioned above, two proposed solutions in *Draft Law 2016* for facilitation of problem of prescription are quire problematic, one because it constitutes violation of right to a fair and impartial trial, and the other because it risks having even higher negative impact on state budget.

To achieve a more suitable solution of the problem of prescription, one should understand clearly causes of this problem. In the case of prescription of procedure, main cause is the insufficient number of judges compared to the number of minor offence cases. Due to the overload of courts, it is impossible for judges to initiate procedure of all cases within one year deadline, after the end of the minor offence and to end all these cases within a two year deadline. The problem of the overload of courts, as well as its connection with the problem of prescription of minor offence cases, there is a long history and was discussed and discussed in reports, news, numerous roundtables almost every year. See, e.g. *Monthly Report – June 2009*, Department for Human Rights and Communities, Sector for Monitoring Legal System, Organisation for Security and Cooperation in Europe (OSCE), p. 3 ("Prolonged delays in the handling of cases … may lead to the prescription of cases, especially in minor offences cases, where the statute of limitations is relatively short"); Annual report *No. 14 – 2014*, the Ombudsperson of the Republic of Kosovo, pg. 33 ("Overloading of the courts with old unresolved cases and delays in handling new cases… for several years are hampering the work of the judiciary in Kosovo"); *Monitoring Courts Report – 2014*, BIRN Kosovo, f. 34 ("As a consequence of lack of judges and professional associates, cases are prescribed") "Lack of judges increases the number of cases in Kosovo Courts", *Koha Ditore*, 14 May 2015 ("Number of cases unresolved in Kosovo Courts continues to be high and is said to be as a consequence of the lack of judges").

In addition, causes of prescription of execution are known: insufficient number of responsible staff for execution of court decisions, as well as lack of accurate address in Kosovo, makes difficult the execution of decisions within a one year deadline in minor offence cases. See, e.g. *Annual Report no. 14 – 2014*, Ombudsperson of the Republic of Kosovo p. 135 ("The causes that affect the low rate of execution of final decisions according to KJC lie with a small number of associates for execution and the lack of accurate addresses in Kosovo").

Above-mentioned causes indicate that problem of prescription of minor offence cases even in the stage of procedure, and that of execution would be resolved if Basic Courts and Police branches would have more time to do their job. Namely, with prolonged limitations, the problem of prescription of procedure would be facilitated, as judges would have more time to review numerous cases waiting for review. In addition, Police branches would execute more ordinances coming from courts if they had longer time before these ordinances would be prescribed. Certainly, the most ideal long-term solution would be to add the number of judges and Police staff members, and to systematise address throughout the territory of the Republic. But until then, the prolongation of the statutory limitation seems to be the most efficient solution to the problem, considering its causes.

However, we should assess this solution, both from efficiency of the problem of prescription and from human rights viewpoint. We can start that prescription problem contains harmful consequences, not only to state budget, but also in full resect of the right to life and security, as well as right to property. On the other hand, we should consider that statutory limitations, especially procedure statutory limitations, also play an important role in the full respect of human rights. Procedure statutory limitations are usually justified based on the right to legal security of the defendant, namely, the right not to be endangered *ad infinitum* from the possibility of criminal persecution. Statutory limitations give a certain date when this possibility is closed forever, thus guaranteeing the legal security for the defendant. Another common justification for application of statutory limitation is that the memory of eyewitness is gradually resolved with the passing of time, thus endangering the fair trial. See Yair Listokin, "Efficient Time Bars? A New Rationale for the Existence of Statutes of Limitations in Criminal Law", 31 J. Legal Stud. 99, 99-100 (2002). For this reason, setting reasonable procedure statutory limitations is indispensable for full respect of the right of defendants for a fair trial. Therefore, statutory limitations cannot be prolonged endlessly. Prolongation of these limitations should be in line with reasonable limits. But how can these reasonable limits be determined? More importantly, is there room within these limitations for prolongation of statutory limitations in the *Law of 1979* and *Draft law of 2016?*

The answer to these questions should be supported with an accurate doctrinal analysis of "*margin of appreciation*", through which, ECtHR recognised some room in which every state can assess as of how would it be the most appropriate manner of the respect of human rights considering the specific context of their country. Depending on cases, this room may be wider or narrower in different areas. In the case law of ECtHR, *margin of appreciation* enjoyed by a state is particularly recognised as wider, when in a specific area:

(1) "The state shall balance the rights of the Convention in competition" with each other (*Evans vs. United Kingdom, ECtHR,* Application No. 6339/05 (2007), par. 77).

(2) "The case raises complicated issues and social strategy decisions: direct recognition of their society and their needs by the authorities means that those authorities are, in principle, in a better position … to assess what is on the interest of the public" (*Dickson vs. United Kingdom*, ECtHR, Application No. 44362/04, (2007), par. 78).
(3) "There is no consensus between Member States of the Council of Europe" (*id*.).

All these criteria lead us to conclusion that there is sufficient room for prolongation of statutory limitation set out in *Law of 1979* and *Draft law of 2016*.

First of all, as we have pointed out, here we have to do with balancing human rights in competition with each other. On one hand, the solution of the problem of prescription in the minor offence case is indispensable for the full respect of the right and security and right to property which supports setting longer statutory limitations. On the other hand, these rights shall be balanced with the right of the defendant for a fair trial, which constitutes a reason to set shorter statutory limitations. In such cases, when rights in competition shall be balanced, the state enjoys wider space to set that balance based on their needs and circumstances. In the circumstances of the Republic of Kosovo, in which the problem of prescription of minor offence cases has taken extreme dimensions, the prolongation of the statutory limitations responds to the special needs of the state and for this reason, it is a reasonable solution.

Secondly, the problem of prescription "raises complicated issues and social strategy decisions" (*Dickson*, ECtHR, *op. cit.*, par. 78). The fact itself that the Republic has continuously been facing the problem of prescription for many years now is an indicator that this problem constitutes a complicated issue. In the face of this complicated issue, the decision to prolong the statutory limitation would be a "special strategy decision" for resolving the problem. Therefore, room for Kosovo state to take this decision is wide according to the case law of ECtHR.

Thirdly, a comparative study conducted by the Ombudsperson is a clear indicator that "There is no consensus between Member States of the Council of Europe" (*id*.), as regards the statutory limitations, in the procedural one or the execution.[2] Statutory limitation for initiating a minor offence procedure, in a member state of the Council of Europe, Malta is short (Three months after the commission of the act), while in another state, Russia, is very long (up to six years). In addition, the statutory limitation for setting the penalty in states of the Council of Europe is at least two months (Armenia and Georgia) and at most ten years (Finland, France, Netherlands and Luxembourg) after the commission of the act. As regards to the execution of penalty, there are some countries (Latvia, Lithuania and Ukraine) which determine a three month statutory limitation after imposing the penalty, while another country (Malta) determines expressly that execution of penalties will never be prescribed. Lack of a clear consensus between States of the Council of Europe on the issue of statutory limitations, means that Republic of Kosovo, which, according to *Law of 1979* and *Draft Law on Minor Offences*, has relatively short statutory limitations (one year for initiating judicial proceedings, two years for completing judicial proceedings and one year for execution of penalty), enjoys sufficient room to prolong these limitations, in order to facilitate the work of

[2] For complete results of the comparative study, see Annex 2.

courts and Police and in this way to resolve, at least up to a certain degree, the problem of prescription.

FINDINGS AND RECOMMENDATIONS OF THE OMBUDSPERSON

A. Findings of the Ombudsperson

Based on the above-mentioned assessment, the Ombudsperson finds that:

(1) Problem of prescription of judicial procedure and execution of penalties in minor offence cases exists considerably in the Republic of Kosovo and it is likely to worsen significantly in the upcoming years;

(2) Problem of prescription causes huge damage to the budget of the Republic of Kosovo;

(3) Problem of prescription constitutes violation of the right to life and security in conformity with Article 25 and 29 of the Constitution of the Republic of Kosovo, Articles 2 and 5 of the European Convention on Human Rights and Article 3 of the Universal Declaration on Human Rights;

(4) Problem of prescription constitutes violation to the right to property in conformity with Article 46 of the Constitution of the Republic of Kosovo and Article 1 of the First protocol of European Convention on Human Rights;

(5) Transfer of competences for judging some minor offence cases from Basic Courts to administrative bodies, in the manner foreseen by Draft law no. 05/L-087 on Minor Offence constitutes violation of the right to a fair and impartial trial in conformity with article 31 of the Constitution of the Republic of Kosovo and Article 6 of European Convention on Human Rights;

(6) Deduction of 50% of penalties rendered in case of payment within the limitation as foreseen in the Draft law no. 05/L-087 on Minor offence, Article 30, par. 3., risks to damage the budget of the Republic of Kosovo, even more than the problem of prescription;

(7) Prolongation of procedural and execution statutory limitations would be a more efficient solution of the problem of prescription and would not constitute violation of human rights in conformity with the doctrine "*margin of appreciation*" of European Court on Human Rights.

B. Recommendations of the Ombudsperson

Based on these findings, and in conformity with Article 135, par. 3 of Constitution of the Republic of Kosovo, and Article 16, par. 4 of Law no. 05/L-019 on Ombudsperson, the Ombudsperson recommends to the Assembly of the Republic of Kosovo to:

(1) (a) Amend Draft Law no. 05/L-087 on Minor Offences in order not to transfer competences from Basic Courts to Administrative bodies for judging minor offence cases, or (b) amend Draft law no. 05/L-087 on Minor Offence in order to ensure the possibility to dispute decisions of bodies on minor offence before a tribunal which

meets criteria of Article 6, par. 1 of European Convention on Human Rights, and with complete jurisdiction to review all factual and legal issues;

(2) Remove entirely Article 30, par. 3 of Draft Law no. 05/L-087 on Minor Offence: "In the case of payment of fine, within the deadline set by minor offence ordinance, the fined person is released from the payment of 50% from the amount of the fine rendered";

(3) Prolong statutory limitations of judicial proceedings and execution of decisions in minor offence cases, up to the degree that the Assembly of the Republic of Kosovo deems it necessary to facilitate considerably, the problem of prescription, without exceeding rationale boundaries in conformity with the case laws of the Member States of the Council of Europe.

In conformity with Article 132, paragraph 3 of Constitution of the Republic of Kosovo ("Every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law") and Article 28 of Law no. 05/L-019 on Ombudsperson ("Authorities to which the Ombudsperson has addressed recommendation, request or proposal for undertaking concrete actions, … must respond within thirty (30) days. The answer should contain written reasoning regarding actions undertaken about the issue in question"), will you kindly inform us on actions to be undertaken about this issue.

Sincerely,
Hilmi Jashari
Ombudsperson

Copy to: Mr Nehat Idrizi, President of the Kosovo Judicial Council

- Mr Shpend Maxhuni, General Director of Police of the Republic of Kosovo

ANNEX 1

Statistics on prescription of judicial proceedings and execution of decisions on minor offence cases

STATISTICS OF MINOR OFFENCE CASES IN BASIC COURTS OF KOSOVO
FOR PERIOD 1 JANUARY - 31 DECEMBER 2015

MINOR OFFENCE CASES / BASIC COURTS	CASES RECEIVED	CASES RESOLVED	CASES UNRESOLVED	CASES PRESCRIBED	CASES FROM 2014 AND EARLIER
BASIC COURT PRISHTINË	**105707**	**99818**	**53888**	**11860**	**47999**
BASIC COURT PRIZREN	**56085**	**45794**	**20444**	**105**	**10153**
BASIC COURT PEJË	**37102**	**34037**	**6471**	**3470**	**3406**
BASIC COURT MITROVICË	**28142**	**22285**	**64362**	**5**	**58505**
BASIC COURT GJILAN	**34006**	**36295**	**8162**	**830**	**10451**
BASIC COURT FERIZAJ	**37597**	**41604**	**37846**	**504**	**41853**
BASIC COURT GJAKOVË	**28523**	**26027**	**19914**	**9492**	**17418**
TOTAL	**327162**	**305860**	**211087**	**26266**	**189785**

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STATISTICS OF ORDINANCES OF BASIC COURTS IN POLICE STATIONS FOR PERIOD 1 JANUARY - 31 DECEMBER 2015				
MINOR OFFENCE CASES BASIC COURTS	ORDINANCES RECEIVED	ORDINANCES EXECUTED	ORDINANCES NOT EXECUTED	ORDINANCES PRESCRIBED
BASIC COURT PRISHTINË	**19666**	**6151**	**36529**	**7930**
BASIC COURT PRIZREN	**14000**	**2336**	**6159**	**5505**
BASIC COURT PEJË	**13506**	**7649**	**7308**	**2728**
BASIC COURT MITROVICË	**5976**	**2951**	**11584**	**2244**
BASIC COURT GJILAN	**21603**	**10519**	**15136**	**4440**
BASIC COURT FERIZAJ	**7924**	**2237**	**5057**	**3629**
BASIC COURT GJAKOVË	**14173**	**5173**	**10758**	**6384**
TOTAL	**96848**	**37016**	**92531**	**32860**

ANNEX 2
Comparative study on statutory limitations in Member States in the Council of Europe

This comparative study collects data on the statutory limitations, in minor offence cases, from 47 member states of the Council of Europe. The study results noted that every state has their own manner of handling minor offence acts. Some states consider minor offences as a category divided from criminal acts, regulating them by a special Law. Some other states view them as a criminal act and as a result, include them in their criminal codes, along with more serious acts. There are also states which do not recognise the minor offence category at all, although in these states, there is a group of minor acts which are punishable only by a penalty and this way are similar to minor offences, although they do not have this name expressly. This diversity among states of the Council of Europe has made the comparisons of statutory limitations between these states more difficult, but not impossible.

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In **Andorra**, the statutory limitation for initiating the procedure is **six months** after the commission of the act, on penal minor offence **(**Penal Code, Article 91**,** par. d). The statutory limitation for execution of the penalty is **two years** after rendering the penalty (*id.*, Article 84).

In **Armenia**, the statutory limitation for rendering the penalty is **two month** after the commission of the minor offence act (Code on Administrative Minor Offence, Article 37). The statutory limitation for execution of penalty is **three months** or **one year** after rendering penalty, depending on the type of minor offence (*id.*, Article 302).

In **Austria**, the statutory limitation for initiating the procedure is **one year** after the commission of the act, for administrative criminal acts (Criminal Administrative Code, Article 31, par. 1). The statutory limitation for rendering the penalty is **three years** (*id.*, Article 31, par. 2). The statutory limitation of the penalty is **three years** after the decision (*id.*, Article 31, par. 3).

In **Azerbaijan**, the statutory limitation for initiating the procedure is **two months** or **one year** after the commission of the minor offence act, depending on the type of minor offence (Minor Offence Administrative Code, Article 36, par. 1).

In **Belgium**, the statutory limitation for initiating the procedure is **six months** after the commission of the minor offence act (Criminal Procedure Code, Preliminary Title, Article 21). The statutory limitation for execution of decision is **one year** after rendering the penalty (Criminal Code, Article 93).

In **Bosnia and Herzegovina (Sarajeva canton)**, the statutory limitation for initiating the procedure is **two years, three years** and **five year** after the commission of the minor offence act, depending on the type of minor offence (Law on Minor Offence, Article 50). The statutory limitation for completion of the procedure is double of the relevant statutory limitation for initiating the procedure (*id.*, Article 52). The statutory limitation for execution of the penalty is **one year** after rendering the penalty (*id.*, Article 51).

In **Bulgaria**, the statutory limitation for initiating the procedure is **one year, two years** or **five years** after the commission of the act, depending on the type of minor offence (Law on Administrative Minor Offence and Sanctions, Article 34, par. 1 and 2). The statutory limitation for execution of penalty is **two years** after rendering the penalty, for the acts punishable with penalty (*id.*, Article 82, par. 1, subpar 1).

In **Denmark,** the statutory limitation for initiating the procedure is **two years** after the commission of the act, for acts which are punishable with less than one year of imprisonment (Criminal Code, Article 1, subpar 1). The statutory limitation for execution of the penalty is **five years** after rendering the penalty, for penalties not exceeding 10,000 Dkr. (*id.*, Article 97a, par. 1, subpar 1).

In **Estonia** the statutory limitation for rendering the penalty is **two** or **three years** after commission of the minor offence act, depending on the type of minor offence (Criminal Code, Article 81, par. 3). The statutory limitation for execution of the penalty is **one year** after rendering penalty (*id.*, Article 82, par. 1, subpar 3).

In **Finland,** the statutory limitation for initiating the procedure is **two years** after commission of the act, for acts which are punishable with a fine (Criminal Code, chapter 8, part 1, par. 2, subpar. 4). The statutory limitation for rendering the penalty is **ten years** after commission of the act, for acts which are punishable with a fine (*id.*, chapter 8, part 6, par. 2, subpar 3). The statutory limitation for execution of the penalty is **five years** after rendering the penalty, for acts which are punishable with a minor fine (*id.*, chapter 8, part 13, par. 3).

In **France,** the statutory limitation for initiating the procedure is **one year** after commission of the minor offence act (Criminal Procedure Code, Article 9). The statutory limitation for rendering the penalty is **ten years** after commission of the act or the last instance taken in a procedure (*id.*, Article 7). The limitation for execution of the penalty is **three years** after rendering penalty (Criminal Code, Article 133-4).

In **Georgia**, the statutory limitation for rendering the penalty is **two months** after commission of the act, for administrative minor offences (Administrative Minor Offence Code, Article 38, par. 1). The statutory limitation for execution of the penalty is **six months** after the decision, for administrative minor offence (*id.*, Article 287).

In **Germany**, the statutory limitation for initiating the procedure is **six months**, **one year, two years,** or **three years** after commission of the administrative minor offence, depending on the type of minor offence (Administrative Minor Offence Code, Article 31, par. 2). The statutory limitation for execution of the penalty is **three years** or **five years** for penalties rendered for administrative minor offence, defending in the quantity of the fine (*id.*, Article 34, par. 2).

In **Greece,** the statutory limitation for initiating the procedure is **one year** after commission of the minor offence act (Criminal code, Article 111, par. 4). The statutory limitation for execution of the penalty is **two years** after rendering penalty, for acts punishable with fine (*id.*, article 114).

In **Netherlands,** the statutory limitation for initiating the procedure is **three years** after commission of the minor offence act (Criminal Code, Article 70, par. 1, subpar 1). The statutory limitation for completion of procedure is **ten years** after commission of the minor offence act (*id.*, Article 72, par. 2). The statutory limitation for execution of the penalty is **one year** after rendering penalty (*id.*, Article 76, par. 2).

In **Hungary,** the statutory limitation for initiating the procedure is **six months** after commission of the minor offence act (Law II on Minor Offence, Article 6, par. 1). The statutory limitation for completion of procedure is **two years** after commission of the act (*id.*, Article 6, par. 6). The statutory limitation for execution of the penalty is **one year** after rendering penalty (*id.*, Article 24, par. 1).

In **Ireland**, the statutory limitation for initiating the procedure is **six months** after commission of the minor offence act (Law on Minor Offence Courts, Article 10).

In **Island**, the statutory limitation for initiating the procedure is **two years** after commission of the act, for acts punishable by fine (Criminal Code, Article 81, par. 1). The statutory limitation for execution of the penalty by fine is **three years** after rendering the fine (*id.*, Article 83, par. 1).

In **Italy**, the statutory limitation for initiating the procedure is **four years** after commission of the minor offence act (Criminal Code, Article 157). The statutory limitation for execution of the penalty is **ten years** after rendering penalty, for acts punishable by fine (*id.*, Article 172).

In **Croatia,** the statutory limitation for initiating the procedure is **two years** after commission of the minor offence act (Law on Minor offence, Article 13, par. 1). The statutory limitation for rendering the penalty is **four years a**fter commission of the minor offence act (*id.*, Article 13, par. 6). The statutory limitation for execution of the penalty is **three years** after rendering penalty (*id.*, Article 14, par. 5).

In **Latvia**, the statutory limitation for rendering the penalty is **four months** after commission of the administrative minor offence act (Administrative Minor Offence Code, Article 37). The statutory limitation for execution of the penalty is **three months** after rendering penalty (*id.*, Article 296).

In **Lichtenstein**, the statutory limitation for initiating the procedure is **one year** after commission of the act, for acts punishable by fine (Criminal Code, Article 57). The statutory limitation for execution of the penalty is **five years** after rendering penalty (*id.*, Article 59).

In **Lithuania**, the statutory limitation for rendering the penalty is **six months** after commission of the act, for administrative minor offences (Administrative Minor offence Code, Article 35). The statutory limitation for execution of the penalty is **three months** after rendering penalty (*id.*, Article 308).

In **Luxembourg,** the statutory limitation for initiating the procedure is **one year** after

commission of the minor offence act (Criminal Procedure Code, Article 640). The statutory limitation for rendering the penalty is **ten years** after commission of the minor offence act or the last procedure act (*id.*, Article 637). The statutory limitation for execution of the penalty is **two years** after the decision (Criminal Code, Article 93).

In **Montenegro**, the statutory limitation for initiating the procedure is **one year** after commission of the minor offence act (Law on Minor Offence, Article 59, par. 1). The statutory limitation for completion of procedure is **two years** after commission of the minor offence act (*id.*, Article 59, par. 6). The statutory limitation for execution of the penalty is **two years** after rendering penalty (*id.*, Article 60, par. 1).

In **Macedonia**, the statutory limitation for initiating the procedure is **one year** after commission of the minor offence act (Law on Minor Offence, Article 42, par. 1). The statutory limitation for completion of procedure is **two years** after commission of the minor offence act (*id.*, Article 42, par. 7). The statutory limitation for execution of the penalty is **one year** after rendering penalty (*id.*, Article 43, par. 1).

In **Malta**, the statutory limitation for initiating the procedure is **three months** after commission of the minor offence act (Criminal code, Article 688, par. f). Expressly, **there is no statutory limitation** for execution of penalty (*id.*, Article 687, par. 1).

In **Moldavia**, the statutory limitation for initiating the procedure is **three months** after commission of the minor offence act (Code of Minor Offence, Article 30, par. 2). The statutory limitation for execution of the penalty is **one year** after rendering penalty (*id.*, Article 30, par. 5).

In **Monaco**, the statutory limitation for initiating the procedure is **one year** after commission of the minor offence act (Criminal Procedure Code, Article 14). The statutory limitation for execution of the penalty is **three years** after rendering penalty (*id.*, Article 631).

In **United Kingdom,** the statutory limitation for initiating the procedure is **six months** after commission of the minor offence act (Magistrate's Court Act, Article 127, par. 1).

In **Norway**, the statutory limitation for initiating procedure is **two years** for acts punishable by fine (Criminal Act, Article 67). The statutory limitation for execution of the penalty is **ten years** after rendering penalty (*id.*, Article 74).

In **Poland,** the statutory limitation for initiating the procedure is **one year** after commission of the minor offence act (Code on Minor Offence, Article 45, par. 1). The statutory limitation for completion of procedure is **two years** after commission of the minor offence act (*id.*). The statutory limitation for execution of the penalty is **three years** after rendering penalty (*id.*, Article 45, par. 3).

In **Portugal**, the statutory limitation for initiating the procedure is **one year**, **three years** or **five years** after commission of the minor offence act, depending on the type of minor offence (Code on Minor Offence, Article 27). The relevant statutory limitation for completion of procedure is 1.5 times longer than limitations for initiating the procedure (*id.*, Article 28, par. 3). The statutory limitation for execution of the penalty is **one** or **three years** after rendering penalty, depending on the quantity of fine (*id.*, Article 29, par. 1).

In **Cyprus**, the statutory limitation for initiating the procedure is **six months** after commission of the act, which is punishable up to three months of imprisonment or up to 25 pounds, or both together (Criminal Procedure Code, Article 88).

In **Czech Republic**, the statutory limitation for initiating the procedure is **one year** after commission of the minor offence act (Law on Minor Offence, Article 20, par. 1). The statutory limitation for completion of procedure is **two years** (*id.*, Article 20, par. 3).

In **Romania**, the statutory limitation for initiating the procedure is **six months** after commission of the minor offence act, punishable by fine (Ordinance for legal regime of minor offences, Article 13, par. 1). The statutory limitation for rendering the penalty is **one year** after commission of the minor offence act, punishable by fine (*id.*, Article 13, par. 3). The statutory limitation for execution of the penalty is **two years** after rendering penalty (*id.*, Article 14, par. 2).

In **Russia**, the statutory limitation for initiating the procedure is **two months**, **three months**, **two years** or **six years**, for minor offence acts, depending on the type of minor offence (Administrative Minor Offence Code, Article 4.5, par. 1). The statutory limitation for execution of the penalty is **two years** after rendering penalty (*id.*, Article 31.9, par. 1).

In **San Marino**, the statutory limitation for initiating the procedure is **six months** for acts punishable by fine (Criminal Code, Article 106, par. 1). The statutory limitation for execution of the penalty is **two years** after rendering penalty (*id.*, Article 125, par. 1).

In **Albania**, the statutory limitation for initiating the procedure is **two years** after commission of the act, for criminal minor offences which foresee a penalty by fine (Criminal Code, Article 66, par. d). The statutory limitation for execution of the penalty is **five years** after rendering a final form decision, for decisions containing penalty with imprisonment up to **five years** or other minor penalties (*id.*, Article 68, par. c). For administrative minor offences, the statutory limitation for execution of the penalty is **two years** after rendering the penalty (Law on Administrative Minor Offences, Article 46).

In **Serbia**, the statutory limitation for initiating the procedure is **one year** after commission of the minor offence act (Law on Minor Offence, Article 76, par. 1). The statutory limitation for completion of procedure **is two years** after commission of the minor offence act (*id.*, Article 76, par. 7). The statutory limitation for execution of the penalty is **one year** after rendering penalty (*id.*, Article 77).

In **Slovakia**, the statutory limitation for initiating the procedure is **two years** after commission of the minor offence act (Law on Minor Offence, Article 20, par. 1).

In **Slovenia**, the statutory limitation for initiating the procedure is **two years** or **five years** after commission of the minor offence act, depending on the type of minor offence (Law on Minor Offence, Article 42, par. 1). The relevant statutory limitation for completion of procedure is the double of the limitation for initiating the procedure (*id.*, Article 42, par. 3). The statutory limitation for execution of the penalty is **two years** after rendering penalty (*id.*, Article 44, par. 2).

In **Spain**, the statutory limitation for initiating procedure is **six months** after commission of

the minor offence act (Criminal code, Article 131, par. 2). The statutory limitation for completion of procedure is **eight months** after commission of the minor offence act (*id.*, Article 131, par. 2, subpar. 2). The statutory limitation for execution of the penalty is **one year** after rendering penalty (*id.*, Article 133, par. 1).

In **Sweden**, the statutory limitation for initiating the procedure is **two years** after commission of the act, if the act is punishable in maximum by one year of imprisonment (Criminal code, Chapter 35, part 1, par. 1). The statutory limitation for completion of procedure is **five years** after commission of the act, in maximum punishable by fine (*id.*, Chapter 31, part 6, par. 1). The statutory limitation for execution of the penalty is **five years** after rendering the fine (*id.*, Chapter 31, part 7, par. 1).

In **Turkey,** the statutory limitation for rendering the penalty is **three years**, **four years** or **five years** for minor offence acts, depending on the quantity of the fine rendered (Code of Minor Offence, Article 20, par. 2). The statutory limitation for execution of the penalty is **three years**, **four years**, **five years** or **ten years,** for minor offence acts, depending on the quantity of the fine rendered (*id.*, Article 21, par. 2).

In **Ukraine**, the statutory limitation for rendering the penalty is **two** or **three months** after commission of the minor offence act (Administrative Minor Offence Code, Article 38). The statutory limitation for execution of the penalty is **three months** after rendering the penalty (*id.*, Article 303).

In **Switzerland,** the statutory limitation for initiating the procedure is **three years** after commission of the act (Criminal Code, Article 109). The statutory limitation for execution of the penalty is **three years** after rendering the penalty (*id.*).