



NATIONAL INTEGRITY SYSTEM ASSESSMENT KOSOVO

October 2015



Schweizerische Eidgenossenschaft
Confédération suisse
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Swiss Cooperation Office Kosovo

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October 2015

The National Integrity System Assessment (NIS) of Kosovo is prepared by Kosova Democratic Institute (KDI), a member of Transparency International, in cooperation with Transparency International Secretariat in Berlin (TI-S).

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of September 2015. Nevertheless, Kosova Democratic Institute / Transparency International cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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I. INTRODUCTORY NOTE

I am grateful for the opportunity of introducing the assessment of the National Integrity System (NIS). This is the second time that this study has been conducted in Kosovo since 2011. The concept of NIS has been developed and promoted by Transparency International (TI) as part of TI's holistic approach to combating corruption. This report is an updated version which aims to assess whether there has been any progress in the last four years with regards to the country's integrity system and identify recommendations and advocacy priorities for improving the country's integrity system.

Regardless that Kosovo institutions have managed to create adequate jurisdiction, not sufficient commitment or priority is invested at practical level to ensure the implementation of the legislation and strengthening of institutional integrity able to confront political interferences. To this regard, the cooperation between institutions is inefficient to guarantee sustainable engagement in combating and reducing corruption.

Many institutions do not relish sufficient public confidence whereas civil society continues to criticize the non transparent approach of the institutions and lack of accountability. Hereby institutions are not immune to corruption and kleptocratic actions.

The institutional and political rhetoric for good governance shall be build upon concrete improvements and actions of the institutions that guarantee institutional independence, transparency and sustainability in addressing issues of general interest and in helping to achieve better results in fight against corruption.

A large number of experts and officials have been instrumental in the preparation of this research project. Whether they reviewed the final report, participated in interviews and workshop activities, provided technical and research assistance, many thanks to them all. The first to acknowledge is the Transparency International (TI) Secretariat in Berlin who had the patience and effort to review our work in progress for more than a year. Particular thanks to Andrew McDevitt, Julia Mager, Tinatin Ninua, Conny Abel, Rebecca Dobson and Julie Anne Miranda-Brobeck who gave immense amount of time and advice during the whole research process. Finalizing this report would have not been possible without the support of Agron Bajrami. He was in charge of editing the report and giving us comments for corrections in terms of language and content. In addition, the list of individuals who gave a great deal of their time and knowledge during the research process are divided as in the following groups: advisory group, focus groups, and interviews. KDI is grateful to all.

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LIST OF ACRONYMS

AAK	Alliance for the Future of Kosovo
AIEMK	Association of Independent Electronic Media of Kosovo
AJK	Association of Journalists of Kosovo
AmCham	American Chamber of Commerce
ATRC	Advocacy Training and Resource Center
BIRN	Balkan Investigative Reporting Network
CEC	Central Election Commission
CEFTA	Central European Free Trade Agreement
CEO	Chief Executive Officer
CPA	Central Procurement Agency
CPI	Corruption Perception Index
CSO	Civil Society Organization
CSR	Corporate Social Responsibility
ÇOHU	Çohu Movement
DCAF	Center for Security, Development and Rule of Law
DI	Democratization Index
EBRD	European Bank for Reconstruction and Development
EC	European Commission
ECAP	Election Complaints and Appeals Panel
ECI	Economic Confidence Index
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
ENEMO	European Network of Election Monitoring Organizations
FIQ	Forum for Civic Initiative
FOL	Fol Movement
EQLS	European Quality of Life Survey
GAP	GAP Institute
GCB	Global Corruption Barometer
GDP	Gross Domestic Product
GLPS	Group for Legal and Political Studies
IAK	Insurance Association of Kosovo
ICO	International Civilian Office
IFC	International Financial Corporation
IFES	International Foundation for Electoral Systems
IFRS	International Financial Reporting Standards
IMC	Independent Media Commission
IMF	International Monetary Fund
INDEP	Institute for Development Policy
INPO	Initiative for Progress
IOB	Independent Oversight Board for Civil Service
IPA	Instrument for Pre-Accession
IREX	International Research and Exchanges Board
KACA	Kosovo Anti-Corruption Agency
KBRA	Kosovo Business Registration Agency
KCFR	Kosovo Council for Financial Reporting
KCSF	Kosovar Civil Society Foundation
KCSS	Kosovo Center for Security Studies
KDI	Kosova Democratic Institute (often referred to as KDI-TI)
KEDS	Kosovo Electricity Distribution and Supply Company
KEK	Kosovo Energy Corporation



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II. ABOUT NIS

The National Integrity System assessment approach used in this report provides a framework to analyze both the vulnerabilities of a given country to corruption as well as the effectiveness of national anti-corruption efforts. The framework includes all principal institutions and actors that form a state. These include all branches of government, the public and private sector, the media, and civil society (the ‘pillars’ as represented in the diagram below). The concept of the National Integrity System has been developed and promoted by Transparency International as part of its holistic approach to fighting corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity.

A National Integrity System assessment is a powerful advocacy tool that delivers a holistic picture of a country’s institutional landscape with regard to integrity, accountability and transparency. A strong and functioning National Integrity System serves as a bulwark against corruption and guarantor of accountability, while a weak system typically harbors systemic corruption and produces a myriad of governance failures. The resulting assessment yields not only a comprehensive outline of reform needs but also a profound understanding of their political feasibility. Strengthening the National Integrity System promotes better governance across all aspects of society and, ultimately, contributes to a more just society.

Definitions

The definition of ‘corruption’ which is used by Transparency International is as follows:

The abuse of entrusted power for private gain. Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.¹

‘Grand corruption’ is defined as “Acts committed at a high level of government that distort policies or the functioning of the state, enabling leaders to benefit at the expense of the public good.”² ‘Petty corruption’ is defined as “Every-

day abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.”³ ‘Political corruption’ is defined as “Manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.”⁴

Objectives

The key objectives of the National Integrity System assessment are to generate:

1. an improved understanding of the strengths and weaknesses of Kosovo’s National Integrity System within the anti-corruption community and beyond
2. momentum among key anti-corruption stakeholders in Kosovo for addressing priority areas in the National Integrity System

The primary aim of the assessment is therefore to evaluate the effectiveness of Kosovo’s institutions in preventing and fighting corruption and in fostering transparency and integrity. In addition, it seeks to promote the assessment process as a springboard for action among the government and anti-corruption community in terms of policy reform, evidence-based advocacy or further in-depth evaluations of specific governance issues. This report represents an update to the previous assessment conducted by KDI in 2011. The primary purpose of the NIS update is to: (a) assess whether there has been any progress over time with regards to the country’s integrity system, (b) identify specific changes (both positive and negative) which have occurred since the previous NIS report was published, and (c) identify recommendations and advocacy priorities for improving the country’s integrity system.

Methodology

In Transparency International’s methodology, the National Integrity System is formed by 15 pillars as presented in the following table.

Each of the 15 pillars is assessed along three dimensions that are essential to its ability to prevent corruption:

1. its overall capacity, in terms of resources and independence

3. its internal governance regulations and practices, focusing on whether the institutions in the pillar are transparent, accountable and act with integrity
4. its role in the overall integrity system, focusing on the extent to which the institutions in the pillar fulfill their assigned role with regards to preventing and fighting corruption

Each dimension is measured by a common set of indicators. The assessment examines for every dimension both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting any discrepancies between the formal provisions and reality in practice.

CORE GOVERNANCE INSTITUTIONS	LAW ENFORCEMENT INSTITUTIONS	INDEPENDENT INSTITUTIONS	NON-GOVERNMENTAL ACTORS
Legislature	Police	Central Election Commission	Political parties
Executive	State Prosecutor	Ombudsperson	Media
Judiciary		Office of the Auditor General	Civil society
Public Sector		Anti-Corruption Agency	Business
			State-Owned Enterprises



DIMENSION	INDICATORS (LAW AND PRACTICE)
Capacity	Resources Independence
Governance	Transparency Accountability Integrity
Role within Governance System	Pillar-Specific Indicators

a view of the overall system. The assessment also looks at the interactions between pillars, as weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars helps to prioritize areas for reform.

In order to take account of important contextual factors, the evaluation is embedded in a concise analysis of the overall political, social, economic and cultural conditions – the ‘foundations’ – in which the 15 pillars operate.



The assessment does not seek to offer an in-depth evaluation of each pillar. Rather it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain

The National Integrity System assessment is a qualitative research tool. It is guided by a set of ‘indicator score sheets’, developed by Transparency International. These consist of a ‘scoring question’ for each indicator, supported by further guiding questions and scoring guidelines. The following scoring and guiding questions, for the resources available in practice to the judiciary, serve as but one example of the process:

PILLAR	Judiciary
INDICATOR NUMBER	3.1.2
INDICATOR NAME	Resources (practice)
SCORING QUESTION	To what extent does the judiciary have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?
GUIDING QUESTIONS	Is the budget of the judiciary sufficient for it to perform its duties? How is the judiciary’s budget apportioned? Who apportions it? In practice, how are salaries determined (by superior judges, constitution, law)? Are salary levels for judges and prosecutors adequate or are they so low that there are strong economic reasons for resorting to corruption? Are salaries for judges roughly commensurate with salaries for practicing lawyers? Is there generally an adequate number of clerks, library resources and modern computer equipment for judges? Is there stability of human resources? Do staff members have training opportunities? Is there sufficient training to enhance a judge’s knowledge of the law, judicial skills including court and case management, judgment writing and conflicts of interest?
MINIMUM SCORE (1)	The existing financial, human and infrastructural resources of the judiciary are minimal and fully insufficient to effectively carry out its duties.
MID-POINT SCORE (3)	The judiciary has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.
MAXIMUM SCORE (5)	The judiciary has an adequate resource base to effectively carry out its duties.



The guiding questions, used by Transparency International worldwide, for each indicator were developed by examining international best practices, as well as by using our own experience of existing assessment tools for each of the respective pillars, and by seeking input from (international) experts on the respective institutions. These indicator score sheets provide guidance for the Kosovo assessment, but when appropriate the lead researcher has added questions or left some questions unanswered, as not all aspects are relevant to the national context. The full toolkit with information on the methodology and score sheets are available on the Transparency International website.⁵

To answer the guiding questions, the research team relied on four main sources of information: national legislation, secondary reports and research, interviews with key experts, and written questionnaires. Secondary sources included reliable reporting by national civil society organizations, international organizations, governmental bodies, think tanks and academia. To gain an in-depth view of the current situation, a minimum of two key informants were interviewed for each pillar – at least one representing the pillar under assessment, and one expert on the subject matter but external to it. In addition, more key informants or people ‘in the field’ were interviewed. Professionals with expertise in more than one pillar were also interviewed in order to get a cross-pillar view.

The scoring system

While this is a qualitative assessment, numerical scores are assigned in order to summarize the information and to help highlight key weaknesses and strengths of the integrity system. Scores are assigned on a 100-point scale in 25-point increments including five possible values: 0, 25, 50, 75 and 100. The scores prevent the reader getting lost in the details and promote reflection on the system as a whole, rather than focusing only on its individual parts. Indicator scores are averaged at the dimension level, and the three dimensions scores are averaged to arrive at the overall score for each pillar, which provides a general description of the system’s overall robustness.

VERY STRONG	81-100
STRONG	61-80
MODERATE	41-60
WEAK	21-40
VERY WEAK	0-20

The scores are not suitable for cross-country rankings or other quantitative comparisons, due to differences in data sources across countries applying the assessment methodology and the absence of an international review board tasked to ensure comparability of scores. For the NIS update, the scores of the previous NIS assessment were used for comparative reasons but are not presented alongside the updates scores.

Consultative Approach and Validation of Findings

The assessment process in Kosovo had a strong consultative component, seeking to involve the key anti-corruption actors in government, civil society and other relevant sectors. This approach had two aims: to generate evidence and to engage a wide range of stakeholders with a view to building momentum, political will and civic demand for reform initiatives.

KDI-TI Kosovo has drawn a stakeholder analysis involving of an Advisory Group and List of Informants who were involved in the research. This part of the exercise was conducted in consultation with staff members of KDI and research team members from the TI Secretariat in Berlin. The Advisory Group was established in November 2014 and met three times. The group consists of 12 individuals ranging from senior public officials of government, judiciary and independent institutions to leading civil society activists, business representatives and officials of international organizations.

In reference to the TI-S methodology, the following set of “responsibilities” and “criteria” were used for the final selection of Advisory Group:



RESPONSIBILITES	CRITERIA
Advise on the main aspects of the project implementation	The number of members should range from 8 to 12 who will meet at least twice during project implementation
Participate in participatory mapping exercise and other activities	The group should represent a good balance of members from civil society, government, private sector and academia
Review and comment on the NIS findings and validate Indicators Scores	Weigh whether the members are for or against NIS and measure the level of influence

The list of informants consists of more than 45 respondents who have the expertise and incentive to help in making the report a success. In many cases, KDI-TIK met an informant more than twice for clarification purposes. In addition to interviews, KDI organized field tests to obtain information about the transparency in practice of specific institutions. These tests were used to assess the public availability, and thereby also the transparency, of information held by ten public institutions. The list of institutions targeted for field tests include: Prime Minister’s Office, Assembly, Kosovo Judicial Council, Ministry of Public Administration, Police, Kosovo Prosecutorial Council, General Auditor’s Office, Ombudsperson, Anti-Corruption Agency, and Central Election Commission.





III. EXECUTIVE SUMMARY

Corruption continues to thrive in Kosovo, a country that is reported to have the highest poverty and unemployment rates in Europe. Using the NIS published by KDI four years ago as a reference point, and applying the same methodology, this study concludes that there has been minor progress in anti-corruption efforts. In general, there is a tendency to address corruption problems with national strategies and action plans which, in practice, seem more like wish-lists rather than solutions with priorities for change.

KEY FINDINGS

This study sheds light on three important findings about anti-corruption mechanisms in Kosovo, which affect almost all institutions and indicators covered in this report. Firstly, it concludes that the legislation is largely in place, but in practice its implementation lags far behind. All efforts made in the last four years to lessen this gap were either not applied or did not address the issues at stake. The Law on Declaration of Assets is an example of the latter. The new Law rules that any failure to disclose property, income, gifts, and other material benefits is punishable by a fine or imprisonment of up to three years, compared to low administrative fines regulated in the previous law. While the new Law has resulted in an improvement of declaration of assets in 2014, it has not led to serious sanctions of public officials who have failed to disclose their income or assets. In practice, it is usually the case that courts misinterpret the law and issue fines instead of imprisonment.

Secondly, the study finds that there is a lack of cooperation between institutions and actors involved in fighting corruption, despite a number of anti-corruption initiatives and strategies formed by the state. The President's Anti-Corruption Council established in 2012 is largely ineffective in coordinating anti-corruption efforts. Its role is highly political and lacks systematic follow-up on the enactment of recommendations. Here the role of the Anti-Corruption Agency is also ineffective since by law it is deprived of the power to investigate corruption. That is the responsibility of judicial institutions, but these institutions suffer from limited capacities and independence. In addition, there is a lack of formal mechanisms of institutional cooperation. For example, findings of the General Auditor which contain evidence of mismanagement of public funds are not taken up by the prosecutor.

Issues regarding limited institutional cooperation and law enforcement gaps are a manifestation of a lack of political will and vision in fighting corruption. Despite the political rhetoric of the government in declaring them as policy priorities, they have failed to address them as such in reality. Instead of focusing on implementation, in most cases, there is a tendency to draft new strategies and legislation without assessing the impact of the previous ones. The anti-corruption strategy (2013-2017) and action plan adopted in 2013 are no exception to this trend. Finding means to avoid responsibilities in fighting corruption is symptomatic of how these institutions are governed. This relates to the third and most important finding: that institutional accountability and integrity in the country are extremely weak. The institutions that demonstrate the least integrity include: political parties, state-owned enterprises (SOEs) and the government, as well as judicial and prosecutorial institutions.

Political Parties, Government and State-Owned Enterprises

Central to the problem is the government itself, where political and financial power is concentrated and from which it spreads to other sectors. This makes the government more susceptible to corruption particularly in public procurement. It is through public procurement that public funds risk being channeled between private subjects and public officials for political gains, often being used for financing political parties and/or their campaigns. The study finds that the transparency of public procurement and financing of political parties suffer significantly, providing fertile ground for corrupt transactions between businesses, public officials and political parties. In addition, institutions in charge of public procurement are highly politicized.

In general, it is difficult to uncover the influence of political parties in the public and private sectors. This is because political parties are by far the least accountable and transparent institutions in Kosovo. In this manner they govern the state and try to influence decision-making in the parliament and other public institutions. They do not have ideological platforms, with few exceptions, and function based on clientelistic relations between certain individuals and groups. While they are required to present financial reports to the Central Election Commission (CEC), in practice, these reports are incomplete



and inaccurate, particularly when it comes to revealing the sources of income from private donors. Meanwhile, the CEC does not have sufficient capacities to be able to hold political parties to account and track their funds more closely. External audits are conducted by licensed audit firms but they are considered highly formal.

The influence of political parties is blatant in the decision-making of SOEs. They are heavily politicized and are by far the biggest spenders of public contracts. SOEs are relatively more inclined to corruption than other pillars in public procurement. Recently, state-owned energy and telecom enterprises have been criticized for favoring certain economic operators in tendering procedures. In many cases, these companies are owned by friends and relatives of highly influential politicians who do not have clean track-records in previous contracts. Chief Executive Officers (CEOs) are under extraordinary pressure to sign contracts, make decisions, and implement board policies on behalf of companies or interest groups that financially support political parties. This, in turn, weakens their performance in providing utility services to the public, including water, telecommunications, electricity and waste management.

Judiciary and Legislature

The judicial system, which should serve to control these trends, is not independent and capable enough to exercise its powers in fighting corruption. Both the parliament and government exercise influence over the judiciary. Political interference explains why public distrust towards the justice system is on the rise. Opinion polls indicate that justice is not equally and fairly served to all, taking into account the lack of initiative and courage in arresting high-level politicians on corruption charges. Prosecutions are only brought against officials who are less influential and not politically connected, hence the reason why the majority of corruption cases involve petty corruption. In addition, there are hardly enough prosecutors and support staff, while only a few have the necessary skills to indict suspected criminals.

The role of the parliament in holding public institutions accountable on behalf of public interest is weak. This is mainly because the government at large dominates the political agenda of the parliament as the governing coalition also holds most of the seats in the Assembly. Here, lack of oversight of the executive and independent institutions is the most problematic issue. For years, the parliament failed to elect board members and directors to important bodies such as the Kosovo Judicial Council (KJC), State-Owned Enterprises (SOEs) and the Procurement Review Body (PRB). As a result, these institutions have either not been accountable or not operational, as was the case with PRB from August 2013

to March 2014. On a positive note, however, the Assembly continues to progressively improve its transparency and is becoming one of the leading institutions in this regard.

Business Sector

The state continues to interfere in the business sector. Customs and tax authorities carry out undue inspections while the business community is in discontent with the performance of the judiciary in managing business disputes and overall private sector affairs. Given the continued existence of an informal economy, secret negotiations with tax and customs authorities are still, to some extent, common practice. A large percentage of local businesses claim that making informal payments to municipal officers to obtain a municipal service is essential to speed up the process. However, there have been slight improvements in the last four years. Registration fees are removed, and municipal one-stop shops are established, enabling any entrepreneur to open a business in a day.

The business sector performs badly when it comes to principles of transparency and accountability. Information regarding their activities does not generally go beyond what is provided on the web portal of the registry of the Kosovo Business Registration Agency of the Ministry of Trade and Industry (MTI). However, for an investor interested in buying shares from start-up or even large companies, it is almost impossible to get reliable information on annual turnover, number of staff, and potential financial risks involved. Meanwhile, corporate governance is almost non-existent, with a few exceptions in the banking and insurance sector. The relations between managers and shareholders are far too informal, as there is almost no separation between them.

External Oversight and Enforcement

For any act of injustice or mismanagement by the state it is the role of Ombudsperson and Office of the Auditor General (OAG) to protect the public interest. They represent successful integrity models and a potential to fight administrative corruption. Compared to other public institutions, they are relatively more independent, capable and transparent, although not so influential in terms of outcomes. Take for instance the Ombudsperson, whose responsibility it is to investigate and inspect all complaints and recommend improvements. Its approach is deemed largely reactive, and of all recommendations sent to public authorities, not more than 25 percent of them are implemented in practice.

The Auditor General is in charge of helping the parliament to hold public institutions to account. It conducts audits of their financial performance, which are presented to the parliament and general public. However, in practice, like the Ombudsperson, it has no enforcement authority in sanctioning any misbehavior in cases of maladministration. Failure to sanction the misbehavior detected by audits is one of the strongest contributors to impunity of public officials who are engaged in corrupt activities. In this regard, there is no formal mechanism of cooperation between the Auditor General and prosecution office. Despite this, the Office of the Auditor General is one of the highest scoring institutions in the assessment.

Much the same can be said of the Kosovo Anti-Corruption Agency (KACA), when it comes to lack of enforcement mechanisms KACA, by law, is restricted in its role in investigating and preventing corruption. For instance, the Agency does not have the right to request the application of intrusive covert and technical measures of surveillance and investigation as would the state prosecutor. The Agency has no access to bank accounts of senior public officials in and outside the country. Either the Agency must be given the necessary tools to investigate corruption, or completely discharged from such responsibilities. The latter option is more viable considering the multitude of institutions involved in investigating corruption.

When it comes to law enforcement, the police are the most trusted institution in Kosovo. They are proactive in investigating and reporting corruption – and are relatively more trained, specialized and superior in numbers than all other law enforcement institutions combined. Although the police depend on the Ministry of Internal Affairs for strategic and policymaking purposes, they are operationally independent and accountable in practice. The existing code of conduct and integrity mechanisms are largely effective in ensuring that police are well behaved. In fact, it has stepped up its efforts to prevent and condemn police crime. However, while the police are well-organized in disciplining their members, they are not so responsive in meeting community demands.

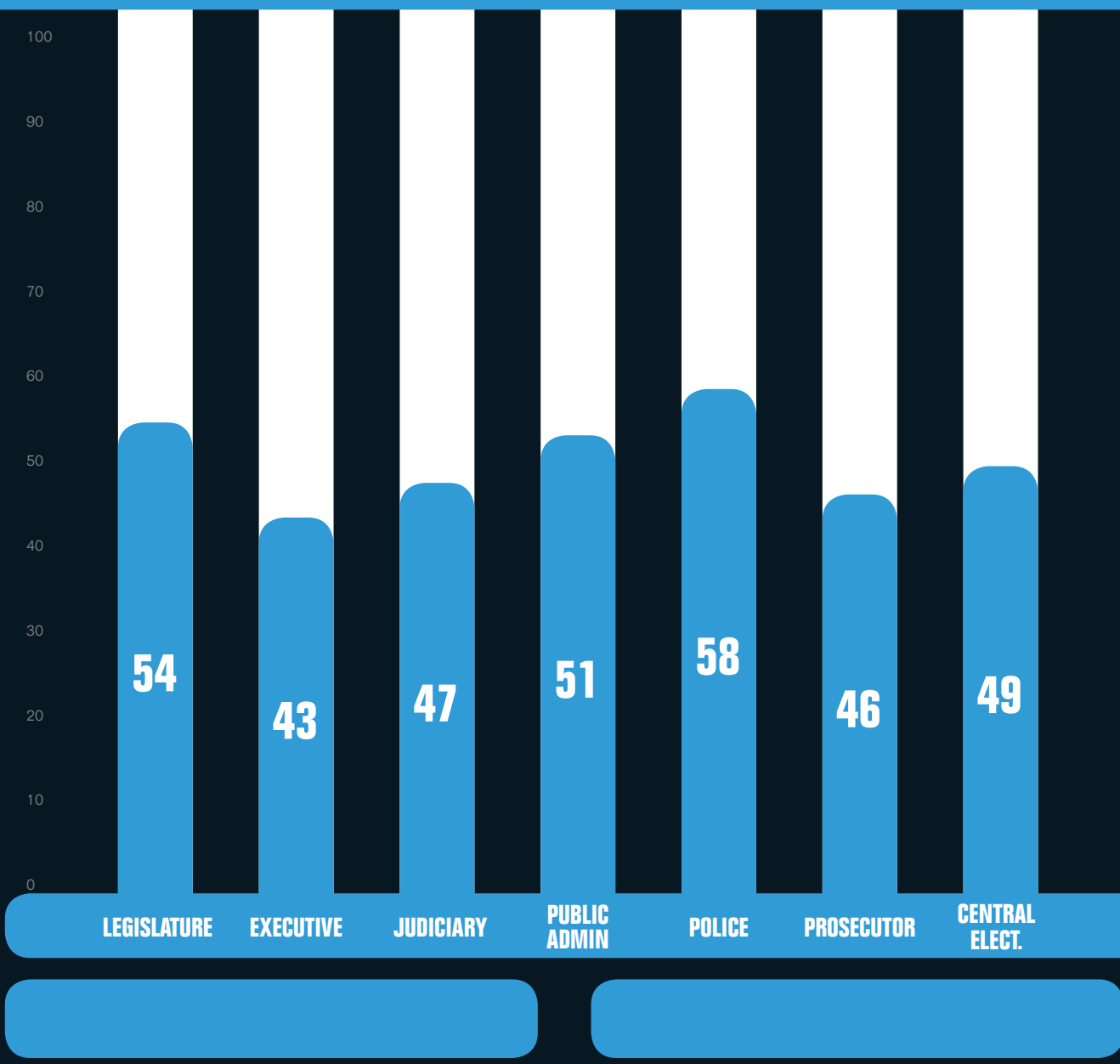
Non-State Watchdogs

Civil society has been active in anti-corruption policymaking. In general, civil society operates in a conducive legal environment where freedom of expression and association is guaranteed by the Constitution. In that regard, it has positioned itself in a supervisory role of the executive, legislative and judicial institutions. However, civil society’s impact is limited since it continues to engage on an ad-hoc basis, only when public institutions require specialized support. CSOs are also largely seen as being donor-driven and having limited integrity, although there are many exceptions. In order for civil society

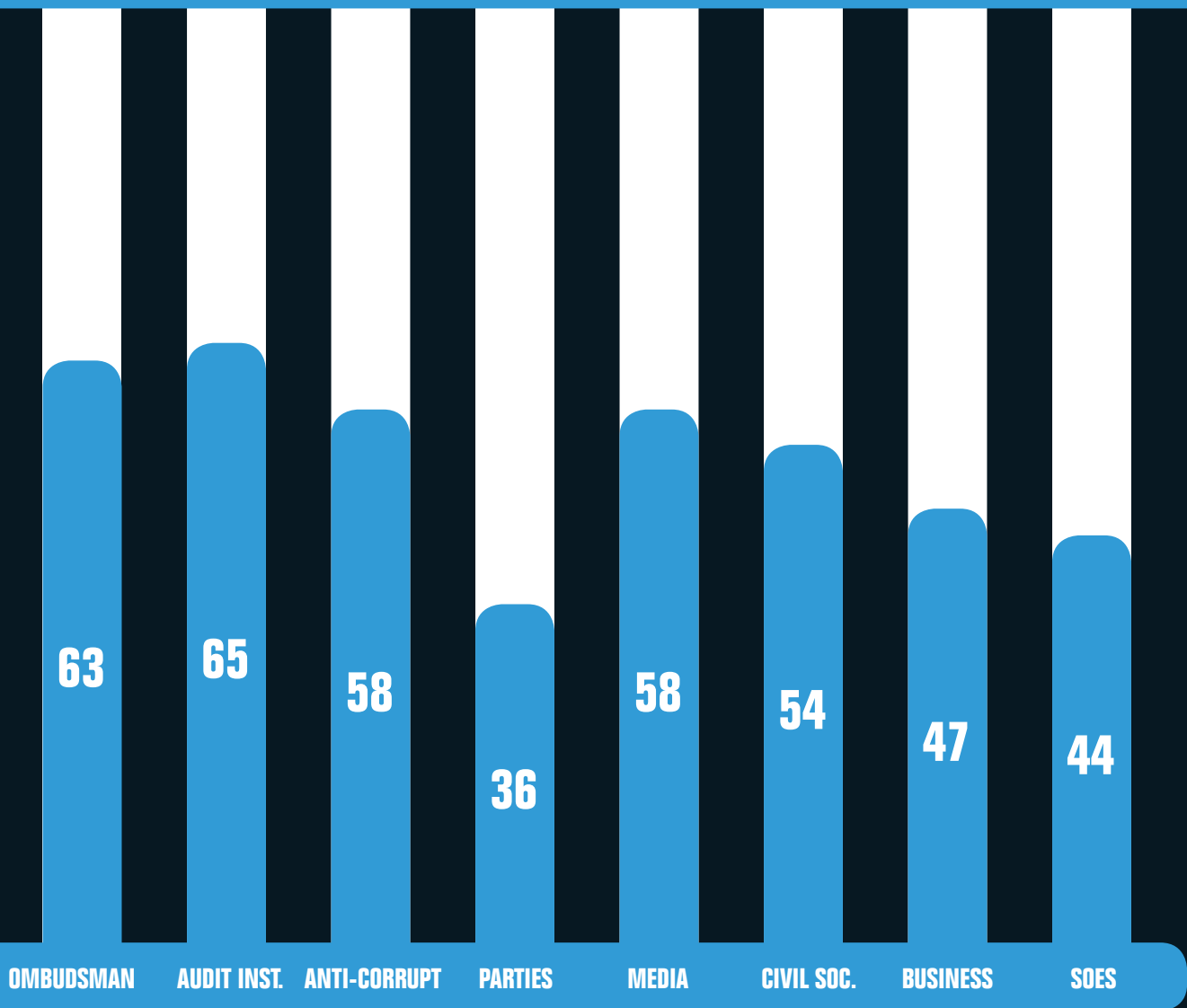
to gain a stronger voice, civil society organizations need to overcome governance issues in terms of accountability – otherwise public institutions will continue to remain skeptical of their commitment.

Media is overall free and independent in terms of informing the public, although self-censorship still remains a challenge. Today there are many news outlets that are specialized and which have the courage to report on corruption. In that regard, media has been active in investigating and exposing corruption, although not so successful in influencing real outcomes with the exception of few individual cases. More could be achieved in the future, but it will ultimately depend on the will and performance of government and judicial institutions.

INDICATORS SCORES > |> > >< <>



<> >< NATIONAL INTEGRITY SYSTEM





IV. COUNTRY PROFILE: FOUNDATIONS FOR THE NIS

Since the National Integrity System is deeply embedded in the country’s overall social, political, economic and cultural context, a brief analysis of this context is presented here for a better understanding of how these context factors impact integrity on the whole. There are four different ‘foundations’ of the system: political-institutional foundations, socio-political foundations, socio-economic foundations, and socio-cultural foundations.

POLITICAL-INSTITUTIONAL FOUNDATIONS



To what extent are the political institutions in the country supportive to an effective national integrity system?

Kosovo is the youngest country in Europe in terms of history and demographics.⁶ It became a separate territory after the war in Kosovo in 1999 under the United Nations administration and declared its independence in 2008.⁷ It has been recognized by more than 111 UN member states including 23 states from EU.⁸ In the last 15 years, the support of the international community including United States and European Union (EU) has been pivotal in establishing democratic institutions. Today Kosovo is a potential candidate to join the EU and is in the process of negotiating the Stabilization and Association Agreement (SAA).⁹

According to the assessment of EC, the government has been productive in coordinating complex negotiations with the EU regarding the Stabilization Association Agreement (SAA).¹⁰ The idea behind this agreement is to enhance trade and political dialogue between EU and Kosovo. Further, the number of monitoring activities of the Assembly has gone

up.¹¹ The parliament has overall become more transparent and cooperative with civil society. Regardless of political progress made until today, political institutions are still in a *limbo state* to be able to support an effective National Integrity System.

The government has not been effective in interacting more closely with the Assembly on many issues. In the parliament, there have been many failures to reach agreements and numerous boycotts of plenary sessions, which have ultimately led to serious delays in decision-making.¹² In June 2014, following general elections, the Democratic Party of Kosovo failed to gain the majority of the votes from the parliament to create a government. It ultimately led to a political deadlock for more than six (6) months until a coalition government was formed in December 2014 presided over by the Democratic League of Kosovo.¹³ As a result, there were delays, particularly in appointing board members of state-owned enterprises and independent agencies.

Hence, there is no free and fair political competition since the government and parliament are controlled by the majority comprised of the two leading political parties in the country, Democratic League of Kosova (LDK) and Democratic Party of Kosova (PDK). The government’s influence until now in determining the budget for the courts and prosecution offices was deemed a serious threat to the independence of the justice system. In practice, the judiciary has not been effective and responsive in protecting the rights of citizens. It continues to “suffer from poor accessibility, inefficiency, delays and growing backlog of unresolved cases.”¹⁴ The number of pending cases in the end of 2013 reached 235,000 cases.¹⁵

The immediate challenge to the judiciary concerns the preparations of the transition of responsibilities from the European Union Rule of Law Mission in Kosovo (EULEX) to local judicial institutions. EULEX’s mandate was extended till June 2016 and until then its judges and prosecutors are set in local institutions and mixed panels which are mostly headed by local officials.¹⁶ EULEX no longer takes on new investigations except in extraordinary circumstances. Now it ultimately depends on local judges and prosecutors instead of EULEX to go after high level corruption which is not so promising since they do not have a track record of convictions in the past.¹⁷



SOCIO-POLITICAL FOUNDATIONS

SCORE

50

100

To what extent are the relationships among social groups and between social groups and the political system in the country supportive to an effective national integrity system?

Social groups are somewhat engaged in supporting an effective National Integrity System (NIS). They consist of civil society, minority groups, and the general public. Overall, the local laws are favorable to social groups in protecting freedom of expression and association. Relations between political institutions and civil society have improved in the last four years. To that effect, the “number of thematic parliamentary debates and public hearings grew.”¹⁸ The Assembly appointed a new civil society liaison officer. However, civil society is consulted only at the end of the legislative process.¹⁹

Likewise, consultations with the government are conducted on an *ad-hoc* basis. The implementation of the government strategy of cooperation with civil society (2013-2017) remains weak.²⁰ The strategy requires that the government involves civil society in policymaking and helps build a sustainable financial system for NGOs.²¹ A Council to monitor and evaluate the implementation of the strategy²² has been established with 29 members of representatives from both government and civil society. CivilKos and Office of Good Governance will co-chair the Council

The legal framework for safeguarding and protecting minority rights is overall comprehensive. The main challenge, however, is its implementation.²³ The security situation for minorities is stable although theft and damages in Serb-returned areas were some of the most frequent types of incidents.²⁴ There have been interethnic tensions and occasional violent incidents involving firearms and explosives in the North.²⁵ Further, the fall of the number of voluntary returns has decreased from 1040 in 2012 to 800 in 2013 largely due to lack of funding and socio-economic prospects.²⁶ They fell to 404 members of minority groups in 2014 according to data of Amnesty International.²⁷

The most vulnerable and marginalized minority groups are Roma, Ashkali and Egyptian communities, numbering in total 40,000 people.²⁸ They are relatively more discriminated against and continue to experience difficulties in “obtaining personal documents, impeding their access to health care,

social assistance, and education.”²⁹ The strategy for their integration (2010) exists only on paper and not implemented due to lack of government funding.³⁰ Lack of socio-economic prospects explains why so many Roma, Ashkali and Egyptian minorities choose to migrate to European countries.

The political dialogue with Serbia to normalize relations has not seriously advanced. The EC has identified a number of pending issues. They include the establishment of the association of Serb majority municipalities, preparations for the implementation of many agreements (i.e. on energy, telecommunications and recognition of university diplomas) and closing of the roadblock known as “Peace Park.”³¹ Nevertheless, there have been modest improvements as a result of the political dialogue with Serbia. Police officers of the North are now integrated in to the Kosovo Police. Freedom of movement arrangements are being implemented.³² Finally, for the first time, the local elections of 2013 were organized in Serb-majority municipalities in the North.³³

The EU has been active in the last four years in facilitating the political dialogue between Kosovo and Serbia. In 2013, it has committed 38.5 million Euros through the Instrument of Pre-Accession Assistance to support the dialogue and the overall integration process, including visa liberalization. The country will continue to benefit from IPA with an indicative allocation of 645.5 million Euros for 2014-2020.³⁴ IPA’s financial assistance concentrates on the following sectors: (a) democracy and governance, (b) human rights and rule of law, (c) market competition and innovation, (d) education, employment and social policies, (e) energy, and (f) agriculture and rural development.

In addition, new members of the Community Council of the President’s Office were appointed in August 2014.³⁵ Their role will be to address issues affecting minority communities in Kosovo. Serb minorities continue to have access to a public broadcaster offered in Serbian through the Radio Television of Kosovo (RTK). In addition, a special court was approved in August 2015 to try former members of the Kosovo Liberation Army (KLA) for crimes committed mostly against Serbs, in 1999.³⁶ From the perspective of Amnesty International, this was a step towards justice “for the families of an estimated 400 Kosovo Serbs.”³⁷

SOCIO-ECONOMIC FOUNDATIONS



To what extent is the socio-economic situation of the country supportive to an effective national integrity system?

Kosovo is a lower-middle-income country with has witnessed a solid economic growth rate since the end of the war in 1998-1999. It has about 1.8 inhabitants and a large diaspora population living in Western European countries.³⁸ One out of four Kosovars currently lives abroad and their remittances make up to one fifth of GDP.³⁹ Kosovo is one of the few economies which was not affected by the global financial crisis in 2008-2012. In that time period its growth rate averaged 4.2 percent⁴⁰ and until today it has remained positive.⁴¹ The economy is largely dependent on remittance payments from abroad and solid inflow of donor support.⁴²

Kosovo is a member of the Central European Free Trade Agreement (CEFTA).⁴³ The purpose of this regional agreement is to mobilize efforts of integrating Southeastern European countries into the EU in political, economic and legal aspects. Most sectors of the economy are open to foreign investment while the financial market is dominated and limited in scope by a small number of commercial banks.⁴⁴ In Kosovo, as in Albania, stock markets are non-existent unlike other countries in the Western Balkans.⁴⁵

Despite strong economic growth, Kosovo still lags behind in terms of development if compared to neighboring and European countries. It has the lowest gross domestic product (GDP) per capita at 2,900 Euros in 2013.⁴⁶ In South East Europe, Kosovo has the highest poverty rate with almost 30 percent of population living below the poverty line and the highest unemployment rate at 30.9 percent.⁴⁷ The unemployment rate is highest among youth at over 55 percent.⁴⁸ The exodus of over 100 thousand Kosovars to the EU in 2014-2015 suggests that the economic situation is dire.⁴⁹ Only in the first quarter of 2015, almost 50,000 Kosovars applied for the first time for asylum in EU according to Eurostat – 19 times more than the first quarter in 2014.⁵⁰

Quality of life to a large extent depends on the number of people employed, according to the European Quality of Life Survey (EQLS). In 2013, the survey reported that Kosovo had the highest misery index score in Europe at 52.3 percent.⁵¹ The misery index examines both the objective circumstances

of the lives of European citizens and how they feel about those circumstances and their lives in general. The EU’s average score was far below that at 12.8 percent. EQLS indicated that 1/3 of the population were at risk of poverty, while the Gini coefficient for measuring income inequality was high at 60 points taken from Eurostat data in 2013.⁵² On the other hand, about 21 percent of the population has difficulties making ends meet, which is less than in former socialist countries, like Bulgaria (40%).⁵³

The state has failed “to maintain its existing capital stock and has not invested sufficiently in its human capital.”⁵⁴ For the last four years, the government has been making decisions and policies in *ad-hoc* basis without a strategy and in favor of special interest groups instead of investing on people through other means, such as education and health.⁵⁵ Thus, decisions on public spending have not consistently been rational according to the World Bank. They have not “contributed to ensuring sustained growth, providing employment, and improving living conditions of Kosovo’s citizens.”⁵⁶

Take for instance the government’s decision in March 2014 to increase the salaries of civil servants and social pensions by 25 percent following the spending decisions for former political prisoners and war veterans. This initiative was deemed political as many other initiatives taken between 2008 and 2012. They rewarded teachers and doctors with a salary increase,⁵⁷ while war-related benefits and pensions “swallowed almost all increases in social protection spending in 2008-2012.”⁵⁸ According to EC, these policies raise concerns over the increase of government debts and rising deficit in the future.

EC noted in the Progress Report (2014) that limited progress has been made in improving the quality of education. Public spending on education has fallen and in 2013 it comprised 3.8 percent of GDP, less than the average of 4.3 percent in low and middle income countries.⁵⁹ Youth of less than 19 years of age make up 38 percent of population.⁶⁰ Investing in them will ultimately improve workforce productivity and help the country become a modern economy.⁶¹

Potential setbacks to the economy comprise falling customs revenue and energy gaps in the country. First, revenues collected at the border have declined in the last four years. They will continue to decline in the future due to increasing ties with the EU (signing of SAA)⁶² and recent signing of a trade agreement with Turkey.⁶³ This is a serious challenge since customs revenue makes up 70 percent of the government revenue.⁶⁴ Second, Kosovo fails to produce enough energy to meet the needs of its households and firms. Also, there are unreliable supply costs exceeding 260 million Euros or 5 percent of GDP due to aging power plants.⁶⁵



According to the EC Progress Report, among many other issues a key challenge is the “discouraging business environment and significant skill gaps in the labor market.”⁶⁶ The continued existence of an informal economy and weak rule of law are damaging to the business environment.⁶⁷ According to EC, the private sector is largely fragmented and unable to gain from economies of scale since SMEs with fewer than 250 employees account for 97 percent of total employment.⁶⁸ Corruption is widespread and continues to undermine “the already restricted environment.”⁶⁹

racy development. The Economic Confidence Index (ECI) was scored at 0.80 out of 3.00 which shows an even more pessimistic opinion of the economic situation in the country.⁷⁵

SOCIO-CULTURAL FOUNDATIONS



To what extent are the prevailing ethics, norms and values in society supportive to an effective national integrity system?

The ethics, norms and values in Kosovar society are not supportive to an effective National Integrity System. People’s trust is extremely low mainly as a result of dissatisfaction with the work of public institutions. In the last series of the Public Opinion Poll in April 2015, UNDP reported that about four percent of Kosovars declared that they were either satisfied or very satisfied with the political situation.⁷⁰ The majority of them - 74 percent - declared that they were either dissatisfied or very dissatisfied.

The public is not very sensitive in responding to problems they face. Fewer than 40 percent of Kosovars responded in the Public Opinion Poll in April 2015 that they were willing to join public protests.⁷¹ The figure is slightly more among Albanian respondents at 45 percent compared to other ethnic groups at 30 percent. A limited level of interpersonal trust between citizens to act in solidarity for change is perhaps one reason which holds them back from joining public protests. In the Kosovar Civil Society Index in 2014, it was reported that only 10.9 percent of respondents said that they didn’t need “to be careful when dealing with others.”⁷²

The lack of interaction and trust among citizens may help explain the sense of pessimism regarding socio-political and economic wellbeing in the country⁷³. In November 2014, the findings of UNDP scored Kosovo was 0.98 out of 3.00 on the Democratization Index (DI).⁷⁴ This means that the majority of people did not have a positive opinion of the level of democ-





V. CORRUPTION PROFILE

In Kosovo, corruption remains one of the priority issues besides unemployment and poverty according to studies of Transparency International, United Nations Development Program, Freedom House, and a myriad of local indicators. These studies either rely on public perception or opinions of field experts. TI's Global Corruption Barometer (GCB) reported in 2013 that almost no progress was attained in the fight against corruption for the last two years. The study addressed people's direct experiences with bribery and details their views on corruption. It was based on a survey sample of 114,000 respondents in 107 countries including Kosovo. Accordingly, 48 percent of respondents stated that corruption had "increased a lot" and 17 percent stated that it had "increased a little," while 26 percent believed that corruption had "stayed the same" and only 7 percent believed that it had "decreased a little."⁷⁶ The highest percentage of respondents felt that the judiciary and political parties were the most corrupt institutions.

Kosovo is regarded as being relatively more corrupt than neighboring countries according to TI's Corruption Perception Index (CPI). The CPI ranks countries on how corrupt the public sector is perceived to be. In 2013, Kosovo was ranked 111th out of 177 countries.⁷⁷ A year later, in 2014, it was ranked 110th place among 175 countries.⁷⁸ The neighboring countries were ranked lower with the exception of Albania which received the same scores as Kosovo. Macedonia was ranked in the 64th place while Montenegro in 76th place and Serbia in 78th place. Furthermore, in its last series of the UNDP's Public Opinion Poll in April 2015, based on the opinions of 1,306 respondents over age 18 from across the country, corruption was seen as one of the top most important problems in Kosovo.⁷⁹ Institutions that were perceived to be the most exposed to "large-scale corruption" were healthcare providers (52 percent), Kosovo Electric Corporation (45 percent), courts (43 percent), customs (39 percent), and public administration (38.5 percent).

Local sources also emphasize that corruption is a serious problem in Kosovo. Corruption is considered as one of the greatest threats facing the country according to the Kosovo Security Barometer (KSB).⁸⁰ KSB is a survey covering 1,101 households which aims to examine public perceptions regarding the level of trust and corruption towards security and justice institutions. The three least trusted institutions were the government, prosecution and the judiciary. More than 63 percent of respondents said that they did not trust the

government and about 51-52 percent said that they did not trust the prosecution office and courts.⁸¹ In practice, public distrust and corruption are closely linked. KSB indicated that public perceptions of corruption were extremely negative. More than 37-38 percent of respondents believed that courts and prosecution office were "very corrupt" while 22-25 percent said that they were "corrupt."⁸²



VI. ANTI-CORRUPTION ACTIVITIES

Anti-Corruption Reform

KDI-TI Kosovo has identified a number of positive anti-corruption efforts in Kosovo. In general, the legislative and institutional framework against corruption has strengthened and is now largely compliant with the *EU Acquis Communautaire*. In January 2013, a new Criminal Code and Criminal Procedure Code came into force. The codes define corruption as a *criminal act*, categorizing it in at least six forms: (1) conflict of interest, (2) abuse and misuse of official position, (3) office fraud, (4) accepting and/or giving bribes, (5) trading influence, and (6) disclosing official information.⁸³ Further, according to the new Code, any failure to disclose property, income, gifts, other material benefits or financial obligations is either fined or imprisonment up to three (3) years.⁸⁴

The Criminal Procedure Code is specific in laying-out the rules for criminal proceedings during investigation (police), indictments (prosecutor), and trials (courts).⁸⁵ Investigations are largely initiated by the police officers pursuant to Articles 69-83 of the Criminal Procedure Code upon the decision of a state prosecutor.⁸⁶ For any suspected criminal offense, the police are required to *investigate* locate the perpetrator and collect all evidence that may be of use in criminal proceedings.⁸⁷ As soon as the police obtain a reasonable suspicion that a criminal offense has been committed, the police have the duty to provide a police report within twenty four (24) hours to the state prosecutor, who shall decide whether to initiate a criminal proceeding.⁸⁸

The Criminal Code was supplemented by an amendment to the Law on Declaration of Assets adopted in April 2013 to harmonize sanctions. In March 2013, a new Law on Extended Powers for Confiscation of Assets was adopted, although the Government and Assembly did not take into account the proposals from the NGO Consultative Forum to further improve the law. One of the most important recommendations of KDI-TI Kosovo was that the “burden of proof” should lie with the defendant. Currently, it lies with the person who lays charges. In this case, the Law specifies extended powers to the state prosecutor for confiscation of assets acquired by the persons who have committed a criminal offence.⁸⁹

Other laws pertaining to anti-corruption besides the Criminal and Civil Code range from laws on public procurement, access to public documents, conflict of interest, declaration of assets, elections, and freedom of press and association. They generally comply with the general principles against corruption which include but are not limited to international human rights standards, clear guidelines on fair sentencing, and legal provisions which constitute any corruption affair. However, a number of legal gaps must be recognized which offer opportunities for change, in considering that corruption offenses are extremely complex and they are exceptionally difficult to prove.

Anti-Corruption Plans and institutions

The new Anti-Corruption Strategy and Action Plan (2013-2017)⁹⁰ were adopted by the Parliament in February 2013. Both the procedure for adoption and the strategy and action plan itself were highly contested. Drafted by the Kosovo Anti-Corruption Agency the Draft Strategy and Action Plan were debated by the Parliament in January 2013, but due to strong disapproval by all MPs they did not vote on the documents.⁹¹ However, parliamentary procedures do not allow for the improvement of such a strategy by the Parliament, and the same document was brought forth in the agenda by the ruling coalition.

Despite the continuing discontent the ruling coalition managed to secure the necessary votes and adopt the Anti-Corruption Strategy and Action Plan (2013-2017). The NGO Consultative Forum on Anti-Corruption Legislation called these documents “so weak in content that they rather legitimize corruption and acquisition of wealth instead of fighting these occurrences”.⁹² Civil society was not consulted when the documents were drafted, but served as a tick box to satisfy the requirements deriving from the short term priorities of the Feasibility Study for a Stabilization and Association Agreement between the EU and Kosovo.⁹³



The Kosovo Prosecutorial Council on November 2013 adopted an Action Plan to Increase the Efficiency of the Prosecutorial System in Fighting Corruption.⁹⁴ The primary objective of this Action Plan is to assist in implementing the Strategic Plan for Inter-Institutional Cooperation to Fight Organized Crime and Corruption.⁹⁵ These documents just add to the number of existing strategies and action plans, the results of which are rarely measured and no statistics exist. The report of the National Coordinator for Fighting Economic Crime confirms these shortcomings. The report recommends for instance that “comprehensive statistics should be included regarding convictions and confiscation [of assets]”⁹⁶ since no statistics on anti-corruption measures exist.

In spite of the legislative progress in fighting corruption, Kosovo still does not have the required institutional mechanisms and political will to enforce its implementation. There is very limited co-operation and coordination of authorities responsible for investigating and prosecuting corruption.⁹⁷ Instead of pushing forward the existing anti-corruption strategy and strengthening and empowering existing institutions, the government has put more emphasis on establishing new anti-corruption institutions.⁹⁸ That is why there is an overlap of institutions, bodies and forums to fight corruption. Currently, there are five institutions/networks that address corruption issues.

They include the President’s Anti-Corruption Council, Anti-Corruption Agency, Anti-Corruption Task Force in the Special Prosecution’s Office, Networks of Prosecutors coordinating corruption cases in six Basic Prosecution Offices and in the Prishtina Office, and the EU Rule of Law Mission in Kosovo (EULEX). The latter was established by EU Joint Action of February 2008 to concentrate on the fight against corruption. The mandate of this institution was recently renewed by the Council until June 2016. Local and international NGOs have been critical of its work and lack of results in anti-corruption efforts. One report stated that “the judicial part of the mission has been perpetually understaffed, precipitating a weak record prosecuting war crimes, organized crime and corruption.”⁹⁹



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VII.

**NATIONAL
INTEGRITY
SYSTEM**

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LEGISLATURE

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OVERVIEW

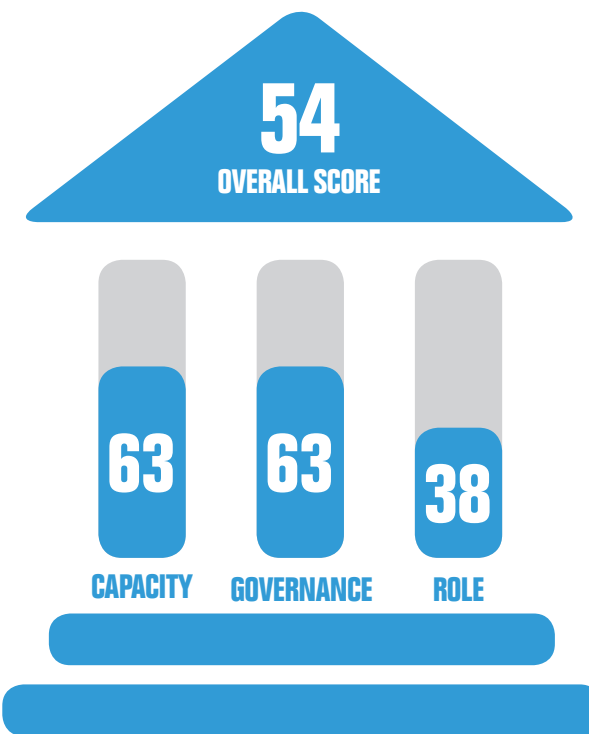
The Assembly of the Republic of Kosovo (the Assembly) is the legislative body of the government directly elected by the people. The resources of the Assembly have slowly increased to tackle legislative, representative and oversight tasks.

The most problematic issue according to the assessment of the legislature is lack of oversight of the executive and independent agencies established by Assembly. In reality it is the government that largely dominates the agenda of the Assembly, as the governing coalition also holds most of the 120 seats in the Assembly.

The Assembly is one of the most transparent institutions in Kosovo. A notable improvement since the last assessment is the publication of the individual votes of MPs in the session within the same day. Another improvement is the opening up of plenary sessions to all broadcasters.

The Assembly has practically no internal integrity mechanisms and the accountability towards its constituents suffers heavily. The Assembly relies on external mechanisms such as the courts and the Kosovo Anti-Corruption Agency (KACA) to keep its members in check with regards to disclosure of assets.

The table graph presents the indicator scores that summarise the assessment of the legislature in terms of its capacity, its internal governance and its role. The remainder of this section presents the qualitative assessment for each indicator.





LEGISLATURE



	Indicator	Law	Practice
Capacity	Resources	75	50
	Independence	75	50
Governance	Transparency	75	75
	Accountability	75	25
	Integrity mechanisms	75	50
Role	Executive oversight		25
	Legal reforms		50



STRUCTURE AND ORGANISATION

The Assembly as a legislative body directly elected by the people¹ exercises the functions of the legislative branch in conformity with the Constitution.² The Assembly has 120 members, which are elected by secret ballot on the basis of open lists. The Constitution stipulates that the legislature shall be elected for a mandate of four years, starting from the day of the constitutive session, which shall be held within 30 days from the official announcement of the election results.

The Assembly establishes the organisation and operation of the Assembly, the president and presidency of the Assembly, parliamentary committees and other Assembly bodies, through the Rules of Procedure.³ Article 67 of the Constitution establishes that the Assembly elects the president of the Assembly and five deputy presidents from among its members, whereas Article 70 stipulates that members of the Assembly are representatives of the people and are not bound by any obligatory mandate. The Rules of Procedure are adopted by a two-thirds vote of all its members and determine the internal organisation and method of work for the Assembly.

staffing table determined by the budget review process by the Ministry of Finance.

The Budget and Finance Committee, in cooperation with the general secretary and the budget department of the Assembly, is responsible for the preparation of the draft-budget of the Assembly, which is sent to the Presidency of the Assembly for final approval, prior to being submitted to the Ministry of Economy and Finance.⁴

The Assembly is the final authority to approve the Kosovo budget. However, the government of Kosovo, through its Ministry of Finance, prepares the budget and also limits the amount that can be requested by the Assembly including the staffing table.

ASSESSMENT

RESOURCES (LAW)



To what extent are there legal provisions that provide adequate financial, human and infrastructure resources for the legislature to be able to effectively carry out its duties?

The budget and other legal provisions regarding the allocation of resources to the Assembly have not undergone any changes since the 2011 National Integrity System (NIS) report. The Assembly continues to be dependent on the government for the allocation of resources and is subject to limitations to its

RESOURCES (PRACTICE)



To what extent are there sufficient resources for the legislature to carry out its duties in practice?

The 2011 NIS concluded that the Assembly did not possess sufficient infrastructural resources to fulfil its duties in practice. Assembly members did not have any budget funds allocated to support and enhance constituent relations efforts. In 2011 the number of employees was 327, including members of the Assembly, administration and the Kosovo Independent Oversight Board. In terms of human resources, the 2011 NIS assessed that the Assembly lacked a professional unit that would ensure drafting of legislation in a manner that would avoid contradictions between different laws.

The 2014 budget of Assembly is 9,388,157 euro⁵ compared with 9,524,580 euro for 2010.⁶ However 1,901,783 euro allocated as subsidies and transfers to political parties have not been disbursed by the Assembly since 2011, but by the Central Election Commission.⁷ As a result, the total budget for the Assembly has increased since 2011 by almost 2 million euro. This steady increase in budget over the years has been reversed in 2015 according to Assembly officials.⁸ The Assembly used 97 per cent of the final budget in 2013, compared with 92 per cent in 2012 (an increase of 5 per cent). In total, budget execution remains at a satisfactory level.⁹ Data for 2014 does not present a fair picture of finan-

cial resources due to the political stalemate following the elections when MPs were not active.

The staffing table for 2014, which is adopted jointly with the budget, permits the AoK to pay a maximum of 338 staff members, including MPs, administration and political support staff.¹⁰ In 2011 this number was 337, but it included 25 employees of the Kosovo Independent Oversight Board for Civil Service (IOB). The IOB has since become a separate budget entity thus it can be deduced that the AoK has seen an increase of 26 employees since 2011. The Assembly's staffing table has 120 slots for MPs, 42 political staffers and 185 civil servants.

The working space of the Assembly has significantly increased by a third since the last assessment in 2011. However, this is still not considered sufficient for normal working conditions, as MPs do not have individual offices where they can conduct their activities.¹¹

The legislative competency of the Assembly suffers and as a result the quality of legislation is poor. This can be deduced by the extremely high number of draft laws (60 per cent in 2013), which were amendments to existing legislation, some of which were adopted in 2011 and 2012.¹² In Kosovo, 99 per cent of draft legislation adopted by the Assembly is sponsored by the government,¹³ and often the quality is not satisfactory, both in terms of content and format. The Assembly has made significant progress in building the capacity to amend proposed legislation, and avoid provisions that collide with existing legislation.¹⁴

However, given the limited number of staff and time constraints during the committee review phase, it is unrealistic to expect that the Assembly can conduct in depth evidence based research, which would completely revise policy solutions set forth in the draft law. Such responsibility falls on the sponsor of the draft law.¹⁵ If the Assembly had more resources in its research and legislation departments to scrutinise draft legislation coming from the government, the number of draft laws needing amendments would fall. In its *Monitoring Report of the Performance of the Assembly of Kosovo*, published in July 2013, the OSCE Mission in Kosovo notes that delays in reviewing of draft laws by Assembly committees occur due to "lack of technical expertise and expert support, disputes between central and local institutions, delays in submission of amendments by main committees, etc."¹⁶ The committees have budget to use at their discretion to hire experts, but the expenditure of this budget remains limited and there is a proposal to transfer these funds to the division for parliamentary research.¹⁷

The representative competence of the Assembly discharged in the form of constituent relations has not seen any improve-

ment since the 2011 NIS assessment. Assembly members do not have any budget funds allocated to support and enhance constituent relations efforts. To a great extent, constituent relations are contingent upon the will of the elected representative to visit certain regions, without any technical support from the Assembly.

The Assembly is supported by various international organisations. The National Democratic Institute for Foreign Affairs (NDI), with the financial support from USAID has supported the Assembly since its establishment in 2001. The NDI's assistance included support for the office of the speaker, the development of Rules of Procedures, the development and implementation of strategic plans, the committee assistance programme, support to women's caucus and youth caucus, support to individual MPs in opening and running constituency offices, support to the Secretariat in improving capacities for legal drafting, enhancement of parliamentary oversight tools and the advancement of transparency and outreach mechanisms.¹⁸

The NDI provided training, workshops, seminars and coaching sessions for the newly-elected parliamentarians and for women parliamentarians. Current NDI programs are focused on supporting parliamentary groups to translate policy positions and priorities into tangible legislative and oversight actions, assist the Secretariat in improving the quality of legal analysis and policy research to inform decision-making, facilitate reforms in the budgeting process, by ensuring greater inclusion of all standing committees in sectorial review of proposed budgets, and support efforts of the assembly to increase transparency and openness.¹⁹

INDEPENDENCE (LAW)

SCORE

2011

75

2015

75

To what extent is the legislature independent by law from foreign actors' dependency?

The 2011 NIS noted that the institutional independence of the Assembly as the only institution on a national level directly elected by the people is guaranteed by the Constitution.²⁰ The overall normative aspect of independence of the Assembly has not changed since 2011. The Dissolution of the Assembly is clearly determined by Article 82 of the Constitution, in special cases, respectively: 1) if the government cannot be established within 60 days from

the date when the president of the Republic of Kosovo appoints the candidate for prime minister; 2) if two thirds of all deputies vote in favour of dissolution, the Assembly shall be dissolved by a decree of the president of the Republic of Kosovo; 3) if the president of the Republic of Kosovo is not elected within 60 days from the date of the beginning of the president's election procedure. The president of the Republic of Kosovo can dissolve the Assembly following a successful vote of no confidence against the government.

The legislative agenda with reference to the legislative procedure for the proposal of draft-laws is determined on the basis of Article 79 of the Constitution, and also Article 53 of the Rules of Procedure of the Assembly, determines that the president of the Republic of Kosovo may present to the Assembly a draft-law from his scope of activity. The same can be done by the government, Assembly members, parliamentary committees, a parliamentary caucus and at least six Assembly members, or 10,000 voters according to the manner prescribed by law. All these procedures are sent to the government for further deliberation. Despite this, it should be noted that the Assembly does not create its own agenda; rather this area is to a great extent determined dependent on the Government Legislative Strategy.

Members of the Assembly have immunity for speeches conducted during the exercise of their duties. And a member of the Assembly cannot be arrested or detained without the consent of the majority of all members of the Assembly.²¹ The MPs, however, "are not immune from criminal prosecution for actions taken or decisions made outside the scope of their responsibilities"²².

The Assembly decides its own work-plan,²³ but the legislative agenda, to a large extent, is determined by the legislative agenda of the government. In terms of draft laws originating from the Assembly during the fourth legislature (2011–2014) "committees and members proposed seven pieces of legislation, which represents a notable improvement over the previous legislature during which only two laws were initiated by Assembly members."²⁴ However, none of these legislative initiatives were actually adopted by the Assembly. The government sponsors about 99 per cent of draft legislation adopted by the Assembly.²⁵

In May 2014 the Assembly used its right to dissolve itself²⁶ to pave the way for snap elections. Members of the main governing and opposition parties of the fourth legislature presented the motion. Due to the tight majority of the governing coalitions a deadlock was imminent and no important decisions could be voted on by the Assembly at that point in time. This indicator illustrates that political will of political parties is the one that drives the Assembly.

In 2011, the government of Kosovo considered that it was necessary to interpret and clarify the questions of immunities of the deputies of the Assembly, the president and members of the government. The Constitutional Court on September 2011 decided that, "Acting outside the scope of their responsibilities: Deputies are not immune from criminal prosecution for actions taken or decisions made outside the scope of their responsibilities. This is applicable both with regard to prosecution for criminal acts allegedly committed prior to the beginning of their mandate and during the course of their mandate as deputies."²⁷ Two days following the decision a member of Assembly was placed under arrest.²⁸ The interpretation of the Constitutional Court limited the scope of the perceived immunity of members of legislature.

On paper, laws defend the Assembly's independence from direct external influence. In reality, however, the governing coalition holds the largest number of seats and the coalition MPs are prone and in particular cases obliged to act according to the wishes of the executive.

INDEPENDENCE (PRACTICE)



To what extent is the legislature independent from foreign actors' dependency?

The 2011 NIS assessment concluded that work of the Assembly is closely interconnected to the political influence of the executive branch and international factors (International Civilian Office and several diplomatic missions accredited in Pristina).

TRANSPARENCY (LAW)

SCORE

2011

75

2015

75

To what extent are there legal provisions to ensure that the public can obtain the needed information on legislature activities and decision-making processes in a timely fashion?

The 2011 NIS concluded that in general there are legal provisions that ensure that the public can obtain relevant information in a timely fashion. These legal provisions have not undergone substantial changes since the last assessment. The rules of procedure of the Assembly have likewise not changed. The Constitution of the Republic prescribes that the meetings of the Assembly are public, but may be closed upon the request of the president of the Republic of Kosovo, the prime minister or one third of the Assembly members.

In regard to committee work, the Rules of Procedure²⁹ set forth that the meetings of the committees are open in principle, except when a committee: a) discusses confidential matters pertaining to security in Kosovo; b) discusses details pertaining to commercial contracts, into which the institutions of the Republic of Kosovo enter with a third party, where confidential commercial matters are discussed; c) prepares draft recommendations or final recommendations, including the drafting of important reports to the Assembly and d) deems otherwise.

With respect to the disclosure of assets of legislators, there is a legal framework that regulates the issue of disclosure, origin and control of assets of senior public officials through the Law on Disclosure, Origin and Control of Assets and Gifts of Senior Public Officials approved by the Assembly. The legal framework makes possible to publish the registers of assets of MPs.

A new Regulation on the manner of access of media and citizens to the work of Assembly was adopted in April 2011. This regulation is within the Assembly Rules of Procedure for access of media and citizens and ensures that all broadcasters can use the premises of the Assembly to broadcast plenary sessions.³⁰ This represents a notable improvement since the 2011 NIS assessment.

Furthermore, civil society organisations have taken serious steps to formalise relations between civil society and the Assembly. In April 2014 the Kosovo Assembly approved

the “declaration,” which promotes a more active role of civil society in policymaking.³¹ In this declaration, the Assembly pledges to be more open, cooperative and supportive of civil society.

TRANSPARENCY (PRACTICE)

SCORE

2011

50

2015

75

To what extent can the public obtain important information on legislature activities and decision-making processes in a timely fashion in practice?

The 2011 NIS concluded that there was improvement in the transparency level with regards to the access to the developments in the Assembly, in comparison to the previous legislatures. It noted increased transparency on the webpage of the Assembly, which published updates and information on a regular basis. This trend has continued since 2011 and the Assembly continues to progressively improve its transparency to become one of the leading central institutions in this regard. In 2014, the Assembly’s official webpage was restructured and made more user-friendly.³² Information is frequently updated and includes agendas for both plenary sessions and committee meetings, biographies of MPs, composition of committees and caucuses etc. As a result, according to the Council of Europe, “Kosovo Assembly is considered to be one of the most transparent institutions in Kosovo.”³³

Voting in the plenary sessions is made public within a day and the public can easily access each agenda point and the vote for each MP that casted a vote.³⁴ However, committees do not publish individual votes from their proceedings, but only the total number of votes on a motion through the meeting minutes.

The 2011 NIS noted that the Kosovo Radio Television (RTK) broadcast, transmits live from Assembly plenary sessions, until 17.00. This practice has changed and in addition to the main public broadcaster other public broadcaster channels (RTK 2, RTK 3) broadcast the plenary sessions live after 17.00. In addition, other broadcasters, including private ones, are allowed to record and broadcast the plenary sessions. This is a notable improvement on the live coverage of the plenary sessions.

Nevertheless, improvements in transparency are still required, for example, by publishing documents and votes on individual

motions within committee meetings. There have been cases when the MPs voted differently in the committee meetings from the plenary sessions. This also affects the accountability of MPs towards their constituents.

In general, the Assembly is viewed as a transparent institution. The public has numerous channels and possibilities to obtain information from the work of the Assembly and its bodies. A notable improvement would be to publish the individual votes of MPs in committees.

ACCOUNTABILITY (LAW)



To what extent are there legal provisions to ensure that the legislature shall report and be accountable for its actions?

The 2011 NIS reported that the implementation of the principles of checks and balances of power and the Constitution allows for the institution of the president,³⁵ Constitutional Court³⁶ and the Office of Auditor General³⁷ to have specific legal authorities to review legislative activities.

The Constitutional Court has the power of constitutional review of laws and other legislative acts approved by the Assembly. Ten or more Assembly members have the right of constitutional challenge of any law or decision approved by the Assembly and request that the Constitutional Court exercise its final authority for the interpretation of the Constitution.³⁸

According to the European Bank for Reconstruction, the parliament has improved its outreach activities, including public hearings, and is currently one of the most transparent institutions in the country.³⁹

The Assembly continues to function based on out-dated Rules of Procedure. The entire fourth legislature (2010-2014) did not manage to adopt its Rules of Procedure despite the legal requirement to do so. The adoption would streamline and improve the general work of the Assembly and its bodies.

In sum, the legal provisions to ensure that the legislature is held accountable for its actions have not undergone any changes since the 2011 NIS assessment.

ACCOUNTABILITY (PRACTICE)



To what extent do the legislature and its members report and are accountable for their actions in practice?

The 2011 NIS concluded that accountability of Assembly members remains an issue of their own volition. It further stated that the Assembly publishes reports on the work of its internal forums at specific periods of time, but there is no legal requirement to report to any specific institution, or to the citizens of Kosovo. And with respect to the complaints mechanism, the 2011 NIS stated that the Assembly had not made many efforts to increase public awareness about this mechanism for complaints and petitions by the citizens to the Assembly.

Kosovo uses a proportional electoral system as a single electoral zone. Citizens may vote for only one party and may vote for up to five candidates within the party list. In this electoral process the elector does not elect representatives from where they live and as a result the MPs do not have a strong link with their constituency.

In addition to this, according to a civil society representative, there are a number of problems with the accountability of MPs and the legislature in general. Firstly, the Assembly reserves seats for minority communities (20 seats) and has a reserved quota for women (40 seats) out of a chamber with 120 seats, which results in a large number of seats that are appointed with indirect votes and not through a pure democratic process of elections. When this is added to the lack of democracy within political parties and how the electoral lists are drawn up by the leaders of the parties (see integrity practice) it decreases the MPs' role within the parliament and their accountability towards citizens.⁴⁰

In terms of consulting with the public the Assembly increased the number of consultations with civil society and the public through hearings in 2013.⁴¹ In general the trend of consultations with public and civil society has increased. The Assembly recruited an NGO liaison officer and has since streamlined the participation of civil society in the work of the Assembly.⁴² Nevertheless, the two-way communication between MPs and citizens needs to improve.

Overall, the Kosovo electoral system does not favour the accountability of the legislative branch of the government,

as constituencies do not exist. Having said this, there has been an increase in consultations and engagement with civil society since the last assessment in 2011.

INTEGRITY MECHANISMS (LAW)

SCORE

2011

75

2015

75

To what extent are there mechanisms to ensure the integrity of legislature members?

The 2011 NIS concluded that there were clear legal provisions emanating from the Constitution, the Law on the Prevention of Conflict of Interest, Law on the Disclosure, Origin and Control of Assets and Gifts of Senior Public Officials, and Code of Conduct, to ensure that the Assembly members act in compliance with the trust granted to them by the people under all circumstances. These provisions have not changed since 2011.

According to Article 72 of the Constitution, a member of the Assembly shall neither hold any executive position, in public administration or in any publicly owned enterprise nor exercise any other executive function as provided by law.⁴³

The Law on the Disclosure, Origin and Control of Assets and Gifts of Senior Public Officials obliges MPs to disclose their assets as soon as they assume office and further once a year in a periodic manner. The same law also regulates the issue of gifts.⁴⁴

The Code of Conduct includes provisions against corruption, emphasising that members should not place themselves under any financial obligation with any individual or organisation, which could influence the discharge of their official duties. Also, according to the Code of Conduct, on any important personal financial interest, before participating in discussions on an issue at the Assembly or an Assembly Committee, members are bound to register their interests in advance.

In addition, the Law on Rights and Responsibilities of the Deputy requires that that within 30 days of the certification of the deputy's mandate a statement is provided to the president of the Assembly on property, income and economic interests, for his/her spouse or partner in life and child(ren) living together with him/her.⁴⁵

The amendment of the Law on the Prevention of Conflict of Interest, to harmonise it with the Criminal Code was not

concluded. The non-adoption of these amendments, and the existence of two different definitions of conflicts of interest may have consequences for the efficiency of co-operation between the KACA and the prosecutor.⁴⁶ Due to this, a maximum score was not provided for this indicator.

INTEGRITY MECHANISMS (PRACTICE)

SCORE

2011

50

2015

50

To what extent is the integrity of legislators ensured in practice?

The 2011 NIS noted that there were legal gaps in the integrity mechanisms, which affected the integrity of MPs in practice. It listed a number of integrity issues within the plenary sessions and general conflicts of interest of MPs holding multiple functions that could potentially be in a conflict of interest.

Currently, the KACA ensures that the disclosure of assets by MPs is done according to the legislation. Any MP who violates the rules on disclosure is criminally liable. Two MPs from the governing coalition were acquitted for any wrongdoing by the court following an indictment by the prosecution for falsely disclosing assets.⁴⁷ The court noted that there was no criminal liability, but that it was a technical error. This example suggests that the disclosure of assets is taken seriously by the KACA and the judicial system in general.

Practical implementation of Article 72 of the Constitution has been challenged. Blerim Shala MP also holds the executive function of the coordinator for the government for talks with Serbia. KACA found out that holding these two positions is not a conflict of interest, but also that it was not competent to interpret the Constitution to evaluate this situation.⁴⁸

An assessment by the Council of Europe states that, "More needs to be done to prevent nepotism and favouritism and to ensure that clear ethical rules are to be followed. There is a gap between the legislation in place and its implementation in practice."⁴⁹ Apart from the improvement in practical disclosure of assets, there is no improvement on other integrity matters, such as the ethical behaviour of MPs by withdrawing from voting in any conflict of interest situation, or any sanctioning by the sub-committee on mandate an immunity, etc.

EXECUTIVE OVERSIGHT (LAW AND PRACTICE)



To what extent does the legislature ensure effective oversight of the executive?

The 2011 NIS analysed the legal basis of parliamentary oversight of the executive and concluded that there was ample constitutional and legal capacity for efficient oversight through parliamentary investigative committees,⁵⁰ committees on special issues including on investigative ones,⁵¹ parliamentary questions,⁵² parliamentary interpellations,⁵³ standing committee on public finance oversight, oversight of individual line ministries by different committees, etc. In addition to this it noted that the Assembly has constitutional authority to also refer to the Constitutional Court matters dealing with the conflict of constitutional authority of the Assembly, the president of Kosovo and the government.⁵⁴ Likewise, the Assembly scrutinises and adopts the budget proposed by the government.⁵⁵ The auditor general⁵⁶ and ombudsperson⁵⁷ are elected and dismissed by the Assembly.

However, in practicing the oversight competences the Assembly is rather limited due to the (lack of) political will of the political landscape and events. For instance, Kosovo’s budget for 2015 was deliberated by the Assembly for only one week between two readings in December 2014 due to the late formation of the government and no real discussion took place. Therefore it can be concluded that the Assembly had almost no say on the state budget.

Budgetary oversight is conducted through the Committee on Oversight of Public Finance. However, this committee has a large burden to oversee the budget of all the ministries. This would be done better if other Committees review and monitor the spending of the budget of ministries they are supposed to oversee. This situation would be alleviated by ensuing greater inclusion of all standing committees in sectorial review of proposed budgets, and financial oversight by reviewing periodic reports of line ministries and independent institutions.⁵⁸

Nevertheless, the political constellation played a positive role during the fourth legislature with regards to executive oversight by the parliament as, “the narrow difference in the number of seats held by the governing coalition and the opposition resulted in a parliament with a fairly consolidated governing coalition and opposition. This obviously influenced

the dynamics of the Assembly’s work and increased its supervisory activities.”⁵⁹

But a particularly sensitive phase was experienced in 2014, when the political deadlock damaged the overall oversight of executive by the legislature. Following the dissolution of the Assembly in May 2014 until the election of the new parliament in 2015 and due to the lack of a Law on Government,⁶⁰ with provisions to limit the powers of an outgoing government, many controversial decisions were taken including the appointment of a number of senior civil servants⁶¹ and awarding a large contract for the construction of a highway.⁶²

According to an NDI representative, over the past years the Assembly has made considerable progress in strengthening its parliamentary oversight mechanisms including: question period, parliamentary investigations, oversight of implementation of laws and oversight hearings across committees, although the responsiveness from the executive branch was not always sufficient. However, carrying effective budgetary oversight remains a challenging task for the Assembly, as standing committees are still excluded from the budgeting process, and the Public Accounts Committee established in 2009 was not empowered enough by the Assembly leadership to reach the goal for which it was created.⁶³

Applicable legislation in Kosovo obliges independent institutions, which are established by the Assembly, to report directly to that institution. One of the major weaknesses of the Assembly is considered the lack of monitoring of, and reporting on the independent institutions and regulatory authorities. The European Commission noted in its report on Kosovo that, “Assembly needs to improve the supervision of public companies, independent institutions and regulatory authorities.”⁶⁴ A civil society representative that monitors the work of Assembly noted that the legal basis on how these agencies report to the Assembly is the single biggest issue. Second, there are no sanctions to the heads or boards of independent institutions if the annual reports are not adopted by the Assembly and there are no set deadlines when these reports should be submitted.⁶⁵

Monitoring of implementation of laws is another activity of the Assembly in general and committees in particular. However, the monitoring of implementation of laws has produced “superficial work and final reports.”⁶⁶ The Assembly needs to step-up its engagement in this front.

The oversight competence the Assembly can be improved, and resources allocated to it, especially regarding monitoring of implementation of laws by the executive. The European Commission Progress Report 2014 also gave prominence to both these two competencies of Assembly. It noted that, “the Assembly and its committees still need to expand their

cooperation with line ministries in the legislative and oversight process to improve the quality of legislation and ensure its implementation.”⁶⁷ Regarding the administration the report stated that, “the secretariat of the Assembly needs to continue to build its expertise on technical issues to support effective policy making and the capacity to improve scrutiny of draft legislation and its implementation.”⁶⁸

Overall, the oversight of executive and independent agencies is one of the major weaknesses of the Assembly. This is a result of the political balance within the Assembly, the lack of a political culture in the governing coalition MPs to oversee the government and an inefficient legal basis to ensure proper oversight of independent institutions.

LEGAL REFORMS (LAW AND PRACTICE)

SCORE

2011

50

2015

50

To what extent is anti-corruption and governance as an issue/concern in country a priority for the legislature?

The 2011 NIS concluded that there was insufficient political will to decrease the high level of corruption in Kosovo, although the Assembly had adopted a number of laws to strengthen the integrity, transparency and accountability of the governance system.

Since 2011 the parliament has mainly been involved with updating and streamlining these laws. The most significant improvement was a new Criminal Code, which entered into force in January 2013 and was supplemented by an amendment to the Law on Declaration of Assets. This made the failure to disclose assets punishable by imprisonment as opposed to the previous sanction of a low administrative fine. A new Anti-Corruption Strategy and Anti-Corruption Action Plan 2013-2017⁶⁹ was also adopted by the Assembly.

However, all these documents were considered by civil society as empty documents that do not bring any change in reality.⁷⁰ Civil society was not consulted when the documents were drafted, but served as a tick box to satisfy the requirements deriving from the short-term priorities of the Feasibility Study for a Stabilization and Association Agreement between the EU and Kosovo.⁷¹

The right of legislative initiative of the Assembly has been rarely used.⁷² Nevertheless, there were a couple of legislative initiatives by opposition MPs to strengthen the anti-corruption framework, but these were not supported by the governing coalition.

RECOMMENDATIONS

- > The Assembly should ensure proper oversight of executive through different mechanisms, and in particular through Assembly committees.
- > The Assembly should review the legal basis, on which independent agencies report to it. Sanctions should be imposed on the heads or boards of independent institutions if the Assembly does not adopt the annual reports and the Assembly should define deadlines for when these reports should be submitted.
- > The independence of Assembly from the executive should be ensured, including the administrative independence which means deciding on allocation of budget and the staffing table.
- > The Assembly should increase its focus on allocating resources to its research capabilities to improve the quality of adopted legislation.
- > The Assembly should ensure greater transparency by publishing the votes of MPs in committee meetings.
- > The Assembly should strengthen its internal integrity mechanisms ensuring that MPs withhold from voting when there is a clear conflict of interest.



ENDNOTES

- 1 Constitution of the Republic of Kosovo, Article 63.
 - 2 (ibidem), Article 65.
 - 3 Since the constitutive session of the third legislature in January 2008, the Assembly of Kosovo with a delay of only three (3) years, on April 29, 2010 managed to approve and harmonize the new Rules of Procedure with the highest legal-political act – The Constitution of the Republic of Kosovo, which entered into force on June 15, 2008. Until that time, this institution continued to operate on the basis of the Rules of Procedure (dated May 20, 2005), in compliance with Chapter 9.1.26, f) of the Constitutional Framework for Provisional Self-Government in Kosovo.
 - 4 Rules of Procedure of the Assembly of Kosovo, Article 15.
 - 5 See the website of Ministry of Finance on Approved Budget for 2014: <https://mf.rks-gov.net/en-us/ministriaefinancave/buxhetiirepublikessekosoves/buxhetiendrore.aspx>
 - 6 Based on the Law on the Budget of the Republic of Kosovo for 2010 (Nr.03/L-177), entered into force on January 1, 2010, before the final review conducted in July 2010, the allocated budget for the Assembly for the year 2010 was 9,301,677 Euro. A total of 7,934,018 Euro were allocated in the category of Operational Expenses, whereas 1,367,649 Euro were allocated for Capital Expenditures.
 - 7 For more on financial support to political entities or the so called Democratization Support Fund see: Law on Financing of Political Parties. Available at: <http://gzk.rks-gov.net/ActDetail.aspx?ActID=2705>
 - 8 Interview with Emrush Haxhiu. Director of Department of Administration. Assembly of Kosovo. 16 January 2015.
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EXECUTIVE

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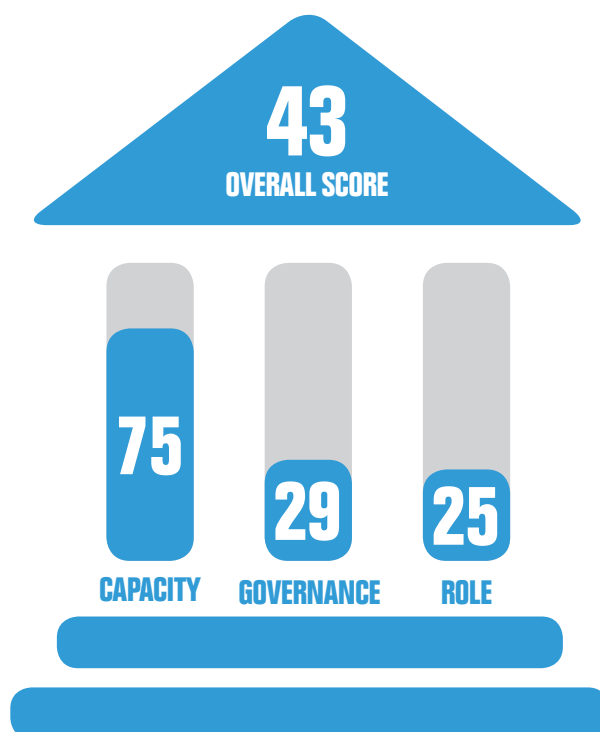
OVERVIEW

No noticeable improvement of capacity, governance or role can be observed regarding the operation of the executive. The government of Kosovo has significantly more resources at its disposal compared to the legislature and judiciary, but strategic planning and coordination between the various ministries who are led by ministers from different political parties is weak.

The government is not transparent regarding its decision-making process and its decisions; this is particularly the case in the Office of the Prime Minister. From June to December 2014 the political parties that won seats in the general elections for the Assembly of the Republic of Kosovo (the Assembly) could not form a government. The Law on Government needs to be adopted to regulate critical issues such as the decision-making powers of an out-going government regarding the adoption of the state budget and the appointment of senior officials etc., as well as a Code of Conduct for the cabinet.

Despite being declared as priorities by the government, public accountability and the fight against corruption have not been seriously addressed. Instead of focusing on implementation, in most cases, there is a tendency to draft strategies and legislation without assessing the impact of previous ones.

The table graph presents the indicator scores, which summarise the assessment of the executive in terms of its capacity, its internal governance and its role. The remainder of this section presents the qualitative assessment for each indicator.





EXECUTIVE



	Indicator	Law	Practice
Capacity	Resources	-	75
	Independence	75	75
Governance	Transparency	50	25
	Accountability	50	25
	Integrity mechanisms	25	0
Role	Public sector management		25
	Legal system		25



STRUCTURE AND ORGANISATION

The executive is the cabinet that exercises executive authority in Kosovo. It is headed by the prime minister, and also includes the deputy prime ministers and various ministers. The president of Kosovo also has some executive powers. The prime minister is elected by the Assembly and ministers are nominated by the prime minister and elected by the Assembly. Isa Mustafa is the current prime minister of Kosovo and head of the government. His cabinet consists of Albanians, as well as ministers from Kosovo's non-majority communities, which include Serbs, Bosnians and Turks.

In comparison with the legislature or the judiciary the executive is far better placed in terms of the human, financial and technical resources at its disposal. However, the European Commission noted that, "the government needs to do more to improve strategic planning and coordination among ministries."² In a lot of cases, coalition partners pursue different priorities and agendas are not harmonised.

ASSESSMENT

RESOURCES (PRACTICE)



To what extent does the executive have adequate resources to implement effectively its duties?

The 2011 National Integrity System (NIS) report concluded that Kosovo government operated with limited human, technical and financial resources, translating itself into an institution easily influenced by international assistance.

This situation has somewhat improved over the years with an increase in the state budget. According to the GAP Institute, a local think-tank, there has been a steady increase of resources used by the government and an increase in the number of government cabinet members, and "the government spends 66% of the overall state budget."¹ In addition to this, the number of ministers has steadily increased to 21 from 19 in 2011. Whereas the increase of financial resources is linked with an increase in personnel in the government cabinet, no significant change can be observed since 2011 regarding the effectiveness of carrying out its duties.

INDEPENDENCE (LAW)



To what extent is the executive independent according to the Law?

The 2011 NIS report concluded that the legal framework in Kosovo offered a good basis for the independence of Kosovo government, in accordance with the principles of governance in parliamentary democracies.

The legal framework regarding the independence of the executive has not changed since 2011. Kosovo's Constitution stipulates that the government is accountable to the Assembly, in relation to its work.³ The Government Rules of Procedure adopted in 2011 did not bring any change in encroachment of the independence of the government.⁴

INDEPENDENCE (PRACTICE)



To what extent is the executive independent in practice?

The 2011 NIS report concluded that the Kosovo government, in practice, operated as an institution independent from interference of other state institutions. It noted that due to strong party leadership, the prime minister and ministers of the government exercised control over other branches of government. This was most notable in the lack of oversight of the government by the Assembly, discussed under the legislature chapter. This has not undergone any changes since the last assessment.

The current government is composed of two main parties representing Kosovo Albanians, namely the Kosovo Democratic Party (PDK) and the Kosovo Democratic League (LDK), and the parties from non-majority communities such as the Serbian List and MPs representing Turkish, Bosnian and Gorani communities. The government holds a comfortable majority and thus can be considered independent from any influence. However, the internal dynamics of the government are a bit complicated. The current prime minister Isa Mustafa comes from the second biggest party, LDK, and sometimes can be overshadowed by Hashim Thaçi, the deputy prime minister and foreign minister, who is also the leader of the biggest party, PDK.

TRANSPARENCY (LAW)



To what extent are there regulations to ensure transparency in the important activities of the executive?

The 2011 NIS report noted that transparency of government is regulated by the Law on Access to Public Documents. The Law on Declaration and Origin of Property and Gifts of Senior Public Officials regulated the declaration of assets of senior officials including the government cabinet. According to Government Rules of Procedure⁵ the minutes of cabinet meetings are considered confidential and this has not changed since the last study.

The Law on Access to public documents, which forms the backbone of transparency has not been amended. The Law on Declaration and Origin of Property and Gifts has been amended, to streamline it with other legislation that helps support corruption prevention. As a result of the amendment of Criminal Code in 2013,⁶ the Law on Declaration of Assets⁷ was also amended and made the failure to disclose property, income, gifts, other material benefits or financial obligations, punishable by a fine or imprisonment up to three years, compared to a previous relatively low administrative fine. Another change that the amendment of the Law on Declaration of Assets brought was that at least 20 per cent of the forms will be subject to full control each year.⁸

In July 2013 the government took the decision⁹ to join the Open Government Partnership (OGP). In this regard the government assigned the Ministry of European Integration to establish a Coordination Group regarding the work in joining the Partnership and implementing the commitments.¹⁰

TRANSPARENCY (PRACTICE)



To what extent is transparency present in the important activities of the executive in practice?

The 2011 NIS report assessed the transparency of government in practice as very low. It noted that selective transparency prevailed, and the government would only publish information that was not sensitive.

This situation remains largely the same. The government does not publish any minutes of its meetings. Decisions taken by the government are published on the prime minister's webpage, but apart from the decision signed by the prime minister, there's no background material, or, in cases of draft laws, the draft laws themselves are not published.¹¹

According to government data¹² the number of requests to access official documents since the adoption of the Law on Access to Official Documents in 2010 has increased. The number of requests in 2012 was 1,343 and this increased to 1,999 in 2013. According to these figures only a fraction of requests did not receive a response or were rejected. But according to the BIRN the implementation of the Law on Access to Official Documents stands at only 30 per cent.¹³ This result came following 300 requests sent to different institutions from January 2012 to May 2013, to which there were only 100 received responses.

The GAP Institute, which sends a substantial number of freedom of information requests to different governmental bodies, has stated that the prime minister's office is the one that replies least often.¹⁴ The contract of the largest capital investment by the government of Kosovo during 2014–2017, the 'Prishtina-Hani i Elezit highway', has never been published. The Ministry of Infrastructure allowed only several hours of access to the 200-page contract to interested organisations or individuals without permitting copying.¹⁵

In April 2014 the government adopted the National Action Plan¹⁶ 2014–2016 for the OGP. According to the FOL Movement, the implementation of the Action Plan has some deficiencies. Based on their monitoring of the 29 actions and 42 sub-actions, only four actions were fully implemented between June 2014 and June 2015.¹⁷ The plan contains a number of actions and sub-actions that need to be implemented.

A survey by the Kosova Democratic Institute (KDI) in 2014 revealed that most of the documents necessary for business, such as procurement plans, annual budgets, etc. are not disclosed to the public.¹⁸ Electronic procurement has been a long standing strategic objective¹⁹ that was intended to be fully functional in January 2013. However, only in June 2015 the pilot project to test the system was implemented. A long way remains to the full implementation of e-procurement, which would significantly increase transparency, reduce administrative costs and increase competitiveness.

The previous government led by Hashim Thaçi (2011–2014) concluded its mandate without a spokesperson. In contrast, the new government led by Isa Mustafa (from 2014) appointed a spokesperson, but he is a minister and is not readily available.

ACCOUNTABILITY (LAW)



To what extent are there legal provisions to ensure that members of the executive report and are accountable for their actions?

The 2011 NIS report noted that the Constitution provides the legal basis for the Assembly to hold the government accountable. The provisions that regulate the balance and separation of powers between the different parts of the government remain the same as in 2011.

The Assembly Rules of Procedure,²⁰ which regulate accountability issues such as motions of no confidence for the government, oversight of the government and parliamentary questions, etc., have not been amended. The 2011 NIS report noted that these are good opportunities for the Assembly to hold the government accountable. However, practice has shown that there are loopholes in the legislation. There are no provisions that sanction cabinet members if they do not answer parliamentary questions, or do not participate in Assembly committee meetings to report on their portfolio.

Legislation relating to accountability of government decisions, with regards to providing reasoning for their decisions does not exist. As a result the origin and reasoning of some decisions of the government is unknown.

Guidelines pertaining to consultation processes²¹ in order

to draft strategies and legislation were drafted in 2011 and disseminated to the different government bodies. They serve as the basis for any input provided by civil society and other actors on governmental policies, strategies and draft laws. The Government Strategy for Cooperation with Civil Society was approved in 2013. Its purpose is to ensure civil society involvement in policy-making, and creating a system of contracting public services and financial support for CSOs.²² Overall the normative aspect that sets the basis for a meaningful consultation process is largely in place. However, there are no explicit legal provisions that would prevent the government from adopting legislation, sub-legislation or policies without holding any consultation process.

A notable deficiency is the lack of a Law on Government, which would amongst other things regulate the competencies of an outgoing government, in terms of adopting and amending the budget and appointing senior officials such as permanent secretaries at ministries, etc. The previous government adopted the draft Law on Government in August 2011, but it was never adopted by parliament.

ACCOUNTABILITY (PRACTICE)



To what extent is there effective oversight of the activities of the executive in practice?

The 2011 NIS report evidenced that the Assembly did not effectively hold the government accountable in practice. Further, it noted that the Auditor Generals' recommendations were usually not taken into account.

In 2014, the European Commission noted that the Assembly "made progress on oversight of the executive."²³ In practicing its oversight competences the Assembly is rather limited due to the political will of the political constellation and events. However, the fourth legislature (2011–2015), with a more balanced composition between the governing coalition and opposition was more effective in its oversight competencies.²⁴

A study by the Kosovar Civil Society Foundation on the public consultation process²⁵ listed a number of challenges related to this process, namely the lack of political will, the lack of civil servant and civil society capacity, inadequate institutional setup for coordinating and monitoring the public consultation process and lack of trust between sectors. The Kosovar Civil

Society Index states that 64 per cent of CSOs declare that they have been involved in a policy-making process during the last three years. However, only 29.29 per cent of CSOs have declared that they have been regularly invited for consultations on laws/policies relevant to their work.²⁶

As of August 2015, the government legislative programme for 2015 was amended 21 times²⁷ by the government. This shows that the government fails to systematically translate political priorities into plans, which are then carried out through legislation changes. Consultation with civil society might help alleviate this systematic problem. The PECK report also noted, “that consultation practice of non-government interested stakeholders is not a wide practice and remains fragmented.”²⁸ According to Agron Demi – executive director of the GAP Institute – during the first half of 2015, of 44 draft laws that the government sent to the Assembly only 13 were also sent to the Civikos platform to consult civil society. As such, 31 draft laws were never sent to Civikos to obtain feedback from civil society.²⁹ Another problem noted by the GAP Institute was the lack of information regarding the establishment of working groups in ministries or in the Office of the Prime Minister to draft legislation.³⁰

The ministries and the Office of the Prime Minister are audited on an annual basis by the Office of the Auditor General (OAG). These reports are published³¹ and contain many recommendations on different findings. Since these recommendations are poorly addressed by the government, they are repeatedly highlighted in reports of the OAG. For instance, 80 of the 317 recommendations in OAG’s 2013 report were not addressed at all by the government cabinet.³²

The expenditure reports of the government are submitted to the Assembly, which performs its oversight functions through its Committee on Oversight of Public Finance. However, this Committee has a large burden to oversee the budget of all the ministries. This would be done better if other Committees review and monitor the spending of the budget of ministries they are supposed to oversee. This situation would be alleviated by ensuring greater inclusion of all standing committees in the sectorial review of proposed budgets, and financial oversight by reviewing periodic reports of line ministries and independent institutions.³³

INTEGRITY MECHANISMS (LAW)

SCORE

2011

25

2015

25

To what extent are there mechanisms to ensure integrity of the executive power members?

The 2011 NIS report evaluated the legal framework pertaining to the integrity of the government cabinet, and noted that it was weak. The legal framework on conflict of interest was also considered very weak. It analysed the draft Law on Government, which would have regulated several identified weaknesses. However, this law had not been adopted.

The legal framework has seen no improvement since 2011. The draft Law on Government³⁴ has still not been adopted by the Assembly. This delayed legislation would have regulated rules of incompatibility and the Code of Conduct, etc. Likewise, there is no Code of Conduct for ministers or the prime minister.³⁵

The draft law to amend the Law on Prevention of Conflict of Interest, despite going through all governmental and parliamentary procedures, was withdrawn from the agenda of the plenary by the government.³⁶ This was the second time that this draft law did not make it through the parliament. No reasons were given by the government for this withdrawal. The approval of this draft law would avoid the existence of two different definitions of conflicts of interest³⁷.

INTEGRITY MECHANISMS (PRACTICE)

SCORE

2011

0

2015

0

To what extent is the integrity of the executive members ensured in practice?

The 2011 NIS report stated that in practical terms, there was no integrity of the government. It noted, for example, that some members of the government held multiple posts, which could be considered to be a conflict of interest. Conflicts of interest in Kosovo were not sanctioned.

In 2015 this situation has not changed. Without the necessary legal changes, there is no prospect of change in practical terms and conflict of interest issues are persistent³⁸. In 2014 the KACA reviewed 67 cases of conflicts of interest coming from the government. It should be noted that these cases were not limited only to members of the cabinet. Of these 31 avoided the situation of conflict of interest, four were found not to be in conflict of interest, in two cases dismissals were requested and 11 are pending cases.³⁹

According to the UNDP’s Public Pulse report, which measures the satisfaction of citizens with different institutions, only 18 per cent of Kosovo’s citizens are satisfied with the work of its central institutions – executive government – whereas satisfaction with the prime minister stands at 23.6 per cent.⁴⁰ This low level of satisfaction, surpassed only by the low satisfaction with judiciary at 17 per cent, shows that citizens do not trust the executive.

PUBLIC SECTOR MANAGEMENT (LAW AND PRACTICE)



To what extent is the executive committed to and engaged in developing a well-governed public sector?

Public administration reform was stated as one of the main government priorities⁴¹ of the Thaçi government (2011–2014). The Ministry of Public Administration was placed in the driving seat of the public administration reform. A revised public administration strategy for the period 2010–2013 was adopted by the government in September 2010.⁴² Only in May 2012 did the Action Plan to Implement the Strategy on Public Administration Reform get its approval.⁴³ Thus, in a 2012 assessment report, SIMGA stated that, “Public Administration Reform (PAR) is clearly not a priority for the government. The Action Plan for Public Administration Reform is not yet approved. The government has shown very little political will to progress with PAR in general and with civil service reform in particular.”⁴⁴

According to an expert in this field, “there was a weak coordination between institutions and there was lack of clarity regarding the division of duties to manage the public administration reform” and on top of this “because of the need to change many things simultaneously for a short period of time a total of 12 priorities were listed which proved to be

too many.”⁴⁵ This negatively affected the progress and the results of the reform itself.⁴⁶ The European Commission noted that, “The implementation of the strategy has been a major challenge and there have been very limited results.”⁴⁷

In 2012 SIGMA recommended that Kosovo “focuses primarily on implementing the already existing rules and tools rather than embark on continuously amending legislation, setting up new bodies, and adopting formal strategies, usually without assessing the effectiveness of the previous laws, strategies and actions.”⁴⁸ Currently, a Draft Strategy on Modernisation of Public Administration 2015–2020 is being discussed.⁴⁹ The Ministry of Public Administration made a critical assessment of the previous strategy⁵⁰ and hopefully will build on lessons learned from past experience.

LEGAL SYSTEM (LAW AND PRACTICE)

Score (In 2011: 25) (In 2015: 25)



To what extent is the executive prioritising public accountability and the fight against corruption as issues of concern for the state?

Despite the rhetoric, improving accountability and fighting corruption are not government priorities in practice. A number of government priorities such as EU Integration, a visa free regime within EU’s Schengen zone,⁵¹ economic development etc. remain hostage to the lack of results in fighting corruption.

The fight against corruption under the Thaçi Government (2011–2014) can be considered a failure. In terms of legislation a number of half-measures were introduced such as the Law on Declaration, Origin and Control of High Public Officials and Declaration, Origin and Control of Gifts for all public officials have been aligned with the Criminal Code.⁵² The Anti-Corruption Strategy and Action Plan were adopted in 2013 as well as the Law on Extended Powers for Confiscation of Assets Acquired by Criminal Offence.⁵³ The Law on Financing of Political Entities was also amended in 2013, but the amended Law on Prevention of the Conflict of Interest has yet to be adopted. The results of these changes in reality are not yet visible.

The new government of İsa Mustafa (December 2014 – present) does not show any promise of increasing the fight against corruption and increasing accountability. The Government Program 2015–2018⁵⁴ agreed between coalition partners has general premises regarding the fight against corruption, but does not answer “the how” in any detail, as it does for economic issues.

Further, in 2015 the government proposed an amendment to the Criminal Code, namely Article 437, which regulates the issue of failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations by senior public officials. Article 437⁵⁵ is very clear in regulating the sanctions regarding the failure to report or falsely reporting assets by senior public officials. Çoşun, the KDI and the FOL Movement reacted against these interventions.⁵⁶ Ultimately the government withdrew the proposal for this amendment.

RECOMMENDATIONS

- > The government should adopt the Law on Government to regulate powers of an outgoing government.
- > The government should adopt a Code of Conduct for the government cabinet listing rules on conflicts of interest and post-ministerial employment.
- > The Government should appoint a spokesperson, whose only duty is to provide answers to the journalists and the public at large.
- > The Government should develop and implement a robust public consultation process for legislation, policies, and strategies, etc. to ensure inclusive policy development based on the needs and interests of relevant stakeholders.
- > The government ministries should systematically address recommendations contained in the audit reports of the Office of the Auditor General.
- > The government should increase its commitment towards fighting corruption by providing resources to corruption fighting bodies and by streamlining legislation and institutions that fight corruption.
- > The government should improve its transparency and accountability to the legislature by consistently answering parliamentary questions, by participating in committee meetings and by answering MPs requests for parliamentary debates.



ENDNOTES

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JUDICIARY

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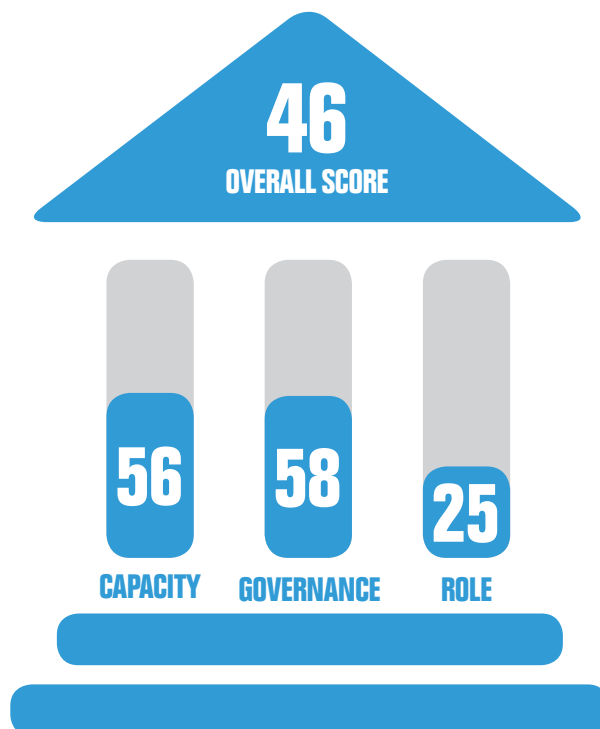


OVERVIEW

The judicial system is not independent and as such is incapable of exercising its powers in fighting corruption. Both the parliament and government exercise influence over the judiciary. The parliament appoints the majority of the Kosovo Judicial Council (KJC). However, the government, according to legal changes adopted in June 2015, no longer has the authority to decide how much the judiciary is allocated in terms of funding.

The KJC by law is an independent institution responsible for administering the courts. A small budget for the last four years has made it impossible for it to recruit and maintain judges and professional staff. There is an overall lack of human capital and suitable working conditions, although with the support of the EU a new building compound (known as the Justice Palace) opened in 2015 to accommodate the main courts and prosecution offices. Further, the office in charge of issuing disciplinary measures against judges for violating ethical rules has been criticised for lacking resources and not being transparent. Hence, the first step forward is the internal development of the judiciary and the recruitment and training of more staff to handle corruption cases.

The graph presents the indicator scores, which summarise the assessment of the judiciary in terms of its capacity, its internal governance and its role. The remainder of this section presents the qualitative assessment for each indicator.





JUDICIARY



	Indicator	Law	Practice
Capacity	Resources	100	25
	Independence	75	25
Governance	Transparency	50	50
	Accountability	100	25
	Integrity mechanisms	75	50
Role	Corruption prosecution		25



STRUCTURE AND ORGANISATION

The court system in Kosovo consists of the Basic Courts, Court of Appeals, and Supreme Court.¹ The Basic Courts are courts of first instance established in the seven largest municipalities: Prishtina, Gjilan, Prizren, Gjakova, Peja, Ferizaj and Mitrovica.² The Court of Appeals is a court of second instance established in Pristina, in charge of reviewing appeals from decisions and conflicts of jurisdictions of Basic Courts.³ Both courts have five Departments that handle (1) commercial matters, (2) administrative cases, (3) serious crimes, (4) general matters, and (5) minors.⁴

The Supreme Court is the highest court responsible for adjudicating requests and revisions against final court orders, defining principles and legal remedies that require unique application, and cases under the scope of the Kosovo Property Agency (KPA) and Kosovo Trust Agency (KTA).⁵ The Constitutional Court is the final authority that determines whether laws and general acts comply with the Constitution.⁶ In April 2014, Kosovo agreed to a new mandate for EULEX until June 2016 and the establishment of a temporary special court for war crimes. Under the new EULEX mandate, Kosovo officials head all rule of law institutions.

(three layers) and of salaries levelled with those of the government. The Basic Courts, Court of Appeal, and Supreme Court replaced an old judicial system composed of district and municipal courts.

The law still does not require a fixed share of the public budget for the judiciary. It is at the discretion of the KJC to prepare and submit the budget to the Assembly of the Republic of Kosovo (the Assembly).⁷ In the previous law, the budget at first had to be reviewed and revised by the government prior to being sent to the Assembly.⁸ That is no longer the case today since KJC has complete power to request a considerable budget. Once it is approved, then it is KJC's role to execute, as far as supervising expenditure, allocating funds, and maintaining accurate financial accounts.⁹

The legal provisions governing judicial salaries are set in the Law on Courts. It mandates the same hierarchy of judicial salaries levelled with those of the government as in indicated in 2011. In the new law the wording "equivalent with that of" has been replaced with the wording "not less than that of."¹⁰ In the Supreme Court, its president earns not less than the prime minister¹¹ and judges earn not less than 90 per cent of their salary rate.¹² In the Court of Appeals, its President earns not less than the President of the Supreme Court and Judges are paid not less than 90 percent of their salary rate.¹³

For any extracurricular activity (e.g. lecturing and training), a judge will be paid 25 per cent of their basic salary.¹⁴ The law also sets an important legal provision against income reduction for judges. In Article 29, it says that the salary of a judge shall not be reduced during his/her term unless there are disciplinary sanctions imposed by the KJC.¹⁵ Such consequences could only occur if there is a case of misconduct for which KJC initiates a disciplinary measure of temporary reduction of a salary up to 50 per cent.¹⁶

ASSESSMENT

RESOURCES (LAW)



To what extent are there laws seeking to ensure appropriate salaries and working conditions of the judiciary?

The laws and regulations are adequate in seeking to ensure appropriate salaries and working conditions of the judiciary. In June 2015, the Law on Courts and Law on Kosovo Judicial Council were slightly amended and supplemented. The Law on Courts defines a new hierarchy of the judiciary

RESOURCES (PRACTICE)



To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

Despite a solid legal framework, courts continue to have minimal resources and working conditions to perform their duties as was reported in the 2011 NIS. The budget is not

sufficient to compensate for operational costs, salaries of newly appointed judges and building courtrooms.¹⁷ While salaries are fairly determined by law and paid by the KJC at the same level as ministers' salaries,¹⁸ there is no incentive to commit funds to recruit additional staff.¹⁹

The budget has increased by 4 million euros since 2010. The budget allocated for the judiciary in 2013²⁰ was 18.032 million euros and in 2014²¹ was 20.031 million euros including both funds and revenue from the courts. In 2013, the total budget amount covered salaries of *approved* 404 judges and 1,591 staff.²² So far, the KJC has never managed to recruit all the approved judges according to a reporter from Justice in Kosovo.²³ This amount is not required by law to be apportioned for a specific share of the state budget. However, in practice it amounted to 1.19 per cent²⁴ in 2013 and 1.28 per cent in 2012.²⁵

A relatively small budget makes it difficult for the KJC to recruit *professional associates* to assist judges in solving court cases more efficiently, as part of the strategy for backlog reduction. The courts already bear the costs as a consequence of their absence, according to the Kosovo Law Institute (KLI). They report that a judge spends 70 per cent of his/her time dealing with technical preparations.²⁶ Besides the KJC has also failed to retain its judges. The un-kept promise of the Ministry of Justice to increase the salaries of judges led to a three-week strike in March 2015.²⁷ As a consequence, 6,000 court sessions had to be cancelled.

In the Secretariat of the KJC, it has been indicated that the number of judges has fallen from about 350 in 2011 to 316 in 2015.²⁸ Although 41 judges were appointed in May 2015,²⁹ this number is a lot lower than the number of judges in other neighbouring countries in relative terms, according to the KJC.³⁰ Too few judges to handle cases is perhaps the main reason why the courts have not been efficient in the last four years. In 2013, only 419,422 cases were resolved or almost a half of the caseload filed for that year.³¹ In total, there were 885,677 cases including 363,506 of those inherited from the previous year and 522,171 received cases in the year.³²

The working conditions for the judiciary since 2011 remain unfavourable. There is overall very limited office space and lack of furniture and equipment.³³ The old court facilities did not change to accommodate the new court model. The Basic Courts still operate in the buildings of municipal courts while they are required by law to exercise more duties.³⁴ Other shortcomings include a lack of courtroom and rooms for witness protection.³⁵ The KLI believes that such deprived working conditions are one reason why courts are inefficient in holding hearings, issuing decisions and translating documents on time.³⁶

To improve the conditions, the EU and the government co-funded a 30 million euro project to build a Justice Palace.³⁷ This will accommodate more than 1,000 staff members from 12 different judicial institutions.³⁸ However, this project did not go as planned. It took almost four years to be completed and since it started to operate numerous problems have come up: toilets are not functional, there is a lack of heating and air-conditioning, as well as technical problems with the elevators.³⁹

As for staffing, there are many issues that indicate court administrations are incapable of performing their duties.⁴⁰ There is lack of institutional culture, standards and discipline in courts. More than a half of judges, prosecutors, and lawyers are over 50 years of age while only 10 per cent are younger than 35 years of age.⁴¹ The staff are still accustomed to communicating in person and not in writing.⁴² A lot of staff are unqualified and inexperienced since they do not have the appropriate educational background. According to the Director of KLI, they come from universities where there are minimal standards and no legal training before graduating.⁴³

In recent years there have been many training opportunities offered by local and international organisations. The Kosovo Judicial Institute (KJI) has been active in developing training programmes and activities for both judges and prosecutors. It has training programmes on initial legal education, and continuous legal education. The former is designed for training judges before they start exercising their functions.⁴⁴ The latter is for training judges in meeting the needs and expectations of an independent and professional judiciary.⁴⁵

The KJI in coordination with the KJC⁴⁶ is also responsible for organising and assessing judges for the preparatory exam and training courses. The training courses cover various topics from case management and planning to more specialised case studies such as domestic violence or juvenile delinquency.⁴⁷ In 2011, there were 78 training activities organised by the KJI as part of its continuous legal education programme, in addition to many study visits that were organised abroad.⁴⁸ According to the KJI, the training activities have increased to more than 110 in 2014.⁴⁹

INDEPENDENCE (LAW)



To what extent is the judiciary independent by law?

The Constitution and laws guarantee to a large extent that the judicial system is independent. Recently certain provisions of the law have been contested for giving excessive power to the parliament in electing members of the KJC. The Constitution requires judges⁵⁰ and prosecutors⁵¹ to be independent and impartial in exercising their functions.⁵² Judges are appointed for life and are restricted from joining any political activity or party.⁵³ It is the role of the KJC to preserve such judicial independence. Its final decision to appoint or remove a judge may be contested by the president of Kosovo only if there is violation of procedure.

By law, the KJC is an independent institution responsible for recruiting and appointing judges.⁵⁴ Its role is also to initiate disciplinary measures and transfer judges in addition to conducting judicial inspections and administering courts.⁵⁵ The Council consists of 13 members of professional background in justice, elected for five years. The Constitution states that five members of KJC must be appointed directly by the courts and the remaining eight members by the parliament.⁵⁶ The *majority rule* by the parliament indicates that the KJC is not fully independent. This goes against the position of the Venice Commission which holds that courts should have the majority say in the judicial council.⁵⁷

The KJC's political dependence was not seen as an issue until late August of 2014 when the mandate of three additional Council members expired.⁵⁸ Since then, the KJC does not have a *quorum* to make important decisions (e.g. recruit new judges and staff). In the meantime, the parliament did not show any initiative to appoint a full Council. They lack Rules of Procedure to elect new members of the Council.⁵⁹ To make any legal change in line with the principles of the Venice Commission would be difficult to initiate in the near future since it would require two thirds (2/3) of the vote of the parliament to change the Constitution.

Judges are appointed, reappointed and dismissed by the president of Kosovo upon the proposal of the KJC.⁶⁰ The KJC makes proposals based on an open process and the merits of candidates taking into account both gender equality and ethnic composition.⁶¹ The Law on Courts requires that candidates meet the following criteria for eligibility: be

a citizen of Kosovo and at least 25 years old, have a valid law degree, pass the bar and judgeship exam, be of high professional reputation and integrity, have a clean criminal record, least three years of legal experience, and pass the evaluation process.⁶²

An important provision on training of judges has changed in the new law. Now it is required that judges during initial training are not assigned to any case.⁶³ Appointment will ultimately depend on the evaluation following the results of the initial training. In addition, in the new law, extra qualifications in terms of legal experience are less demanding than they were in the past, depending on the court layer and department. In the previous law, 10 years of legal experience were required to serve as a judge in the Court of Appeals whereas 15 years of legal experience as a judge in the Supreme Court.⁶⁴ Today almost a half of that is required – five years for the judge of the Court of Appeals and eight years for the judge of the Supreme Court.⁶⁵

The initial mandate for a newly appointed judge is three years and once reappointed he/she will preside over court proceedings until retirement.⁶⁶ So far, 88 judges have been given a permanent mandate.⁶⁷ In a sense, job security is not an issue if the reappointment process is successfully completed, a process that requires a rigorous entry exam and additional training activities.⁶⁸ Hence, there are no threats of arbitrary termination of a contract. A judge can only be removed if convicted of a serious crime or neglect of duty.⁶⁹

INDEPENDENCE (PRACTICE)



To what extent does the judiciary operate without interference from the government or other actors?

In the last four years, the judicial system has suffered from government interference. This is expected to slightly improve according to the new laws adopted in June 2015. So far, the budget has been under complete control of the government. In other words, the government has had the ultimate authority to decide how much the KJC can spend each year without being seriously contested by the parliament. Besides its control over the budget, according to the KJC, the government has gone as far as making transactions from the KJC account without any approval or informing the Council.⁷⁰

The KJC is subject to the risk of *political bargaining* since four out of its nine judge members are elected by the parliament.⁷¹ This makes it difficult for the KJC to act independently in appointing members and judges on clear and professional criteria. It has been noted by the KLI that often political parties negotiate in secret and propose candidates who will be more responsive to the interests of a specific political party once appointed.⁷²

The judiciary is also subject to undue external interference in judicial proceedings. The EULEX investigations of high-ranking politicians for war crimes of late 1990s have been under constant political pressure (e.g. statements regarding war crimes in the “Klečka Case,” and “Drenica Group”).⁷³ The most blatant example is the political attempts on the “Kiqina Case” which had already exhausted all the steps of the judicial procedures.⁷⁴ The lawmakers initially proposed an ad hoc parliamentary commission to probe claims of human rights violations. Their proposal was deemed political and it was ultimately dismissed in March 2013 after stout pressure from representatives of the EU and US.⁷⁵

EULEX has also suspected political interference in the judiciary. In January 2014, it issued a letter warning that local judicial institutions were unable to assume responsibility on certain cases that involve political influence.⁷⁶ The most relevant situation relates to arrests of politicians and senior public officials regarding corruption charges that ultimately led to no concrete results or criminal convictions, suggesting that they were politically motivated.⁷⁷ Eventually, many political figures were discharged or condemned to house arrest due to lack of credible evidence according to an activist from Çohu.⁷⁸

TRANSPARENCY (LAW)

SCORE

2011

50

2015

50

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?

The Law on Courts has general legal provisions regarding judicial transparency. It requires that all the decisions of the Court of Appeals⁷⁹ and Supreme Court are made public,⁸⁰ at a minimum in the webpages of the KJC.

In the new Law it is required that all courts publish final judgments in their official website, “in a time limit of sixty (60) days from the day the decision becomes final.”⁸¹ In general, the legal framework requires that court hearings are open⁸² and calls for a more transparent court administration.⁸³ Further, certain dispositions set in the Criminal Code require that Basic Courts oversee criminal investigations by assigning cases in an objective and transparent manner starting from a pre-trial to a single trial judge.⁸⁴

The KJC is required by the Constitution to prepare and present its annual report to the parliament.⁸⁵ In addition, it is required to make public all of its activities and decisions. The KJC’s meetings are open and the agenda must be disclosed 24 hours prior to the meeting.⁸⁶ Activities that may be organised in closed meetings include: personal matters concerning judges and staff, non-public information that is sensitive, on-going investigation for misconduct or any criminal activity, performance assessment of judges, and proprietary information.⁸⁷

Judges are required to disclose their assets and make them available every year to the Kosovo Anti-Corruption Agency (KACA), since they are considered senior public officials. The Law on Declaration, Origin and Control of Property of Senior Public Officials sets up legal requirements and procedures for judges to report their property, revenue and gifts to KACA.⁸⁸ This may include real estate, property in value of more than 5,000 euro, shares in commercial enterprises, valuable letters, and savings in banks and other financial institutions, financial obligations, and annual revenue.⁸⁹

Public officials, including judges, are restricted from soliciting or accepting gifts or other favours that may have an influence on the exercise of their duties.⁹⁰ There are exceptions for only protocol or casual gifts brought by foreign representatives and organisations for a visit or an event. These protocol gifts once registered automatically become institutional property.⁹¹ Failure to disclose assets or making false declarations to the KACA is classified as a criminal offense according to the new Criminal Code, which entered into force in January 2013.⁹²

Alongside the KACA, the KJC plays an important role in ensuring that judges disclose their assets and make them available to them on annual basis. It is required in the 2006 Code of Ethics that judges inform the KJC of their property, e.g. bank accounts, stocks, bonds, houses, and motor vehicles.⁹³ In addition, gifts and favours are prohibited by the 2006 Code of Ethics under Rule Nr. 9/B which may relate to a case being tried.⁹⁴

TRANSPARENCY (PRACTICE)



To what extent does the public have access to judicial information and activities in practice?

The judicial system is relatively transparent as was the case in 2011. To date, it has a working website offering information on general case statistics, decisions, activities, and overall spending. The website does not meet the needs of the public since it is not comprehensive in providing detailed reports on court decisions. Hence, court judgments are not made public, and statistical reports are difficult to understand. According to the Director of the Court Performance Review, the statistical reports provide only numbers without any narrative behind them.⁹⁵

There is no reliable access to information on judicial statistics, court procedures and judgments. The main reason for this according to a civil society activist from Çohu is that courts do not have a reliable tracking mechanism.⁹⁶ He explains that there is a statistical gap for what is registered in the field, in courts, and passed on to the KJC.⁹⁷ The KLI indicates that there is a statistical mismatch owing to the lack of resources and cooperation between judicial institutions of harmonising all data.⁹⁸ There are also a number of corruption cases that are either unregistered or registered late in the tracking mechanism.⁹⁹

The judiciary does not have a reliable tracking mechanism of cases being investigated and closed.¹⁰⁰ It has been two years now since the ICT project on Case Management and Information System (CMIS) was launched with the support of the Norwegian Embassy in Kosovo. The idea behind this project is to improve the efficiency and transparency of the justice system.¹⁰¹ The project cost is 6.6 million euro for a time-period of four years.¹⁰² The preparatory phase of delivering a set of detailed functions of CMIS has been completed. The project is in its final phase of testing the system, training judges and prosecutors how to use it and deploying it to courts and prosecution offices.

In the meantime, the KJC has taken many initiatives to improve relations with the public. For instance, it has signed up to many Memorandums of Understanding with civil society and media entities.¹⁰³ It has also established information offices and appointed press officers in almost all courts across the country.¹⁰⁴ Today there is video recording of court sessions according to a reporter from Justice in Kosovo.¹⁰⁵ Many civil society activists are satisfied with how progressively the KJC has managed to create an open-door policy in the last four years. However, much is to be desired, considering that

courts continue to not have websites and not respond to media requests on time.¹⁰⁶

When it comes to asset and income declaration, judges overall disclose their assets to the KACA, as required by law, and they may be charged of a criminal offense if they fail to do so. The KACA updates information on wealth and income of all senior public officials on an annual basis and this is available to the public.¹⁰⁷ So far, the KACA has not reported any issues regarding judges disclosing their assets. In 2014, 99.74 per cent of public officials disclosed their assets, in total 3,030 senior officials.¹⁰⁸

ACCOUNTABILITY (LAW)



To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?

The laws that govern judicial accountability are comprehensive. The current judicial system consists of three court layers including Basic Courts, Court of Appeals, and Supreme Court. In each court layer, all parties have the right to appeal decisions to higher court instances.¹⁰⁹ They can also address their concerns in the Constitutional Court. The Constitution guarantees the right to file a complaint against the decision issued by any court.

The Constitution gives full authority to the KJC to conduct judicial inspections and administer the courts of law.¹¹⁰ The KJC has a critical role in holding accountable judges for any misbehaviour or misconduct in their decision-making, following which they initiate disciplinary proceedings. Misconduct is defined as a conviction of criminal offense, failure to perform or abuse of functions, and violation of the Code of Ethics.¹¹¹ There are two important institutions that facilitate this process, the Office of the Disciplinary Counsel (ODC) and the Disciplinary Committee.

The ODC is a separate and independent institution elected by KJC and the Kosovo Prosecutorial Council (KPC), responsible for investigating judges when there is a reasonable complaint or doubt of misconduct.¹¹² The ODC has the right to investigate all matters and from evidence obtained decide whether to present disciplinary action to the Disciplinary Committee of the KJC.¹¹³ The ODC consists of a director, counsels, inspectors and management staff who report to the KJC and KPC on an annual basis on its activities and expenses.¹¹⁴

The Disciplinary Committee of the KJC consists of three members, which are appointed by the KJC.¹¹⁵ The Disciplinary Committee makes its final decision on whether or not to impose sanctions in accordance with the rules and procedures set on disciplinary proceedings.¹¹⁶ The disciplinary measures that may be imposed include a reprimand, temporary salary reduction, and propose the removal of a judge.¹¹⁷ Appeals against the Disciplinary Committee may be submitted to the KJC within 15 days from the receipt of the final decision.¹¹⁸ Legal discretions that justify an appeal include a violation of law or any disciplinary procedure and mistaken or incomplete evidence.¹¹⁹

Immunity does not apply to corruption and other criminal offences. Judges are immune only from prosecution, civil lawsuits and dismissals for actions and decisions taken within their scope of responsibility.¹²⁰ However, there are no legal provisions either in the Constitution or respective laws that protect judges from criminal offences. Judges are not immune to even a small violation of an international law according to Article 107 of the Constitution.¹²¹

lic or even parties involved, on whether a judge should be sanctioned or not. This hinders judicial accountability since judges are often known for making complex or inconsistent decisions against the law.¹²⁶

In many cases, it takes up to nine months for the ODC to investigate and make a final decision.¹²⁷ Once the decisions are made and sanctions imposed, the KJC fails to record and monitor whether they are being implemented (e.g. nominating a member who is already under disciplinary measures).¹²⁸ In theory, disciplinary measures are meant to hold judges accountable in delivering justice in a timely manner. However, in practice they were not effective, according to a civil society activist from Çohu, especially in reducing the number of cases (11,000) of statutory limitations.¹²⁹

According to the assessment report of the Council of Europe the implementation of the Code of Ethics of the KPC and KJC remains weak, especially regarding disciplinary proceedings.¹³⁰ The database of filing all information submitted to the Disciplinary Commission by the ODC is still not developed as it is in the Kosovo Police Inspectorate.¹³¹ They have a database that is periodically updated with statistics on disciplinary measures. Moreover, disciplinary measures are not applied enough and there is not a strict mechanism for monitoring the implementation of the ethical rules and disciplinary proceedings.¹³²

Nevertheless, initiatives to strengthen disciplinary measures are underway. Recently, there has been some progress in protecting complainants and offering acceptable remedies. For instance, the ODC has created a functional complaints mechanism with the support of the Advocacy Training and Resource Centre (ATRC) for citizens to upload the form online and fill in with relevant information.¹³³ Meanwhile, the Ministry of Justice has already started to amend the laws with regards to a new functioning of the ODC completely independent from both the KJC and the KPC.¹³⁴

ACCOUNTABILITY (PRACTICE)

SCORE

2011

50

2015

25

To what extent do members of the judiciary have to report and be answerable for their actions in practice?

The judicial system has not grown more accountable in practice since 2011. The KJC is not entirely effective and independent in investigating complaints and imposing sanctions. The ODC lacks human resources and the financial capacity to conduct investigations for any breach of conduct by a judge according to the KJC.¹²² In addition, part of the problem is that the ODC is dependent on both judicial and prosecutorial Councils. They get to make the final decision on what and to whom disciplinary measures should be applied. In practice, there is the risk that decision-making is not objective, given that there are limited checks on conflicts of interest.

The Disciplinary Committee have been criticised for issuing soft disciplinary measures. In 2013, for instance, there were 23 decisions, a half of which were reprimands and temporary salary reductions (11 in total) while there were no dismissals.¹²³ The ODC, in particular, is slow¹²⁴ and closed¹²⁵ in investigating and sharing its final decisions, with the pub-

INTEGRITY MECHANISMS (LAW)

SCORE

2011

100

2015

75

To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?

Judicial integrity is fairly regulated and there are a number of laws and codes of ethics requiring that judges are professional.

In addition to the old Code of Ethics and Professional Conduct for judges (2006), in October 2012 the KJC adopted a Code that applies only to Council members.¹³⁵ However, these disciplinary regulations are old and according to European Commission Progress Report 2014 they should be updated.¹³⁶ The basis of the European Commission’s criticism is that the Codes do not specify all actions in detail although they “provide a good basis to interpret what consists inadequate behaviour.”¹³⁷

The Code of Ethics and Professional Conduct for Judges (2006) is a universal document that applies to *all judges* and relies on international principles regarding human rights, equal justice, and presumption of innocence.¹³⁸ It demands that judges maintain high professional standards, perform their duties impartially and with due-diligence, avoid potential conflicts of interest, and respect the law.¹³⁹ The KJC’s Code applies only to its members, but it has the same tenor. The Council members in addition are asked to respect the principle of collective decision-making and joint responsibilities on behalf of the KJC.¹⁴⁰

Two additional mechanisms that ensure judicial integrity are the (1) citizens’ right to appeal a court decision, and (2) prevention of conflict of interest for the judge to perform his or her duty. The right to appeal a court decision is protected by the Constitution¹⁴¹ and the Law on Courts.¹⁴² It is the Court of Appeals that is competent to reveal all appeals from the decisions issued by the Basic Courts.¹⁴³ On contested issues, however, the Supreme Court is competent to revise and adjudicate a case.¹⁴⁴

Judicial integrity is further protected owing to the existence of many laws that govern conflicts of interest, exchange of gifts and hospitality for judges. The Law on Prevention of Conflict of Interest defines the rules and responsibilities on how to identify, treat and solve cases of conflicts of interest.¹⁴⁵ Conflicts of interest refer to the private interests of a judge that “*may influence*” the objectivity, legitimacy and transparency of the judge’s official duty/function.¹⁴⁶ Important activities that are restricted by this law are the exchange of gifts and rewards.¹⁴⁷

The Commission for Normative Matters is currently drafting a new Code of Ethics for judges, and it is expected to go to the Council for approval.¹⁴⁸ However, it is unlikely that this new Code will address specific clauses regarding the acceptance of gifts, incompatibilities and additional activities that have been recommended by the Council of Europe in its 2013 assessment report.¹⁴⁹ The new draft code is expected to regulate “outside employment” for judges. But, since it is secondary legislation, its enforcement will be a problem according to the assessment team.¹⁵⁰ Hence, outside employment should be regulated by the primary legislation.

The conflict of interest principle is a problem for not being aligned with the Criminal Code, in the same way as the gifts and rewards are regulated as criminal offense by the Law on

Declaration, Origin and Control of Property of Senior Public Officials. As stated in the European Commission Progress Report, this legal gap could raise many issues, considering that in 2013 there were over 1,400 senior public officials [including judges] holding multiple functions funded by the Kosovo budget.¹⁵¹ This is not a criminal offense, however, it could be a risk of a conflict of interest, particularly for judges and prosecutors.¹⁵²

INTEGRITY (PRACTICE)



To what extent is the integrity of members of the judiciary ensured in practice?

The integrity of the judiciary has deteriorated in the last four years. The eighth edition of the Public Pulse Project organised by UNDP shows that in 2014 public satisfaction with the judicial system went from 38 per cent in April to 23 per cent in November.¹⁵³ The civil society activist and director of ATRC refers to a selective justice system to explain why there is so much public distrust in the judiciary.¹⁵⁴ In his view, justice is not equally and fairly served to all citizens, which indicates that judges and politicians get to make their own rules and violate them when and if necessary.¹⁵⁵

The judiciary reports on a regular basis to the KACA. In 2014, all 351 judges have reported their assets (in March).¹⁵⁶ In its annual report, KACA reports that there was no case of corruption involving a judge. With regards to conflicts of interest, out of 264 cases reported by the KACA, only 13 involved judges and prosecutors (or less than 5 per cent).¹⁵⁷ The public officials that were more exposed to conflicts of interest include municipal authorities (126 cases or 48 per cent), and central government officials (67 cases or 26 per cent).¹⁵⁸

However, many civil society activists have criticized KACA’s role in ensuring the integrity in the judiciary. The main problem according to the civil society activist and director of Çohu is that assets declared by judges are not scrutinised and thus there are almost no violations identified.¹⁵⁹ It is certain whether KACA has the capacity to verify the origin and certainty of their assets, but there are two important limitations. The KACA has no legal access to the (1) bank accounts of the public officials and (2) wealth abroad.¹⁶⁰ This makes it impossible to investigate and sanction. Thus, for all the charges the KACA has made, no legal actions are taken.

In the anti-corruption assessment report of the Council of Europe, the issue of conflicts of interest has come up in reference to statistics shared by the KACA, indicating that judges, in particular, exercise “simultaneously several remunerated functions outside working hours.”¹⁶¹ The issue of the judge taking up publicly and privately funded work was discussed in the meeting of the 2015 National Integrity System Advisory Group held in November 2014. Laura Pula from the KPC expressed her concerns regarding the engagement of judges and prosecutors in lecturing in private and public universities during their regular work hours.¹⁶²

The KLI explains that judges are too comfortable being engaged in non-judicial activities, which are continuously under public scrutiny, and this merits further discussion and analysis into whether they are legitimate or not.¹⁶³ A reporter from Justice in Kosovo says that there is no conflict of interest mechanism ensured in practice since the Code is not specific on certain matters (e.g. working hours for a judge).¹⁶⁴ That is why there are many cases of conflicts of interest that are not monitored and reported even by the Office of the Disciplinary Counsel.

CORRUPTION PROSECUTION



To what extent is the judiciary committed to fighting corruption through prosecution and other activities?

The judiciary continues to be ineffective in its fight against corruption, according to assessments conducted by international and local organisations including the European Commission, United Nations and civil society. As stated in the European Commission Progress Report 2014, there is no track record of corruption prosecutions,¹⁶⁵ despite the efforts of the Kosovo Judicial Council (KJC) and other institutions to make them a priority.

Fundamental reasons why judges are so ineffective are well argued by the Kosovo Institute for Policy Research and Development (KIPRED). They (1) lack capacity and (2) hesitate to deal with corruption cases that are either sophisticated or involve high-profile political leaders who are accused for corruption.¹⁶⁶ Thus far, the most serious verdict issued by the Basic Court was in May 2013 in sentencing the former head of the Anti-Corruption Task Force, Nazmi Mustafi, to five years in prison. He was

found guilty of accepting a bribe to drop charges in an on-going investigation in 2012.¹⁶⁷

The number of corruption-related cases brought to justice is small and on the decline. In its report regarding judicial integrity, the UNDOC revealed that corruption convictions fell from 103 in 2009 to 52 in 2012.¹⁶⁸ It is the role of prosecutorial institutions to initiate corruption charges based on credible evidence for courts to do their job. However, courts are inefficient in their performance. The KLI has reported that from January to September 2014, only 152 of corruption cases out of 599 were closed.¹⁶⁹

The reports of the KJC are too broad and do not provide separate data on corruption related cases. It is ultimately up to civil society to demand detailed information *in person* since they are not made public on the website. Those that are more active in observing the performance of the judiciary in fighting corruption besides civil society organizations such as KLI, Çohu and Fol. With their support in requesting information from the KJC on corruption cases for 2014, they reported some distressing statistics of less than 35 per cent of cases being resolved:¹⁷⁰ of the 655 cases for 2014, only 229 were closed while the remaining (426) cases were transferred to year 2015.

The judiciary has the expertise and experience to initiate reform for an improvement. However, for now there is no political will to make that possible. The Anti-corruption Council formed in 2012 by the president has been endorsed, but a systematic follow-up for the enactment of its recommendations is still to be desired.¹⁷¹ Thus far, there are no concrete results and public perception remains sceptical of the role of the judiciary in fighting corruption.

RECOMMENDATIONS

- > **The government should initiate and the Assembly should adopt amendments to the Constitution to ensure that majority of KJC members are elected by their peers.**
- > **KJC should enhance a functional system of case management, reporting and accessibility of statistics.**
- > **KJC should create a functioning system of random case assignments based on a number of factors: case specialization, seniority, workload and potential conflicts of interests.**
- > **KJC should create a database in which disciplinary violations are registered and updated in order to track the accountability of judges.**



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PUBLIC SECTOR

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OVERVIEW

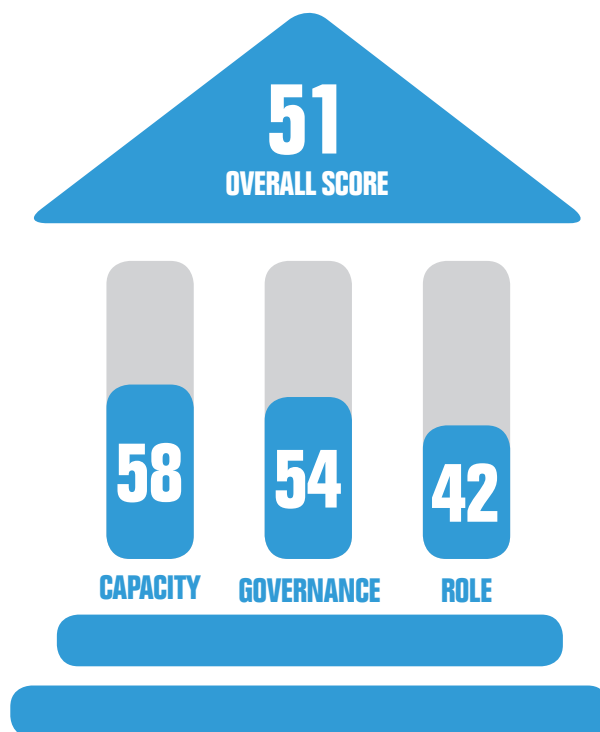
The public service in Kosovo is estimated to comprise over 80,000 employees. There has been a steady increase in public service salaries in Kosovo and currently they are now higher than in the private sector. The normative aspect of governance of the public sector has not witnessed any changes since the assessment conducted in 2011, but transparency in practice has slightly increased.

There are irregularities in the recruitment stage for public sector employees and this directly damages the independence of the public institutions. There are a number of institutions who are in charge of overseeing the functioning of different aspects of public sector such as the auditor general, the Independent Oversight Board (IOB), and the ombudsperson, etc. The reports and recommendations provided by these institutions are largely ignored.

For over three years the Code of Conduct was not in harmony with the Law on Civil Service and as such could not be implemented in practice. Although a new Code of Conduct of Civil Service was adopted in early 2015, it still does not contain any provisions on sanctions.

The integrity of public procurement remains one of the most critical issues in Kosovo and the situation has deteriorated in this regard since 2011. The Law on Public Procurement is amended frequently which does not leave space for the system to adjust. The leadership of the main institutions that deal with public procurement such as the Public Procurement Regulatory Commission and Procurement Review Body are selected by politicians through the Assembly of the Republic of Kosovo (the Assembly) and in some cases this has proved problematic. The transparency of public procurement documents is very limited. The balance between open and closed contracts is shifting in favour of the latter considering the trend since 2011, meaning that contracting authorities are closing instead of opening up to competition. In terms of contracting authorities there are currently 170 and this number needs to be reduced. The Central Procurement Agency could be better utilised to purchase common items which would reduce overall costs.

The graph presents the indicator scores, which summarise the assessment of the public sector in terms of its capacity, its internal governance and its role. The remainder of this section presents the qualitative assessment for each indicator.





PUBLIC SECTOR



	Indicator	Law	Practice
Capacity	Resources	-	50
	Independence	75	50
Governance	Transparency	75	50
	Accountability	75	25
	Integrity mechanisms	75	25
Role	Public education		50
	Corruption risk reduction through protection of integrity in public procurement		50
	Oversight of State Owned Enterprises		25



STRUCTURE AND ORGANISATION

The public sector in Kosovo comprises several clusters of officials. The highest state administration bodies are comprised of the Office of the Prime Minister and the ministries. The central state administrative bodies are subordinate bodies of the state administration performing non-ministerial tasks or other administrative tasks. Local state administration bodies are the municipal bodies of the state administration. The legislation also recognises the independent state administration bodies as legal entities established to perform activities of state administration, which require a high degree of independence in the public interest.

Due to the level of fragmentation of the public administration there are no data on the number of employees.¹ The closest official data that indicates the number of employees can be found in the Law on Budget for 2015, which states that the number of employees for budget organisations for the central level is 37,933 and for municipalities is 43,761 which together with the 241 employees of Kosovo Privatisation Agency totals 81,952.² In 2011 the figure of employees in public service was 78,565.³

than doubled, growing three to four times faster than in other West Balkan countries.⁴ The budget for wages and salaries that was allocated in 2011 was 383 million euro, whereas this figure in 2015 stood at 560 million euro.⁵

The increase in salaries of public servants follows the same pattern as the election cycle. This is seen more as a tool of gaining votes for elections. In 2011, an election year, the salaries of several public sectors were increased by 23 per cent. In 2014, another election year, salaries were increased by 25 per cent.⁶ According to the European Commission, wage policies with large ad hoc hikes typically occurring in election years severely undermine transparency, predictability and credibility of fiscal policy. They complicate fiscal planning and shift spending priorities towards less growth friendly expenditure.⁷

The salary system currently applied is the system set out in an UNMIK (United Nations Interim Administration Mission in Kosovo) instruction issued in 2000.⁸ According to Kosovo Agency of Statistics, cited by SIGMA, average public salaries in “general public services,” in “public order and security” and in the area of “environment” are slightly higher than the average net monthly salary in the private labour market. In some specific sectors and in highly qualified jobs, salary supplements aimed at retaining key staff are allocated. These supplements create distortions in the salary system and sometimes are not aligned with the working conditions.⁹

There is continuing pressure to increase salaries and at the beginning of 2015 teachers went on strike.¹⁰ The pressure to further increase salaries comes from other sectors as well. According to the World Bank, “if not properly managed, an across the board salary increase for public servants will (i) affect the implementation of the pay and grading reforms; (ii) risk the accumulation of government arrears to suppliers, which would impact the country’s growth potential; and (iii) put pressure on ministries with particularly high wage bills, such as education and health.”¹¹

ASSESSMENT

RESOURCES (PRACTICE)



To what extent are there adequate resources for the public sector to be able to effectively carry out its duties?

The 2011 National Integrity System (NIS) report evaluated that Kosovo’s public sector suffers from a lack of human and financial resources to be able to effectively carry out its duties. However, there has been a steady increase of salaries of public sector. Since 2008, when Kosovo declared independence, average public sector wages have more

INDEPENDENCE (LAW)



To what extent is public sector independence protected by law?

The 2011 NIS listed the legal documents and mechanisms that regulate the independence of the public sector. UNMIK

regulations and Independent Oversight Board take prominence in this regard. The Law on Civil Service¹² sets out the rules for the overall management and organisation of a “politically neutral and impartial Civil Service.”

The Law on Independent Oversight Board for Civil Service of Kosovo¹³ gives this body, amongst others, the powers to review the complaints of civil servants and applicants to work in Kosovo’s civil service, and oversee the implementation of the law. Its administrative decisions regarding disputes are final and can only be appealed to a competent court.

Horizontally, there are different regulations that apply to different parts of public administration. This horizontal fragmentation was also noted by the SIGMA report.¹⁴ The Law on the State Administration allows independent bodies to choose whether or not to be under civil service regulations.¹⁵

INDEPENDENCE (PRACTICE)

SCORE 2011 **50** 2015 **50**

To what extent is the public sector free of external interference into its activities?

The 2011 NIS noted that the Kosovo public sector is not free of external interference in performing its duties. The tendency to appoint political permanent secretaries of ministries, an administrative position, was highlighted in this regard. This trend has not abated and no noticeable improvements to avoid interference have been witnessed. The European Commission stated that, “with regard to public service and human resources management, political interference in public administration persists, both at central and local level.” Lack of implementation of relevant provisions on the prevention of corruption and promotion of integrity in the civil service were listed as leading to this issue.¹⁶

Recruitment is one of the stages where undue interference is exercised. According to the IOB, which monitors recruitment, out of 38 monitoring processes of recruitment 34 went according to laws and regulations, while four were suspended or cancelled due to irregularities.¹⁷ In 2011, the IOB suspended or cancelled the recruitment of eight senior positions due to irregularities.¹⁸ Since 2011, there seems to be improvement though the cancelled or suspended recruitments amount to a total of almost 10 per cent of observed positions. In 2013 alone, 105 complaints were

submitted to dispute vacancies, or a total of 23 per cent of all complaints received by IOB.¹⁹ Irregularities in the recruitment stage are very high and this directly damages the independence of the public institutions.

According to Public Procurement Regulatory Commission’s (PPRC) Annual Report, the independence of procurement officers also needs to be strengthened²⁰ in order to protect them from pressure when awarding a contract. Although, in its annual report PPRC does not explicitly state whether they have witnessed this type of pressure, since they are the main authority in procurement in Kosovo, this statement must be taken seriously.

Politics plays an important role with regards to the functioning of independent institutions, especially on selection of managing positions, which are appointed by the parliament. An example is the Procurement Review Body (PRB), which was not operational from August 2013 to March 2014. The five-member board of the PRB was not appointed as a consequence of the government delaying the proposals to the Assembly. In addition, when the Assembly appointed the board’s new members, it disregarded the recommendation of the Independent Selection Board, which had concerns regarding some of the appointees, including an on-going corruption investigation.²¹

TRANSPARENCY (LAW)

SCORE 2011 **75** 2015 **75**

To what extent are there provisions to ensure public sector transparency in the management of human and financial resources as well as in the management of information?

The 2011 NIS evaluated the laws to ensure transparency in the management of human and financial resources and in information management and found them functioning in a satisfactory manner. Nevertheless, it noted that the Law on Disclosure of Assets foresaw only light financial penalties for officials who refuse to declare their wealth or who make false/incomplete declarations. This was remedied with the new Criminal Code in 2013. The new law stipulates that failure to disclose property, income, gifts, other material benefits or financial obligations, is punishable by a fine or imprisonment up to three years. Previously, these violations constituted offenses that were penalised with low adminis-

trative fines. The Criminal Code was supplemented by an amendment to the Law on Declaration of Assets²² adopted in April 2013. The same improvements in legislation apply to the gifts received by public officials.

Public procurement records are managed in accordance with the Law on Public Procurement in Kosovo, which has been amended twice since the 2011 NIS assessment. The most notable improvement was the amendment of the law to establish an electronic Public Procurement Register by the PRB.²³

Apart from the above changes, no other significant changes to the legislation with regards to transparency of public administration have been noted. The Law on Access to Public Documents continues to be the basis of legislation with regard to transparency in the public sector. This law, if fully implemented would significantly improve the situation. However, the law should also address how courts deal with cases of no response from the public administration.²⁴

TRANSPARENCY (PRACTICE)



To what extent are provisions ensuring public sector transparency in the management of human and financial resources as well as in the management of information effectively implemented in practice?

The 2011 NIS assessed the transparency of public sector in practice as being low, stating that the media represented almost the only way for Kosovo citizens to obtain information on the activities of the public sector. There have been improvements in regards to information relating to public procurement materials, but overall the trend of opacity persists.

The disclosure of the assets of senior officials continues to be made public on the webpages of the Anti-Corruption Agency. Likewise, job vacancies continue to be advertised in the local media in both the official languages of Kosovo (Albanian and Serbian), as set forth by the Constitution.

Public procurement related data has seen a significant improvement since the last assessment. The PRB regularly publishes data regarding notices, invitations and awarded

contracts in its website.²⁵ However, other procurement activities and data continue to be obscured from the public's view. No ministry has published their procurement plan,²⁶ and granting of contracts is usually only posted on the website of the PPRC and not on the websites of ministries.

The implementation of the Law on Access to Official Documents stands at only 30 per cent according to the Balkan Investigative Reporting Network.²⁷ This result came following 300 requests sent to different institutions from January 2012 to May 2013, where only 100 received responses. According to this report, the least transparent institutions are the Office of the Prime Minister, Municipality of Pristina, Cadastral Agency of Kosovo, Kosovo Prosecutorial Council and Kosovo Judicial Council, while the most transparent institutions were independent institutions. According to government figures, the efficiency of the Kosovo institutions in providing access in 2013 stood at 91 per cent.²⁸

ACCOUNTABILITY (LAW)



To what extent are there provisions ensuring that public sector officers report and are held accountable for their actions?

The 2011 NIS assessment noted that the legal and institutional framework pertaining to accountability of the public sector is considered satisfactory for both civil servants and citizens. This framework has not undergone substantial changes since 2011.

One exception is the adoption of the Law on Protection of Informants,²⁹ which is the law to protect whistleblowers. However, this law was criticised by FoI Movement, an NGO, for several reasons. Its name implies a negative connotation; it's unclear which body should receive information, and it lacks sanctions for those persons or authorities that disclose the identity of whistleblowers.³⁰

In the area of public procurement, the PRB³¹ is the highest legal authority that examines complaints or requests by economic operators and contracting authorities and reaches pertinent decisions. Only the judiciary can redress the decisions of PRB.

The Ombudsperson Institution (OI) is another body that can receive complaints against public sector bodies. The Office of Auditor General audits all institutions that are more than 50 per cent publicly owned or receive funding from Kosovo budget. The IOB addresses and decides on complaints of civil servants against decisions of their institutions; and the Assembly oversees the majority of independent institutions and their performance.

ACCOUNTABILITY (PRACTICE)

SCORE

2011

25

2015

25

In practice, to what extent do public sector officers report and are held accountable for their actions?

The 2011 NIS concluded that there was an unsatisfactory level of accountability of Kosovo public sector officers while referring to issues identified by the IOB and the auditor general.

Currently, the IOB adjudicates complaints of civil servants and issues decisions on cases it reviews. A serious drawback in the practical implementation of these decisions exists as, “there is no sanctioning mechanism that would ensure that these recommendations are adopted by employing authorities.”³² The auditor general’s recommendations, which are designed to address risks or weaknesses, are also not implemented by the authorities to which they are directed. For example, out of 317 recommendations, the government cabinet addressed successfully 136, partly addressed 101 recommendations and 80 recommendations were not addressed at all.³³

Despite the new law whistleblowers are not protected from repercussions from their superiors. The FOL Movement has identified four prominent cases when whistleblowers were suspended, faced pressure to resign or were completely dismissed from their positions.³⁴ This does not encourage the disclosure of corrupt acts by public servants.

In August 2015, the whistleblower and former cashier of ProCredit Bank Abdullah Taçi was sentenced for leaking the bank’s Information, and fined 5,000 euro. The information he leaked raised suspicions that the director of education in the municipality of Prizren, Nexhat Çoçaj, illegally benefited from money from the municipality’s bud-

get. Following the publication of this information, a criminal proceeding was initiated against Çoçaj for abuse of official position; a position he continues to hold. It is suspected that Çoçaj, among other activities, used this money to pay his loan instalments and rental fee. Starting from this case, and other cases that occurred during the year, civil society organisations have recollected the letter previously sent to institutions requesting the amendment of the Law on Protection of Informants in accordance with the standards of the European Court of Human Rights, as well as the treatment of actual cases according to these standards.³⁵

Despite an increase by 23 per cent of complaints to the OI, the government’s responses to the ombudsperson’s recommendations remain low.³⁶ The OI’s decisions do not contain any sanctions, and this might be the reason why there is no feedback from other institutions.

All these examples lead to the conclusion that institutions responsible for holding the public sector accountable fail to implement legislation. The involvement of politics in procurement issues is another weakness (see indicator on procurement below).

INTEGRITY MECHANISMS (LAW)

SCORE

2011

100

2015

75

To what extent are there provisions that ensure public sector officer integrity?

The 2011 NIS listed the legal provisions that regulate the integrity of public servants: namely the Civil Service Code of Conduct’ (01/2006), Law on Disclosure, Origin and Control of Assets and Gifts of Senior Public Officials and Law on Preventing Conflict of Interest. The approval of the Law on Civil Service³⁷ in 2010 made the Civil Service Code of Conduct of 2006 obsolete as it changed the provisions to implement this Code. A new Code of Conduct in line with the Law on Civil Service was not adopted until March 2015.³⁸ The new Code of Conduct does not contain any sanctions for violations.³⁹

The Law on Disclosure, Origin and Control of Assets and Gifts of Senior Public Officials, which regulates the field of declaration of assets, has been amended. The updated law increases the number of officials that are required to declare assets and has been harmonised with the amended Criminal Code which made the failure to disclose property, income,

gifts, other material benefits or financial obligations, punishable by a fine or imprisonment up to three years, compared to a previous relatively low administrative fine.⁴⁰

The draft law to amend the Law on Prevention of Conflict of Interest, despite going through all governmental and parliamentary procedures, was withdrawn from the agenda of the plenary by the government in May 2015.⁴¹ This was the second time that it did not make it through the parliament.

With regard to procurement, the Law on Public Procurement stipulates that bidders need to present evidence that they have not been found guilty for corruption related offences by a court.⁴² In addition, economic operators that have not implemented a decision of PRB or the court cannot apply in a tender.

Overall, the legal framework regulating the integrity mechanisms in the public sector is in place. But from 2011 to 2015 the Code of Conduct of Civil Service, which regulates integrity issues such as conflicts of interest, gifts, unfair advantage, etc., was not in line with the law and thus weakened the legal framework.⁴³

INTEGRITY MECHANISMS (PRACTICE)



To what extent is the integrity of public sector officials ensured in practice?

The 2011 NIS assessed that the implementation of integrity mechanisms was very weak. It noted that the Code of Conduct was only partially implemented and institutions were far from achieving integrity. No progress has been made since 2011.

As noted above, the Code of Conduct could not be implemented because it was not in line with the Law on Civil Service. The new Code of Conduct was adopted in March 2015 and its results are not yet visible. Even so, there cannot be much expectation since the new Code of Conduct does not contain any sanctions for violations.⁴⁴ Ethics issues are included in a 12-day training course for new civil servants organised by the Kosovo Institute for Public Administration (KIPA).⁴⁵

The IOB noted in 2013 that some institutions failed to establish disciplinary commissions⁴⁶ and in 2014 it noted that in many cases these commissions were not able to complete procedures pursuant to legal provisions and timelines set forth.⁴⁷ Likewise, according to SIGMA disciplinary commissions, made up of civil servants appointed by the highest administrative officer of each institution for a two-year period, have not yet been established in all institutions.⁴⁸ All these illustrations point to severely weak enforcement of regulations within the civil service.

Public procurement remains one of the most corrupt sectors in Kosovo.⁴⁹ Research from Kosova Democratic Institute has found that mismanagement is widespread. In all five municipalities monitored during 2014 and 2015 there were issues with procurement.⁵⁰ It was found that many institutions failed to procure works and supply at market price and value for the money, which is one of the core public procurement principles. For some items suppliers were paid at a higher price compared to the price of the same items in retail: the price of petrol was higher for the Municipality of Prizren, which purchases in bulk, than for ordinary citizens who purchase small quantities mainly for transport. Usually, these issues emerged as a result of strict requirements in the tender dossier, which decreased the competition of business operators. For small tenders, institutions in some cases submitted many professional and technical requirements that made it impossible for some businesses to compete. A particularly major problem was supervision of contract implementation and tracking the quality of delivery of works or supplies.⁵¹

Overall, there was no change in this sector since the last assessment. Enforcement of rules is weak and impunity is the norm rather than the exception.

PUBLIC EDUCATION (LAW AND PRACTICE)



To what extent does the public sector inform and educate the public on its role in fighting corruption?

The 2011 NIS noted that the public education campaigns organised by the Kosovo Anti-Corruption Agency (KACA) were promoting and educating the public on its role in

fighting corruption. KACA continues to serve as the primary agency in informing the public on corruption issues. Together with EULEX, KACA launched a campaign during late 2014 to raise the awareness of citizens regarding corruption issues.⁵²

KACA has made available a toll-free hotline where citizens can report corruption. Kosovo Customs has also made available a hotline where citizens can report corruption and smuggling.⁵³ In 2014, Kosovo Customs processed about 300 calls with an accuracy of 95 per cent,⁵⁴ and as a result 82 measures against customs employees were issued.⁵⁵

The Kosovo Police Inspectorate,⁵⁶ within the Ministry of Internal Affairs, has increased its visibility to address complaints, including corruption allegations, of citizens against the Kosovo Police.

In addition to this, the Office of Disciplinary Council⁵⁷ has also stepped up its public education campaign and has become a channel where citizens can submit their complaints relating to judges and prosecutors.

In general, citizens are partly informed about possibilities where they can address their complaints about corrupt practices. The existence of several hotlines where citizens can report corruption suggests that there is no trust in a single institution such as KACA, the police or state prosecutor.

legislation and competence of bodies has undergone substantial changes that were aimed at improving the public procurement system in Kosovo. However, no noticeable improvement has been evidenced. In fact the situation has deteriorated. As with other indicators in this pillar, the legal provisions are largely in place. However the implementation of legal provisions in terms of control, sanctions and complaints mechanisms remain far from ideal.

The PPRC regulates the public procurement system,⁵⁸ which is an independent regulatory agency responsible for the overall development, operation and supervision of the public procurement system. The PRB⁵⁹ is the highest legal instance for procurement that examines complaints or requests by economic operators and contracting authorities and reaches pertinent decisions. Only the judiciary can redress the decisions of PRB. Contracting authorities are all public authorities, public service operators, public undertakings and/or any persons, committees, or private companies operating on basis of a special or exclusive right, or undertaking carrying out a procurement activity on behalf of or for the benefit of a public authority, public service operator or public undertaking.⁶⁰ The Central Procurement Agency (CPA) is another important body that conducts common (joint) procurement for the contracting authorities. While the overall setup is satisfactory, the implementation of legislation in practice suffers and most notably there is no accountability of different actors in the system.

The PRB consists of a board of five members who are proposed by the government and nominated by the Assembly.⁶¹ In 2014, for over six months the PRB did not function as the Assembly did not convene at all, following the political crisis after the general elections. Even when the Assembly appointed the board's new members, it disregarded the recommendation of the Independent Selection Board, which had concerns regarding some of the appointees, including an on-going corruption investigation.⁶² This indicates that the PRB is not independent and its role in safeguarding procurement procedures is limited.

The government was heavily criticised for not using joint procurements through CPA.⁶³ This trend was reversed in 2015 when the CPA initiated joint procurement procedures for petrol, air-tickets, car tires and other common goods and services.

The current Law on Public Procurement⁶⁴ in Kosovo has been amended twice since the 2011 NIS assessment and six times since its first approval. This rate of change does not leave enough space to accommodate the system. There are 170 contracting authorities in Kosovo.⁶⁵ And according to the EU Commission the existence of many entities involved in procurement represents a risk of corruption.⁶⁶

CORRUPTION RISK REDUCTION THROUGH PROTECTION OF INTEGRITY IN PUBLIC PROCUREMENT (LAW AND PRACTICE)



To what extent is there an effective framework to protect integrity in public procurement, including specific penalties for both tender applicants/participants and public officials, and are there appeal and review mechanisms?

The 2011 NIS listed the legislation, bodies and procedures regarding public procurement. This framework, both in

In 2013 87.86 per cent of the budget for public procurements in Kosovo was spent through open procedures and only 5.60 per cent was spent through a negotiated procedure without the publication of a contract notice.⁶⁷ In 2014 these figures changed and 72.55 per cent of the budget was spent through open procedures and 12.98 per cent through negotiated procedure without publication of the contract notice.⁶⁸ This trend of decreasing the amount spent though open procedure has been witnessed since 2011.

Transparency of public procurement documents is also very limited. A survey by KDI in 2014 revealed that most of the documents necessary for business such as procurement plans and annual budgets are not disclosed to the public.⁶⁹ Electronic procurement has been a long standing strategic objective⁷⁰ that was intended to be fully functional in January 2013. However, only in June 2015 the pilot project to test the system was implemented. A long way remains to the full implementation of e-procurement, which would significantly increase transparency, reduce administrative costs and increase competitiveness.

The Law on Public Procurement⁷¹ states that the PRB has the right to disqualify an economic operator for one year and place it in the so-called “blacklist.” This blacklist currently contains only three companies and they are published on the website of the PRB. However, this tool can only be used against operators who provided false data or documents and not against operators who win contracts, but do not fulfil the conditions.

Posting performance security is the pre-condition for the signing and entry into force of contracts,⁷² which is usually 10 per cent of the value of the contract. This mechanism is intended to sanction companies that fail to observe deadlines and fail to perform. But a KDI analysis of audit findings indicated that institutions frequently fail to ensure the implementation of this safeguard and in most cases do not apply sanctions which are foreseen by the contracts.⁷³

The Law on Procurement⁷⁴ also regulates the certification of procurement officers. KIPA issues a “basic procurement professional certificate” only to those who have satisfactorily completed all of the basic courses and who are recommended by the trainer. KIPA issues an “advanced procurement professional certificate” only to persons who have satisfactorily completed all of the advanced courses. These certificates are valid⁷⁵ for three years.

The remedial system in procurement does not function as it should. The oversight institutions such as the PPRC, PRB and Office of the Auditor General identified many violations of the Procurement Law but no sanctions are applied. In a 2014 report,⁷⁶ the PPRC present over 660 violations based

on the monitoring of 36 contracting authorities. Apart from this, of 537 complaints for violations of the Procurement Law submitted to the PRB, 266 were found to have a basis and PRB ordered annulment of procurement activity, including re-tendering or a re-evaluation of tenders. In only 181 cases did the PRB confirm the decisions of the contracting authorities.⁷⁷ Despite all this evidence of violations, the licenses of the procurement officers were not revoked.

OVERSIGHT OF STATE OWNED ENTERPRISES (LAW AND PRACTICE)

SCORE

2015 **25**

To what extent does the state have a clear and consistent ownership policy of SOEs and the necessary governance structures to implement this policy?

The Constitution gives full rights to the government to all publicly owned enterprises, which may privatise concessions or lease them as provided by the law.⁷⁸ The ownership of SOEs that provide services only in a specific municipality or in a limited number of municipalities is owned by the municipality.⁷⁹ However, the government does not have an active ownership policy for SOEs. The intention of the government to privatise certain sectors is clear, but they are not well communicated to the public and stakeholders at large.

The POE Monitoring Unit is more responsible for monitoring the work of SOEs, through which they report directly the Ministry of Economic Development. It has no say in deciding upon strategic assets in which the state has a long-term interest. That is ultimately left to the government who is responsible for providing reliable information on the manner in which the central SOEs serve the public interest. The POE Unit is typically late in terms of reporting, but it is never disciplined for such misbehaviour. In this case, the government does not act as a responsible owner and it shows no strength of authority.⁸⁰

The POE Unit is established by the MED, with the aim of supporting the government in settling its responsibilities in relation to SOEs. Unfortunately, it has very limited resourc-

es. It does not have adequate legal and financial expertise to oversee the operations of SOEs. To date, it has only eight or nine individuals working full-time and until last year it did not have a lawyer to carry out legal work.⁸¹

As far as policy priorities, the government is pro-privatisation of the SOEs. In the last four years it has put its focus in the telecommunications and energy sectors. In the telecommunications industry two SOEs have been created from PTK: (a) Kosovo Telecom, and (b) Post of Kosovo.⁸² The latter is owned by the government, while the former is in the process of being privatised. The Kosovo Telecom privatisation has failed multiple times due to suspected corruption and heavy criticism from civil society. In the energy sector, the much criticised process of privatisation of the KEDS has been completed while the Kosovo Energy Corporation remains under the state ownership.

- > **The Auditor General's recommendations, which are designed to address risks or weaknesses need to be implemented by local and central institutions in a systematic manner.**
- > **Economic operators who violate contracts should be black-listed to prevent them for bidding in other contracts.**
- > **The draft law to amend the Law on Prevention of Conflict of Interest needs to be urgently adopted by the parliament in line with recommendations provided by civil society.**

RECOMMENDATIONS

- > **Public sector salaries should only be increased according to a coherent strategy and should be linked to performance to facilitate a more strategic and cohesive distribution of the state budget. Ad-hoc increases should be avoided.**
- > **Disciplinary commissions, made up of civil servants appointed by the highest administrative officer of each institution for a two-year period need to be established in all institutions.**
- > **The disclosure of corrupt acts by public servants through whistleblowing needs to be encouraged through training and internal public administration awareness campaigns and not suppressed as is currently the case.**
- > **Central and local governments need to improve the rate of response to official requests for information from the current 30 percent.**
- > **Legislation on the PRB and PPRC needs to be amended to take into account situations when there is no functioning parliament to appoint board members. In case of the expiry of mandate, the PPRC and PRB need to be able to exercise their functions until the election of the new boards.**
- > **Central and local governments need to publish their budgets, procurement plans and other procurement data in their websites.**



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POLICE

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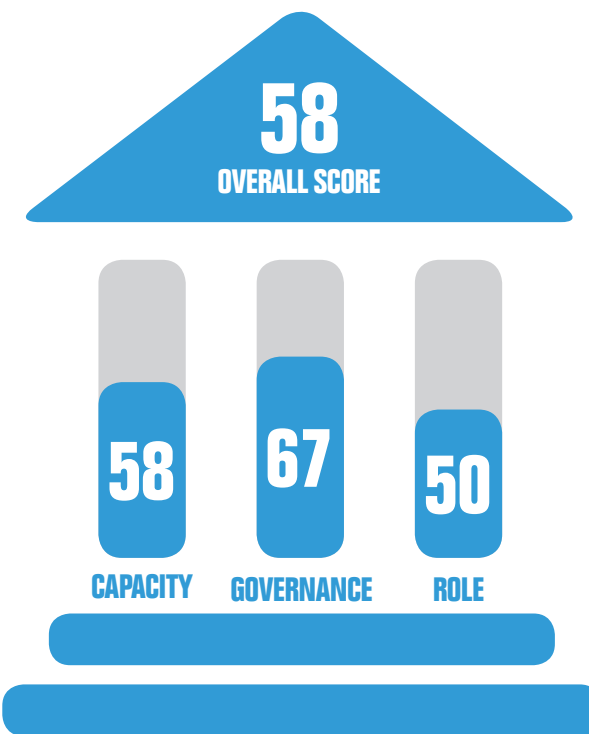


OVERVIEW

The Kosovo police force is the most trusted and contacted law enforcement institution in Kosovo. It has enough financial and human resources, and is fairly well-regulated by law in terms of requiring that police officers are independent, transparent and accountable in the course of their duties. Aside from that, the police force is considered the most active law enforcement institution in terms of investigating and reporting corruption.

However, in practice, the police are far from perfect. The government continues to exercise heavy influence on internal management issues, e.g. in the process of appointing senior management. The police may be well organised in disciplining its members, but it does not seem equally responsible in meeting community demands. This is largely because it is highly centralised and does not engage enough officers in the field. The most serious integrity threat in the police force is in public procurement. Since 2011, the police have been criticised for favouring certain economic operators in procuring goods and services for its needs.

The graph presents the indicator scores, which summarise the assessment of the police in terms of its capacity, its internal governance and its role. The remainder of this section presents the qualitative assessment for each indicator.





POLICE



	Indicator	Law	Practice
Capacity	Resources	-	75
	Independence	75	25
Governance	Transparency	75	75
	Accountability	75	50
	Integrity mechanisms	75	50
Role	Corruption investigation	50	



STRUCTURE AND ORGANISATION

The Kosovo police force is a law enforcement institution under the Ministry of Internal Affairs (MIA), responsible for preserving public order and safety across the country.¹ Its duty is also to maintain border control in direct cooperation with local and international authorities. The territorial jurisdiction and internal make-up of the police force is established by the general director.² Further, the police force is organised at a central and local level with the General Police Directorate at the centre.

The General Police Directorate is responsible for administering, recruiting and training police personnel, and managing the budget and all financial matters.³ The police are ranked in the following order: junior police officer, police officer, senior police officer, sergeant, lieutenant, captain, major, lieutenant, colonel and colonel.⁴ The police consists of five departments: operations, border patrol, investigation, human resources and support services.

At the local level, regional police directorates are responsible for local policing in specific municipalities.⁵ There are eight regional directorates, established based on a number of factors including size of the region, number of inhabitants, geographical position, level of crime and infrastructure.⁶ Regional offices are responsible for supporting, coordinating and supervising police work assigned by the General Directorate.⁷ In addition to regional offices, police stations are established in every municipality and headed by a station commander.⁸

The Kosovo police have a considerable budget and overall pay good salaries. That is why there have rarely been any police complaints or strikes regarding budget cuts in the last four years. There are enough police officers on active duty; 7,634 police officers as of 15 June 2015.⁹ Nonetheless, when it comes to long-term investments, for instance, buying police aircraft, the budget is not sufficient.¹⁰ Further, while the police have adequate computer and transport equipment, they are not maintained on a regular basis.¹¹

The police have a separate budget within the MIA, subject to the approval in accordance with the Law on Management of Public Finances.¹² The budget is prepared by the general director of the police and submitted to the MIA for its review and approval. Once it is finalised, the police are responsible for managing and executing the budget.¹³ In 2014, the police spent 77,700,382 euro or 96.25 per cent of the approved budget of 80,727,510 euro.¹⁴ There were more than 5 million euro of expenses spent in 2013 on income, capital, subsidies and goods and services.¹⁵

In general, salaries of police officers are satisfactory,¹⁶ and they are regulated by law based on certain provisions, including the ranks and length of service, risk on duty, overtime and shift hours, amount of pressure and work during holidays or on leave, and any other special assignment.¹⁷ Today the average salary is around 450 euro per month.¹⁸ As noted in the 2011 National Integrity System (NIS) study, salaries for public administration have increased by 23 per cent and this raise has included the police. It included police officers, civil personnel and police cadets.

Nonetheless, police are not eligible for any financial benefits of retirement other than the fixed monthly pension sum of 120 euro. Such an amount is not enough for police to make ends meet and retire with dignity.¹⁹ Noting that the average age of police officers is the oldest in the region, this may become an issue in 10 years from now when they retire at age 65. In theory, incentives are high for the elderly police officers to engage in corrupt activities due to their meagre pension provisions.²⁰

The police are perceived as the most trusted rule of law institution according to the European Commission Progress Report 2014.²¹ In the last four years, the police have become more competent and specialised, owing to the support of international organisations. As noted in the 2011 NIS study, EULEX has been extremely helpful in mentoring and advising police staff in the process of recruiting, training and retaining local staff. In the last two years, EULEX has supported a witness protection directorate set within the police.²² Other international organisations which have helped police in capacity-building include the European Commission, OSCE, ICITAP and DCAF.

ASSESSMENT

RESOURCES (PRACTICE)

SCORE

2015 **75**

To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

INDEPENDENCE (LAW)

SCORE

2015

75

To what extent are law enforcement agencies independent by law?

The police are not independent enough by law. The institution is largely regulated through sub-legal acts. In the Law on Police, principles of *neutrality* and *impartiality* are emphasised in Article 2.²³ However, the Code of Ethics is more detailed, requiring that police officers are not to be influenced by any political party.²⁴ Their performance, in particular, should not be subject to any political affiliation.²⁵

The police leadership and budget depend exclusively on the government. The Constitution requires that the prime minister appoints the director police general upon the recommendation of the Ministry of Internal Affairs.²⁶ The Ministry also determines and approves the final budget proposed by the general director.²⁷ The police functions under the authority of the Ministry and control of the general director.²⁸ As such, the Ministry's role is more of a policy-maker and coordinator, while the role of the general director is operational.²⁹

The general director and deputy general directors are appointed for five years. The appointing authority is a Commission established by the Minister.³⁰ The general director appoints regional police directors "based on the standards of ranks, positions and description of work"³¹ and police station commanders "based on the internal procedures."³²

The Council of Europe, in its anti-corruption assessment report, has criticised the process of appointing directors and commanders. The Council indicates that the legal framework offers too many discretionary powers without a counterbalancing mechanism in terms of independence and transparency.³³ It argues that, "there is a relatively high risk of overexposure to political discretion within the government if additional safeguards to prevent potential interference are not in place."³⁴

INDEPENDENCE (PRACTICE)

SCORE

2015

25

To what extent are law enforcement agencies independent in practice?

The police are not independent in practice. The Ministry of Internal Affairs exercises a great deal of influence in its budget³⁵ and appointment process. The Ministry reports to the public on the work in progress of the police force. It is often the case that the minister goes on television and discusses operational activities and priorities of the police. All the credit of success or criticism instead of going to the police force is ascribed to the Ministry, which is normally led by a member of a political party from the governing coalition. That's the reason why any initiative that he/she undertakes is deemed political,³⁶ and this in return, damages the image of the police.

Institutional independence in the senior level management is less of an issue than it was four years ago according to the anti-corruption assessment report of the Council of Europe. This is because the criteria for selection, nomination and dismissal of senior level officials are objective and transparent.³⁷ To ensure that rules are applied in practice, there is a range of inspectorates that do their job well in supervising the activities of another institutional mechanism.

The police force is politicised to some degree, as was reported in the 2011 NIS report. However, previously there was greater international support, which in practice helped the police be more effective. Today that is less the case since international organisations are more withdrawn while the police seem more divided than before according to a number of researchers. Inside the police force there is a rise of many interest groups who have the power to influence decision-making and control the right to privileges.³⁸ Here the main issue is that people are promoted and transferred based on individual or group preferences rather than good performance and meritocracy.³⁹

Beyond office politics and government influence, police officers have been subject to random intimidation and attacks. The murder of a police officer in March 2015 is perhaps the most shocking example.⁴⁰ Another example was the beating of a police officer in February 2013 by the two sons of a current MP. The MP in question is the current head of the Party Caucus of the Democratic Party of Kosovo (PDK). A Basic Court in Pristina finally gave his sons a light sentence of a fine of 6,000 euro.⁴¹



TRANSPARENCY (LAW)

SCORE

2015

75

To what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement agency activities?

The legislation regulating police transparency is overall comprehensive. Current laws demand that the police are open to the public in obtaining information on activities and decisions concerning the public interest.⁴² The same rules that apply to the police are also pertinent for the Police Inspectorate of Kosovo, whose inspection mission is to ensure that the police are transparent and accountable in their work.⁴³ Other aspects of police work that are required to be publicly disclosed include public documents and personal assets of police officers.

Institutional transparency in the police force can be regulated only to a certain point. They are different from other rule of law institutions since they are more exposed to investigative work and information, which if asked to reveal may be sensitive. However, according to those who are involved in security issues, as is the case with the Kosovo Centre for Securities Studies (KCSS), there are no difficulties to obtain information from police unless it threatens the public interest.⁴⁴

Certain legal provisions set in the Criminal Procedure Code require that victims of crimes have access to case files. In the initial steps of investigation, the suspects, defendants and injured parties have access to the case file. The defence may not be refused inspection of records, material obtained and concerning investigation “to which defence counsel has been or should have been admitted to expert analyses.”⁴⁵ The same with the injured party or a victim advocate, who is entitled to obtain evidence available if there is a legitimate interest.⁴⁶

Senior police officers are required to disclose their assets – property, revenue, and gifts – to the Kosovo Anti-Corruption Agency (KACA).⁴⁷ These assets include real estate, property in value of more than 5,000 euro, shares in commercial enterprises, valuable letters, and savings in banks and other financial institutions, financial obligations, and annual revenue.⁴⁸ The declaration forms undergo a preliminary check by the KACA to ensure that there are no mistakes and incomplete data prior to being verified for their accuracy.

TRANSPARENCY (PRACTICE)

SCORE

2015

75

To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?

The public may easily obtain information on the police functions and decisions. Since 2011, the police have grown more transparent.⁴⁹ They prepare daily reports (24 hours reports), which may be accessed upon a legitimate request.⁵⁰ However, there are exceptions for reports that comprise sensitive information and that relate to on-going investigations. On data that are more general and assessable, there are annual and statistical reports. They not only present annual activities, but also work in progress while comparing the results with those of the previous year.

The field tests for access to public documents organised by KDI-TI Kosovo in April and May 2015 indicate that the police are overall open to the public. Of four requests sent to the Kosovo police through different partner organisations, all of them received a positive response in a timely manner. There were questions ranging from simple requests on the annual budget to more complex questions on the number of traffic fines or corruption charges. A small number of complaints filed and investigated by the ombudsman concerning lack of access to public documents also suggest that police are overall open to the public. In 2013 and 2014, there were only two complaints investigated.⁵¹

Senior police officers disclose their assets to the KACA, which are made public on its website. So far, the KACA has not reported any issues regarding police officers disclosing their assets. More than 99 per cent of government officials disclosed their assets in 2014 (out of 3,030 in total).⁵² This number includes senior police officials, although it does not categorise them as such. To reiterate what has been stated in the previous pillar reports, it is difficult to trust the accuracy of information declared, since the KACA has no legal authority to check and verify financial or material sources in greater detail.

Unlike most public officials, police officers undergo a background security check, which also consists of a financial inquest of assets and wealth reported by the police. This applies more to new recruits and police officers involved in producing and maintaining classified (confidential and secret) information.⁵³ Security clearance is considered an extra



integrity measure to keep the police in check. This procedure does not apply to judges and prosecutors, possibly a valid reason why the police are considered relatively more transparent. Nonetheless, according to many critics, it is not certain how legitimate, effective and updated the security background check is in practice, especially since until now it has been administered by the Kosovo Intelligence Agency.⁵⁴

ACCOUNTABILITY (LAW)

SCORE

2015 **75**

To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?

Extensive provisions are in place to ensure that the police are answerable for their actions. The police are required to operate through a unified chain of command.⁵⁵ The general director is held accountable to the minister for administration and management issues. He works with the minister and provides information in a manner determined by the law.⁵⁶ The general director may be suspended by the minister if there is a suspicion that a criminal act has been committed.⁵⁷

The police are accountable to report to the Office of the Prosecutor on “information related to alleged criminal activity.”⁵⁸ For further proceedings, the police must apply all the orders and instructions lawfully issued by the state prosecutor or a competent judge.⁵⁹ For public safety purposes, the police must also work with local authorities, civil society organisations and local communities.⁶⁰ With regards to community relations, police station commanders and other police officials must be members of the Municipal Council for Community Safety, established in each municipality.⁶¹

The Council of Europe explains that the police are not wholly accountable in legal terms by criticising how the police lack objective and transparent procedures of appointing, removing and promoting deputy directors and other higher ranks.⁶² Also, there are no legal rules of promotion, delegation and dismissal of police staff.⁶³ This is more regulated through sub-legal acts which, according to the anti-corruption assessment report, are not accessible on-line.⁶⁴ Here the Council refers to the appointment of the general director in October 2011 under direct political influence exercised by the prime minister.⁶⁵

The police are required to give reasons to prosecutors and judges regarding their decision to investigate. However, they must not have any controlling functions over them.⁶⁶ Information on criminal activities must be reported to the Prosecution Office in compliance with the Criminal Procedure Code.⁶⁷ Meanwhile, the police must respect their rights and act carefully not to violate the honour and image of any citizen.⁶⁸ All victims are entitled to access the justice system and presumed innocent until proven guilty.⁶⁹ A citizen’s right to file a complaint to the courts of law is well regulated by the Law.

In terms of preventing internal corruption, disciplinary measures involving police personnel are regulated by sub-legal acts and determined by the police.⁷⁰ Any disciplinary offense is subject to a review by an independent institution or competent court.⁷¹ Here the Directorate of Professional Standards and Auditing and the Internal Inspection Unit play an important role. The Appeal Board makes the final decisions, based on the measures announced by the Directorate.⁷² The following disciplinary measures may be imposed: reprimand, transfer, demotion to a lower grade, removal from command position, withhold 20-30 per cent of monthly salary for up to three months, suspension without pay for up to 60 days and termination of employment.⁷³

The Police Inspectorate is an independent institution in charge of investigating high profile disciplinary offenses.⁷⁴ High profile disciplinary cases include the following incidents: conflicts between the police and community, the use of lethal force, death in police custody and fatal traffic accidents involving police staff.⁷⁵ The Inspectorate is also responsible for preventing, investigating and documenting any criminal activity committed by police members for which they are not entitled to immunity.

ACCOUNTABILITY (PRACTICE)

SCORE

2015 **50**

To what extent do law enforcement agencies have to report and be answerable for their actions in practice?

In practice, the police are not as accountable for their actions as the legislation envisions. It is true that the police have close relations with both the minister and the state prosecutor. They often meet and discuss issues at stake. However, solutions to problems are not always forthcoming. For instance,

in the fight against corruption is ineffectually tackled, with each denying fault and responsibility while blaming each the other.⁷⁶ Setting that aside, the police are relatively more accountable than other public institutions. Overall, they may be well organised in disciplining their members, although not so responsible in meeting community demands.

The police force is highly centralised and thus bureaucratic, according to a former police commander.⁷⁷ He explained that for any crime initially investigated in the field by a local police officer, once the case is taken at the centre it is less likely that he/she will be informed of its final outcome – whether the case has been investigated by the prosecutor or tried by a judge.⁷⁸ Hence, local police officers are less answerable for their actions and incapable of informing the community regarding a case. It is largely the fault of the institution for not engaging, inspiring and holding accountable field officers. After all, they have more hands-on investigations and are exposed to corruption.⁷⁹ Instead, greater priority and rewards are given to middle management or regional directorates, which are in charge of facilitating cooperation between local and central police authorities.

Besides internal command issues, the police demonstrate good-will in working with respective central authorities in joint efforts of investigating criminal activities. They are reasonable in their decision-making, and it is rarely the case that a judge or prosecutor is not satisfied with their work.⁸⁰ However, this is not the case with regular citizens who continue to report complaints regarding police misconduct or criminal activity. Their complaints may be filed with the Directorate of Professional Standards or the Police Inspectorate. The former investigates complaints regarding disciplinary offenses committed by non-senior police officials. The latter institution may investigate both disciplinary offenses and criminal activities committed by senior police officials.⁸¹

For any disciplinary offense, the Inspectorate recommends to the general director that a disciplinary measure is imposed. It is at the general director's discretion to make the final decision, unless there is a reasonable suspicion that the police officer has committed a crime in which case the Inspectorate reports directly to the prosecutor.⁸² In 2014, 1,622 complaints were submitted to the Inspectorate, of which 1,304 were citizen complaints.⁸³ Of those, 37 per cent (478 complaints) were received by the police and 35 per cent (458 complaints) by the Inspectorate. The rest were complaints issued in other forms, including 216 cases initiated inside the police force.⁸⁴ Following these complaints, there were 20 arrests, 64 recommendations for suspension and 13 for transfers.⁸⁵

INTEGRITY MECHANISMS (LAW)

SCORE

2015

75

To what extent is the integrity of law enforcement agencies ensured by law?

Police officers are required to perform their duties in lawful manner. Besides constitutional provisions and laws, the Code of Ethics is another integrity source.⁸⁶ It sets the rules of conduct and ethical principles in the *realm* of police objectives and their role in the justice system, organisational structures and staff training and investigation. The Code requires that police personnel are “able to demonstrate sound judgment, an open attitude, maturity, impartiality, honesty, neutrality, fairness, accountability, communication skills, and, when appropriate, leadership and management skills.”⁸⁷

Rules on conflicts of interest and declarations of assets constitute preventive measures regulated by the law. By definition, conflicts of interest refer to a private gain that may influence the objectivity, legitimacy and transparency of the official duty of a police officer.⁸⁸ The main legal provisions that apply to conflicts of interest include exchange of gifts and rewards.⁸⁹ Efforts to regulate conflicts of interest as criminal acts have failed several times for uncertain reasons. The latest attempt was in May 2015. The Council of Europe indicates that there is a dilemma over whether criminal proceedings (repressive) and administrative proceedings (prevention) are mutually exclusive or not.⁹⁰

Activities that constitute a conflict of interest for police officers include election to public duty or government positions, participation in electoral campaigns, employment in the private sector, involvement in any political party, and making public statements regarding police work.⁹¹ Nonetheless, as noted in the Council of Europe's anti-corruption assessment report, “there are no clear guidelines concerning the possibility of police officers to be engaged in external activities besides the requirement to have the approval from the Director General.”⁹² There are no rules on post-employment restrictions for the majority of police officers. As indicated by the European Council, guidelines for approving activities outside the work schedule, including post-employment restrictions, are yet to be adopted.⁹³

However, for higher level leadership positions including the general director and chief inspector there are specific rules, as they apply to judges and prosecutors foreseen in the Law on Prevention of Conflict of Interest. A senior public official

once terminated from his/her function, has no right within one year to be employed or appointed to managing positions. He/she cannot be involved in the control of public or private enterprises, if his/her duties during the last two years before the termination of public functions, have been directly connected to monitoring or controlling business activities of those enterprises.⁹⁴

INTEGRITY MECHANISMS (PRACTICE)

SCORE

2015 **50**

To what extent is the integrity of members of law enforcement agencies ensured in practice?

The police are regarded overall as the most trusted and least corrupt law enforcement institution. In the Kosovo Security Barometer, more than 77 per cent of respondents said that they trust the police,⁹⁵ while less than 44 per cent said that they trust the prosecution office.⁹⁶ As far as corruption perception, 33.5 per cent of respondents believed that police are not corrupt,⁹⁷ while 15.9 per cent believed that the prosecution is not corrupt.⁹⁸ A similar public opinion study has been conducted by the UNDP. Its findings indicate that 20.4 per cent of respondents believed that corruption is widespread in the police, while 42.9 per cent believed that corruption is widespread in courts.⁹⁹

The existing Code of Conduct and integrity bodies are generally effective in ensuring that the police are well-behaved. However, they fall short in practice, mainly for being too broad and not clear in defining the means of integrity. For instance, integrity tests are not required or conducted to evaluate the extent to which the police are inclined to corruption.¹⁰⁰ When the director of the Police Inspectorate was asked in a Parliamentary Committee meeting, in April 2015, why this was the case, he replied by stating that the state prosecutor did not approve of such an initiative.¹⁰¹ Random integrity tests are necessary to ensure that police officers do not abuse their powers and are conducted in many developed countries.

The police has a strong hierarchical structure. It ultimately depends on the manager or director to reconcile tensions between individual and institutional interests. In that regard, integrity may be at risk since often directors are politically appointed and may not be always objective in carrying out

their tasks.¹⁰² Hence, police officers have no options other than listening to their superiors even when there is a breach of conduct. This may not be the case at the lower ranks since now it has become a practice for the police to report against their peers. In 2014, there were 300 cases of police reports on police misbehaviour while in 2012 there were none.¹⁰³

Overall, the efforts in preventing and condemning police crime have been stepped up. The Inspectorate has grown more capable of conducting disciplinary proceedings and criminal investigations. In the last four years, it has added more departments and doubled its staff from 50 to 100 employees.¹⁰⁴ The Inspectorate takes praise for investigating more than 93 per cent of criminal cases in 2014. In total, it investigated 233 criminal cases, while 132 criminal charges were sent to the office of the state prosecutor.¹⁰⁵ The prosecutor's office issued 28 indictments in courts (11 more than in 2013) while five indictments were dropped due to lack of evidence.¹⁰⁶

Meanwhile, the rising number of criminal investigations within the police force is alarming to many MPs, including Zafir Berisha, the Member of the Parliamentary Committee on Internal Affairs, Security and Supervision of the Kosovo Security Forces. In a Committee meeting in April 2015, he said the number of police being investigated indicates that they are not familiar with the rules and laws.¹⁰⁷ The director of the Inspectorate responded by arguing that it is the responsibility of the Inspectorate to hold police officers accountable for any misbehaviour or criminal act.¹⁰⁸ In that sense, integrity mechanisms seem to be working well in practice.

Police are more inclined to corruption in public procurement. The institution in charge of making sure that economic operators are protected from unlawful actions of public contracting authorities is the Procurement Review Body (PRB). For any violation of tendering procedures, complaints are addressed directly to the PRB. In 2014, there were 537 complaints, 32 of which were related to the police as the contracting authority.¹⁰⁹ This number has doubled in the last three years. In 2012, the PRB reported only 16 complaints regarding the police's decisions in procuring goods and services.¹¹⁰

The rise of complaints on procurement procedures is a serious issue, especially since more than 20 per cent of the police's budget goes on public procurement. In 2014, the police spent 18.5 million euro on procurement, making it the highest government spender after the Ministry of Infrastructure (27.8 million euro). KDI-TI Kosovo in 2014 was critical of the police for favouring certain economic operators in tendering procedures. This has been the case with the purchasing of patrol vehicles since 2011. Due to rising complaints regarding procedure violations filed at Procurement Review Body (PRB), the tender failed four times. Accordingly, the tender



was framed on behalf of the highest bidder, demanding that companies meet specific criteria that were against the Law on Procurement.

CORRUPTION INVESTIGATION (LAW AND PRACTICE)

SCORE

2015 **50**

To what extent do law enforcement agencies detect and investigate corruption cases in the country?

Overall, the police are relatively active in investigating corruption cases. However, in practice, there have not been serious convictions in the last four years despite efforts and the capacity to fight corruption. Here the main fault rests in the Office of the State Prosecutor, which is in charge of initiating investigations mainly on the basis of police reports and/or other sources. In that regard, according to an MP, the police have been the leading and most serious institution in investigating and reporting corruption, because in most instances they are doing the job of the prosecutor.¹¹¹

The police have the legal powers to apply proper investigative techniques in detecting corruption cases. In legal terms, the police are in charge of investigating whether a reasonable suspicion exists that a criminal offense has been committed. What constitutes a criminal offense is well regulated in the Criminal Code and Criminal Procedure Code. For instance, it defines corruption as a criminal act, categorising it in at least five terms: (1) abuse and misuse of official position, (2) office fraud, (3) accepting and/or giving bribes, (4) trading in influence, and (5) disclosing official information.¹¹²

The Criminal Procedure Code is specific in laying-out the rules for criminal proceedings during investigation (police), indictments (prosecutor), and trials (courts).¹¹³ Investigations are largely initiated by the police officers pursuant to Articles 69-83 of the Criminal Procedure Code, upon the decision of a state prosecutor.¹¹⁴ For any suspected criminal offense, the police are required to investigate, locate the perpetrator and collect all evidence that may be of use in criminal proceedings.¹¹⁵ As soon as the police have a reasonable suspicion that a criminal offense has been committed, the police have the duty to provide a police report within 24 hours to the state prosecutor, who shall decide whether to initiate a criminal proceeding.¹¹⁶

In practice, police reports are well prepared and presented to the state prosecutor.¹¹⁷ They contain credible information and evidence obtained from interviews in the field and provisional inspections as required by the law. Often, their reports are “plainly copied and pasted” in the decisions of the state prosecutor. That said, the police are relatively better trained, specialised, and larger in numbers compared to the staff of the Office of the State Prosecutor. Also, the Directorate of Economic Crime and Corruption has grown in the last four years. Today it has 123 police officials, 16 of which solely work on anti-corruption.¹¹⁸

In 2014, the police investigated numerous cases related to corruption. According to the Directorate of Economic Crime and Corruption, 390 corruption and economic crime charges were reported in the Office of the State Prosecutor against 757 individuals.¹¹⁹ That is less than the numbers reported in 2013 (485 criminal charges involving 1,006 individuals).¹²⁰ It was indicated Kosovo Prosecutorial Council’s annual report in 2014 that slightly more than 43 per cent of all corruption charges sent to the state prosecutor were issued by the police.¹²¹

However, it should be noted that the quality and effectiveness of corruption prosecution depends on the cooperation between the police and the state prosecutor.¹²² It is required that police keep investigation authorities informed on the implementation of their instructions.¹²³ However, this is not always the case. The state prosecutor on a particular case rarely gives the police additional instructions or requests.¹²⁴ That is the main reason why cases presented in the courts of law, particularly on corruption, by the state prosecutor are often incomplete and discredited.

RECOMMENDATIONS

- > **The Ministry of Interior Affairs should increase transparency in the process of selecting and appointing senior management ensuring that appointments are merit based and free of political influence.**
- > **Police should establish restrictions on post-employment and engagement outside working hours.**
- > **Police should introduce and define procedures for conducting integrity tests for police officers.**



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STATE PROSECUTOR

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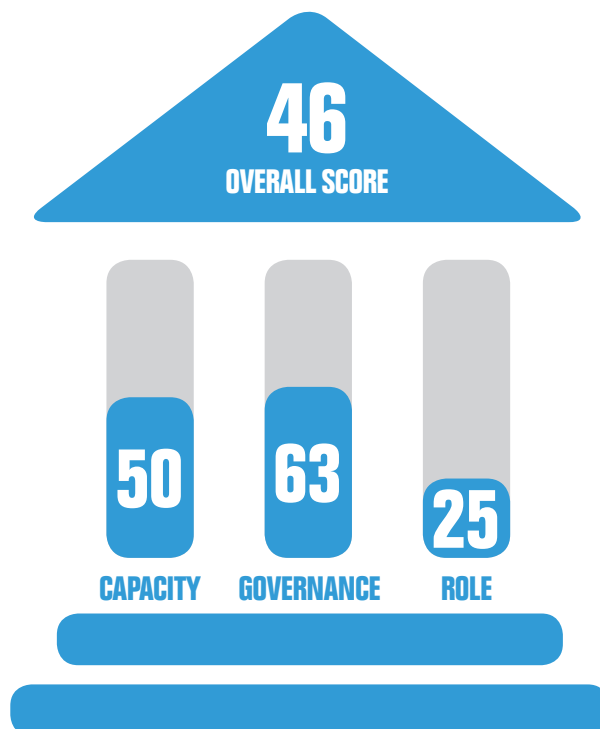


OVERVIEW

The role of the state prosecutor in fighting corruption remains extremely weak. Lack of financial and human resources partly explain why the state prosecutor is not effective in prosecuting serious corruption cases. It has a small budget – a third of the judiciary. For the last four years, the government has had the right to exercise direct control over the prosecutor. It has determined how much funding the prosecution gets and it has had voting influence in decision-making in the Kosovo Prosecutorial Council (KPC). This has changed according to the new amendments adopted in June 2015 making the prosecution more independent.

To date, the prosecutor continues to operate in unfavourable working conditions. There are hardly enough prosecutors and support staff, while only few have the skills to indict suspected criminals. Those who choose to violate ethical procedures for private gain go unpunished. A serious reform and budget upgrade is required now that EULEX has withdrawn from its main competencies of helping judicial institutions fight higher level corruption.

The graph presents the indicator scores, which summarise the assessment of the state prosecutor in terms of its capacity, its internal governance and its role. The remainder of this section presents the qualitative assessment for each indicator.





STATE PROSECUTOR



	Indicator	Law	Practice
Capacity	Resources	75	25
	Independence	75	25
Governance	Transparency	75	50
	Accountability	100	50
	Integrity mechanisms	75	25
Role	Corruption investigation		25



STRUCTURE AND ORGANISATION

In Kosovo, the role of the state prosecutor is to initiate criminal investigations, discover and collect evidence and information, and finally file indictments and prosecute suspected persons for criminal offenses.¹ The state prosecutor consists of the Basic Prosecution Office, Special Prosecution Office, Appellate Prosecution Office and Chief State Prosecution Office.²

The Basic Prosecution Office consists of the general department and department for minor and serious crime.³ Any case involving commercial and administrative matters must be assigned within the general department of the Basic Prosecution Office.⁴ This office is established in the seven largest municipalities: Pristina, Ferizaj, Gjakova, Gjilan, Mitrovica, Peja, and Prizren.⁵

The Appellate Prosecution Office consists of the general department and department for serious crimes.⁶ It is established to act for the Court of Appeals with residence in Pristina.⁷ The Office of the Chief State Prosecutor has exclusive jurisdiction over third instance cases before the Supreme Court, cases involving extraordinary legal remedies or any other case in the prosecution office/s.⁸ It is also responsible for the management of the state prosecutor and issuing rules and decisions for the internal regulation of the prosecutorial system.⁹ In addition, there is a Special Prosecution Office, which consists of 10 prosecutors who have exclusive competence over more complex and riskier cases involving terrorism, genocide, war crimes, armed conflicts, organised crime, and money laundering.¹⁰

ASSESSMENT

RESOURCES (LAW)

SCORE

2015 **75**

To what extent are there laws seeking to ensure appropriate salaries and working conditions of prosecutors?

The legislation is overall comprehensive in ensuring appropriate salaries, working conditions and tenure policies for the prosecutors. It defines a hierarchy of the prosecutorial institutions and salaries.¹¹ In June 2015, the Law on the State Prosecutor and Law on Kosovo Prosecutorial Council (KPC) were slightly amended and supplemented. Accordingly, the government is required to provide suitable funds for the state prosecutor to perform its role.¹² However, the law does not require a fixed share of the public budget apportioned for the state prosecutor.

The budget is drafted and proposed by the KPC and sent to the Assembly of the Republic of Kosovo (the Assembly) for approval.¹³ Once it is discussed and approved, the KJC is responsible for managing the budget, overseeing expenditure, allocating funds and maintaining accurate financial accounts.¹⁴ According to changes made to the Law, the KPC is much more independent. It is no longer required to get the government to approve the budget prior to sending it to the Assembly. The Office of the Chief State Prosecutor is no longer required to provide administrative support to the Council as was previously regulated.

Prosecutors are appointed for life unless they are removed upon conviction of a serious crime.¹⁵ Their salaries are similar to the salaries of judges. The chief state prosecutor is paid the same salary as the president of the Supreme Court.¹⁶ The chief prosecutor of the Special Prosecution Office receives the salary equivalent to 95 per cent of the salary of the chief state prosecutor. Prosecutors receive the salary equivalent to 90 per cent of the salary of the chief state prosecutor. The chief prosecutor of the Appellate Prosecution Office is paid the salary equivalent to that of the president of the Court of Appeal.¹⁷ For any extracurricular activity (e.g. lecturing and training), a prosecutor will be paid only 25 per cent of their basic salary.¹⁸

The law also sets an important legal provision against income reduction of prosecutors. In Article 21 of the Law of State Prosecutor, it states that a salary of a prosecutor shall not be reduced during his/her term unless there are disciplinary sanctions imposed by the KPC.¹⁹ Such consequences could occur if there is a case of misconduct for which KPC initiates a disciplinary measure of temporary reduction of a salary by up to 50 per cent.²⁰

RESOURCES (PRACTICE)

SCORE

2015

25

To what extent does the public prosecutor have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

Despite the legal framework, the existing financial, human and infrastructural resources of the state prosecutor are minimal to effectively carry out its duties. The KPC's budget is not sufficient to compensate for operational costs and salaries of newly appointed prosecutors. In 2014, the KPC had a budget of 6.9 million euros,²¹ slightly less than the previous year.²² The budget amounts to less than a half a per cent of the state budget and it paid for salaries of 139 prosecutors.²³ Given a small budget, prosecutors continue to work in old buildings without enough office space or adequate equipment.²⁴ As an extreme example, the Basic Prosecution Office in Mitrovica operates in less than 40 meters square office space.²⁵

To improve the conditions, the EU co-funded a 30 million euro project to build a Justice Palace.²⁶ The palace is built to accommodate more than 1,000 staff members from 12 different judicial institutions.²⁷ However, this project did not go as planned and certainly does not affect the work of a prosecutor working in Mitrovica or Peja. This project took almost four years to complete and since its inauguration numerous problems have come up: toilets are not functional, lack of heating and air-conditioning, and technical problems with elevators.²⁸ So far, only two or three courtrooms are in use.²⁹ Since costs are higher to travel the 4 kilometre distance to the new building, which is located in the outskirts of Pristina, employees will also experience financial issues.

A relatively small budget makes it difficult for the KPC to make up for travel costs, and more importantly, recruit ad-

ditional prosecutors and staff. The number of professional associates per prosecutor is insufficient: one associate per five prosecutors.³⁰ As a result, often prosecutors are occupied dealing with technical tasks rather than the content of a case. Far worse, prosecutors lack skills and experience. Their indictments are overall poorly written and do not last more than a page.³¹ According to the Group Legal and Political Studies (GLPS), when it comes to more complex issues involving international trade or corruption, they are not experienced to put together an effective case.³²

Basic financial constraints whether they are the additional travel costs or salaries of prosecutors indicate that the Council lacks authority in decision-making. Unfortunately, salaries do not correspond to the level of risk that a prosecutor undertakes to resolve a case. For instance, a prosecutor who is responsible for investigating organised crime gets the same pay as a prosecutor who deals with petty theft.³³ For the risk taken, special prosecutors were paid additional 800 euro per month for almost four years until March 2015 when the government removed such compensation.³⁴

On the positive side, in recent years there have been many training opportunities offered by local and international organisations, in many instances involving more specialised crime. The Kosovo Judicial Institute (KJI) has been active in developing training programmes and activities for both judges and prosecutors. Its training programme covers many topics from case management and planning to more specialised case studies such as domestic violence or juvenile delinquency.³⁵ KJI has reported that the training activities have increased from 70 in 2011 to 110 in 2014.³⁶

INDEPENDENCE (LAW)

SCORE

2015

75

To what extent is the public prosecutor independent by law?

The Constitution requires that prosecutors³⁷ are independent and impartial in exercising their functions.³⁸ Prosecutors are appointed for life and are restricted from joining any political activity or party.³⁹ It is the role of the KPC to preserve such independence.⁴⁰ In any case of performing other duties or services that may interfere with their independence, prosecutors may be termed incompatible.⁴¹

The Criminal Code also puts emphasis on avoiding undue influence in case assignments.⁴² For any personal safety issue, such as intimidation during criminal proceedings⁴³ or attacking a prosecutor while performing official duties,⁴⁴ the perpetrator shall be punished by imprisonment of up to three years.

The KPC is an independent institution⁴⁵ responsible to “recruit, propose, promote, train, transfer, reappoint and discipline prosecutors.”⁴⁶ Its composition expanded and reformed according to the changes made in the law in June 2015. The Council has 13 members and it is much more representative. Of those, 10 members are appointed from each prosecution office including one from the State Prosecution Office, seven from Basic Prosecution Offices, one from the Basic Appellate Prosecution Office, and one from the Special Prosecution Office.⁴⁷

The remaining three members come from other sectors. They include a lawyer appointed by the Chamber of Advocates, a professor from the Law Faculty, and a civil society representative.⁴⁸ The minister of justice is no longer a member of the KPC, as was the case until June 2015. The three non-prosecutor members must be elected by the majority of votes in the Assembly. In the changed law, the new requirement for the civil society representative is that he/she must have legal work experience of more than five years, have not been member or affiliate of any political activity in the last three years and have the support of more than five CSOs.⁴⁹

Prosecutors are appointed, reappointed and dismissed by the president of Kosovo upon the proposal of the KPC.⁵⁰ The KPC must propose candidates based on merit and in a transparent manner, taking into account the gender equality and ethnic composition.⁵¹ In April 2015, however, the president was heavily criticised for taking almost two months to approve the new chief state prosecutor. Furthermore, the KPC in cooperation with the KJI must establish the standards for recruiting, organising and advertising the preparatory exams for interested and qualified applicants.⁵² KPC at first makes the advertisement public and then develops and implements procedures for recruiting and nominating candidates.⁵³

The law requires that candidates meet the following criteria for eligibility: be a citizen and resident of Kosovo, have valid law degree, pass the bar and preparatory exam, be of high professional reputation and integrity, have a clean criminal record and at least three years of experience working as a judge or prosecutor, and pass the evaluation process.⁵⁴ In addition to the minimum qualification, there are special requirements for certain state prosecutors regarding years of legal experience. For instance, three years of legal ex-

perience are required for the Basic Prosecution Office, four years for the Appellate Prosecution Office, and five years for the Special Prosecution Office, and six years for the Office of Chief State Prosecutor.⁵⁵

The state prosecutor is appointed for three years and reappointed until retirement, unless he/she is removed upon conviction of a serious crime or neglect of duty.⁵⁶ Hence, job security is not an issue if the reappointment process is successfully completed. As far as career making, there are no mechanisms that regulate promotion based on merits and good performance. In addition, the chief state prosecutor is appointed by the Council for seven years without the possibility of reappointment. The chief prosecutor is appointed for four years with the possibility of being appointed for one additional term.⁵⁷

INDEPENDENCE (PRACTICE)

SCORE

2015

25

To what extent does the public prosecutor operate without interference from the government or other actors?

In practice, the government and political leaders constantly exert influence over activities and decisions of the state prosecutor. In the last four years, the budget of the Kosovo Prosecutorial Council (KPC) was determined by the government and the agenda controlled by the Minister of Justice who was a Council member. On a positive note, that is no longer the case since the legal provisions that were adopted as of June 2015 do not require that the government approves the budget for the judiciary and the Minister is no longer a member of the KPC.

The government’s threats and demands in public against the KPC exemplify its interference in decision-making. A recent decision in March to not approve the additional payment of 800 euro for special prosecutors depicts the government’s authority over the state prosecutor.⁵⁸ As a result, the KPC will be forced to pay its special prosecutors from its budget, which will ultimately lead to a budget deficit. This may threaten financial sustainability, making it difficult for the KPC to recruit and retain professional prosecutors.

It is difficult to measure the depth of political influence on the state prosecutor. The lack of initiative to indict high-ranking officials for corruption may suggest that politics has a hand in the prosecutorial system.⁵⁹ Delays and discretion on investigating large government contracts perhaps may validate such claim. For instance, there have been allegations involving a one billion euro contract of building an 80km highway from Merdare to Vermica, which until now have not been cleared (for two years) by either EULEX or the national state prosecutor.⁶⁰

The highway contract has ample indications of corruption and has been publically contested by the former head of the economics unit of the International Civilian Office, Andrea Capussela. He explains that the cost of building the highway has no economic rationale; its per-km cost is between 40 to 50 per cent higher than the comparable EU average calculated by the European Court of Auditors.⁶¹ Far worse, the price payable to the consortium rose from the initial bid of 400 million euro for 102 km to the final price of 838 million euros for 77.4km; the total cost, including expropriation and other peripheral costs, came to 1.13 billion euro.⁶²

TRANSPARENCY (LAW)

SCORE

2015 **75**

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the public prosecutor?

The legislation regarding transparency of the state prosecutor is overall in place. The *public relations clause* in the Law of the State Prosecutor is perhaps the key legal provision that requires that the state prosecutor updates the public on their activities.⁶³ Clearer provisions are set in the Law on Access to Public Documents, which guarantees the right to any natural and legal person to have access to official documents maintained, drawn or received by public institutions.⁶⁴

With regards to the KPC, it is required that it reports to the public in addition to the parliament and president.⁶⁵ However, there are a few legal gaps in the secondary legislation. For instance, in the Code of Ethics it says that prosecutors “may” keep active communication with the public (Article

3).⁶⁶ The word “may” seems rather soft and it implies that it is at the state prosecutor’s discretion to choose whether it will be transparent to the public or not. Certainly, there are exceptions to the rule, particularly in disclosing information while investigating a criminal activity or disciplinary proceedings.⁶⁷

The meetings of the KPC are required to be open. The agenda must be publicly disclosed at least 48 hours before the meeting.⁶⁸ The KPC may close a meeting if the following issues are to be discussed: official state secrets, personnel matters, performance assessments, proprietary information that is confidential, an on-going investigation, and any information that may violate a law.⁶⁹ The chair must explain all the reasons and with the majority of votes decide and justify why the meeting was kept closed.⁷⁰

The KPC is also required to make public the rules of procedure for its own functioning.⁷¹ It is also required to provide and publish information and statistical data on the prosecution system.⁷² However, the law does not specify how and where all of this information should be made public since there are no legal provisions (as in the judicial system) that require prosecutorial institutions to have a webpage. Nonetheless, all the mandatory documents that must be published in the webpage are regulated by the Law on Access to Public Documents (Article 16)⁷³ and they include: mission and vision, strategic document, basic legislation, public activity, and contact information.

In addition, prosecutors are required to disclose their assets and make them available every year to the Kosovo Anti-Corruption Agency (KACA) since they are considered senior public officials. The Law on Declaration, Origin and Control of Property of Senior Public Officials sets up legal requirements and procedures for prosecutors to report their property, revenue and gifts.⁷⁴ This may include real estate, property in value of more than 5,000 euro, shares in commercial enterprises, valuable letters, and savings in banks and other financial institutions, financial obligations, and annual revenue.⁷⁵

Prosecutors are prohibited from soliciting or accepting gifts or other favours, which may have an influence on the exercise of their duties.⁷⁶ There are exceptions for only protocol or casual gifts brought by foreign representatives and organisations for a visit or an event. These protocol gifts once registered automatically become institutional property.⁷⁷ Failure to disclose their assets and false declarations to the KACA are classified as a criminal offense according to the new Criminal Code, which entered into force in January 2013.⁷⁸

TRANSPARENCY (PRACTICE)

SCORE

2015

50

To what extent does the public have access to information on the activities and decision-making processes of the public prosecutor in practice?

In practice, the public does not have full access to information on the activities and decisions taken by the state prosecutor.⁷⁹ The KPC’s website is not comprehensive in providing general reports on its decisions and statistics. Besides the quarterly reports of different prosecution offices, which are not up to date, there are almost no reports on performance, expenditure, and strategy.⁸⁰ Meanwhile, the website of the state prosecutor is more functional and offers information and reports on its activities and work.⁸¹

The KPC should be more transparent in practice for having four of its members come from different sectors including civil society, the bar association, the government and academia. Each member is held accountable to share information with his peers outside the KPC.⁸² However, this has not been always the case. For instance, the KPC member representing civil society has been criticised for not consulting civil society on any matter.⁸³ Part of the problem among many others is the KPC’s lack of rules and procedures of appointing a civil society representative and holding him or her accountable.⁸⁴

Beyond the KPC’s role, the state prosecutor is closed and hierarchical. There are only three spokespeople representing the office of the KPC, the chief state prosecutor, and special prosecutor, all located in Pristina. The role of the spokesperson is crucial in informing the public; otherwise it becomes onerous for the whole office of the state prosecutor to share information when demanded.⁸⁵ In many instances, it is a matter of the working culture rather than ill intentions to hide information from the public.⁸⁶ Appointing a spokesperson for each office may be a solution to this problem.

Setting aside the KPC’s issues with its website and internal legitimacy, there are signs of progress. Overall, both the KPC and state prosecutor have become more transparent to the media and civil society. They issue press releases on a regular basis and provide information if demanded.⁸⁷ The Council has taken many initiatives in partnering with civil society. In December 2013, it signed a Memorandum of Understanding with the KLI for monitoring and assessing the

implementation of the action plan for the fight against corruption.⁸⁸ So far, the partnership has proven to be successful; it was extremely praised by both the prosecutorial and judicial councils in a conference organised in April 2015.⁸⁹

Further, prosecutors disclose their assets to the KACA, which makes them available to the public. Thus far, the KACA has not reported any issues regarding prosecutors disclosing their assets. In 2014, 99.74 per cent of public officials disclosed their assets; in total 128 senior officials.⁹⁰ However, it is difficult to judge the accuracy of information since the KACA does not investigate and compare them with other institutional registries in greater depth.⁹¹

ACCOUNTABILITY (LAW)

SCORE

2015

100

To what extent are there provisions in place to ensure that the public prosecutor has to report and be answerable for its actions?

The legislation governing the accountability of the state prosecutor is comprehensive. The Constitution gives authority to the KPC to initiate disciplinary actions in a manner provided by law,⁹² holding prosecutors accountable for any misbehaviour or misconduct in their decision-making. Misconduct is defined by the Constitution as a criminal offense or neglect of duty.⁹³ There are two institutions that facilitate disciplinary proceedings, the Office of Disciplinary Prosecutor (ODP) and the Disciplinary Committee.

The ODP is a separate and independent institution elected by both the KPC and Kosovo Judicial Council (KJC) responsible for investigating judges and prosecutors when there is a reasonable complaint or doubt of misconduct.⁹⁴ The ODP has the right to investigate all matters and from evidence obtained decide whether to present disciplinary actions to the Disciplinary Committee.⁹⁵ The ODC consists of a director, advisors, inspectors and management staff who are responsible to report to the KJC and KPC on an annual basis on its activities and expenses.⁹⁶ The budget of the ODC is administered by the Secretariat of the KJC. The KPC has no legal authority to limit or otherwise direct its expenditures or reallocate the budget.⁹⁷

The Disciplinary Committee of KPC consists of three members appointed by the Council.⁹⁸ It makes its final decision

on whether or not to impose sanctions in accordance with the rules and procedures set on disciplinary proceedings.⁹⁹ The disciplinary measures that may be forced by the Disciplinary Committee include a reprimand, temporary salary reduction, and downgrade or the removal of a prosecutor.¹⁰⁰ Appeals against the Disciplinary Committee may be submitted to the KPC within 15 days from the receipt of the final decision.¹⁰¹ Legal discretions that justify an appeal include a violation of the law or any disciplinary procedure and mistaken or incomplete evidence.¹⁰²

ACCOUNTABILITY (PRACTICE)

SCORE

2015

50

To what extent do prosecutors report and answer for their actions in practice?

In practice, the state prosecutor is mostly not accountable for actions taken. The Councils have been criticised for not being responsive in investigating complaints and imposing sanctions. Part of the problem is that the ODC lacks the human resources to conduct investigations for any breaches of conduct by prosecutors.¹⁰³ In a common opinion expressed by both the president of KJC and the Supreme Court, the ODC inspectors besides lacking both legal and investigative experience, have no clue what goes on inside the courts or the prosecution office.¹⁰⁴ According to KLI, the small number of inspectors is also not enough to investigate over a 100 prosecutors in addition to 350 judges.¹⁰⁵

The KPC seems withdrawn from its role in ensuring that prosecutors exercise their function in a professional and impartial manner. In practice, the Council is least active in assessing and sanctioning prosecutors according to a former member of KPC.¹⁰⁶ It seems that the KPC has its own internal problems, as has been the case during the election process for nominating the new chief state prosecutor. There was a set of political smear campaigns and conflicts among KPC members that spiralled out of control, e.g. bitter complaints regarding past experience and legitimacy.¹⁰⁷ As a consequence, according to a former member of the KPC, all the efforts made for the last three years to establish a capable and independent KPC amounted to nothing.¹⁰⁸

While complaints are filed to the ODC, only a small number of prosecutors are sanctioned.¹⁰⁹ None of the sanctions are due to lack of performance, for instance, a prosecutor not

prioritising and indicting corruption cases.¹¹⁰ In 2013, there were four decisions, two of which were reprimands and there was one temporary salary reduction, while one decision was withdrawn.¹¹¹ In addition, the ODC is slow¹¹² and closed¹¹³ in issuing its final decisions to the public or even parties involved to whether a judge or prosecutor has been recommended to be sanctioned or not by the Disciplinary Committee.¹¹⁴

On a positive note, the KPC established a tracking mechanism in 2013 in cooperation with the KJC and Kosovo police to assess its progress in corruption and organised crime. This is a database application that registers information regarding the activities of prosecutors and other involved institutions.¹¹⁵ Unfortunately, the tracking mechanism is for internal use and neither the parties involved nor the general public can track indictments issued. Access to the database may expose the public to confidential information and this may jeopardise investigations. However, it is important that at least the parties involved are informed through a web/electronic interface about the progress of their case and justification as to why it is pending.

The database of filing all information submitted to the Disciplinary Commission by the ODC is still not developed as it is in the Kosovo Police Inspectorate.¹¹⁶ In addition, there is no mechanism for monitoring the implementation of the ethical rules and disciplinary proceedings.¹¹⁷ For instance, there is no mechanism in place that ensures that in time past sanctions are removed from the record, so that the prosecutor's record can go back to clean after a set period of time.¹¹⁸ When it comes to performance evaluation, there are no mechanisms in inspiring them to become more accountable.¹¹⁹ Hence, many prosecutors who abide by the ethical rules and perform well go almost unnoticed and unrewarded.

INTEGRITY (LAW)

SCORE

2015

75

To what extent are there mechanisms in place to ensure the integrity of prosecutors?

The integrity of the state prosecutor is set forth by the Law on State Prosecutor and the Code of Ethics and Professional Conduct for Prosecutors. The KPC has also adopted a Code of Conduct that applies only to the Council. In light of the criticism from the European Council (EC), the Codes do not specify all actions in detail although they "provide

a good basis to interpret what consists inadequate behaviour.”¹²⁰ However, the anti-corruption assessment team of the Council of Europe has indicated that all three sectors (judges, prosecutors, and police) lack clear rules and procedures in establishing conditions for outside activities.¹²¹

The Code of Ethics and Professional Conduct for Prosecutors was adopted in July 2012. It defines the standards of ethics and professional conduct for all state prosecutors.¹²² The Code requires that state prosecutors respect the applicable laws, act independently in exercising their function, avoid any potential conflict of interest, and perform in conformity with international principles of human rights.¹²³ The Code, for example, requires that prosecutors do not engage in any non-prosecutorial activity without the prior approval of the KPC.¹²⁴ The KPC’s Code applies only to its members but it has the same tenor.

With regards to regulating integrity, there are two important mechanisms which include the (1) presumption of innocence, and (2) prevention of conflicts of interest for the prosecutor to perform his or her duty. The state prosecutor must be objective in searching for the truth in taking into account all evidence and must act with integrity and honour the presumption of innocence at all times.¹²⁵ Further, the prevention of conflicts of interest is regulated in the Code of Ethics (Article 3), which requires that prosecutors do not accept gifts, favours, privileges, or promises for material help from any person having a direct or indirect interest in a particular case.¹²⁶

In addition, the integrity of the state prosecutor is highly protected owing to the existence of many laws that govern conflicts of interest, exchange of gifts and hospitality for judges. The Law on Prevention of Conflict of Interest defines rules and responsibilities how to identify, treat and solve cases of conflicts of interest.¹²⁷ Conflict of interest refers to a private interest of a prosecutor that “*may influence*” the objectivity, legitimacy and transparency of his official duty/function.¹²⁸ Important activities restricted by this law are the exchange of gifts and rewards.¹²⁹

However, the conflict of interest principle is a problem for not being aligned/sanctioned according to the Criminal Code the same way as the gifts and rewards are regulated as a criminal offense by the Law on Declaration, Origin and Control of Property of Senior Public Officials. As stated in the European Commission Progress Report, this legal gap could raise many issues, considering that in 2013 there were over 1,400 senior public officials, including prosecutors, holding multiple functions funded by the Kosovo budget.¹³⁰ This is not a criminal offense, but it could be a risk of a conflict of interest, particularly for judges and prosecutors.¹³¹

INTEGRITY (PRACTICE)

SCORE

2015 **25**

To what extent is the integrity of members of the prosecutor’s office ensured in practice?

The public prosecutor lacks integrity in practice as indicated in the eighth edition of the Public Pulse study of the UNDP. The study shows that in 2014 public satisfaction with the public prosecutor dropped from 38 per cent in April to 21 per cent in November.¹³² Both courts and prosecution offices remain the least trusted institutions in Kosovo, even less than the government.¹³³ This is mainly due to a system that is perceived largely as corrupt, selective and unfair against those who lack financial and political power. In addition, up to 50 per cent of respondents according to the Kosovo Security Barometer declared that the prosecution is corrupt while 30 per cent believed that it is very corrupt.¹³⁴

The main problem as to why there is injustice stems from its approach of taking legal actions against anyone who is less influential and politically connected, according to a representative from the Group for Legal and Political Studies (GLPS).¹³⁵ That is why the majority of corruption cases involve petty corruption by public officials at a lower level.¹³⁶ There are hardly any high-profile cases of corruption with the exception of the arrest of the head of the Anti-Corruption Task Force, Nazmi Mustafi. Mustafi was sentenced to five years in prison in May 2013.¹³⁷ He was found guilty of accepting a bribe in dropping charges in an on-going investigation in 2012.¹³⁸

Lack of institutional integrity has been noted in the anti-corruption assessment report of the Council of Europe, in reference to concerns shared by the KACA, indicating that prosecutors “exercise simultaneously several remunerated functions outside working hours.”¹³⁹ Accordingly, the implementation of the Codes of Ethics of the KPC and the KJC remain weak, especially regarding disciplinary proceedings.¹⁴⁰ The issue of the prosecutor taking up publicly and privately funded work while working was discussed in the meeting of the National Integrity System (NIS) 2015 Advisory Group held in November 2014. Laura Pula from the State Prosecutor Office expressed her concerns regarding the engagement of judges and prosecutors in lecturing in private and public universities during their regular work hours.¹⁴¹

The state prosecutor in joint efforts with the Kosovo Police and Kosovo Anti-Corruption Agency signed an agreement in May 2014 on how to administer more efficiently and vigor-

ously conflicts of interests and false declaration of assets.¹⁴² The chief state prosecutor issued a decision in June 2014 that “for every case presented by the KACA, a preliminary consultation amongst case prosecutors and KACA officials must take place.”¹⁴³ However, there was never a follow-up plan and it is uncertain whether or when the judiciary is or will be part of this formalised plan.¹⁴⁴ So far, there is no track record of processing and sanctioning of conflicts of interest¹⁴⁵ and false declarations of assets.

The state prosecutor reports on a regular basis to the Anti-Corruption Agency. In 2014, 129 prosecutors reported their assets (in March) to the KACA or 99.22 per cent.¹⁴⁶ In its annual report, the KACA reports that it did not encounter any issues with prosecutors not declaring or falsely declaring their assets. However, this may not be the case in 2015 since so far around 71 senior officials have not declared their assets.¹⁴⁷ With regards to conflicts of interest, of the 264 cases reported by the KACA, only 13 involved judges and prosecutors (less than 5 per cent).¹⁴⁸

CORRUPTION PROSECUTION (LAW AND PRACTICE)

SCORE

2015

25

To what extent does the public prosecutor investigate and prosecute corruption cases in the country?

The state prosecutor is ineffective in fighting corruption. As stated in the European Commission Progress Report 2014, there is no track record of corruption being prosecuted,¹⁴⁹ despite institutional efforts to make it a priority. Overall, prosecutors are not active and lack the initiative to prosecute cases. Almost all cases are initiated by the public or another institution, in the form of a letter that is sent to the prosecutor’s office denouncing any criminal activity.¹⁵⁰ In 2014, 503 charges were filed, only 2 per cent of which were initiated by the prosecutors, while the majority were initiated by the Kosovo police (219 or 43.5 per cent) and KACA (147 or 30 per cent).¹⁵¹

The statistics on corruption prosecutions are reported by the KPC. In 2014, there were 976 corruption charges administered involving 2,569 individuals. Of those, only 444 cases have been resolved (45 per cent) for 1,011 individuals (40 per cent).¹⁵² Charges against 54 per cent of the accused were

dropped or termed incomplete due to lack of credible evidence.¹⁵³ Hence, less than a half of individuals indicted were charged for corruption, which may include misuse of official power, giving or accepting gifts and bribes, violating work confidentiality, instigating conflicts of interest, falsifying documents and not declaring assets truthfully. The reason why charges are dropped or termed incomplete pertains to the lack of capacity of parties involved including the KACA and the police.

Besides lacking integrity, the state prosecutor is seen also as incompetent and unprofessional in practice. Critics charge that often indictments are poorly written and not well investigated, making it difficult for a judge to take a decision.¹⁵⁴ When it comes to corruption charges, they tend to go beyond the comprehension of the state prosecutor,¹⁵⁵ although as a sign of improvement, recently the KPC has certified 11 experts from respective public institutions to help prosecutors on more specialised cases involving corruption.¹⁵⁶ Moreover, prosecutors often violate procedures and deadlines to collect and present evidence in the courts of law.¹⁵⁷ Or they exceed the maximum time period of the statutes of limitations to a point that a claim can no longer be valid.

It is extremely difficult for the state prosecutor to improve in the short-term since there is no political will to support its cause. The National Anti-Corruption Council established by the president of Kosovo in 2012 is considered largely ceremonial and to date is not active.¹⁵⁸ The new Anti-Corruption Strategy and Action Plan (2013–2017) has also been criticised for lacking content, not being well budgeted, and without concrete steps on how it will be implemented.¹⁵⁹ To many critics, the strategy is a paper that in principle is designed to serve EU integration purposes and to present the government’s intentions in a positive light to the public.¹⁶⁰

RECOMMENDATIONS

- > The Assembly, upon proposal of KPC, should increase financial and human resources in making the state prosecutor more effective.
- > KPC and KJI should organise additional specialized trainings on economic crime and corruption.
- > KPC should increase transparency by updating its website and recruiting spokespersons.
- > KPC should publish statistical reports on prosecution and adjudication of criminal acts regarding corruption.



ENDNOTES

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CENTRAL ELECTION COMMISSION

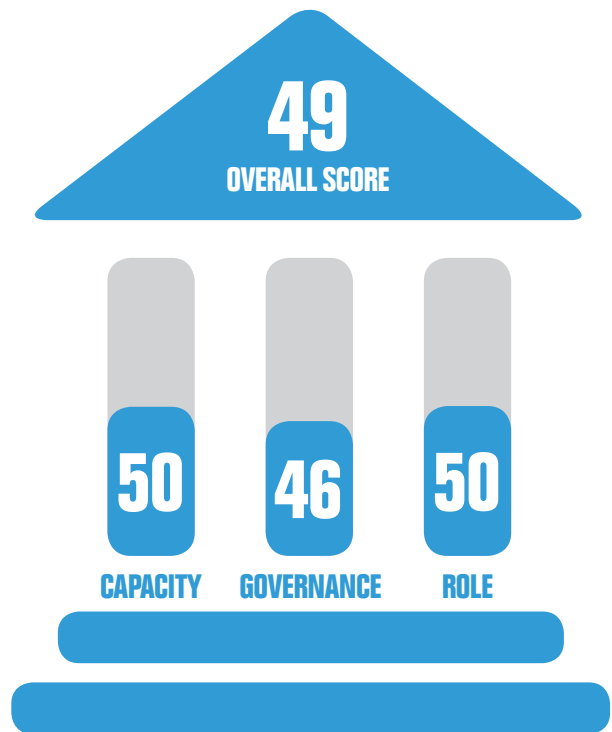
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OVERVIEW

The Central Election Commission (CEC) was negatively rated in the 2011 National Integrity System (NIS) report. Since then, it has somewhat improved and grown more accountable. To the credit of the CEC, the local and national elections in 2013 and 2014 were well organised and deemed successful and transparent. In the last elections, preliminary results were published in due time through an advanced IT system called K-Vote.

A significant challenge remains for the amendments of the Law on General Elections to address issues, such as the need for multiple electoral districts, a lower electoral threshold percentage and the accuracy of the voters' list. So far, attempts by the ad hoc Parliamentary Commission for Electoral Reform to amend the law have failed. The independence of the CEC members and their dismissal by the political parties is still concerning.

The graph presents the indicator scores, which summarise the assessment of the CEC in terms of its capacity, its internal governance and its role. The remainder of this section presents the qualitative assessment for each indicator.





CENTRAL ELECTION COMMISSION



	Indicator	Law	Practice
Capacity	Resources	-	75
	Independence	50	25
Governance	Transparency	75	25
	Accountability	50	50
	Integrity mechanisms	50	25
Role	Campaign regulation		50
	Election administration		50



STRUCTURE AND ORGANISATION

The Central Election Commission¹ is an independent permanent body composed of 11 members including the chair. The chair of the Central Election Commission is appointed by the president of the Republic of Kosovo from among the judges of the Supreme Court. The largest parliamentary groups in the Assembly of the Republic of Kosovo (the Assembly) and four by non-majority groups appoint the six members.

The CEC has the sole decision-making power over all aspects of the election administration. The political composition of CEC is reflected in other election management bodies such as the Municipal Election Commissions (MECs) and Polling Station Committees (PSCs). The law envisions giving special consideration to the need to ensure fair gender and ethnic representation in the MEC structures.² The Secretariat of CEC assists the CEC in the discharge of its responsibilities and functions. It provides administrative and other necessary support to CEC in implementing its decisions³.

Parallel to Secretariat is the Office for Registration of Political Parties (ORPP), which is responsible for updating and maintaining the political party registry, party certification and party financial disclosures. The existing legal and practical gaps make it difficult to distinguish whether this office functions within or parallel to Secretariat. According to the law,⁴ the ORPP functions as part of the Secretariat, but the executive director is directly accountable to CEC and not to the chief of executive. There are proposals that ORPP should function independently from CEC.⁵

Meanwhile, the Elections Complaints and Appeals Panel (ECAP)⁶ is an independent body in charge of adjudicating complaints and appeals concerning the electoral process and appeals on CEC decisions. ECAP consists of 10 members including the chair. The chair is appointed by the president of the Supreme Court and other members from among the judges of District Courts. By law, Kosovo is a single electoral district with the 120 deputies directly elected on the basis of an open list. The distribution of seats is made by proportional representation in accordance with the *Sainte-Laguë* method. The reserved seats that were applied as a transitional measure for minority communities in previous legislatures were replaced by a permanent system of guaranteed seats.⁷

ASSESSMENT

RESOURCES (PRACTICE)



To what extent does the electoral management body have adequate resources to achieve its goals in practice?

The CEC has adequate resources to achieve its goals in practice. It is required to submit a budget proposal each year to the government.⁸ In the last four years, the CEC has been granted sufficient funds, of the requested amount, in a timely fashion. However, in early 2014 its budget together with ECAP’s budget was reduced by 15 per cent.⁹ These cuts do not seem to have significantly affected the proper functioning of these institutions, however.

The CEC budget for 2014 was 11.884 million euro, a half of which was allocated for administering the national elections in June. By the end of 2014, CEC ended up with over 1.5 million in surplus since there were shortened activity timeframes for early elections. Further, ECAP only managed to spend 87 per cent of its planned budget for 2013.¹⁰

There is no doubt that CEC’s human capacity in administering elections has improved. The election process was well-managed considering the challenging schedule for the early general elections of 2014 and the political context in which the local elections took place¹¹. The number of permanent staff remains almost the same. In 2013, ECAP’s staff during the election period was doubled due to increased workload in adjudicating all received complaints pertaining to out-of-country voting¹².

International donor organisations such the OSCE and International Foundation for Electoral Systems (IFES) continue to provide technical expertise, capacity building and training for the CEC staff, the Secretariat and ECAP. In 2013, The CEC’s webpage was restructured and redesigned owing to donor support. As far as staffing, there have not been major shifts in the permanent Secretariat staff. Women’s representation in headquarters, including that in senior positions is satisfactory (CEC, ECAP and ORPP are run by women), but that is not the case with Municipal Election Commissions.

INDEPENDENCE (LAW)

SCORE

2011

50

2015

50

To what extent is the electoral management body independent by law?

The Constitution¹³ ensures that the CEC is independent and impartial in exercising its role in administering free and fair elections. However, the structures regarding the composition of the CEC are highly political. Political parties directly appoint members of the CEC, in an attempt to create a more balanced environment for the CEC to push forward its mission.¹⁴ However, this may not be the case since the leading political party has more authority in terms of votes and sway in decision-making.

Since 2011, there have been proposals from civil society organisations and international election monitoring organisations¹⁵ to depoliticise and redesign the CEC's structure, i.e. by adding extra judges, balancing the number of members from ruling and opposition parties or appointing its members through the Constitutional Court as opposed to a president. However the structure of CEC body has so far remained intact.

The ECAP¹⁶ is an independent permanent body in charge of adjudicating complaints and appeals concerning the electoral process. The ECAP consists of 10 members including a chair. The fact that the president of the Supreme Court appoints the chair from among the judges of the Supreme Court and other members from among the judges of District Courts means that this body is less politicised and more impartial than the CEC. The decisions within the ECAP decision-making panels are taken with majority of votes.¹⁷ The engagement in ECAP is a secondary job for all judges.¹⁸

The CEC Secretariat is an administrative technical body established by CEC to assist it in accomplishing its responsibilities and functions. There is a solid division of powers between the CEC and Secretariat and this has been functioning well in recent years.¹⁹ As required by law, the chief executive of the Secretariat reports regularly to the CEC. In addition, internal CEC councils ensure better oversight of the Secretariat.²⁰ The chief executive and his deputy and the executive director of the ORPP are selected by the CEC, through open competition procedures foreseen by the Law on Civil Servants.²¹ They are well protected from dismissal by the existing procedures in the Law on Civil Servants although the Law on General Elections states that they can be dismissed at any time by the CEC.²²

INDEPENDENCE (PRACTICE)

SCORE

2011

25

2015

25

To what extent does the electoral management body function independently in practice?

Practice shows that the CEC has not become more independent since 2011. IFES conducted a poll in August 2012 indicating that only 47 per cent of respondents believed that the CEC was completely or somewhat independent.²³ State interference in the work of the CEC is still concerning, in particular the influence that political parties exert in elections. At the same time, political reliance of the members of the CEC on political parties to appoint and hold them accountable shows how far is this institution politicised.

Several CEC members participated in electoral rallies²⁴ and were seen in protests,²⁵ despite the fact that they take an oath before the president and declare that they will perform in an impartial manner. However, the appointing authority of CEC members, the president of the country, did not impose any punitive measures in this regard.²⁶ Nevertheless, there has not been any recorded interference or pressure by political parties to influence specific ECAP panel decisions.²⁷

A CEC member from a party in the governing coalition was dismissed by his party because of his decision with regards to the removal of the state emblem from the ballot.²⁸ There were a couple of other cases when members of the CEC have been discharged by their respective parties²⁹ before the end of their mandate. Parties have justified these replacements as their representatives in the CEC did not fulfil party expectations and did not represent party interests.

The majority of CEC Secretariat staff have gained valuable experience and improved their skills, but political affiliation remains evident. Based on an assessment report conducted by IFES, 33 per cent of Secretariat staff made reference to patronage and nepotism occurring within the Secretariat.³⁰ Further, the appointment process of PSCs by respective political parties is not based on professionalism. A significant number of PSCs have not attended the required training and their competence in voting and counting procedures has been contested. As a result, a striking number of invalid ballots were recorded.³¹

On a small positive note, for the first time in 2013, the CEC administered local elections throughout the Kosovo territory, including the municipalities in the north of Kosovo. The 19 April 2014 agreement between Kosovo and Serbia called for the OSCE’s involvement in “facilitating” these elections in accordance with Kosovo law and international standards. The CEC raised the concern that this would result in limited access to information with regards to the electoral process in the north of Kosovo, in particular for out-of-country voting. The chair publicly appealed to the OSCE to provide a written report.³² ENEMO’s report of 2013 stated that the unclear role and the OSCE’s interference may cause lack of trust and challenge the functioning of the system of electoral administration.³³

polling centre by its chair. The CEC is requested to publish the election results after they have been certified. Within 60 days from the day of the official announcement of the election result, the CEC shall publish a complete report on the election expenditures and the manner of their spending.³⁸

The transparency of party finances has been reinstated in the amended Law on Financing of Political Parties³⁹ adopted in 2013. It requires that the CEC and political parties publish annual financial reports and campaign disclosure reports on their respective websites and in national daily newspapers. Parties are obliged to report all contributions (over 100 Euro), sources of contributions/donors, expenditures etc. and execute all financial transactions through a single bank account. If parties fail to do so, heavy punitive measures are foreseen. For instance, if parties do not prove the origin of their income source for over 20,000 euro they will be fined three times that amount.⁴⁰

TRANSPARENCY (LAW)



To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the electoral management body?

The 2011 NIS report indicated that there were not enough legal provisions to require that the CEC be transparent in its activities and decision-making. The major changes in legislation regarding transparency include the amendments to the Law on Political Party Financing in 2013. The CEC shall provide an annual report to the Assembly,³⁴ inclusive of information about activities of the CEC. As for election periods, it is required that within 60 days from the day of the official announcements of the election result, the CEC shall publish a complete report on the election expenditures and the manner of their spending.³⁵

An accredited observer shall have access to all meetings and documents of an MEC. If an MEC does not allow attendance at a meeting, or access to a document, a complaint may be filed with the CEC. The CEC shall reach a decision on a complaint within 48 hours and take such action as it considers appropriate.³⁶ In addition, ECAP’s decisions shall be published in accordance with ECAP’s rules of procedure and shall become publicly available at ECAP’s webpage.³⁷

The CEC Secretariat shall make the voters’ list available and accessible at the MEC Office in each municipality or other locations in conformity with data protection law. The results of the counts at the polling station shall be posted in the

TRANSPARENCY (PRACTICE)



To what extent are reports and decisions of the electoral management body made public in practice?

According to the 2011 NIS report, the CEC did not offer sufficient information to the public. The CEC was largely criticised for not sharing information on its website and not holding enough press conferences. However, in the last four years the CEC has slightly improved transparency in terms of sharing its reports and decisions with the public.

Its website is more regularly updated owing to the support of international donors.⁴¹ On its website, the CEC makes public the laws and rules pertaining to elections, all its decisions, lists of MEC members, list of polling centres, press releases and election reports, memorandums, and forms. The schedule of operations for electoral activities is also made public. There is an email address where interested parties can post questions related to requests for access to public documents. For the most part, the information is up-to-date. In addition, the CEC organises press conferences on a regular basis, and the meetings are open to the public. The ORPP also notifies political party officials on the changes pertaining to rules and procedures applicable to party financing.⁴²

As far as the election process is concerned, the CEC came to a final decision as recommended by domestic monitoring CSOs

to allow election observers to sit behind the commissioners and have the full picture on the voting and counting process.⁴³

The CEC annual reports for 2011, 2012 and 2013 have been provided to the Assembly, although they were criticised for lacking substantial information.⁴⁴ The CEC 2011 and 2012 annual reports, although not disclosing sufficient financial details were uploaded onto the CEC webpage, but the recent report for 2013 is still not available on the CEC’s website. These reports are not placed on the CEC webpage and cannot become available upon request based on the Law on Access to Public Documents.

However, the field tests for access to public documents organised by KDI-TI Kosovo in April and May 2015 indicate that the CEC is still not sufficiently transparent to the public. Out of four field tests or requests sent to the CEC through different partner organisations, all of them received a negative response. There were questions ranging from simple requests on the annual budget to more complex requests on the numbers of complaints lodged in the last elections.

The CEC delays in certifying the election final results remain evident, although progress has been made in announcing preliminary results. The final results for the 2014 national elections were certified 26 days after the election day,⁴⁵ whereas the final results for local elections of 2013 were certified after 17 days. Understanding the negative effects of these delays, especially in increasing voters’ concerns about potential manipulations of election results, the CEC in 2013 launched a K-Vote project. This software that tabulates and announces preliminary results in real time. The successful implementation of the rather costly K-Vote project⁴⁶ in both election rounds improved transparency and the effectiveness of the CEC in announcing the preliminary results and reduced tension.

on whether the CEC should make its reports public and to whom it is accountable.

The legal framework does not regulate well the CEC’s relationships with other stakeholders. Each year in April the CEC is required to submit to the Assembly its annual report covering CEC activities and recommendations.⁴⁷ Following the announcement of the election results, the CEC is required to publish a complete report on the election expenditures and the manner of their spending,⁴⁸ whereas the proper use of funds allocated for elections and donations is controlled by the auditor general.⁴⁹

Parties, candidates and citizens have satisfactory legal means to redress for electoral irregularities. A private or legal person whose legal rights have been affected by decisions of the CEC, i.e. inclusion or exclusion of a person from participation in an out-of-Kosovo voting program, the certification or refusal to certify a political entity or candidate to participate in an election, the accreditation or refusal to accredit an electoral observer, the imposition of an administrative fee on a political entity under Article 42 of the Law on General Elections; etc.) may appeal that decision to the ECAP within 24 hours after that decision is announced. The ECAP will decide on the appeal within 72 hours after the receiving of such appeal.⁵⁰

ACCOUNTABILITY (LAW)

SCORE 2011 **25** 2015 **50**

To what extent are there provisions in place to ensure that the election management body has to report and be answerable for its actions?

The legal provisions of ensuring accountability of the CEC contained certain ambiguities according to the 2011 NIS report. These remain today and mostly relate to lack of clarity

ACCOUNTABILITY (PRACTICE)

SCORE 2011 **25** 2015 **50**

To what extent does the election management body have to report and be answerable for its actions in practice?

The CEC has grown slightly more accountable in practice over the last four years. However, partisan relationships are evident between the heads of the Secretariat and CEC members. As such, dismissal of the Secretariat exponents by the CEC is very difficult, especially considering the fact that CEC members are in charge of their performance assessment.⁵¹ The perception that the majority of Secretariat staff come from political parties in power is still prevalent, but the lasting “work symbiosis” of staff tends to minimise such polarisation.

The annual reports for 2013 cannot be found on the website, and the annual report for 2014 was due in April 2015. The annual report is comprehensive and subject to discussion

and review at the Assembly, and parliamentary committees such on legislation and finances. In addition, under the Law on Managing of Public Finances, the CEC submits the annual financial report to Ministry on Budget and Finance by 31 January for each previous year.⁵² This report is initially approved by the CEC. Financial reports are not found on the CEC's webpage, although they may be provided upon request.

Public confidence towards the CEC is perceived to have increased in 2013 and 2014, given the fact that domestic and international observation missions assessed the elections as positive.⁵³ Involvement of state prosecutors during Election Day for the first time and heavier penalties for electoral violations imposed by the new Criminal Code contributed to increasing public confidence in the electoral process. The ECAP sent an additional 64 cases containing elements of criminal offense to the state prosecutor. For local elections in 2013, the ECAP imposed a total of 109 fines (190,550 euro) on political parties; parties paid 183,900 and these revenues were transferred to the state consolidated budget.⁵⁴

The ECAP also prepares comprehensive annual and financial reports and these are available on the ECAP's webpage. In practice, political parties and candidates and in some cases individual citizens file complaints related to electoral irregularities. Since 2011, the ECAP has increasingly demonstrated qualitative performance and efficiency in dealing with electoral complaints and appeals within the legal timeframes.⁵⁵ However, the rejected voters that applied to the out-of-country voting programme, due to narrow election timeframes could not appeal to the Supreme Court and their right to seek a final remedy was affected.

In 2013, in order to keep-up with all received cases during the electoral process in an efficient manner, the ECAP expanded its structure by engaging an extra 10 temporary staff. This human reinforcement was especially needed to keep up with the large number of complaints related to out-of-country voting that came mainly from Serbian voters in the north. There were 16,410 complaints adjudicated and all decisions were conveyed to parties; of these 10,419 complaints were rejected as unfounded. A concerning number (109) of these complaints came from candidates for Municipal Assembly members relating to vote manipulation.

In 2014, the ECAP received in total 341 complaints and appeals. The majority were deposited by political parties during the election campaign, mainly for placing posters on public buildings, trees and roads (136). Additional complaints (64) were related to missing votes in the Form for Candidate Result. Only 10 were related to manipulation during the voting process. Individual citizens placed seven complaints, mainly because their deceased relatives were still on the

voters' list.⁵⁶ A total of 173 complaints were rejected as unfounded. The imposed penalties include a total of 86,700 euros, of which political parties paid only 15,450 euro. In 2013, parties paid the penalties primarily because they could not certify themselves for participation in the 2014 national elections.⁵⁷ Their fines were deducted from the fund for the support of political parties, which they receive each year from the state budget.⁵⁸

INTEGRITY MECHANISMS (LAW)



To what extent are there mechanisms in place to ensure the integrity of the electoral management body?

The main laws that require CEC's performance to be of high integrity include the Law on General Elections, Law on Conflict of Interest, Law on Civil Service, and the Code of Conduct for Civil Servants. In order to be appointed, members of the CEC are required to personally appear before the president and take the oath or declaration in the language of their own choice that they will perform honourably, faithfully, impartially, diligently and conscientiously.⁵⁹ The CEC and ECAP members are subject to other laws for public officials such Law on Prevention of Conflict of Interest in Discharge of Public Functions.⁶⁰

Significant amendments to the Law on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Official Persons were adopted in March 2014. This law envisages that the chairperson and members of the CEC are considered senior public officials and hence are subject to its provisions to declare their property and income⁶¹.

According to the CEC Rules of Procedure's section on conflicts of interest, a CEC member is not allowed to participate in decision-making pertinent to the issues where they or a member of their family has a personal or financial interest, which can put in doubt their ability to act impartially.

The ECAP members are also subject to Code of Ethics for Judges.⁶² The appointment of a MEC member is subject to the signing of the MEC Code of Conduct as adopted by the CEC before commencing their work.⁶³ The law also

requires that MEC members should have high professional and ethical standing, as well as electoral experience and knowledge.⁶⁴ Each PSC member at the time of appointment shall sign a Code of Conduct and take the oath, and regardless of political party affiliation or political viewpoint, act impartially in the service of all voters. The PSC shall be responsible for ensuring the integrity, security and tranquillity of the polling and counting process at the polling station under the immediate supervision of the MEC.⁶⁵

The integrity of the staff of the Secretariat is subject to the Law on Civil Service, which calls for a professional, politically neutral and impartial civil service. It covers conflict of interest provisions, as well as rules on gifts and hospitality, in accordance with the applicable anti-corruption legislation.⁶⁶ The director and the deputy and the executive director of the ORPP cannot serve if they hold or seek public office, any official post or executive position in a political party or have been criminally convicted. Staff of the Secretariat are also required to sign the Code of Conduct.⁶⁷

INTEGRITY MECHANISMS (PRACTICE)

SCORE

2011

25

2015

25

To what extent is the integrity of the electoral management body ensured in practice?

The CEC has not improved since 2011 in ensuring that there is enough institutional integrity to organise elections. Several CEC members were discharged by their respective parties for not representing party interests. Members of CEC were also seen in party rallies and protests and their actions were perceived as politically biased. Nevertheless no procedures for breaching their obligations were initiated by the president.⁶⁸

All staff of the Secretariat sign the Code of Conduct. The provisions for corrupt practices and gift and hospitality rules foreseen by anti-corruption legislation are transmitted to staff by the department of personnel through an email notification. None of the staff has ever declared the acceptance of a gift and no dismissals have been recorded since 2011.⁶⁹ There is a disciplinary commission within the Secretariat where staff can file complaints. The CEC decided to prohibit the promotion of a former Secretariat officer for three years, fol-

lowing his implication in a physical assault of another officer.⁷⁰

All information on the assets and income of senior officials of the CEC and ECAP is publicly available at the webpage of the Kosovo Anti-corruption Agency (KACA). According to the amended law, 20 per cent of all officials required to disclose their property are selected randomly by the KACA for the verification of asset declarations.⁷¹ No proceedings have been initiated against any of the CEC, Secretariat or ECAP officials. Members of CEC and ECAP are also subject to anti-corruption legislation, in which matters such as incompatibility of holding public office and restrictions regarding the acceptance of gifts are regulated.

In 2013, the media reported that a member of the CEC was holding two public posts at the same time,⁷² as the CEC member and as a CEO of a public enterprise. According to the Law on General Elections,⁷³ a person is not be eligible to be a member of the CEC if he or she is: a holder of a senior public or high political party office. Following these allegations, the KACA assessed the case and concluded that there was not sufficient evidence to prove a conflict of interest. Allegations that the official in question was receiving a half-salary from the CEC were confirmed by the CEC member and CEC Secretariat. He was, however, being paid according to an administrative direction for public servant salaries, not applicable for a CEC member.⁷⁴ The official requested not to be fully paid by two institutions where he served. Just one day before the president mandated the new CEC composition, in December 2014, the same CEC member resigned from his post as CEO of the public enterprise. He decided to resign from the CEO position and devote his time to the CEC, because his party re-nominated him as a CEC member.⁷⁵

CAMPAIGN REGULATION (LAW AND PRACTICE)

SCORE

2011

25

2015

50

Does the electoral management body effectively regulate candidate and political party finance?

The 2011 NIS report brought to the forefront legal ambiguities and loopholes in regulating candidate and political party financing. The CEC has the ORPP,⁷⁶ which is responsible

for maintaining a political party registry, certifying political entities and other provisions related to party financing and expenditure. The common perception is that the ORPP has the necessary human and technical resources to ensure proper implementation of the law.⁷⁷

The most significant legal update is the change of the Law on Financing of Political Parties, adopted just three months before the local elections in November 2013. According to the new law, the CEC is responsible for allocating and managing the Fund for the Political Party Support granted through the Kosovo budget.⁷⁸ In order to mirror the new provisions of the law, in January of 2015, the CEC approved the new election rule 14/2015 on political party financing and sanctions. The head of the ORPP justified this delay due to the CEC’s heavy engagement in administering local and national elections in 2013 and 2014.⁷⁹

The new amended law⁸⁰ regulates political party financing more rigorously, namely incomes and donations. As such, it prohibits donations from private enterprises while they are in a contractual relationship with Kosovo institutions and for three years after the end of the contractual relationship; and requires that political parties are to carry out all financial transactions through a single bank account.⁸¹ In addition, the new law envisions heavier punitive provisions for political parties who do not abide by its provisions. In a worst case scenario the party loses eligibility to benefit from the Fund for the political party support for the next year.

All registered political parties are required to submit their annual financial reports to the CEC. All party annual financial reports and campaign financial disclosures are subject to auditing, but according to the amended Law on Financing of Political Parties, the CEC is no longer responsible for auditing. At least 10 licensed auditors will be elected by the Assembly through the Committee for the Oversight of Public Finances and an open public announcement.⁸² Parties are obliged to publish their annual financial reports and campaign financial disclosures on their respective websites, and the shortened versions of these reports should be published in one of the national daily newspapers.⁸³

Small political parties have been critical of these new requirements since they cannot afford to create or maintain webpages or publish their financial reports in daily newspapers.⁸⁴ In addition, the CEC is required to publish all annual financial reports of the parties along with a final audited report of political parties in its official webpage.⁸⁵ These reports for 2011 and 2012 are uploaded on the CEC’s webpage. However, the auditing of party financial reports for 2013 and 2014 was not done, as a result of the Assembly’s deadlock for six months and its new assumed role in auditing such reports.⁸⁶

ELECTION ADMINISTRATION (LAW AND PRACTICE)



Does the electoral management body ensure the integrity of the electoral process?

According to the 2011 NIS report, the CEC did poorly in ensuring the integrity of the electoral process. Key issues identified in the report included a lack of capacity at the count and results centre, a poor voter education programme and election irregularities. The CEC has grown more competent in the last four years to ensure greater integrity in the electoral process. The local and national elections were well organised in 2013–2014 despite some issues regarding the inaccuracy of the voters’ list and difficulties voting in the northern municipalities for security reasons.⁸⁷

In the local elections of 2013, there was a tense atmosphere in several polling centres in the north on election day, which resulted in the termination of voting, closing of the polling station and withdrawal of international and domestic observers. A re-run in three polling centres was ordered and extra security measures were installed to secure the voting process. Due to safety and security issues, Democracy in Action managed to recruit only a small number of election observers.⁸⁸ As far as national elections in June 2014, they were overall more transparent and well organised,⁸⁹ compared with the elections in 2010 when there were many irregularities.

The voters’ list continues to be the “Achilles heel” of the election process. Public confidence in the accuracy of the list remains low despite some improvements after removing around 30,000 deceased voters. Also, it is estimated that 500,000 people who do not reside in Kosovo are still registered in the civil registry and on the voters’ list. During the 10-day voter service period in 2014, only 6,275 voters presented the request to change their polling centre at Municipal Election Commission. A search engine platform was available on the CEC website. All interested voters were able to confirm information on their polling centre. According to the CEC report, 59,451 voters visited the search engine for the 2014 national elections.⁹⁰

The memorandum that the CEC signed with the state prosecutor, Judicial Council, the ECAP and the police had a significant impact on improving the integrity of the electoral process and preventing election irregularities. The deploy-

ment of 100 prosecutors on Election Day to handle potential fraud and heavier penalties imposed for election offenses (through revised Criminal Code in 2013) were deemed to demonstrate seriousness in preventing electoral crime.⁹¹ The state prosecutor's intervention on Election Day was recorded in at least two municipalities.⁹²

In 2014, the CEC contracted a management/marketing company to conduct a voter education campaign through a negotiated tendering procedure, as per the imposed short timeframes for procurement activities. Approximately 358,000 euro were paid to the awarded company to design the voter education, TV advertisements and other voter education material.⁹³ The voter education campaign was centralised, and there is evidence that posters and other educational materials did not reach rural areas.⁹⁴

Democracy in Action is the main civil society network that covers the observation of electoral campaigns and election days. Observers were present in all polling stations. The counting was accurate at most polling stations, but determining whether a ballot was valid or invalid was questionable at times.⁹⁵ The number of invalid votes in the 2013 municipal elections was a great concern. It was slightly higher than in the 2009 municipal elections. One in every 10 votes was deemed invalid,⁹⁶ and this is attributed to the CEC's poor voter education campaign.

In 2013, the CEC launched a K-Vote project, which is software that tabulates and announces the preliminary results in real time. The CEC engaged operators and bought approximately 800 ipads to cover all polling centres. K-Vote was a great tool in improving the CEC's transparency and announcing preliminary results. Before 2013, the only source of preliminary results for citizens was Democracy in Action. The CEC certified final results for the 2014 national elections 26 days after the Election Day whereas the final results for local elections of 2013 were announced after 29 days.⁹⁷

RECOMMENDATIONS

- > CEC should become more transparent in making public its reports and decisions.
- > CEC should better plan and deliver voter awareness campaigns to decrease the number of invalid votes.
- > The political parties in the Assembly should agree to gradually depoliticise CEC in the next four years by adding additional judges to amount to the same number of political representatives in the fora.



ENDNOTES

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OMBUDSPERSON

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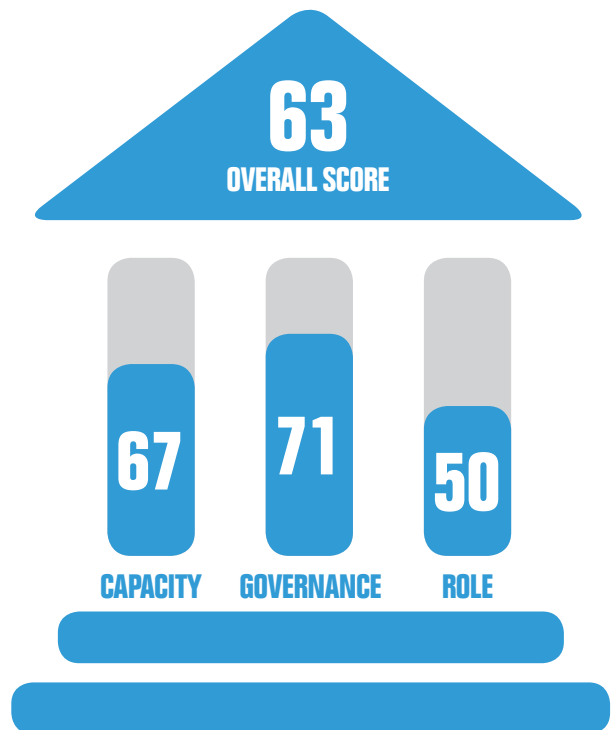


OVERVIEW

The role of the Ombudsperson Institution (OI) in Kosovo has slightly improved in the last four years. Currently it is more financially stable and open to the public than it was in the past. The new Law on Ombudsperson adopted in June 2015 requires that it is independent and accountable in protecting and promoting human rights.

Its role is to investigate public authorities concerning any act of injustice used against an individual. In that sense, it has been active in administering complaints although not so influential in terms of outcomes. That is mostly because public authorities disregard or defer any advice they receive from the OI. To uphold its findings and build up credibility, the OI should rely more on the support of civil society, which has not been the case in practice.

The graph presents the indicator scores which summarise the assessment of the OI in terms of its capacity, its internal governance and its role. The remainder of this section presents the qualitative assessment for each indicator.





OMBUDSPERSON



	Indicator	Law	Practice
Capacity	Resources	-	75
	Independence	75	50
Governance	Transparency	100	75
	Accountability	75	50
	Integrity mechanisms	75	50
Role	Investigation		50
	Promoting good practices		50



STRUCTURE AND ORGANISATION

The Ombudsperson Institution (OI) is an independent institution elected by the Assembly of the Republic of Kosovo (the Assembly) to defend and protect rights and freedoms of individuals from unlawful acts of public authorities.¹ It administers complaints, initiates investigations, and monitors policies and laws adopted by authorities to ensure that they respect human rights and good governance.

The OI has no executive and/or sanctioning authority and its role is to monitor, protect and promote fundamental human rights and freedoms.² Its services cover all regions, including Pristina, Mitrovica, Gjilan, Peja, Prizren and Gracanica.³ Two additional regional offices were established, in Ferizaj and Gjakova as of October 2013.⁴ The OI is composed of the ombudsperson and deputies, an executive director, professional and administrative staff.⁵ The mandate of its current head expired early in 2014 and as of July 2015 there is a new ombudsperson elected by the Assembly.

The OI has five departments: (a) anti-discrimination department, (b) legal department, (c) executive department, (d) judicial department, and (e) public relations department.⁶ Each of these departments covers various issues that are addressed to the government, legislature, and judiciary. The OI is a partner to many independent institutions and civil society (e.g. Youth Initiative for Human Rights).

it was criticised for having a small budget at 523,735 euro. Four years later, the budget doubled to 1.022 million euros,⁷ which is more than enough for the OI to cover salaries, goods and services, municipal expenses and capital expenditure. However, only 80 per cent⁸ of the budget was spent in 2014, while there was not a serious staff increase. Today the institution has 54 employees,⁹ while in 2010 it had 47.

The budget has increased for a number of reasons as clarified by the OI.¹⁰ First, there was an increase in terms of salaries. This came as a result of a decision issued by the Office of the Prime Minister to increase the salaries of all civil servants in Kosovo, which, according to many critics, was deemed political and caused inflation. Second, there was an increase of spending on salaries of additional staff and many training activities. Third, there was an increase in spending for capital expenses on goods and services.

Since 2011, the government has not provided appropriate work facilities to the OI. Currently, it is located in a private building far from downtown and it is hard to access, especially for people with disabilities. This is against the Law on Ombudsperson¹¹ and Paris Principles of National Human Rights Institutions according to a representative of the OI.¹² The situation is almost the same with regional offices in terms of accessibility, although to their advantage they are located in public buildings.¹³

In general, the OI has low staff turnover. In 2014, two staff members left for the professional reason of finding another job.¹⁴ Turnover was more problematic in 2013, as noted in the OI's annual report.¹⁵ In that year, staff turnover imperilled the institutional workflow since the employees that left had senior work experience and were well suited to their jobs.

The OI continues to organise and attend many training programmes. They cover a wide range of modules from writing of analytical reports and project management to public relations and advocacy work.¹⁶ In that regard, the OI has received constant support in the last four years from many international organisations, including the OSCE, UNDP, Council of Europe and OHCHR.¹⁷ Many of these organisations and various embassies have also offered financial support for capacity building.¹⁸

In general, staff have appropriate skills and experience to perform their duties.¹⁹ There are some who have worked for more than four years in the OI and have grown accustomed to its working culture. Certainly this has not been the case in the past, as the OI was previously criticised for recruiting staff not based on merit who did not have skills and experience in human rights and did not speak sufficient English to be able to do any credible research.²⁰ The fact that that OI adopted the Code of Ethics and Internal Rules of Procedure in 2011 is a sign that it is taking staff performance more seriously.²¹

ASSESSMENT

RESOURCES (PRACTICE)



To what extent does an ombudsperson or its equivalent have adequate resources to achieve its goals in practice?

The OI has adequate financial and human resources to meet its goals. In the 2011 National Integrity System (NIS) report

INDEPENDENCE (LAW)

SCORE

2011

75

2015

75

To what extent is the ombudsperson independent by law?

The laws seeking to ensure the independence of the OI are adequate. The Constitution is the fundamental document that protects its independence. It defines the competencies, qualifications, election and reporting of the OI (Article 132-135). In Article 134, it says that the ombudsperson and its deputies shall “not be members of any political party, exercise any political, state or professional private activity, or participate in the management of civil, economic or trade organizations.”²²

A new Law on Ombudsperson came into force in June 2015. It creates a legal mechanism for protection, supervision and promotion of human rights and freedoms from illegal actions or failures of public authorities.²³ It also regulates how the OI should function in “determining procedures for appointment and dismissal, powers and manner of work ... procedures for submission of complaints and their investigation.”²⁴ The three basic principles of an independent ombudsperson include: impartiality, confidentiality and professionalism.²⁵

On the conditions for the election of the ombudsperson and its deputies, it is required that he/she is a citizen of Kosovo and has the following: a higher university education, character of honesty and high morals, and distinguished knowledge on human rights.²⁶ Also, he/she cannot exercise any function in a political party or be a member of the Assembly or the government.²⁷ The ombudsperson is elected for a fixed term of five years by a majority of votes of the Assembly.²⁸

The recruitment of deputies and staff is required to be based on clear professional criteria. However, employees are recruited as civil servants according to the Law on Civil Service.²⁹ In that regard, the OI has exclusive power to appoint and recruit staff. But in hiring new staff it may take up more than a month to get the approval from the Ministry of Public Administration.³⁰ In the meantime, for any violation of the Code of Ethics, the OI sets disciplinary measures according to the Law on Civil Service and Labour Law.³¹

Salaries of the OI are regulated under the Law on Salaries from the State Budget according to the Law on Ombudsperson.³² This is rather a broad provision according to the

director of the Youth Initiative for Human Rights (YIHR).³³ It gives complete authority to the government to decide the salaries of senior public officials on an ad hoc basis. This was regulated in greater detail in the previous law where salaries of ombudsperson and staff were comparable to the salaries of civil servants and senior public officials.³⁴ However, even then there were many legal gaps, especially related to the salaries of senior public officials.

For instance, senior officials including the ombudsperson are paid a higher salary increase amounting to 50-60 per cent of what they were paid until 2012, based on the decision issued by the government, which was adopted after the Law on Salaries of Public Officials failed to pass in the Assembly.³⁵ Until the new Law on Ombudsperson, salaries of senior officials of the OI were equivalent with those of the judges of the Supreme Court.³⁶ Now this has changed and salaries will be determined by the Law on Budget set each year by the government.

INDEPENDENCE (PRACTICE)

SCORE

2011

50

2015

50

To what extent is the ombudsperson independent in practice?

In general, the ombudsperson is independent, although occasional interference does arise. This is mostly because the law gives undue powers to the legislature and executive over the ombudsperson. The majority of the Assembly votes every five years on who should be the new person in-charge of the OI.³⁷ In practice, elections have not gone well and have experienced significant delays in both terms, in 2009 and 2014-15. It would appear that political parties struggle to agree on the individual who once elected would represent their interests.³⁸ Despite political influence in appointing the ombudsperson, interference in the hiring professional staff is almost non-existent.

Financial dependence on the government is a problem noted in the 2011 NIS report. Today that may be less of a concern since the ombudsperson has exclusive decision-making power over how it wants to spend the budget for operational purposes.³⁹ For the last four years, the budget has doubled and the government has been more than generous in adapting to the needs of the ombudsperson. In 2014, the OI received 94 per cent of the budget it demanded from the government. That is a large fraction



considering that the OI typically spends less than 84 per cent of the approved budget.⁴⁰

Its website is more functional, upgraded and user-friendly than it was four years ago. It is where all information of the OI is made public, including reports (i.e. annual, case, special and ex-officio reports).

TRANSPARENCY (LAW)



To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ombudsperson?

By law, the ombudsperson is required to be very transparent. It is required that the ombudsperson⁴¹ and staff⁴² are appointed/recruited or dismissed through a transparent process. These are the legal provisions that were also part of the previous law and are merged into the Code of Ethics and Internal Rules of Regulations (2011–2012).

The OI is required to inform the public regarding its work through annual or special reports, recommendations and press releases.⁴³ However, when it comes to sensitive information, the OI is cautious in disclosing individual cases unless requested by the parties involved. It is required that it keeps confidential information and data particularly on the complainants in accordance with the Law on Personal Data Protection.⁴⁴

In addition, senior public officials of the OI are required to disclose their assets to the Kosovo Anti-Corruption Agency each year by 31 March. This is required by the Law on Declaration and Origin of Property and Gifts of Senior Public Officials.

The OI issues press releases and decisions on an ad hoc basis depending on issues that may arise.⁴⁵ For instance, last year, it initiated an *ex-officio* investigation on the decision of admitting children of war veterans in the University of Pristina without passing the standard admission test.⁴⁶ In a letter addressed to the Ministry of Education, it demanded that there should be provisional measures to suspend the execution of the decision until the investigation was completed.⁴⁷ Moreover, on extra-ordinary issues, it also provides recommendations to public authorities (e.g. on organising public protests).⁴⁸

The field tests for access to public documents organised by KDI-TI Kosovo in April and May 2015 also indicate that the OI is open to the public. Of the four requests sent to the OI through different partner organisations, all of them received a positive response in a timely manner. There were questions ranging from simple requests on the annual budget to more complex requests on the list of recommendations sent to the public authorities.

Nonetheless, the OI is not wholly transparent for a number of issues: it does not make public its annual report in due time,⁴⁹ and it does not disclose full information on which recommendations are implemented by public authorities.⁵⁰ Hence, it is difficult to assess the work of the OI, if there is no mechanism to track specific reports.⁵¹

TRANSPARENCY (PRACTICE)



To what extent is there transparency in the activities and decision-making processes of the ombudsperson in practice?

The public is able to readily obtain information on the organisation and functioning of the ombudsman, on decisions that concern them and how these decisions were made.

ACCOUNTABILITY (LAW)



To what extent are there provisions in place to ensure that the ombudsperson has to report and be answerable for its actions?

The legal provisions demanding that ombudsperson is accountable are in general comprehensive. It is required that ombudsperson reports directly to the Assembly on an annual basis.⁵² The ombudsperson also makes recommendations and proposes actions to public authorities,⁵³ which may include ministries and the courts, etc. It may also refer to specific matters concerning human rights in the Constitutional Court.⁵⁴



The most important information that ombudsperson must submit to the Assembly is its annual report. This report covers issues and recommendations for improvement in responses to human rights violations by public authorities.⁵⁵ The law requires that the report is submitted in a plenary session each year by 31 March.⁵⁶ In addition, the ombudsperson must submit interim or other reports upon request.⁵⁷

the institution, the election process, reporting requirements and conflicts of interest. Since then the OI has adopted Internal Rules of Procedure (March 2011) and a Code of Ethics (April 2011).

The Code of Ethics upholds high moral values and professional ethics at work.⁶⁰ Institutional integrity is an important principle defined in its Code of Ethics (No. 01/2011). It requires that all staff to work with honesty and courage and not to be “influenced by political, social, religious or economic views of the persons they meet while performing their duty.”⁶¹ The issues covered in the Code of Ethics include conflicts of interest (Article 13), corruption (Article 14), gifts, favouring and other benefiting (Article 15), and abuse of duty (Article 16).⁶² Article 13 requires all staff members to prevent any potential case of conflict. If there is any conflict of interest, it must be reported at the earliest opportunity, ultimately resolved “in favour of the institution.”⁶³

Similar rules apply in Article 14 and 15. They require immediate reporting of any corruption or other threat to the independence and integrity of the institution.⁶⁴ Restrictions on the abuse of authority are well articulated in Article 16. The OI’s staff should not give any favours to colleagues, complainants or other groups for financial and political gains, sexual and any other benefit.⁶⁵

The ombudsperson and his deputies are immune from “prosecution, civil lawsuit and dismissal for activities or decisions that are within the scope of responsibilities [of the ombudsperson].”⁶⁶ Also, all of its assets, funds, archives and communications are “inviolable and immune from control, acquisition, official search, confiscation, from expropriation or from any other intervention or through bailiff action, administrative, judicial or legislative action.”⁶⁷

ACCOUNTABILITY (PRACTICE)



To what extent does the ombudsperson report and is answerable for its actions in practice?

Legal provisions ensuring accountability of the OI are partially effective in practice. Although the annual report is prepared in a proper manner, it is not presented in due time to the Assembly. This is mainly because the report is not considered a high priority by the parliament.⁵⁸ Meanwhile, it is difficult for the report to find a listening ear on its views and recommendations and reports are rarely debated in public.

In 2013–2014, sessions were organised with the Parliamentary Commission on Human Rights. This was a great opportunity for the ombudsperson to exercise pressure on elected officials and ministers to adhere to its findings.⁵⁹ Unfortunately, in what is seen as a sign of the lack of political will to debate these issues, these sessions have not been organised for more than a year.

INTEGRITY (PRACTICE)



To what extent are there provisions in place to ensure the integrity of the ombudsperson?

In general, new rules and codes are well regarded in practice by staff according to the YIHR.⁶⁸ In an interview the former ombudsperson explained how there is a positive work environment built on mutual respect and team solidarity.⁶⁹ In his words, there is an open-door policy for all staff to consult senior officials when necessary.⁷⁰

INTEGRITY (LAW)



To what extent are there provisions in place to ensure the integrity of the ombudsperson?

The existing laws for regulating integrity mechanisms of the OI are fairly strong. The KDI in the 2011 NIS report emphasised certain legal provisions relating to the role of

Nonetheless, there have been few serious inquiries into alleged misbehaviour in the OI. For almost three years there has been an on-going investigation against the former head of the OI, Sami Kurteshi, who has been accused by the prosecutor for suspected corruption affairs, although no final judgments have been made.⁷¹ To many critics, including Kurteshi himself, accusations were politically motivated and they show that the justice system is unfair and not independent.⁷²

It is not common for the ombudsperson and senior staff to be removed from their position before the end of their term. However, there have been exceptions involving two members who were suspended for internal issues. Regarding the first case, it is not clear why the person was discharged. However, because the person in question was a civil servant working for the OI the case was taken to the Independent Oversight Board and a contradictory decision was made.⁷³ The second case involved one of the minority deputy members, Bogoljub Staletovic, who was suspended for five months for his unprofessional performance.⁷⁴

INVESTIGATION (LAW AND PRACTICE)



To what extent is the ombudsperson active and effective in dealing with complaints from the public?

The OI’s approach to dealing with public complaints is largely reactive and its success is limited. In terms of lodging complaints, procedures are fairly simple and quick, as they were four years ago. Complaints range from authority violations on basic human rights and abuse of official power to lengthy court proceedings.⁷⁵ It is the responsibility of the OI to investigate and inspect all complaints and recommend improvements to procedures and practices.

A complaint can be filed with the support of a legal adviser from the regional office. Then it is registered in the database and reviewed in the central office.⁷⁶ It takes up to 15 days to administer a complaint and come up with a final response according to the OI.⁷⁷ The public may also email, phone or visit the legal adviser during open office hours.⁷⁸

In 2013, the OI administered 2,047 cases,⁷⁹ and in 2014, 2,224 cases;⁸⁰ a 23 and 30 per cent increase respectively

if compared to 2012. However, the rise of the number of complaints alone is not necessarily a true measure of the performance of the OI, since a large number of cases are rejected at first instance.⁸¹ Nearly 70 to 80 per cent of complaints are termed void for either not falling under the scope of the OI or because they were already sent to the courts of law.⁸²

In essence, the OI has little impact in decision-making. Its findings are mostly ignored by the public authorities.⁸³ In 2013, only 15 out of 55 of the ombudsperson’s recommendations were implemented.⁸⁴ Unfortunately, the annual reports of the ombudsman do not provide complete information on the content of the findings and recommendations. Instead, they are presented in a statistical manner. This limits the ability public to examine and track them more closely.

PROMOTING GOOD PRACTICE (LAW AND PRACTICE)



To what extent is the ombudsperson active and effective in raising awareness within government and the public about standards of ethical behaviour?

The ombudsperson is active to some extent in promoting good practice among the government and public. The OI has been responsive on a few sensitive issues. Two of them involved the Law on Duties and Benefits of Members of the Parliament and public resentment against Kosovo 2.0 on sexual rights. On the former issue, with the support of 10 civil society organisations the ombudsperson disputed two articles that demanded a younger age of retirement at 55 and extra financial compensation for MPs.⁸⁵ In late 2011, the two articles of concern were finally ruled unconstitutional by the Constitutional Court.

In its annual report, the ombudsperson elaborates on a number joint activities with public institutions, civil society and international organisations. However, it does not explain the results of these activities. Roundtables that were organised were very generic and did not concentrate on thematic issues.⁸⁶ Or they were self-serving, for instance, discussing how the ombudsperson can do its job better or how to strengthen cooperation.⁸⁷

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The OI is not active in organising public campaigns. There is little media exposure⁸⁸ and cooperation with civil society⁸⁹. In March 2013, for the first time it managed to partner with a local civil society organisation, YIHR, when they signed a Memorandum of Understanding to monitor and report on the performance of the ombudsperson.⁹⁰ However, this cooperation did not last longer than six months. Since this project ended, the YIHR has rarely been consulted on other issues of concern related to human rights.⁹¹

RECOMMENDATIONS

- > The Ombudsperson should increase the number of staff and interns since it has a considerable budget.
- > The Ombudsperson should strengthen cooperation with civil society and media on issues related to corruption and human rights.

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OFFICE OF THE AUDITOR GENERAL

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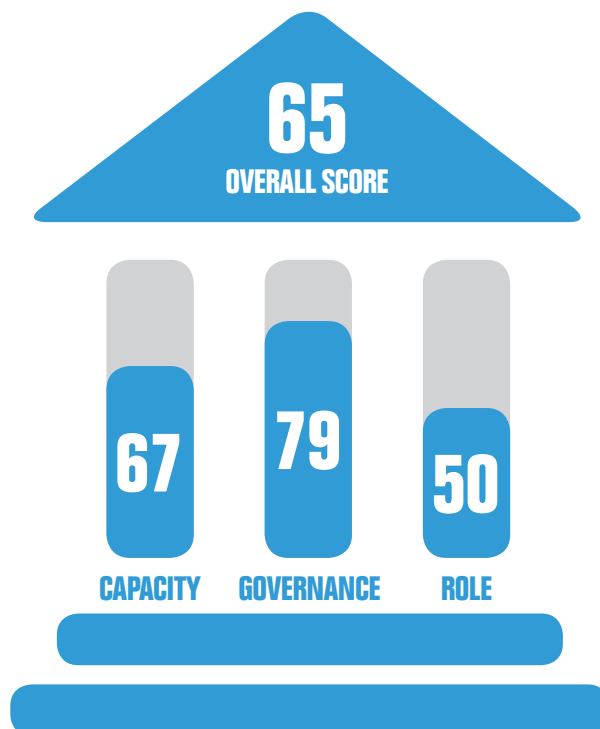
OVERVIEW

The Office of the Auditor General (OAG) is a relatively well-established institution, which conducts audits of financial statements and performance of public institutions. Since the 2011 National Integrity System (NIS) assessment its budget has almost doubled and the quality and number of audits has increased further.

However, the reports produced by the OAG do not receive enough attention by the authorities in charge of planning the budget for the following year or the Assembly of the Republic of Kosovo (the Assembly) to hold public officials accountable. More importantly, investigation and prosecution authorities do not use audit reports produced by the OAG as a source of information to initiate investigations.

Since the end of supervised independence in September 2012, a sunset clause in legislation has ensured the selection of a local general auditor. The mandate of the international general auditor expired in August 2014. Kosovo's institutions now have an opportunity to appoint an individual that would enable the strengthening of this institution, but there are concerns that a local general auditor may expose the institution to more political interference.

The table on the right presents the detailed indicator scores assigned to the Office of General Auditor in terms of its capacity, its internal governance and its role. The remainder of this section presents the qualitative assessment for each indicator.





OFFICE OF THE AUDITOR GENERAL



	Indicator	Law	Practice
Capacity	Resources	-	75
	Independence	75	50
Governance	Transparency	75	75
	Accountability	100	75
	Integrity mechanisms	75	75
Role	Effective financial audits		75
	Detecting and sanctioning misbehaviour		25
	Improving financial management		50





ASSESSMENT

RESOURCES (PRACTICE)



To what extent does the Office of the Auditor General have adequate resources to achieve its goals in practice?

The 2011 NIS report assessed that the OAG did not have the necessary resources to achieve its goals. It was heavily supported by international organisations as the head of this institution – the auditor general – was an international appointed from the International Civilian Office. These additional resources complemented the budget allocated from the government to increase the number of staff and their capacity.

The budget of OAG has steadily increased. The final budget of 2013 was 9.5 per cent higher than in 2012, whilst the budget of 2012 was 3.8 per cent higher than in 2011.¹ Overall, since the last assessment in 2011, the budget allocated to the OAG has almost doubled to 2,247,515 euro² by 2015. Subsequently, the staffing table has increased by 30 new slots to 146 staff.³ However, the OAG “continues to rent its offices and does not have a permanent address.”⁴

According to the OAG annual report, 127 out of 140 employees were engaged for over two years at the OAG and the staff turnover for 2013 was 3.75 per cent.⁵ Significant progress has been made in the institution’s capacity building: over 3,000 hours were invested in staff internal training and 1,500 additional hours in staff external training, excluding the certification schemes for auditors.⁶

INDEPENDENCE (LAW)



To what extent is the Institution of Auditor General independent in its operation?

The 2011 NIS report presented the OAG as a body established by the Constitution as the highest institution of economic and financial control. Its organisation, operations and competences are stipulated in the Constitution and law. The OAG Code of Ethics and the Code of Conduct are based on the internationally recognised auditing standards of INTOSAI.⁷ They specify how the whole staff shall carry out duties in an impartial and professional way. These legal provisions have not changed since 2011.

The only amendment made to the Law on the Establishment of the Office of the Auditor General of Kosovo and the Audit Office of Kosovo⁸ was the one which effectively removed the legal requirement for the auditor general to be an international appointee by the International Civilian Representative. This came into effect in 2012.⁹ A new auditor general is expected to be appointed by the Assembly.

Overall, legal provisions ensure a relatively high level of independence of the OAG. The auditor general is elected by the Assembly and can be dismissed by two-thirds of votes of MPs, upon the president’s proposal, or at the motion of one-third of MPs. The auditor general is accountable to the Assembly regarding all operational aspects and also – as head of an independent organisation – for the way his own budget is executed.

INDEPENDENCE (PRACTICE)



To what extent is the institution free from external interferences in performance of its work in practice?

The 2011 NIS study assessed that in practice the OAG had partial independence, noting a couple of cases of interference or attempted interference in its work. It also noted



that independence of this institution was guaranteed due to the fact that the head was an international appointed by International Civilian Office. Since the last assessment no interference in the work of the OAG has been evidenced.

The mandate of the international head of OAG expired in September 2014 and according to the Constitution a new local auditor general needs to be appointed by the Assembly. However, the political deadlock that lasted six months led to procedural delays in the appointment of the new auditor general. The fact that a local auditor general is to be appointed may expose the institution to political influence. The Assembly failed to appoint the proposal by the president of Kosovo, as there was no agreement between the MPs on the proposed candidate.¹⁰ The deputy of the OAG also confirms that he “fears that there might be pressure on the new local General Auditor and as a result the new OAG will only focus on compliance with the law to perform regular audits.”¹¹

A serious threat to the independence of the OAG would come from the political entities that may work towards curtailing the independence of a local auditor general, either through the selection process or through undue influence once in position. Experience of the appointment processes in other independent institutions indicates this threat is real. The Union of the Workers of the OAG publicly complained regarding the ignored recommendation they provided to the governmental working group that “persons with political background cannot apply for the position of the Auditor General.”¹²

TRANSPARENCY (LAW)

SCORE

2011

75

2015

75

To what extent are there provisions guaranteeing to the public the right to obtain relevant information on OAG activities and decisions?

Since the 2011 NIS report the legal provisions regarding transparency have not changed. They continue to guarantee the public the right to obtain information on activities of the OAG. According to the legislation, audit reports are to be made public. Similarly, Regularity Audit reports (including opinions on the annual financial statements, performance audit reports, the comprehensive annual audit report, as well as the OAG annual performance report are all public.

TRANSPARENCY (PRACTICE)

SCORE

2011

75

2015

75

To what extent are the Auditor’s activities and decisions transparent?

The 2011 NIS report assessed that the OAG publishes general information on its website, including the legal basis, policies, standards, manuals and guidelines. Further the OAG publishes and sends to the Assembly its annual audit reports. These practices have not changed.

The OAG’s¹³ website is frequently updated with new documents that are legally required to be published. The OAG publishes regularity audit reports¹⁴ (of ministries, municipalities, public enterprises, and independent institutions), management audit reports,¹⁵ performance audit reports¹⁶ and reports on the OAG itself.

The OAG sends the audit reports on time to the Assembly for review before 31 August for the previous year. The Assembly reviews the annual audit report during a plenary session. The latest such report was discussed and adopted on 14 November 2013 and for the first time allowed the general auditor to present the report in person.¹⁷

The annual audit report¹⁸ contains detailed information on following: external audit and accountability; the Kosovo budget annual financial report and government accountability; financial management and control; and, executing the budget in the public sector. This report is addressed to the MPs of the Assembly.

ACCOUNTABILITY (LAW)

SCORE

2011

100

2015

100

To what extent are there provisions ensuring that the OAG reports and is accountable for its actions?

The legal provisions regarding the accountability of the OAG have not undergone any changes since the 2011 NIS report. It assessed that there were extensive legal provisions



to ensure that OAG was answerable for its actions. These provisions included the requirement of the OAG to produce annual financial statements and annual performance reports, which include opinions given by an external auditor. The external auditor is selected by the Assembly.

the OAG produces and publishes reports on its performance and reports regarding the audits it conducts on its website. These ensure that the OAG continues to remain accountable. However, as noted above, there was a lack of direct accountability of the head of the institution with regard to the Assembly.

ACCOUNTABILITY (PRACTICE)



To what extent does the OAG have to report on and be held accountable for its actions in practice?

The 2011 NIS report evidenced that the OAG prepares an annual performance report, which is sent to the Assembly. The assessment also noted that the internal auditor was only appointed in 2010. Back in 2010 the Assembly engaged a private external auditor to audit the financial statements of the OAG.

The OAG continues to produce annual performance reports,¹⁹ which are inward looking and focus on result indicators, resources (both financial and human), cooperation and the future focus of the OAG institution itself. These reports are deliberated in Assembly.

The OAG's operations are continuously assessed by an internal auditor who evaluates the effectiveness of the internal systems. According to the OAG, accountability is also ensured through the international partners with which they cooperate.²⁰

The Assembly appoints the external auditor who audits the OAG's annual financial statements. The latest audit, which was done for 2013, can also be found in the performance report prepared by the OAG.²¹

Until mid-2014 the auditor general was internationally appointed by the International Civilian Office. Although the auditor general was bound to report to the Assembly, in practice it would be virtually impossible for the Assembly to discharge him. This was planned to ensure greater independence of the auditor general and the OAG, but also demonstrated a lack of accountability towards local institutions.

In general, the OAG is accountable to the Assembly and in particular to its Committee on Public Finances.²² Likewise,

INTEGRITY MECHANISMS (LAW)



To what extent are mechanisms ensuring the auditor's institutional integrity implemented?

The legal provisions entailing to the integrity of the OAG and its staff remain the same as in 2011. The OAG has adopted the INTOSAI Code of Ethics, based on which a Professional Code of Conduct was developed, with the aim of its application by all staff. The Law on the OAG²³ and the Code of Ethics and Auditing Standards²⁴ are applicable to date.

INTEGRITY MECHANISMS (PRACTICE)



To what extent is the integrity of the institution of the auditor ensured in practice?

The 2011 NIS report assessed that the integrity of the OAG was somewhat ensured. The OAG's personnel are familiar with and sign the Code of Conduct. In addition, each auditor on an annual basis and prior to starting an individual audit assignment signs a document asserting that she/he does not have any specific interest in relation to the assigned project. It also noted that the OAG staff undergo training and different stages of certification.

To date no staff have been sanctioned for violating the Code of Conduct. A dismissal case occurred in 2014, as a result of lack of performance.²⁵ Like the legal aspect of integrity



mechanisms the practical aspect has not undergone any changes. However, the lack of any substantiated criticism towards audit reports prepared by the OAG is an indicator that the integrity mechanisms in place are functioning rather well.

EFFECTIVE FINANCIAL AUDITS (LAW AND PRACTICE)

SCORE 2011 **50** 2015 **75**

To what extent does the OAG offer effective audit on public expenditures?

The 2011 NIS report noted that the OAG conducts regularity/statutory audits of financial statements and compliance, but also to conducts performance audits, although to a lesser extent. In 2011, regularity audits included organisations with 80 per cent of total expenditures and 95 per cent of total Kosovo budget revenues. Performance reports were sporadic and in 2010 only one performance report was conducted.

In 2013 these indicators increased. The audit of the 2013 annual financial statements covers all budget organisations except the Kosovo Intelligence Agency, representing 100 per cent of the total revenues and 99 per cent of the total expenditures of the Kosovo budget.²⁶ As for performance audits, these types of audits also increased and 17 such audit reports were produced in 2013.²⁷

The statutory reports on the regularity of financial statements and compliance are regular and cover all budget organisations. The OAG also prepares a report on the audit of the Kosovo budget as a whole.

The regularity/statutory audits are published in a timely manner and are sent to the Assembly as the highest authority to oversee the expenditure of the Kosovo budget. The Parliamentary Committee for Public Finances has used these audit reports to “hold Government representatives to account for the way they managed public resources.”²⁸

In addition, the OAG staff participate in the meetings of the Parliamentary Committee on Public Finance when audit reports of different budgetary entities are discussed. According to the OAG, “17 individual audit reports and the Annual Audit Report were discussed and accountable persons were subsequently required to implement actions and improvements.”²⁹

Due to a lack of resources (personnel) the OAG does not audit the finances of political parties.³⁰ The financial reports – both annual reports and campaign disclosure – are audited by independent auditing companies according to the Law on Financing of Political Parties³¹. The political deadlock, which hampered the functioning of the Assembly, disrupted the selection of independent auditors by the parliament and as a result political party campaign expenditures were not published for over a year following the official deadline in July 2014.

DETECTING AND SANCTIONING MISBEHAVIOUR (LAW AND PRACTICE)

SCORE 2011 **0** 2015 **25**

Does the auditor investigate and find irregularities with public servants?

The 2011 NIS report noted that the auditor general had no specific mechanism to identify irregularities besides the internationally recognised auditing standards. The law gives the auditor general the authority to perform, at any time, an audit of the work of institution, or entity for which the OAG has authorisation.

Failure to sanction the misbehaviour detected by audits is an important contributor to the impunity of public officials who are engaged in corrupt activities. In this regard there is no specific formal mechanism of cooperation between the OAG and prosecution to report mismanagement of public funds by public servants. Improved cooperation with the prosecutor's office is also a request of the OAG workers union.³²

There are some discussions between the head of the OAG and EULEX to flag audit reports where there is suspicion that a criminal offence may have been committed. Currently financial investigators from the police contact the OAG to obtain information.³³ Thus, cooperation takes place, but it is not systematic. As a result, it is assessed that the auditor general fails to contribute to the prosecution of corruption due to the lack of cooperation with other stakeholders. Nevertheless, the OAG manages to detect serious mismanagement of public funds by different institutions.



IMPROVING FINANCIAL MANAGEMENT (LAW AND PRACTICE)



To what extent is the OAG effective in improving the financial management of the government?

The 2011 NIS report noted that the OAG provides recommendations in its reports when it audits different public institutions. However, the recommendations to increase value for money and avoid risks are not systematically taken into account. This has not changed since 2011.

To illustrate this, the individual audit reports for 38 municipalities in 2013 emphasised that in total there were 425 recommendations addressed to municipalities in 2012. Out of these 203 were not addressed at all, 109 were partly addressed and 113 were totally addressed.³⁴ A similar pattern has been followed by central government. Of 317 recommendations, a quarter of them were not addressed.³⁵ The recurring trend of avoiding the OAG recommendations produces the repetition of the same violations, loss of public money and lack of controls.

According to the OAG “there is no demand for recommendations on performance reports.”³⁶ The Assembly as the oversight institution is not reviewing and taking action on reports that are already provided by the OAG. The OAG reports are not taken into account when it comes to planning the budget for the following year or holding public officials or managers accountable. There clearly is a break in the control chain to improve the financial management of the government.

RECOMMENDATIONS

- > The Office of the Auditor General should increase its cooperation with prosecutors and the police unit for economic crimes and corruption by establishing a mechanism for regular exchange of information.
- > The auditor general’s reports should be taken into account by the Assembly committees when reviewing annual performance reports of independent organizations. The government and Assembly should also take into account the findings and recommendations in audit reports when planning the state budget.
- > The OAG should increase the number of performance reports it produces.
- > The Law on the Office of the Auditor General should be amended to streamline the appointment process of the Auditor General.



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KOSOVO ANTI-CORRUPTION AGENCY

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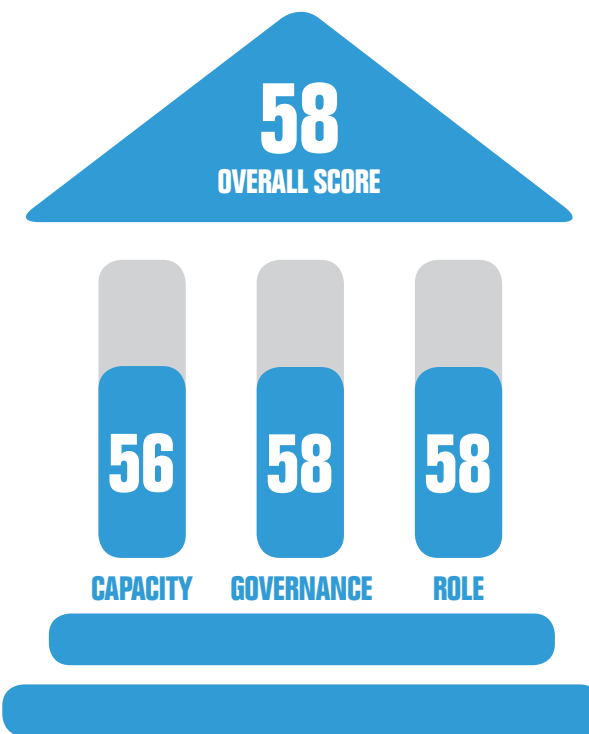
OVERVIEW

The Kosovo Anti-Corruption Agency (KACA) was established in July 2006 and became operational in February 2007. The Assembly of the Republic of Kosovo (the Assembly) selects its director based on open competition and the normative aspects regarding this have not changed since the 2011 National Integrity System (NIS) report. Resources allocated to the KACA by the Assembly, were reported as insufficient, inconsistent and not proportional to the overall trend of the increasing state budget.

In terms of the organisational setup within the institutions in Kosovo, the KACA plays an important role since it is the focal point for combating and preventing corruption in Kosovo. However, there is institutional overlap in fighting and preventing corruption, which causes confusion amongst citizens. The KACA's main activities include investigating corruption (labelled law enforcement in Law on KACA), corruption prevention and civic education/participation. Although the KACA has competences to investigate corruption, it has not been provided with the legal means to do so. Given that the KACA is deprived of exercising this competence effectively its role on law enforcement should be reviewed. The prosecutor could potentially absorb the accumulated knowledge and personnel to investigate corruption cases.

The KACA relies heavily on international support for public education, and since this type of support was reduced, there has been little public outreach. The KACA should allocate its own resources to boost public education and should rely less on ad hoc support from international organisations.

The graph presents the indicator scores, which summarise the assessment of the KACA in terms of its capacity, its internal governance and its role. The remainder of this section presents the qualitative assessment for each indicator.





KOSOVO ANTI-CORRUPTION AGENCY



	Indicator	Law	Practice
Capacity	Resources	50	50
	Independence	75	50
Governance	Transparency	100	25
	Accountability	50	50
	Integrity mechanisms	75	50
Role	Prevention		75
	Education		50
	Investigation		50



STRUCTURE AND ORGANISATION

The KACA is an independent and specialised body responsible for implementing state policies for combating and preventing corruption in Kosovo.¹ It employs 40 staff members including a director and is composed of three departments: the department of investigations, the department of corruption prevention and the department of administration.² According to the Law on KACA, it also has the right to initiate investigations into suspected cases of corruption, but only the cases that are not being investigated by other investigating authorities.

In terms of the organisational setup within the institutions in Kosovo, the KACA plays an important role since it is the focal point for combating and preventing corruption. However, there is institutional overlap in fighting and preventing corruption, which causes confusion amongst citizens. Currently, there are numerous institutions/bodies that address corruption issues, including the President's Anti-Corruption Council, the KACA, the Anti-Corruption Task force in the Special Prosecution's Office, the networks of prosecutors coordinating corruption cases in six Basic Prosecution Offices and in the Pristina Office, and the EU Rule of Law Mission in Kosovo (EULEX).

ASSESSMENT

RESOURCES (LAW)



To what extent are there provisions that ensure sufficient resources for the Kosovo Anti-Corruption Agency to effectively carry out its duties?

The 2011 NIS report assessed that the KACA independently proposes its budget, but fiscal sustainability is not guaranteed. It also considered that the KACA's legal framework to carry out its duties was largely in place. This legal framework

has not undergone any changes. The KACA is still unable to generate its own income from asset seizure. However, external funding may be secured through donations from international organisations. An example is the World Bank funding of 27,600³ euro at the end of 2013.

RESOURCES (PRACTICE)



To what extent does the KACA have adequate resources to achieve its goals in practice?

The 2011 NIS report assessed that the KACA's budget was sufficient for the agency to achieve its goals. In terms of staffing it evaluated that the KACA staff lacked the necessary skills, both academic and work experience, to fight corruption.

In comparison with 2011, the current budget does not show any significant increase. On the contrary, compared to the overall increase of the state budget, in relative terms the budget has decreased. In 2014, the total allowed expenditure amounted to 485,000 euro.⁴ As the KACA's budget for 2010 was around 500,000 euro, this represents a significant decrease, especially if taken in account that the overall state budget was increased by almost a third during these years. Budget projections for 2015 and 2016 do not show any planned increase.⁵ In spite of this, the KACA's budget execution over the past three years has varied from 93 per cent in 2012, 88 per cent in 2013 and 94 per cent in 2014. These swings in budget execution suggest that budgetary resources for the KACA are therefore sufficient. The average salary at the KACA in December 2013 was 597 euro and in 2014 this was 708 euro.⁶

Since 2011, the KACA's staff contingent has increased by nearly 14 per cent and currently counts 40 people.⁷ The employees benefit from capacity-building opportunities mainly supported by international donors to improve on their skills in fighting corruption. This combined with the experience gained over years leads to the overall improvement in the KACA's performance.⁸ The director of KACA, Hasan Preteni, was re-elected in September 2011 for another five-year mandate.



INDEPENDENCE (LAW)

SCORE

2011

75

2015

75

To what extent is the KACA independent according to law?

The 2011 NIS report assessed that according to the legislation, the KACA “as an independent and specialized body” that “operates as an independent entity and not as part of any ministry or other institution”.

Since then this legislative framework has not been amended, the KACA’s position within Kosovo’s organisational setup has not changed and legally its independence has not been threatened. In theory, the government may influence the KACA primarily via the budget, since its approval goes through the government before passing to the Assembly. Similar to the budgetary process for the Constitutional Court,⁹ the KACA’s budget should not be reviewed by the government but only by the Assembly to ensure its independence.

The 2011 NIS report also noted that the director of the KACA is elected for a term of office of five years with the possibility of re-election for only one additional term. The director’s termination without a cause is well protected by law. The director may be dismissed by the Assembly in the event he or she fails to fulfil the legal mandate, is convicted of a criminal offense, or there is a conflict of interest between the director function and any other duty.¹⁰ This provision has not been amended. However, according to KACA officials “none of the staff, including the Director have any immunity from prosecution” in the normal discharge of their duties.¹¹ This implies that charges may be filed against KACA officials for other issues, but to date this has not happened.

INDEPENDENCE (PRACTICE)

SCORE

2011

50

2015

50

To what extent is the KACA independent in practice?

The 2011 NIS report concluded that, the KACA has endeavoured to remain independent and impartial despite tendencies

to be influenced externally.” According to KACA officials these tendencies to influence the work of this institution have continued. The KACA did not divulge where the pressure came from, but has publicly requested a stop to such practices.¹² Similarly the KACA’s annual report states that, “although exposed to some pressure or tendency of influence in its work, nevertheless the Agency remains committed to achieve its mission defined in legal framework.”¹³ According to KACA officials, “there is no direct pressure, however there were some attempts which were stopped once they were made public.”¹⁴

These allegations cannot be independently verified as the KACA does not divulge where this pressure or tendency to influence its work comes from. It is worth noting that the director or senior staff members have not changed or been replaced since 2011.

TRANSPARENCY (LAW)

SCORE

2011

100

2015

100

To what extent are there provisions that ensure the public can obtain relevant information on the activities and decision-making processes of the KACA?

The 2011 NIS report presented the legislative framework, which ensures access to information on the KACA’s activities. The type of documents and deadlines for their publication are disclosed in the Law on Kosovo Anti-Corruption Agency and Law on Access to Official Documents. Since 2011 the legislation has not been amended.

In an attempt to bypass transparency sanctioned by Law No. 04/L-050 on Declaration of Assets, the National Agency for Personal Data Protection, required to remove the declaration of assets from the online domain.¹⁵ However, following an outcry from civil society and media, the draft law was not adopted. The current law continues to allow the publication of asset declarations.

Overall, the legislative framework ensures access to the KACA’s reports, decisions and opinions. The KACA continues to make available to the public the registers of assets of senior public officials as well as decisions on conflicts of interest. However, the KACA could improve reporting of aggregate data regarding the non-declaration of assets and the number of investigations forwarded to the prosecutor.





TRANSPARENCY (PRACTICE)



To what extent is there transparency in practice in the KACA activities and decision-making processes?

The 2011 NIS report assessed that the KACA provided its reports required by law in a timely fashion. The frequency of reporting and the contents of the annual reports sent to the Assembly have not changed and, again, are in line with the legislation. The annual report is published online on the KACA's website¹⁶ and is made public through a press conference. In addition to this the KACA also publishes its decisions and opinions on conflicts of interest.¹⁷ These decisions serve to implement the Law on Prevention of Conflict of Interest in Discharge of Public Functions.¹⁸

The KACA's webpage continues to be written in three languages: Albanian, Serbian and English. However parts of the webpage have not been updated for years. For instance, the KACA's reporting on its public awareness activities is six years old.¹⁹

According to the NGO FOL Movement, the KACA's transparency has increased from 48 points in 2011 to 53 points in 2012, on a scale where 0 represents a "closed" institution and 100 represents a "totally open" institution.²⁰ The same report notes that the KACA's work-plan contains an objective to strengthen transparency and closer cooperation between the KACA and the public. Activities to meet this objective relate to the publication of documents and information of the KACA where public access is permitted. However, this analysis is not corroborated by the field tests conducted in 2015 for the purpose of this assessment, which resulted in no information being provided to our partner organisations and journalists on the four requests for information sent to the KACA.

There is room for improvement regarding the level of cooperation between the KACA and civil society. A joint meeting between civil society and the KACA was held on 12 September 2014 with support from the UNDP.²¹ One of the recommendations from this meeting was that, "the agency should publish statistical data on periodic basis with the number of criminal charges it addresses to the competent prosecutions." Although the KACA provides reports required by law in a timely fashion, the law does not prevent the KACA from publishing these reports on a quarterly basis, which would benefit the public.

ACCOUNTABILITY (LAW)



To what extent are there provisions ensuring the KACA reports and is held accountable for its actions?

The 2011 NIS report noted that the KACA is accountable to the Assembly, to which it reports once a year and to the Assembly Committee for Legislation and Judicial matters every six months. The reporting requirements have not undergone any changes.

The KACA is annually audited by the Office of the Auditor General.²² The latest audit report²³ states that, "Anti-Corruption Agency has applied effective internal controls to ensure that financial systems operate as intended." The audit report for the previous year²⁴ notes that, "notwithstanding the progress, some areas need significant improvement" and lists procurement procedures, management of expenditures not subject to procurement procedures and asset management.

The Law on KACA states that the "Assembly of Kosovo based on this Law and its Rules of Procedure, establishes the Oversight Committee of the Agency." However, the Parliamentary Committee on Legislative Matters assumed the competences of this committee.

ACCOUNTABILITY (PRACTICE)



To what extent does the KACA report and is held accountable for its actions in practice?

The 2011 NIS report assessed that the Assembly holds the KACA accountable. The director of the KACA reports to the Assembly once a year and to the Assembly Committee for Legislation and Judicial matters twice a year. This practice has not changed since the last assessment.



The KACA submits its annual report to the Assembly, which is discussed in detail in the Assembly Committee for Legislative and Judicial Issues and in the plenary session in the Assembly.²⁵ However, the KACA's annual reporting is considered insufficient by civil society organisations, given that it is required that, "KACA shall publish statistical data on periodic basis enclosing the number of criminal charges that are addressed to the competent prosecutions."²⁶ Opposition MPs also criticise the KACA's report because it does not touch upon corruption at large, but only lists the activities of KACA for the reporting period.²⁷

Details on corruption cases investigated by the KACA, which resulted in 128 information and criminal charges during 2013²⁸ are not disclosed. This situation has not changed since 2011. Disclosing cases would ensure greater transparency and would point to how they were handled, which cases they were, of what nature, which institutions were involved, why were they closed, etc. in an aggregated form.

According to 'Cohu' "KACA was never accountable towards the Parliamentary Committee on Legislative matters until 2015 when this Committee defined its mandate and included in its title 'oversight of KACA.'²⁹ So for over three years an external body never reviewed the KACA's director's and senior management's declarations of assets.³⁰

sanctions (such as fines or imprisonment up to three years) if failure to disclose property, income, gifts, other material benefits or financial obligations was recorded. The punishment measures in previous legislation were relatively low administrative fines.³³

The Law on Civil Service³⁴ regulates some issues regarding integrity such as performance of duties and the obligation to implement legislation; the duty to abstain from abuse of authority; the duty to refuse undue rewards; the duty to abstain from unduly rewarding for other civil servants; the duty to inform and justify administrative action; the duty to secrecy and respect of privacy; the duty to keep high standards of professional performance; the duty to be present; the use of public property; the duty to comply with orders and pursue mandatory administrative actions; and the refusal to perform illegal acts or criminal offences. The KACA has its own Code of Ethics, which defines conflicts of interest and regulates different issues.³⁵ Due to its strict hierarchical structure, where no internal information makes it to the public it is unknown how and if these regulations are implemented.

INTEGRITY MECHANISMS (LAW)



To what extent are there mechanisms that ensure the integrity of KACA officials?

The 2011 NIS report assessed that the rules applicable to all civil servants in Kosovo are applicable to the KACA officials and officers, namely the Civil Service Code of Conduct (01/2006). The Code "seems to be obsolete" in the view of the current applicable legal changes, as it has been adopted on the basis of the previous legal framework.³¹

Law on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Official Persons³² was amended in 2014. The updated law increased the number of officials that are required to declare assets and was harmonised with the amended Criminal Code, which imposed rather heavier

INTEGRITY MECHANISMS (PRACTICE)



To what extent is the integrity of KACA officials ensured in practice?

The 2011 NIS found that there were no cases of penalisation as a result of violations of the Civil Service Code by KACA officials. From 2011 to date, no violations of the Code of Conduct that would lead to dismissal of KACA staff were noted.³⁶ This either means that procedures to enforce existing integrity mechanisms are not in place or that the KACA employees strictly follow the legislation and procedures that ensure integrity.

According to the Law on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all official persons,³⁷ the KACA's senior officials are required to declare their assets. The verification procedure included in the amendment of this law in 2014, as stipulated in Article 15 requires that "at least twenty percent (20%) of the forms shall be subject to

the full control each year. Selection of declarations to be subject of full control shall be done by a draw.” The random 2014 draw resulted in the inclusion of the KACA’s director, which may be considered inappropriate, as the vetting will be done by the KACA. This issue needs to be remedied through legislative changes.

Since the KACA is in charge of taking measures regarding conflicts of interest in other Kosovo institutions, it should lead by example by publishing all materials regarding the procedures to implement the Code of Ethics, integrity mechanisms, conflicts of interest, etc. Some of the KACA’s employees appear to be trained on integrity issues as reflected in the KACA’s annual report.³⁸ According to KACA officials “the ethics code for KACA employees exists, and all employees of KACA are informed.”³⁹

As a result, cases that should never have been submitted to the prosecution were sent there by the KACA.

As in 2011, the KACA still has a department on corruption prevention, which is based on three pillars: oversight and control of assets, gifts, and prevention of conflict of interest. The capacity for oversight and control of assets by the KACA continues to increase due to legal changes and internal capacity-building. The KACA “has the capacity to verify the origin and veracity of the assets declared,”⁴⁸ and this is a major improvement. It continues to improve monitoring and control of gifts. In 2013 the KACA started to conduct field visits in other institutions to check compliance with legislation⁴⁹ regarding maintenance and reporting of a gift catalogue. On the issue of conflict of interest prevention the KACA has continuously increased the number of cases it reviewed and the opinions it provided.

PREVENTION (LAW AND PRACTICE)



To what extent is KACA engaged in corruption prevention activities?

The mandate of the KACA in 2011 and presently is based on Law on Prevention of Conflict of Interest, the Law on Declaration of Assets⁴⁰ and the Law on KACA.⁴¹ As a result of amendment of Criminal Code in 2013,⁴² the Law on Declaration of Assets⁴³ was also amended and made the failure to disclose property, income, gifts, other material benefits or financial obligations, punishable by a fine or imprisonment up to three years, compared to a previous relatively low administrative fine. This change has resulted in an improvement in the declaration of assets in 2014 when only two officials did not declare their assets,⁴⁴ compared with 29 in the previous year.⁴⁵ Another improvement that the amendment of the Law on Declaration of Assets brought was that at least 20 per cent of the forms will be subject to full control each year.⁴⁶

However, these changes did not produce any positive effect. Sanctioning is non-existent mainly due to the fact that the courts misinterpret the law and issue fines instead of imprisonment. The other issue stems from the fact that the KACA has never asked for additional information from officials that were considered to have falsely declared their assets.⁴⁷ Requests for additional information are a requirement from the KACA Regulation No. 01/2014 Article 26.16.

Number of cases reported and opinions regarding conflict of interest

	2011	2012	2013
Cases	54	131	238
Opinions	7	4	20

SOURCE: KACA ANNUAL REPORTS.

In terms of improving legislation the KACA continues to be involved and was part of the working groups providing input to the Assembly on legislation. It was also in charge of drafting the Anti-Corruption Strategy and Anti-Corruption Action Plan 2013-2017.⁵⁰ It is in charge of monitoring the implementation of the Anti-Corruption Strategy and Anti-Corruption Action Plan and produces bi-annual reports.⁵¹

In general, therefore, the KACA’s corruption prevention capacities and scope have increased since 2011. The effects of this improvement, however, are not noticeable in practice. As discussed under resources (practice), the internal accumulated capacities and know-how place the KACA in a good position to provide input to different corruption prevention policies to other decision-making bodies.

EDUCATION (LAW AND PRACTICE)

SCORE

2011

75

2015

50

To what extent does the KACA engage in public education on fighting corruption?

The 2011 NIS assessment noted that the KACA held several campaigns, debates and seminars to increase awareness regarding corruption prevention. These events, mostly sponsored by international organisations were organised both at the central and local levels. This trend appears to have significantly decreased since 2011. The latest dated activity on the KACA's Education/Public Participation webpage is a campaign in Kosovo's municipalities in 2009.⁵² According to the KACA "there were many campaigns since 2007."⁵³ A public information campaign was organised together with EULEX in 2014. The KACA's annual reports do not show any significant engagement for enhancing public awareness across the country. This shows that the KACA is overly-reliant on external support regarding the educational part of its mandate, and with decreased support its public education engagement has declined.

As noted in 2011, however, the KACA continues to receive a lot of publicity when it publishes the register of declared assets, and when it publishes the annual report which features prominently in the Assembly's agenda. The KACA director and other officials participate in a lot of debates and talk-shows and these also serve to promote the KACA and educate the public regarding the fight against corruption.

The level of cooperation between the KACA and civil society is very low. Only one joint meeting between civil society and the KACA was held on 12 September 2014, with support from the UNDP,⁵⁴ which is not enough for the purpose of reaching better cooperation.

INVESTIGATION (LAW AND PRACTICE)

SCORE

2011

75

2015

50

To what extent does the KACA engage in investigations pertinent to corruption suspected cases?

The 2011 NIS assessment observed that the KACA has competences to investigate corruption according to the Law on KACA.⁵⁵ It also assessed that there is ambiguity in laws and provisions with regards to its competences in addition to the multiple institutions fighting corruption. These competencies have not changed and this situation has not improved.

There are multiple institutions that deal with corruption investigations, including the KACA, the Anti-Corruption Task force in the Special Prosecution's Office, networks of prosecutors coordinating corruption cases in six Basic Prosecution Offices and in the Pristina Office, and the EULEX. The EU funded Project against Economic Crime in Kosovo (PECK) implemented by Council of Europe concluded that "the limited co-operation and coordination by the various authorities responsible for detecting, investigating and prosecuting corruption offences and the lack of a proactive approach in investigating corruption offences appear to be some of major obstacles to effectiveness and the main reasons for a very low number of convictions for corruption."⁵⁶

According to KACA officials the cooperation with other law enforcement agencies currently "is at an appropriate level and very functional."⁵⁷ In April 2014, several ministries and agencies signed a Memorandum of Understanding to establish a National Coordinator to Combat Economic Crime,⁵⁸ with the aim to address the serious shortcomings in coordination between different agencies. The fruits of this cooperation are yet to materialise. In a follow-up report by PECK, their assessment team "observed an improvement in communication and co-ordination between KACA and Prosecutor's office," but they also state that, "the number of cases followed up by the prosecution remains below 10% and only very few cases result in a processed indictment."⁵⁹

In 2011 the KACA forwarded 39 cases to the prosecution and police for further processing. In 2012 52 cases were sent to prosecution and police and in 2013 this indicator

jumped to 128 and in 2014 there were 131.⁶⁰ However, due to lack of available data it is not possible to assess how many of these were followed up by the prosecutors and led to an indictment.

Although the KACA has competences to investigate corruption according to the Law on KACA, it has not been provided with the legal mechanisms to do so. For instance, prosecutors can request the application of intrusive covert and technical measures of surveillance and investigation,⁶¹ whereas the KACA cannot do so. The KACA relies heavily on other institutions to provide data to support their investigations.

A focus group conclusion was that police should be the primary point of contact for citizens with regards to denouncing corruption affairs as they are better equipped and more efficient than the KACA.⁶²

RECOMMENDATIONS

- > **The Assembly of Kosovo should review the law enforcement/investigation competence of the KACA, following a general review of the institutional set-up of anti-corruption mechanisms. The staff of the Law Enforcement Department within the KACA, with all the accumulated knowledge, should be repositioned in another law enforcement agency and/or within other KACA departments.**
- > **Other public institutions should take full advantage of the KACA's corruption prevention capacities and knowledge to conduct risk assessments and improve their corruption prevention policies by involving the KACA's staff to prepare these policies.**
- > **Public information campaigns should be organised and funded on the KACA's initiative and not be dependent exclusively on international donors.**
- > **The KACA should be able to propose its own budget and the review process should solely be at the discretion of the Assembly. Neither the government nor any other budgetary organisation should be able to amend or modify the budget proposal prepared by the KACA.**

ENDNOTES

- 1 Law on Kosovo Anti-Corruption Agency (03/L-159), Art. 3
- 2 See the website of KACA for further information on its organizational structure: <http://akk-ks.org/>
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- 4 See the website of Ministry of Finance on Approved Budget for 2014: <https://mf.rks-gov.net/en-us/ministriaefinancave/buxhetiirepublikessekosoves/buxhetiendrore.aspx>
- 5 See the website of Ministry of Finance on Approved Budget for 2014: <https://mf.rks-gov.net/en-us/ministriaefinancave/buxhetiirepublikessekosoves/buxhetiendrore.aspx>
- 6 According to the Office of the Auditor General 286,822 Euros were spent in 2013 on wages and salaries for 40 employees. The OAG report for 2014 stated that 340,202 Euros were spent in 2014 on 40 employees.
- 7 See the website of Ministry of Finance on Approved Budget for 2014: <https://mf.rks-gov.net/en-us/ministriaefinancave/buxhetiirepublikessekosoves/buxhetiendrore.aspx>
- Kosovo Anti-Corruption Agency, Annual Report 2014, p. 3. Prishtina, 2015.
- 8 For instance in 2011 only 39 cases were proceeded to the prosecution and police for further processing, in 2012 52 cases were sent to prosecution and police and in 2013 this indicator jumped to 128. Data from Annual Reports of Kosovo Anti-Corruption Agency.
- 9 Law 03/L-121 on the Constitutional Court of the Republic of Kosovo, Article 14.2. Available at: <http://gzk.rks-gov.net/ActDetail.aspx?ActID=2614>
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- 11 Written interview with Blerim Kelmendi, Director of the Department for Combating Corruption, Kosovo Anti-Corruption Agency, October 1, 2014
- 12 Press release by KACA on January 23, 2014. Available at: <http://www.akk-ks.org/?cid=1,4,672>
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- 14 Written interview with Blerim Kelmendi, Director of the Department for Combating Corruption, Kosovo Anti-Corruption Agency, October 1, 2014
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- 17 Decisions on conflict of interest can be accessed in the KACA webpage, <http://www.akk-ks.org/?cid=1,1170>
- 18 The Law on Prevention of Conflict Of Interest in Discharge of Public Functions can be accessed at <http://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2768>
- 19 <http://akk-ks.org/>
- 20 Movement FOL, Transparency Index IV, p. 31. Pristina, July 2013. Available at: http://levizjafol.org/documents/20140309070714_1215_en.pdf
- 21 Anti-Corruption Agency holds an open meeting with civil society, recommendations from this meeting can be accessed through the UNDP site (accessed on 15 October 2014): <http://www.ks.undp.org/content/kosovo/en/home/presscenter/articles/2014/09/12/anti-corruption-agency-holds-an-open-meeting-with-civil-society/>
- 22 Office of the Auditor General website <http://oag-rks.org/en-us/Home?>
- 23 Audit Report on the Financial Statements of the Anti-Corruption Agency for the year Ended 31 December 2014, Office of the Auditor General. Prishtina, 2015.
- 24 Audit Report on the Financial Statements of the Anti-Corruption Agency for the year Ended 31 December 2013, Office of the Auditor General, Document No: 24.35.1-2013-08, Pristina, June 2014.
- 25 Assembly of Kosovo, Transcript of Plenary Session held on 15 May 2015 available at: http://www.kuvendikosoves.org/common/docs/proc/trans_s_2015_05_15_10_5937_al.pdf
- 26 Anti-Corruption Agency holds an open meeting with civil society, recommendations from this meeting can be accessed through the UNDP site (accessed on 15 October 2014): <http://www.ks.undp.org/content/kosovo/en/home/presscenter/articles/2014/09/12/anti-corruption-agency-holds-an-open-meeting-with-civil-society/>
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- 28 KACA Annual Report January – December 2013, p.6
- 29 Parliamentary Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of Anti-Corruption Agency
- 30 Lorik Bajrami, Cohu. Contributions to the focus group discussion held on 24 April 2015.
- 31 Council of Europe, Project against Economic Crime in Kosovo (PECK), ; http://eeas.europa.eu/delegations/kosovo/documents/press_corner/2590_peck_ac_final_dar_17_06_2013.pdf ; p. 94 (Accessed on 8 August 2014)
- 32 Law No. 04/L-050 on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all official persons, can be accessed at <http://gzk.rks-gov.net/ActDetail.aspx?ActID=9445>



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- 38 KACA Annual Report January – December 2013 states that its staff underwent trainings on: Ethics Training for Public Officials; Ethics and Anti-Corruption in Public Administration; Prevention of Corruption: Implementation of Integrity Plans and Integrity Management and Integrity Planning - Train the Trainers.
- 39 Written interview with Blerim Kelmendi, Director of the Department for Combating Corruption, Kosovo Anti-Corruption Agency, October 1, 2014
- 40 The Law on Prevention of Conflict Of Interest in Discharge of Public Functions can be accessed at <http://gzk.rks-gov.net/ActDocument-Detail.aspx?ActID=2768>. Law No. 04/L-050 on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all official persons, can be accessed at <http://gzk.rks-gov.net/ActDetail.aspx?ActID=9445>
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- 44 Only Two Officials did not Declare their Assets. KACA, <http://akk-ks.org/?cid=1,4,697> (Accessed on October 16, 2014)
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- 46 Law No. 04/L-050 on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts, Article 15
- 47 The case of Nait Hasani and Duda Balje accused for penal act related to paragraph 437 of Penal Code on non-declaration and false declaration of assets. For e detailed elaboration see: Cohu, The Breakthrough Crisis p. 38. Available at: http://www.cohu.org/repository/docs/Analysis_Asset_Declaration_Eng_267906.pdf
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- 52 The latest dated activity in KACA's Education/Public Participation webpage is a campaign in Kosovo's municipalities in 2009. <http://www.akk-ks.org/?cid=1,14> (Accessed on October 17, 2014).
- 53 Written interview with Blerim Kelmendi, Director of the Department for Combating Corruption, Kosovo Anti-Corruption Agency, October 1, 2014
- 54 Anti-Corruption Agency holds an open meeting with civil society, recommendations from this meeting can be accessed through the UNDP site (accessed on 15 October 2014): <http://www.ks.undp.org/content/kosovo/en/home/presscenter/articles/2014/09/12/anti-corruption-agency-holds-an-open-meeting-with-civil-society/>
- 55 Law 03/L-159 on Kosovo Anti-Corruption Agency. Article 5. Agency Competences: 1.1 Initiates and undertakes the detection and preliminary investigation procedure of corruption, and forward criminal charges if for the suspected cases of corruption in competent public prosecutors office, if for the same case the criminal procedure has not been undertaken. Available at: <http://gzk.rks-gov.net/ActDetail.aspx?ActID=2662>
- 56 Council of Europe, Project against Economic Crime in Kosovo (PECK), p.12. Pristina, June 2013. Available at: http://eeas.europa.eu/delegations/kosovo/documents/press_corner/2590_peck_ac_final_dar_17_06_2013.pdf (Accessed on 8 August 2014)
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- 62 Conclusions from a focus group held with BIRN, Çohu, D4D, GLPS, Handikos, IKD, Internews Kosova, GAP Instute, PEN and YIHR on 24 April 2015



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POLITICAL PARTIES

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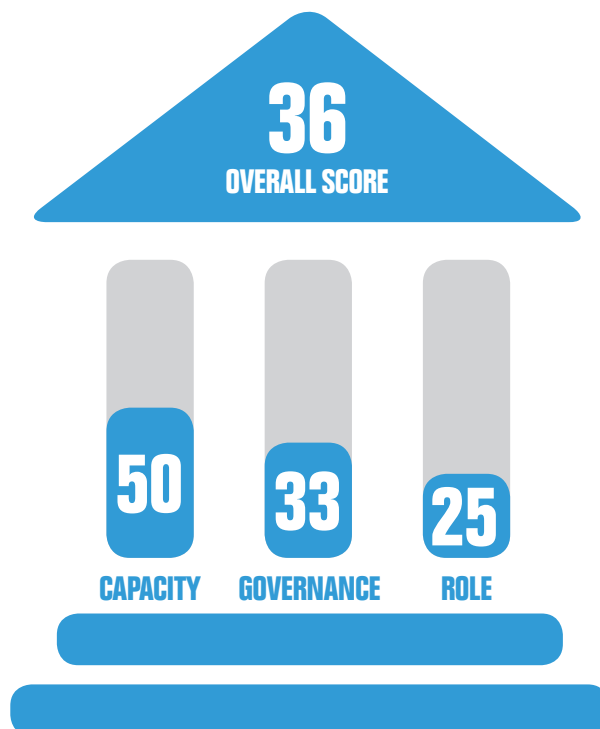


OVERVIEW

The Central Election Commission (CEC) largely regulates the activities of political parties. The CEC is a politically appointed institution, which sets all the rules from the registration and financial requirements to the sanctioning of political parties. Party financing remains the most problematic issue, as reported in the 2011 National Integrity System (NIS) report. Mainstream political parties are largely sponsored by private entities while their expense reports are not transparent. Minor changes to the Law on Political Party Financing were made and a few regulations have been adopted that require political parties to be more accountable. However, there are still many legal gaps, and in practice very little has changed since 2011.

In the last two years, attempts to reform the internal organisation of political parties were made on an ad hoc basis (e.g. recruiting of civil society and media activists just a few months before elections). Today political parties are still leader driven and undemocratic in their decision-making. Given this mind-set, for personal and political interests, they continue to exert influence over public institutions and undermine their independence. To that effect, political parties are seen as the least trusted institution in the country.

The graph presents the indicator scores, which summarise the assessment of political parties in terms of their capacity, their internal governance and their role. The remainder of this section presents the qualitative assessment for each indicator.





POLITICAL PARTIES



	Indicator	Law	Practice
Capacity	Resources	75	25
	Independence	50	50
Governance	Transparency	50	0
	Accountability	50	25
	Integrity mechanisms	50	25
Role	Interest representation		25
	Anti-corruption commitment		25



STRUCTURE AND ORGANISATION

Rule No. 01/2013 on Registration and Operation of Political Parties regulates the functioning of political parties. In addition, there are a number of laws regulating party funding, including the Law on Financing of Political Entities, the Law on General Elections, the Law on Local Elections and the Law on Kosovo Budget for Public Funding.

The Office of Political Party Registration and Certification is responsible for registering and maintaining a register of political parties. It was established by the CEC, which is in charge of administering the election process. There are 66 political parties and three citizens' initiatives registered.¹ In the national elections in 2014, there were 30 entities, including 18 political parties, seven citizens' initiatives, four coalitions, and an independent candidate. The leadership including the president of the political party is required to be elected by the party membership (assembly) in a democratic and transparent way.

In general, political parties in terms of their internal structures are much alike. The three main political parties, PDK, LDK and AAK, are presided over by a central Council/Committee. The Council of Vetëvendosja (VV) is another leading party representative and divided into both local and central/national levels.

political parties function, there is the Law on General Elections and rules set by the CEC. A political party has the right to establish based on the principle of freedom of association protected by the Constitution.² The Constitution has no definition for political parties, but a legal definition is found in the Law on General Elections, where "political party" is defined as "an organization of individuals which have come together voluntarily based on joint ideas, interests, and viewpoints."³

The CEC is required to register political parties. The Political Party Registration and Certification Office is responsible for certifying political parties, maintaining the registry, setting limitations on campaign expenditures and implementing provisions on financial reporting.⁴ It is led by the executive director who is required to report directly to the CEC.⁵ Its competencies are defined in greater depth in CEC Regulation 1/2013. For registration purposes, political parties are required to submit their application together with a list of documents including the party programme, list of senior party officials, latest financial reports, the date of the last party convention, and names and signatures of at least 500 members of the party living in Kosovo.⁶

The Law on Financing Political Parties regulates the sources of funding for political parties. Article 4 allows parties to draw funding from membership fees, donations, financing from the public budget, and income from the activities of political parties. Contributions are limited up to 2,000 euro for a calendar year for individual contributions and 10,000 euro for legal entities.⁷ For all contributions the origins of the funds need to be declared, and if this cannot be proved, the receiving political parties are obliged to report any dubious donation to the authorities, and the funds are to be given to Kosovo's budget. Further, with the new Law, private companies can make contributions only after three years past their contractual agreement with public institutions for offering goods and services.⁸

A specific budget amount is apportioned from the Kosovo budget to support political entities in the national elections. This fund is only destined for political parties represented in the parliament in a given year, and is allocated based on the number of MPs in the current mandate.⁹ In total, the sum cannot exceed 0.34 per cent of the budget, which is double the percentage (0.17 per cent)¹⁰ reported in the 2011 NIS study. This fund is allocated for the functioning of parliamentary groups, financing of electoral and pre-electoral activities of political parties, financing of the branches of the parties, and annual material expenses of the MPs.

ASSESSMENT

RESOURCES (LAW)



To what extent does the legal framework provide an environment conducive to the formation and operations of political parties?

The legislation pertaining to the existence and operation of political parties has not changed since 2011. While there is no constitutional provision and specific law to regulate how

RESOURCES (PRACTICE)

SCORE

2011

25

2015

25

To what extent do the financial resources available to political parties allow for effective political competition?

Political competition in the party system has not changed since the 2011 NIS study. To date, it is largely ineffective due to a lack of adequate funding and heavily biased funding against new and small political parties. Judging from the increased public and private funding in the last four years, the larger political entities benefit the most and are considered to be in a more stable financial state.

Political entities are required to be certified whenever running for elections. The requirement for collecting at least 1,000 signatures for national elections makes it difficult for the smaller political parties to register for competition in elections for the national parliament. In addition, they experience difficulties in raising funds and organising a serious election campaign. Hence, left to the discretion of CEC, smaller political parties cannot compete and ultimately cannot represent the interests of their constituents.¹¹

There is no reliable financial analysis of public or private financing of political parties. However, it is not difficult to estimate the depth of private funding in support to political parties. The total amount is allocated based on the number of parliamentary seats gained in the last general election. In weighting the costs spent in election campaigning in the last national elections in 2014, they far exceed the amount of funding apportioned by the government. On campaign expenses, the government gives to political parties 0.05 per cent of the budget for each election.¹² That comes to about 5 million euro, which in terms of value it is less than what political parties receive from private donations.¹³

The financial reports of political parties submitted to the CEC do not correspond with the reality on the ground. This is more in common among larger political parties, who often declare incomplete, inaccurate financial expenses for not reporting their private donations. This information is not updated in the webpage of the CEC or on the websites of political parties. Therefore, it is difficult to know the level of private funding that went to PDK or LDK, the two leading parties. Unfortunately, the CEC does not have sufficient staff to do its job. As specified in the anti-corruption assessment report of the European Council, “only three persons are working there

[Office of Political Entities Registration and Certification] and the salary of the members of the Office are rather bad in comparison with other comparable positions.”¹⁴

INDEPENDENCE (LAW)

SCORE

2011

50

2015

50

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

The law preventing unwarranted external interference is not so favourable to political parties. It is at the discretion of the CEC to disallow any state interference in the activities of political parties. This is very contradictory to the principle of independence, since the CEC is a politically elected institution, mainly run by the larger political parties who are in charge of the government.

The Political Party Registration Office within the CEC conducts two types of monitoring activity: It (a) requires holding periodical conventions, and (b) monitors expenditures. In both of these areas, there are legal gaps enabling parties to avoid some obligations. In the legal sense, oversight of authorities is primarily designed to protect the public interest, but only very basic oversight takes place.

There are two exceptions in relation to the participation of authorities in political party meetings. The first is the police presence in election campaign events.¹⁵ The second exception relates to the request that the Office or Municipal Election Commission is present at the political party conventions. Investigations and phone tapping may be conducted only in the manner prescribed by the Criminal Code.

In cases of deregistration of a political party, the Political Party Registration Office must act in agreement with the CEC. Grounds for the suspension of the registration of a political party are provided in Article 6 and 8 of CEC’s Rule on Party Registration: criminal liability, failure to submit or late submission of registration forms, non-certification by the CEC to take part on three consecutive elections, voluntary dissolution, leads to suspension for 48 consecutive months, and termination of work by a competent court.¹⁶ For any complaint, a political entity may appeal to the Election Complaints and Appeals Panel (ECAP) within 24 hours. The CEC serves as the first instance while ECAP as the last instance for any appeal that may arise during election periods.¹⁷



INDEPENDENCE (PRACTICE)



To what extent are political parties free from unwarranted external interference in their activities in practice?

Political parties are not generally exposed to external interference in their activities. There have been no serious attempts since 2011 by the state authorities to prohibit or interfere with political parties in representing their constituents. On another positive note, there is overall equal access to public venues during election time for all political parties, which was not the case in the past.

However, there have been many cases of intimidation and attacks on party activists at an individual level. The arrests of the members of the political entity Lëvizja Vetëvendosja during the public protests in January 2015 were criticised for being politically motivated by the government. In particular, the arrest of the Mayor of Pristina and his immediate release from jail seemed intimidating. The same happened with the arrest of other leading figures, including the secretary general of the same entity, which right after their arrests were set free.¹⁸

The government does not treat political parties equally when it comes to public financing. There is a financial gap and clear discrimination at the municipal level, in favour of ruling political parties. A similar assertion was made four years ago in the 2011 NIS study in reference to the privileges of the Democratic Party of Kosovo (PDK), which has been governing for more than eight years. The PDK today enjoys many privileges not only in relation to the budget but also in relation to representation in different public institutions. They continue to lead the most important committees and hold influence in appointing party activists to government.¹⁹

Hence, to some extent, there is intimidation during election season by the parties in charge of the government. They exercise pressure on civil servants to keep them under control and persuade them to vote in their favour.²⁰ This is most commonly exercised on public administration and state-owned enterprises. On the latter, CEOs of state-owned enterprises are under “extraordinary pressure to sign contracts, make decisions, and implement board policies.”²¹ In addition, they have almost no authority to resist political pressure on employment.²² According to a GAP study, 42 per cent of CEOs interviewed stated that they were under pressure to employ staff based on party preferences.²³

TRANSPARENCY (LAW)



To what extent are there regulations in place that require parties to make their financial information publicly available?

The legislation pertaining to the transparency of political parties has limited provisions that require them to make their financial information publicly available. This is partly due to the absence of a Law on Political Parties, which if approved would make transparency mandatory. For now, party functioning is regulated by the secondary legislation of the CEC. The Law on Financing Political Parties sets all the legal provisions, requiring that annual audits on financial statements are made on a regular basis.²⁴

Political entities must use one bank account for their transactions in one of the commercial banks in the country.²⁵ Their annual reports including financial statements on campaign expenditure must be made and kept public for at least a year on the official website of the political entity.²⁶ It is highly recommended that separate laws are drafted and approved in relation to the registration and operation of political parties.

All financial information must be archived for a time period of seven years, which must include invoices, bank statements, contracts, accounting books, and the list of contributions.²⁷ As far as funds, political parties must submit their annual financial report each year to the Political Party Registration Office. The report must include a balance sheet, profits and losses, and a transaction statement.²⁸

The Political Party Registration Office within the CEC maintains a Public Information File containing: a) register of donors, b) copies of all campaign financial reports, submitted to the office; c) copies of all candidate financial disclosure forms for certified candidates, submitted to the office, and d) copies of final reports of certified candidates in relation to the audit conducted by the office.²⁹ In addition, other information that must be made public includes the full name and surname, and personal information of every contributor that donated more than 100 euro, as well as the contribution values and the date they were given by the donor.³⁰



TRANSPARENCY (PRACTICE)

SCORE

2011

0

2015

0

To what extent can the public obtain relevant financial information from political parties?

In general, political parties do not make their financial information available to the public. In that context, they have not improved since the publication of the 2011 NIS report. It is common practice for political parties to submit financial statements to the CEC at the last minute before the deadline is closed.

Both financial annual reports and campaign reports are required to be posted on the websites of political parties each year by 31 March. Information on updates must also be provided. However, that is almost never the case. According to two scholars of the University of Pristina, “it is still not transparent who really finances political entities.”³¹ There is no information disclosed on the identity and value of contributors made to the political parties.

Furthermore, financial reports of political parties are not maintained in the CEC website despite being required by law. The website of the CEC is not functional. In the anti-corruption assessment report of the European Commission, it is recommended that the website is improved “with commentaries or guides to their application, and more specifically with a clear and accessible disclosure of accounts of political parties.”³²

The CEC may fine a political entity for submitting its campaign financial report after the deadline, with administrative fees in accordance with the rules. The clause above is a good illustration of most regulation that gives the power to the CEC to punish parties for violations, but does not oblige it to do so. Hence, it is at the discretion of the CEC whether they choose to impose fines for committed violations.

The only law that was subject to change in 2013 was the Law on Financing of Political Parties, three months before local elections. The most relevant changes to this law include the prohibition of donations from private companies up to three years past the completion of any present working agreement with the public institutions.³⁴ Also, these changes addressed the obligation for political parties to have only one bank account and to perform all of their transactions through this account.

Now, the law provides for fines as well as tougher sanctions towards parties that do not comply with the legislation.³⁵ If parliamentary parties do not submit their annual financial report and those of election campaigns, they are fined 10 per cent of the amount allocated by the Fund in the prior year, as well as a daily fine of 0.01 per cent of the base amount until the report is submitted. For inaccurate and incomplete information in the balance sheet worth over 5,000 euro, they are fined 5,000 euro. For missing copies of financial documents, they are fined 2,000 euro.

For receiving unlawful donations, the fine is twice the amount admitted, and if they cannot prove the origin of the funds received for donations worth over 20,000 euro, the fine is three times that amount. The law also encourages the creation of mechanisms of internal financial control in order to combat corrupt practices by forcing political parties to define this in their statutes,³⁶ as well as encouraging the establishment and strengthening of financial management and transparency.

ACCOUNTABILITY (LAW)

SCORE

2011

25

2015

50

To what extent are there provisions governing financial oversight of political parties by a designated state body?

There are a limited number of legal provisions, which mandate that political parties maintain financial records and report on them. The Law on General Elections requires that any registered political entity must submit financial reports covering the campaign period. These reports need to include an income statement, sources of contributions, expenditure report and the balance sheet.³³

ACCOUNTABILITY (PRACTICE)

SCORE

2011

0

2015

25

To what extent is there effective financial oversight of political parties in practice?

In practice, political parties are not accountable in terms of reporting. Their financial reports are partially incomplete and are submitted with delays to the CEC.³⁷ As noted in the 2011 NIS study, political parties declare inaccurate incomes and

expenditures. That is largely the case today when financial sources remain mostly undiscovered.

In the last elections, held in June 2014, political parties exceeded their maximum spending limits, owing to the support of unregistered contributors. Also, political parties in general seek ways to bypass reporting requirements.³⁸ At the same time, the fines imposed for any violation (Article 11 of Rule No. 16/2011) are not dissuasive enough or proportionate to the severity of the offenses.³⁹

They audit reports indicate that that financial activities of political parties are not in line with international accounting principles. Political parties continue to hide their expenditure including utility, salary, and rent expenses.⁴⁰ On many transactions, there are no invoices to justify the expense, or tax and pension registries on income paid to officials of political parties. According to the assessment report of the Council of Europe, audit controls are simply too formal,⁴¹ serving only the legal purposes of legitimising transactions.

Licensed audit firms selected by the Public Accounts Committee of the Assembly of the Republic of Kosovo (the Assembly) audit political parties. Each year the Committee selects a short list of at least 10 licensed auditors.⁴² The same auditor cannot be selected in consecutive terms. Unfortunately, the Office of the Auditor General (OAG) does not audit political parties.⁴³ Article 30 of the Law on the General Auditor says that any entity that receives funding from state budget must undergo an audit by the OAG.

The OAG has for many years resisted such a responsibility, arguing more in favour of internal auditors of the CEC to audit political parties. Accordingly, there is a conflict of interest for the auditor to double audit, first the CEC and then political parties which report directly to the CEC. Also, it is not appropriate for the auditor general to audit political parties since a lot of their funding comes from private entities. It is unclear if the financial information sent to the CEC is complete or not, considering that the CEC does not make it public.⁴⁴

The control of the CEC over political parties is considered highly formal. It continues to serve as a mere check on whether the reports of political parties are complete and submitted on time.⁴⁵ Unfortunately, the annual financial reports of political parties for the last two years have not been made public on the webpages of the CEC. The reason why these reports are not online is because they were not audited. For uncertain reasons, the Public Account Committee of the Assembly failed to select the auditors.

In the report of the Election Complaints and Appeals Penal (ECAP) the main issue relates to fines, which are proportionally low compared to violations and breaches of the law.⁴⁶

In total, there have been fines of a value of 75,000 euro for the national elections in 2014, less than in 2010 when they exceeded 350,000 euro.⁴⁷ If parties fail to pay the fines within 15 days, they cannot be certified for the following elections. However, fines are not paid on time, or they are paid shortly before the process of accreditation, and yet the parties were allowed to run for elections.⁴⁸

INTEGRITY MECHANISMS (LAW)



To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?

Overall, political parties lack organisational regulations regarding internal democratic governance. This was noted in the 2011 NIS report and to date nothing has improved. According to an anonymous expert, ethical rules are set by political parties to look legitimate in terms of paper in front of respective institutions, notably the CEC, to be able to function.⁴⁹

The rules and regulations require political entities to comply with democratic principles and hold party conventions on a regular basis. It is mandatory that party conventions are organised every four years and internal party structures are renewed. Meanwhile, there are risks of suspension which may arise if the party fails to do one of the following: (a) inform the Office regarding its electoral convention, (b) submit a complete and updated annual report, (c) approve the party programme and statute in line with the legal requirements, and (d) pay the fines imposed by the CEC or Election Complaints and Appeals Commission.⁵⁰

Every member of a registered political party, directly or through delegates appointed according to the relevant procedures, has an equal right to vote on all decisions taken by the Convention, including the election of the party president and the party's highest executive body. The party president is obliged to report on the party's financial situation and to submit an annual financial report between two conventions. The main political parties, including PDK, AAK, and AKR went through internal elections prior to local elections in 2013. Likewise, LDK, AAK and VV held their elections after the last national elections in June 2014.

A political party is required to invite the Office for Registration of Political Parties (within the CEC) to monitor the party convention. The Municipal Election Commission monitors branch conventions and the party is obliged to inform them in this regard. Also, during the selection of election candidates, a political party is obliged to ensure democratic participation of party members in the election of party electoral candidates. Candidates of a registered political party in municipal elections are chosen from the branch or branches of the party in the relevant municipality.

Rule 1/2013 also requires that parties maintain and keep a register of members including names, addresses and civil registration, passport or driver's licence numbers of all its members and also dates of their membership. A registered political party may establish the amount of the fee or payment applicable to its members not exceeding the amount of 12 euro per member within a calendar year. On a positive note, the Rule strips the party members, including its officials, of the liability for party debts.

pened in party branches as well, where heads of parties and candidates for mayor were elected based on the preferences of the leaders.

Once the leader of a political party is elected or re-elected, it is almost impossible for him or her to depart or resign from the political party. There is an exception with the Vetëvendosja (VM), which in 2015 organised its internal elections. For the first time, a new leader was elected through a voting process of one-member and one-vote.⁵³ The previous leader is now more focused on working for the party at the grassroots level.

The LDK is another positive example of how its leadership has transformed since the death of its legendary leader, Ibrahim Rugova, in 2006. For almost 10 years two different presidents have led the party. This is something that has never happened with the other two mainstream political parties. However, in the last party elections of the LDK in May 2015, the current leader who has presided over the party for four years was re-elected through an open voting system and absolute vote.⁵⁴

INTEGRITY MECHANISMS (PRACTICE)

SCORE

2011

25

2015

25

To what extent is there effective internal democratic governance of political parties in practice?

In practice, only a few political parties elect their leaders and candidates for public office and determine their policies through democratic means. In general, they rely on a strong leader and his closed circle of influence with which constituents sympathise.⁵¹ In most cases, a party leader is usually someone who is elected and re-elected by an absolute vote and not contested by any means. The leader ultimately has the final say on almost all party matters and decision-making.

The current legislation requires political parties to organise internal elections at least once in every 48 months; otherwise they cannot be certified to participate in elections.⁵² The organisation of internal elections and nominations of candidates for recent local elections in most political parties were merely formal and to satisfy legal requirements. The heads of political parties were re-elected without having to compete against another candidate. A similar situation hap-

INTEREST REPRESENTATION (LAW AND PRACTICE)

SCORE

2011

25

2015

25

To what extent do political parties aggregate and represent relevant social interests in the political sphere?

In general, political parties represent narrow interests instead of the public interest and that of their constituents. The motivation to join a political party is seen purely as an opportunity to gain power and personal benefit.⁵⁵ That is why competition within political parties is tightly controlled, kept in the hands of party leaders who choose to reward only those who listen and abide by the rules. For individuals including civil society activists who are interested in joining political parties there is little room for their contributions. They are recruited more for visibility purposes and media attention.

Lack of competition inspires non-formal decision-making and the creation of unprincipled groups and factions within parties.⁵⁶ Unfortunately, clientelistic relations have been established between certain individuals or groups and political parties. Interest groups around powerful individuals dominate political parties.

They are more prone to lobbying through private channels to the government rather than through the Assembly.⁵⁷

Political parties do not have ideological platforms on how to govern. They are often populist and appeal to the public interest. Political parties have few incentives to customise their messages to specific voter groups. One obstacle stressed in this regard is the sense of patriotism in relation to the whole public space. For instance, the highway that was built to connect to Albania was not discussed as an infrastructure project that would shorten the journey, decrease accidents etc.

ANTI-CORRUPTION COMMITMENT (LAW AND PRACTICE)



To what extent do political parties give due attention to public accountability and the fight against corruption?

Political parties are not active enough in promoting public accountability and the fight against corruption. Overall, Kosovo’s political elite is failing to oppose the criminal infiltration into the political, legal and economic system deriving from organised crime and corruption.⁵⁸ The fight against corruption has been rhetorical for some time and this trend is still continuing. None of the governments thus far have undertaken any serious actions after coming to power.⁵⁹

Party platforms are not well tailored and prepared in addressing the needs of constituents. They are usually drafted weeks before the elections, and are similar across party lines. There are no programmatic or ideological differences among the parties.⁶⁰ The stance on corruption is generally the same, usually with the parties in opposition being more vocal. After elections are completed, it is difficult to get hold of party programmes. Besides VV, other parties do not maintain and update their platforms in their websites.

RECOMMENDATIONS

- > The Assembly should adopt a Law on Political Parties in which existing legal provisions from secondary legislation will be integrated, regulating how internal democracy of political parties should be exercised.
- > Political parties should be more transparent in revealing their sources of income (public and non-public) and expenses related and non-related to elections.
- > CEC should adopt a standardized format for political parties to report their expenses and be stricter in sanctioning those who do not report on time and accurately.

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MEDIA

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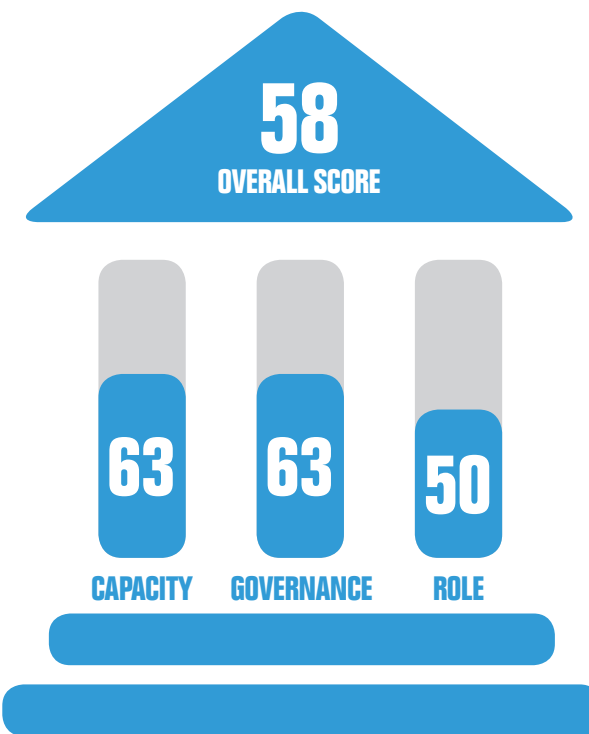
OVERVIEW

The rights and freedoms of journalists are guaranteed by the Constitution. However, in practice, they are subject to daily interference by either the state or media proprietors. The state broadcast media has the largest audience and by far the largest budget of any media broadcaster, which undermines the principle of ensuring genuine independence. The state has legal authority over the regulatory body for media broadcasters, the Independent Media Commission (IMC), while the print media including newspapers are self-regulated and politically more independent.

Self-censorship remains a challenge since the publication of the 2011 National Integrity System (NIS) report. Often editors and reporters fail to report a story that may upset businesses. While the media is active in investigating and exposing individual cases of corruption, it is not so successful in influencing real outcomes.

The legal framework regulating the media is very fragmented and at times contradictory. In order to improve the situation a single fair and balanced Law on Media should be adopted to resolve many governance issues, such as media ownership and the functioning of online news portals, two of the most controversial issues in the media sector.

The graph presents the indicator scores, which summarise the assessment of the media in terms of its capacity, its internal governance and its role. The remainder of this section presents the qualitative assessment for each indicator.





MEDIA



	Indicator	Law	Practice
Capacity	Resources	75	50
	Independence	75	50
Governance	Transparency	75	50
	Accountability	100	25
	Integrity mechanisms	75	50
Role	Investigate and expose corruption		50
	Inform public on corruption		50
	Inform public on government		50



STRUCTURE AND ORGANISATION

In Kosovo, independent institutions control the print and broadcasting media.

The Kosovo Press Council (KPC) regulates the print media. The KPC's role is to protect and promote the integrity of journalists under a Code of Ethics of international standards.¹ This self-regulatory institution is composed of chief editors or representatives of all media outlets and three independent members.² There are three main daily newspapers: *Koha Ditore*, *Zëri*, and *Kosova Sot*.

The online media is mostly unregulated. There are seven leading online news portals: *Gazeta Express*, *Telegrafi*, *Gazeta Blic*, *Jetë në Kosovë*, *Zëri*, *Koha.net*, and *Indeks Online*.

The IMC regulates broadcasting and is directly appointed by the Assembly of the Republic of Kosovo (the Assembly). The IMC's role is to license, manage and oversee broadcasting.³ The IMC reports on any violation and accepts and evaluates third party complaints.⁴ The IMC is composed of five members that are directly elected by the Assembly. In total, there are 167 licensed broadcasters, 21 TV stations, 83 radio stations, 32 cable operators and 53 programme service providers.⁵ The three most popular TV stations are the public Radio Television of Kosovo (RTK), privately owned Kohavision (KTV) and cable TV Klan.

Certain membership groups also play an important role in the media industry. The three leading groups are the Association of Journalists of Kosovo (AJK), Union of Journalists of Kosovo (UJK) and Association of Independent Electronic Media of Kosovo (AIEMK).

ASSESSMENT

RESOURCES (LAW)



To what extent does the legal framework provide an environment conducive to a diverse independent media?

The legislation pertaining to the existence and operations of independent media is conducive to a diverse and independent media, as was reported in the 2011 NIS study. Accordingly, broadcasting is licensed by the IMC and print media is self-regulated by the KPC. KPC as an NGO is a lot less regulated and receives no public funding, unlike the IMC. A set of criteria for licensing is mandated by the Law on Independent Media Commission to promote competition. This includes financial viability, technical capability, and media impartiality. A new Law on the Radio Television of Kosovo was adopted in 2012.

The legislation for broadcasting has overall been consolidated in the new Law on Independent Media Commission (Law No. 04/L-044) adopted in April 2012. Its aim is to create a more viable market for audio-visual media services.⁶ Under its policy on broadcasting (Article 9), the IMC is required to protect and promote local production, diverse distribution, technical quality, and use of new technology in the broadcasting industry.⁷

However, there are many contradictory legal provisions and imprecise definitions in the new law. The biggest contradiction is in Article 12 and Article 13 on the eligibility criteria for who can be a member of the IMC. Article 12 rules out any person who has held a public office in the last two years.⁸ It basically prevents an IMC member to be re-elected for a subsequent term – a right well protected in Article 13.⁹ In addition, technology in the sector of audio-visual media services is far too advanced for the legislation to keep up with development.¹⁰

The European Union has criticised the government for having 14 separate laws to regulate media.¹¹ Often these laws are in conflict with each other. For instance, the new draft Law on Digital Broadcasting refers more to the Law on Electronic Communications (Law No. 04/L-109) instead of referring to

the Law on Independent Media Commission.¹² It seems that the idea behind these legal contradictions is to allow the IMC to only deal with content and not frequencies.¹³

The IMC exercises certain restrictions in the set up broadcast media entities. It issues a broadcasting license with a renewal for a term of seven years for a radio service and 10 years for audio-visual media services and network operators.¹⁴ The IMC is first required to make a public notice for a proposed license for audio-visual media services. The public notice must detail all the information required, including the methodology and criteria for the assessment, and applicable fees for the application.¹⁵ The IMC is required to allocate sufficient frequencies for both television and radio broadcasting.¹⁶

RESOURCES (PRACTICE)

SCORE

2011

50

2015

50

To what extent is there a diverse independent media providing a variety of perspectives?

In general, media sources do not cover the entire political and social spectrum. In the 2011 NIS study, there were 110 licensed broadcasting entities and 10 in-print media newspapers. Today there are only 98 broadcasting entities¹⁷ and five newspapers. *Tribuna*, *Lajmi* and *Gazeta Express* are some of the newspapers that closed in the last two years, mainly for financial reasons, with some choosing to continue as online-only publications. The IMC and public media are in a better financial position than the KPC, although they experience budget cuts each year.¹⁸ The KPC and private media are run as private entities and most of them must rely on donor support.

Between 2007 and 2013 donor support to media was about 15 million euro.¹⁹ It is difficult to come up with a parallel estimate of how much profit media makes from advertising, but it is fair to indicate that a far larger portion of their funding comes from businesses. Local media, in particular, rely primarily on advertising income while subscriptions are common only for cable providers and a few magazines.²⁰

In a volatile media market journalists bear the costs. They have low pay and are insecure in their work.²¹ Those that are more talented are always inclined to pursue other career prospects outside their profession.²² Or they may seek employment in the public RTK where there are better salaries

and greater job security compared to private media.²³ According to the Kosovo Democratic Institute (KDI), this negatively affects media competition and inspires good journalists to transfer to highly politicised institutions such as RTK.²⁴ To some critics, it may even inspire journalists in the private media sector to accept pay-offs to make up for their meagre salaries.

However, the private media is not wholly independent and immune to external interference. Far from it, they depend heavily on revenue from business advertising and/or donor cash while failing to retain and create talent.²⁵ Here the issue is that many private media enterprises are willing to risk their independence in order to attract a wider readership, ample advertising, and a healthy profit margin. At the same time, many of them experience large debts or are on the edge of bankruptcy.²⁶ According to the IREX report on the Media Sustainability Index (2015), some media outlets can barely pay the salaries of their staff.²⁷ In December 2014, the editor of *Tribuna* was asked to resign without pay for the work he had done in the previous two months.²⁸

Hence, most journalists work in a very hostile environment. They are not highly regarded by their employers while they work long hours, do not have appropriate contracts, and are paid very little.²⁹ In a recent study Media Indicators 2015, 45 per cent of respondents stated that they did not have employment contracts.³⁰ This study was commissioned by Kosovo 2.0, Çohu and the KPC, and its focus was to assess the current perception of 175 journalists on key media-related issues in Kosovo.

Moreover, print media is on the decline while online news portals have thrived in the last two years. Daily circulation of print media ranges from 25,000 to 35,000 copies,³¹ while there are no official estimates for online news portals. In 2013, more than 76 per cent of the population in Kosovo had access to the Internet, which represents an improved access to news and information.³² There is a positive and negative side to the rise of online news portals. They offer quick and reactive news information at no cost. They also consist of diverse opinions and information. However, they can be extremely biased and not transparent.³³ High demand for online news portals explains why many newspapers have closed in just a few years.

INDEPENDENCE (LAW)



To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?

The legal framework is largely favourable to the media. Freedom of expression, access to public documents and a media free of censorship are guaranteed by the Constitution (Article 40, 41 and 42). While there is no specific law on the media there are a number of legal safeguards that prevent interference in the media’s activities set in the Law on Independent Media Commission, the Law on Protection of Journalism Sources, the Criminal Code and the Law on Access to Public Documents. As far as regulatory media institutions go, the IMC is more politically influenced than the KPC since it carries a greater remit and legal responsibility and is accountable to parliament.

The legislation regarding media independence did not change seriously since 2011. Media independence has its strong hold in Article 40 of the Constitution. This protects the “right to express oneself, to disseminate and receive information, opinions and other messages without impediment.”³⁴ Additional constitutional rights are expressed in Article 41 on the “right to access public documents” and Article 42 on the “freedom of media” and censorship. In Article 42 it states, “no one shall prevent the dissemination of information or ideas through media.”³⁵

The new Criminal Code amended in November 2012 and the Law on Protection of Journalism Sources approved in August 2013 are interrelated. They have been praised for giving certain rights to journalists in the disclosure of sources of information. Initially, the Criminal Code (Law No. 04/L-082) in articles 37, 38 and 39 imposed criminal liability on chief editors and publishers for committing any criminal offense through the publication of information. These provisions were heavily criticised by civil society and media activists, ultimately leading to their repeal in November 2012.

In addition, the debate on information disclosure continued until the draft Law on Protection of Journalism Sources (Law No. 04/L-137) was initiated and finally adopted in August 2013. It regulates how sources of information should be protected³⁶ and is applicable to journalists and the media, “who cannot be denied the protection of their rights and privileges.”³⁷ One of the basic right is the “right to remain silent regarding their sources of information.”³⁸ This refers to

the identity, origin, author and content of the information.³⁹ There is only one exception to this clause, when a competent court requests that information is necessary to be disclosed in order to prevent a serious threat.”⁴⁰

The Law on Access to Public Documents was approved in November 2010. Its purpose is to guarantee the right of any person to have access to public documents.⁴¹ These documents shall be accessed “based on a direct request, either following a written application or in electronic form, with exception to information restricted by Law.”⁴²

INDEPENDENCE (PRACTICE)



To what extent is the media free from unwarranted external interference in its work in practice?

The state and/or other external actors occasionally interfere with the activities of the media. These instances of interference are usually non-severe, such as threatening verbal attacks, without significant consequences for the behaviour of media. Journalists print stories without risking fines or imprisonment for failing to reveal their sources of information. However, public trust on freedom of expression of the media is on the decline according to the UNDP’s Public Pulse Poll. In April 2015, it fell to 35.5 per cent compared to 40 per cent in November 2014.⁴³ In the Media Indicators 2015 study, many journalists are of the opinion that legal safeguards regarding freedom of expression are not being implemented to a desirable level.⁴⁴

The KDI was critical of the state influence on media in the 2011 NIS report. It discussed how state funding imperils the editorial independence of RTK. This is more an issue during election time as reported by IREX in the Media Sustainability Index. Accordingly, the RTK gave more coverage in the evening news edition to the ruling party, Democratic Party of Kosovo (PDK).⁴⁵ Lately, the RTK has been subject to many internal management and censorship issues. As a response, the union of the RTK organised protests, which called against political influence exercised on the board and its management.⁴⁶

The IMC is criticised for being a politicised regulatory institution. It is appointed by the parliament and as such it is highly dependent on politics. It was reported in the European

Commission Progress Report in 2014 that the appointment of the IMC “favoured political affiliation rather than independence.”⁴⁷ In December 2013, the IMC dismissed two of its board members as a result of conflicts of interest. They were officially part of a political party and ran in local elections.⁴⁸ Since then the IMC has struggled to consolidate the board due to a lack of political will, which has led to extreme delays on a number of important issues (e.g. digitalisation of analogue broadcasts).⁴⁹ The KPC is less political, as it is an independent NGO and funded by the international community.⁵⁰

State control over the private media is also a problem. It is exercised by denying access to public official sources.⁵¹ The Balkan Investigative Reporting Network (BIRN) stated that out of 300 requests for public information, only 30 per cent received a full answer.⁵² On more sensitive public documents, there is almost no access. As a result, on any story that may go against the state and/or party interests, journalists have no alternative other than to rely on anonymous sources.⁵³ Interference from private companies may be as harmful, particularly in a country where there is very little advertising income and donor money to support media. In order to survive, self-censorship is applied at the editorial level to prevent enterprises from commercial losses.⁵⁴

Intimidation in the form of physical and verbal threats is still present in the media community. According to a report on the state of media published by the Institute for Policy Development (INDEP), the Law on Defamation and Insult is used as a tool to “either frighten, deter or take revenge on reporters.”⁵⁵ Two important incidents of intimidation were well identified in the 2014 Human Rights Watch Report, and they include gas bombs thrown into the house of the editor-in-chief of the RTK and threats exercised by the mayor of Skenderaj against the director of BIRN.⁵⁶ In 2015, intimidation is a recurrent issue, while the persistence of impunity among perpetrators is scarcely dealt with by the authorities.

terms of reporting, licensing provisions, and disclosure of private broadcaster ownership. However, the IMC has no authority to investigate beyond financial disclosure to find out who stands behind a particular media enterprise. The same issue applies to the print media, in which case the KPC has a weaker role on ownership regulation. Meanwhile, online news portals are completely deregulated and do not report to any entity.

Transparency is a principle that is promoted in the news laws and regulations on media. In the Law on Independent Media Commission, Article 7 requires full access to licenses, sub-legal acts, case records, meetings and decisions issued by the IMC.⁵⁷ The same tenor follows the Rules of Procedure of IMC (Nr. 12/1), with Rule Nr. 10 requiring that the IMC is transparent in its work and voting system.⁵⁸ Additional emphasis has been put on the IMC’s responsibility to communicate with the media in Article 16 of the Regulation of IMC (Nr. 2014/01) enforced in May 2014.⁵⁹

Broadcasters and newspapers are registered as business entities in the Kosovo Business Registration Agency (KBRA) of the Ministry of Trade.⁶⁰ As such, they are required to be transparent to some extent, in terms of providing basic information on founders of the business. As for print media, the Code of Ethics requires that media enterprises “demonstrate transparency in matters of media ownership and management, enabling citizens to ascertain clearly the identity of proprietors and the extent of their economic interest in media.”⁶¹

TRANSPARENCY (LAW)

SCORE

2011

75

2015

75

To what extent are there provisions to ensure transparency in the activities of the media?

In general, the legal provisions and individual rules and codes of media outlets seek to establish full transparency regarding media activities. The law gives specific rights to the IMC in

TRANSPARENCY (PRACTICE)

SCORE

2011

50

2015

50

To what extent is there transparency in the media in practice?

In general, media outlets do not disclose relevant information on their activities. The KDI in the 2011 NIS report criticised both broadcasting and print media for their lack of transparency on ownership disclosure and reporting/editing policies. Unfortunately, nothing has improved in the last four years. Since media enterprises are registered as business entities they are required to report to the KBRA. This is more required for registration or application purposes.

Nonetheless, the media should not be treated only as a private business, as matters such as “media ownership” con-

cern the public interest. Consumers deserve to have such information to be able to judge the objectivity of a newspaper.⁶² In general, there is more transparency in broadcast media since they report not only to the Kosovo Anti-Corruption Agency (KACA) but also to the IMC.

On the other hand, newspapers and local media are relatively less transparent, while online news portals are not transparent at all.⁶³ The less transparent mediums threaten democracy since in Kosovo major political parties may choose to pay media proprietors to manipulate public opinion on their behalf.

ACCOUNTABILITY (LAW)



To what extent are there legal provisions to ensure that media outlets are answerable for their activities?

The legal framework requires that media enterprises are answerable for their activities. The IMC is in charge of regulating broadcast media and promoting ethical, technical and professional standards in the media industry. For any violation the IMC issues a warning in writing and/or levies a financial fee.

The IMC is in charge of regulating and managing of broadcasting frequencies. The IMC’s role is defined in Article 141 of the Constitution and the Law on Independent Media Commission. The IMC is an independent body responsible “for the regulation, management and supervision of broadcasting frequency spectrum.”⁶⁴ It also regulates the “rights, duties and responsibilities of individuals and entities that provide audio and audio-visual media services.”⁶⁵ The IMC is composed of only five board members. The IMC is responsible for reporting on an annual basis to the parliament.⁶⁶

The KPC is a self-regulatory body responsible for regulating the print media. Its role is to advocate for freedom of expression and ensure compliance with the principles of the Code of Conduct. The KPC is a self-regulatory body composed of the chief editors of media enterprises. It reviews complaints raised by a claimant who believes that his/her right or name has been threatened by a particular newspaper. The KPC is a professional Council and as such it is held accountable to take ethical decisions and protect the interests of its members.

ACCOUNTABILITY (PRACTICE)



To what extent can media outlets be held accountable in practice?

In practice, media outlets are mostly not answerable for their decisions and actions. In the 2011 NIS report, the IMC was criticised for being inconsistent in sanctioning its final decisions, mainly due to political pressure coming from outside. Accordingly, television mediums failed to comply with international standards, while the KPC and newspapers were more attentive in correcting wrong information. Nothing has changed in the last four years other than the rise of online news portals and the closing down of many print newspapers and media forums.

The IMC and the KPC have been criticised for not having enough capacity “to implement their regulations concerning the media.”⁶⁷ The IMC was deemed inefficient in the last two elections by the EU Election Observation Mission in overseeing media performance and addressing media related complaints.⁶⁸ The IMC was also criticised for its inability to appoint a full Council for four years;⁶⁹ perhaps a leading cause of the IMC’s failure to adopt the strategy of digitalisation for almost five years.⁷⁰

As far as public accountability is concerned, the IMC has been criticised for not covering all the regions with frequency, e.g. Dragash municipality and North of Mitrovica region.⁷¹ There are technical and political reasons that explain why the IMC is unable to provide equal and full coverage across the country. It is more of a political issue in the north, where minority Serbs do not have access to the public channel offered in Serbian by the RTK.⁷² To resolve this issue, digital broadcasting appears to be the solution. It can offer better and higher quality signals,⁷³ using digital data instead of analogue waveforms.

The KPC does not do well when it comes to accountability in practice. It functions as an NGO, and as such it is not held accountable by the public institutions.⁷⁴ The KPC has to report only to its donors and maintain its legal status in the NGO registration department of the Ministry of Public Administration. It has no authority to investigate, punish or exclude members who misbehave.⁷⁵ It operates more as a culture of naming and shaming bad journalists. However, the KPC has a legitimate role in addressing complaints, threats and insults in the courts of law.⁷⁶

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INTEGRITY MECHANISMS (LAW)

SCORE

2011

50

2015

75

To what extent are there provisions in place to ensure the integrity of media employees?

The Codes of Conduct set ethical standards of ensuring that there is media integrity. They cover media broadcasting and press activities and overall are considered comprehensive.

The IMC sets the highest standards of propriety involving integrity, impartiality, and objectivity in its Code of Ethics, adopted in August 2006. Integrity is emphasised in tendering procedures in Article 17, requiring full documentation in writing of “any contacts with companies invited to tender for IMC work or IMC licenses.”⁷⁷ In September 2012, the IMC also adopted a regulation on Rules of Procedures, which consists of 24 rules on the organisation, procedures and functioning of IMC.

The Broadcasting Media Code of Conduct was adopted in 2000 by the Temporary Media Commission. This Code requires that all broadcasters recognise international standards of conduct and respect ethnic, cultural and religious diversity. It also covers other areas of interest including media competition, provocative statements, and media impartiality, as well as differences between news and opinions and fraudulent materials.

The Kosovo Press Code was adopted in 2005 and it refers to high principles of integrity covering a wide range of issues, for example, corruption, bribery, conflicts of interest and moral credibility. In 2010, the Code was amended as a result of public debates and discussions. Some of the changes include the following: careful monitoring of online forums, making distinctions between print media and online forums, and exercising greater scrutiny and responsibility on the publication of media articles.⁷⁸

INTEGRITY MECHANISMS (PRACTICE)

SCORE

2011

50

2015

50

To what extent is the integrity of media employees ensured in practice?

In practice, media integrity has not advanced since 2011. There is not an independent body to ensure that media outlets and journalists abide by ethical rules and so the Codes of Conduct that exist on paper are not effectively enforced.⁷⁹ The two media regulators – the IMC and the KPC – struggle to implement their statutory duties.⁸⁰ The IMC has been criticised for not having enough capacity and lacking political independence,⁸¹ while KPC has been criticised for keeping a low public profile.⁸²

In the 2011 NIS report, the KDI noted that journalists lacked information on rules, ethics, and standards. That is the case according to the GAP Institute, which states that it is not common for journalists to receive independent instructions on ethics.⁸³ Hence, in many instances, journalists do not adhere to ethical rules. Those who attend trainings and are taught ethics apply very little knowledge in practice. In the last two years, there were many training modules delivered on ethics and “legal leaks” by UNECSO, Access Info Europe⁸⁴ and Kosovo Media Institute.⁸⁵

Training is offered by non-profit membership organisations as well.⁸⁶ These entities play a vital role in promoting and protecting media integrity. They mainly consist of the Association of Journalists of Kosovo (AJK) and Union of Journalists of Kosovo.⁸⁷ The AJK has more than 100 registered members and it is overall considered representative of the interests and rights of journalists and other media actors.⁸⁸ In the last year, it has been an advocate in voicing the concerns of journalists against particular threats⁸⁹, for example, the stabbing of a journalist in October 2014. However, the AJK must become more active group in strengthening its membership base.

Often journalists do not use multiple sources to report on both sides of an issue, but there are exceptions since many experienced journalists have grown accustomed to media ethics on reporting a story from diverse perspectives.⁹⁰ The lack of multiple sourcing is more present in online news portals, which are not regulated and extremely biased.⁹¹ They are recognised for their low quality editorials and copyright infringements.⁹²

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Many critics claim that they are not professional.⁹³

When it comes to lack of media integrity online media is the most problematic although they were less criticised in the 2011 NIS study. They were considered interactive mediums where users could discuss issues that were of interest to them. However, that may no longer be the case, as explained earlier. The main challenge here is how to regulate Internet content and improve accountability of online portals.⁹⁴ The KPC has no authority to require online news portals to abide by its Code, since they are only voluntary members.⁹⁵

INVESTIGATE AND EXPOSE CORRUPTION (LAW AND PRACTICE)



To what extent is the media active and successful in investigating and exposing cases of corruption?

In general, the media is active and successful in investigating and exposing individual cases of corruption. Investigative journalism has evolved in the last four years. It was noted in the Council of Europe’s anti-corruption report that the role of media has been “periodical and very active.”⁹⁶ However, to have a greater impact in the fight against corruption it will largely depend on the work and independence of the judiciary. For now there are many success stories of media reporting on higher ranking officials that for example led to the resignation of the rector of the University of Pristina for plagiarism in 2014.⁹⁷

Today journalists covering corruption affairs are more than capable of doing credible research without interference.⁹⁸ They are not afraid to report life-threatening stories.⁹⁹ It is not that they are protected by law enforcement. It is quite the opposite, as they must turn to their peers for support.¹⁰⁰ Unfortunately, dedicated journalists in the field of anti-corruption are very few in numbers. Mediums that are more specialised and experienced in anti-corruption are *Koha Ditore*, *Zëri* and *BIRN*.¹⁰¹

The most flagrant story of suspected corruption involved senior officials of the European Rule of Law Mission in Kosovo (EULEX). In October 2014, *Koha Ditore* ran a series of articles on corruption affairs, despite the many threats it received

directly from senior officials of EULEX.¹⁰² Threats from the international community on the media are very unusual, especially from a mission institution whose goal is to restore the rule of law and establish respect for European democratic values. The mission head, Gabriele Meucci, told the press that the allegations would be pursued vigorously.¹⁰³

The Balkan Investigative Reporting Network (BIRN) is a specialised media outlet for investigative journalism, focusing on the field of anti-corruption in the judiciary.¹⁰⁴ However, it functions as an NGO, so it largely depends on donor funds, unlike typical media outlets that depend on commercial income. Its two most famous programs are *Jeta në Kosovë* (Life in Kosovo) and *Drejtësia në Kosovë* (Justice in Kosovo). The BIRN is known for its close-knit group of editors and trainers that help journalists produce in-depth reports and conduct investigative journalism.¹⁰⁵ It is an independent and regional network hub comprised of award-winning journalists (local and international) representing almost all states in the Western Balkans.¹⁰⁶

INFORM PUBLIC ON CORRUPTION (LAW AND PRACTICE)



To what extent is the media active and successful in informing the public on corruption and its impact on the country?

The media is active in informing the public on corruption and its impact on the country. However, to some critics the information is limited, biased and/or of poor quality.¹⁰⁷ They seem to overstate the issues at stake and tell a story in a more negative approach. This, according to an independent media consultant, could damage or weaken the role of media in the fight against corruption.¹⁰⁸ Here, the KPC should act as a moral force to ensure responsible journalists to not misinform the public.

International donors have been inclined to offer financial support on anti-corruption programmes over the last four years. In 2014, the EU set up a fund of 600,000 Euros to help with investigative journalism.¹⁰⁹ Its aim is to promote freedom of expression and an independent media.¹¹⁰ Now this will require a lot of work for media outlets that have benefited from the fund while taking into account a number of challenges.

First, to offer legal aid and ensure confidentiality to victims of corruption to report to the media. Second, to recruit and train more journalists on anti-corruption.

The BIRN continues to be a vocal and informative voice on anti-corruption initiatives. It has run an online platform KALLXO.COM together with Internews Kosova and in partnership with the Kosovo Anti-Corruption Agency (KACA) for more than three years. The idea behind this platform is to offer the public the opportunity to report corruption, fraud, conflicts of interest and any abuse of official position, negligence, endangering of human rights and general interest.¹¹¹ From January to June 2015, it received 572 cases out of which 128 were verified and reported either in news articles or on television, while the remaining 444 cases are in the process of being verified.¹¹²

INFORM PUBLIC ON GOVERNMENT (LAW AND PRACTICE)

SCORE

2011

50

2015

50

To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?

The media is in general active and successful in informing the public on the activities of the government. This is more evident in the private media, since they are more independent from state interference. Reporting in general is fair and mostly reporters adhere to the basic principles of journalism, such as fact checking and sometimes consulting multiple sources.¹¹³

Investigative reporting has evolved in the last four years and is holding the government more accountable. Certainly, co-operation with civil society has contributed to that effect, although a lot more remains to be done in the future. On a positive note, today there are many news mediums that are far more specialised and confident to go after senior public officials. The BIRN filed a suit in 2015 against the Prime Minister's Office for not disclosing information on the personal expenses.¹¹⁴

It is highly anticipated that media will be more active in the future. The media should be seen as the key agent, together with civil society and institutions in the realm of anti-cor-

ruption (e.g. KACA, Judiciary Council, Prosecutor's Office, etc.), in initiating many advocacy activities. However, there are challenges and threats ahead according to a reporter from the BIRN.¹¹⁵ He sees public institutions more keen to using punitive libel laws to intimidate reporters.

RECOMMENDATIONS

To adopt a specific law on the media to regulate a number of issues including media ownership and online portals.

Media enterprises should establish a more diversified financial portfolio and rely less on state or business support.

Media proprietors should ensure that journalists are paid competitive salaries which encourage independence rather than dependence and self-censorship.

IMC should become a powerful moral force to demand greater transparency on media ownership and make it mandatory to disclose ownership for the online news portals.

Media should partner more with civil society on important anti-corruption initiatives and organize joint advocacy activities.



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CIVIL SOCIETY

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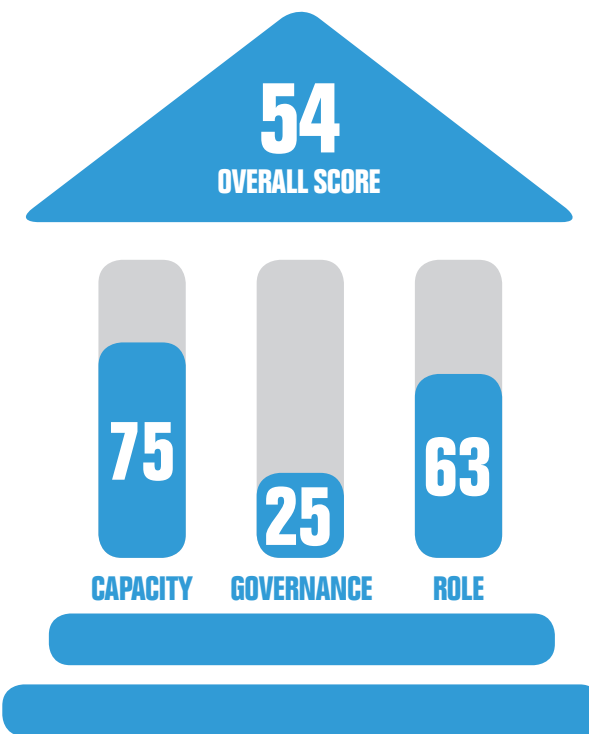


OVERVIEW

Civil society in Kosovo plays a central role in holding the government accountable and informing the public on policy failures, especially those involving corruption. In general, civil society operates in a friendly legal environment where freedom of expression and association is guaranteed by the Constitution. In that regard, it has positioned itself as a watchdog of the executive, legislative and judicial institutions. Today these institutions are slightly more open to the public as a result.

Relations with state institutions are formalised through strategies and bilateral agreements. However, their impact will remain limited as long as civil society organisations (CSOs) do not overcome their own governance issues. Until this happens, public institutions and public opinion will continue to remain sceptical of their cause. As was the case in 2011, civil society lacks transparency and accountability and CSOs are largely seen as donor-driven and lacking in integrity, although there are many exceptions.

The graph presents the indicator scores, which summarise the assessment of civil society in terms of its capacity, its internal governance and its role. The remainder of this section presents the qualitative assessment for each indicator.





CIVIL SOCIETY



	Indicator	Law	Practice
Capacity	Resources	100	50
	Independence	100	50
Governance	Transparency	-	25
	Accountability	-	25
	Integrity mechanisms	-	25
Role	Hold government accountable		75
	Policy reform		50



STRUCTURE AND ORGANISATION

Civil society in Kosovo consists of non-profit entities that lie outside the formal state apparatus. It includes not only non-governmental organisations (NGOs), but also organisations that are traditionally labelled as *interest groups* such as labour unions, professional associations, chambers of commerce, sports clubs, cultural societies and informal community groups. For the purposes of this study, civil society refers to NGOs and grassroots organisations while *interest groups* are discussed in other sections of the report such as the business pillar.

The main legal sources that apply to CSOs are the Constitution (Article 44) and a new Law on NGOs. In Kosovo, after the breakup of Yugoslavia and the war in 1998–1999, civil society has emerged along with the newly established democracy and deregulated economy. With the financial and technical support of the international donor community, there was a drastic increase in the number of NGOs.¹ Today, there are more than 7,000 NGOs² registered either as foundations or associations, although less than 10 per cent are active or partially active.³ They are registered in the NGO Registration and Liaison Department of the Ministry of Public Administration.

dards.⁵ The right to associate is enshrined in Article 44 of the Constitution and Section 3 of the Law on Freedom of Association of NGOs. However, challenges arise with regards to the application of current laws and regulations. In this case, the government and tax authorities do not have a clear understanding of laws and practices governing civil society.⁶

A few changes were made to the Law in 2011. They relate to the registration/eligibility criteria and the Public Beneficiary Status (PBS). In the new Law, the registration clause encompasses a wider group of organisations for eligibility in line with the Law against Discrimination. In addition to the criteria of nationality, race, colour, and gender, it also lists other groups. They include “association with any community, property, economic and social situation, sexual orientation, birth, disability or any other personal statute.”⁷

The laws guarantee freedom of association to be exercised without registering an NGO. Hence, there are many voluntary or community based initiatives and networks that are successful in representing public interests.⁸ However, the majority of those ultimately decide to register in order to gain a legal status.⁹ The registration procedures are simple although they may be time-consuming and costly, particularly for applicants residing outside the capital city. It takes up to 60 days to register or change the registration of existing NGOs.¹⁰

ASSESSMENT

RESOURCES (LAW)



To what extent does the legal framework provide an environment conducive to civil society?

The legal framework pertaining to the existence and operation of CSOs is largely conducive,⁴ as was reported in the 2011 National Integrity System (NIS) report. The legislation is generally simple and in compliance with international stan-

RESOURCES (PRACTICE)



To what extent do CSOs have adequate financial and human resources to function and operate effectively?

In general, most CSOs tend to have some resources. However, there are significant gaps that lead to a certain degree of ineffectiveness in carrying out their duties. The most serious threat risking their sustainability is financial dependence on international funding. More than 80 per cent of funds come from international agencies and organisations.¹¹ However, donor support has declined in the last few years according to a 2014 Freedom House Report.¹²

Competition for funding may have inspired CSOs to invest in human capital and they are becoming more specialised in specific sectors as a result (e.g. policymaking, anti-corruption and socio-economic issues). However, in practice, CSOs’

desire for cash far exceeds their capacities. The majority are forced to alter their mission and objectives depending on the availability of funds.¹³

CSOs have limited access to local funding from either public or private institutions. They do not make any income from services and products that they offer. However, there is an increase of funds from public intuitions from 8 per cent in 2010 to 20 per cent in 2013 of total funding.¹⁴ However, there are no clear procedures, consultations and standard criteria for distributing those funds to civil society.¹⁵ This may be more worrying since this amount may constitute a much larger proportion than 20 per cent.¹⁶ So far the government has not made public the actual amount of public funds (in euro) given to civil society.

KDI-TIK shares its concern about the lack of transparency in this regard and criticises the government for giving money to many phantom CSOs, which are politically connected and whose aim is to make money instead of serving the public interest.¹⁷ In particular, this may be more damaging at the local level, to a point that local CSOs cannot go on with their activities without the financial support from the municipal authorities.¹⁸

The more financially stable CSOs are able to attract and retain skilled staff. They are relatively more capable in networking and fundraising,¹⁹ and capable of offering a variety of services in the public sector. This trend has thrived at the municipal level as well. On an ad hoc basis, there are many CSOs that organise festivals or are engaged in monitoring either the executive or legislative institutions.²⁰ In 2012, the Ministry of Labour and Social Welfare issued the Administrative Instruction 02/2012, allowing CSOs to become licensed service providers through an open application process.²¹

the Constitution (Article 44) and the Law on NGOs. They guarantee the freedom of assembly and expression. Meanwhile, the government is prohibited from interfering in the activities of civil society.²²

In general, there are no restrictions on holding public meetings, which act as a barrier to the mobilisation of CSOs. Nor are there requirements for the licensing of such meetings (e.g. by the local police), as is the case in many other countries. Hence, CSOs are completely free to act on the behalf or citizens and partners they represent.

Certain legal provisions may enforce *de-registration* of CSOs that organise activities that are illegal and/or that “infringe constitutional order.”²³ In the Constitution, a list of infringements is outlined in Article 44. They include the violation of human rights and freedoms, and incitement of racial, national, ethnic or religious hatred.²⁴ In 2014, 14 CSOs were suspended by the Ministry of Public Administration.²⁵

Measures for de-registration and suspension of CSOs may be considered as a legitimate role of the government in ensuring that public interest is not threatened by any organisation. Meanwhile, the *denial of registration* is another legitimate form of control by the government. In Article 10, registration is denied if there is non-compliance with the requirements of the law.²⁶

INDEPENDENCE (LAW)



To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?

The legal safeguards to prevent CSOs from unwarranted external interference in their activities are adequate and have not deteriorated in the last four years. The rights of CSOs were well discussed in the 2011 NIS report, in reference to

INDEPENDENCE (PRACTICE)



To what extent can civil society exist and function without undue external interference?

The state and/or other external actors occasionally interfere in the activities of CSOs. They usually consist of verbal attacks without significant consequences. CSOs that are more exposed to political tensions are those critical of the government.²⁷ However, individuals more often threaten them than institutions, particularly on issues related to corruption or crime.²⁸ A typical verbal attack is when either central or local politicians make false statements about a CSO. They allege that a particular civil society activist is a spy agent or that he works only for the money and donor interests.²⁹

At the municipal level, critics of the government tend to be under more sustained pressure from local authorities. They

respond to CSO research and advocacy activities with arrogance and disrespect.³⁰ It is not that municipal authorities have a control *apparatus* by which they exercise coercion in civil society.³¹ Instead, they use negative publicity to devalue the work of CSOs and threaten their integrity.³² Their tenacity is to create and maintain an environment that is hostile to CSOs.

CSOs experience difficulties in securing adequate funds and access to information while maintaining their independence.³³ Many CSOs are criticised for existing only for the purposes of gaining funds from donors for their personal benefit. However, this was more common after the war in 1998–1999 when international donor community was pouring a lot of cash into the hands of individuals who created CSOs in their own interests. Today there is a lot more competition and more limited funds in the market.

The most serious instance of third party interference occurred in 2012 when a local CSO, *Kosovo 2.0*, launched a magazine on sexual rights. Its emphasis was on lesbian, gay, bisexual, and transgender issues. Public resentment led to a group of soccer hooligans demolishing the launch venue, hours prior to the event.³⁴ One member of a CSO was beaten when a group of protesters entered the building and damaged property.³⁵ The government authorities did not respond to this incident in a timely manner.³⁶ However, with the support of EULEX, all three defendants were found guilty as charged.³⁷

scan of 70 of the more active CSOs in Kosovo. In addition, not more than 20 per cent of CSOs published their financial reports online.⁴⁰ These figures demonstrate that civil society is overall not transparent.

CSOs choose other means of informing the public besides publishing narrative and financial reports. They organise “public events, press conferences, and direct media relations.”⁴¹ In terms of outreach, the most effective tools are print or televised media exposure and social media (e.g. Facebook and Twitter). On a regular basis, they are invited by journalists to express their opinions and ideas on specific matters of public concern.⁴²

Local CSOs seem to struggle more with the issue of transparency mainly due to lack of funding. To help them become more open and accountable, *CiviKos* – a network of more than 150 organisations – intends to help them make available their financial and narrative reports in its website.⁴³ Nothing has been initiated so far although it is highly recommended that the website becomes soon available for the local members to make their reports available to the public.

TRANSPARENCY (PRACTICE)



To what extent is there transparency in CSOs?

In general, CSOs do not make public all their information. As reported in the 2011 NIS report, in reference to a UNDP opinion poll study, less than a third of respondents stated that CSOs were not open to the public. That is almost the case today as reported by Kosovo Civil Society Foundation (KCSF) in a number of studies. Accordingly, only a small number of more stable CSOs make relevant information publicly available.³⁸

In the latest Civil Society Index (2013), research findings indicate that 12 per cent of CSOs have made their narrative reports available for the public.³⁹ This study consisted of a

ACCOUNTABILITY (PRACTICE)



To what extent are CSOs answerable to their constituencies?

CSOs are not accountable enough for their decisions and actions. In the 2011 NIS report, greater emphasis was put on issues with regards to lack of voluntarism and solidarity at the grassroots level. In reference to the UNDP Human Development Report, only 5 per cent of respondents believed that CSOs were accountable to citizens. It is almost the same situation today. CSOs continue to be largely donor driven in order to survive.

CSOs remain largely isolated from the public according to the USAID Index Report 2012.⁴⁴ In general, CSOs are unaware of societal concerns and are inclined to care more about their own interests.⁴⁵ However, there are exceptions, as in the last four years, a number of local grassroots CSOs have thrived (e.g. *Ec ma Ndryshe* in Prizren, *INPO* in Ferizaj, etc.).⁴⁶ Local foundations with the support of international aid give lots of grants to these organisations and include *FIQ*, *ATRC*, *KCSF* and *KFOS*.⁴⁷

CSOs with an annual turnover of 100,000 euro are audited by an external licensed auditor on an annual basis as required by the law.⁴⁸ The main role of the external auditor is to give an opinion in writing as to whether the entity's financial statements are free of material misstatements. Here the purpose is to inform the board members that there is no mismanagement in the organisation. Financial audits do not carry as much weight in civil society since there are no oversight mechanisms.⁴⁹ They are usually written in English to be shared only with the interested donors.⁵⁰

A small number of CSOs have grown and meet legal obligations in setting up "clear organizational structures and define the responsibilities of the boards and management."⁵¹ Legal obligations include setting up a board and assembly to be in charge of monitoring activities. Yet, the majority of CSOs do not have functional boards and their members rarely meet.⁵² In practice, they are not effective in providing oversight of organisational activities unless they are forced/required by the donor.

cial reports and participate in membership activities. Kosovo Women Network has also been adamant in requiring that its members (more than 70 organisations) adopt the code of ethics.⁵⁵ But in general only a few organisations have integrity mechanisms.

CiviKos in joint efforts with the government has been involved in creating a regulatory framework for mutual cooperation. The idea behind this is to enable qualified CSOs to offer services to the public as requested and approved by the government.⁵⁶ There are challenges ahead in pushing forward this initiative, taking into account that CSOs still lack internal capacities and that there is a limited set of services and funding procedures.⁵⁷

INTEGRITY MECHANISMS (PRACTICE)



To what extent is the integrity of CSOs ensured in practice?

In general, CSOs are inactive in ensuring the integrity of their staff and boards, so that misbehaviour mostly goes unsanctioned. The main problem with integrity is that CSOs are not self-regulated. A few initiatives for self-regulation have been taken, such as creating codes of conduct, but very little progress has been achieved in practice.

Nevertheless, in the last four years, a consensus has evolved in favour of self-regulation for CSOs.⁵³ CiviKos has been an advocate behind the idea that CSO members should set principles and actions to improve the integrity of civil society as a whole.⁵⁴ This network of more than 150 registered CSOs has organised many events where practices of good governance were shared. The last annual membership meeting organised in April 2014 is a good example of this.

CiviKos serves as an integrity model, demanding that its members adopt codes of conduct, make public their finan-

HOLD GOVERNMENT ACCOUNTABLE (LAW AND PRACTICE)



To what extent is civil society active and successful in holding the government accountable for its actions?

In general, CSOs are active and successful in holding the government to account for its actions, as was the case four years ago according to the 2011 NIS 2011. CSOs are more competitive and specialised in many policy sectors (e.g. anti-corruption, gender issues, etc.). In finding common ground, they have created or joined networks (e.g. Democracy in Action).

CSOs are overall active in voicing public concerns.⁵⁸ In two instances civil society was influential in decision-making. In late 2011, a coalition of 10 CSOs with the support of the ombudsperson challenged the Law on Duties and Benefits of MPs in the Constitutional Court. Specific articles that relate to MP privileges were the target of civil society resistance. These privileges include a younger retirement age of 55 and extra financial compensation for retired MPs. In December 2011, the Court ruled that the "articles in question were unconstitutional."⁵⁹

In April of the following year, civil society pushed forward another successful initiative. In joint efforts with media association, civil society exercised pressure on lawmakers to eliminate specific articles in the Criminal Code, designed to hold jour-

nalists liable for defamation and other offenses if they refused to reveal their sources of information.⁶⁰ The minister of justice, Hajredin Kuçi, supported civil society, promising to resign if the two contested articles were not removed.⁶¹ They were finally removed from the Criminal Code in October 2012.⁶²

In the same year, a group of CSOs strongly opposed the proposed changes to the Law on the Central Bank of Kosovo and Microfinance Institutions, according to which, microfinance institutions could turn their non-profit capital into privately owned capital of a business enterprise.⁶³ This capital, as noted in a Freedom House report, came to about a 100 million euro.⁶⁴ Following a heated debate, with the support of the ombudsperson, the law was taken to the Constitutional Court, which ultimately ruled that the articles in concern were unconstitutional.⁶⁵

The role of civil society in overseeing the performance of public institutions has strengthened in the since 2011. It has positioned “itself in a supervisory role of the country’s public institutions.”⁶⁶ Both legislative and executive institutions have been overall more receptive to CSO inputs and expertise.⁶⁷ The usual activities in which CSOs participate include public discussions, contributions on specific laws and regulations, and observe the assembly work.⁶⁸ In praise of civil society work thus far, the Assembly of the Republic of Kosovo (the Assembly) launched a web-based civil society registry/database for the purposes of information sharing.⁶⁹

POLICY REFORM (LAW AND PRACTICE)



To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?

In general, civil society is active in engaging with government on anti-corruption policies. However, its impact is not as satisfactory in decision-making. This is because its role is recognised on an ad hoc basis (e.g. anti-corruption reform), i.e. only when the government requires specialised support.⁷⁰ Civil society exclusion in policy-making is an issue at both national and municipal level. A survey study conducted by KCSF has reported that about 30 per cent of CSOs have been consulted in drafting and implementing specific laws relevant to their field of study/interest.⁷¹ The rationale behind this problem is twofold.

First, in the civil service sector there is lack of recognition that inclusion of civil society in policy-making is beneficial.⁷² Second, laws and policies are not easily accessible in timely fashion,⁷³ a challenge for CSOs is to keep up to date with policy change. In anti-corruption, the Kosovo Anti-Corruption Agency has not been responsive to civil society demands. In September 2014, it made a promise in a meeting organised with civil society to publish statistical data on a periodic basis on anti-corruption,⁷⁴ but to date no statistical reports have been published.

Despite this challenging context, CSOs have been active in anti-corruption since 2011. CSOs have contributed to drafting and changing of many laws, including on political party financing, declarations of assets, asset confiscation, the penal code, the anti-corruption agency, and the judiciary and prosecutorial councils, etc. In particular they have been influential in educating public institutions about how to become more transparent and accountable.⁷⁵ Today there are many civil society representatives that are members of important councils and agencies where they are involved directly in decision-making giving them a voting right.

There are at least three influential grassroots civil society organizations working in the anti-corruption field. These include the Kosovo Democratic Institute (KDI), Çohu and Fol. These organisations have five to 10 years’ experience in the field of anti-corruption. However, their impact depends on the support from a number of media organisations and think-tanks from the Balkan Investigative Reporting Network and the Kosovo Legal Institute to the Kosovo Institute for Policy Research and Development, the GAP Institute and the Legal Group for Legal and Political Studies. There are also many local organisations active in holding the local authorities more accountable, e.g. Ec ma Ndryshe in Prizren, Syri i Vizionit in Peja, INPO in Ferizaj, etc.

Furthermore, CSOs have taken serious steps to formalise relations between civil society and public institutions. The more relevant success story is the approval of the “Declaration” by the Assembly in April 2014, which promotes a more active role for civil society in policy-making.⁷⁶ In the Declaration, the Assembly pledges to be more open, cooperative and supportive of civil society.⁷⁷

The approval of the National Action Plan 2014–2016 for Open Government Partnership⁷⁸ in April 2014 is a positive step forward that indicates that the government has the will to become more transparent. Civil society has been active in exercising pressure in decision-making for the adaptation of the action plan.⁷⁹ Now it will depend on the government to ensure the budget allocation for its implementation.⁸⁰ Thus far, the National Action Plan has not shown concrete actions and results in practice.

The Office for Good Governance (OGG) has taken its first steps to serve as a Secretariat to the Joint Advisory Council for the implementation of the government strategy of cooperation with civil society.⁸¹ Further, the Assembly adopted a comprehensive information and public relations strategy in 2012.⁸² The idea behind this strategy is to engage civil society in a “comprehensive dialogue” and increase its role in policy-making.⁸³ In spite of the initiatives’ positive influence for improvement, it is yet early to judge their effects in practice. In addition, the Assembly has appointed a civil society liaison officer. This person will serve as a contact point for CSOs that are interested in the work of the Assembly.⁸⁴

The Government Strategy for Cooperation with Civil Society was approved in 2013. Its purpose is to ensure civil society involvement in policy-making, and creating a system of contracting public services and financial support for CSOs.⁸⁵ The implementation of the strategy has already started. A Council has been established with 29 members of representatives from both government and civil society. CiviKos and the Office of Good Governance will co-chair the Council, and its role will be to monitor and evaluate the implementation of the strategy.⁸⁶ The Council held its first meeting in October 2014 where the Rules and Regulations for the implementation of the strategy were approved.⁸⁷

RECOMMENDATIONS

- > **The government should disclose information on the amount of public funds donated to civil society and where it goes.**
- > **CiviKos should demand that its 150 CSO members are more transparent and that they make public their financial and narrative reports on an annual basis.**
- > **CSOs should be more united in fighting corruption, drawing on lessons learned and success stories, and initiating potential projects that tackle corruption from multiple angles.**



ENDNOTES

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BUSINESS

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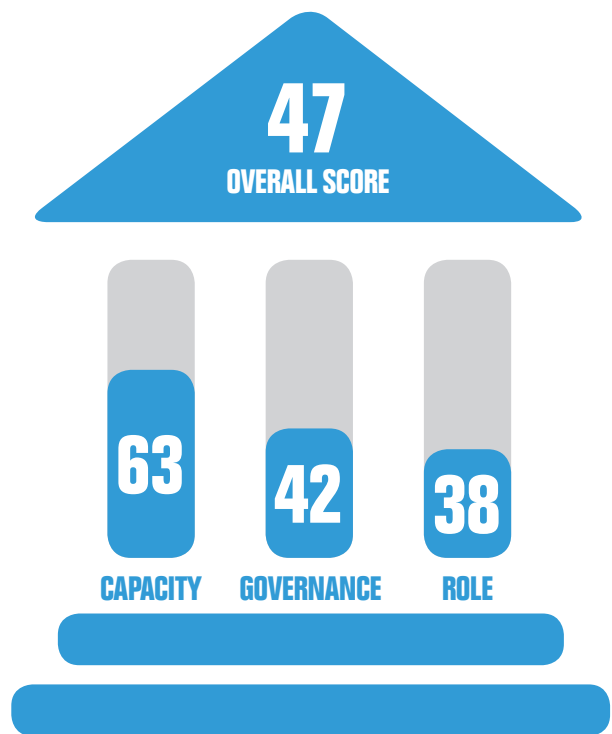


OVERVIEW

In Kosovo, the business sector has experienced moderate improvement over the past four years. Since the 2011 National Integrity System (NIS) report, when the legal framework was criticised for being incomplete, many legal reforms have been achieved. Certain legal provisions were adopted requiring that businesses are more transparent in meeting international standards of financial reporting. Today procedures for start-up businesses are simpler and it takes less than three days to open a business. As a result, in 2014, Kosovo was ranked among the most improved economies for “ease of doing business” by the World Bank.

However, in practice, much more is to be desired. The issue of the informal economy and lack of rule of law are still concerning. Even once a business is registered it is not well protected by the state. Threats or bribes that a business is confronted with are unlikely to be reported to the courts of law since they are deemed ineffective and politically influenced.

The graph presents the indicator scores, which summarise the assessment of the business sector in terms of its capacity, its internal governance and its role. The remainder of this section presents the qualitative assessment for each indicator.





BUSINESS



	Indicator	Law	Practice
Capacity	Resources	100	50
	Independence	75	25
Governance	Transparency	75	25
	Accountability	50	50
	Integrity mechanisms	25	25
Role	Anti-corruption policy engagement		50
	Civil society support		25



STRUCTURE AND ORGANISATION

The business sector falls under rules and procedures set by the Ministry of Trade and Industry (MTI) specified in the Law on Business Organisations, which was amended in July 2011. The legislation requires that companies register at the MTI as one of the following: individual business, full partnership, limited partnership, limited liability, or joint-stock.¹

There has been a rise of new businesses registering at the Kosovo Business Registration Agency (KBRA). The Business Registry maintains the records of all registered companies.² In the last four years, there has been a rising trend of newly registered businesses: in 2012 nearly 9,500 new businesses were registered while in 2013 almost 12,000 businesses were registered (2,500 of which were registered as Limited Liability Corporations).³

More than 40 per cent of businesses are concentrated in the capital city, Pristina.⁴ Businesses are subject to income tax, value-added tax and corporate income tax. They are also required to pay taxes and pension contributions for their employees, as well as any rents they pay.⁵ There is a flat corporate tax of 10 per cent for all registered businesses in Kosovo.⁶

Membership groups that represent business interests continue to be active in policy-making. They can be summed up in two categories: local chambers of commerce (e.g. Kosovo Chamber of Commerce, Women Chamber of Commerce established in 2012⁷), and chambers representing local and international businesses (e.g. American Chamber of Commerce).⁸ The notable international businesses include Coca-Cola, FedEx, UPS, DHL, Deloitte, Booz Allen, Hertz, Century 21, and Microsoft.⁹ No international company for food and hospitality exists.¹⁰

In terms of membership in international organisations, Kosovo is a member of the International Monetary Fund (IMF), World Bank (WB), European Bank for Reconstruction and Development (EBRD), and Council for Europe’s Development Bank.¹¹ These are institutions that continue to support the business community in Kosovo to enhance economic development.

ASSESSMENT

RESOURCES (LAW)



To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?

The 2011 NIS report concluded that the legal framework was in general favourable to individual businesses. The main Law on Business Organisations was adopted in September 2007. The law regulated registration, and operational and reporting activities of businesses. The MTI was the main institution to ensure that businesses obey the law and rules of procedure (e.g. registry and timeline requirements, etc.). Two issues stated in the report were (1) lack of a system of electronic registration at the MTI, and (2) lack of legislation on contract enforcement.

The business legal framework for enabling a business environment has experienced reform since 2011. The Law on Businesses was amended in 2011 in addition to newly adopted laws that indirectly apply to the business community. These laws may be categorised into two groups. The first group consists of laws on financial reporting, public procurement and public-private partnerships (2011).¹² The second group consists of the Criminal Code, and laws on courts and enforcement (2013). These efforts to improve have been recognised by the World Bank,¹³ and comply with the EU from the perspective of the EBRD.¹⁴

The Law on Business Organisation was amended in July 2011. Most of the changes that were incorporated into the new law relate to definitions, deadlines, violations, and complaints procedures. The requirement set in Article 9 for the establishment of a municipal registration office by the Business Registration Agency.¹⁵ The MTI’s Agency for Business Registration maintains an active registration process, always in good cooperation with municipal offices. Elimination of fees and of municipal work permits were additional reforms that enabled Kosovo to receive high scores on ease of doing business from the World Bank.¹⁶ Kosovo improved in the World Bank’s Doing Business Report of 2014 by 12 places, to rank 86 out of 189 countries, placing the country among the 10 most improved economies.¹⁷

The Law on Public-Private Partnership (PPP) was harmonised with the support of the European Council in accordance with the EU *Acquis Communautaire*.¹⁸ The law outlines separate definitions for concessions and PPPs, giving more flexibility for structuring of foreign direct investment transactions.¹⁹ On other improvements, “prior limits on the length of investment projects and a provision allowing unsolicited proposals ... have been removed.”²⁰ The last change would not allow any longer procurement activities outside a competitive market-based process.

The new Criminal Code came into force in January 2013. It consists of penalties that apply to tax evasion, intellectual property infringements, anti-trust and securities fraud, money laundering and corruption affairs.²¹ In light of the new criminal code, important changes were made in terms of jurisdiction of commercial activities. Departments of commercial affairs were established within the Basic Court and Court of Appeals according to the new Law on Courts in 2013.²² They handle economic disputes that may range from bankruptcy to protecting competition and property rights.²³ Licensing of private bailiffs to resolve economic disputes is now required by the Law on Enforcement.²⁴

The procedures to register a business are simple and clear. There are five steps: opening a bank account for tax purposes (one day)³¹, obtaining certificates of registration, i.e. fiscal number, value-added tax and business certificates (seven days)³², getting a seal or stamp which is not legally required (one day)³³, obtaining inspection of the business premise from tax authorities if necessary (one day)³⁴, and registering employees for pension and tax reporting requirements (one day)³⁵.

At the local level, the time reduction to register a business is documented in the Municipal Competitiveness Index (MCI) 2014 Report. The MCI represents the views of 3,052 businesses and offers a robust analysis of economic governance at the municipal level, how effectively businesses operate and the regulatory environment in Kosovo.³⁶ The establishment of Municipal Business Registration Centres (MBRC) has been helpful in facilitating the registration process. They offer online registration in 28 municipalities, although they need to be further developed in the future.³⁷ They have reduced the time needed for company registration, to one day for individual businesses, and three days for limited liability companies and joint stock companies.³⁸

RESOURCES (PRACTICE)

SCORE

2011

25

2015

50

To what extent are individual businesses able in practice to form and operate effectively?

The business environment has slightly improved in practice since 2011. The government has initiated reform efforts for simplifying procedures of registration, reducing registration costs and timeline, and eliminating work permits.²⁵ According to the KBRA,²⁶ it takes less than three days to get a business certificate, as it is required by the new Law.²⁷ That is a lot less time than it took four years ago, where it took up to 54 days to register a business, as explained an official at KBRA.²⁸

The process of registering a business has improved in the last four years. Kosovo was ranked the 42nd economy on the *ease of starting a business* in the World Bank’s 2015 Report.²⁹ In 2011, there were difficulties with replacing the fiscal number with a tax number and that required inspections by the tax authorities. By 2014 fiscal numbers came into force, registration fees were removed and municipal one-stop shops were established for incorporation.³⁰

INDEPENDENCE (LAW)

SCORE

2011

50

2015

75

To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?

Legal safeguards on preventing businesses from external interference have slightly improved in the last four years. The two most important laws passed in 2011 in this regard were on business organisations and trademarks. The MTI authorities in charge of servicing the business sector are the KBRA and Industrial Property Office (IPO). The KBRA is responsible for the registration of new companies, trademarks, and foreign companies.³⁹ It also receives annual financial reports for LLCs and joint-stock companies.⁴⁰ The IPO is the independent administrative state institution that is responsible for legal protection of inventions, trademarks, industrial designs, and names of origin.⁴¹

Complaints regarding any violation may be addressed to the head of Business Registration Agency if this agency does not fulfil its legal responsibility. It takes up to 15 days for a complaint to be administered from the day of receiving it.⁴²

If the complaint is not reviewed, then the complaint is submitted to the Commission of MTI, which is responsible for administering requests.⁴³ Once the Commission approves the complaint, it will require from the head of KBRA to undertake necessary measures in order to readjust this failure.⁴⁴

The laws and regulations for start-up and business operations are clear. The Law on Business Organisations outlines all of registration requirements and sets forth legal provisions with respect to legal capacity and structure of businesses. Trade names are required to be registered at the registry, which becomes the official name under which the company does business. Trademarks are also important and they are associated with trade names. They are optional, but important to register since they guarantee exclusive use and protection from any liability.

The Law on Trademarks was adopted in August 2011. This law is in line with international conventions and EU law and practices.⁴⁵ Trademarks are registered and protected for a time period of 10 years and they may be renewed for additional 10 years.⁴⁶ Claims for compensation for damages to a trademark are set in Article 98 of the Law, which states that, “any holder of a trade mark may take a court procedure against any person who has caused him damage.”⁴⁷ The damage may relate to any usage of an identical sign without permission.⁴⁸

A new administrative instruction on trademarks was passed in August 2012, which sets out registration procedures for trademark registration in the IPO.⁴⁹ These procedures include application, registration, objection, and publication, changes in the trademarks register, renewal, termination ... and other issues related to trademark protection in the Office.⁵⁰

excessive inspections and additional fees. For instance, certain businesses suffered heavy fiscal inspections only due to filing a complaint to the tax authorities. Or they were required to pay additional fees by customs for importing goods in the country.

The state is still inclined to interfere in the business sector. Customs and tax authorities continue to exercise undue inspections because of very little progress in strengthening relations between them and business community.⁵¹ The business climate still remains a challenge for a number of reasons relating to public distrust on 1) the quality of court judgments,⁵² 2) private sector affairs,⁵³ and 3) the government’s role in privatising SOEs.⁵⁴ Other issues regard high interest rates, large debts and complicated procedures to get a business loan,⁵⁵ added to the parliament’s inability to create a government for more than a half a year in 2014.⁵⁶

The informal economy is still present, which in practice motivates corruption. The national survey presented in the MCI 2014 report shows that out of 3,052 businesses, 34 per cent believed that informal negotiations with tax authorities were normal.⁵⁷ Also, the percentage of those who stated that making informal payments to municipal officers was essential to obtain a municipal service was still higher than in previous years.⁵⁸

The phenomenon of abuse of power in transactions with businesses extends beyond the public sector. It has been reported that there is an increase in offering gifts and extra fees to loan officers to obtain a loan: 34 per cent in 2012 agreed/strongly agreed, compared to 38 per cent in 2013.⁵⁹ In one example in July 2013, a representative of the tax administration was arrested for receiving unofficial payments from business entities. According to the police report the officer demanded that a number of businesses use accounting services from a specific firm or otherwise they would be inspected/audited.⁶⁰

INDEPENDENCE (PRACTICE)



To what extent is the business sector free from unwarranted external interference in its work in practice?

The 2011 NIS report explained how courts were not supportive of the business community. They were slow and unresponsive to business needs, ultimately led to a call for business associations and private networks to become more active in representing interests of their business members. Tax and customs authorities exercised pressure on businesses with

TRANSPARENCY (LAW)



To what extent are there provisions to ensure transparency in the activities of the business sector?

Minor legal reforms have been achieved since 2011 that have contributed to inspiring greater transparency in the business sector. Financial reporting standards and comprehensive

disclosure rules for businesses are set in the new Law on Financial Reporting from 2013. These reporting standards apply to large and/or medium business organisations. The Law requires that all reporting should apply to International Financial Reporting Standards (IFRS). This particular legal provision has been added to the new Law on Business Organisations.

According to the Law on Accounting, Financial Reporting and Audits, large, medium and small-sized entities are required to adopt IFRS. Consolidated financial statements must be prepared in accordance with EU law. Accounting records are to be maintained in the official languages of Kosovo and using the euro as the currency. The financial statements of large companies must be audited by auditing firms, while those of medium-sized companies may be audited by auditing firms or individual auditors.⁶¹

Medium and large businesses with an annual net turnover higher than 2 million euro must consolidate and report their financial statements to the Kosovo Council for Financial Reporting (KCFR) in accordance with Directive 78/660/EEC of EU and IFRS.⁶² Financial statements are required to be audited by a licensed statutory firm⁶³ and in accordance with international standards.⁶⁴ Once these reports are submitted to the KCFR they become part of the registry at the country level.⁶⁵

The registry “serves as a central source of information activity of large companies in Kosovo and their financial positions.”⁶⁶ Its aim is to enhance “financial transparency of large commercial companies which have significant impact on the economy.”⁶⁷ The KCFR must submit to the government and publish its annual report regarding its performance and achievements realised through the year.⁶⁸

TRANSPARENCY (PRACTICE)

SCORE

2011

25

2015

25

To what extent is there transparency in the business sector in practice?

In general, businesses do not make either their financial accounts or reports on activities publicly available, as was reported in the 2011 NIS report. This has been more than confirmed in the World Bank Doing Business Report where Kosovo received only 5 out of 9 points on “the extent of cor-

porate transparency.”⁶⁹ To draw a comparison, the World Bank ranks Bulgaria high on corporate transparency with 8.5 points and the Czech Republic extremely low with 3.5 points.⁷⁰

This scope of transparency does not go beyond narrow information provided on the web portal of the registry of the Business Registration Agency of the MTI.⁷¹ Information published includes the type of business, owner’s name, number of employees, address and contacts. To a great extent, this information is not updated since that is not required from businesses.⁷² Large businesses such as banks, insurance companies, and so forth, continue to undergo audit examinations and report financial statements to the tax authorities. However, according to the Riinvest Institute, whatever gets reported remains closed and not shared with the public.⁷³

There is no access to financial information of business enterprises. If an investor is interested in buying shares from any company, he or she will not be able to get reliable information on the number of staff, annual turnover, financial losses, etc.⁷⁴ Furthermore, in the World Bank Doing Business Report, Kosovo was ranked the last country in the region for corporate governance structures in the business community.⁷⁵ Kosovo was also ranked at its worst on the ease of accessing internal corporate documents, 4 out of 10 points.⁷⁶

ACCOUNTABILITY (LAW)

SCORE

2011

25

2015

50

To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?

The Law on Business Organisations defines different types of company, e.g. joint stock company, Limited Liability Company, etc., and it sets requirements for registration of each entity. More importantly, it offers details on the rights and obligations of owners, managers, directors, and shareholders.⁷⁷

An important provision added to the new law concerns the manager’s responsibilities in reporting to the Board. In Article 184, the text has been reformulated to the following: “Every Officer or Director should avoid actual or potential conflicts between personal interests and those of the company, it is obliged to inform to the Board of Directors or a Decision taking Commission ... whatever personal or financial interest she/he may have.”⁷⁸

While there is no stock market, banks are regulated by the Law on Banks, Microfinance Institutions and Non-Bank Financial Institutions. This Law regulates all financial activities including capital and ownership requirements and audit and reporting. The Law came into force in May 2012, but very soon was contested by civil society organisations and the ombudsperson, specifically for articles 90, 95, 110, 111, and 116.

The main contested Article by civil society was Article 110. It stated that in “any event of liquidation, remaining donated capital must be returned to the original donor(s) or distributed for charitable purposes.”⁷⁹ For years microfinance institutions were registered as non-profit entities, while in practice they operated as private businesses. As non-profit entities they were entitled to many tax exemptions. Hence, the concerned articles were ruled unconstitutional and remaining capital cannot be treated as non-profit and returned to the original donor.

The financial regulator that oversees the business sector is the division of the KCFR. The KCFR’s role is to approve and verify that financial statements of business organisations are in conformity with international financial reporting standards.⁸⁰ Other responsibilities of the KCFR comprise monitoring the implementation of accounting and audit procedures, and licensing accountants and auditors.⁸¹ The administrative instruction on the Structure and Content of the Financial Reporting (No. 2/2013) was introduced in March 2013. Its aim is to layout the structure and content of the annual financial reports in accordance with Article 3 and 9 of the Law on Accounting, Financial Reporting and Auditing.⁸²

ACCOUNTABILITY (PRACTICE)



To what extent is there effective corporate governance in companies in practice?

Corporate governance was rated extremely low in the 2011 NIS study. This was mainly due to the report’s take on corporate culture in publicly owned enterprises, which were characterised as being too politicised. For instance, board members were generally appointed by political parties without credible work experience. Private companies also had their own issues. According to the assessment of 2011 NIS report, they were far from fulfilling international standards of financial reporting.

In the last four years corporate governance in the private sector has not improved. This refers to the structures and processes of leading a company, which, according to the Riinvest Institute, are not in a stable state in Kosovo. One of the problems is that relations between managers, directors, and shareholders remain far too informal.⁸³ Accordingly, there is almost no separation of management and ownership when it comes to accountability.

Despite modest reforms in the legal system that pertain to corporate governance, practice still lags behind. The standards of corporate governance are lower than what is considered normal in Europe.⁸⁴ This is something that has been well stated in a conference organised by Corporate Social Responsibility (CSR) Network in June 2014. Efforts to improve have been made in recent years by the International Financial Corporation (IFC). For instance, the IFC has produced a manual on corporate governance for family businesses. However, for all initiatives and services offered by the IFC it is too early to judge their actual impact in practice.

Reporting to the Kosovo Financial Reporting Council (KFRC) has not significantly increased. The number of large commercial companies that have submitted their financial statements to the KFRC has increased by only eight. In 2012, only 209 companies submitted their financial statements whereas in 2013, only 218 companies did so.⁸⁵ These numbers exclude banks and insurance companies that are not subject to the Law on Accounting, Financial Reporting and Auditing.⁸⁶

INTEGRITY MECHANISMS (LAW)



To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

The mechanisms that apply to business integrity have not seriously improved in the last for years. Any unlawful act is sanctioned through the Penal and Civil Code, as was reported in the 2011 NIS study. Internal compliance mechanisms to report bribery to public authorities have become more widespread. Many businesses have come to realise that bribery and fraud “can seriously harm their reputation and business interests.”⁸⁷

To increase their integrity, many businesses have been applying comprehensive internal compliance policies that specify

certain unacceptable practices.⁸⁸ In the MCI survey report, about 41 per cent of respondents stated that they had adopted an internal code of ethics while 31 per cent had adopted policies regarding bribery and corruption.⁸⁹ However, Codes of Conduct are more likely to be written down in business organisations that are exposed to the international community. They may include large corporations or banks and insurance companies.

INTEGRITY MECHANISMS (PRACTICE)



To what extent is the integrity of those working in the business sector ensured in practice?

Corruption in the business community is still a serious problem, as was reported in the 2011 NIS report. Bribery is viewed as a means of survival and a method for businesses to get by in the real world. Tenders and public procurement were also an area of concern and highly sensitive to corruption. According to the UN Office on Drugs and Crime in 2013, “businesses on average pay bribes every seven weeks.”⁹⁰ In almost a half of bribery cases, the bribes were requested by public officials.⁹¹

The rate of bribery prevalence exceeds 3.2 per cent of those businesses that declared that they had contacts with public officials.⁹² This is an estimate calculated in the MCI survey sample of 3,052 businesses in which more than 90 per cent of respondents stated that they had contacts (at least one contact in a year) with public officials or civil servants.⁹³ Of those who paid bribes, an average of 7.7 bribes were paid to public officials in the 12 months prior to the survey.⁹⁴ According to a MCI study report in 2013, the main purpose of bribery is to either speed up a procedure (28.4 per cent) or contribute to finalising a procedure (13.1 per cent).⁹⁵ Only 23.9 per cent of bribes that were paid did not serve any specific purpose.⁹⁶

Corruption is the main impediment to attracting foreign investment, as pointed out by the World Bank Group and International Finance Cooperation. A study, published in 2014, consisted of a survey to measure of perceptions of 103 foreign companies, 72 of which had already invested in Kosovo while the other 31 were potential investors.⁹⁷ In this

survey report, corruption was rated as a top negative issue in the perceptions of potential investors.⁹⁸ About 54 per cent of respondents had a negative perception about corruption.⁹⁹

Since there are negative perceptions about corruption in the foreign business community in Kosovo, not much is anticipated to change in the near future. There are no cases where sanctions by the government were imposed for bribery. A UN report claimed that, “only 3.7 per cent of all bribes paid by businesses in Kosovo are reported to official authorities.”¹⁰⁰ There are a number of reasons why bribes are not reported: either because it would be pointless, or due to fear of reprisals.¹⁰¹ Such failure to report corruption suggests that there is lack of trust in the public authorities.¹⁰²

There is a blacklist of companies that have engaged in corrupt practices. However, the blacklist is very short, with only three companies on the list that have violated rules and procedures of public procurement and they are published on the website of the PRB.¹⁰³

The fact that large businesses are involved in corruption makes it almost impossible to have any lasting and effective anti-corruption effect. In December 2014, a few owners of gas pumps were arrested for not reporting their tax and working without fiscal registers.¹⁰⁴ Tax evasion is associated with the informal economy and *smuggling* of foreign imports, in this case oil, by evasion of customs duties.¹⁰⁵

ANTI-CORRUPTION POLICY ENGAGEMENT (LAW AND PRACTICE)



To what extent is the business sector active in engaging the domestic government on anti-corruption?

In general, businesses are not so engaged in anti-corruption policies. According to the Riinvest Institute, there is no incentive for them to do so since the rule of law is not responsive.¹⁰⁶ Business associations are relatively more involved on an ad hoc basis, e.g. the American Chamber of Commerce. However, their contributions come down to only a few statements and advocacy attempts to hold the government

accountable. So far, the government has rarely responded to their requests.

Anti-corruption initiatives are sometimes discussed in meetings and other activities between the business community and government. Business agencies and chambers of commerce continue to voice their membership concerns against corruption. For instance, the American Chamber of Commerce (AmCham) in late November 2014 came out with a statement to condemn corruption and call for the government to strengthen the rule of law and create a more welcoming business environment to attract foreign investments.

No businesses are currently subscribed to the UN Global Compact. This is an initiative that aims to encourage businesses worldwide to adopt sustainable and socially responsible policies, and to report on their implementation. There are only three non-profit participants in this network. In September 2014, the National Chapter of CCLP Worldwide was registered.¹⁰⁷ In other neighbouring countries, the number of participants is higher (Albania seven, Macedonia 20, and Serbia 77).¹⁰⁸

into local companies.¹⁰⁹ This network has grown to almost 25 members, including mainly foreign commercial banks, insurance companies, audit firms, marketing companies, and grocery chain shops.

In June 2013, two companies, Meridian and SharrCem, received European CSR Awards in Brussels. The award was given by the European Commission for Industry and Entrepreneurship for their outstanding work in the community.¹¹⁰ The CSR Network aims to promote the UN's Global Compact Principles in the business community. Some of these principles relate to labour, the environment and anti-corruption including bribery.¹¹¹

Civil society associations that are more active include the Kosovo Bankers Association, the Kosovo Association of Information and Communication Technology, the Insurance Association of Kosovo and Kosovo Exporters Association.¹¹² Many of these associations are members of the Economic Advisory Council established in December 2013. This consists of representatives from the Ministry of Finance, Customs and Tax Administration and its purpose is to work on fiscal reform.¹¹³

Further assessments or analysis must be done on how corporate governance can advance to overcome corruption affairs in the business community. This approach should begin from within, meaning that businesses should start thinking outside corporate walls on how to meet the demand of customers. Here CSR should play a positive role, while taking into consideration the few success stories that have already occurred in the last four years (e.g. corporation Rugova helping Down Syndrome).

CIVIL SOCIETY SUPPORT (LAW AND PRACTICE)



To what extent does the business sector engage with/provide support to civil society in its task of combating corruption?

In Kosovo, the role of the private sector is slightly more aligned with civil society than it was in 2011. In the last four years, it has grown more supportive of civil society initiatives in fighting corruption. They are reluctant to support anti-corruption activities of CSOs in financial terms. Meanwhile, in many cases, businesses have created their own associations and chambers of commerce. As such, they attend many civil society meetings to discuss priority issues and strategies for cooperation.

There have been some minor incentives for improvement in the sector of corporate social responsibility. For example, the Kosovo Corporate Social Responsibility (CSR) Network was established in April 2011. Its purpose is to increase public awareness of CSR and incorporate CSR practices

RECOMMENDATIONS

- > **The government should create an integrated online portal, between Kosovo Tax Administration and KARB where information on businesses is registered.**
- > **Cooperation between businesses and customs and tax authorities should be strengthened through the various economic chambers that represent the former.**

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STATE OWNED ENTERPRISES

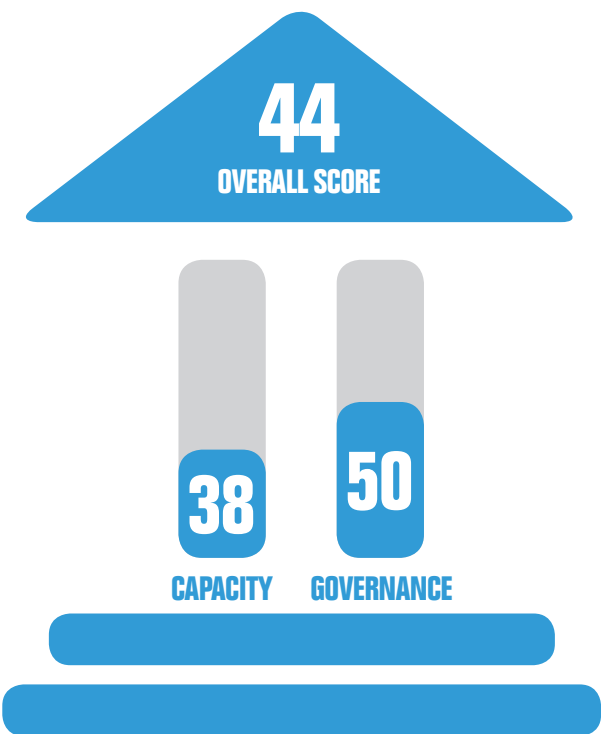
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OVERVIEW

In general, the legislation regulating State Owned Enterprises (SOEs) is satisfactory. It is largely in line with the principles of corporate governance set by the Organisation Economic Cooperation and Development (OECD). However, the legislation is far from being effective in practice. The source of the problem stems largely from the political parties in power. They continue to exercise influence in decision-making and use SOEs for political ambitions (e.g. putting pressure on public tenders or influencing the appointment of the members/directors of the boards). This negatively affects the institutional performance of SOEs in providing utility services to the public including water, telecommunications, electricity and waste management. There is also the difficulty of collecting utility payments. As almost all SOEs operate with financial losses, they turn to the government for support, which in most cases is not sufficient to meet their needs.

The graph presents the indicator scores, which summarise the assessment of the SOEs in terms of their capacity, their internal governance and their role. The remainder of this section presents the qualitative assessment for each indicator.





SOEs



	Indicator	Law	Practice
Capacity	Resources	-	-
	Independence	75	0
Governance	Transparency	75	25
	Accountability	75	25
	Integrity mechanisms	75	25



STRUCTURE AND ORGANISATION

In Kosovo, the SOEs are referred to as Publicly Owned Enterprises (POEs). For the purposes of this study, Socially Owned Enterprises will not be considered as SOEs, since the cycle of privatising them is drawing to an end.

The government controls SOEs through full, majority, or significant minority ownership. They represent a substantial part of the GDP, employment and market capitalisation. SOEs are subject to the Law on Business Organisations unless regulated by the legislation on POEs.¹ Reorganisation, bankruptcy and liquidation of SOEs are also regulated by special legal acts.² POEs are also subject to regulatory requirements and provisions of applicable laws in Kosovo.

SOEs are divided at both the central and local level. There are 17 centrally owned and 43 locally owned SOEs.³ The main central SOEs include the Kosovo Energy Corporation (KEK), Kosovo Electricity Distribution and Supply Company (KEDS), Transmission System and Market Operator (KOSTT), Post and Telecommunications of Kosovo (PTK), Kosovo Railways, Pristina International Airport, HPE Iber Lepenc, and Radio Television of Kosovo (RTK). In addition, there are two regional irrigation companies (Drini i Bardhë and Radoniqi), and six regional water companies in Pristina, Prizren, Gjakova, Peja, Gjilan and Mitrovica. The local POEs include heating, water, waste, bus stations, horticulture, and public housing enterprises.⁴

ASSESSMENT

INDEPENDENCE (LAW)

SCORE

2015 **75**

To what extent does the legal and regulatory framework for SOEs protect the independent operation of SOEs and ensure a level-playing field between SOEs and private sector companies?

The Law on Publicly Owned Enterprises provides the legal framework on *ownership* and corporate governance of SOEs in accordance with international standards.⁵ SOEs may be either owned by the central or local government.⁶ Centrally owned enterprises are required to offer services to more than three municipalities, otherwise they should be locally owned.

SOEs are organised as joint stock companies under the Law on Business Organisations.⁷ All ownership interests in any SOE must be represented and registered in shares.⁸ The POE Policy and Monitoring Unit (the POE Unit) in the Ministry of Economic Development (MED) is in charge of overseeing “all physical certificates representing shares in POEs.”⁹ The MED or any government entity, however, is not allowed to interfere in day-to-day activities of SOEs.

The obligations and responsibilities of SOEs in terms of public service are clearly mandated by laws and regulations. In exercising shareholder rights, there are two distinctions between centrally and locally owned SOEs. On the former, the government establishes a Committee of Ministers. On the latter, a Municipal Shareholder Committee is established consisting of one member appointed by the mayor and two members appointed by the Municipal Assembly.¹⁰

The board of directors of a central POE consists of either five or seven members.¹¹ With the exception of one member, the members are appointed by the government once they are recommended by a Committee. The permanent secretary sets the selection criteria. Requirements are that members should be highly qualified senior servants and that they should come from the policy sector in which the concerned POE is functioning.¹² The one member that is not appointed by the government is the CEO who is elected by the members of the board.¹³ The boards of local SOEs con-

sist of only five members.¹⁴ Four members are appointed in a shareholder meeting as provided by the Law on Business Organisation, while the fifth member is elected by the other board members.¹⁵

The members of the Board of Directorates must be independent. No one can influence the Recommendation Committee in identifying and recommending potential candidates of the Board of Directors.¹⁶ This is very important since it has the ultimate authority in decision-making, particularly in electing and dismissing senior officials of SOEs, including the executive/managing directors.

Those who are not eligible to be a board member fall under these categories, he or she (1) is currently or has been for the last three years an employee of the SOE, (2) has or had for the last three years financial relations with the SOE, (3) has important connections with other directors of the concerned POE, (4) represents a shareholder holding of more than 10 per cent of voting shares, (5) has served in the board of directors for more than nine years, and (6) is subject to any other issue of conflict of interest.¹⁷

The most problematic provision pertains to whether board members/directors may be part of a political party. The law requires that members of the board cannot have been elected officials, political appointees or decision-makers in any political party in the 36 months preceding the date of their application.¹⁸ This provision, however, does not rule out individuals who are members of a political party. Thus, there is a legitimate potential for party militants to run and become directors of boards, which may seriously impede the independence of SOEs.

INDEPENDENCE (PRACTICE)

SCORE

2015 **0**

To what extent are the day-to-day operations of SOEs performed independently of state interference in practice?

SOEs are politically controlled and operationally ineffective in practice. They are run by political parties, which have direct influence on the activities and decisions related to strategic and daily management. For instance, political parties have the final say in appointing, controlling and dismissing the members/directors of the boards.¹⁹ Hence, in practice

boards of directors are not independent, since the personal and political interests and/or ambitions far outweigh the public or institutional interest. It is at their discretion to appoint the CEO of an enterprise, who may also be a political affiliate, a party member or servant who will obey orders rightfully as requested from the top.²⁰

The appointment of the CEO of PTK is a more recent case study of political interference in SOEs, recognised by the public and examined in greater depth by civil society and media. Its current CEO²¹ is the head member of the Pristina branch of the Democratic Party of Kosovo (PDK).²² In the previous term, he had been the managing director and CEO of Airport Pristina since 2008.²³ His appointment has not only been thought of as political, but also unprofessional due to his lack of expertise and experience in the telecommunications industry.²⁴ This scenario involving PTK is common among other SOEs. In a study conducted by the GAP Institute, six out of 17 interviewed CEOs openly stated that they belonged to a political party.²⁵

SOEs are exposed to *clientelism* in exchange of goods and services for political support. CEOs are under “extraordinary pressure to sign contracts, make decisions, and implement board policies”²⁶ on behalf of companies or interest groups that financially support political parties. As reported by Çohu in reference to the financial audit reports of the Central Election Commission (CEC), PTK serves as a large source of revenue for donors of political parties.²⁷ Accordingly, more than 23 million euro of high value public tenders went to companies, which have contributed to five political parties.²⁸ It appears that SOEs are a great source for making money in public procurement, more than the government or all other institutions combined can offer. In 2014, PTK and KEK spent almost 100 million euro in public procurement contracts.²⁹

In addition, CEOs have no authority to resist political pressure on recruitment decisions.³⁰ According to a GAP study, 42 per cent of CEOs interviewed stated that they were under pressure to employ staff based on party preferences.³¹ For instance, PTK is recognised as an employment hub of hundreds of individuals who are either members or servants of political parties.³² The more people are employed based on political connections rather than merit, it hurts the marginal productivity of an enterprise. As a result, the majority of, if not all, SOEs operate with heavy losses in revenue and value.³³



TRANSPARENCY (LAW)

SCORE

2015

75

To what extent are there provisions to ensure transparency in the activities of SOEs?

SOEs are required to be open in terms of governance and ownership. The boards of directors are appointed in a transparent and open competition.³⁴ SOEs are required to prepare a business plan by October 31 for the upcoming calendar year.³⁵ This plan must be at first approved by the board and then submitted to the minister/government (POE Unit) or the concerned Municipal Shareholder Committee. The business plan must cover: business and financial targets, means and actions of achieving those targets, and obligations vis-à-vis consumers and the public.³⁶

SOEs are joint stock companies, and as such they must comply with financial reporting requirements and auditing principles set out in the Law on Business Organisations. For the purposes of preparing financial reports, they must also do so in accordance with the Law on Public Financial Management and Accountability.³⁷ The financial statements are subject to an external audit review, and finally made public in the website of the SOEs.³⁸

The audit of SOEs is conducted by an independent and qualified auditor.³⁹ It is required that auditor gives the final opinion regarding the truthfulness of the financial statements. He finally submits a management letter to the POE Unit by May of the coming year. Both the government and parliament may assign an auditor besides the general auditor.⁴⁰

The POE Unit must make public information for all SOEs on its website. This includes financial statements, performance assessments, business plans, decisions and bylaws, salaries of directors and officers, number and breakdown of employees, material information on each related party transaction, procurement contracts, public service obligations, financial interests declared by the directors and officers, and a list of the 10 most important suppliers.⁴¹

The members of the board of any SOE are required by law to declare their property, gifts and revenue to the Anti-Corruption Agency (KACA).⁴² In the declaration form they must register the amount and source of their revenues, material benefits and financial obligations.⁴³ The declarations are to be submitted when taking up public office, annually, upon request of the KACA, and after completing or being dismissed from a public office.⁴⁴

TRANSPARENCY (PRACTICE)

SCORE

2015

25

To what extent is there transparency in SOEs in practice?

SOEs are overall not very transparent in practice. Those that are most problematic in this regard are locally owned enterprises, as was indicated by GAP Institute in their 2015 research study. In particular, the report refers to many difficulties in accessing financial and annual reports of local SOEs in order to assess their existence and performance.⁴⁵ A very large number of local SOEs do not have websites and even when they do their financial and annual reports are not made public.⁴⁶

Central SOEs are slightly more transparent than local SOEs. This is because the POE Unit holds them accountable, as they report their annual reports, financial statements, and business plans to it.⁴⁷ According to the audit report of the Office of the Auditor General, the POE Unit “has made progress in terms of transparency of data.”⁴⁸

Nonetheless, central SOEs are still far from perfect. As reported by Çohu, in reference to PTK, monitoring and regulatory bodies continue to fail to provide information on the decisions and projects of the SOEs.⁴⁹ In this case, the POE Unit is not effective in monitoring the work of the boards, for example, ensuring that bonuses of board members are gained appropriately and public money is spent rationally.⁵⁰

In practice, however, besides conducting a general audit and providing an opinion, auditors do not audit or assess the performance of SOEs.⁵¹ Hence, the POE Unit offers no information to the public regarding the performance of SOEs. SOEs are subject to an annual external audit review conducted by an independent, competent and qualified auditor, as required by the Law on Publicly Owned Enterprises. The auditor is required to provide to the board and shareholders with 1) a detailed financial assessment report, 2) the financial position and performance of the SOE, and (3) an opinion on the manner in which financial statements were prepared and presented by the SOEs.⁵²

SOE senior officials disclose their assets to the KACA, which makes them available to the public. Thus far, the KACA has not reported any issues regarding SOEs disclosing their assets. In 2014, 100 per cent of public officials disclosed their assets, in total 296 senior officials.⁵³ In addition, statements



of conflicts of interest are made public on the webpage of the POE Unit. However, the biographies of the board members are not made public, so the public are not aware of who is running the country's SOEs.

ACCOUNTABILITY (LAW)

SCORE

2015 **75**

To what extent are there rules and laws governing oversight of SOEs?

SOEs are concerned with maximising enterprise and shareholder value.⁵⁴ They must function in accordance with business strategies and treat their shareholder(s) equally.⁵⁵ SOEs are overall well-regulated in terms of how they should be governed and to whom they should be held accountable. They report to the Ministry of Economic Development and the POE Unit and the government reports to the parliament on an annual basis regarding the manner in which these two institutions exercise their competencies and responsibilities.⁵⁶ It is almost the same case with the locally owned SOEs. The Municipal Shareholder Committee reports to the Municipal Assembly every year on the performance of SOEs.

The POE Unit was established by the MED for purposes of supporting SOEs.⁵⁷ It prepares and submits analytical reports to the minister, and proposed procedures of supervising the central SOEs.⁵⁸ It also collects information on SOEs and offers assistance to the budget department for of any matter related to SOEs.⁵⁹ It reports to all shareholders regarding specific concerns on the performance and management of SOEs. In addition, it must assess the performance of the boards on an annual basis. This requires that all officers and members cooperate with the POE Unit during an assessment.⁶⁰ The POE Unit may engage a professional consulting firm to conduct the assessment in accordance with the Law on Public Procurement.⁶¹

The shareholder(s) of a POE are entitled to exercise continuous and rigorous oversight over the conduct of board of directors and audit committees.⁶² In any instance, if an SOE fails to meet its performance targets over two consecutive years, shareholders are required to “consider removing and replacing the Board of Directors or the majority of its members.”⁶³ Furthermore, the shareholders require that the board prepares and submits a detailed report. They are concerned mainly on three measures: performance trends in

accordance with the business plan, fluctuations of the value of assets, and the level of consumer satisfaction regarding the quality of services.⁶⁴ These are reports that are submitted to and published on the website of the POE Unit.⁶⁵

The board of directors must conduct a systematic assessment of its performance. The results of the assessment must be reported to the minister, in the case of central SOEs, and the Municipal Shareholders Committee, in the case of local SOEs.⁶⁶ Each Audit Committee consists of three directors elected by the government.⁶⁷ Its purpose is to verify whether the business affairs of the POE are conducted lawfully and responsibly on behalf of its shareholder(s). It is required that at least two members must be proficient in accounting.

The shares of any POE may be sold once the government issues a decision and the majority of the parliament approve. It is at the discretion of the Kosovo Privatisation Committee to proceed with tendering procedures in selling the shares.⁶⁸ The Committee is composed of five ministers and administered by a professional Secretariat established within the MED.⁶⁹ The tendering process should be transparent and competitive in compliance with the Law on the Procedure for the Award of Concessions.⁷⁰

ACCOUNTABILITY (PRACTICE)

SCORE

2015 **25**

To what extent is there effective oversight of SOEs in practice?

In practice, SOEs are not accountable to the government or the public interest for their actions. Political interference is the source of the problem. It is largely concentrated in the process of appointing board members based on party interests rather than professional merits. As a consequence, the boards do not carry out their functions in line with the objectives set by the government and the POE Unit. Instead, they act more on behalf of party interests or interest groups who hold political and financial power.⁷¹ To keep SOEs up and running, both central and local government finance them on an ad hoc basis rather than concentrating in long-term improvements to the infrastructure and corporate performance.⁷²

KDI-TI has been a critic of the performance of board members. In its assessment, they are extremely unprofessional and there is no mechanism in place for internal control.⁷³

Accordingly, that is the main reason why SOEs have not been performing well, or even operating with financial losses. These are findings asserted by many local civil society organisations (e.g. Çohu, GAP) and the European Commission. Take for example the telecommunications industry. PTK in the last eight years has experienced a serious decline in terms income and the number of end-users.⁷⁴

The POE Unit evaluates the performance of the board directors. In its assessment, boards do not perform well.⁷⁵ Unfortunately, the government has not taken any measures to nominate professional members in the boards of SOEs.⁷⁶ That is why SOEs fail on many initiatives, which are required by the Law. For instance, reports on consumer satisfaction are not completed by many SOEs. Out of 22 SOE officials interviewed by the GAP Institute, seven stated that they did not prepare such reports.⁷⁷ These reports are required to be submitted to the POE Unit by 31 March for the preceding year and should be published in the website of the SOE.⁷⁸

According to the European Commission Progress Report, SOEs are inefficient, and for the last two years, government subsidies have fallen by 0.25 per cent of GDP.⁷⁹ This hurts the financial and operative performance of SOEs.⁸⁰ In 2014, subsidies amounted to 0.5 per cent while in 2012 they amounted to 0.75 per cent of GDP, covering energy, heating, water and transportation. Still, subsidies make a large percentage of public funds apportioned by the government as required by the Law on Budget. In 2009–2013, SOEs have received 260 million euro from the MED,⁸¹ 78 per cent of which was allocated in the form of subsidies and the remaining 22 per cent in capital investments.⁸²

The majority of SOEs operate with financial losses (technical and commercial).⁸³ According to the GAP Institute, “only for the central enterprises losses exceeded 500 million Euros.”⁸⁴ The GAP Institute also shows that there is no improvement with regards to expansion, quality and coverage of services.⁸⁵ The two most concerning issues with SOEs were (1) SOEs’ difficulties/inability to collect debts, and (2) SOEs’ commercial losses. These are problems more common in the water companies and regional waste companies.⁸⁶ The failure to collect debt has three consequences as it (1) increases exposure to liquidity problems, (2) affects capital investments, and (3) increases the price of services.⁸⁷

In the water sector, the percentage of unbilled water goes over 57 per cent at the national level, which falls behind the average in developed countries, ranging from 10 to 15 per cent.⁸⁸ In waste, 39 per cent of households do not receive any services from the waste collectors. The profits of PTK have dropped in the last three years, the main reason being the privatisation process and implementation of broadband technology from competitors.⁸⁹ The number of landline users

has decreased by 4 per cent from 2012 to 2013.⁹⁰ Although KEK has performed well in terms of profits in the last two years, the company still faces outstanding debts. In 2014, the portion of debt went from 162 to 264 per cent of its capital.⁹¹

INTEGRITY MECHANISMS (LAW)

SCORE

2015 **75**

To what extent are there mechanisms in place to ensure the integrity of SOEs?

Institutional integrity of SOEs is overall well regulated by the law. The general procurement rules are set in the Law on Public Procurement and they apply equally to SOEs and private sector enterprises. Procurement is highly important for SOEs since they are the largest spenders of public contracts. The Law rules out any economic operator who has committed a serious offense of corruption, including bribery, or grave professional misconduct in the last ten years.⁹²

Any individual who desires to join the board of directors of a SOE must be a person of “recognized integrity.”⁹³ Besides the individual’s professional background, he or she must have a clean criminal record.⁹⁴ Board members cannot have been convicted by a court of law for any criminal or civil offence involving fraud, corruption, theft, money laundering, and bribery.⁹⁵ Hence, according to the Law, it is highly important that the members or directors of the board are of high integrity since they have a pivotal role in decision-making.

The boards have the legal authority to appoint and dismiss the officers of SOEs.⁹⁶ Every SOE has the following four officers: (1) chief executive officer, (2) treasury and chief financial officer, (3) general corporate secretary, and (4) audit officer.⁹⁷ Meanwhile, members/directors of SOEs are required to attend training sessions on corporate governance. These are organised once a year by the POE Unit.⁹⁸ Any failure of attendance will be reported to the government and the concerned member will be termed ineligible for reappointment.⁹⁹

SOEs are subject to bylaws or policies that contain provisions on many integrity issues. They cover: (1) fair and transparent recruitment and performance assessment, (2) monitoring and controlling of conflict of interest, and (3) monitoring, reporting and approval of the procedures on related party transactions.¹⁰⁰ It is the Ministry’s responsibility to create a

model of bylaws and ensure that they are successfully integrated by SOEs.

SOEs are required to prepare, adopt a Code of Ethics and implement corporate governance in committing to highest standards of corporate conduct.¹⁰¹ They must be detailed in giving clear instructions on expected behaviour of directors, officers, employees and advisors.¹⁰² The Code of Ethics must be consistent with a model created by the Ministry of Economic Development, which must comply with the current laws and international standards of corporate governance.¹⁰³

There are many legal provisions that restrict members/directors and officers from lobbying activities of SOEs. In the Law, it exclusively says that they cannot attend and attempt to influence any meeting, discussion, negotiation or decision on matters that concern their personal [financial] interest.¹⁰⁴ To avoid conflicts of interest, it is required that they disclose their personal interests to the board of directors regarding their competitors, creditors, suppliers and customers.¹⁰⁵

Rules on conflicts of interest and declarations of assets constitute preventive measures regulated by the law. By definition, conflicts of interest refer to private gains that may influence the objectivity, legitimacy and transparency of an official duty of a public officer.¹⁰⁶ The main legal provisions that apply to conflicts of interest include the exchange of gifts and rewards.¹⁰⁷ Efforts to regulate conflicts of interest as criminal acts have failed several times, the last time in May 2015, for uncertain reasons. The Council of Europe indicates that there is a dilemma whether criminal proceedings (*repressive*) and administrative proceedings (*prevention*) are mutually exclusive or not.¹⁰⁸

INTEGRITY MECHANISMS (PRACTICE)

SCORE

2015 **25**

To what extent is the integrity of SOEs ensured in practice?

The integrity of SOEs is not implemented in practice at all. SOEs operate far from what the OECD guidelines recommend; that the state should play a positive role in improving corporate governance and performance of SOEs.¹⁰⁹ SOE's lack of transparency and accountability constitute a serious

breach of the basic principles of the OECD guidelines. However, relating to integrity more issues arise, particularly with regards to corporate governance and public procurement.

In many SOEs, staff and officials are not well informed of the existence and importance of the Codes of Corporate Governance. Their implementation is highly recommended by the OECD for the purposes of whistleblowing and instructing officials on how to behave.¹¹⁰ Çohu noted in its more recent study that SOEs in the telecommunications sector do not respect the good practices of the OECD due to private interests from both politics and business.¹¹¹ Overall, there are a number of SOEs that do not have Codes of Ethics or Corporate Governance. In a study by the GAP Institute in 2014, of the 22 SOE officials interviewed, two did not have a Code of Ethics and three did not have a Code of Corporate Governance.¹¹²

SOE directors/members are inclined to many conflicts of interest. Since they are minimally required to engage in the activities and operations of an enterprise, it is almost a given that they find a second part-time or a full-time job. As reported in the European Commission Progress Report in 2013, over 1,400 cases of senior officials, including many board directors of SOEs, held multiple functions funded by the public budget.¹¹³ This is unjust considering the level of payment they receive and comparing it with the limited amount of work they spend on SOE activities. They meet no more than twice a month¹¹⁴ and are paid a monthly salary up to 750 euro, depending on the category of the SOE.¹¹⁵ As also noted by the Office of the Auditor General, the majority of board members are engaged in primary work in the private or public sector.¹¹⁶

As far as declaring income and assets to the KACA, board directors and other senior officials report on a regular basis. In 2014, 296 SOE senior officials (100 per cent) have reported their income and assets to the KACA.¹¹⁷ However, as reiterated in the previous pillar reports, the KACA has its limitations in verifying their sources, making it almost impossible to investigate and sanction.¹¹⁸ Furthermore, SOEs have not signed up to any integrity pacts, which according to Transparency International, are "a tool for preventing corruption in public contracting."¹¹⁹ This tool requires that both the government contractor and company agree to abstain from bribery, collusion and other corrupt practices.

Instead, SOEs along with other public institutions choose to commit to an individual contract with the company. This becomes a problem considering that SOEs are relatively more inclined to corruption in public procurement, as they are heavily politicised and spend the largest portion of the state budget on public contracts. In 2014, KEK spent 45.2 million euro and PTK 54.3 million euro in procuring goods



and services.¹²⁰ The Procurement Review Body reports that in 2014 there were 34 complaints regarding contractual activities of KEK¹²¹ and 27 complaints regarding contractual activities of PTK.¹²²

The energy and telecom enterprises have been heavily criticised for favouring certain economic operators in tendering procedures. A notable example is that of KEK, which gave a 6.8 million euro contract to a very controversial company called Security Code for offering security services. The company in name is owned by a close relative and former body-guard of the current mayor of Skenderaj, who is recognised as the most influential political leader and war veteran in the country. These individuals were charged with corruption by the state prosecutor two years ago for the same tender.¹²³ Far worse, PTK was criticised by Çohu in reference to the audit report of the CEC for giving high value public tenders to companies who are donors of political parties.¹²⁴

RECOMMENDATIONS

- > The Assembly should change the Law on SOEs in order to prohibit party leaders and party members from becoming Board members.
- > The government should increase/strengthen the financial and human resources of the POE Unit by adding at least four professional staff members in order to carry-out the duties as required by the Law.
- > SOEs should make public the biographies of the Board members/directors and assessment results of their performance.
- > The government and parliament should exercise a more active role in holding accountable and disciplining SOEs boards and management who have not been performing well.
- > SOEs should hire professional research companies for testing and measuring consumer satisfaction on behalf of each SOE.



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VIII. RECOMMENDATIONS

Below is a non-exhaustive list of recommendations extracted from the individual chapters and grouped according to the addressed institution:

Main recommendations

Cross institutional cooperation in fighting corruption should be strengthened

Institutions that fight corruption should be streamlined

Capacities of justice system in fighting corruption should be significantly increased

To the Assembly:

The Assembly should ensure proper oversight of executive through different mechanisms, and in particular through Assembly committees.

The Assembly should review the legal basis on which independent agencies report to it. Sanctions should be imposed on the heads or boards of independent institutions if the Assembly does not adopt the annual reports and the Assembly should define deadlines for when these reports should be submitted.

The Assembly should strengthen its internal integrity mechanisms ensuring that MPs withhold from voting when there is a clear conflict of interest.

Committees need to review proposed budgets and periodically monitor spending by the line ministries they oversee.

The draft law to amend the Law on Prevention of Conflict of Interest needs to be urgently adopted by the parliament in line with recommendations provided by civil society.

The Assembly should adopt a Law on Political Parties in which existing legal provisions from secondary legislation will be integrated, regulating how internal democracy of political parties should be exercised.

The Assembly of Kosovo should review the law enforcement/ investigation competence of the KACA, following a general review of the institutional set-up of anti-corruption mecha-

nisms. The staff of the Law Enforcement Department within the KACA, with all the accumulated knowledge, should be repositioned in another law enforcement agency and/or within other KACA departments.

Legislation on the PRB and PPRC needs to be amended to take into account situations when there is no functioning parliament to appoint board members. In case of the expiry of mandate, the PPRC and PRB need to be able to exercise their functions until the election of the new boards.

The political parties in the Assembly should agree to gradually depoliticise CEC in the next four years by adding additional judges to amount to the same number of political representatives in the fora.

To the Government:

The government should adopt the Law on Government to regulate powers of an outgoing government.

The Government should develop and implement a robust public consultation process for legislation, policies, and strategies, etc. to ensure inclusive policy development based on the needs and interests of relevant stakeholders.

The government ministries should systematically address recommendations contained in the audit reports of the Office of the Auditor General.

The government should increase its commitment towards fighting corruption by providing resources to corruption fighting bodies and by streamlining legislation and institutions that fight corruption.

Public sector salaries should only be increased according to a coherent strategy and should be linked to performance to facilitate a more strategic and cohesive distribution of the state budget. Ad-hoc increases should be avoided.

The government should initiate and the Assembly should adopt amendments to the Constitution to ensure that majority of KJC members are elected by their peers.

The Ministry of Interior Affairs should increase transparency in the process of selecting and appointing senior manage-



ment ensuring that appointments are merit based and free of political influence.

The Law on the Office of the Auditor General should be amended to streamline the appointment process of the Auditor General.

The government should adopt a specific law on the media to regulate a number of issues including media ownership and online portals.

The disclosure of corrupt acts by public servants through whistleblowing needs to be encouraged through training and internal public administration awareness campaigns and not suppressed as is currently the case.

Central and local governments need to improve the rate of response to official requests for information from the current 30 percent.

To the Kosovo Judicial Council:

KJC should enhance a functional system of case management, reporting and accessibility of statistics.

KJC should create a functioning system of random case assignments based on a number of factors: case specialization, seniority, workload and potential conflicts of interests.

KJC should create a database in which disciplinary violations are registered and updated in order to track the accountability of judges.

To the Kosovo Prosecutorial Council:

The Assembly, upon proposal of KPC, should increase financial and human resources in making the state prosecutor more effective.

KPC and KJI should organise additional specialized trainings on economic crime and corruption.

KPC should increase transparency by updating its website and recruiting spokespersons.

KPC should publish statistical reports on prosecution and adjudication of criminal acts regarding corruption.

The Office of the Auditor General should increase its cooperation with prosecutors and the police unit for economic crimes and corruption by establishing a mechanism for regular exchange of information.

To the Kosovo Anti-Corruption Agency

Public information campaigns should be organised and funded on the KACA's initiative and not be dependent exclusively on international donors.

The KACA should be able to propose its own budget and the review process should solely be at the discretion of the Assembly. Neither the government nor any other budgetary organisation should be able to amend or modify the budget proposal prepared by the KACA.

To leaders of Political parties

Political parties should be more transparent in revealing their sources of income (public and non-public) and expenses related and non-related to elections.

To Civil society

The government should disclose information on the amount of public funds donated to civil society and where it goes.

CiviKos should demand that its 150 CSO members are more transparent and that they make public their financial and narrative reports on an annual basis.

CSOs should be more united in fighting corruption, drawing on lessons learned and success stories, and initiating potential projects that tackle corruption from multiple angles.



Business

The government should create an integrated online portal, between Kosovo Tax Administration and KARB where information on businesses is registered.

Cooperation between businesses and customs and tax authorities should be strengthened through the various economic chambers that represent the former.

State Owned Enterprises

The government should increase/strengthen the financial and human resources of the POE Unit by adding at least four professional staff members in order to carry-out the duties as required by the Law.

SOEs should make public the biographies of the Board members/directors and assessment results of their performance.

The government and parliament should exercise a more active role in holding accountable and disciplining SOEs boards and management who have not been performing well.



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