

The expenses of budgetary organizations on **judicial decisions**



The expenses of budgetary organizations on judicial decisions

March 2023

— Table of Contents

The expenses of budgetary organizations on judicial decisions	3
1. Contingent liabilities	4
2. Payments for judicial decisions	4
Arrears and the current reserve	11
Conclusion	13

Disclaimer:

This publication was commissioned by UNDP, through the Support to Anti-Corruption Efforts in Kosovo (SAEK) III project, with the financial support of Swiss Development Agency (SDC) and Swedish International Development Cooperation Agency (SIDA) to promote institutional and budgetary transparency and accountability. Its contents are the sole responsibility of GAP Institute and do not necessarily reflect the views of UNDP in Kosovo, SDC or SIDA.

Supported by:



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Cooperation Office Kosovo



Sweden
Sverige

The expenses of budgetary organizations on judicial decisions

Public institutions in Kosovo have paid a significantly increased cost for judicial and enforcement decisions over the years. Based on the decisions of the courts for 2022, the Treasury of Kosovo has paid an amount of 46.3 million euros, by charging budgetary organizations. Compared to the previous year (2021), payments have decreased by 5.6 million euros or (-11%) in 2022¹. However, the number of lawsuits filed against public institutions in 2022 cost 347 million euros or 110 million more than in 2021.² In the period 2017–2022, budgetary organizations have paid approximately 31 million euros per year for judicial and enforcement decisions. In the last six years, close to 186 million euros were spent in total towards payments based on court decisions. Audit reports on eleven budgetary organizations in 2021, (which constitute 76% of total payments for judicial and enforcement decisions) have shown that expropriation processes, jubilee salaries and late payment of invoices, are the most frequent causes of such lawsuits. 7.4 million euros have been paid for expropriation issues; 12.7 for jubilee salaries and 11.5 million for late payment of invoices, of which 9.5 were paid for the category capital investments and 2 for goods and services³.

Every year, the Law on the budget foresees budget allocations under the current reserves category for the implementation of the decisions issued by enforcement authorities. However, due to large financial obligations of institutions, the Treasury withdraws (in many cases) free funds from various budget categories of the institution. During the period 2017–2022, 17.2 million per year have been budgeted for the category current reserves. The funds of this category, if approved by the responsible officials, may be transferred to other categories, i.e that of capital expenditures.

When taken into account, this shows that judicial and enforcement decisions may cause numerous damages to the budget of institutions. Besides interest expenses that institutions are obliged to pay, various planned projects become either impossible to implement or delayed; new projects risk failure; and damage may be caused to the responsible economic operators, etc. In this policy memo, the GAP Institute intends to provide an overview concerning the expenditures of budgetary organizations on judicial decisions and the issues and reasons for such expenditures in recent years. Additionally, the memo provides conclusions.

¹ Ministry of Finance, Labor and Transfers. Annual financial report 2022. Source: <https://bit.ly/42P0I7Y>

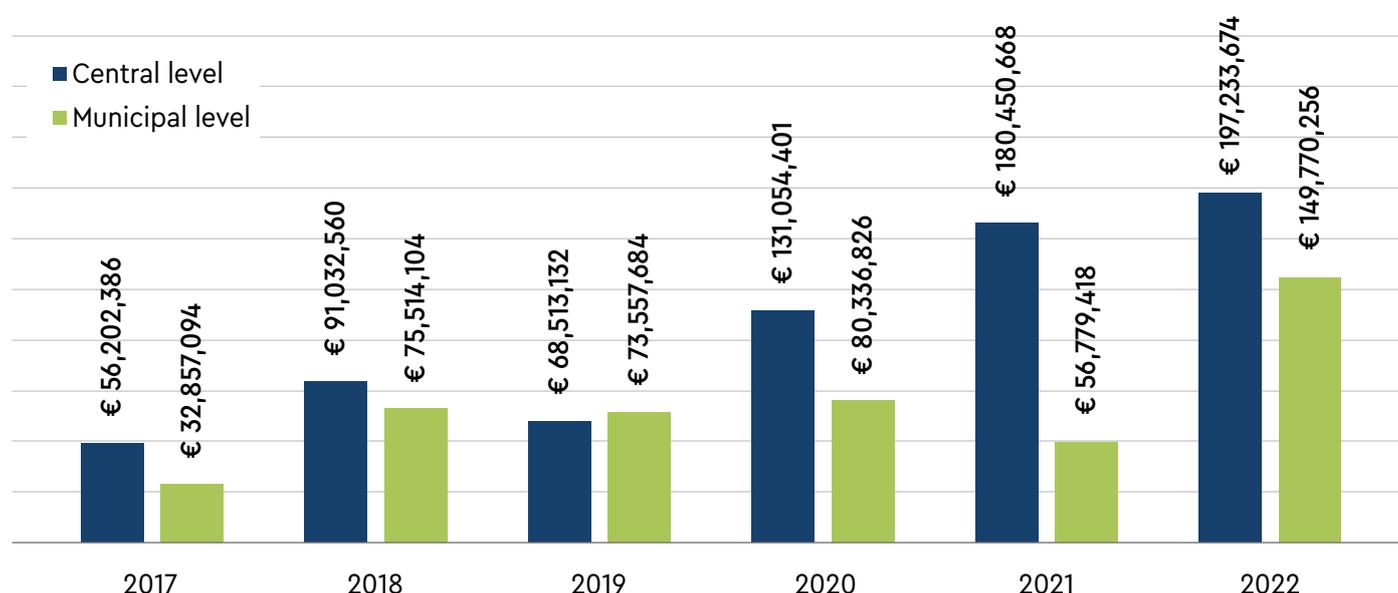
² Ibid.

³ National Audit Office. Audit reports for the 2021 annual financial statements of: Ministry of Environment, Spatial Planning and Infrastructure, Ministry of Finance, Labor and Transfers, Ministry of Internal Affairs, University Hospital and Clinic Service, Municipality of Ferizaj, Prizren, South Mitrovica, Prishtina, Gjakova, Malisheva, Peja and Deçan. Source: <http://bitly.ws/BfKG>

1. Contingent liabilities

Contingent liabilities are potential obligations that a public institution (budgetary organization) may have to incur depending on the outcome of pending lawsuits by economic operators or natural persons. According to the annual financial report of the Ministry of Finance, Labor and Transfers (MFLT), contingent liabilities for budgetary organizations in 2022 were 347 million euros. Compared to 2021, contingent liabilities in 2022 have increased by 46% or 110 million euros. Among the organizations with the highest contingencies are: the Municipality of Prishtina (79.6 million euros); Kosovo Judicial Council (76.8 million euros); the Ministry of Environment, Spatial Planning and Infrastructure (37.3 million euros); the Health Insurance Fund (approximately 30 million euros), the Municipality of Gjilan (17.7 million euros), the Ministry of Internal Affairs with (approximately 12 million euros), the State Prosecutor (9.7 million euros).⁴

Figure 1. Contingent liabilities of public institutions (2017–2022)



Source: GAP Institute using data from MFLT Reports

2. Payments for judicial decisions

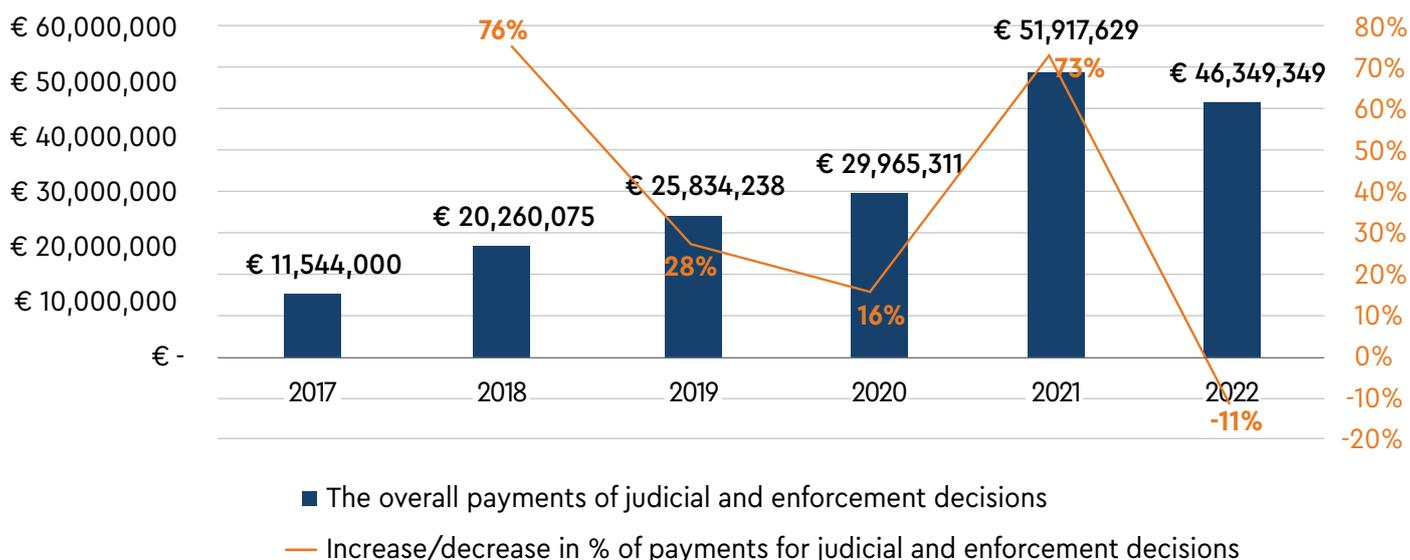
Budgetary organizations have paid in recent years (specifically the period 2017–2022), approximately 31 million euros per year for judicial and enforcement decisions⁵. Payments as an outcome of judicial and enforcement decisions have increased significantly, especially during 2018–2021. Based on court decisions, the Treasury of Kosovo paid 20.3 million euros in 2018 (76% more than in 2017) from the budget of budgetary organizations. These payments have increased to 52 million euros in 2021, or 22 million (+73%) more than in 2020 and 40.4 million (+350%) more than in 2017⁶. While in the last year (2022), payments through court and enforcement have been observed to have decreased by 5.6 million euros or (-11%).

⁴ Ministry of Finance, Labor and Transfers. Annual financial report 2022. Source: <https://bit.ly/42P0I7Y>

⁵ Ministry of Finance, Labor and Transfers. Annual financial reports (2019–2022). Source: <https://bit.ly/40KecQz>

⁶ Ministry of Finance, Labor and Transfers. Annual financial report 2021. Source: <https://bit.ly/414KMgY>

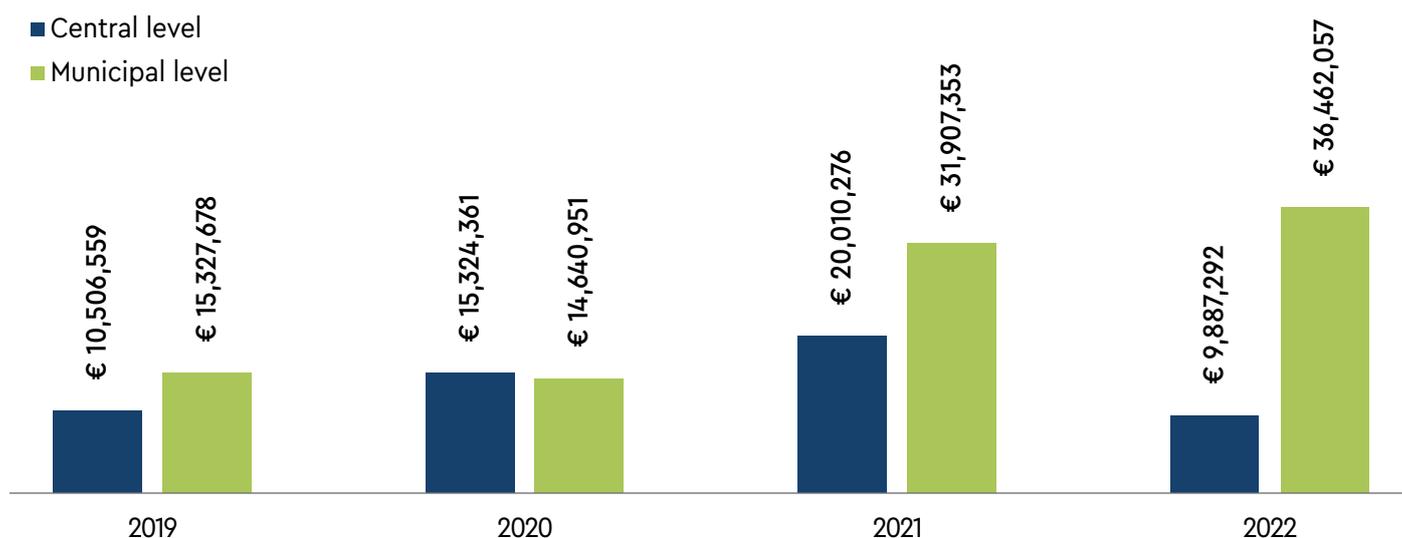
Figure 2. Payments of judicial and enforcement decisions (2017-2022)



Source: GAP Institute, based on MFLT reports

According to the 2021 annual financial report of MFLT⁷, the budgetary organizations with the highest contingencies for judicial and enforcement decisions are: the Ministry of Environment, Spatial Planning and Infrastructure (MESPI) with 7.5 million euros, the Municipality of Ferizaj with 7 million euros, the Municipality of Prizren with about 5 million euros, the Municipality of South Mitrovica with 4.3 million euros, the Ministry of Finance, Labor and Transfers (MFLT) with about 3.3 million euros, the Ministry of Internal Affairs (MIA) with 2.9 million euros, and so on. Out of 74 budgetary organizations, 11 have paid over one million euros, each through judicial and enforcement decisions, whereas 61 other budgetary organizations have paid less than one million euros.

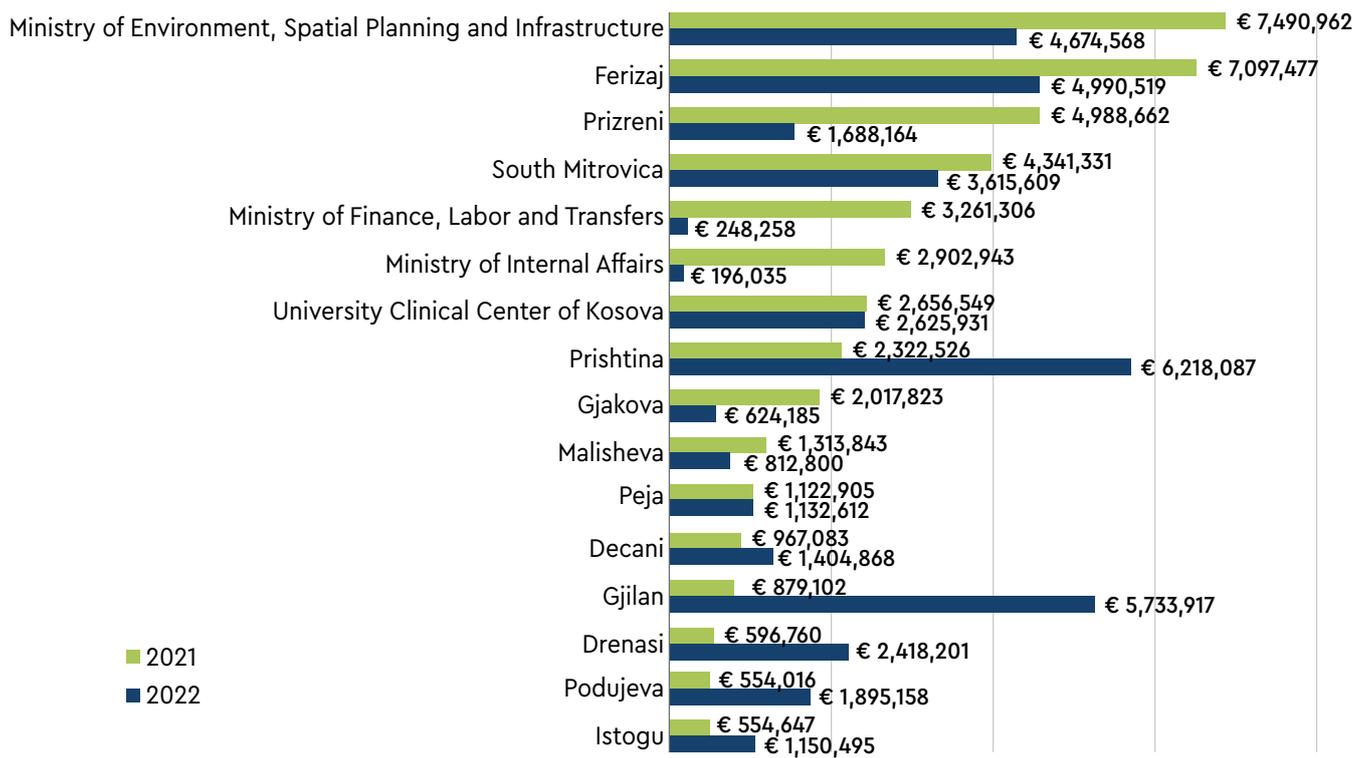
Figure 3. Payments through court and enforcement decisions (2019-2022)



Source: GAP Institute, based on NAO and MFLT reports

7 MFLT. Annual financial report 2021. Source: <https://bit.ly/414KMqY>

Figure 4. Payments for judicial and enforcement decisions of some of the budgetary organizations



Source: GAP Institute using data from MFLT reports

Based on the audit reports for the financial statements for 2021, the reasons for such payments are mainly related to expropriation processes, jubilee salaries and late payment of invoices.⁸

The high value of payments for judicial and enforcement decisions is also due to the impact that legal representatives of public institutions have had as a result of improper representation. There are instances where representatives of public institutions of State Advocacy had not participated in court hearings. Therefore, not protecting the interest of public institutions. For instance, Basic Court in Prishtina reports a case where it had approved the request of a pharmaceutical company against the Ministry of Health (MoH) 11 years after the MoH had excluded the company from the tender for supply of certain drugs. The representative of the Procurement Review Body (PRB) and that of the MoH were absent during the review process. Neither did they submit any relevant evidence to the court. Therefore, the current debt of 636 thousand euros will increase by eight percent for each subsequent year until a next instance decision, unless the second instance disapproves the appeal of the Ministry of Health.⁹

Other issues that had an impact in the increase of judicial and enforcement payments constitute poor budgetary planning of capital project activities; delays in payment for regular invoices; non-compliance with contract terms; unilateral termination of contracts; inflation; the COVID-19 pandemic, etc.

If, in terms of the contract, the lowest bid price is the criterion for winning but nevertheless the declared winners are those bidders who do not fulfill the criterion,

⁸ National Audit Office. Audit reports for the 2021 annual financial statements of: Ministry of Environment, Spatial Planning and Infrastructure, Ministry of Finance, Labor and Transfers, Ministry of Internal Affairs, University Hospital and Clinic Service, Municipality of Ferizaj, Prizren, South Mitrovica, Prishtina, Gjakova, Malisheva, Peja and Deçan. Source: <http://bitly.wvs/BfKG>

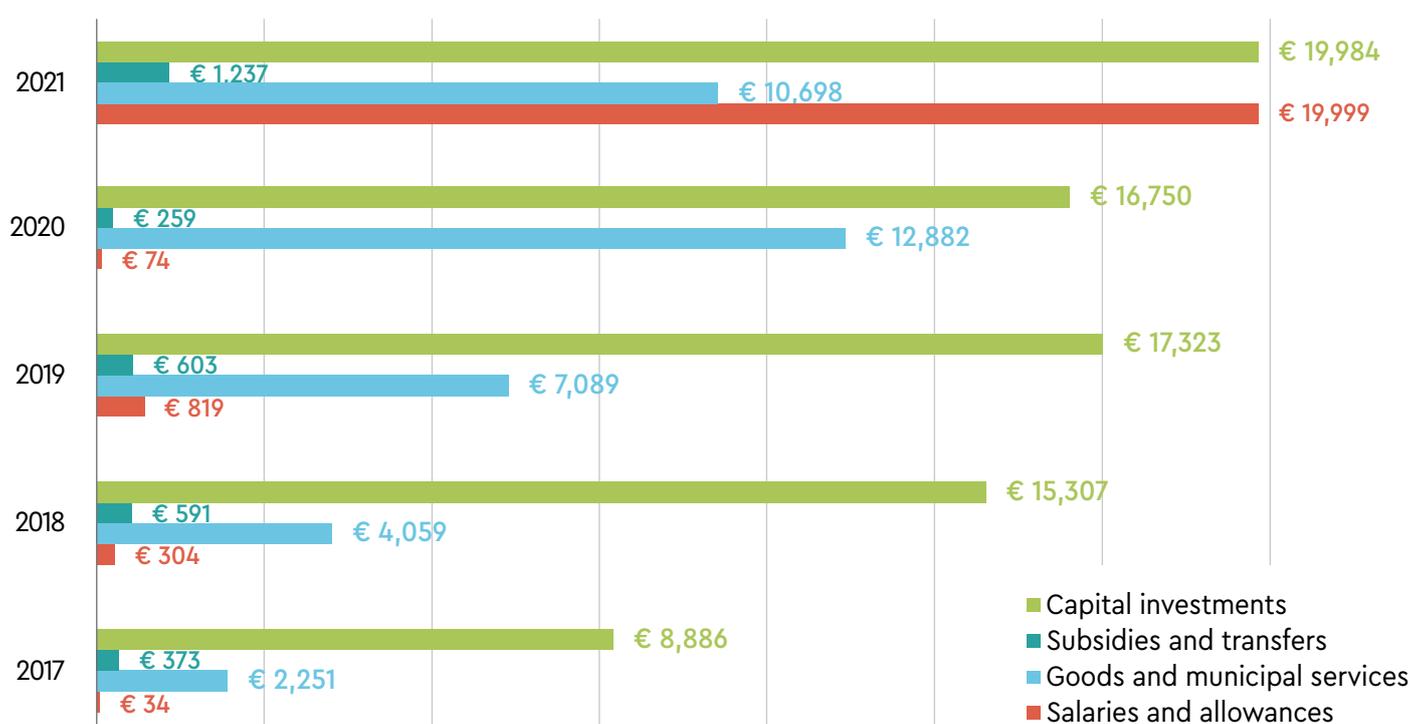
⁹ Koha.net Source: <https://bit.ly/3TijCjC>

the bidders with lowest bid price have the right to file a lawsuit against the institution and win the case. The pandemic and the high inflation which followed, have caused businesses to stop work in the field and reject the same terms of the contract signed before the pandemic began. The reason for this is the increase of prices in the market, which consequently affected the increase of cost of the work being done. This led to the suspension of contracts or establish new contracts with bidders of higher prices.

2.1. Capital expenditure

According to the budget economic categories, payments by judicial and enforcement decisions have mostly been made from the category of capital investments. From 2017 to 2021, an average of 15.6 million euros per year were paid from the category of capital investments. The highest amount paid is 20 million euros in 2021 (38.5% of payments by court decisions for that year), while the lowest amount paid is 8.9 million euros in 2017 (77% of total payments through court decisions for that year).¹⁰ In 2021, compared to 2017, the expenses for this category under capital investments have increased by 125% or 11.1 million euros.

Figure 5. Payments for judicial and enforcement decisions according to budget economic categories ('000€)



Source: GAP Institute using data from NAO reports

The growing trend of payments through court decisions is creating a high opportunity cost for public investment. Non-payment of obligations in due time has affected that payments shall be made directly from the Treasury. This situation has resulted in increased costs, thus damaging the state budget. These payments constitute 5% of budget expenditures realized for capital investments in 2021. If court decisions were not paid, budgetary organizations would be able to make significant capital investments in infrastructure, tourism, health and education. According to the 2022 Budget Law, more than half of the projects of the ministries in the municipalities started in 2018 and 2019 and have not yet been completed.¹¹

¹⁰ National Audit Office. Annual Reports. Source: <https://bit.ly/3IGsbrj>; <https://bit.ly/3SbLGnC>; <https://bit.ly/3EmIiiP>

¹¹ GAP Institute. Budget Law 2022: Favoritism and discrimination of municipalities in capital investments
Source: <https://bit.ly/3IAiN1o>

The audit reports for capital investments have identified the following irregularities: signed contracts beyond the estimated value of the budget; public investments in dispossession of property; deficiencies in the processing of payments and delays in invoice payments; selection of an irresponsible economic operator; payments for unrealized work; payment of projects from the budget of other projects; delays in work realizations; conclusion of contracts through an inadequate procurement procedure; inadequate classification of expenses; absence and deficiencies in the drafting of executive projects for construction of roads, acceptance of the invoice before the commitment of financial means , etc¹²

Figure 6. Payments through judicial and enforcement decisions for capital investments ('000€)



Source: GAP Institute using data from NAO reports

2.2. Expropriations

Compensation for land expropriations is one of the issues that has influenced an increase in expenses caused by court decisions. During 2021, 7,4 millions have been paid for expropriation issues, through judicial and enforcement decisions.^{13,14} In 2021, compared to 2020, payments through court decisions for expropriations have increased by 40% or 2.1 million euros. The value of the owners' applications for expropriation compensation during 2020 was around 54 million euros, while 10% of this value was paid through court decisions. The Ministry of Environment, Spatial Planning and Infrastructure (MMPHI) is responsible for paying the obligations arising from the expropriation process. These payments are made from the budget allocated for capital investments and are mainly related to private, social, public and municipal properties.

From 2010 to 2019, the Government had made decisions to expropriate properties in favour of public interest to an amount of 231.7 million euros. Of these, the decisions issued in 2019 captured the cost of 88.9 million euros, to be paid within two years. Almost 119.4 million euro have been spent for the expropriation of private properties; 85.3 million for social properties; about 15.9 for public properties and 11.1 million for municipal properties.¹⁵ In 2021, financial obligations for expropriations have decreased to 118.3 million euros

¹² National Audit Office. Annual Report 2021. Source: <https://bit.ly/3lGsbrj>

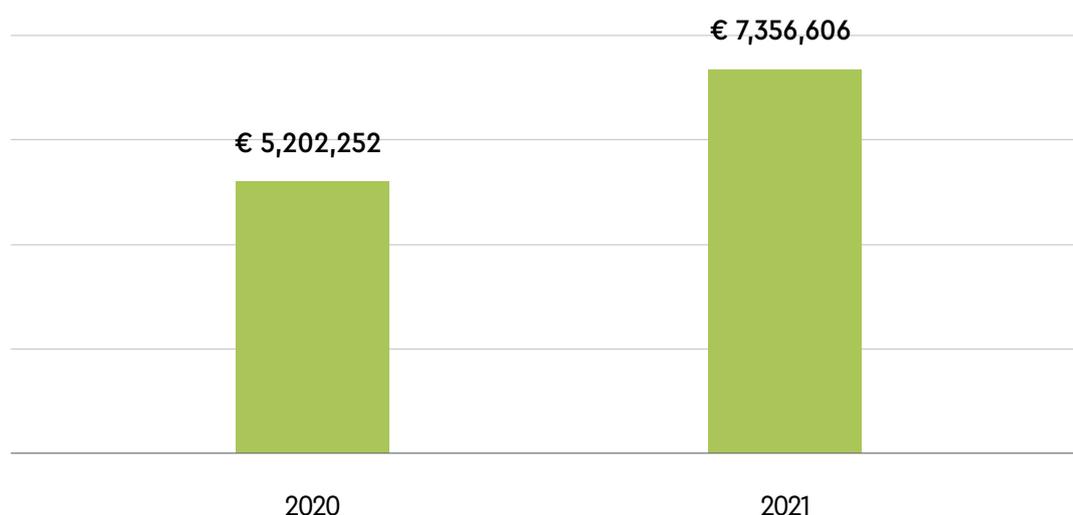
¹³ National Audit Office. Audit report for the annual financial statements of the Ministry of Environment, Spatial Planning and Infrastructure for 2021. Source: <https://bit.ly/3k95snm>

¹⁴ Calculation based on the reports of NAO for the 11 budget organizations which had a participation of 76% in the total amount paid for judicial and enforcement decisions.

¹⁵ NAO. audit report for the financial statements of the Ministry of Environment and Spatial Planning 2019. Source: <https://bit.ly/3EiktW8>

(61% of the total financial obligations in 2021) from 184.1 million euros in 2020.¹⁶ A similar trend is also observed in the nine months of 2022, specifically the January-September period, where payments for expropriations have reached the value of 39.4 million euros, a value that is four times higher than in the same period of 2021¹⁷. The payment in due time, by the Government, with regard to expropriation issues reduces the number of new lawsuits and adverse decision against the government and consequently creates opportunities for the implementation of more capital projects.

Figure 7. Payments for expropriations through judicial and enforcement decisions



Source: GAP Institute using data from NAO reports

One of the irregularities that audit individual reports have identified with regard to the category capital investment concern public investments in dispossession of properties. In 2016, for instance, a contract was signed with an economic operator for the construction of the "Vojnik-Osojan" road but the private properties where the road would pass by, were not expropriated. As a result, construction was stopped and the road was not finished and remained non-functional. What led to this situation was the ineffective communication between the former Ministry of Infrastructure (now MMPHI) and the beneficiary municipalities. The latter has not undertaken anything to carry out the expropriation of road routes, while the Ministry had no evidence that the municipalities had undergone the expropriation of properties. In addition, the Municipalities of Istog and Skenderaj had not allocated a budget for the compensation of land owners.¹⁸ This causes delays in the realization of projects and can also cause additional interest expenses as a result of lawsuits by economic operators.

2.3. Salaries and Allowances

An increase in payments through judicial and enforcement decisions is observed for the category salary and allowances. In 2021, 20 million euros were paid out of salary and allowances through judicial and enforcement decisions. In the past, payments for judicial and enforcement decisions within the framework of salaries and allowances have been low and included at most up to 3.2% of the total payments, while in 2021 they included 38.5% of them.¹⁹ This increase

¹⁶ MFLT. Annual financial report 2021. Source: <https://bit.ly/414KMgY>

¹⁷ MFLT. Financial report Q3 2022. Source: <https://bit.ly/40BBGHv>

¹⁸ NAO. Value for money in the construction of local and regional roads. Source: <https://bit.ly/3l2i1Bp>

¹⁹ NAO. The report of the auditor general for the 2021 annual financial report of the government for the budget of the Republic of Kosovo. Source: <https://bit.ly/3lGsbrj>

was mainly influenced by the decisions to compensate workers for jubilee and follow-up salaries, which were regulated according to the collective contract, but which were not budgeted from the salaries and allowances category.

Figure 8. Payments through judicial and enforcement decisions for salaries and allowances ('000€)



Source: GAP Institute using data from NAO reports

The total amount of these expenses can be underestimated. According to the National Audit Office, some public institutions have classified multiple payments for such decisions in the wrong budget categories. During 2021, public institutions have paid 9.3 million euros from the inadequate economic category, of which 1.9 million euros were based on judicial and enforcement decisions.²⁰

Jubilee salary compensation is aimed at in the collective contracts of education and health workers.²¹ During 2021, more than 12.7 million euros were paid for jubilee salaries²². Compared to the previous year, payments for jubilee salaries have increased by 5 million euros (65%). These payments are made from the salary and allowance category. However, as a result of inadequate budgeting and lack of funds in the category of salaries and allowances, payments were also made from other budget categories.

Since the signing of the collective contract between the Union of Education, Science and Culture and the Ministry of Education, and between the unions of health and the Ministry of Health, the municipalities have been charged with the payment of jubilee salaries. Despite being the signatory of these contracts and despite the requests made by the municipalities to the MFLT, the Government of Kosovo had not allocated a budget for this issue during those years. For almost all lawsuits filed against the government, the court's final decision has been in favour of education and health personnel.²³

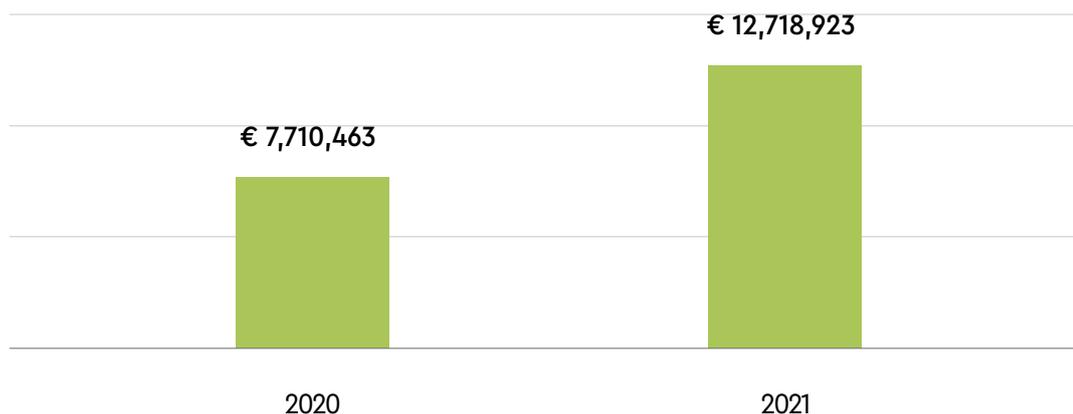
²⁰ Ibid.

²¹ Ibid.

²² Calculation based on the reports of NAO for the 11 budget organizations which had a participation of 76% in the total amount paid for judicial and enforcement decisions.

²³ Kallxo.com. Source : <https://bit.ly/3ZOn2MK>

Figure 9. Payments through judicial and enforcement decisions for jubilee salaries



Source: GAP Institute using data from NAO reports

2.4. Payment delays

The Law on the Management of Public Finances and Responsibilities determines that every bill – valid for payment (supply of goods and services and work realization) – must be paid within thirty calendar days from the moment the economic operators or individual entities receive the receipt. It is also foreseen that during the preparation and approval of the Law on Budget Appropriations for the current and the following years, it is necessary to provide regular and timely funds and budget allocations for financial capital projects.²⁴ As the NAO reports show, approximately 11.5 million euros were paid through judicial and enforcement decisions in 2021, of which 9.5 million euros were paid due to delays in payment for the category capital investments and about 2 million for the category goods and services.

Arrears and the current reserve

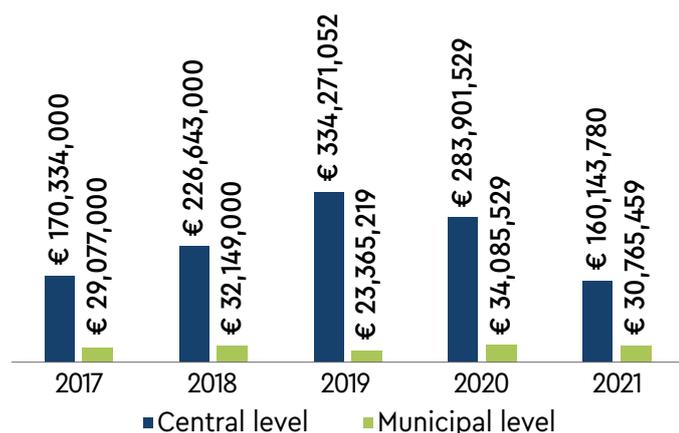
Unpaid obligations have increased in recent years. These include invoices received for works or services realized by economic operators, but which have not been paid by budget organizations within the legal deadline.²⁵ Financial obligations in 2021 are 191 million euros. Compared to 2020, financial obligations in 2021 have decreased by 39% or 127 million euros.

²⁴ Official newspaper. Law on Public Finance Management and Responsibilities. Article 32 and 39.

Source: <https://bit.ly/3lB1xcy>

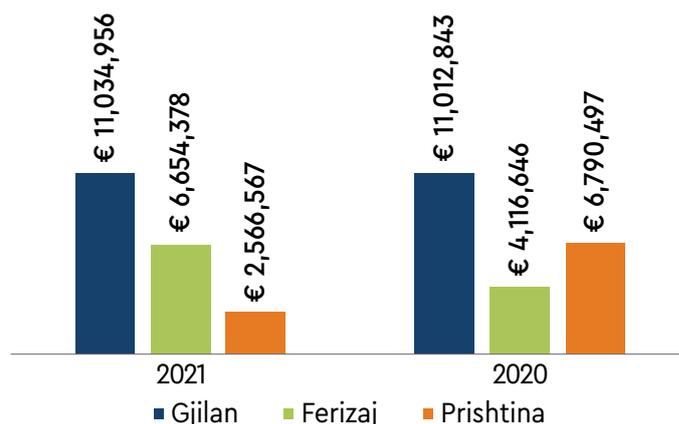
²⁵ NAO. The report of the auditor general for the 2021 annual financial report of the government for the budget of the Republic of Kosovo. Source: <https://bit.ly/3lGsbrj>

Figure 10. Arrears (2017–2021)



Source: GAP Institute using data from NAO Reports

Figure 11. Municipalities with the highest budget obligations

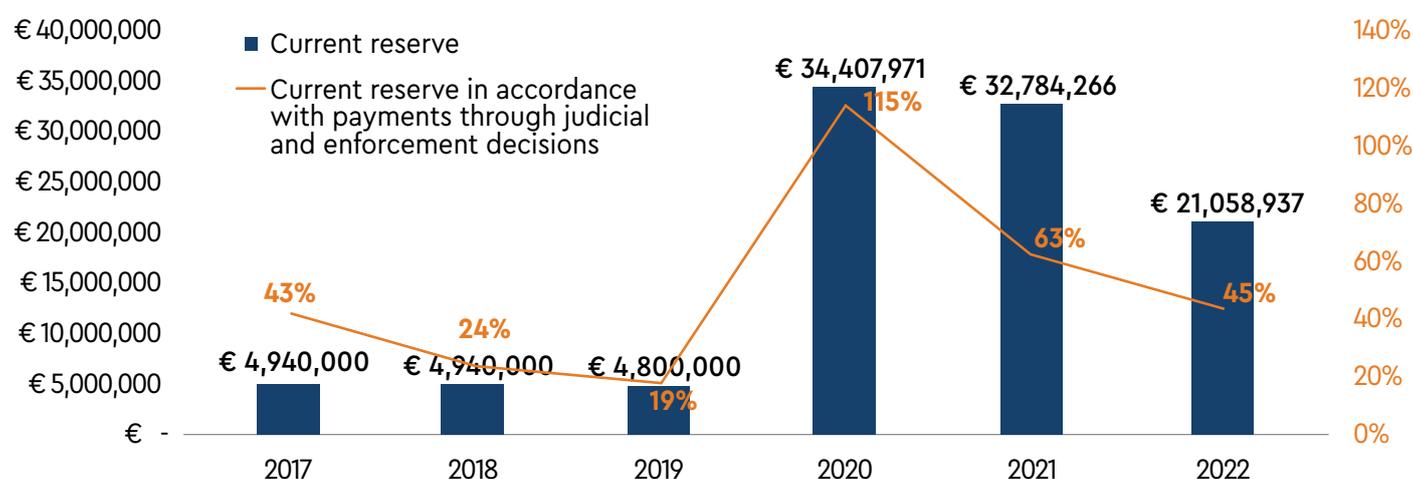


Source: GAP Institute using data from NAO Reports

The current reserve is a category of current expenses. The budget from the current reserve can be transferred from the budget organization to other categories of expenses for the implementation of any decisions made by the enforcement authorities.²⁶ The current reserve is allocated every year for each budgetary organization at the central and municipal levels. When the budget organization justifies the capital project proposal, funds from this category can also be allocated to the capital expenditure category. According to the Law on annual budget allocations, these funds can be transferred with the approval of the Chief Administrative Officers and Chief Financial Officers of the requesting organization, and in the case of municipalities, after approval by the municipal assembly.

During the period 2017–2022, an average of 17.1 million euros have been budgeted for the current reserve category. The budget for current reserves in 2022 was 21.1 million euros. Unpaid obligations in many cases are accompanied by additional costs due to judicial and enforcement decisions. In relation to payments, according to judicial and enforcement decisions, 45% coverage is offered from current reserves for the year 2022. However, compared to 2021, the coverage of payments through judicial and enforcement decisions in 2022 from current reserves has dropped from 64% to 45%. Thus, this has the effect of increasing contingent liabilities, but also receiving funds from other budget lines.

Figure 12. Current reserves (2017–2022)



Source: GAP Institute using NAO and MFLT data

²⁶ Law on Budgetary Allocations for the Budget of the Republic of Kosovo for 2023. Article 15 and 16.

Source: <https://bit.ly/3YrXZij>

Conclusion

During the years 2017–2022, public institutions have made more and more payments through judicial and enforcement decisions, which have also been accompanied by additional interest expenses. The Treasury of Kosovo, based on court decisions for 2022, has made payments from the budget of public institutions for an amount of about 46.3 million euros. Compared to the previous year, payments have decreased by around 5.6 million euros or by (-11%) in 2022. The funds allocated to the current reserve in 2022 were insufficient to cover the payments for judicial and enforcement decisions. The issues that cause these payments are mainly related to expropriation processes, jubilee salaries and delayed payment of bills. During the years 2017–2022, payments through judicial and enforcement decisions mostly occurred in the category of capital investments, including compensations for land expropriations and payment delays. However, in the last two years, including the nine months of 2022, payments made by budget organizations for expropriation issues have increased. Specifically, during the nine months of 2022, they have quadrupled compared to the same period of 2021. As a result, this has the effect of reducing the number of new lawsuits and harmful court decisions with budgetary impact. The value of financial obligations for unpaid invoices, though it remains at a high level of around 191 million euros, has decreased in 2021 by 39% or 127 million euros compared to 2020.

And, recently, an increase in payments through judicial and enforcement decisions has also been observed for the salary and allowances category, mainly due to the jubilee salaries that originate from the collective contracts of education and health workers. Also, the amount of contingent liabilities, which are at risk of being spent by court decisions, has increased for about 110 million euros in 2022, reaching a total value of 347 million euros.



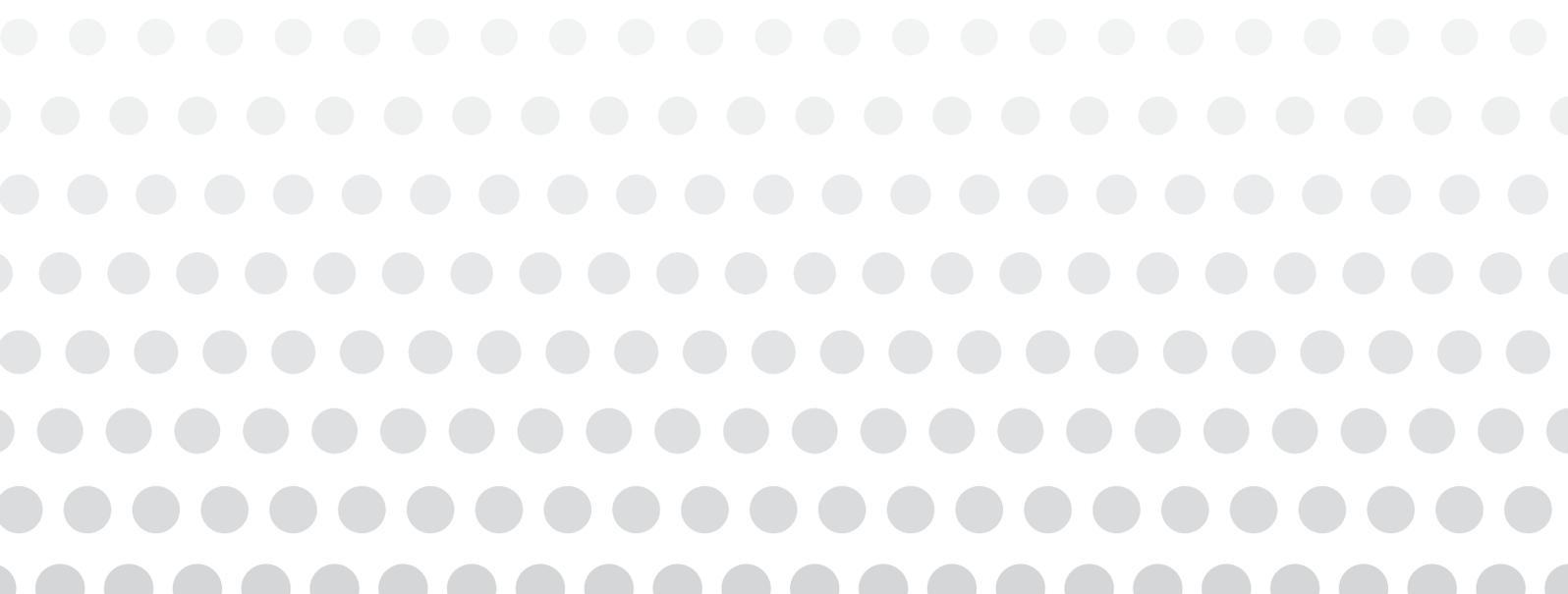
GAP Institute is a Think Tank established in October 2007 in Kosovo. GAP's main goal is to attract professionals to create an environment of professional development and research, as seen in similar institutions in Western countries. This also provides Kosovars with opportunities to research, develop and implement projects in order to advance the Kosovo society. Priority for this Institute is the mobilization of professionals to address the country's economic, political and social challenges. GAP's main goals are to fill the gaps between government and citizens, and between problems and solutions.

www.institutigap.org

Rr. Sejdi Kryeziu, Blloku 4, Nr.4,
10000 Prishtine

+383 38 609 339

info@institutigap.org



The GAP Institute is supported by:



Rockefeller
Brothers Fund

Philanthropy for an Interdependent World

This project is supported by:

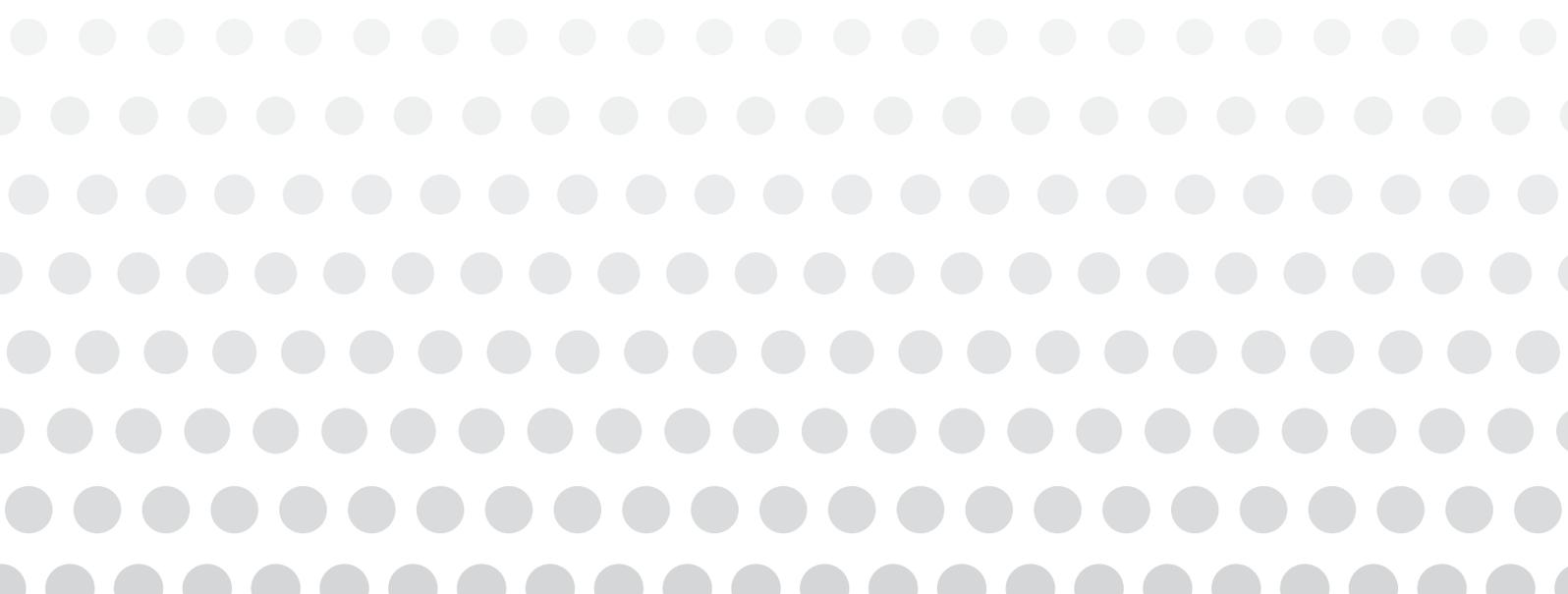


Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Cooperation Office Kosovo



Sweden
Sverige



The expenses of
budgetary organizations
on **judicial decisions**