



# **Assessment of Institutional Integrity**

## **Kosova 2011**



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The Assessment of Institutional Integrity (AII) of Kosova is prepared by Kosova Democratic Institute (KDI) / Transparency International Kosova (TIK) in co-operation with Transparency International Secretariat in Berlin (TI-S).

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Note: Opinions expressed in this report are those of the authors, and do not necessarily represent the views of UNDP or the Japanese Government.



**Kosova**

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# **I**

## **INTRODUCTORY INFORMATION**

## Foreword

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*Executive Director of Kosova Democratic Institute / Transparency International Kosova*

*July 2011*

Development of democracy in Kosovo continues to encounter difficulties and be hampered by the culture and the institutional non-transparent actions, followed by the phenomenon of corruption. Corruption is tremendously spread throughout Kosovo, and as a result of unsatisfied actions by the institutions, its level is only increasing.

Kosovo's political leaders are aware for the need for reforms and advancement of anti-corruption mechanisms, and being subject to a pressure of domestic and international public, they have undertaken some activities and legal initiatives which still prove to be insufficient to deliver real results in the fight against this phenomenon. Moreover, taken measures to amend the legislation and the rhetoric of the Prime Minister for "zero tolerance against corruption", have not changed at all the perception of the Kosovar Public for corruption, who allude to a great presence of this phenomenon.

Being aware that the corruption phenomenon is hampering Kosovo in its EU membership process, its economic development, and what is the most important thing it is damaging the poorest strata of the population. The Government and other responsible institutions should take immediate and concrete steps to strengthen the mechanisms that fight corruption.

In this case, on behalf of Kosova Democratic Institute and Transparency International Kosova, I am pleased to introduce the "Assessment of Institutional Integrity" for Kosova, which also reveals the strongest and weakest points of the relevant institutions, in order to achieve more ambitious and far-reaching goals – to suggest precise and realistic proposals for the anti-corruption institutional activities in Kosovo.

Also, I would like to thank everyone who participated in the development of this study, as well as in the overall project implementation, namely: the team of authors that consists of **Alban Bokshi, Ibrahim Rexhepi, Leon Malazogu, Pëllumb Kallaba**, the team at Transparency International Secretariat that consists of **Cornelia Abel, Finn Heinrich, and Suzanne Mulcahy**, as well as **Enver Robelli** the external reviewer. I want to express my special gratitude to the members of the Advisory Group, the respondents, as well as the whole team at the KDI, and other contributors that participated in the preparation of this study. Also, appreciation to UNDP who offered support and funding to this very important project.



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## ACRONYMS AND ABBREVIATIONS

<b>AAK</b>	Alliance for the Future of Kosovo
<b>AAR</b>	Comprehensive Annual Audit Report
<b>ACA</b>	Anti-Corruption Agency
<b>AD</b>	Administrative Directive
<b>AFS</b>	Annual Financial Statement
<b>AI</b>	Administrative Instruction
<b>AKR</b>	Alliance New Kosovo
<b>APJK</b>	Association of Professional Journalists of Kosovo
<b>APR</b>	Annual Performance Report
<b>ASI</b>	Assembly Support Initiative
<b>BIRN</b>	Balkan Investigative Reporting Network
<b>CBK</b>	Central Bank of Kosovo
<b>CEC</b>	Central Election Commission
<b>CECS</b>	Central Election Commission's Secretariat
<b>CEO</b>	Chief Executive Officer
<b>CIVIKOS</b>	Kosovo Civil Society Platform
<b>CPCCK</b>	Criminal Procedure Code of Kosovo
<b>CSO</b>	Civil Society Organization
<b>CSPA</b>	Commission on Senior Public Appointments
<b>EBU</b>	European Broadcasting Union
<b>EC</b>	European Commission
<b>ECAC</b>	Electoral Commission for Appeals and Complaints
<b>ECAP</b>	Elections Complaints and Appeals Panel
<b>ECLO</b>	European Commission Liaison Office
<b>EMI</b>	Effective Municipalities Initiative
<b>ENEMO</b>	European Network of Election Monitoring Organizations
<b>EPAP</b>	European Partnership Action Plan
<b>EU</b>	European Union
<b>EULEX</b>	European Union Rule of Law Mission
<b>EUR</b>	Euro
<b>FIC</b>	Financial Intelligence Centre
<b>GDP</b>	Gross Domestic Production
<b>HDI</b>	Human Development Index
<b>ICO</b>	International Civilian Office
<b>IFES</b>	International Foundation for Electoral Systems

## ACRONYMS AND ABBREVIATIONS

<b>IJPC</b>	Independent Judicial and Prosecutorial Commission
<b>IKS</b>	Kosovo Stability Initiative
<b>IMC</b>	Independent Media Commission
<b>INPO</b>	Initiative for Progress
<b>IPA</b>	Instrument of Pre-Accession
<b>IREX</b>	International Research & Exchanges Board
<b>ISBN</b>	International Standard Book Number
<b>ISI</b>	Institutional System Integrity
<b>KACA</b>	Kosovo Anti-Corruption Agency
<b>KAG</b>	Kosovo Auditor-General
<b>KCSF</b>	Kosovo Civil Society Foundation
<b>KCSS</b>	Kosovo Centre for Security Studies
<b>KDI</b>	Kosovo Democratic Institute
<b>KEC</b>	Kosovo Education Centre
<b>KEK</b>	Kosovo Energy Corporation
<b>KIOB</b>	Kosovo Independent Oversight Board
<b>KIPA</b>	Kosovo Institute for Public Administration
<b>KIPRED</b>	Kosovo Institute for Policy Research Development
<b>KJC</b>	Kosovo Judicial Council
<b>KJI</b>	Kosovo Judicial Institute
<b>KMA</b>	Kosovo Municipalities Association
<b>KSF</b>	Kosovo Security Force
<b>KSI</b>	Kosovar Stability Initiative
<b>KTV</b>	Koha Television
<b>KZZHN</b>	Swedish Corporation for International Development
<b>LDD</b>	Democratic League of Dardania
<b>LDK</b>	Democratic League of Kosovo
<b>LPFMA</b>	Law on Public Financial Management and Accountability
<b>LPP</b>	Law on Public Procurement
<b>MEF</b>	Ministry of Economy and Finance
<b>MLGA</b>	Ministry of Local Government Administration
<b>MSI</b>	Media Sustainability Index
<b>MTPT</b>	Ministry of Transport and Post-Telecommunication
<b>NDI</b>	National Democratic Institute
<b>NGO</b>	Non-governmental organization

## ACRONYMS AND ABBREVIATIONS

<b>OAG</b>	Office of Auditor General
<b>ODP</b>	Office of Disciplinary Prosecutor
<b>OECD</b>	Organization for Economic Cooperation and Development
<b>OIK</b>	Ombudsperson Institution of Kosovo
<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>PDK</b>	Democratic Party of Kosovo
<b>PO</b>	Procurement Officer
<b>PPA</b>	Public Procurement Agency
<b>PPRC</b>	Public Procurement Regulatory Commission
<b>PRB</b>	Procurement Review Body
<b>PSC</b>	Polling Station Committees
<b>PTK</b>	Post and Telecom of Kosovo
<b>RTK</b>	Radio and Television of Kosovo
<b>SAC</b>	Senior Appointments Committee
<b>SDC</b>	Swiss Development Cooperation
<b>SLS</b>	Serbian Liberal Party
<b>SPRK</b>	Special Prosecutor's Office of Kosovo
<b>SRSG</b>	Special Representative of Secretary General
<b>TAK</b>	Tax administration of Kosovo
<b>TI</b>	Transparency International
<b>TMC</b>	Temporary Media Commissioner
<b>TV</b>	Television
<b>UÇK or KLA</b>	Kosovo Liberation Army
<b>UK</b>	United Kingdom
<b>UN or UNO</b>	United Nations Organisation
<b>UNDP</b>	United Nations Development Programme
<b>UNMIK</b>	United Nations Mission in Kosovo
<b>UNSCR</b>	United Nations Security Council Resolution
<b>USA</b>	United States of America
<b>USAID</b>	United States Agency for International Development
<b>VAT</b>	Value Added tax
<b>YIHR</b>	Youth Initiative for Human Rights



# **II**

## **ABOUT THE ASSESSMENT**

## What is the AII?

The ASSESSMENT of Institutional Integrity (AII) encompasses the institutions, sectors, and activities that contribute to integrity, transparency and accountability in a society. When it works properly, the AII combats corruption to support sustainable development, rule of law and human rights. Strengthening the AII is about promoting better governance across all aspects of society. The concept of the AII 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.

## Why Conduct AII's?

The purpose of each AII is to evaluate the National Integrity System, in theory (law and regulatory provisions) and practice (how well it works). The studies provide both benchmarks for measuring further developments and a basis for comparison among a range of countries. Their findings can also serve as a pointer for areas requiring priority action or can form the basis from which stakeholders may assess existing anti-corruption initiatives. AII assessments help explain, for example, which pillars have been more successful and why, whether they are mutually supportive and what factors support or inhibit their effectiveness. The reports also assess where the emphasis should be placed on improving the system and what factors are required to support the overall development of the integrity system.

The ISI studies create a sound empirical basis that adds to our understanding of strong or weak performers. Within a region, in which several countries may function with similar economic, political or social frameworks, the results of the study can create a sense of peer pressure for reform as well as an opportunity for learning from those countries that are in similar stages of development. For Transparency International, ISI country studies are an important measurement tool. They complement TI's global indices and surveys, such as the Corruption Perceptions Index, Bribe Payers Index and Global Corruption Barometer, as well as national surveys, by exploring the specific practices and constraints within countries and providing qualitative empirical results about the rules and practices that govern integrity systems.

TI believes that it is necessary to understand the provision for and capacity of the integrity pillars, as well as their interaction and practices, to be able to diagnose corruption risks and develop strategies to counter those risks. The ISI country studies are a unique product of Transparency International, as they reflect the systemic approach TI takes to curbing corruption and the independence of analysis that can be offered by the world's leading anti-corruption NGO.

## **Methodological Note**

While the study's main purpose is to assess safeguards and efforts against corruption (defined by TI as 'the abuse of entrusted power for private gain'), the pillar section of the study also highlights those systems and dynamics that affect the State's ability to prevent the abuse of power more generally. It offers a qualitative assessment of the integrity system in Kosovo and is based on both objective and subjective sources of data. The assessment therefore required desk research, as well as face-to-face and phone interviews. The study was conducted according to international terms of reference and international guidelines designed by Transparency International Secretariat's Research and Knowledge Department in Berlin.





# **III**

## **EXECUTIVE SUMMARY**

## 1. General Overview

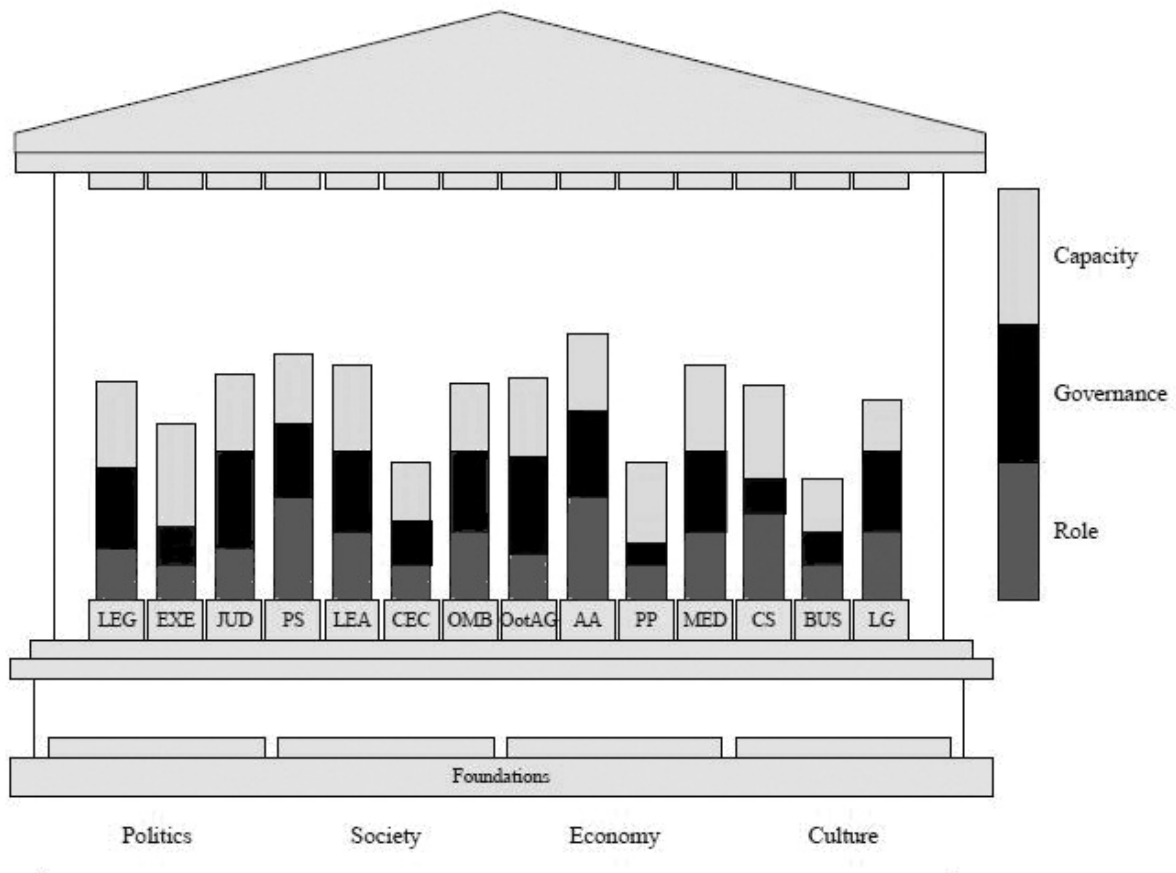
The ASSESSMENT of Institutional Integrity in Kosovo, conducted by KDI, examines the legal basis and the actual performance of those institutions (“pillars”) which are relevant to the overall anti-corruption system of the country. It finds that although a supportive legal framework is generally in place, many barriers exist regarding its effective implementation.

Furthermore, laws are often incomplete or lack supporting legislation such as codes and standards. In addition, political interference frequently compromises the independence of institutions and influences a number of critical processes, such as recruitment and public procurement. In general, the Executive dominates over – and sometimes even controls – the parliament, judiciary and other public institutions.

The presence of international institutions in Kosovo further reduces the independence of some pillars, with several institutions still depending on external agencies for economic and political support. Other barriers to effective implementation of laws include limited resources, lack of clarity, budget constraints, lack of training and insufficient support staff.

The summary graph below highlights the key findings in terms of strength and weakness of the respective pillars.

### Institutional system Integrity - Kosova 2011



- |      |                             |        |                               |
|------|-----------------------------|--------|-------------------------------|
| LEG. | Legislature                 | OotAG. | Office of the Auditor General |
| EXE. | Executive                   | AA.    | Anti-Corruption Agency        |
| JUD. | Judiciary                   | PP.    | Political Parties             |
| PS.  | Public Sector               | MED.   | Media                         |
| LEA. | Law Enforcement Agencies    | CS.    | Civil Society                 |
| CEC. | Central Election Commission | BUS.   | Business                      |
| OMB. | Ombudsman                   | LG.    | Local Governance              |

Political parties, the business sector and the Central Election Commission are identified as the weakest pillars of Kosovo's integrity system. They are all marred by the problems highlighted above, such as deficient legislation, a significant gaps in the implementation of existing laws as well as frequent political/government interference in their activities. The business sector is characterized by the additional challenge of intransparent procurement processes (in a context of over-dependence on government contracts), widespread organized crime, and a lack of governmental regulations of "phantom" businesses. The weakness of political parties is clearly linked to the problematic performance of the Central Election Commission. It highlights a major deficit in the country's governance system, namely the lack of integrity in the democratic political process, which requires urgent attention, as it affects people's trust in the governance system as a whole. However, there are also signs of strong institutional performance, such as in the case of the Kosovo Anti-Corruption Agency (KACA), which has put important internal integrity, transparency and accountability safeguards in place, and, at the same time, has significantly stepped up its work in investigating corruption cases.

## 2. AII Foundations

The assessment of the Kosovo integrity system is placed into a wider context by an examination of the country's political, social, economic and cultural "foundations". Overall, as seen in the graph above, the country's integrity system operates in a rather disabling environment, where neither political, social, economic nor cultural factors are supportive of integrity, accountability and transparency.

In terms of political foundations, Kosovo has undergone substantial changes in recent years. Following the collapse of Yugoslavia in 1999, the United Nations Security Council passed Resolution 1244 authorizing the United Nations Interim Administration Mission in Kosovo (UNMIK). Almost ten years later, on February 17 2008, the Republic of Kosovo declared its independence from Serbia. The first Constitution of Independent Kosovo became effective on June 15 2008. The institutional framework was completed in February 2009 with the establishment of a Kosovo Intelligence Agency and a Kosovo Security Council. These institutions are heavily overseen by NATO, the International Civilian Office (ICO) and the European Union Rule of Law Mission (EULEX). In practice, the country faces serious obstacles on its path towards democratization. The rule of law is only weakly entrenched, political interference in watchdog institutions is frequent so that political competition is far from free and fair.

Kosovo remains one of the poorest countries in Europe. Although its economic growth in the post-

war years has been solid, large numbers of the population still live in poverty or extreme poverty. Unemployment is high, particularly among young people, and almost 5% of the population require social assistance. The Government has a program of assisting the poor, but it does not offer assistance in food items and accommodation. Whereas the past pension system failed, a larger number of pensioners now benefit from social assistance, including all persons over 65 years of age. It is estimated that 50% of the population is under the age of 25 and 40% under the age of 18.<sup>1</sup>

Kosovo suffers from a number of problems in terms of its social fabric. These are primarily related to inter-ethnic divisions in Kosovo's society. The Serb minority of Kosovo largely opposes the declaration of independence. Due to the pressure coming from Serbia, the ethnic-Serbian community is reluctant to fully enter into dialogue with Kosovo's political leadership. The April 2010 poll of the UNDP Early Warning Report shows that the portion of K-Serbs willing to work with K-Albanians has dramatically decreased to an all-time low of only 3% since September 2009 after having experienced a substantial increase during the period of June to September 2009. As for K-Albanians, the indicator has also decreased to 37% from 46% in January 2010 of K-Albanians willing to work with K-Serbs.<sup>2</sup>

In addition to a heavy reliance on social assistance and societal indifference toward associational activities, the level of interpersonal and interethnic trust is rather limited. Postwar periods have a negative impact on the establishment of a positive and reasonable social mentality. As a result, a critical mass of voluntary associations aimed at self-help has yet to emerge in Kosovo.<sup>3</sup>

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<sup>1</sup> UNDP Kosovo, Kosovo Human Development Report (Pristina, 2006).

<sup>2</sup> UNDP Kosovo, Early Warning Report 28, at [http://www.ks.undp.org/repository/docs/EWR\\_eng\\_web-opt.pdf](http://www.ks.undp.org/repository/docs/EWR_eng_web-opt.pdf) (accessed on 13 December 2010)

<sup>3</sup> Bertelsmann Foundation 2010, Kosovo Country Report, at <http://www.bertelsmann-transformation-index.de/1404.0.html> (accessed on 15 December 2010)

### 3. The AII Pillars

*The specific assessment results for each pillar are briefly summarized as follows.*

#### Legislature

Despite the existence of a legal framework that defines and determines the constitutional role and the importance of the legislative body, practical difficulties exist in the implementation and accomplishment of the Assembly's mission. The lack of bipartisan politics has visibly weakened the integrity of this pillar. A key challenge is presented by the Executive branch which still dictates the agenda of the Assembly's proceedings. This has strong implications for the independence and integrity of the Assembly. Additional interference by international institutions further curtails parliamentary debate. This has led to a significant lack of accountability to citizens and increased political dependency in relation to the international institutions and organizations. The Assembly remains at the periphery of decision-making, and many key decisions are reached without any involvement by the Assembly. The essential Assembly support staff is currently limited in numbers and quality, operating within considerable budgetary and physical constraints.

The Assembly has failed to utilize parliamentarian oversight tools, especially in issues that pertain to public fund disbursements and the investigation of conflict of interest and public administration corruption cases. As core agents of democratization, the capacity of Assembly members to fulfill their representative, legislative and oversight roles leaves much to be desired, even after the second half of the term. While Kosovo has installed a single district electoral system, the weak link between elected representatives and constituents continues to represent a point of concern. Citizen interests are not fully represented on the Assembly floor.

## Executive

The Constitution stipulates that the Government is the main holder of the Executive power. The assessment finds that the Kosovo Government, albeit with limited human, technical and financial resources, continues to produce results below expectations. The lack of resources is primarily covered through international assistance, which directly impacts on the independence of the Executive. As the Kosovo Assembly does not currently effectively perform its checks and balances over the Government, it is able to operate freely in many important policy areas. In general, the Kosovo Government is showing poor governmental performance and is among the most criticized addresses of the whole institutional system. According to the latest UNDP Early Warning Report, the level of people's satisfaction with the government has fallen to 29% (May 2010) that is 7% less than in January 2010.<sup>4</sup>

Government transparency is insufficient, and disproportionate to its powerful rhetoric in terms of transparency. Accountability and integrity mechanisms are also not properly developed. Moreover they are not implemented effectively on the practical level. In relation to the anti-corruption legal system, the government has sponsored a package of laws to expose and punish corruption abuses. However these mechanisms have been heavily criticized by civil society.

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<sup>4</sup>UNDP, Early Warning Report 28, April – June 2010, at [http://www.ks.undp.org/repository/docs/EWR\\_eng\\_web-opt.pdf](http://www.ks.undp.org/repository/docs/EWR_eng_web-opt.pdf) (accessed on 10 December 2010)

## Judiciary

Though progress has been made in reforming Kosovo's judiciary, it still suffers from a number of structural weaknesses. The independence of the judiciary is guaranteed by the Constitution of the Republic of Kosovo and some of the UNMIK regulations. The legal infrastructure has also improved by the passing of a number of important laws by the Kosovo Assembly in 2010, such as the law on courts, the law on Prosecutorial Council and the law on Kosovo Judicial Council. However in practice, the judiciary is unable to maintain its independence from politics. Moreover, judges are often subject to intimidation and violence and are left unprotected by state institutions. The resources of judiciary remain low and do not allow for creation of effective and impartial judiciary. Another problem is fragmentation and lack of coordination and clarity of competencies between institutions that deal with the justice system, for example the Ministry of Justice, KJC, Judicial Institute, Special Prosecutor's Office of Kosovo and European Union Rule of Law Mission (EULEX).

Although laws and institutions to maintain the integrity of the judiciary exist, in practice it remains vulnerable due to lack of effective oversight and implementation of laws. The judiciary has failed to oversee the Executive branch and thus no high profile cases have been investigated or brought before justice. The EULEX Mission has focused in these flaws of the Kosovo justice system in order to create an independent judiciary and combat corruption, however, after more than two years in Kosovo this mission has failed in catching the 'big fish'.

## Public Sector

Kosovo's public administration is over politicized. Although the legal infrastructure has improved with the passing of two laws: the Law on Civil Servants and the Law on Salaries for Civil Servants, the independence of civil servants is still compromised. Political interference occurs in the appointment of staff at all levels. The resources of the public sector in Kosovo are also extremely limited.

Legislation regarding public sector transparency, such as the Law on Access to Official Documents, is not satisfactorily implemented. Gaps also exist in the Law on the Disclosure of Assets. The accountability of public sector is also covered by several laws and institutions. However, in practice the power of these institutions has been weakened and laws have not been properly implemented. Regarding public procurement, there is a Law on Public Procurement (LPP) which although worked and reworked with the assistance of the European Commission and World



Bank, still needs improvement. For example, tenders have not always been awarded to the company with the lowest bid, although by law this is the main criterion. There are several laws that protect the integrity of public sector; nevertheless the legal infrastructure is incomplete. With all the progress achieved in the development of an institutional and legal framework Kosovo institutions are far from achieving integrity because of nepotism, high level of politicization, failure to fight corruption, poorly paid administration, etc.

## **Law Enforcement Agencies**

Although legislation regulating law enforcement agencies in Kosovo provides sufficient safeguards for independence, integrity and accountability, these safeguards are not effectively implemented. Despite their strong legal protection, agencies are often subject to political interference. For example, prosecution of corruption by law enforcement agencies is weak, mainly as a result of political interference. Senior appointments in law enforcement agencies are also said to be politically motivated. Disciplinary mechanisms within police and oversight mechanisms are also not strong enough and need to be reinforced. In its 2010 Progress Report for Kosovo, the European Commission noted that corruption, nepotism and political interference all remain issues of serious concern for law enforcement agencies.

Law Enforcement agencies in Kosovo receive inadequate financial support. The budget for the Prosecution is 1.4% of the overall Kosovo budget which is not sufficient for an effective functionality of the prosecution in Kosovo. Police officers went on strike during year 2010 as a result of low wages. In addition, effective transparency and accountability regulations of law enforcement agencies are lacking.

## Central Election Commission (CEC)

The CEC's implementation of relevant laws is insufficient. Although there are fewer legal violations than before, they are still a frequent occurrence. The majority of observer reports emphasize the space created for manipulation with conditional votes and the poor quality of voters' lists, which in many aspects remains the Achilles' heel of Kosovo elections. Whether for cultural reasons or in order to gain benefits, family and group voting still exists, as is the case with assisted voting, especially in rural areas. The CEC is subject to severe interferences, with consequent political bias, blockades, difficulties and procrastinations. CEC's lack of capacities was clearly exhibited with the problems in managing its own budget. Furthermore, a dysfunctional judiciary as the last instance for electoral disputes increases the pressure of political parties over the CEC in order to influence their decisions.

From 2000 until 2007, the CEC was under the management and direct supervision of the OSCE Mission in Kosovo. Criticism of elections held in 2009 and 2010, suggest that the quality of elections has significantly worsened. Many irregularities that occurred during the voting process paved the way for re-voting at five municipalities. CEC certified the election results very late, around three weeks after the Election Day. Long delays and lack of information decreased the trust in the impartiality of election administration bodies and reduced its credibility and trust among the citizens. A serious legal deficiency, identified by the majority of observer reports, is that the legislation is not sufficiently clear in relation to complaints and appeals.

## Ombudsman

The Law on Ombudsperson was adopted by the Assembly of Republic of Kosovo on 22 July 2010 and entered into force on 9 August 2010. This previous legal gap has had a negative impact on the capacity, governance and the role of the institution. According to the new law, the Ombudsperson Institution (OI) is a fully independent institution. However, due to the lack of implementing legislation and its dependence on the Executive for its budget, it is not fully independent in practice. In addition, the recommendations of the Ombudsman are not acted upon by the legislature, and other central institutions.

Despite OI's limited budgetary and human capacities, it has taken a number of steps to increase public transparency, and increase access to relevant information on activities and decision-making processes within the institution. The OI has also shown its readiness to co-operate with civil society organizations who view the OI as an open institution that is also willing to cooperate with the public.

## **Office of the Auditor General**

The Office of the Auditor General (OAG) in Kosovo is a relatively new institution, in existence since 2003. It is responsible for economic and financial oversight of public institutions reporting to the Kosovo Assembly. The Constitution and the Law currently stipulate that the Auditor General should be international, appointed by the International Civilian Representative.

The OAG Code of Ethics and the Code of Conduct are also based on internationally recognized auditing standards. Although the law provides auditors with an opportunity to act independently and without any interference, there have still been cases of interference. The major issue is that there is no mechanism for reviewing if the Government implemented OAG recommendations. Almost every year the auditor has the same remarks and recommendations, which are not implemented in practice by the agencies.

In terms of transparency, the law states that audit reports must be made public. The OAG web page has published all reports since 2005. The Annual Performance Report of the Auditor General was also found to be comprehensive. Training is an important aspect of the Audit institution. During the past three years, intensive training has been developed in the area of integrity.

## **Kosovo Anti-Corruption Agency (KACA)**

The assessment found that the resources allocated by the Government to the Kosovo Anti-Corruption Agency (KACA) have not been sufficient or consistent. However, a number of improvements can be seen. For example, the KACA is now fully staffed, and additional salaries and work space have been provided. The Civil Service Code of Conduct is also applicable to KACA officials, although to date there have been no cases of penalization of its officials as a result of violations.

With the new Law on Anti-Corruption Agency and the establishment of the Agency Oversight Committee by the Assembly of Kosovo, an attempt was made to strengthen the position of KACA in relation to the Executive and the Legislature. However, tendencies to influence or utilize KACA for political benefit by the Government are apparent. A lack of transparency has also been highlighted. For example, KACA failed to disclose 168 cases which were investigated and then closed. With respect to corruption investigation, there are some ambiguities in the law on the agency which contradicts the Criminal Procedure Code. Nevertheless, the number of corruption cases reported to KACA in 2010 has increased significantly over time.

## **Political Parties**

The political parties in Kosovo are extremely centralized and undemocratic, and are one of the least trusted institutions. Although the legal framework that regulates political parties was found to be sufficient, problems arise regarding its implementation. This is particularly the case for political financing. At the end of 2010, a new law came into force which aimed to increase transparency of political financing. However, the assessment found little improvement in this area. It remains a weak point for the majority of political entities, who continuously avoid reporting on their financing. In some cases, political parties declare incorrect incomes and expenditure. At present electoral campaigns are the only public funds not directly audited by the Office of Auditor General.

The registration and monitoring of political parties is currently conducted by the Central Election Commission. The assessment found the threshold for new political parties to participate in the election process to be high. As a result, political competition leaves a lot to be desired. Differences in financial resources are large and new parties are in a very difficult position vis-à-vis the established parties.

## Media

The assessment of the media suggests that the current legal framework offers a satisfactory basis for the activity of the media; however several practical difficulties exist regarding the implementation of these provisions. Media independence in Kosovo is jeopardised by the issue of financial sustainability, which has resulted in dependence on advertising space purchased by public institutions. In addition, the media organisations are neither transparent nor accountable and have difficulties in practicing principles of media ethics. Investigative journalism also remains a weak point of this profession; this includes investigating and reporting of corruption cases.

## Civil Society Organizations (CSOs)

The assessment found the framework for activities of Civil Society Organizations (CSOs) in Kosovo to be generally favourable. There is currently a law in place to protect CSOs from unjustified external interferences. However there have still been several Government attempts exert pressure over organisations which are critical of the government, as well as some procedural delays in the registration and excessive tax duties. In terms of resources, 2010 saw a decrease in the number of international donors in Kosovo with some completely withdrawing from the country. This has meant less funding opportunities for NGOs. Moreover, donations are not on the level that would guarantee financial sustainability; whilst national grants and income generation from CSOs' own activities remain low.

The transparency and accountability of CSOs was found to be low. For example, only a very small number publish reports or names of board members. Some CSOs publish their financial audit reports on their websites. In many cases, boards were found to be non-operational, existing primarily on donors' request. The lack of official procedures currently in place means that regulation of CSO activity reflects the will of individual organisations. As with transparency and accountability, integrity efforts by CSOs can also be attributed to donor requests, rather than any legal requirements or standards that apply to the sector as a whole.

Several CSOs are active in initiating and suggesting anti-corruption reforms in Kosovo, though with a limited effect. There is a rising trend of watchdog activities by CSOs that attempt to hold the Government accountable for its actions, especially in the fight against corruption.

## **Business**

There is an initial framework for the effective conduct of business activities in place which consists of basic laws for the establishment and development of business. In parallel, several institutions have been established to guarantee fair competition and the independence of business vis-à-vis the state and its officials. However, at present, this has not been followed up with secondary legislation, such as the codes and standards which would determine operation standards for all partners, in business, as well as governmental institutions. Despite the seemingly positive situation, the framework remains incomplete. For example, there are no laws to regulate dispute resolution among businesses, nor are there rules and obligations on financial reporting.

In practice, the Government has a considerable influence over businesses, especially as it is the largest employer in the country. The biggest contracts of businesses are deals with the government. A key problem is that procurement procedures are not fully respected, and certain businesses are favored. It was found that the widest space for corruption is provided within public enterprises, which are owned by the government. Job positions are often awarded without public announcement of vacancies, while large procurement contracts are awarded through non-transparent tendering. Over 92,000 businesses are registered in Kosovo, but only approximately 50,000 are operational. However, ministries, tax administration and customs have insufficient human resources to investigate these 'phantom businesses'.

## **Local Governance**

Kosovo possesses a legal framework which reflects European principles of local government. However, as local government authorities are part of an overall system of asymmetric decentralisation, the implementation of such legislation in practice appears to be difficult for the Kosovo institutions and international authorities. The independence of local government authorities is influenced by the constellation of forces within the governing coalition at the central level, primarily due to appointments and recruitments on political grounds, nepotism, and favours, whilst the municipal budget priorities are set often and influenced by the actors external to the elected municipal authorities. Local administration, as the catalyst for law enforcement and the provision of public services, currently lack financial incentives and genuine recruitment criteria, and is subject to private sector interference.

Kosovo municipalities have no credible mechanisms for enhancing the fight against corrup-

tion, addressing conflict of interest or raising management capacities of the offices of public procurement. Local transparency mechanisms remain concentrated in the municipalities with larger population only. The supervising authority, the Ministry of Administration of Local Government, has failed to successfully address the violations of the Law on Local Government which have occurred in some municipalities. Additional problems have arisen as a result of the local governance reform and decentralisation process which started in 2008, particularly in the transfer of competencies from the existing municipalities to the recently established ones and the process of establishing new municipal administrations within new municipal boundaries. This is due to the political, economic and social elements involved. In addition, the political interference by the Serbian Government in non-cooperative municipalities, controlled through parallel structures which do not respect the applicable laws of the Republic of Kosovo, have become sources of anarchy, organised crime, and corruption.

## 4. Recommendations

The following areas have been identified as being key priorities for anti-corruption policy and practice changes.

### Changes in the electoral system

As the AII assessment finds, the country's electoral system need major reforms in the following areas:

- legislative amendments with special emphasis on electoral districting;
- introduction of an electoral system that maintains open lists and gender representation, and where are created seven Electoral Districts and decreases the threshold to enter parliament from 5% to maximum 3%,
- drafting of a new Electoral Code, which will codify new legislative amendments,
- reform electoral process, aimed to prevent violations during voting and counting,
- increase CEC independence and diminish opportunities for political interference,
- update voters' list in a transparent manner

## Transparency in Funding and functioning of the Political Parties

Although a new law on the financing of political entities has been passed in late 2010, this aspect remains a weak spot in the Kosovo NIS. The new law for financing of political parties should be implemented and amended in the following aspects:

- specify the date when the CEC should publish the financial declarations,
- specify if financial declarations of political entities should be published by CEC before or after they are audited

## Strengthening the Judiciary and Law Enforcement Agencies

The NIS assessment shows that the practical integrity aspects of the judiciary and Law Enforcement Agencies remain serious concerns, particularly with regard to their available resources, political independence and role in investigating corruption cases. Therefore, the Government should take a number of measures in order to strengthen the capacities and effectiveness of these institutions, such as:

- Increase the overall budget for Judiciary and Rule of Law Agencies (at least double the existing one) so that they are equipped with the necessary infrastructure e.g. modern libraries, new modern court rooms, more professional and administrative staff.
- Increase the number of judges, prosecutors and investigative police officers, in order to be able to deal with the complex and high number of backlog cases.
- Ensure the process of reappointment of judges and prosecutors is based on meritocracy, and without political interference
- Kosovo Judiciary Council and the Government of Kosovo should provide security for judges and Prosecutors so that they are free to do their work in accordance with principles of integrity, independence, and impartiality.
- The politically motivated senior appointments in law enforcement agencies should be stopped.
- Kosovo Judicial Council needs to improve its implementation of the recommendations of Judicial Audit Unit in relation to the functioning of courts,
- Strengthen the weak oversight role and powers of police inspectorate.



## Strengthening of Government's Anti-Corruption Reforms

In addition, the Government's immediate actions in fight against corruption should focus on the following:

- a) Amend the criminal code making the false declaration of assets a criminal act,
- b) Approve the laws for confiscating the illegally earned assets and law against organized crime, law for protection of witnesses and the whistleblowers protection law.
- c) Improve the cooperation with civil society on drafting process of public policies and legislation.
- d) Develop a strategy to address the recommendations of Supreme Audit Institution for the ministries and municipalities that were most subject of misused funds
- e) Take concrete measures to implement the law on access to public documents, especially the documents related to public procurement
- f) Speed up the process of reforms in public administration, especially in the public procurement sector such as: amendment of Procurement law and its implementation, ensure that the reappointment of senior positions in public administration is based on meritocracy, make the Procurement Review Body more transparent regarding the publication of its decisions and improve the quality of its legal decisions, as well as open offices in all administration branches to train staff in order to increase the capacities and work ethics of civil servants.



**IV**

**COUNTRY PROFILE**

## 1. Politics

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

**Score: 2 / 5**

The Kosovo parliament adopted the first Constitution of Independent Kosovo on April 9, 2008. This Constitution became effective on June 15, 2008. Based on the approved Constitution, the Kosovo institutions will take over responsibilities presently managed by the UN mission that has been administrating Kosovo since 1999. The Constitution defines Kosovo as a parliamentary republic and a “State for all citizens” that guarantees the respect of minority rights. The official languages are Albanian and Serbian. Kosovo’s democratic institutions perform their fundamental functions, but much work remains to be done regarding their coordination and capacity building for planning and implementing policies. Kosovo’s institutions are new and have only been under development since 2000. The institutional framework was completed in February 2009 with the establishment of a Kosovo Intelligence Agency and a Kosovo Security Council. However, Kosovo institutions are not the sole governing structures of the state. The International Civilian Office (ICO) is mandated with overseeing the implementation of the Ahtisaari Plan, while EULEX is in charge of assisting, monitoring and advising institutions in charge of implementing the rule of law.<sup>5</sup>

Recently established government structures are functioning and have been able to maintain political stability. There has been certain progress regarding local government reform. Effective implementation of decentralization for the benefit of all communities remains a major challenge. Inter-ministerial coordination needs further strengthening. Political interference in high level appointments is an issue of concern.<sup>6</sup> The justice system remains weak, inefficient and vulnerable to political interference. There is a considerable backlog of cases (there are more than 200,000 cases waiting in courts.) The police, public prosecutors and courts are erratic performers, prone to political interference and abuse of office. Organized crime and corruption are widespread and growing.<sup>7</sup> The judiciary is considered one of the weakest links in Kosovo’s rule of law. This has continued to hamper the delivery of justice, as judges are not always certain of the legal basis for their decisions.

<sup>5</sup> Bertelsmann Foundation 2010, Kosovo Country Report, at <http://www.bertelsmann-transformation-index.de/1404.0.html> (accessed on 15 December 2010)

<sup>6</sup> Ibidem

<sup>7</sup> International Crisis Group, The rule of law in independent Kosovo, at <http://www.crisisgroup.org/en/regions/europe/balkans/kosovo/204-the-rule-of-law-in-independent-kosovo.aspx> (accessed on 4 December 2010)

Freedom House Nation in Transit 2010 Report, which measures the Progress of democratization, gives a scoring of 5.75 at the level 1 (highest progress) to 7 (lowest progress), finds no improvement in the rule of law, restriction of freedom of expression, increasing corruption, government influence on RTK and other media, political interference in senior public appointments. This report ranks Kosovo as last in the region, as well as near countries such as Moldova, Armenia and Russia.<sup>8</sup> Another Freedom House report, Freedom in the World 2010, which looks at the political rights and civil liberties portrays Kosovo as a partially free country, drawing attention to abuse in the elections of 2009, the separated north, harassment of free media and the high level of corruption. It ranks Kosovo last in the region and with the same assessment as countries such as Burundi, Haiti, Morocco, Nigeria, Pakistan, Uganda and Venezuela.<sup>9</sup>

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<sup>8</sup> Freedom House, Nations in Transit 2010, at <http://www.freedomhouse.org/images/File/nit/2010/NIT-2010-Kosovo-final.pdf> (accessed on 4 December 2010)

<sup>9</sup> Freedom House, Freedom in the World 2010, at <http://www.freedomhouse.org/template.cfm?page=22&country=7972&year=2010> (accessed on 4 December 2010)

## 2. Society

*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?*

**Score: 2 / 5**

Kosovo suffers from a number of problems in its social inclusion system. Crucially, there is still a lack of accurate data upon which to make evidence-based policy choices. In addition, there is weak horizontal and vertical coordination, a clash between technical and political governance, and the absence of public debate and stakeholder involvement in planning and managing services.<sup>10</sup> The inter-ethnic divisions in Kosovo's society go back a few decades. The political leadership believes that the completed legislative framework is sufficient for addressing these divisions. Due to the pressure coming from Serbia, the ethnic-Serbian community is reluctant to fully enter into dialogue with Kosovo's political leadership. The decentralization process foresees the creation of new municipalities in which ethnic minorities constitute a majority with enhanced municipal powers. This process might be an opportunity to bridge inter-ethnic tensions and provide a single legal framework throughout the state.<sup>11</sup>

Sustainability of civil society is all the more important given the key role that CSOs have played in helping some of Kosovo's neighbours join the European Union. Now that Kosovo has declared independence, perhaps some of the energy that went into resolving its status can now be spent on strengthening civil society.<sup>12</sup> On the other hand, the government seems not to have a clear vision of how to foster citizen engagement in all possible sectors, maintaining the autonomy of CSOs but including them in carrying out tasks and promoting a mature civil society.<sup>13</sup>

Civil-society actors are largely ignored by the political leadership. Even in rare cases when the government "consults" with civil society, this is often done to legitimize decisions already made rather than to solicit input. At the same time, most NGOs are lacking in terms of their pro-

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<sup>10</sup> European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, Social protection and social inclusion in Kosovo, at [ec.europa.eu/social/BlobServlet?docId=4443&langId=en](http://ec.europa.eu/social/BlobServlet?docId=4443&langId=en) (accessed on 4 December 2010)

<sup>11</sup> Bertelsmann Foundation 2010, Kosovo Country Report, at <http://www.bertelsmann-transformation-index.de/1404.0.html> (accessed on 15 December 2010)

<sup>12</sup> UNDP Kosova, Human Development Report 2008, Civil Society and Development, at [http://www.ks.undp.org/repository/docs/HDR\\_final\\_eng\\_small.pdf](http://www.ks.undp.org/repository/docs/HDR_final_eng_small.pdf) (accessed on 4 December 2010)

<sup>13</sup> Ibidem

files and are facing conceptual and financial challenges. Both civil society and the government have a fundamental problem with building relationships with their own constituencies. Nevertheless, civil society is present in all public debates and often facilitates them. A political culture has been created to always present the views of civil society on various fundamental issues of public concern.<sup>14</sup>

### 3. Economy

*To what extent does the socio-economic situation contribute to an effective national integrity system?*

**Score: 2 / 5**

Kosovo's economic growth in the post-war years has been solid, yet, with a gross domestic product (GDP) per capita of €1,850 in 2010, the country remains one of the poorest in Europe.<sup>15</sup> Kosovo is considered to be a lower middle income country, with a Human Development Index (HDI) of 0.734.<sup>16</sup> It is estimated that 50% of the population is under the age of 25 and 40% under the age of 18.<sup>17</sup> In 2009, approximately 34% of the population lived in poverty on €1.55 per day and 12% of the population lived in extreme poverty line of €1.02 per day<sup>18</sup>. Unemployment in Kosovo is 45%<sup>19</sup>, relative poverty is 45%.<sup>20</sup> By the end of December 2009, 338.895 job-seekers were registered, with a small decrease of just 0,1 percent. In the meantime, the number of families on social assistance increased, from 34.307 in December 2008, to 35.656 in December 2009. Such assistance is being used by 152.598 individuals, or almost 5 percent of population.<sup>21</sup>

Poverty is constantly present, no matter that economical growth is among the highest in the region - around 4 percent according to the World Bank.<sup>22</sup> This increase does not influence the levels of unemployment and poverty due to a deadlock in the development of branches that would offer larger employment opportunities, such as agriculture. The Government has a program of assisting the poor, but offers just symbolic financial assistance, around two Euros per

<sup>14</sup> Bertelsmann Foundation 2010, Kosovo Country Report, at <http://www.bertelsmann-transformation-index.de/1404.0.html> (accessed on 15 December 2010)

<sup>15</sup> World Bank: Unlocking of Growth Potential

<sup>16</sup> HDI, according to UNDP Kosovo, Kosovo Human Development Report (Pristina, 2006)

<sup>17</sup> UNDP Kosovo, Kosovo Human Development Report (Pristina, 2006).

<sup>18</sup> World Bank: Consumption Poverty in the republic of Kosovo in 2009, (Pristina, May 2011)\_

<sup>19</sup> SOK: Labor force Survey 2009

<sup>20</sup> UNDP Kosovo, Kosovo MDG Factsheet 2010

<sup>21</sup> Statistical Office of Kosova, at <http://www.ks-gov.net/ESK/dmdocuments/Buletini%20Tremujor%20Janar%202010.pdf> (accessed on 17 November 2010)

<sup>22</sup> World Bank, Kosovo Poverty Assessment, 2007, at <http://siteresources.worldbank.org/INTKOSOVO/Country%20Home/21541688/KosovoPAvol2.pdf> (accessed on 22 November 2010)

day for every family living in poverty.<sup>23</sup> However, it does not offer assistance in terms of food items or housing, and health care is not spread adequately due to the lack of relevant laws, such as one on social insurance.

Kosovo is building a pension scheme, including 315.628 contributors.<sup>24</sup> Currently, only a symbolic number of people benefit from this scheme. The past pension system failed, whereas now a larger number of pensioners benefit from social assistance, including all persons over 65 years of age.

During the past two years, large capital investments were focused primarily on the infrastructure, or more accurately on the paving of roads. Problems related to the traffic of goods and people are more of a political nature. The best connection to Europe goes through Serbia, but it recognizes neither Kosovo documents, nor its registration plates. Construction of the highway connecting Kosovo to Albanian and the Adriatic Sea started already.

In 2009 GDP increased 4 percent, consumption 2.6 percent and investments 12.6 percent. All these increases are lower than in 2008. Exports suffered a 1.2 percent drop and imports a 3.5 percent increase. Kosovo has a big trade deficit, even though export-import proportion reached 1:10.

#### 4. Culture

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

**Score: 2 / 5**

In addition to a heavy reliance on social assistance and societal indifference toward associational activities, the level of interpersonal and inter-ethnic trust is rather limited. Postwar periods have a negative impact on the establishment of a positive and reasonable social mentality. The entire societal drive is seen more in the light of individual gain rather than social benefit. As a result, voluntary as-

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<sup>23</sup> Interview with Muhamet Sadiku, Riinvest Institute

<sup>24</sup> Kosova Pensions Trust, at <http://www.trusti.org/trusti/Home/tabid/36/language/sq-AL/Default.aspx> (accessed 17 November 2010)



sociations aimed at self-help have yet to emerge in Kosovo.<sup>25</sup>

The Balkan Monitor found that the share of respondents finding positive neighbourly relations has risen significantly in the past year (from 6% to 16%).<sup>26</sup> The Balkan Monitor Focus on Kosovo's independence, published in July 2010, showed that public opinion is becoming less conciliatory following the unilateral declaration of independence. This tendency was confirmed in the latest wave of the Balkan Monitor: the proportion of respondents in Serbia thinking that a division of Kosovo could be part of a solution to the conflict has fallen from 50% in 2008 to 43% in 2010. For people living in Kosovo, such a solution is even less attractive: in 2010, 90% of Kosovo Albanians and 92% of Kosovo Serbs were opposed to a division of the territory of Kosovo.<sup>27</sup>

The April 2010 poll of the UNDP Early Warning Report shows that the portion of K-Serbs willing to work with K-Albanians has dramatically decreased to an all-time low of only 3% since September 2009 after having experienced a substantial increase during the period of June to September 2009. As for K-Albanians, the indicator has also decreased to 37% from 46% in January 2010 of K-Albanians willing to work with K-Serbs.<sup>28</sup>

The approval of Kosovo's leadership, among the highest in the region in earlier Balkan Monitor waves, has dropped from 59% to 48% between 2009 and 2010. This reduced support for the administration was reflected in a lower level of confidence in the national government and in the judicial system.<sup>29</sup> Both Serbs and Albanians in Kosovo now find religion much more important than they did four years ago. The shares of respondents considering it to be an important part of their lives have increased from 59% to 81% (for Serbs) and from 68% to 89% (for Albanians) in the period since 2006.<sup>30</sup>

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<sup>25</sup> Bertelsmann Foundation 2010, Kosovo Country Report, at <http://www.bertelsmann-transformation-index.de/1404.0.html> (accessed on 15 December 2010)

<sup>26</sup> Gallup Balkan Monitor, Insights and Perceptions: Voices of the Balkans, at [http://www.balkan-monitor.eu/files/BalkanMonitor-2010\\_Summary\\_of\\_Findings.pdf](http://www.balkan-monitor.eu/files/BalkanMonitor-2010_Summary_of_Findings.pdf) (accessed on 13 December 2010)

<sup>27</sup> Ibidem

<sup>28</sup> UNDP Kosovo, Early Warning Report 28, at [http://www.ks.undp.org/repository/docs/EWR\\_eng\\_web-opt.pdf](http://www.ks.undp.org/repository/docs/EWR_eng_web-opt.pdf) (accessed on 13 December 2010)

<sup>29</sup> Gallup Balkan Monitor, Insights and Perceptions: Voices of the Balkans, at [http://www.balkan-monitor.eu/files/BalkanMonitor-2010\\_Summary\\_of\\_Findings.pdf](http://www.balkan-monitor.eu/files/BalkanMonitor-2010_Summary_of_Findings.pdf) (accessed on 13 December 2010)

<sup>30</sup> Ibidem



**V**

**CORRUPTION**

**PROFILE**

Corruption remains a widespread phenomenon in the country. The Corruption Perception Index 2010 of Transparency International gives a score of 2.8 (high corruption, position 110) on a zero (very corrupted) to ten (very clean) scale. Kosovo shares position 110 with the following states: Benin, Bolivia, Gabon, Indonesia and the Solomon Islands.<sup>31</sup> Over the last three years, as an independent state, there were several reports both local and international that have attracted attention about the perception that levels of corruption are damaging the country's development as well as Kosovo's image on the international scene. The year 2010 began with reports of bursting levels of corruption and organised crime at the highest levels of the country's government circles. The lack of political will to establish law and order is continuously damaging Kosovo by reducing its chances to become an attractive environment for foreign investors<sup>32</sup>

There are major concerns related to the performance of the public sector, judiciary and law enforcement, while the number of final convictions for corruption cases remains low. The Progress Report of the European Commission last year shocked the public with information that 168 million of the consolidated budgeted was spent through single source procurement.<sup>33</sup> The Foreign Policy Club in its publication "How is corruption sending away foreign investors," warned about the damages caused by the high levels of political corruption in the country and the negative impact on attracting foreign investments. The report calls for urgent anti-corruption measures. The report cast doubts on the way public funds were managed by the Ministry of Transport, on the selection process of the second mobile phone operator and the privatisation of the SOE's "Llamkos" and "Feronikel."<sup>34</sup> Meanwhile, the Progress Report 2010 of the European Commission points out that since 2007 the levels of foreign investments in Kosovo have declined. According to the Progress Report, foreign investments in Kosovo have declined from 19% to 7.1% of net GDP.<sup>35</sup>

According to Balkan Monitor 2010, more than 9 out of 10 (91%) respondents in Kosovo thought that governmental corruption was widespread in the country. This represents the most dramatic change in this survey, where the share of those believing that their government was corrupt has increased

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<sup>31</sup> Transparency International, Corruption Perception Index 2010, at <http://www.transparency.org/content/download/55725/890310> (accessed on 4 December 2010)

<sup>32</sup> Foreign Policy Club, Periscope No 5: Either corrupt government of direct investments, at <http://www.periskopi.com/> (accessed on 12 January 2010)

<sup>33</sup> European Commission, Kosova Progress Report 2010, at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/ks\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ks_rapport_2010_en.pdf) (accessed on 13 December 2010)

<sup>34</sup> Foreign Policy Club, Corruption and Foreign direct investments, at <http://www.foreignpolicyclub.org/publikime.php?baza=raportet> (accessed on 12 January 2010)

<sup>35</sup> European Commission, Kosova Progress Report 2010, at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/ks\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ks_rapport_2010_en.pdf) (accessed on 13 December 2010)

by eight percent since 2009.<sup>36</sup> When asked about offering a bribe or present to solve their problems in the past year, only 9% of Kosovars is said to have done so.<sup>37</sup> Compared to the previous finding, the situation indicates that corruption is perceived to be rooted at the highest levels of state and other institutions (political parties and judiciary being at the top.) On the other side, UNDP Early Warning Report shows that unemployment (45%) and poverty (28%) are the most paramount problems that Kosovo faces. Corruption (7%) and social problems (4%) are in third and fourth place..<sup>38</sup>

In an analysis on international reports about Kosovo, the Foreign Policy Club concludes that these reports do not speak well of Kosovo, claiming that at the end of its third year of statehood, Kosovo is not being portrayed as a success story and that corruption is often mentioned as one of the most serious concerns.<sup>39</sup> The analysis concludes that the new state, based on external evaluations, is not on the road to becoming a well-functioning state.

According to the Global Corruption Barometer 2010 of Transparency International, 73% of respondents in Kosovo believe that since 2007 the level of corruption has increased, while only 8% think that corruption has decreased. The report reveals that the political parties are seen as the most corrupt institutions, followed by the judiciary and the parliament. Some 15% of respondents have stated that they or someone related to them has given bribes in various forms. In general, at the regional level, Kosovo is not better in terms of the perception of corruption with an average grade of 3.5, which means it is perceived to be very close to the extreme level of corruption (level 5 means extreme corruption).<sup>40</sup> In TI's Global Corruption Report 2009, which assessed corruption in the private sector Kosovo has been evaluated as having a high level of corruption. The report finds that the competition policies is at an emerging phase and that there are high level corruption scandals, when Kosovo is assessed among post-conflict countries like Angola, Burundi, Guatemala and Mozambique.<sup>41</sup>

The European Commission Kosovo Progress Report 2010 has found almost no overall progress during the last year and expressed serious concerns regarding political and economic criteria. The report

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<sup>36</sup> Galup Balkan Monitor, Insights and Perceptions: Voices of the Balkans, at [http://www.balkan-monitor.eu/files/BalkanMonitor-2010\\_Summary\\_of\\_Findings.pdf](http://www.balkan-monitor.eu/files/BalkanMonitor-2010_Summary_of_Findings.pdf) (accessed on 13 December 2010)

<sup>37</sup> Ibidem

<sup>38</sup> UNDP Kosovo, Early Warning Report 28, at [http://www.ks.undp.org/repository/docs/EWR\\_eng\\_web-opt.pdf](http://www.ks.undp.org/repository/docs/EWR_eng_web-opt.pdf) (accessed on 13 December 2010)

<sup>39</sup> Foreign Policy Club, External Assessment of the new State, What do the international reports say about the state of Kosovo?, at <http://www.foreignpolicyclub.org/raportet/03.pdf>, (accessed on 4 December 2010)

<sup>40</sup> Transparency International, Global Corruption Barometer 2010, at <http://www.transparency.org/content/download/57399/918005> (accessed on 15 December 2010)

<sup>41</sup> Transparency International, Global Corruption Report 2009, at <http://www.transparency.org/content/download/46187/739801> (accessed on 13 December 2010)

indicates a lack of freedom of expression, political influence on appointments in the judiciary, a lack of results in the fight against corruption and organized crime, serious concerns regarding the rule of law, poor public administration and parallel structures still in operation.<sup>42</sup> The measurement of an anti-corruption system at the national level by the Global Integrity Report 2009 ranks Kosovo with 67 (poor) at the level of 0 (very poor) up to 100 (very strong,) putting forward the following findings: poor accountability and transparency by the government in financing political parties, conflicts of interest not regulated and political interference in the Anti-Corruption Agency. Kosovo is ranked near countries like Ghana, Nepal, Kenya, Sierra Leone and Uganda.<sup>43</sup> The rule of law in independent Kosovo was assessed by the International Crisis Group, which found that law enforcement agencies (police, prosecutor's offices and courts) are disoriented and under the influence of politics, organized crime and corruption are blooming, unlawful political elite, a criminalized north, etc.<sup>44</sup>

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<sup>42</sup> European Commission, Kosovo Progress Report 2010, at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/ks\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ks_rapport_2010_en.pdf) (accessed on 13 December 2010)

<sup>43</sup> Global Integrity, Global Integrity Report 2009, at <http://report.globalintegrity.org/reportPDFS/2009/Kosovo.pdf> (accessed on 13 December 2010)

<sup>44</sup> International Crisis Group, The rule of law in independent Kosova [http://www.crisisgroup.org/~media/Files/europe/balkans/kosovo/204%20The%20rule%20of%20Law%20in%20Independent%20Kosovo.ashx](http://www.crisisgroup.org/~/media/Files/europe/balkans/kosovo/204%20The%20rule%20of%20Law%20in%20Independent%20Kosovo.ashx) (accessed on 13 December 2010)

**VI**

**ANTI-CORRUPTION  
ACTIVITIES**

An Anti-Corruption Strategy was adopted in 2004, and it was followed up with an Anti-Corruption Action Plan in 2005 with the purpose of implementing the Strategy. It maintained measures of anti-corruption legislation, development of the judicial system and law enforcement, public administration reform, public finance and economy, media, civil society and public participation, capacity building and education.<sup>45</sup> The Government's Anti-Corruption Strategy has recently been put into practice through the Anti-Corruption Action Plan, a detailed matrix of measures linked to target groups and stake holders, responsibilities, timelines, indicators of success, obstacles and challenges. The Action Plan is aiming at new legislation, law enforcement, public awareness and civil society involvement, and is to be realized during 2006-2007. The Office of Good Governance in the Office of the Prime Minister is coordinating and overseeing the initiatives.<sup>46</sup>

Kosovo has adopted the main legal instruments in the field of preventing corruption, including the Anti-Corruption Law, the Law on Access to Official Documents, the Law on Preventing Conflict of Interest in Exercising Public Function, the Law on Declaration of the Property of Senior Officials of Public Sector, the Law on Preventing Conflict of Interest in Exercising Public Function and the Law on Financing of Political Parties. One very important law, however, is still missing, the law on confiscating illegally acquired assets.

As part of an Anti-Corruption Strategy, the Assembly of Kosovo adopted the Anti-Corruption Law in April 2005, which was promulgated by the SRSG in May 2005. The Law foresees measures against corruption in the field of administrative investigations of public corruption, publicizing most serious violations of the law, nepotism in recruitment, conflict of interest, standards on giving/acceptance of gifts in public administration, etc. The Law also foresees the establishment of the Kosovo Anti-Corruption Agency. This Executive Agency will have a Council overseeing its work. Membership of the Council of the Anti-Corruption Agency was voted upon by the Assembly in February 2006. The effective functioning of the Anti-Corruption Council has been set out by the Committee of legislation and judiciary of the Assembly of Kosovo.<sup>47</sup>

With the Agency in place, a new strategy was to be prepared in 2008; however, the drafting of the strategy was postponed and was only initiated in 2009.<sup>48</sup> Pursuant to provisions of the Law on the Suppression of Corruption that regulate issues related to drafting and implementation of strategies and considering that the Anti-corruption Strategy and Action Plan covered the period between 2004 – 2007, the Agency undertook the initiative to draft and recommend for adoption the new Draft of Anti-corruption Strategy.<sup>49</sup> Ac-

<sup>45</sup> UNDP, Anti-corruption practitioners Network, at <http://europeandcis.undp.org/anticorruption/show/B67B3B38-F203-1EE9-B35D2BD39F543C9A> (accessed on 23 November 2010)

<sup>46</sup> OSCE in Kosovo, Kosovo Anti-Corruption Action Plan: Social and Economic Necessity for Kosovo, at [http://www.osce.org/publications/mik/2006/10/21712\\_685\\_en.pdf](http://www.osce.org/publications/mik/2006/10/21712_685_en.pdf) (accessed on 23 November 2010)

<sup>47</sup> Ibidem

<sup>48</sup> Lejla Sadiku, Civil Society Against Corruption, Kosova, at [http://www.againstcorruption.eu/uploads/rapoarte\\_finale\\_PDF/Kosovo.pdf](http://www.againstcorruption.eu/uploads/rapoarte_finale_PDF/Kosovo.pdf) (accessed on 2 December 2010)



According to the Global Corruption Barometer, 61% of respondents think that anti-corruption measures of government have not had any effect, while 32% believe that the measures have been effective.<sup>50</sup>

The Assembly has adopted the anti-corruption strategy and action plan for 2009-2011. The conditions for the work of the Anti-Corruption Agency have improved. The Agency has revised the action plan. It has also started monitoring implementation of the action plan and has received reports from about 40 agencies involved. However, they demonstrate limited ownership and commitment to implement it. While the relation between the Anti-Corruption Agency and the prosecution has improved, there is room for further improvement. There has been a raise in the number of cases related to mismanagement of public funds which have been reported to the Anti-Corruption Agency. Public awareness has increased. During the reporting period, the chief executive officers of five independent agencies have been dismissed or demoted on the grounds of weak performance and alleged corruption. Concerns persist with regards to whether there existed sufficient justification to substantiate such action.<sup>51</sup>

The 2009-2011 Strategy is drafted as a comprehensive and coherent document, which sets the anti-corruption policy objectives in Kosovo for the period from 2009 to 2011. With regards to the current situation of corruption and the results in implementation of the Anti-corruption Strategy 2004, the present strategy is focused more on strengthening institutional capacities and practical/administrative measures for their implementation and implementation monitoring of previously adopted legislation, rather than on new legislative initiatives. When legislative initiatives are planned, they should be supported by organizational measures that aim at increasing capacities and training for their implementation.<sup>52</sup>

In addition to the national institutions, the EULEX Kosovo Mission, as set out in the Joint Action adopted by the Council of the European Union of 4 February 2008, is another important anti-corruption body in Kosovo. With approximately 1700 international personnel deployed across Kosovo, the mission has been able to move forward its activities to a larger extent. In accordance with its mission,, EULEX Kosovo has conducted monitoring, mentoring and advising activities aimed at improving the performance of the competent Kosovo institutions, judicial authorities and law-enforcement agencies. The Mission has, in parallel, retained certain executive responsibilities as per its mandate. The Mission has in particular reviewed the backlog of sensitive investigations pertaining to war crimes, terrorism, organised crime, corruption, inter-

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<sup>49</sup> Kosova Anti-Corruption Agency, Anti-Corruption Strategy 2009-2011, at [http://www.akk-ks.org/repository/docs/Strategjia\\_-\\_versioni\\_final\\_anglisht\\_-\\_janar\\_2010.pdf](http://www.akk-ks.org/repository/docs/Strategjia_-_versioni_final_anglisht_-_janar_2010.pdf) (accessed on 2 December 2010)

<sup>50</sup> Transparency International, Global Corruption Barometer 2010, at <http://www.transparency.org/content/download/57399/918005> (accessed on 15 December 2010)

<sup>51</sup> EC Kosova Progress Report 2010, at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/ks\\_report\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ks_report_2010_en.pdf) (accessed on 2 December 2010)

<sup>52</sup> Kosova Anti-Corruption Agency, Anti-Corruption Strategy 2009-2011, at [http://www.akk-ks.org/repository/docs/Strategjia\\_-\\_versioni\\_final\\_anglisht\\_-\\_janar\\_2010.pdf](http://www.akk-ks.org/repository/docs/Strategjia_-_versioni_final_anglisht_-_janar_2010.pdf) (accessed on 2 December 2010)

ethnic crimes, financial/economic crimes and other serious crimes.<sup>53</sup>

In the field of anti-corruption, the civil society sector is marked by a few organizations which are very present in the public. These organizations tend to specialize in different tools rather than different aspects of corruption. Some analysts argue that civil society organizations can be separated into two major groups: organizations that deal with institutional transparency and advocacy, such as the Kosovo Democratic Institute (the Transparency International chapter in Kosovo) and the Youth Initiative for Human Rights which monitors enforcement of legislation, mainly the law on access to official documents. The second group deals with high level corruption, where two organizations have made a considerable contribution: COHU and the Balkan Investigative Reporting Network Kosovo (BIRN.) COHU relies more on advocacy and whistle-blowing, while BIRN uses mainly naming and shaming.<sup>54</sup>

Other important civil society organizations active in the anti-corruption field include: the Speak Up (FOL) Movement, the Initiative for Progress (INPO) and the Forum for Civic Initiative. These organizations are known for their innovative use of traditional tools (for example, protests with performance elements), educating the public and increasing citizen involvement in policy making processes. There are not many organizations working in the anti-corruption sector. The overall contribution of civil society organizations has been rather modest; but, well-targeted projects, led by enthusiastic leaders (and often in coalitions) have had a positive impact.<sup>55</sup>

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<sup>53</sup> Centro Studi sul Federalismo, at <http://www.csfederalismo.it/index.php/it/eulex-kosovo> (accessed on 23 November 2010)

<sup>54</sup> Lejla Sadiku, Civil Society Against Corruption, Kosovo, at [http://www.againstcorruption.eu/uploads/rapoarte\\_finale\\_PDF/Kosovo.pdf](http://www.againstcorruption.eu/uploads/rapoarte_finale_PDF/Kosovo.pdf) (accessed on 2 December 2010)

<sup>55</sup> *Ibidem*

**VII**

**INSTITUTIONAL**

**INTEGRITY**



**1.**

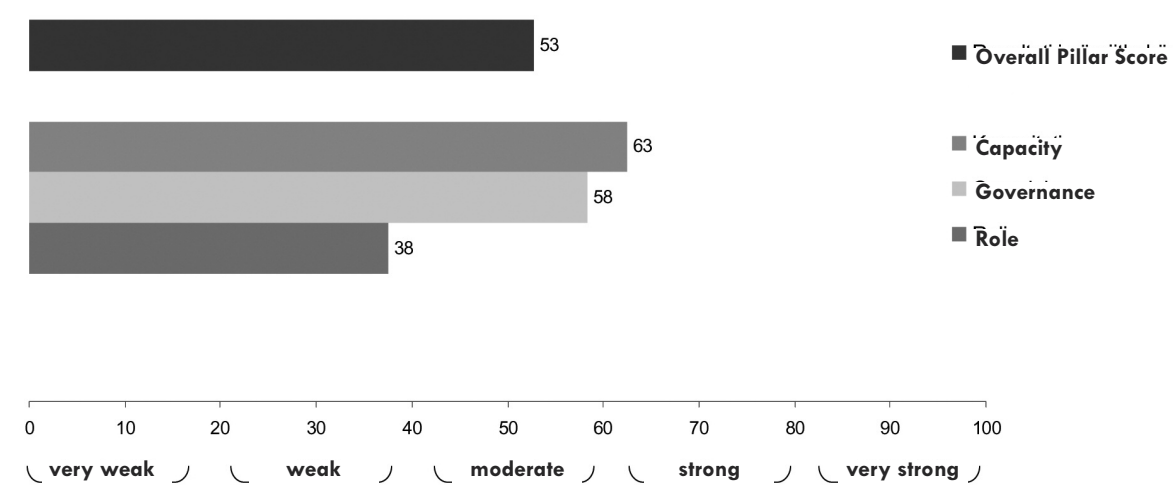
**LEGISLATURE**

## Overview

The Report on the Legislative Pillar in Kosovo finds that, despite the existence of the legal framework that defines and determines the constitutional role and the importance of this highest legislative body, the practical difficulties in the implementation and accomplishment of the Assembly mission remain challenging.

The violation of independence and integrity by means of dictating the agenda of the Assembly proceedings by the Executive Branch itself represents a key challenge, along with the other direct interferences by international factors in curtailing the parliamentary debate, especially as it pertains to sensitive political issues, including the country's sovereignty and integrity. While this feature has had a significant impact on the lack of accountability to citizens and on the increased political dependency in relation to international institutions and organizations present in Kosovo, this assessment indicates that the Assembly remains at the periphery of decision-making and many substantial decisions are reached only by the Government, without any significant involvement of the Assembly. The example of Kosovo indicates that the approval of adequate legislation does not guarantee success in practice, and to the contrary it can be counter-productive; because of the delay in the establishment of several institutions and agencies, and the lack thereof, which would be directly accountable to the Assembly, mainly as a consequence of inexistent bipartisan politics, has visibly weakened the integrity of this pillar. As core agents of democratization, the capacity of the Assembly Members in accomplishing their representative, legislative and oversight roles, even after the second half of the term of office, leaves much to be desired. The ability of the Assembly Members is also dependent on the effectiveness of the Assembly support staff which is quite limited in both numbers and quality performance, in addition to operating within considerable budgetary and physical constraints.

To a considerable extent, the Assembly has failed in the accomplishment of the legislative strategy, in addition to failure to utilize parliamentary oversight tools, especially in issues that pertain to public fund disbursements and the investigation of conflicts of interest and public administration corruption cases. While Kosovo has installed the single district electoral system, the weak link or even the disconnect in the cooperation between elected representatives and constituents, continues to represent a point of concern, as this has damaged the protection of the interests of the citizens in the sense of a dignified representation of these interests on the Assembly floor.



## Structure & Organization

The Assembly of the Republic of Kosovo as a legislative body directly elected by the people<sup>56</sup> exercises the Legislative Branch functions in conformity with the Constitution of the Republic of Kosovo.<sup>57</sup> The Assembly has one hundred twenty (120) members elected by secret ballot on the basis of open lists. The Constitution stipulates that the legislature shall be elected for a mandate of four (4) years, starting from the day of the constitutive session, which shall be held within thirty (30) days from the official announcement of the election results.

The seats in the Assembly are distributed amongst all parties, coalitions, citizens' initiatives and independent candidates in proportion to the number of valid votes received by them in the election to the Assembly.<sup>58</sup> The Assembly establishes the organization and operation of the Assembly of Kosovo, the President and Presidency of the Assembly, Parliamentary Committees and other Assembly bodies, through the Rules of Procedure.<sup>59</sup> Article 67 of the Constitution establishes that the Assembly of Kosovo elects the President of the Assembly and five (5) Deputy Presidents from among its members,

<sup>56</sup> Constitution of the Republic of Kosovo, Article 63.

<sup>57</sup> (ibidem), Article 65.

<sup>58</sup> (ibidem), Article 64.

<sup>59</sup> 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.

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 two thirds (2/3) vote of all its members and determine the internal organization and method of work of the Assembly.

## Resources (Law) - 75

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

Under Competences of the Assembly, Article 65, among other items reads that the Assembly of Kosovo approves the budget of the Republic of Kosovo. Based on Article 77 of the Constitution, the Assembly of Kosovo appoints permanent committees, operational committees and ad hoc committees reflecting the political composition of the Assembly. According to the current Rules of Procedure, the Budget and Finance Committee, the Committee for Community Rights and Interests and for Return, Legislation and Judiciary Committee, as well as the Committee for European Integrations are permanent committees. There are also 8 functional committees, as well as one sub-committee, the Sub-Committee for Mandate, Immunity and Regulation<sup>60</sup>.

The Budget and Finance Committee, in cooperation with the General Secretary and the Budget Department of the Assembly of Kosovo, is responsible for the preparation of the draft-budget of the Assembly, which will be turned in to the President of the Assembly for final approval, before being submitted to the Ministry of Economy and Finance.<sup>61</sup> This committee, within its scope of operation and responsibilities, reviews all issues pertinent to budgets and finances in Kosovo. The importance of this committee consists of legislative review in all areas that relate to the field of budget and finance, as well as review of proposed amendments with budgetary implications which are submitted to the Budget and Finance Committee, which in turn must declare its findings through a report submitted within five (5) working days from the day of receipt.<sup>62</sup>

<sup>60</sup> Committee on Foreign Affairs; Committee on Education, Science, Technology, Culture, Youth and Sports; Committee on Economy, Trade, Industry, Energy, Transportation and Telecommunications; Committee on Agriculture, Forestry, Rural Development, Environment and Spatial Planning; Committee on Health, Labor and Social Welfare; Committee on Public Administration, Local Government and Media; Committee on Internal Affairs and Security; Committee on Human Rights, Gender Equality, Missing Persons and Petitions; Public Finance Oversight Committee; Kosovo Intelligence Agency Oversight Committee, Kosovo Security Force Oversight Committee; Committee on Mandates, Immunities and Rules of Procedure of the Assembly.

<sup>61</sup> Rules of Procedure of the Assembly of Kosovo, Article 15.

<sup>62</sup> (ibidem), Article 57, item 5.



## Resources (Practice)

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

The Assembly of Kosovo does not possess sufficient infrastructural resources to fulfill its duties in practice. According to the AKR Caucus Chairperson,<sup>63</sup> there are no individual offices for the Assembly Members and their personal assistants, and these needs can only be met by utilizing the Party Caucus Headquarters Offices within the Assembly Building. Further, Assembly Members do not have any budgetary funds allocated to support and enhance constituent relations efforts, although Kosovo implements a single district electoral system. 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. On the issue of legislation,<sup>64</sup> in 2009, of 127 foreseen draft-laws, the Assembly of Kosovo approved 31 laws, of which 18 belong to the Government Legislative Strategy for 2008, and only 13 belong to the Legislative Strategy for 2009. In 2009, the Assembly sent back to the Government four (4) draft-laws for further review. In 2010, in its Legislative Strategy the Assembly anticipated the approval of 146 draft-laws, as well as 23 others belonging to the previous legislative years, which amount to 169 draft-laws. Out of these, the Assembly approved 71 in two readings or 42 % of them; 18 draft-laws were past during the first reading, while 80 draft-laws or 47 % of the entire plan was not treated at all. The Assembly on this occasion proved that it does not effectively develop its own working plan, because every year, it does not manage to fulfill even 50% of its plan. The Kosovo Assembly, maybe due to early interruption of its work, has not managed to adopt a number of draft-laws which are carried from year to year and some others which have passed the first reading, and have remained to be reviewed in the Committees of the Assembly.

All the draft-laws in the Assembly which have passed the first reading during this mandate shall once again begin the review procedure from the beginning in the next legislature. The number of these draft-laws is 18. Realistically, the Presidency of the Assembly holds great responsibility in this whole process, due to the fact that the Rules of Procedure, Article 15 provisions regulating the duties of the Presidency, allow the same to review the Government Legislative and Reporting Strategy, which may be incorporated and harmonized with the Assembly Work Program. According to Forumi 2015, the Government of Kosovo holds the greatest degree of responsibility for the non-implementation of the Assembly of Kosovo Work Plan, since the Government is the initiator of almost all legislative initiatives, and as such has failed to advance the majority of draft-laws foreseen in its own Legislative Strategy and the Assembly Work Program.<sup>65</sup> GAP Institute remarks that this practice also automatically influences the misuse of the work plan

<sup>63</sup> Interview with Ibrahim Makolli by the author, Pristine, April 14, 2010.

<sup>64</sup> The Institute for Advanced Studies GAP, *Fakte rreth Strategjisë Legjislative (Facts about Legislative Strategy)*, (Prishtina: GAP, 2010), pg. 9.

<sup>65</sup> Forumi 2015, *Duke Pritur Vendimmarrësit (Waiting on the Decision-Makers)* 10 – KS – 100, (Prishtina: Forumi 2015, 2010), pg. 31.

of the Assembly committees and thus committees start operating on an ad hoc basis.<sup>66</sup> The delays in the work of Assembly committees in the review of draft-laws approved in principle, at the very onset of 2008, created a series of standstills, because of obstructions by interest groups either within the committees or by the international offices present in Kosovo.<sup>67</sup>

Based on the final review, through the approval of the Draft-Law on the Amendment and Supplement of the Law on the Budget of the Republic of Kosovo on July 12, 2010<sup>68</sup> at the Assembly, the allocated budget for the Assembly of the Republic for 2010<sup>69</sup> has been increased from 9,301,677 to 9,524,580 Euros. Also, according to this review 4,801,070 Euros have been allocated in the category Wages and Salaries, 1,299,292 Euros have been allocated in the category of Goods and Services, 241,208 Euros have been allocated in the category of Utilities, 1,901,783 Euros have been allocated in the category of Subsidies and Transfers, whereas a total of 1,281,227 Euros have been allocated in the category of Capital Expenditures.<sup>70</sup> The number of employees is 327, including Members of the Assembly, Administration and the Kosovo Independent Oversight Board. The approval of this budget amendment by the majority of the Assembly Members has in fact indicated that the legislature's needs for 2010 have been met, and up to this stage there has been no notice of a request or proposal to increase budgetary categories. In general, Committees are faced with a lack of absorption capacity to spend allocated funds in a planned manner, with emphasis on the lack of expertise pertinent to lawmaking in general. This remark has been accented on the European Commission's 2009 Progress Report,<sup>71</sup> which expresses the need to increase the administrative and technical capacities of the committees, in order of achieving a further enhancement of the parliamentary oversight of the executive branch of government. In this context, the Assembly lacks a professional unit that would ensure drafting of legislation in a manner that would avoid contradictions between different laws. Remarks on the administration of the Kosovo Assembly in the 2010 Progress Report of the European Commission concerned: human resources management by the Secretariat of the Assembly, as well as on the transparency during the staff recruitment process within this institution and the movement of qualified personnel, in this case

<sup>66</sup> Interview with Agron Demi, Researcher, GAP Institute, Prishtina, April 12, 2010.

<sup>67</sup> (ibid).

<sup>68</sup> Government of the Republic of Kosovo, Ministry of Economy and Finance, Review of the Budget of the Republic of Kosovo for 2010, <http://www.mef-rks.org/sq/download/buxheti-i-konsoliduar-i-kosoves/2010/2965-rishikimi-i-buxhetit-te-republikes-se-kosoves-per-vitin-2010-draft> (checked last on July 17, 2010).

<sup>69</sup> 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 Euros. A total of 7,934,018 Euros were allocated in the category of Operational Expenses, whereas 1,367,649 Euros were allocated for Capital Expenditures.

<sup>70</sup> The Government of the Republic of Kosovo, Ministry of Economy and Finance, Review of the Budget of the Republic of Kosovo for 2010 Rishikimi i Buxhetit të Republikës së Kosovës për vitin 2010, <http://www.mef-rks.org/sq/download/buxheti-i-konsoliduar-i-kosoves/2010/2965-rishikimi-i-buxhetit-te-republikes-se-kosoves-per-vitin-2010-draft> (checked last on July 17, 2010).

<sup>71</sup> Commission of the European Communities, Kosovo under UNSCR 1244/99 2009 Progress Report (Brussels, 15.10.2009), pg.7.

the efforts to build effective capacities with a particular emphasis on aligning national legislation with that of the European Union.

Political entities present through their respective Assembly Caucuses are entitled to a certain amount of financial aid from the Democratization Fund, which based on the Assembly Budget for the year 2010 is 1,901,783 Euros. According to a senior official from the OSCE Mission in Kosovo,<sup>72</sup> the year 2010 has marked improvements in the increase of financial support for the Permanent and Functional Committees; for Assembly Committees the amount of funding varies from 10,000 to 20,000 Euro, respectively, depending upon the committee framework.

However, at the very moment of the term of office verification for the Assembly Member, the Member obtains the right to material compensation consisting of a monthly income (their base salary is approximately 1,488 Euros per month), the right to additional income compensation (including special wages for participation in Assembly sessions, Assembly Presidency and Committee sessions,) and the right to expense report reimbursements for travel and stay in and out of country on official business. The incomes of the Assembly members far exceed the average income in Kosovo, and this is something that has often been the subject of political debate in Kosovo. KDI together with other NGOs have organized a meeting with the President of Kosovo on 21 June 2010, when they spoke about Law on Rights and responsibilities of the MPs, specifically article 22.1 regarding supplementary pensioning. They have requested from the President that within his competencies to return back the Law to the Assembly. In this context, they have also declared their disagreement with the extension of retirement age for Assembly Members to 55 years of age, as it currently stands. According to them, this draft-law is unconstitutional, because it discriminates against other categories of employees in Kosovo, in addition to standing against social equality in the country, with the mere fact that the Assembly has changed the age for supplemental retirement only for Assembly Members. On 04 June 2010, KDI and few other NGOs met with Peoples Advocate Mr. Sami Kurteshi, when it was requested to forward this issue to the Constitutional Court; this request is based on the grounds that this law violates human rights and freedoms and as such it is discriminatory. As result of this on 18 December 2010 Constitutional Court temporary cancelled the implementation of this law

In reference to the issue of Assembly services, all Assembly Members have the right to utilize all services, including: the Assembly Building, Assembly professional services, computer services, the internet and other electronic services, library services, interpreter services, as well as transportation services.<sup>73</sup> Nevertheless, Kosovo Assembly Members should increase the utilization of the Information Technology serv-

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<sup>72</sup> Interview with Blerim Vela by the author, Prishtina, April 12, 2010.

ices, in particular, access to official Assembly electronic mail and especially the utilization of the intranet (internal computer network). The President of the Assembly makes decisions on financial means and rules governing Members, Administrative Officer, Presidency Member staff, Party Caucus staff accommodation and equipment. According to the review of the Consolidated Budget of Kosovo for the year 2010, a total of 309,538,246 Euro have been allocated for Assembly Administration projects, which to great extent deal with capital investments.<sup>74</sup>

Generally, the administrative staff of the Assembly is supported by various international organizations, whereas an important role in this direction has been provided by the OSCE Mission in Kosovo,<sup>75</sup> to include the publication of the Assembly magazine (ASI) which publishes 4-5 issues annually. Regardless of applicable regional models, the Assembly of Kosovo still hasn't established an internship/professional practice program which could be utilized for academic/research purposes by both local and international students. The Assembly does not have a well developed information technology approach (intranet and shared drive) to serve the purposes of official document exchange between the Assembly Members and administration; instead, the practice of printed materials distributed to members' cubby holes is still in place, whereby the increased efficiency and up-to-date operations within the Assembly are affected.

## Independence (Law)

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

Being the body that exercises legislative power,<sup>76</sup> the institutional independence of the Assembly of Kosovo as the only institution directly elected by the people is guaranteed by the Constitution.<sup>77</sup> The Competencies of the Assembly are prescribed and guaranteed by Article 65 of the Constitution. The Dissolution of the Assembly is clearly determined by Article 82 of the Constitution, in the following special cases: 1) if the government cannot be established within sixty (60) days from the date when the President of the Republic of Kosovo appoints the candidate for Prime Minister; 2) if two thirds (2/3) of all deputies vote in favor 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

<sup>73</sup> Interview with the Senior Advisor to the President of the Assembly, Ilir Gashi, by the author Prishtina, April 13, 2010.

<sup>74</sup> The Government of the Republic of Kosovo, Ministry of Economy and Finance, Review of the Budget of the Republic of Kosovo for 2010 Rishikimi i Buxhetit të Republikës së Kosovës për vitin 2010, <http://www.mef-rks.org/sq/download/buxheti-i-konsoliduar-i-kosoves/2010/2965-rishikimi-i-buxhetit-te-republikes-se-kosoves-per-vitin-2010-draft> (checked last on July 17, 2010) table 3.2

<sup>75</sup> OSCE Mission in Kosovo, <http://www.osce.org/kosovo/29387.html> (checked last on May 5, 2010).

<sup>76</sup> Constitution of the Republic of Kosovo, Article 4.

<sup>77</sup> Constitution of the Republic of Kosovo, Article 63.

sixty (60) days from the date of the beginning of the President's election procedure. The Assembly may be dissolved by the President of the Republic of Kosovo following a successful vote of no confidence against the Government.

The Schedule of Sessions and Quorum is regulated by Article 69 of the Constitution of the Republic. Specifically, the convention of extraordinary sessions may occur upon the request of the President of the Republic of Kosovo, the Prime Minister or one third (1/3) of the Members, whereas the Assembly has its quorum when more than one half (1/2) of all Assembly Members are present. The Election of the President of the Assembly is prescribed by Article 67 of the Constitution; specifically the President of the Assembly is proposed by the largest parliamentary group and is elected by a majority vote of all Members of the Assembly.

The legislative agenda with reference to the legislative procedure for the proposal of draft-laws is determined on the basis of the Constitution of the Republic, Article 79, and also the Rules of Procedure of the Assembly of Kosovo, Article 53, determines that the President of the Republic of Kosovo may present to the Assembly a draft-law from his scope of activity. The same may be done by the Government, Assembly members, parliamentary committees, a parliamentary caucus and at least six (6) Assembly Members, ten thousand 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 of Kosovo does not create its own agenda; rather this area is to a great extent dependent on the Government Legislative Strategy. According to the Institute for Advanced Studies GAP, each year, in conformity with the legislation in force, the Government of Kosovo is responsible for the preparation of the legislative strategy for the following year. The strategy represents the planning of government legislative work by taking into account the needs of Kosovo and the capacities of the Republic of Kosovo. Additionally, this strategy is used by the Assembly of Kosovo to plan its sessions throughout the year, as well as to draft work plans for the parliamentary committees.<sup>78</sup> In this context, civil society organisations<sup>79</sup> have criticized the lack of legislative initiatives within the Assembly, outside of the context of the Government Legislative Strategy which is incorporated almost entirely into the work of the Assembly of Kosovo.

Legally, the Assembly of Kosovo independently appoints internal staff through the President of the Assembly, which is responsible for the administrative performance of the Assembly, in the manner prescribed by the Rules of Procedure.<sup>80</sup> According to Article 15, item 11, the President elects the Secretary of the Assembly through a process of open recruitment. The Secretary is directly accountable and performs his duties in close cooperation with the President of the Assembly.

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<sup>78</sup> The Institute for Advanced Studies GAP, *Fakte rreth Strategjisë Legjislative (Facts About Legislative Strategy)*, (Prishtina: GAP, 2010), pg. 2.

<sup>79</sup> *Forumi 2015, Duke Pritur Vendimmarrësit (Waiting on the Decision-Makers) 10 - KS - 100*, (Prishtina: Forumi 2015, 2010), pg. 29.

<sup>80</sup> Constitution of the Republic of Kosovo, Article 67.



## Independence (Practice)

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

There is a perception by civil society actors and the opposition that in practice the work of the Assembly of Kosovo is closely interconnected to the political influence of the Executive Branch and international organizations, including the International Civilian Office and several Diplomatic Missions accredited in Prishtina.<sup>81</sup> During last year several examples of political interference by foreign political actors have been linked to political issues of an extremely sensitive nature, as in the case of the appointment of Constitutional Court Judges,<sup>82</sup> the approval of the Declaration on the Implementation of the Constitution throughout the Territory of Kosovo, interference to preclude the approval of a Resolution by the Assembly, the discussion of the protest events of February 10, 2007 organized by the Movement Vetëvendosja (a discussion which took place only after an organized petition signed by over 100,000 citizens of Kosovo, Albania, Montenegro and Serbia was sent to the Assembly),<sup>83</sup> the lack of a conclusion reached by the Assembly members;<sup>84</sup> the issue of a preliminary lack of a Government Strategy on the Integration of the North by the Assembly Members at the parliamentary debate organized by Lidhja Demokratike e Dardanisë (LDD) on the presence of government structures of the Republic of Serbia<sup>85</sup> and the protocol issue of the EU Rule of Law Mission in Kosovo (EULEX) with the Republic of Serbia pertinent to police cooperation<sup>86</sup>.

There have also been a number of cases where Assembly members have signed documents to raise issues to the Presidency and upon pressure from different political actors (including foreign organizations) have withdrawn several signatures to prevent the fulfillment of procedural criteria necessary to initiate a specific topic. This is symptomatic of the lack of independence of the institution. It is important to note the most recent case where, four (4) Assembly members have withdrawn their signatures after a relatively short time although fully cognizant when signing and supporting a legal

<sup>81</sup> Interview with Driton Selmanaj, Central Governance Program Assistant, KDI, Prishtina, April 19, 2010; Interview with AKR Caucus Chairman, Ibrahim Makolli, Prishtina, April 14, 2010.

<sup>82</sup> Interview with a Civil Society monitor of the Assembly proceedings, Prishtina, April 19, 2010.

<sup>83</sup> Express Daily, Çështja "Kurti", pa asnjë vendim apo rekomandim ("Kurti" Case, No Decision or Recommendation), Prishtina (2010), <http://lajme.shqiperia.com/lajme/artikull/iden/1046846130/titulli/Ceshtja-Kurti-pa-asnje-vendim-apo-rekomandim> (checked last on May 6, 2010).

<sup>84</sup> Kosovo Democratic Institute (KDI), Raport mujor i monitorimit të Kuvendit të Kosovës (Assembly of Kosovo Monthly Monitoring Report), (Prishtina, KDI, 2010), fq.3.

<sup>85</sup> Instituti Demokratik i Kosovës, Fletënotim VII -XII/ 2009 (Scorecard VII-XII/2009), (Prishtina, KDI, 2010) pg 4.

<sup>86</sup> Freedom House, Nations in Transit 2010, Kosovo, <http://www.freedomhouse.hu/images/nit2010/NIT-2010-Kosovo-final.pdf> (checked last on July 1, 2010).

initiative at the Constitutional Court for a legal interpretation as to whether or not the President of the Republic, Fatmir Sejdiu, is in violation of the Constitution. The media and civil society deemed this action to be a consequence of political pressure and a lack of integrity by the legislators.<sup>87</sup> In practice, these occurrences are displacing the attention of the Assembly Members from the lack of accountability and responsibility on issues of public interest, thus damaging the institution of the Assembly. The European Union Special Representative, Pieter Feith, has commented that Kosovo has not progressed sufficiently, especially in the accountability and transparency of public funds and donor disbursements, that the Parliament of Kosovo is not sufficiently involved in decision making and that a lot of decisions are still made solely by the Government, without any significant involvement of the Parliament.<sup>88</sup>

Regarding the relationship between the Assembly Members and the Government, despite the lack of legal obstacles to having an individual hold office at the executive level (whether Prime Minister or Minister) and hold an Assembly seat, this duality of powers has weakened the principle of separation of powers in Kosovo.<sup>89</sup> Notwithstanding the fact that this practice has been prohibited by the Prime Minister recently,<sup>90</sup> the Deputy Prime Minister and several Ministers have resigned their Assembly positions only after two years in office. The fact that there are many Government cabinet members who continue to hold dual offices remains a point of concern. Later on, the resignation example was followed by the Primary Spokesperson for the Government, who had concurrently held an Assembly seat.<sup>91</sup> In this context, by taking into account these defects of legislative dependency on the executive and foreign factors and especially by Assembly Members that represent the governing position, through informal interferences, according to KDI representatives,<sup>92</sup> "The Assembly lacks the power and integrity guaranteed by the Constitution to reach decisions which will serve as answers to political problems in the country and problems that relate to Legality and Constitutionality." However, the issue of dual positions in the executive and legislative is already resolved, because constitutional norms have determined that legislative representatives may only hold one position at a time.

<sup>87</sup> Express Daily, Dëmtohet kërkesa për Presidentin (Request for the President Damaged), Prishtina (2010), <http://www.gazetaexpress.com/web/index.php/artikujt/lexo/33713/C4/C13/> (checked last on July 2, 2010); Radio Free Europe, Serbët tërheqin nënshkrimet në "rastin Sejdiu" - Serbs Withdraw Signatures in the "Sejdiu Case", Prishtina (2010), <http://www.evropaelire.org/content/article/2087960.html> (checked last on July 3, 2010).

<sup>88</sup> Radio Free Europe, Kritikkat e Feithit (s') befasojnë Prishtinën, (Feith's Criticisms (Don't) Surprise Prishtina) <http://www.evropaelire.org/Content/Article/1492088.html> (checked last on May 6, 2010).

<sup>89</sup> Radio Free Europe, Deputet ose Ministër (Assembly Member or Minister), Prishtina (2010), <http://www.evropaelire.org/content/article/2004126.html> (checked last on July 3, 2010).

<sup>90</sup> Telegrafi, Thaçi jep dorëheqje nga pozita e deputetit (Thaçi Resigns Assembly Member Post), Prishtina (2010), <http://www.telegrafi.com/?id=2&a=7370> (checked last July 3, 2010).

<sup>91</sup> Express Daily, Tërhiqen nga Parlamenti (Withdrawing from the Assembly), (Prishtina, 2010), <http://www.gazetaexpress.com/web/index.php/artikujt/lexo/29119/C4/C13/> (checked last on July 1, 2010).

<sup>92</sup> Interview with Driton Selmanaj, Central Governance Program Assistant, KDI, Prishtina, April 19, 2010

## Transparency (Law)

*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 legal provisions addressing the area of transparency in the Assembly proceedings are mainly regulated by the Rules of Procedure of the Assembly, however, Article 68 of the Constitution of the Republic explicitly prescribes that the meetings of the Assembly of Kosovo are public. However, according to this Article, meetings of the Assembly of Kosovo may be closed upon the request of the President of the Republic of Kosovo, the Prime Minister or one third (1/3) of the Members of the Assembly as set forth by the Rules of Procedure of the Assembly. The decision shall be made in an open and transparent manner and must be adopted by a two thirds (2/3) vote of the Members of Assembly present and voting. With respect to public meetings and session recording, the Rules of Procedure<sup>93</sup> foresee that Assembly sessions may be broadcast in accordance with arrangements decided upon by the President of the Assembly. Each plenary session of the Assembly is recorded and each discussion is recorded in the language it was held. Minutes shall reflect a summary of discussions and decisions reached by the Assembly. Voting records are made public on the Assembly website,<sup>94</sup> through the publication of transcripts of plenary sessions, as well as on Kosovo Public TV (RTK), which is required to broadcast live the proceedings of the plenary sessions of the Assembly, the latter being the founder of RTK.<sup>95</sup> According to the Rules of Procedure, Article 41, the President of the Assembly issues rules regarding the conduct of public and press representatives and other persons attending Assembly meetings, which may be open to the public (including physical persons, media, NGOs and representatives of the Diplomatic Missions.)<sup>96</sup> According to the aforementioned provision, the President may remove from the meeting all persons who do not respect the rules of the Assembly. Police Officers shall act upon the orders of the President of the Assembly.

In regard to committee work, the Rules of Procedure<sup>97</sup> 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

<sup>93</sup> Rules of Procedure of the Assembly, Article 43.

<sup>94</sup> Assembly of Kosovo Webpage, <http://www.kuvendikosoves.org/> (checked last on May 5, 2010).

<sup>95</sup> Law on Radio Television of Kosovo (Nr.02/L-47), entered into force on January 20, 2006.

<sup>96</sup> However, the Assembly Webpage does not reflect formal instructions informing the public on how to access the information or participation in the internal forums of the Assembly.

<sup>97</sup> Rules of Procedure of the Assembly, Article 65.



reports to the Assembly or d) deems otherwise necessary. This item provides that the Committee may operate behind closed doors, away from the public and the media, at its discretion. Additionally, the presentation of draft-laws is already being made public through the website of the Assembly of Kosovo, an action that was missing in the Kosovo parliamentary practice up to the end of 2009. According to the Rules of Procedure, a committee may invite representatives of institutions and civil society to its meetings to present evidence or to offer important documents, as well as hire advisers or experts, in accordance with procedural and financial guidelines established by the Presidency.

With respect to the disclosure of assets of legislators, there is a legal framework which regulates the issues 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 of Kosovo on February 11, 2010, and promulgated by decree of the President of Kosovo on March 2, 2010.<sup>98</sup> In this context, the aforementioned law sets forth several types of asset disclosure, such as regular annual disclosure, disclosure upon taking office by senior public official and disclosure by order of the Kosovo Anti-Corruption Agency (KACA). According to the base Law on Anti-Corruption Agency (Nr.03/L-159) approved on December 29, 2009, and promulgated by decree of the President of the Republic on January 19, 2010, Article 5 grants this institution the authority to monitor the assets of senior public officials and other persons, as well as monitor the receipt of gifts in the line of official duty and undertake measures set forth by law. Access to the Registry of Senior Official Property Disclosure is granted according to procedure set forth by the Law on Access to Official Documents (Nr.2003/12); access to these records can be achieved also through the KACA Website, where the Registry of Senior Official Property Disclosure is published. Realistically, this practice did not exist before February 2010, when this law was yet to be approved by the Assembly of Kosovo. Moreover, within sixty (60) days from the deadline for the submitting of the disclosure, KACA must publish on its website the names of the senior public officials who have failed to disclose their assets. Previous parliamentary practices have not paid much importance to this vital institution. More precisely, in 2007, because of the departure of a large number of Assembly Members during the presentation of the annual report by the Head of this institution during an Assembly session, the KACA annual report was not approved, whereas, in 2008, the Assembly insisted that only elected representatives may take the floor which in turn meant that the Head of KACA was not allowed to present the annual report to the Assembly.<sup>99</sup>

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<sup>98</sup> Kosovo Democratic Institute, *Analizë Krahasuese, Legjislacioni për Deklarimin, Prejardhjen dhe Kontrollin e Pasurisë së Zyrtarëve të Lartë Publik (Shqipëri, Maqedoni, Kroaci dhe Kosovë)* (Comparative Analysis of the Legislation for the Disclosure, Origin and Control of Assets of Senior Public Officials) (Albania, Macedonia, Croatia and Kosovo), [http://www.kdi-kosova.org/publications/Analiza\\_legjislacionit%20\\_%20dekl\\_pasurise.pdf](http://www.kdi-kosova.org/publications/Analiza_legjislacionit%20_%20dekl_pasurise.pdf) (checked last July 5, 2010), pg 14.

<sup>99</sup> Kosovar Stability Initiative, *Zgjidhja e Nyjës (Untying the Knot), Ekonomia Politike e Korrupsionit dhe Llogaridhënies në Kosovë* (Political Economies of Corruption and Accountability in Kosovo), (Prishtina, KSI, 2010), pg. 20.

## Transparency (Practice)

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

In practice there is a level of increased transparency regarding access to information concerning developments in the Assembly of Kosovo, in comparison to the previous legislatures of 2001-2004 and 2004-2007. In this context there is a noticeable improvement in transparency, especially with the electronic website of the Assembly, which publishes and updates information through the publishing of transcripts, as well as meetings of the Presidency and the President. Additionally, considerable space is provided for the publishing of approved laws, as well as draft-laws. Recently, the Assembly leadership decided to publish Assembly Member electronic voting records, thus enabling the constituents to see how their elected representatives vote on various issues. It is worth noting, that in comparison to other institutions, the Assembly has a well structured website. In this sense, Assembly Committee meeting agendas, Assembly Caucus Member bios, as well the composition of relevant committees are made available.

The Assembly Week is an ongoing practice, where the President of the Assembly visits several Kosovo municipalities, in order to being available for Q&A sessions. However, for the moment, the level of public awareness and citizen participation is insufficient, mostly due to the absence of public information campaigns during the Assembly Week.<sup>100</sup>

Kosovo Radio Television (RTK) continues to broadcast live Assembly of Kosovo plenary sessions, until 17:00. From the civil society perspective, there is a practical concern with respect to the transparency of the Assembly during 2010 as well. According to the Kosovo Democratic Institute (KDI),<sup>101</sup> plenary sessions should be broadcast by RTK even after 17:00, because the interest of the citizens should be of priority for this public broadcaster. In the event RTK is unable to adjust the programming schedule, the Assembly should consider, through RTK, the possibility of initiating a second channel dedicated to broadcasting plenary sessions of the Assembly of Kosovo. In spite of the fact that the Rules of Procedure do not precisely address the issue of the transparency of committee proceedings and in spite of the lack of transcripts being available to the public, the meetings of this forum continue to remain closed to local civil society organizations, whereas they remain open only for the

<sup>100</sup> In 2010, the Assembly Week was not held in the municipalities in the North. This agenda focused on only 5 municipalities: Ferizaj, Lipjan, Vushtrri, Podujeva and Gjakova. For more, see article: Televizioni Alsat, Java e Kuvendit të Kosovës nuk mbahet në komunat e veriut (TV Alsat, The Kosovo Assembly Week Not Held in the Municipalities in the North), <http://alsat-m.tv/lajme/rajoni/32317.html> (checked last on May 5, 2010).

<sup>101</sup> Kosovo Democratic Institute, Fletënotim I-VI (Scorecard I-VI). 2010, (Prishtina, KDI, 2010), pg. 13.

international institutions and organizations, such as the OSCE Mission, the International Civilian Office (ICO) and the National Democratic Institute (NDI).

In addition, according to the last Monitoring Report on the work of the Assembly by KDI,<sup>102</sup> among the identified transparency challenges that are a constant companion to the Assembly of Kosovo, from the constitution of the first legislature in 2001, irregularities remain dealing with: a failure to publish Assembly member electronic voting records from several plenary sessions in a timely fashion, Government delays in advancing draft-laws to the Assembly according to its legislative strategy or withdrawal of draft-laws during sessions, a lack of respect for deadlines for the advancement of draft-laws from the first reading to the second reading (a total of 13 draft-laws) as well as a failure to publish the minutes of the Assembly President and committee meetings in a timely fashion.

## Accountability (Law)

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

As the highest state/supreme institution based on the Constitution of the Republic, in a political sense the Assembly is accountable to only the citizens of the Republic of Kosovo. The Mission of the Assembly is the approval of laws, resolutions and other general acts, as well as decision-making on issues of general interest, oversight of the work of the Government and other public institutions, which according to the Constitution and laws report to the Assembly. As the highest representative and legislative body in Kosovo, it has a broad scope of operations in conformity with the Constitution and Rules of Procedure.

In the sense of the implementation of principles of checks and balances of power, the Constitution allows for the institution of the President<sup>103</sup>, the Constitutional Court<sup>104</sup> and the Office of Auditor General<sup>105</sup> to have specific legal authorities, in the sense of reciprocal accountability mechanisms. With regards to the handling of complaint mechanisms within the Assembly, according to Assembly Member Mr. Ibrahim Makolli, there is a Committee on Human Rights, Gender Equality, Missing Persons and Petitions, which among other things is responsible for accepting and reviewing

<sup>102</sup> Kosovo Democratic Institute (KDI), Raport mujor i monitorimit të Kuvendit të Kosovës (Assembly of Kosovo Monthly Monitoring Report), (Prishtina, KDI, 2010), pg.7.

<sup>103</sup> Constitution of the Republic of Kosovo, Article 84.

<sup>104</sup> (ibidem). Article 113.

<sup>105</sup> (ibidem). Article 137.

petitions that have been submitted in writing, contain the name of the petitioner and the relevant signatures, are understandable and clearly indicate their objective. Additionally, on the basis of the Rules of Procedure, this Committee may also send back the petition to the petitioners for re-drafting or require additional explanations. No later than two work weeks from the date the petition was received; the Committee Chairperson shall present the petition to the Committee, simultaneously proposing the legal solution or rejection of the petition

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.<sup>106</sup>

With regard to Assembly Member immunity, the Constitution of the Republic sets forth that the Assembly Members<sup>107</sup> shall be immune from criminal prosecution, civil lawsuit and dismissal for actions or decisions that are within the scope of their responsibilities as members of the Assembly. The immunity shall not prevent the criminal prosecution of Members of the Assembly for actions taken outside of the scope of their responsibilities as members of the Assembly. A Member of the Assembly shall not be arrested or otherwise detained while performing her/his duties as a Member of the Assembly without the consent of the majority of all Members. Nevertheless, there are no legal instruments ensuring that Members of the Assembly at various Assembly forums and the Presidency of the Assembly, respectively, are held accountable for failure to implement normative acts emanating from the Rules of Procedure.<sup>108</sup>

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<sup>106</sup> Constitution of the Republic of Kosovo, Article 113.

<sup>107</sup> (ibidem). Article 74.

<sup>108</sup> For more information, read the report on the violations of legal provisions by members of the Assembly Presidency by Kosovo Democratic Institute, Fletënotim I-VI (Scorecard I-VI). 2010, (Prishtina, KDI, 2010), pg. 5; Kuvendi i Republikës së Kosovës, Komisioni për Punë të Jashtme, (Assembly of Kosovo, Committee on Foreign Affairs) <http://www.kuvendikosoves.org/?cid=1,110,86> (checked last on July 23, 2010).

## Accountability (Practice)

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

In practice, there are no electoral districts, in order to have the Members of the Assembly of Kosovo held politically accountable by their voters, taking into account that the electoral system for the Assembly of Kosovo determines that Kosovo shall be considered a single, multi-member electoral district.<sup>109</sup> The accountability of Members remains an issue of their own volition; specifically the civil society has often raised concerns regarding the absence of Members at Assembly committee meetings and hearings..<sup>110</sup>

By means of its information tools, the Assembly publishes reports on the work of its internal forums at specific times, but there is no legal requirement to report to any specific institution, or to the citizens of Kosovo. It is worth noting that the annual expenditures of the Assembly of Kosovo have not to date been published, either on the Assembly website or through another communication channel. In addition, the unsatisfactory level of the publishing of vital documents on the Assembly website remains an issue of concern. One case in point, the “Declaration on the Implementation of the Constitution throughout the Territory of Kosovo” which since March 5, 2010 remains an unfinished draft, in spite of being published in the tab of Assembly Official Documents.<sup>111</sup> Moreover, the old Assembly Rules of Procedure that entered into force on March 20, 2005 remain published in the tab of Official Documents, and have not been removed upon entry into force of the new Rules of Procedure.<sup>112</sup>

With regards to the respect for legal provisions by the Assembly Members, even after entry into force of the Rules of Procedure (on the basis of the Constitution of the Republic, Article 63, item 1 of the Rules of Procedure,) during the period of January – June 2010, in the absence of political will, these rules continued to be disrespected by the Presidency Member who concurrently holds the position of Chairperson of the Assembly Committee on Foreign Affairs. This article explicitly determines that “a Presidency Member may not be the Chairperson of an Assembly Committee.”<sup>113</sup> Realistically, this disrespect for legal provisions may set a dangerous precedent in regards to Assembly functionality, by leaving the respect for legal provisions only at the level of the personal will of individual As-

<sup>109</sup> Law on General Elections in the Republic of Kosovo (Nr.03/L-073), Article 110.1, entered into force on June 5, 2008.

<sup>110</sup> Kosovo Democratic Institute, Fletënotim VII – XII/ 2009 (Scorecard VII-XII/2009), (Prishtina, KDI, 2010).

<sup>111</sup> The Assembly of the Republic of Kosovo, Deklarata për zbatimin e Kushtetutës në tërë territorin e Kosovës, (Declaration on the Implementation of the Constitution throughout the Territory of Kosovo) <http://www.kuvendikosoves.org/common/docs/Deklarata-per-zbatimin-e-Kushtetutes-ne-tere-territorin-e-Kosoves.doc> (checked last on May 5, 2010).

<sup>112</sup> (ibidem), Rules of Procedure of the Assembly of Kosovo, <http://www.kuvendikosoves.org/?cid=1,100,2> (checked last on July 23, 2010).

sembly Members. Moreover, Presidency Members should be an example of legality when it is known that on constitutional basis the Presidency is responsible for the administrative operation of the Assembly as provided in the Rules of Procedure of the Assembly.<sup>114</sup> Nevertheless, such a phenomenon is not continuing in the 4th Legislature of the Assembly of the Republic of Kosovo.

Finally, according to Auditor General Records for 2009,<sup>115</sup> the Assembly has not yet managed to completely establish a functional system of internal control for error and potential irregularity prevention. In general, the Auditor found that there are still weak points in the Budget planning process, which as a direct consequence have impacted the implementation of other projects and delayed their execution. Capital investment expenditure flaws were noted with respect to the procurement management process. The report stresses that deviations from the implementation of the rules on procurement, in such cases as above, directly or indirectly increase the risk of loss or misuse of budget funds.<sup>116</sup>

With respect to the practice of the complaint mechanism treatment, it is important to emphasize that the Assembly of Kosovo has not made much effort to increase the level of knowledge on this option of complaints and petitions by the citizens to the Assembly. Even on the Assembly website (as of September 2010) there is no form/application or necessary instruction with respect to the scope of operations of this Committee and the possibility to access this Committee.

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<sup>113</sup> Kosovo Democratic Institute, Fletënotim I-VI (Scorecard I-VI). 2010, (Prishtina, KDI, 2010), pg. 5; Kuvendi i Republikës së Kosovës, Komisioni për Punë të Jashtme, (Assembly of Kosovo, Committee on Foreign Affairs) <http://www.kuvendikosoves.org/?cid=1,110,86> (checked last on July 23, 2010).

<sup>114</sup> Constitution of the Republic of Kosovo, Article 67, item 6. .

<sup>115</sup> The Office of Auditor General, Zyra e Auditorit të Përgjithshëm, Audit Report on Financial Statements of the Assembly of the Republic of Kosovo for year ending December 31, 2009, (Prishtina, The Office of Auditor General, 2010, pg. 20.

<sup>116</sup> (ibidem).



## Integrity Mechanisms (Law)

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

There are clear legal provisions emanating from the Constitution of the Republic (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 shall act in compliance with the trust granted to them by the people under all circumstances. According to Article 72 of the Constitution of the Republic, a Member of the Assembly of Kosovo shall neither hold any executive post in the public administration or in any publicly owned enterprise nor exercise any other executive function as provided by law.

In the absence of the approval of the Law on Assembly Members up to this point in time, the Code of Conduct of Assembly Members,<sup>117</sup> binds the Members to respect the law and in all cases act in compliance with the trust granted to them by the people, with special care for clearly defined principles.<sup>118</sup> Additionally, the Code of Conduct includes provisions against corruption emphasizing that Members should not place themselves under any financial obligation with any individual or organization, which could influence the discharge of their official duties.

The principle of objectivity binds the Members to make decisions based solely on merit and public interest in the course of public function performance, including public appointments, announcement of contract winners or recommendation of individuals for awards and subsidies. With conflict of interest issues, according to the aforementioned Code, when an Assembly Member or close family member has a vested personal financial interest in any issue reviewed by the Assembly or any committee, of which she/he is a member, she/he must verbally declare this advantage before participating in the meeting where the issue at stake shall be discussed.<sup>119</sup>

Except for Code of Conduct provisions with respect to special rules on gifts and gratuities, the Assembly has approved the Law on the Disclosure, Origin and Control of Assists and Gifts of Senior Public Officials on February 11, 2010, Article 5 of which binds the Members to

<sup>117</sup> Rules of Procedure of the Assembly of Kosovo, Code of Conduct of Assembly Members, item 1.

<sup>118</sup> Dedication; Moral Integrity; Objectivity; Responsibility; Sincerity; Honesty and Leadership Skills.

<sup>119</sup> Rules of Procedure of the Assembly of Kosovo, Appendix Nr. 3, Code of Conduct of Assembly Members, item 2, pg.57.

four (4) types of asset disclosures: regular annual disclosure; disclosure upon taking office by senior public official; disclosure by order of the Kosovo Anti-Corruption Agency (KACA) and disclosure upon leaving office. 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.

With regards to relationships/contacts with lobbyists and Members, paid advocacy and lobbying at the Assembly is prohibited for all Members according to the Code of Conduct, item 5, specifically a Member may not initiate or influence any flow of discussions or issue at Assembly or Committee Meetings, in exchange for payment or any other type of benefit, whether direct or indirect. The same applies to payment or benefit accepted by a close family member of the Assembly Member. However, activities dealing with invitations to Members by specific interest groups to participate at conferences, seminars or scientific meetings on specific issues, whether in out of country, are not prohibited. Also, an Assembly Member is bound neither politically nor legally with respect to the issue of activity limitations upon the expiration of their term of office.



## Integrity Mechanisms (Practice)

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

The absence of the approved Law on Assembly Members, even after three (3) years of this legislature, has established legal gaps in the direction of increased legislator integrity in practice. However, until now the Assembly of Kosovo managed to implement legislator behavioral ethics to a certain extent through the Code of Conduct in the Rules of Procedure of the Assembly of Kosovo, which is finitely interpreted by the President of the Assembly. During the last year, a violation of the ethical code took place on March 11, 2010<sup>120</sup> by the Chairperson of the Assembly Caucus of the political entity Aleanca për Ardhmërinë e Kosovës (AAK, Alliance for the Future of Kosovo), who was, upon the request of the President of the Assembly, removed from the plenary session because of inappropriate language.

With regards to the conflict of interest policies, according to the AKR Assembly Caucus Chairperson, there is reasonable doubt that Assembly Members disregard this legal requirement, therefore conflicts of interest exist in practice. The Law on Preventing Conflicts of Interest in Exercising Public Function determines that the conflict of interest is the situation of non-compliance between the official duty and the private interest of an official. According to KACA data, at the Assembly of Kosovo in 2009 there were 19 cases of suspected conflicts of interest.<sup>121</sup> To illustrate the point, according to this institution, in the entire public sector the number of senior officials required to disclose their assets for 2009 was 800. Out of this, 619 or 77.3% have disclosed their assets, while 173 officials failed to disclose assets by the first deadline. Eight (8) other senior officials were dismissed from offices held earlier and are not required to disclose assets.<sup>122</sup> Kosovo legislation does not foresee under any circumstances the requirement for termination of employment of any person for failure to disclose assets. The approval of the Law on Disclosure, Origin and Control of Assets and Gifts of Senior Public Officials foresees punitive measures in addition to fines of 150 Euro – for failure to disclose assets upon leaving office and taking office, and up to 1,500 Euro – for failure to comply with disclosure by order of KACA. The amendment and supplement of this law, notably the issue of the level of sanction

<sup>120</sup> Assembly of the Republic of Kosovo, Plenary Session held on March 11, 2010 – Transcript - Prishtina (2010), [http://www.kuvendikosoves.org/common/docs/proc/trans\\_s\\_2010\\_03\\_11\\_10\\_al.pdf](http://www.kuvendikosoves.org/common/docs/proc/trans_s_2010_03_11_10_al.pdf) (checked last on May 6, 2010).

<sup>121</sup> Kosovo Anti-Corruption Agency, Annual Report 2009 (Prishtina, KACA, 2010), pg. 32.

<sup>122</sup> (ibidem), pg. 24.

enforcement through fines should be considered an immediate need in the context of the Republic of Kosovo.

Assembly Members are required to disclose any private interest that could be relevant to their public office duties, and also undertake steps to resolve any conflict that may arise in a manner such that protects public interests. However, according to the report of Lëvizja (Movement) FOL,<sup>123</sup> at the Assembly of Kosovo at the 3rd Legislature, four cases of Member conflict of interest were identified, specifically: 1) an Assembly Member from the PDK Caucus who is concurrently the Chairperson of the Committee on Budget and Finance (and who is also a Legal Officer at KEK,) 2) an Assembly Member from the LDD Caucus who is concurrently a member of the Committee on Mandates, Immunities and Rules of Procedure of the Assembly and a member of the Committee on Budget and Finance (simultaneously acting in the capacity of PTK Officer – Peja Branch,) 3) an Assembly Member from the SLS Caucus concurrently a member of the Presidency of the Assembly and the Committee on Foreign Affairs (at the same time also the Coordinator of the Community Office at PTK) and 4) an Assembly Member from the PDK Caucus who is concurrently a member of the Kosovo Intelligence Agency Oversight Committee (at the same time working as an Editor at RTK.)

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<sup>123</sup> Lëvizja (Movement) FOL, Seven Cases of Conflict of Interest at the Higher Public Institutions, Prishtina (2010), <http://www.fol-08.org/arkiva/1141101802097.html> (checked last on May 11, 2010).

## Government Oversight (Law and Practice)

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

Parliamentary Investigation is based on the Constitution of the Republic, Article 77, which reads that on the request of one third (1/3) of all of the members, the Assembly appoints committees for specific matters, including investigative matters. Also, Article 69 of the Rules of Procedure of the Assembly allows the Assembly to establish a committee on certain special issues, including investigative matters. The draft-law on Parliamentary Investigation, expected to be approved in the second half of 2010, represents a good foundation for the regulation and operation of the Investigative Committee by determining the organizational structure, scope, authorities and responsibilities of the Investigative Committee.<sup>124</sup> However, for the duration of this legislature the right to establish Investigative Committees has not been utilized, rather a Public Finance Oversight Committee was established headed by the parliamentary opposition, and which is yet to become operational.<sup>125</sup>

The Assembly Members in the course of exercising their authorities, in the context of executive branch oversight, most frequently utilize parliamentary questioning that often remains unaddressed due to the absence of Ministers at parliamentary sessions. Although each Assembly Member has the right to verbal question and answer time with a Government Member on the condition that the parliamentary question has been submitted, in writing, in advance, with the Assembly Table Office at least forty eight (48) hours prior to the start of the session, according to the KDI Report for the period of January-June 2010, during the time scheduled for parliamentary questioning (in the session of February 11, 2010,) there were only five (5) Ministers present from the Government Cabinet, where numerically out of twenty seven (27) Assembly Member questions only three received answers. Another case was the plenary session of 22.07.2010, where out of 12 parliamentary questions asked by the MPs, only 2 of them got answers, this due to a lack of Ministers in attendance at this plenary session. It was not any better in the plenary session of 07.10.2010, where out of 14 plenary questions only 4 were answered.<sup>126</sup> Except for the verbal question and answer option, Article 46 of the Rules of Procedure enables the Assembly Members to submit questions in writing to the Prime Minister or any of the Ministers, regarding her/his scope of responsibility, the answer to such a question can be provided within two (2) weeks from the submission date, and shall be recorded in the minutes of the following plenary session of the Assembly.

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<sup>124</sup> The Assembly of Kosovo, Draft-Law on Parliamentary Investigation, <http://kuvendikosoves.org/common/docs/ligjet/2009-176.pdf> (checked last on July 23, 2010).

<sup>125</sup> Interview with the Senior Advisor to the President of the Assembly, Ilir Gashi, by the author, Prishtina, April 13, 2010.

<sup>126</sup>

The legislature has constitutional authority to oversee the Budget of the Republic of Kosovo approved at the Assembly through the Committee on Budget that reviews all matters pertinent to budget and finances in Kosovo. On track with efforts to strengthen parliamentary oversight, the Public Finance Oversight Committee as a functional committee, among other things, maintains the oversight of the legality of public funds disbursement as the centerpiece of its scope of operation, based on annual and periodic audit reports and statements, in addition to audit reports by the Office of the Auditor General.

Parliamentary interpolation, as one of the parliamentary control tools over the Government, according to Article 44 of the Rules of Procedure gives the Assembly Members the right to parliamentary oversight/control over the Government. However, this important tool of democratic oversight of the executive has been utilized only two (2) times by the previous legislature, and never during a parliamentary session.<sup>127</sup> The absence of sustainable opposition cohesion through Party Caucuses at the Assembly is evident, and this has sufficiently influenced the non-utilization of this tool, while Members are more individually oriented toward parliamentary questioning. However, Legislature IV constituted in February, in its first working months gave signals that it will be more active in performing a supervisory function of the government. This is evidenced by the fact that on 5 May 2011 in the parliamentary interpolation Prime Minister Hashim Thaçi was invited, at the request of the Vetëvendosje parliamentary group, and also on 20 June 2011 the second parliamentary interpolation was organized with the Prime Minister, at the demand of the same parliamentary group.<sup>128</sup>

The Assembly of Kosovo also has constitutional authority to refer to the Constitutional Court matters dealing with the conflict of constitutional authority of the Assembly of Kosovo, President of the Republic and Government<sup>129</sup>. This legal option was used twice by MPs of the Kosovo Assembly during 2010 and 2011. In both cases, issues raised in the Constitutional Court had to do with the post of the President of State. In the first case some MPs requested the interpretation of the Constitutional Court claiming that President Fatmir Sejdiu was violating the Constitution by simultaneously holding dual positions, as a President and as a Chairman of a political party – LDK. In the second case some MPs contested the manner in which Behgjet Pacolli was elected as a President of State. In both cases, the Constitutional Court ruled in favor of the MPs who had raised the issues before this Court for interpretation.<sup>130</sup>

<sup>127</sup> Kosovo Democratic Institute, Fletënotim I-VI (Scorecard I-VI). 2010, (Prishtina, KDI, 2010), pg. 10.

<sup>128</sup> Raporti mujor i monitorimit të punës së Kuvendit – maj KDI

<sup>129</sup> Constitution of the Republic of Kosovo, Article 113.

<sup>130</sup> Vendimet e Gjykatës Kushtetuese - [www.gjk-ks.org](http://www.gjk-ks.org)

Nevertheless, the bulk of the operational work within the Assembly is carried through the Assembly Committees, which based on the Rules of the Procedure, Rule 53, have the legal authority to oversee the implementation of laws by the Government of Kosovo or relevant Ministries.<sup>131</sup> According to a Senior Official of the OSCE Mission in Kosovo<sup>132</sup> in the capacity of Assembly Support and Monitoring Staff, for Kosovo circumstances, the Assembly is not the ideal venue for parliamentary oversight because of the constellation of the political powers within the Assembly.

In the sense of the lawmaking process in the previous legislature, the power of the votes of the governing coalition (PDK – LDK) in relation to the opposition was fairly apparent; therefore the opposition does not possess the political power to be consistent in its requirements on matters of Government oversight. This has changed in the actual legislature, because the power of numbers of coalition partners is significantly lower compared to the previous coalition. However, regardless of this, the Assembly must increase its efforts to promote clear integrity and will against corruption by effectively engaging independent institutions, such as the Office of the Auditor General and KACA, toward the advancement of the oversight function of the Assembly.

The sale of the share capital of Post and Telecommunications of Kosovo (PTK) per privatization policies of the Government of Kosovo,<sup>133</sup> regardless of the absence of approval by the Assembly, is an indicator of the lack of legislative oversight of executive decision making. While the Assembly of Kosovo had planned to hold a parliamentary session in September 2010 in order to discuss the PTK privatization strategy, which had not been approved by the Assembly on July 27, 2010, the Head of the Independent Union of PTK has stressed that “it makes no sense and is totally unacceptable that the Government has announced the tender for the sale of PTK before this meeting is held.”<sup>134</sup> In this context, according to the civil society and the opposition, there was no inclusion of parties and there is no consensus in the society. According to them, a broad public discussion should have taken place instead of discussions within narrow circles at the Governmental level, because the decision was reached by a narrow group of people and is not widely agreed upon by the citizens.<sup>135</sup> This issue was left unfinished due to distrust of government approval by the Assembly of Kosovo on 02.11.2010, which was later followed by the dissolution of the Assembly, thus causing early parliamentary elections. The issue of privatization of PTK is actualized also in the new legislature,

<sup>131</sup> Instituti Demokratik i Kosovës (KDI), Scorecard VII – XII/ 2009, (Prishtina, KDI, 2010), pg.8.

<sup>132</sup> Interview with Blerim Vela by the author, Prishtina, April 12, 2010.

<sup>133</sup> Ministria e Ekonomisë dhe Financave, Ftesë Publike për pjesëmarrje në procesin publik tenderues për shitjen e aksioneve të Postës dhe Telekomit të Kosovës, Sh.A. (PTK), (Public Invitation for participation in the public tender process for the sale of shares in Post and Telecommunications of Kosovo, J.S.C (PTK) <http://www.mef-rks.org/sq/download/te-tjera/shpallje-dhe-konkurse/shpallje-dhe-njofitime/3062-ftese-publike-/download> (checked last on August 9, 2010).

<sup>134</sup> Zëri Daily, Shala shet PTK-në pa “izën” e Kuvendit (Shala sells PTK without “the blessing” of the Assembly), Prishtina (2010), <http://www.zeri.info/artikulli/2/8/9613/shala-shet-ptk-ne-pa-izen-e-kuvendit/> (checked last on August 9, 2010).

<sup>135</sup> Zëri Daily, Qeveria saboton Kuvendin për PTK-në (Government Sabotages the Assembly on PTK), Prishtina (2010), <http://www.zeri.info/artikulli/2/8/9627/qeveria-saboton-kuvendin-per-ptk-ne/> (checked last on August 9, 2010).

where the Government of Kosovo approved a decision to privatize 75 % of the shares of PTK and this decision was attached as an annex to the draft law on Budget of the Republic of Kosovo for 2011, respectively in Article 4 of this draft law. This in fact alarmed all, because the Law on Public Enterprises, Article 9, which deals with the sale of shares, makes it clear that privatization can be done only after the Government's decision is approved in the Assembly by a majority of votes. This decision is not even once adopted as such in a plenary session. It only was processed for discussion in the relevant functional Committee<sup>136</sup>.

As to the appointment of the Ombudsperson, Auditor General and the Central Election Commission (CEC), according to Article 134 of the Constitution of the Republic, the Ombudsperson is elected by the Assembly of Kosovo by a majority of all its members for a non-renewable five (5) year term and only with a restricted institutional oversight role. This institution has the right to make recommendations and propose measures, in cases where it finds violations of human rights and freedoms by public administration and other state bodies.

In addition, according to Article 136 of the Constitution of the Republic, the Auditor-General is elected by the Assembly by a majority vote of all its members on the proposal of the President of the Republic of Kosovo, for a term of office of five (5) years with the possibility of re-election for only one additional term.

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<sup>136</sup> Monthly monitoring Report – KDI (march 2011)



## Legal Reform (Law and Practice)

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

In spite of the fact that Kosovo has not ratified any international legal instrument on corruption, the Republic of Kosovo is characterized by the international presence of the Rule of Law Mission (EULEX), which maintains several executive responsibilities through the Justice component, in cooperation with the local institutions, also in the fight against corruption in accordance with the applicable law, specifically according to the Council of EU Joint Action 2008/124/CFSP on EULEX of February 4, 2008,<sup>137</sup> the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (03/L-053) approved by the Assembly on March 13, 2008 and the Law on the Special Prosecution Office of the Republic of Kosovo (03/L-52) approved by the Assembly on March 13, 2008.<sup>138</sup> This legal infrastructure emerged as a requirement based on the Ahtisaari Package. Until now, this legislature has approved a series of laws to strengthen the integrity, transparency and accountability of the governance system, mainly through the following laws: the Law on the Prevention of Conflict of Interest, the Law on the Disclosure, Origin and Control of Assets, the Law on Anti-Corruption, the Law on the Administration of Sequestered or Seized Assets, the Anti-Corruption Strategy and Plan of Action 2009-2011 and Financial Intelligence Center, however, the Law on Political Entity Financing and the Law on Money Laundering, deemed as fundamental laws in the prevention of the conflict of interest and money laundering. In the meantime, on the initiative of the Government of Kosovo, an institution named “Anti-Corruption and Organized Crime Task Force” was established within the Special Prosecution of Kosovo, according to a Government decision of February 26, 2010,<sup>139</sup> composed of local and international prosecutors in addition to police officers, which will exclusively deal with fighting organized crime and corruption. The Assembly of Kosovo was not part of this decision-making process, while the Government of Kosovo with its decision has put at the disposal of this structure all the necessary logistical resources and financial incentives for the employees of this department, in order of ensuring the efficiency of the operations of this department. According to an analysis by the Kosovar Sta-

<sup>137</sup> EU Official Gazette, Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo, [http://www.eulex-kosovo.eu/en/info/docs/JointActionEULEX\\_EN.pdf](http://www.eulex-kosovo.eu/en/info/docs/JointActionEULEX_EN.pdf) (checked last on July 13, 2010).

<sup>138</sup> Republic of Kosovo Official Gazette, Lista e Ligjeve të Pakos së Presidentit Ahtisaari, (List of Laws of President Ahtisaari Package) [http://www.gazetazyrtare.com/e-gov/index.php?option=com\\_content&task=view&id=345&lang=sq](http://www.gazetazyrtare.com/e-gov/index.php?option=com_content&task=view&id=345&lang=sq) (checked last on July 13, 2010).

<sup>139</sup> Government of the Republic of Kosovo, Vendim (Decision) Nr.01/110, [http://www.kryeministri-ks.net/repository/docs/Vendimet\\_e\\_Mbledhjes\\_se\\_110\\_-te\\_te\\_Qeverise\\_2010.pdf](http://www.kryeministri-ks.net/repository/docs/Vendimet_e_Mbledhjes_se_110_-te_te_Qeverise_2010.pdf) (checked last on July 14, 2010).

bility Initiative (KSI),<sup>140</sup> the institutional framework for fighting and preventing corruption in Kosovo is a mixture of local and international institutions and semi-independent actors, whereas the two most important local institutions are KACA and the Office of Auditor General.

There are doubts whether the anti-corruption activities of the legislature have in fact been sufficient to decrease the level of corruption.<sup>141</sup> According to research conducted by Forum 2015, the delay and lack of political will within the political party constellations to establish, elect and operationalize a series of public institutions and various boards required to report to the Assembly of Kosovo, has consequently created an institutional gap throughout the previous legislature, which is in conflict with legal reforms as a political responsibility of the Assembly.<sup>142</sup> Thus finding that the Assembly of Kosovo is not managing to fulfill its responsibility of Executive oversight; except in the approval of several anti-corruption laws, its priorities in the fight against corruption and the improvement of good governance are more at the level of political rhetoric.<sup>143</sup>

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<sup>140</sup> Kosovar Stability Initiative, *Zgjidhja e Nyjës (Untying the Knot), Ekonomia Politike e Korrupsionit dhe Llogaridhënies në Kosovë (Political Economies of Corruption and Accountability in Kosovo)*, (Prishtina, KSI, 2010), pg. 18.

<sup>141</sup> Koha Ditore Daily, *Çohu: Mungon vullneti për luftimin e korrupsionit, (Çohu: There is No Will to Fight Corruption)* Prishtina (2010), <http://www.koha.net/index.php?cid=1,7,11446> (checked last on May 6, 2010).

<sup>142</sup> Forumi 2015, *Duke Pritur Vendimmarrësit (Waiting on Decision-Makers) 10 – KS – 100*, (Prishtina: Forumi 2015, 2010), pg. 43.

<sup>143</sup> Interview with Driton Selmanaj, Central Governance Program Assistant, KDI, Prishtina, April 19, 2010.



## Recommendations

- The Assembly of Kosovo should considerably increase the administrative and professional capacities of Assembly Committees; in particular, Functional Committees should be directed on the recruitment of specialists of particular areas of expertise, thus diminishing the gap of human and financial resources between permanent and functional committees.
- In the absence of electoral districts and offices for Members at the Assembly of Kosovo, the Presidency should support the establishment of the necessary infrastructure for opening offices through municipal representation, contingent upon the interest of the Members to represent their municipality. Also, Kosovo Assembly Members should increase the utilization of the Information Technology services, in particular, access to official Assembly electronic mail.
- The Members of the Assembly of Kosovo should display higher readiness and responsibility to be present at Assembly Committee meetings, as well as plenary sessions, in order not to obstruct the representation of the interests of the citizens and the functionality of the Assembly proceedings.
- The Assembly Committees should visibly increase the mechanisms of legislation implementation monitoring, and organize a Public Hearing on certain draft-laws by wide scale consultation inclusion of competent actors in the law-making process.
- The Assembly of Kosovo should demonstrate sustainable political will by engaging in parliamentary debates on issues of general interest, and making decisions in exercising constitutional authorities in the protection of the sovereignty and integrity of the country throughout the territory of the Republic of Kosovo, with purposes of Constitution implementation.
- The Assembly of Kosovo as the founder of Kosovo Radio Television (RTK), in cooperation with the latter should identify a sustainable solution for broadcasting Assembly of Kosovo plenary sessions after 17:00. Except for increased transparency on the deliberations of the Assembly Committees, the Assembly should disclose annual expenditure financial reports, in addition to increasing capacities for the maintenance of the official Assembly website and electronic vote publishing.

- Local organizations of civil society, accredited to monitor the work of the Assembly of Kosovo, should also have access to the deliberations of the Presidency of the Assembly. Transcripts of the Presidency deliberations should also be published.
- The Assembly Committees should be better prepared to implement the Annual Work Program, in addition to respecting deadlines set by the Rules of Procedure on the advancement of draft-laws from the first reading to the second reading.
- The Assembly of Kosovo should seriously consider the need to establish a professional unit ensuring competency superposition and collision during legislation drafting.
- The Assembly of Kosovo should undertake immediate measures against Members who fail to disclose their assets, or those with conflicts of interest, as set forth by law and the Rules of Procedure.

**2.**

**EXECUTIVE**

## Overview

Until February 2011, Kosovo was run by a lame-duck government. The collapse of the government followed an announcement by the Democratic League of Kosovo (LDK) that it would withdraw from the governing coalition. The leader of LDK party, Mr Fatmir Sejdiu was president of Kosovo until his resignation on September 27th 2010, following a ruling by the constitutional court that he could not occupy the posts of party leader and president simultaneously. Early elections were called for December 12 2010. The many irregularities that occurred during the voting process paved the way for re-voting in five municipalities.

Kosovo is a parliamentary democracy, where the executive power is in the hands of the Government. The Kosovo Constitution stipulates that the Government of Kosovo exercises executive power in compliance with the Constitution and the law (Article 92, paragraph 2). Notwithstanding, because of the fact that the Constitution also gives some functions to the President of the Republic (primarily with regard to foreign policy affairs), his executive role is very limited. Consequently, the chapter on the Executive in this report analyzes the capacity, governance and the role of the Kosovo Government, as the main holder of executive power in the country.

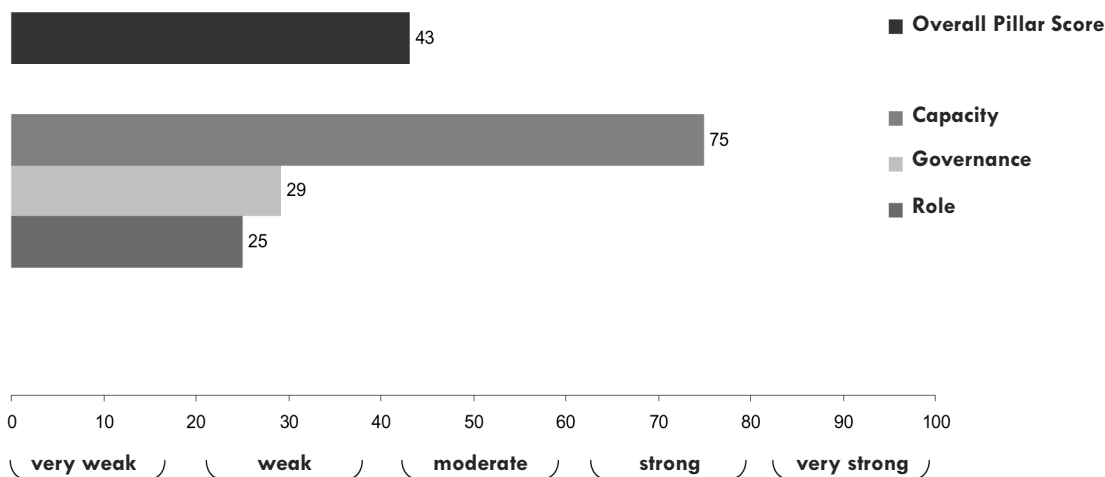
Kosovo Government, albeit with limited human, technical and financial resources, continues to produce results below expectations. The lack of resources is primarily covered through international assistance, which directly impacts on the independence of the executive. The Kosovo Assembly doesn't properly perform its checks and balances over the Government, leaving it with free hands in many important policy areas. In practice, Government transparency is characterized as insufficient, while the powerful rhetoric of the government in terms of transparency is seen as disproportionate. Mechanisms of accountability and integrity are not properly developed, moreover they are not implemented effectively on the practical level.

The civil service sector still remains politicized and sensitive to direct governmental influences, especially in relation to senior public appointments. In relation to the anti-corruption legal system, the government has sponsored a package of laws that are evaluated by the civil society as "toothless" mechanisms for shedding light and punishing abuses.<sup>144</sup> In general, the Kosovo

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<sup>144</sup> ÇOHU, Analysis of Legal Anti-Corruption Package, May 2010, at [http://www.cohu.org/index.php?option=com\\_content&view=article&id=167:analize-e-pakos-ligjore-antikorrupsion&catid=2:raporte&Itemid=4](http://www.cohu.org/index.php?option=com_content&view=article&id=167:analize-e-pakos-ligjore-antikorrupsion&catid=2:raporte&Itemid=4) (accessed on 19 June 2010)

Government is showing poor governmental performance and is among the most criticized among the institutional system. According to the latest UNDP Early Warning Report, the level of civic satisfaction with the government has fallen to 29% (May 2010) which is 7% less than in January 2010.<sup>145</sup>



<sup>145</sup> UNDP, Early Warning Report 28, April – June 2010, at [http://www.ks.undp.org/repository/docs/EWR\\_eng\\_web-opt.pdf](http://www.ks.undp.org/repository/docs/EWR_eng_web-opt.pdf) (accessed on 10 December 2010)

## Structure and organization

The Executive of Kosovo is the collection of Kosovo institutions that exercises executive authority. It is headed by the Prime Minister of Kosovo, and includes: the Prime Minister, the deputy prime ministers as well as various other ministers. The President of Kosovo also plays a role. The Prime Minister is elected by the Assembly of the Republic. Ministers are nominated by the Prime Minister and elected by the Assembly. Hashim Thaçi is the current Prime Minister of Kosovo and Head of Government. His cabinet consists of Albanians, as well as ministers from Kosovo's minorities, which include Serbs, Bosniaks and Turks. Regarding the distribution of power, the situation in Kosovo is very special due to the presence of international organizations which, prior to the full implementation of the Comprehensive Proposal for Kosovo Settlement, hold executive powers and share areas of public authority: this includes the UN Interim Administration Mission in Kosovo (UNMIK), the EU Rule of Law Mission in Kosovo (EULEX) and the International Civilian Office (ICO). The transitional provisions of the Constitution assign a special role to the ICO as the ultimate authority in Kosovo regarding the civilian aspects of the Kosovo Status Settlement.<sup>146</sup>

## Resources (Practice)

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

The Kosovo Government operates with limited human, technical and financial resources, translating itself into an institution easily influenced by international assistance. This assistance, that is essential for functionality in many governmental departments, can be easily used as a channel for impacting priorities of the Kosovo Government policies.

According to the Kosovo former Government Spokesperson, resources exist mainly quantitatively, however their quality remains problematic in several sectors, especially in public administration.<sup>147</sup> In deficient governmental sectors, international assistance is the main warranty for the drafting and implementation of public policies. One such areas is the Energy sector, where the World Bank and Bearing Point were hired to develop an Energy Strategy. According to an interviewee, through this assistance, these international organizations (external stakeholders) increase their influence over the work of state institutions in Kosovo (primarily of the Government).<sup>148</sup>

<sup>146</sup> OECD, Kosovo (under UNSCR 1244/99) Administrative Legal Framework Assessment, at <http://www.oecd.org/dataoecd/32/12/43913956.pdf>, May 2009 (accessed on 7 November 2010)

<sup>147</sup> Interview with Memli Krasniqi, former Kosovo Government Spokesperson

<sup>148</sup> Interview with Avni Zogiani, co-founder of ÇOHU

Notwithstanding the fact that it is said that governmental financial resources are limited and in many cases insufficient for effective operation, many financial years ended with large surpluses, raising doubts in the ability of the government to spend the budget rationally.<sup>149</sup> Many economic analysts see as very concerning the fact that every budget year starts off with complaints and institutional grievances, which are coupled with the justification that Kosovo doesn't have a sufficient budget to implement envisaged projects, but ultimately there is a budget surplus of 200-250 million Euros.<sup>150</sup> According to a member of the Kosovo Chamber of Commerce<sup>151</sup>, Mr. Safet Gërxxhaliu, this proves the governmental inefficiency, lack of specific projects and lack of clear vision in terms of implementing capital projects.<sup>152</sup>

## Independence (Law)

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

The legal framework in Kosovo offers a good basis for the independence of the Kosovo Government, in accordance with the principles of governance in parliamentary democracies. Kosovo's Constitution stipulates that the Government is accountable to the Kosovo Assembly, in relation to its work (Article 97.) Also, the highest legal act stipulates that the methods of work and decision making procedures of the Government shall be regulated by law and regulations (Article 99.) Currently, the legal basis for the activity of Kosovo's Government is set by its Rules of Procedure.<sup>153</sup> These Rules of Procedure were adopted in 2007, moreover this instrument refers to the Constitutional Framework as its legal basis.<sup>154</sup>

The Kosovo Government operation is in urgent need of legal regulation. The Draft Law on Government, was sent to the Kosovo Assembly for adoption in May 2009, but is still pending. According to the former Government Spokesperson, it is probable that the Assembly will limit the scope of activity of the Government and a good indicator for this is the failure to adopt the

<sup>149</sup> For more, see <http://www.telegrafi.com/?id=49&a=117> (accessed on 20 November 2010)

<sup>150</sup> Ibidem

<sup>151</sup> Kosovo Chamber of Commerce, for more visit: <http://www.oek-kcc.org/> (accessed on 17 June 2010)

<sup>152</sup> Telegrafi, Pse ndodh suficiti buxhetor (Why budgetary surplus happens), at <http://www.telegrafi.com/?id=49&a=117> (accessed on 17 June 2010)

<sup>153</sup> Kosovo Government Rules of Procedure, at [http://www.kryeministri-ks.net/repository/docs/Rregullorja\\_e\\_Punes123.pdf](http://www.kryeministri-ks.net/repository/docs/Rregullorja_e_Punes123.pdf) (accessed on 19 June 2010)

<sup>154</sup> Constitutional Framework was the highest legal act in Kosovo at the time of international administration and it was adopted on 15 May 2001. The full text of the Constitutional Framework may be found on [http://assemblyofkosovo.org/common/docs/FrameworkPocket\\_ALB\\_Dec2002.pdf](http://assemblyofkosovo.org/common/docs/FrameworkPocket_ALB_Dec2002.pdf)

<sup>155</sup> Interview with Memli Krasniqi, Kosovo former Government Spokesperson

Law on Government, which has been under consideration by the Assembly members for over a year already.<sup>155</sup> On the other hand, Kosovo's Constitution gives international institutions the right to influence the decision-making processes of state bodies (Chapter 14, Transitional provisions.) This may be considered as a form of limitation (interference) in the work of Kosovo state institutions, including the Government. One of the competencies held by the International Civilian Representative in Kosovo is also a mandate to dismiss state officials and to dissolve the Kosovo Assembly.

## Independence (Practice)

*To what extent is the executive independent in practice?*

Kosovo Government, in practice, operates as an institution independent from interferences of other state institutions. Above all, considering very strong party leadership, traditionally the prime ministers and the ministers of the Kosovo Government exercised a considerable influence over deputies coming from their parties represented in the Assembly, consequently weakening also the component of checks and balances over the executive. Many analysts of political developments and civil society activists who monitor the work of state institutions concluded that the Government is ignoring as well as controlling the Assembly.<sup>156</sup> The Assembly of Kosovo is relatively weak in terms of adopting legislation and overseeing the work of the executive.<sup>157</sup>

Avni Zogiani from the organization ÇOHU considers that the judiciary and the police are in the hands of internationals, rather than in the hands of the Kosovo Government.<sup>158</sup> Sometimes the impression is that the Government has no role whatsoever in police and judiciary, where, according to this civil society activist, EULEX and UNMIK dominate. The former director of \GAP Institute, by concluding that the international community has a sensitive impact over the work of the Government, adds also another dimension to the influence, by saying that the major impact on the work of the Government comes from embassies of powerful countries, rather than from ICO or EULEX.<sup>159</sup>

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<sup>156</sup> KOHA Net, Opposition and civil society say the government is controlling the Assembly, at <http://www.koha.net/index.php?cid=1,22,34748> (accessed on 20 October 2010)

<sup>157</sup> Bertelsmann Transformation Index 2010, Report on Kosovo in <http://www.bertelsmann-transformation-index.de/en/bti/country-reports/laendergutachten/eastern-central-and-southeastern-europe/kosovo/#chap4> (last viewed on 3 December 2010)

<sup>158</sup> Interview with Avni Zogiani, co-founder of ÇOHU

<sup>159</sup> Interview with Shpend Ahmeti, former Executive Director of GAP Institute



However, the former Kosovo Government Spokesperson stresses a difference that is not noticed much by others. According to him, there is a difference between the interferences and recommendations coming from international institutions in Kosovo addressed to the Government.<sup>160</sup> The government tends to interpret the role of international community more as an advisory and monitoring one, rather than a decision-making body, which is usually raised by the civil society and media.

## Transparency (Law)

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

The minutes from the Kosovo Government meetings, according to the Rules of Procedures, are confidential records (Section 59, paragraph 3.) The former Government Spokesperson says that minutes are not published, instead just the decisions made by the Government, and adds that Government meetings are open to the public.<sup>161</sup> The Governmental budget is required to be made public, whereas this issue is regulated within the process of annual budget adoption by the Kosovo Assembly.

The access to public documents has been regulated by a new law, which was approved by the Kosovo Assembly on October 7, 2010 and posted in an official gazette on November 11, 2010. The new law has been improved a lot, compared to the previous law, adopted in 2003, which had many deficiencies. Some of issues identified at a roundtable held on this topic included: a lack of knowledge of public officials in relation to the Law, a refusal to cooperate, a lack of timelines, a lack of sanctions and a failure of document classification.<sup>162</sup>

The issue of assets of public officials in Kosovo is regulated by the Law on Declaration and Origin of Property and Gifts of Senior Public Officials.<sup>163</sup> This law stipulates persons that fall under the definition of a "senior public official" and that are obliged to publish their assets (Section 3.) Among other public officials, the following Government officials are subject to duties stipulated by this law: the Prime Minister, Deputy Prime Minister, Ministers and Deputy Ministers, heads of secretariats and other Government offices, Prime Minister's Permanent Secretary, Ministerial Permanent Secretaries, Departmental Directors and equivalent positions. The body responsible of administering and maintaining registers with information disclosed by liable persons according to the Law is the Anti-Corruption Agency.<sup>164</sup>

<sup>160</sup> Interview with Memli Krasniqi, Kosovo Government former Spokesperson

<sup>161</sup> Interview with Memli Krasniqi, Kosovo Government former Spokesperson

<sup>162</sup> Roundtable organized by the Movement FOL, on the topic of Discussion about the Draft Law on Access to Official Documents, on 3 June 2010, for more information please visit <http://www.levizjafol.org/arkiva/15511027436.html> (accessed on 19 June 2010)

<sup>163</sup> Law Nr. 03/L-151, adopted on 11 February 2010

<sup>164</sup> Kosova Democratic Institute, Comparative Analysis – Legislation on Disclosure, Origin and Verification of Assets of Senior Public Officials (Albania, Macedonia, Croatia and Kosovo), April 2010, 14

## Transparency (Practice)

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

While monitoring the work of the Kosovo Government, ÇOHU recorded many cases where journalists' requests to take minutes from Kosovo Government meetings were refused.<sup>165</sup> According to the head of this organization, selective transparency prevails in Kosovo, considering that the Government is saturating the public with information (mostly unimportant truths,) though it remains closed in terms of sensitive ones.<sup>166/167</sup> Despite the fact that the Government claims that meetings open for public are the strongest argument in favour of full transparency, ÇOHU is convinced that these meetings are used only to formalize decisions that have been previously negotiated..<sup>168</sup>

The former Director of the GAP Institute considers that the Government lacks willingness to offer information and documents, and he mentions difficulties encountered by the Institute he lead in ensuring details and information on budgetary expenditures.<sup>169</sup> GAP also concludes that financial reports published by the Government are insufficiently understandable to the public

On 1 June 2010, the Anti-Corruption Agency for the first time published the file with information of senior public officials on their assets.<sup>171</sup> At the roundtable organized on 8 June 2010 on disclosure of assets of senior public officials, by Kosovo Democratic Institute and Speak Up Movement, the following deficiencies were established: inaccuracy in completed forms, soft sanctions for failure to disclose and for false disclosure of assets, lack of law on seizure of illegally acquired assets and inadequate performance of the Anti-Corruption Agency.<sup>172</sup> The same irregularities in the completion of forms were repeated in year 2011.

The government information system is a functioning one, though there are still deficiencies in its performance. Information regarding the government's budget is only partly available, while the more detailed budgetary information is usually too chaotic and complicated to be understood by or-

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<sup>165</sup> Interview with Avni Zogiani, co-founder of ÇOHU

<sup>166</sup> Ibid

<sup>167</sup> In one case that provoked the reaction of the civil society, the Government was very hesitant to make public the content of the contract on construction of Vërmicë - Merdar Highway.

<sup>168</sup> Interview with Avni Zogiani, co-founder of ÇOHU

<sup>169</sup> Interview with Shpend Ahmeti, Ex Executive Director of GAP Institute

<sup>170</sup> Ibid

<sup>171</sup> Anti-Corruption Agency, Disclosure of Assets, at <http://www.akk-ks.org/?cid=1,115> (accessed on 19 June 2010)

<sup>172</sup> Kosova Democratic Institute, Transparency challenged in disclosure of assets, 8 June 2010, at [http://www.kdi-kosova.org/alb/index.php?subaction=showfull&id=1275985866&archive=&start\\_from=&ucat=&](http://www.kdi-kosova.org/alb/index.php?subaction=showfull&id=1275985866&archive=&start_from=&ucat=&) (accessed on 19 June 2010)

dinary citizens. Asset disclosure started in 2010, after long pressure from civil society, though there are many difficulties in respecting the procedures, some of the information that was made public is incomplete and forms sometimes are inaccurately filled. The government does not systematically translate procedures and regulations in plain language to ensure that average citizens may understand them.

## Accountability (Law)

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

The Global Integrity Scorecard for 2009 gives a score of 44 for executive accountability, indicating a “very weak” level of accountability, citing a number of problems, such as the absence of the possibility to press criminal charges against the heads of state and government.<sup>173</sup>

Kosovo's Constitution gives the Assembly the right to oversee the work of the Government and other public institutions that report to the Assembly, according to the Constitution and the laws, (Article 65, Paragraph 9.)<sup>174</sup> The assembly elects the Government and can express no confidence in it (Section 65, paragraph 9.) Kosovo Assembly Rules of Procedure<sup>175</sup> provide an opportunity for any parliamentary group to file a request for interpolation in order to discuss an issue relating to the work of the Government or any Ministry (Rule 25.) It also provides an opportunity for any Assembly Member to request from any Government member to answer parliamentary questions (Rule 26.)

Pursuant to its Rules of Procedure, the Government informs the Assembly on its Work Plan and periodical Work Plan (Section 71, Paragraph 1.) Other aspects of the Government – Assembly relationship are stipulated in the first part of Chapter Eight of Kosovo Government Rules of Procedure (Sections 71 to 87.) A motion of no confidence may be presented against the Government on the proposal of one third (1/3) of all the deputies of the Assembly.<sup>176</sup> In addition,

<sup>173</sup> Global Integrity Report 2009, at <http://report.globalintegrity.org/Kosovo/2009/scorecard/34> (accessed on 4 November 2010)

<sup>174</sup> Kosovo Constitution entered into force on 15 June 2008, at <http://www.kushtetutakosoves.info/?cid=1,245> (accessed on 19 June 2010)

<sup>175</sup> This Regulation was adopted on 20 May 2005, and it was amended on 1 June 2006, at <http://www.kuvendikosoves.org/common/docs/Z-Rregullore%20e%20punes-shqip-20%20maj%202005-me%20ndryshime.pdf> (accessed on 19 June 2010)

a vote of confidence for the Government may be requested by the Prime Minister.<sup>177</sup>

Public involvement in a consultative process is stipulated in Sections 27 (Working Groups Consultations with the Public) and 36 (Additional Consultations with Kosovo society in case of dilemmas in relation to specific aspects of the draft legislation) of Kosovo Government Rules of Procedure. However, the Government has been reluctant to involve the public and civil society organizations in the policy-making processes.

## Accountability (Practice)

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

The Kosovo Assembly was criticized very often in European Commission Progress Reports on failure of effective oversight over the work of the executive. 2010 Progress Report on Kosovo stipulates literally that the oversight function over the executive needs to be improved.<sup>178</sup> Specifically, the pillar of oversight of public funds remains problematic. An analysis of KIPRED Institute in relation to this issue says that the Assembly solely, as the highest legislative body, may hold the Government completely accountable in terms of managing and spending public funds.<sup>179</sup> Apart from the transparency in terms of the budget and its development, the former Government Spokespersons says that the Government sends regular quarterly financial reports to the Kosovo Assembly..<sup>180</sup>

According to the former Government Spokesperson, the Assembly receives regular Government reports on its work whereas the civil society is an integral part of law-drafting processes.<sup>181</sup> Based on the existing legal framework, the Spokesperson considers that the Assembly has full authority to oversee the Government work, whereas, how often they do so, is entirely another matter.<sup>182</sup> A former member of Kosovo Assembly called this institution a “marionette” approving laws.<sup>183</sup> According to ÇOHU organization, the initiatives and opinions of the civil society are looked upon with

<sup>176</sup> Kosovo Constitution, Article 100, Motion of No Confidence, at <http://www.kushtetutakosoves.info/?cid=2,260> (accessed on 17 October 2010)

<sup>177</sup> Ibidem

<sup>178</sup> European Commission, Kosova 2010 Progress Report, 7

<sup>179</sup> KIPRED Institute, Overview of Public Funds in Kosovo, October 2009, 5

<sup>180</sup> Ibid

<sup>181</sup> Interview with Memli Krasniqi, Kosovo Government Spokesperson

<sup>182</sup> Ibid

<sup>183</sup> Fatmire Kollqaku, former Kosovo Assembly member, during a TV debate in the show “Jeta në Kosovë” (Life in Kosovo), on 7 February 2008, at <http://kosovo.birn.eu.com/al/1/31/8090/?tpl=80>

skepticism or are ignored by the Government.<sup>184</sup> ÇOHU took part in the development of the Anti-Corruption Strategy, however, their recommendations were ignored. Notwithstanding the fact that the version of this Strategy sent by the Kosovo Government was refused by the Assembly upon the request of NGOs and with a justification that this document was poorly drafted, the Anti-Corruption Agency later sent the same Strategy with only minor changes, which was adopted by the Assembly on the second occasion.

A Government audit is performed regularly by the Office of Auditor-General that reports only to the Kosovo Assembly. However, according to former Director of the GAP Institute, the main issue lies in the implementation of recommendations coming out of reports of the Office of the Auditor-General.<sup>185</sup> If we estimate the degree of reaction of the government to the recommendations given by OAG on a 1 – 5 scale, we can say that this reaction was at 1 at the very beginning, and now it is nearing 2.<sup>186</sup> This condition arises due to the lack of enforcement mechanisms to ensure compliance and implementation of remarks and recommendations provided by the Auditor.

## Integrity (Law)

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

The legal framework on conflicts of interest is very weak, considering that the sanctions are very soft. According to an analysis conducted by ÇOHU, the legal framework on the fight against corruption emphasises preventive aspects of the fight against corruption by surpassing the punitive ones.<sup>187</sup>

Currently, Kosovo Government does not have a Code of Conduct. The Draft Law on Kosovo Government<sup>188</sup> will regulate this issue as soon as it is adopted. This draft law specifies rules that every government member will have to abide by, including the Code of Conduct of Government Members that will be adopted within thirty days after the entry into force of this law (Section 10, Paragraph 2.) The issue of conflicts of interest of Kosovo Government members is regulated on the basis of the Law on Preventing Conflicts of Interest while Exercising Public Function.<sup>189</sup>

The Draft Law on Kosovo Government stipulates that Government members may not have any other pub-

<sup>184</sup> Interview with Avni Zogiani, co-founder of ÇOHU

<sup>185</sup> Interview with former Shpend Ahmeti, Executive Director of GAP Institute

<sup>186</sup> Interview with Lars Lage Olofsson, Kosovo Auditor-General

<sup>187</sup> ÇOHU, Analysis of Legal Anti-Corruption Package, May 2010, at [http://www.cohu.org/index.php?option=com\\_content&view=article&id=167:analize-e-pakos-ligjore-antikorrupcion&catid=2:raporte&Itemid=4](http://www.cohu.org/index.php?option=com_content&view=article&id=167:analize-e-pakos-ligjore-antikorrupcion&catid=2:raporte&Itemid=4) (accessed on 19 June 2010)

<sup>188</sup> Kosovo Assembly, Draft Law on the Government of the Republic of Kosovo, date of distribution 5 May 2009, at <http://www.kuvendikosoves.org/common/docs/ligjet/2009-L-148.pdf> (accessed on 19 June 2010)

<sup>189</sup> Law Nr. 02/L-133, adopted on 2 November 2007

lic or private full-time employment, obliging them to avoid conflicts of interest in accordance with the Law on Preventing Conflicts of Interest while Exercising Public Function (Section 9.) According to the same law, official persons shouldn't hold administrative, supervisory or representative posts in trade associations, companies, institutions, co-operatives, funds or agencies (Section 10.) According to an analysis of ÇOHU, the main deficiency of this law is a failure to sanction "constantly occurring conflicts of interest," considering that it is not incorporated as a legal category in the Criminal Code or the Kosovo Criminal Procedure Code.<sup>190</sup>

The Law on Declaration and Origin of Property and Gifts of Senior Public Officials also regulates the issue of gifts. Based on this law, all institutions of the Republic of Kosovo are obliged to maintain a catalogue of gifts and to send catalogue copies for the previous year to the Anti-Corruption Agency by 31 March of the next year for the previous year (Section 11, Paragraph 5.) Within this timeline, for 2010, Agency received copies of gift catalogues from nine institutions of the Republic of Kosovo (forty two gifts were declared by the Ministry of Local Governance and twenty four from the Ministry of Transport Post-Telecommunication,) whereas other institutions declared that they didn't receive any gifts.<sup>191</sup>

## Integrity (Practice)

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

In practical terms, conflicts of interest in Kosovo became an offense characterized by impunity.<sup>192</sup> The former Government Spokesperson denied that there are cases of conflict of interest in the Kosovo Government, or movements between the senior posts and business sector.<sup>193</sup> According to the Director of the Anti-Corruption Agency, during 2010 a total of 65 cases were identified. Divisions by institutions were as follows: from the Government there were 21 cases, from the Assembly 6 cases, from the Courts and Prosecution 1 case, from the independent agencies 11 cases, from the public enterprises 19 cases, from the local governments 4 cases and from other institutions there were 3 cases identified and suspected for conflicts of interest.<sup>194</sup>

In May 2010, the FOL Movement, published names of seven officials holding double posts in public institu-

<sup>190</sup> ÇOHU, Analysis of Legal Anti-Corruption Package, May 2010, at [http://www.cohu.org/index.php?option=com\\_content&view=article&id=167:analize-e-pakos-ligjore-antikorrupsion&catid=2:raporte&Itemid=4](http://www.cohu.org/index.php?option=com_content&view=article&id=167:analize-e-pakos-ligjore-antikorrupsion&catid=2:raporte&Itemid=4) (accessed on 19 June 2010)

<sup>191</sup> Anti-Corruption Agency, Report on Gifts, 17 June 2010, at <http://www.akk-ks.org/?cid=1,4,246> (accessed on 19 June 2010)

<sup>192</sup> Interview with Avni Zogiani, co-founder of ÇOHU

<sup>193</sup> Interview with Memli Krasniq, Kosovo Government former Spokesperson



tions in the Republic of Kosovo, includes senior government officials.<sup>194</sup> According to the FOL Movement, these officials are in clear conflict of interest, considering that all legal provisions prohibit officials to perform other engagements in public institutions and companies, where they could be in the clear conflict of interest.<sup>195</sup>

## Public sector management (Law and Practice)

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

The Kosovo Independent Oversight Board (KIOB) was initially established on the basis of UNMIK Regulation Nr. 2001/36 on Kosovo Civil Service, stipulating provisions and mechanisms for the protection of civil servants from political interferences and to ensure a professional civil service. Since 2004, it has operated under the Ministry of Public Administration. KIOB is also foreseen by the Constitution of Kosovo (Article 101.) UNMIK Regulation Nr. 2008/12 Amending Regulation Nr. 2001/36 on Kosovo Civil Service stipulates that the Board is an independent body reporting directly to the Kosovo Assembly. KIOB mandate is focused on reviewing complaints filed by civil servants and applicants for jobs in Kosovo civil service, monitoring implementation of the law and civil service principles and monitoring the selection of departmental directors and the same levels.<sup>196</sup>

Civil servants may lodge an appeal against KIOB decisions to the Supreme Court of Kosovo. The Senior Appointments Committee (SAC) was responsible for senior appointments, such as Permanent Secretary, Municipal CEO or any independent agency. At present, the Law No.03/L-149 on Civil Service of the Republic of Kosovo, namely article 15 (point 2) states that on the appointment of senior managerial positions, the Ministry responsible for public administration shall establish a Criteria Assessment Commission (the Commission), comprised of 3 (three) general secretaries, 1 (one) university professor from the relevant subject area and one (1) member from the civil society. The head of the institution where the vacancy has arisen shall appoint two (2) of the members of the Commission. Also article 15 (point 3) provides that the ministry responsible for public administration shall then submit to the head of the relevant institution three (3) of the best candidates for his/her approval.

Article 25 states that for each job grade there will be steps established in progressive order. Civil Servants' career progression from their present step to a higher step shall be based on performance. Also, in article 26 it is specified that direct appointment to a vacant position in derogation of the principle of merit and procedures established by applicable legislation is not permitted.<sup>197</sup>

<sup>194</sup> FOL Movement, Seven cases of conflict of interest in senior public institutions, 11 May 2010, at <http://levizjafol.org/arkiva/1141101802097.html> (accessed on 19 June 2010)

<sup>195</sup> FOL Movement, Corruption Monitor, June 2010, 13

<sup>196</sup> Kosovo Independent Oversight Board, Annual Report 2009, 4, at [http://www.ks-gov.net/kpmk/document/shqip/publikime/raporti\\_2009.pdf](http://www.ks-gov.net/kpmk/document/shqip/publikime/raporti_2009.pdf) (accessed on 20 June 2010)

However, the majority of current permanent secretaries in the Kosovo Government are only “acting.” This practice has been present from the beginning of the first mandate of this government. According to the civil society, directors of different departments in the civil service are also members of political parties in power, mentioning the director of Tax Administration of Kosovo.<sup>198</sup> TAK managers are interchanged depending on the political party in power.<sup>199</sup>

## Legal System (Law and Practice)

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

An analysis of the package of anti-corruption laws in Kosovo concludes that these are toothless legal mechanisms, yielding the fight against corruption unsuccessful.<sup>200</sup> According to this analysis, new laws against corruption put the Anti-Corruption Agency in an inferior position in comparison to the presence, appearance and spread of corruption.<sup>201</sup> With these laws, the analysis concludes, the Agency has competencies primarily in petty corruption, whereas the fight against grand corruption becomes extremely difficult.<sup>202</sup>

The former Government Spokesperson deems that Kosovo has good Anti-Corruption legislation, while mentioning also Anti-Corruption Strategy and Task Force for the fight against corruption and organized crime.<sup>203</sup> On the other hand, the Kosovo Government applies powerful rhetoric against corruption with its main slogan “Zero tolerance towards corruption.”

A Member of Civil Society considers that new anti-corruption laws will come, whereas, in relation to the present ones he concludes that they are weak from two perspectives: weak sanctions and contradictions between the laws.<sup>204</sup> The Kosovo Government, according to him, lacks the will to fight for the truth in anti-corruption efforts, therefore everything remains on the

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<sup>197</sup> Law No.03/L-149 on Civil Service of the Republic of Kosovo. See: <http://www.kuvendikosoves.org/common/docs/ligjet/2010-149-eng.pdf>

<sup>198</sup> Interview with Avni Zogianin, co-founder of ÇOHU organization

<sup>199</sup> Ibid

<sup>200</sup> ÇOHU, Analysis of Legal Anti-Corruption Package, May 2010, at [http://www.cohu.org/index.php?option=com\\_content&view=article&id=167:analize-e-pakos-ligjore-antikorrupcion&catid=2:raporte&Itemid=4](http://www.cohu.org/index.php?option=com_content&view=article&id=167:analize-e-pakos-ligjore-antikorrupcion&catid=2:raporte&Itemid=4) (accessed on 19 June 2010)

<sup>201</sup> Ibid

<sup>202</sup> Ibid

<sup>203</sup> Interview with Memli Krasniqi, Kosovo Government former Spokesperson

<sup>204</sup> Interview with Avni Zogiani, co-founder of ÇOHU

<sup>205</sup> Ibid



## Recommendations

- Adequate management of international assistance in Governmental projects and policies, to ensure an adequate level of intervention of assistance providers in the state management
- Removal of dominant position on the Assembly, to open the possibility of free debate in this institution and to prove seriousness for the democratisation of the political and institutional life of the state
- Moving from the rhetoric to the practical level of transparency, publishing all the important state documents in time
- Provision of practical evidence that the accountability and integrity mechanisms function, through addressing the responsibilities of senior government officials in cases of legal violations
- De-politicisation of public sector, especially in the higher public appointments segment, to promote a healthy and professional competition for the public sector positions
- Although the Government has sponsored a package of laws related to the fight against corruption, the latter are considered as mechanisms “without teeth” in putting a light and punishing the malpractices, therefore further strengthening of them is required, by making the penalties tougher
- Amendment of the Penal Code to make a penal act the false declaration of assets
- Approval of two additional laws such as Law on confiscation of illegally acquired assets, and Law on Anti-Mafia, and the latter would further complete the anti-corruption legislation.



**3.**

## **JUDICIARY**

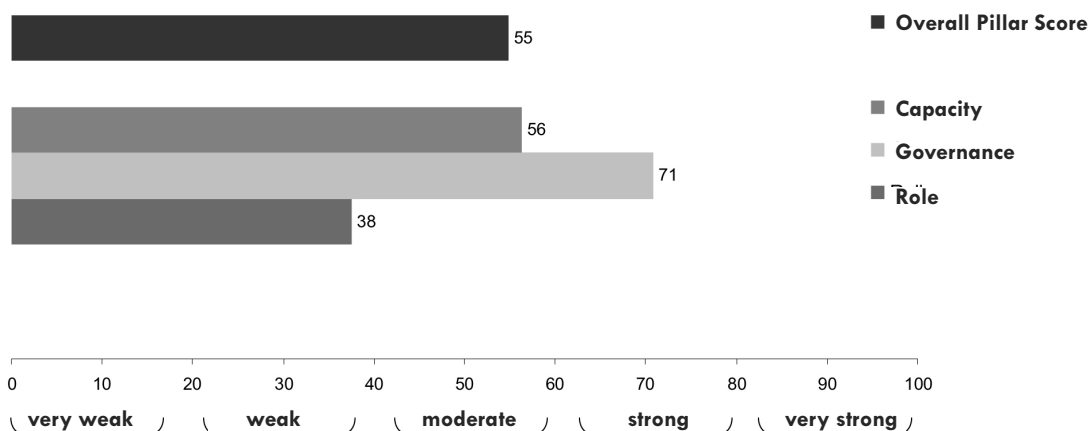
## Overview

Though progress has been made in reforming Kosovo's judiciary, it still suffers from a number of structural weaknesses. The largest part of the investment on the judiciary went into creating a solid legal infrastructure to build an independent and impartial judiciary. The independence of the judiciary is guaranteed by the Constitution of the Republic of Kosovo and some UNMIK regulations. The legal infrastructure has also improved through the passing of a number of important laws by the Kosovo Assembly during 2010, such as the law on courts, the law on Prosecutorial Council and the law on the Kosovo Judicial Council. The situation is worse in practice where the judiciary was unable to prove its independence from politics by allowing influence. Moreover, judges are often subject to intimidation and violence and are left unprotected by state institutions.

Another problem is fragmentation and lack of coordination and clarity of competencies between institutions that deal with the judicial system: the Ministry of Justice, the KJC, the Judicial Institute, the Special Prosecutor's Office of Kosovo and the European Union Rule of Law Mission (EULEX).

The judiciary accountability legislation is quite good, in practice the judiciary has not achieved to discipline itself sufficiently. This is also the situation when it comes to integrity of the judiciary where, although laws and institutions exist, the integrity of the judiciary remains vulnerable in practice due to lack of effective oversight and implementation of laws. The justice has failed to oversee the executive branch and thus no high profile case was investigated and brought to justice. The EULEX Mission has focused on these flaws of the Kosovo justice system in order to create an independent judiciary and combat corruption, however, after more than two years in Kosovo this mission has failed in catching the 'big fish.'

The budget allocated for the judiciary is insufficient for it to perform its duties effectively and it lacks proper administrative and spatial infrastructure. With the approval of the law on courts the judges and prosecutors receive high and dignified salaries. The resources of the judiciary remain low and do not allow for the creation of an effective and impartial judiciary.



## Structure and Organisation

According to the United Nations' Mission in Kosovo (UNMIK) Regulation 1999/24 the applicable laws in Kosovo are UNMIK Regulations and subsidiary instruments issued thereunder and the non-discriminatory laws in force in Kosovo on 22 March 1989<sup>206</sup> (i.e. laws prior to the abolishment of Kosovo' autonomy by Milosevic.) Based on this regulation the Kosovo Courts have practised their activity according to the Law on Regular Courts of ex-Yugoslavia, i.e. of the Autonomous Socialist Province of Kosovo.<sup>207</sup> A number of other regulations covering the judiciary were issued by UNMIK in the years immediately following the war in 1999 and 2000, such as regulations on appointing and removal of judges and prosecutors. The Law on Courts has been approved meanwhile by the Kosovo Assembly which regulates the salaries for judges as well as the organizational and geographical structure of the Kosovo courts.

The issue of judges' mandate is regulated by the Law on Courts, and the Law on Prosecutorial Council and the Law on Kosovo Judicial Council have been approved. Currently the situation with laws is confusing because of applicability of former Yugoslav laws from before 1989, UNMIK regulations and administrative instructions as well as the laws adopted by the Assembly of Kosovo after independence on 17 February 2008.

The Kosovo judiciary is organised in the following setting: the Supreme Court, the Commercial Court, District Courts, Municipal Courts, High Minor Offences Court and Minor Offences Courts.

<sup>206</sup> UNMIK Regulation Nr. 1999/24 On the Law Applicable in Kosovo, 12 December 1999.

[http://www.unmikonline.org/regulations/1999/re1999\\_24.htm](http://www.unmikonline.org/regulations/1999/re1999_24.htm) [accessed 14 October, 2010]

<sup>207</sup> Arbëresha Raça - Shala Kosovo Courts - What urgent changes are needed? RSHSL Annual Conference 2008, p.2.

[http://ajls.org/doc/ARaca-Shala\\_Ndryshime-Gjyqesor-AJLS-2008.pdf](http://ajls.org/doc/ARaca-Shala_Ndryshime-Gjyqesor-AJLS-2008.pdf) [accessed 14 October, 2010].

The new law on courts, which should be implemented by 1 January, 2013<sup>208</sup> is expected to regulate the geography and structure of the Kosovo courts.

The work of EULEX in the judiciary is divided into two basic functions: in investigation of crimes, reaching decisions, prosecution of suspects for violations, on the one hand, and in mentoring, monitoring and advising their Kosovar colleagues on the other hand.<sup>209</sup> EULEX has an objective to assist the KJC in developing into an institution that promotes an independent, transparent and accountable judiciary. Until now EULEX participated in panels of judges which are usually composed of both local and EULEX judges in bringing decisions, and it took highly sensitive cases such as high profile corruption or war crimes cases. It remains to be seen to what extent this mission will be successful in both building an efficient judiciary and the prosecution of sensitive cases. So far EULEX was slow in the organisation of its work and the political support that it received from Brussels was crippled as a result of misunderstandings in the EU regarding the independence of Kosovo.<sup>210</sup>

## Resources (law) – 4

*To what extent are there sufficient laws to ensure proper policies on the mandate, salaries and working conditions of the judiciary?*

The legal infrastructure covering the judiciary in Kosovo has been completed by the passing of a number of basic and essential laws, though to an extent it still remains outdated. Until recently the courts functioned based on the old Yugoslav Law on Regular Courts (1978) and a number of UNMIK Regulations regulating the judiciary. In a report by OSCE on the Commercial Court which was established based on the Law on Regular Courts, it is stated that the terminology used by this court is 'often outdated, undefined and unclear.'<sup>211</sup>

Meanwhile, the situation has improved due to the approval of the law on courts by the Kosovo Assembly which has been implemented since 01 January 2011. The new law regulates salaries for judges and it defines the structure and geographic division of the Kosovo Judiciary. The law on courts determines an equivalency of salaries based on the hierarchy between the executive branch and the judiciary where the President of the Supreme Court receives a salary equal to that of the Prime Minister (1443 Euros) the Appellate Court Judge (which is to be established) receives 90% of the salary of the Minister (1143 Euros) and the basic court

<sup>208</sup> Interview of Fejzullah Hasani, the President of the Supreme Court of Kosovo, with the author. Prishtinë, 04 February, 2011.

<sup>209</sup> EULEX, Programme Report 2010, p.25.

<http://eulex-kosovo.eu/docs/tracking/EULEX%20Programme%20Report%202010%20.pdf> [accessed in 10 July 2010].

<sup>210</sup> Freedom House, Nations in Transit: Kosovo (2010), p.282.

<sup>211</sup> OSCE Mission in Kosovo Report on the Commercial Court of Kosovo July 2009, p.2.

[http://www.osce.org/documents/mik/2009/07/39078\\_en.pdf](http://www.osce.org/documents/mik/2009/07/39078_en.pdf) [accessed 14 October, 2010].

judge (which will replace the district and municipal courts) receives around 800 Euros per month.<sup>212</sup> According to the draft-law on courts, the salaries are protected from arbitrary reductions. Besides the law on courts several other important laws have meanwhile been approved, such as the Law on Kosovo Judicial Council and the Law on Prosecutorial Council.<sup>213</sup> The law on notary service, the one for attorneys, the civil procedure law etc., have also been passed.<sup>214</sup>

Appointment and removal from office of judges was foreseen in the Ahtisaari Proposal and consequently, the Constitution of Kosovo. According to the Constitution, Article 104, paragraph 1, the Kosovo Judicial Council (KJC) shall propose the names to the President of Kosovo whereby the President makes the appointment, reappointment and removal from office of judges.<sup>215</sup> According to the Chairman of this Institution, as long as the KJC proposes the names of judges for appointment, reappointment or removal from office, this prevents the interference of the government in this process.<sup>216</sup> Certain provisions foresee the procedure for discharging a judge, if he/she commits a criminal offence or serious abuse of authority or other eventual misuses. According to the Constitution, the initial mandate of a judge is three years and in case of reappointment it is permanent up until the age of retirement unless he/she is removed from office based on the law (Article 105.) Kosovo does not allow for appointment of judges on an ad hoc basis.<sup>217</sup> The vetting and reappointment process of judges and prosecutors is still ongoing.

The budget of the Judiciary is fixed and is allocated by the Government of Kosovo, respectively the Ministry of Economy and Finance (MEF.) Pursuant to the Law on Management and Responsibility of Public Finances (03/L-048),<sup>218</sup> Article 63.2, the KJC is authorised to prepare and submit the budget proposal for all courts in Kosovo. The KJC proposes to the Government the Judiciary budget but is excluded from decision-making in this process because the final decision is taken by the MEF and the Assembly of Kosovo. There is no minimum percentage allocated for the Judiciary from the overall budget.

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<sup>212</sup> Interview of Fejzullah Hasani, the President of the Supreme Court of Kosovo, with the author. Prishtinë, 04 February, 2011. See also: the Draft Law on courts, quoted in: International Crisis Group, *The Rule of Law in Independent Kosovo*, May 2010, p.13. <http://www.crisisweb.org> [accessed on 2 June 2010].

<sup>213</sup> Interview of Fejzullah Hasani, the President of the Supreme Court of Kosovo, with the author. Prishtinë, 04 February, 2011.

<sup>214</sup> European Commission, *Enlargement Strategy and Progress Reports, Kosovo under UNSCR 1244/99 2009 Progress Report*. p.9-10. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/ks\\_rapport\\_2009\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2009/ks_rapport_2009_en.pdf) [accessed on 4 June 2010].

<sup>215</sup> The Constitution of the Republic of Kosovo.

<http://www.kushtetutakosoves.info> [accessed on 30 May 2010].

<sup>216</sup> Interview of Enver Peci with the author, Prishtina, 14 April 2010.

<sup>217</sup> *Ibid.*

<sup>218</sup> All laws of Kosovo can be accessed at: <http://www.kuvendikosoves.org>

## Resources (practice) – 2

*To what extent are the financial, human and infrastructure resources of the judiciary sufficient for it to function effectively in practice?*

The Budget which is allocated for the judiciary is insufficient for it to be able to perform its duties effectively, it lacks adequate infrastructure and judges are often compelled to work in very small offices which are not suitable for them to perform their duties.<sup>219</sup> They lack human and financial resources.<sup>220</sup> Insecurity and intimidation of judges and prosecutors is a growing trend according to one report.<sup>221</sup> The courts in Kosovo are overburdened with a backlog of cases accumulated over years and the number of necessary judges is too low to handle those cases.<sup>222</sup> According to the Chairman of the KJC with the current number of judges even if no new case is accepted it would take 5 years to settle all pending cases. The number of pending cases accrued over the years is currently 213,967.<sup>223</sup>

The overall budget allocated for the judiciary of Kosovo for the period January–December 2009 was over 13 million Euros or 1.17% of the overall budget of Kosovo.<sup>224</sup> The approved 2010 budget for the judiciary has an increase of over a million Euros and is in total 14 million Euros; however, it is almost two million less than that requested by the KJC.<sup>225</sup> The approval of the law on courts has ensured high and dignified salaries for judges, which has improved the financial resources for the judiciary and it is expected to have a positive effect on the work of the judiciary. In the past, small salaries have been seen as a contributing factor for corruption in certain circumstances.<sup>226</sup> The Kosovo Judiciary also lacks sufficient assets such as professional libraries, they lack the necessary experienced administrative Staff, and they lack sustainability of human resources.<sup>227</sup> All of the above are under the required minimum. However, the judiciary reform process in Kosovo has started through the vetting and reappointment of judges and prosecutors and it is managed by an Independent Judicial and Prosecutorial Commission (IJPC.) The courts across Kosovo have been equipped with new computers, and this has enabled installment of software for an information management system in the courts and registration of data and cases from the old registers into the system.<sup>228</sup> The system is functional in most of the courts and training on how to use the system is ongoing.<sup>229</sup>

The Kosovo Judicial Institute (KJI) offers trainings for judges on criminal, administrative and civil matters, legal education, on the code of ethics, the EU Law, etc. During 2008 the KJI organised a total of 96 trainings which were attended by 2031 judges, prosecutors and others.<sup>230</sup>

<sup>219</sup> Interview of Agon Vrenezi with the author, Prishtina, 15 April, 2010. <sup>220</sup> Ibid.

<sup>221</sup> OSCE Mission in Kosovo, Intimidation of the Judiciary: Security of Judges and Prosecutors Issue 3 April 2010, p.1. [http://www.osce.org/documents/mik/2010/04/43500\\_en.pdf](http://www.osce.org/documents/mik/2010/04/43500_en.pdf) [accessed 14 October, 2010].

<sup>222</sup> Interview of Enver Peci with the author, Prishtina, 14 April 2010.

<sup>223</sup> Kosovo Judicial Council, KJC Secretariat, 2009 Annual Report – Regular Courts Statistics. <http://www.kgjk-ks.org/> [accessed on 2 June 2010].

<sup>224</sup> Republic of Kosovo, Kosovo Judicial Council, KJC Secretariat, 2009 Budget for KJC and the financial report of the budget and judicial revenues for the period January – December 2009. <sup>225</sup> Ibid.

<sup>226</sup> Interview of Enver Peci with the author, Prishtina, 14 April 2010. <sup>227</sup> Ibid. <sup>228</sup> European Commission, 2009: 10. <sup>229</sup> Ibid.

<sup>230</sup> KJI submitted its 2009 report to the Assembly of Kosovo, however it is still not published in their web-page. Kosovo Judicial Institute, 2008 Annual report of Kosovo Judicial Institute. Page 6-8. <http://www.kjjjudicial.org/> [accessed on 2 June 2010].



## Independence (law) – 5

*To what extent is the judiciary independent based on the law?*

The independence of judiciary in Kosovo is guaranteed by a number of laws, UNMIK regulations as well as the Kosovo Constitution. Article 102, par 2 of the Constitution of the Republic of Kosovo states that the judicial branch is independent, impartial and apolitical. The Supreme Court of Kosovo is the highest judicial authority, according to Article 103. The articles in the Constitution of Kosovo pertaining to the Supreme Court may be amended with ‘double-majority’, i.e. 2/3-rds of votes of members of the Assembly of Kosovo and the majority of votes of minority members. The regular court system and the independence of regular judiciary is regulated and guaranteed by the Constitution.

The appointment of judges is considered as a mixed matter between professionalism and politics since the judges are nominated by the KJC but are appointed by the president.<sup>231</sup> The KJC is the responsible institution for managing the entire judicial system of Kosovo and thus, manages the process of appointment and removal of judges from office. According to the Constitution of Kosovo, the President of Kosovo is the one that appoints, reappoints and removes from office judges on the proposal of the KJC (Article 104.) According to Article 105 of the Constitution, the initial mandate of a judge is three years and in the case of reappointment it is permanent until retirement age, unless he/she is removed from the office in accordance to the law.

The Independence of the KJC is guaranteed by the Constitution, the KJC has 13 members who are appointed for a five year mandate. Five of them are judges nominated by the judiciary, four are nominated by members of the Assembly of Kosovo (at least two of them should be judges and one representative of the Kosovo Chamber of Advocates,) two of them are nominated by the Serb members of the Assembly of Kosovo (at least one of them should be a judge) and two are nominated by the members of the Assembly from the non-Serb minority communities (at least one of them should be a judge.)<sup>232</sup>

The proposals for nomination of judges from the ranks of non-majority communities may only be done by the KJC members who have been appointed there by members of the Kosovo Assembly who hold the reserved seats for members of non-majority communities in Kosovo. If these members of the KJC fail to provide the nominations during two consecutive meetings, than the nominations for the candidates for those positions can be made by any member of the KJC.<sup>233</sup>

<sup>231</sup> Interview of Robert Muharremi with the author, Prishtina, 21 April 2010.

<sup>232</sup> The Constitution of Kosovo, Article 108, paragraph 6.

<sup>233</sup> The Constitution of Kosovo, Article 108, paragraph 9.

The criteria for the selection of judges and prosecutors are foreseen in the Regulation 2005/52 and the Administrative Directive (AD) 2008/2 adopted by UNMIK.<sup>234</sup> Some of the criteria to be fulfilled are: to be a permanent resident of Kosovo, to have a degree in law, to have high moral integrity, to have passed the Bar Exam and the Exam for becoming a judge, to possess work experience, to have proven skills for legal reasoning and academic work, to have proven results in his/her career, to possess communication skills etc. The criteria foreseen in this Regulation and AD are rather comprehensive and appropriate to establish a 'professional, independent, impartial and multi-ethnic judiciary' (Reg. 2005/52, article 5.2.) The Independent Judicial and Prosecutorial Commission (IJPC,) as an ad hoc body of the KJC to manage the vetting process, has a staff of 100 persons who conduct the field research for the candidates, inquire about their biography and past.<sup>235</sup> The civil society was almost entirely excluded from the oversight process of the appointment of judges and prosecutors.

Judges are protected by law from arbitrary removal from office and there are provisions that foresee the procedure for discharging a judge. According to Regulation 2005/52, the judge may be removed from office if he/she commits a criminal offence or other eventual abuses, on the recommendation of the KJC and the decision of the President of the country.

The judges are not allowed, by the Code of Ethics, to be included in political activities, finance or solicit funds on behalf of different organisations or agencies, or exercise state functions outside of judiciary. The judges are entitled to establish professional associations which do not contradict his/her position and the Code of Ethics. The Criminal Code protects Judges from excessive influence.

## **Independence (practice) – 2**

*To what extent is the Judiciary free from interference from the Government or other stakeholders?*

If the independence of the judiciary is guaranteed by law, in practice there are attempts at political interference, influence and the intimidation of judges. The legal basis for the Supreme Court was stable until now; there were no attempts to amend it. The Supreme Court is protected also by the International Civilian Office (ICO) which is responsible for supervising the implementation of the Ahtisaari Proposal, a document that prevails over the institutions of Kosovo and the Constitution of Kosovo itself.

<sup>234</sup> All UNMIK Regulations and Administrative Directives can be accessed at: <http://www.unmikonline.org>

<sup>235</sup> Interview of Enver Peci with the author, Prishtina, 14 April 2010.

The criteria for selection of judges are defined in Regulation 2005/52 and Administrative Directive 2008/2, mentioned above, specifies the professional qualifications, the experience and the professional and personal integrity. The IJPC has a staff of 100 persons who conduct field research on the candidates seeking to become judges in Kosovo.<sup>236</sup> Currently the IJPC is managed by a staff of five members, all of them internationals who were involved in the background inquiry of judges. The international composition of the IJPC may guarantee an impartial and apolitical vetting process for judges and prosecutors, though international composition does not necessarily make independence when taking into consideration that UNMIK international judges and prosecutors were also subject to outside interference due to a preference for stability over the rule of law.<sup>237</sup>

It rarely happens that judges are removed from office before ending their mandate. If we are to compare this with the reported violations, it ought to happen more frequently.<sup>238</sup> Even for those who were removed usually there was a grounded reason for their removal, or were transferred to other positions. Out of 11 decisions taken by the KJC in 2009 which were published in the official website, eight were resignations of judges who gave no reason for their resignation, or mentioned material reasons as a cause for their resignation and in one case the reason was failure in the ethics test.<sup>239</sup> From the cases published by the KJC, it seems that, in overall, the reasons for the removal of judges have been based on objective grounds and did not constitute undue interference.<sup>240</sup>

However, the popular perception is that the courts are amongst the most corrupt<sup>241</sup> and controlled by political institutions. However, there are few credible statistics or known cases of direct interference of politics in the judiciary. Although the independence of the judicial branch is guaranteed by the legislation, judges are threatened and blackmailed by politics.<sup>242</sup> To date the Kosovo justice system has failed to bring ministers or high profile politicians before justice, and this is considered an indicator of the lack of independence of the judiciary from the executive branch.<sup>243</sup> However, this failure has to be attributed to the prosecutors and not to the

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<sup>236</sup> Ibid.

<sup>237</sup> Global Integrity, Global Integrity Scorecard: Kosovo 2009, (Global Integrity Report: Kosovo 2009), p.152. <http://report.globalintegrity.org/reportPDFS/2009/Kosovo.pdf> [accessed on 5 June 2010].

<sup>238</sup> Interview of Enver Peci with the author, Prishtina, 14 April 2010.

<sup>239</sup> Kosovo Judicial Council. These and the consequent decisions can be accessed on the official Webpage of the KJC: <http://www.kgjk-ks.org/?cid=1,7> [accessed on 4 June 2010].

<sup>240</sup> See below under 'Integrity (practice)' for more cases on the removal of judges.

<sup>241</sup> See UNDP Early Warning Reports. <http://www.ks.undp.org/>

<sup>242</sup> Global Integrity, 2009: 153.

<sup>243</sup> Global Integrity, 2009: 152.

judges. According to the President of the Supreme Court of Kosovo the prosecution has not brought a single high profile case before the court, thus the judges cannot be attributed this failure.<sup>244</sup> UNMIK prosecutors too failed to bring to justice senior Kosovo officials, mostly due to political interference coming from the international community who had intervened to provide stability over the rule of law in Kosovo.<sup>245</sup> According to the European Commission, the justice system in Kosovo remains weak, vulnerable from political interference and influence.<sup>246</sup> The Kosovo Chief-prosecutor in a media conference accused the Government and the Assembly of Kosovo for intentional destruction of the judiciary by not creating conditions for the normal functioning of the courts.<sup>247</sup>

There are some known cases of judges socialising with politicians amongst lay judges who form a part of the judicial system and some of them are in the process of being removed from office.<sup>248</sup>

A number of judges and prosecutors are prone to blackmail because they served under the former Yugoslav judicial system or Serb regime during the 90's when Albanians were expelled from the system which undermined their independence and impartiality.<sup>249</sup> In August 2010 a member of the Kosovo Assembly from the largest party in the country submitted an indictment in Kosovo courts and EULEX against some of Kosovo's ex-communist leaders for crimes against humanity amongst which were the former Chief Prosecutor Hilmi Zhitia and the former President of the Supreme Court Rexhep Haxhimusa.<sup>250</sup> The past of these judges and prosecutors makes them vulnerable because they are seen as collaborators with an oppressive regime against the majority of the Kosovo population.

Another problem is fragmentation and a lack of coordination and clarity of competencies between institutions that deal with the justice system, such as: the Ministry of Justice, the KJC, the Judicial Institute, the Special Prosecutor's Office of Kosovo and the European Union Rule of Law Mission (EULEX) etc.<sup>251</sup> Though the Minister of Justice sits ex-officio in the KJC, the two

<sup>244</sup> Interview of Fejzullah Hasani with the author, Prishtinë, 04 February 2011.

<sup>245</sup> Ibid. <sup>246</sup> European Commission, 2009: 11.

<sup>247</sup> Zëri Info, Kabashi accuses the institutions for back-draws in judiciary. 23.03.2010.

<http://www.zeri.info/artikulli/1/1/3546/kabashi-akuzon-institucionet-per-ngecjet-ne-drejtessi/>

<sup>248</sup> Interview of Enver Peci with the author, Prishtina, 14 April, 2010.

<sup>249</sup> Former Chief Prosecutor of Kosovo Hilmi Zhitija was accused by several media for his service under the Yugoslav and consequently Serb system.

<sup>250</sup> Bota Sot Online, I padit edhe në EULEX (Submits an indictment in EULEX too) 8 August, 2010.

<http://www.botasot.info/def.php?gjuha=0&category=0&id=73059> [accessed 15 October, 2010].

<sup>251</sup> Interview of Robert Muharremi with the author, Prishtina, 21 April 2010.

institutions are separate. The Ministry of Justice determines the policies for the entire justice system in the country, however, it deals with management of prisons, while the courts are managed by the KJC. EULEX has executive powers over both which makes this international mission a supra-institutional entity.<sup>252</sup> KJC is not sufficiently effective in managing the court system Kosovo-wide. There is a lack of infrastructure and human resources, hence the backlog of pending cases is very big, and this is an additional burden to the cases filed on a daily basis.<sup>253</sup> The procurement process is extremely centralised, in order for a court in a certain municipality to purchase pens, it needs to go through the KJC.<sup>254</sup> All this has an impact in the independence and effectiveness of the Kosovo judiciary. There is no effective association of judges and the regulations that protect them from influences are not implemented effectively.

The independence of the Kosovo Judiciary was damaged greatly by the process of vetting and reappointing judges and prosecutors, due to procrastination of this process for five years now which is creating uncertainties amongst members of the judiciary who, being kept in a limbo for such a long time feel uncertain about their prospects of reappointment and are less committed to their work.<sup>255</sup>

Moreover, Kosovo judges are often subject to violence and intimidation by dissatisfied parties in case and are left unprotected by the competent authorities, in this case the KJC which is responsible for providing security to judges and prosecutors.<sup>256</sup> Previously, UNMIK and currently EULEX mission provide security and protection to their judges and prosecutors but not for their Kosovo counterparts.<sup>257</sup>

### Transparency (law) – 3

*To what extent are there provisions that ensure that public can take relevant information on the activities and decision-making processes of the judiciary?*

Judges are obliged to declare their property to the Kosovo Anti-Corruption Agency (KACA) pursuant to the law on the Declaration and Origin of Property and Gifts of Senior Public Officials (Law 03/L-151) and in the KJC based on the Code of Ethics and Professional Conduct for Judges.

<sup>252</sup> See the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Nr. 03/L-053). <http://www.kuvendikosoves.org>

<sup>253</sup> Interview of Agon Vrenezi with the author, Prishtina, 15 April 2010.

<sup>254</sup> Interview of Robert Muharremi with the author, Prishtina, 21 April 2010.

<sup>255</sup> Interview of Agon Vrenezi with the author, Prishtina, 15 April 2010.

<sup>256</sup> See the OSCE report Intimidation of the Judiciary: Security of Judges and Prosecutors Issue 3 April 2010 for specific cases.

<sup>257</sup> Ibid.

Through its annual report, the KJC reports to the Assembly of Kosovo once a year in relation to the general efficiency and functioning of the Judicial System, as required by the Constitution. Regulation 2005/52 'On the Establishment of the Kosovo Judicial Council', Article 1.7, foresees that the KJC provides data and statistics to the judicial system as needed. The courts provide other statistics and data to the KJC which then processes them into a general report. The KJC Secretariat is responsible for implementation of KJC policies and within its auspices contains the Statistics Department which is responsible for collection of statistical data on the work of the Kosovo judiciary.<sup>258</sup>

Meanwhile the Law on the KJC has been approved by the Assembly of Kosovo, since the previous law was a Regulation inherited from UNMIK. This is another step towards completing the legal infrastructure on the judiciary so necessary to make a full transition from Yugoslav and UNMIK era laws to Republic of Kosovo laws. Clarifying which laws are applicable in Kosovo would help make the work of the judiciary more transparent also.

### Transparency (practice) – 3

*To what extent does the public have access to information on the judiciary and its activities in practice?*

While the Kosovo judiciary, and in particular the KJC, have shown some transparency through the publication of several reports, these reports have been shown to be non-comprehensive. Furthermore, one of the key aspects of judicial transparency – public access to the courts – is seriously undermined by the poor infrastructure in place. The KJC publishes on its website the decisions made related to judges and the functions that it fulfils deriving from its mandate, however the website is incomplete and not all data is published on time. The decisions are only published at the request of the party, and the law requires that sessions are open to public.<sup>259</sup> For now this website contains publications of 2008 and 2009 annual reports which cover regular courts and minor offence courts, as well as periodic reports for those two years and 2010.<sup>260</sup> The web page also contains decisions of the Disciplinary Judicial or prosecutorial Commission, the Decisions of the KJC, general information on the internal organisation of the KJC and the work that it performs, etc.

None of the courts in Kosovo have websites, and often the participation of the public in sessions is limited due to a lack of sufficient infrastructure.<sup>261</sup> The judges and especially the minor offence ones,

<sup>258</sup> Kosovo Judicial Council, Statistics. <http://www.kgjk-ks.org/?cid=1,101>

<sup>259</sup> Interview of Enver Peci with the author, Prishtina, 14 April, 2010.

<sup>260</sup> Annual periodical report, and other data may be accessed at the webpage of the Kosovo Judicial Council. <http://www.kgjk-ks.org/>

<sup>261</sup> Interview of Enver Peci with the author, Prishtina, 14 April 2010.



often have to hold sessions in their respective offices. Although the equipment exists, almost none of the courts in Kosovo perform audio recording of judicial sessions although this is required by law.

Decisions and data on the judiciary are only published in the annual report of KJC which is not comprehensive and which is sent to the Assembly of Kosovo and is published in the website of this institution. This report contains data on the number of judges, cases received and settled, number of cases inherited from previous years, number of judges in comparison to the number of cases etc., but does not contain data for example on the budget and governance of the judiciary.

According to a notification by KACA on 1 June 2010 all 'senior public officials' including judges and prosecutors, have declared their property in the KACA.<sup>262</sup> In the days following this, the KACA declared that it will perform verification of property statements in order to verify their authenticity.

The IJPC has its website as well. This is an autonomous body of the KJC established by Regulation 2008/2 with the mandate to manage the process of vetting and reappointment of judges and prosecutors in the justice system of Kosovo.<sup>263</sup> The website of this institution contains sufficient information for judges and prosecutors who apply for reappointment but also for citizens who want to be informed.

## Accountability (law) – 5

*To what extent are there provisions that ensure that judiciary reports and is held accountable for its actions?*

Judges are required by law to make known the reasons for decisions they take. If they do not do this than they can be demoted by the KJC which has the Office of Disciplinary Prosecutor (ODP) within its auspices, which deals with complaints against judges or be sent to professional trainings.<sup>264</sup> Based on Administrative Directive 2006/8 for the implementation of the Regulation for establishment of the KJC, a violation is inter alia considered 'neglecting of judicial function' of 'conduct which is not in line with the obligation of the judge to be independent and impartial.' There is a formal procedure through which the complaints are filed with the ODP and their confidentiality is protected by law. The procedure is initiated with the receipt of submission, in written form or verbally, through electronic media or initiation of the case ex officio.<sup>265</sup> The Constitution of Kosovo (Article 102, paragraph 5) guarantees the right of citizens

<sup>262</sup> The registers of declaration of property of judges and prosecutors can be accessed in the webpage of the KACA: <http://www.akk-ks.org/?cid=1,1038>

<sup>263</sup> Judicial and Prosecutorial Commission. <http://www.ijpc-kos.org/>

<sup>264</sup> Interview of Enver Peci with the author, Prishtina, 14 April, 2010.

<sup>265</sup> The Kosovo Judicial Council, Office of Disciplinary Prosecutor, Duties and functions of the Office of Disciplinary Prosecutor (former Judicial Inspection Unit). <http://www.kgjk-ks.org/index.php?cid=1,152>

to complain against the decisions made by the courts.

According to the Constitution judges enjoy immunity from criminal prosecution, civil suits and removal from the office for decisions taken by them; however, they have no immunity from corruption charges and criminal offences. The judges are protected from censorship, admonition, suspension or public punishment for their decisions; their integrity is protected.

### **Accountability (practice) – 3**

*To what extent do the members of the judiciary report and are held responsible for their actions in practice?*

The judges should provide reasons for their decisions, which are understandable to the parties. There are punishments/sanctions for violations of this rule, however, it is not known whether there was any such case until now. The ODP took measures against judges for misconduct, bribery, destruction of evidence and violation of the code of ethics.<sup>266</sup> However, the European Commission (EC) 2009 Progress Report for Kosovo states that the suspicions for corruption and misconduct have not been investigated properly, and the ODP as the responsible body for this activity is still not completely functional.<sup>267</sup> It also states that the Judicial Audit Unit issued recommendations in relation to the functioning of the courts which were not taken into consideration by the KJC.<sup>268</sup>

The complaints of the public in the ODP have increased, from 73 in 2001, to 400 complaints in 2008 and 293 in 2009.<sup>269</sup> This decrease in 2009 is not believed to have happened due to a decrease of corruption in the judiciary but more due to a loss of credibility in the system.<sup>270</sup> Since 2001 the ODP has handed over 120 complaints to the KJC for review, out of which 76 were for judges, however the KJC was not shown to be effective and until now only 10 judges have been suspended, only three after the proclamation of Kosovo's independence.<sup>271</sup>

According to Global Integrity, the decisions for criminal offences are sometimes arbitrary and the law is not always respected during the issuance of these Decisions, however there is a complaint mechanism and the complaints for criminal offences are settled within a reasonable time and better than in civil cases.<sup>272</sup>

<sup>266</sup> See below under 'Integrity (practice)' and the KJC webpage.

<sup>267</sup> European Commission, 2009: 10.

<sup>268</sup> Ibid.

<sup>269</sup> Kadri Begolli, director of ODP quoted in: International Crisis Group, *The Rule of Law in Independent Kosovo*, May 2010, p.16. <http://www.crisisweb.org>

<sup>270</sup> Ibid. <sup>271</sup> International Crisis Group, 2010: 16. <http://www.crisisweb.org> <sup>272</sup> Global Integrity, 2009: 150-151.



## Integrity mechanisms (law) – 5

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

The integrity of the members of judiciary is protected by the Code of Ethics and Professional Conduct for Judges but also by a number of laws such as the law on Declaration of Property and Gifts, Law on Prevention of Conflict of Interest in Exercise of the Public Function and the Criminal procedure Code. Conflicts of interest for the judiciary and the issue of gifts and other benefits is regulated by the Code of Ethics, but also by the above-mentioned laws.

The Code of Ethics and Professional Conduct for Judges is comprehensive and is based on international standards and principles, such as human rights and equality before the law, the presumption of innocence, the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, etc.<sup>273</sup> It also refers to the United Nations Basic Principles on the Independence of Judiciary (adopted 1985,) Recommendation No R (94) 12 of the Committee of Minister of Council of Europe on the independence, efficiency and role of judges and European Charter and Statute for Judges (adopted 1998.) The breaches of the Code of Ethics are sanctioned by provision 7.5 of UNMIK Regulation 2005/52 establishing KJC and the AD 2006/8 taking care, nevertheless, to adopt provisions to protect judges' independence.

Judges are obliged to declare their property to the Kosovo Anti-Corruption Agency (KACA) pursuant to the law on the Declaration and Origin of Property and Gifts of Senior Public Officials and in the KJC based on the Code of Ethics and Professional Conduct for Judges and a special one for lay judges, which needs to be amended. This code does not allow judges to be compensated or take per-diem for private travels, or any type of activity which was not endorsed in advance by the KJC.

There are limitations in employment of judges once they finish their mandate, and citizens can challenge the impartiality of a judge in a given case, but they have to justify it.<sup>274</sup>

<sup>273</sup> Code of Ethics and Professional Conduct for Judges can be accessed in the KJC webpage: <http://www.kgjk-ks.org>

<sup>274</sup> Interview of Enver Peci with the author, Prishtina, 14 April 2010.

## Integrity Mechanisms (practice) – 4

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

Regarding the integrity of judges in practice, the Code of Ethics is to some extent effective and its implementation is supervised by the KJC, IJPC and the president of the respective court. The violations are investigated and punishments are imposed on judges, although, as stated in the EC 2009 Kosovo Progress Report, these efforts are insufficient.<sup>275</sup>

In practice, judges declare their property which is then interrogated by the IJPC and there were many cases in which the non-declaration of property by judges was discovered and punishment measures were undertaken against them as a result.<sup>276</sup> On 1 June this year (2010) judges have declared their property before the Anti-Corruption Agency as well. According to the KACA, 69 senior public officials did not declare their property, none of whom are judges or prosecutors.

Regarding violations by judges, the KJC had ruled on 11 cases in 2009; eight were resignations of judges who gave no reason for their resignation, or mentioned material reasons as a cause for their resignation and in one case the reason was failure of the ethics test.<sup>277</sup> In 2008 three judges were removed from office with a decision of the KJC which acted based on the recommendation of the Disciplinary Judicial Commission for bribery, destruction of evidence and violation of the code of ethics. In 2007 a lay judge was removed from office in Gjilan municipality for “misconduct” and “violation of code of ethics.” In 2006 the KJC upheld two Decisions of the Disciplinary Judicial Commission for removal from office of one lay judge in Lipjan municipality for accepting a bribe and the Decision for removal from the Office of the President of Gjilan Court for “misconduct” and “violation of Code of Ethics.”

It is not known how effectively are the regulations for restrictions in employment of judges following their mandate, or those for accepting gifts and other benefits implemented. Following the Declaration of the Property, KACA made verification of registers of gifts accepted by public institutions of Kosovo including courts. According to KACA, KJC and the courts in Kosovo have declared that they have not received any gifts during 2009.<sup>278</sup> The right of citizens to challenge the impartiality of a judge in different cases is weakly implemented.

<sup>275</sup> European Commission, 2009: 10.

<sup>276</sup> Interview of Enver Peci with the author, Prishtina, 14 April 2010.

<sup>277</sup> Kosovo Judicial Council. These and the following decisions can be accessed on the official Webpage of the KJC: <http://www.kgjk-ks.org/?cid=1,7> [accessed on 4 June 2010].

<sup>278</sup> See K ACA webpage, Report on accepting of gifts. <http://www.akk-ks.org/?cid=1,4,246>

## Oversight of executive branch (law and practice) – 3

*To what extent does the judiciary offer effective oversight of the executive branch?*

The courts have the right to review the decisions of the executive branch, however, this does not happen in practice. The reports of the Office of Auditor General (OAG)<sup>279</sup> highlight a number of violations and financial mismanagement in Kosovo institutions but the Kosovo justice has proven rather indifferent in this regard which is also the weakest point of the justice system and the point that was mostly criticised by the public.<sup>280</sup> Civil society has been vocal in criticizing the judiciary, respectively the prosecution office for failing to utilize the OAG reports in order to bring high profile officials to justice.<sup>281</sup>

According to the Constitution of Kosovo,<sup>282</sup> the Constitutional Court has the right to review decisions of the executive branch if it is assumed that they are not in compliance with the Constitution of the country or the compliance of the domestic laws with the highest legal act. In the spring this year, the Constitutional Court of the Republic of Kosovo requested the Municipality of Prizren to change its logo, since it was found to be in contradiction with the Constitution of Kosovo.<sup>283</sup> Moreover, in a decision that shook the political scene in Kosovo, the Constitutional Court of Kosovo upon a request by more than 30 MPs deliberated and decided that the President of Kosovo had violated the Constitution of Kosovo, article 88(2) by not resigning from his position of President of the Democratic League of Kosovo (LDK) while serving as President of the country as is required by the aforementioned article of the Constitution.<sup>284</sup>

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<sup>279</sup> The reports of OAG can be accessed at: <http://www.ks-gov.net/oag/english/home.htm>

<sup>280</sup> InfoKosova, Auditorët Gjeneral kanë punuar shumë por drejtia dhe prokuroria është në gjumë (The Auditor General has done lots of work but justice and prosecution are sleeping) 15 July, 2010.

<http://info-kosova.net/ekonomi/vendore/5367-auditorët-gjeneral-kane-punuar-shume-por-drejtia-dhe-prokuroria-eshte-ne-gjume> [accessed 15 October, 2010].

<sup>281</sup> See the media report above but also Organizata ÇOHU! Ku është raporti i Auditorit për Kuvendin e Kosovës? (What happened to Auditor's report on Kosovo Assembly?) No date provided.

[http://www.cohu.org/index.php?option=com\\_content&view=article&id=18:ku-eshte-raporti-i-auditorit-per-kuvendin-e-kosoves&catid=3:komunikata&Itemid=3](http://www.cohu.org/index.php?option=com_content&view=article&id=18:ku-eshte-raporti-i-auditorit-per-kuvendin-e-kosoves&catid=3:komunikata&Itemid=3) [accessed 15 October, 2010].

Organizata ÇOHU! Përdorimi Politik i Auditimeve (The Political Use of Audit Reports) January 2007.

[http://www.cohu.org/raporte/Raporti\\_Auditimi\\_COHU\\_alb.pdf](http://www.cohu.org/raporte/Raporti_Auditimi_COHU_alb.pdf) [accessed 15 October, 2010].

<sup>282</sup> Constitution of Kosovo, Chapter VIII Constitutional Court, articles 112 and 116. <http://www.gjk-ks.org/>

<sup>283</sup> SETimes, Feith wants Prizren municipality to change logo this week 15 September, 2010. [weekhttp://www.setimes.com/cocon/setimes/xhtml/en\\_GB/newsbriefs/setimes/newsbriefs/2010/09/15/nb-14](http://www.setimes.com/cocon/setimes/xhtml/en_GB/newsbriefs/setimes/newsbriefs/2010/09/15/nb-14) [accessed 15 October, 2010].

<sup>284</sup> Republic of Kosovo, Constitutional Court Judgment Case No. KI 47/10 Naim Rrustemi and 31 other Deputies of the Assembly of the Republic of Kosovo Vs. His Excellency, Fatmir Sejdiu, President of the Republic of Kosovo 29 September, 2010.

[http://gjk-ks.org/repository/docs/ki\\_47\\_10\\_eng\\_2.pdf](http://gjk-ks.org/repository/docs/ki_47_10_eng_2.pdf) [accessed 15 October, 2010].

## Investigation of corruption (practice) – 2

*To what extent is the judiciary committed to combating corruption by initiating prosecutions and other activities?*

Another point where the Kosovo justice has proven unsuccessful and for which it was criticised severely by the public and international institutions is the investigation of corruption cases. The public perception for the presence of corruption in Kosovo is very high<sup>285</sup> and it was normal for the public and civil society to expect the justice system to undertake actions in this regard.<sup>286</sup> The judiciary has failed to protect its independence from politics and thus judges would be threatened and blackmailed if they would investigate high profile politicians for corruption charges.<sup>287</sup> So far the Kosovo judiciary, respectively the prosecution, has failed to bring to justice any high profile politician. A very hot topic of debate was the reports of the OAG and the failure to undertake actions by the prosecution authorities with all the violations evidenced by this institution, in ministries and other state institutions.<sup>288</sup>

The prosecution authorities were in conflict with the Anti-Corruption Agency because the latter was complaining that the reports that are sent to the prosecutor's office are not investigated at all, especially those that have to do with Kosovo judges and prosecutors. In 2009, the KACA submitted 58 cases in the competent prosecutor's offices and in EULEX and none of these cases have yet been brought to justice. In fact none of the cases for which the KACA collected evidence since it became functional in 2007 was treated by the Kosovo judiciary.

The search by EULEX in the premises of the Ministry of Transport and Telecommunication (MTT) has only confirmed the perceptions of Kosovars of the presence of corruption in the highest levels of the government.<sup>289</sup> All these failures of the Kosovo justice system resulted in citizens losing their trust in this institution and made them believe that this system is one of the most corrupt institutions in the country.<sup>290</sup> The EC Progress Report (2009) states that, the Kosovo justice system remains weak, vulnerable from political interference, and ineffective.<sup>291</sup>

<sup>285</sup> See UNDP Early Warning Reports. <http://www.ks.undp.org/>

<sup>286</sup> See under 'Oversight of Executive Branch (law and practice)' the media report cited InfoKosova The Auditor General has done lots of work but justice and prosecution are sleeping and ÇOHU What happened to Auditor's report on Kosovo Assembly? as well as The Political Use of Audit Reports.

<sup>287</sup> Global Integrity, 2009: 153.

<sup>288</sup> See under 'Oversight of Executive Branch (law and practice)' the media report cited InfoKosova The Auditor General has done lots of work but justice and prosecution are sleeping and ÇOHU! What happened to Auditor's report on Kosovo Assembly? as well as The Political Use of Audit Reports.

<sup>289</sup> Telegrafi Policia e EULEX-it bastis zyrat e MTPT-së (EULEX Police searches MTPT offices) 28 April, 2010. <http://www.telegrafi.com/?id=2&a=8349> [accessed 15 October, 2010].

KOHAnet, EULEX-i bastis, Limaj vazhdon punën (EULEX's searches, Limaj continues work) 29 April, 2010. <http://www.kohaditore.com/index.php?cid=1,22,19766> [accessed 15 October, 2010].

<sup>290</sup> See UNDP Early Warning Reports in <http://www.ks.undp.org/>

<sup>291</sup> European Commission, 2009: 11

However security is a huge problem for the judiciary in Kosovo, where judges and prosecutors are not protected with additional measures due to sensitive nature of their work.<sup>292</sup> Low salaries and lack of security are amongst factors that have had an impact in making the Kosovo judiciary lose the motivation to combat corruption. Kosovo prosecutors are overburdened with work and suffer from a lack of capacities.<sup>293</sup> There were instances when judges requested firearms for self protection for security reasons but such requests were rejected.<sup>294</sup> According to the International Crisis Group there are mechanisms for combating corruption but they are ineffective and lack political support and leadership.<sup>295</sup> The Kosovo Chief-Prosecutor in a media conference accused the Government and the Assembly of Kosovo for intentional destruction of judiciary by not creating conditions for the normal functioning of the courts.<sup>296</sup>

The European Union Rule of law Mission – EULEX in Kosovo is focused in the Kosovo judiciary and in building its capacities for combating corruption. In February 2010, the Special Prosecutor’s Office of the Republic of Kosovo (SPRK), established a special office for investigation of high profile corruption cases within the auspices, Anti-Corruption Task Force. This Task Force is comprised of five Kosovo and three EULEX prosecutors. The searches in the MTPT and the notified investigation of corruption in other ministries by the EULEX were managed by the SPRK. In the summer 2010, this Task Force arrested an advisor to a Minister for abuse of authority and acquisition of property in an illegal manner. At almost the same time a panel comprised of both Kosovo and EULEX judges punished a judge with four years imprisonment for accepting a bribe. However, after more than two years in Kosovo these are still only minimal actions by the EU’s police mission in Kosovo compared to the perception of corruption of Kosovo citizens. The so-called ‘big fish’ continue to remain free.

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<sup>292</sup> OSCE, 2010: 1.

<sup>293</sup> International Crisis Group, 2010: 17.

<sup>294</sup> Global Integrity, 2009: 155.

<sup>295</sup> International Crisis Group, 2010: 12.

<sup>296</sup> Zëri Info, Kabashi accuses the institutions for back-draws in judiciary. 23.03.2010.

<http://www.zeri.info/artikulli/1/1/3546/kabashi-akuzon-institucionet-per-ngecjet-ne-drejtesi/>

## Recommendations

There are a number of immediate steps that have to be taken by Kosovo institutions in order to improve the situation in the judiciary. The promulgation of the law on courts and a number of other laws are good positive steps which clarify the situation regarding the applicability of laws in Kosovo and improve the salaries of judges. However, there are a number of other immediate steps to be taken which we recommend:

- Security for judges should be provided by the KJC and the government of Kosovo so that they are free to do their work in accordance with principles of integrity, independence and impartiality.
- Security for judges personally should be provided as well as provide modern infrastructure (i.e. court rooms) which allows them to do their work uninhibited from external interference.
- The overall budget for the judiciary should be increased (at least double the existing one) so that the judiciary is equipped with the necessary infrastructure e.g. modern libraries, new modern court rooms, more administrative staff to be employed.
- Immediately, the number of judges should be increased in order for the judiciary to be able to deal with the high number of backlog cases. This is an issue which is hindering the work of the judiciary and preventing it from fulfilling its duties in service of the rule of law and gain the trust of citizens.
- Finally, the legal infrastructure should be completed to make a full transition from old Yugoslav and UMNIIK-era laws to Kosovo laws in order to clarify the situation regarding the applicability of laws and make the judiciary more transparent.

**4.**

## **PUBLIC SECTOR**



## Overview

The resources of the public sector in Kosovo are extremely limited, with low salaries and few benefits. It is an overburdened and politicized administration. The legal infrastructure has improved with the passing of two laws that the unions have demanded, the Law on Civil Service and the Law on Salaries for Civil Servants. Although the legislation to a certain point protects the independence of civil servants, in practice Kosovo's public administration is over politicized, with political interference in the appointment of Permanent Secretaries all the way to the hiring of janitors. Also, public sector transparency is covered pretty well by legislation regardless of gaps; however, it is different in practice where there is no satisfactory implementation of the Law on Access to Official Documents. The start of the implementation of the law on the disclosure of assets is a good beginning towards increasing public sector transparency, although gaps are evident even there.

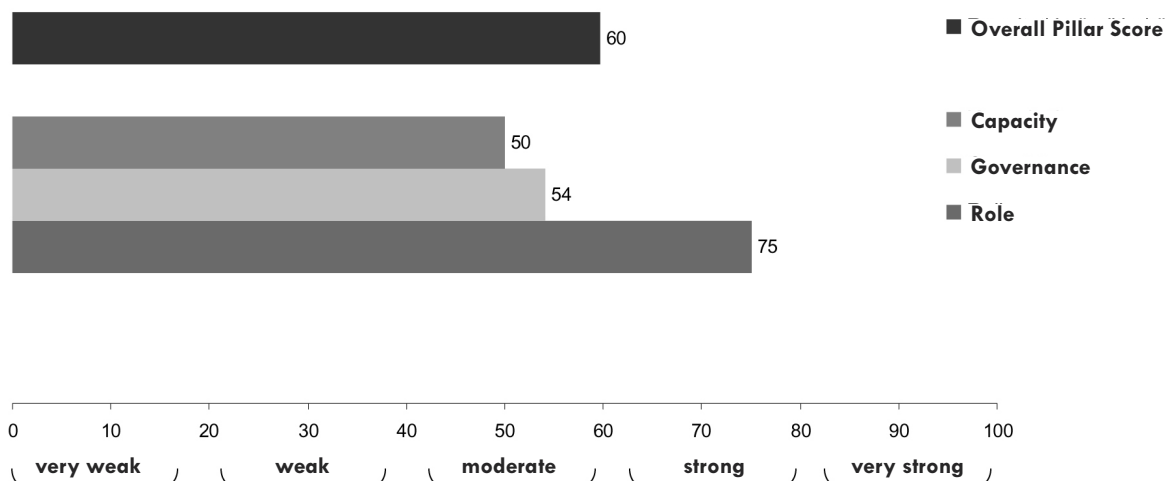
The accountability of the public sector is covered by several laws and institutions. However, in practice the power of these institutions has been weakened and laws are not properly implemented.

There are several laws that protect the integrity of the public sector; nevertheless the legal infrastructure is incomplete. With all the progress achieved in the development of an institutional and legal framework, Kosovo institutions are far from achieving integrity as a result of nepotism, a high level of politicization, the failure to fight corruption, poorly paid administration, etc.

Except for the Kosovo Anti-Corruption Agency (KACA) and several earlier campaigns, the public sector in general has done little to educate the public on fighting corruption and their campaigns have had limited impact. The cooperation of the public sector with public institutions, civil society organizations and private agencies in preventing/addressing corruption is inadequate, especially with businesses and civil society which last year withdrew from the cooperation to develop the Anti-Corruption Strategy and Action Plan because their remarks were ignored.

In the area of public procurement there is a Law on Public Procurement (LPP) which although worked and reworked with the assistance of the European Commission and the World Bank, still needs improvement. The most criticized feature is the allowing of the negotiated procedure, which has enabled the institutions to dictate the tender winner. Also the tender has not always been awarded to the company with the lowest bid, although by law this is the main criterion. The LPP is currently being amended to be properly aligned with EU legislation. Some of the institutions managing public procurement have been criticized by the European Commission for being unprofessional and politicized.





## Structure & Organisation

The number of civil servants in Kosovo on January 2008, including both central and local level, was 71,670.<sup>297</sup> This includes all civil servants whose salaries are paid for from the Budget of Kosovo, such as central and local government staff, National Assembly administrative staff, doctors, teachers, police, court administrative staff, etc. Upon the declaration of independence, several new ministries and institutions were established, and with the decentralization project a number of new municipalities were established as well, therefore the current number of civil servants is certainly larger.

According to one comparison, Kosovo spends more than seven EU countries in general administrative services, while social security services expenditures are under the average of these countries, with approximately the same territorial and population size as Kosovo.<sup>298</sup> In comparison to other countries, therefore, Kosovo, with an estimated population of over 2 million inhabitants and a territory of over 10,000 km<sup>2</sup> has an oversized public sector.

<sup>297</sup> SIGMA, *Public Service and the Administrative Framework Assessment* May 2008, p.4. <http://www.sigmaxweb.org/dataoecd/48/31/41637624.pdf> [accessed May 20, 2010].

<sup>298</sup> Kosovo was compared to Estonia, Slovenia, Finland, Slovakia, Ireland, Letonia and Lithuania. FRIDOM, *Review of the whole Government*, November 2008, p.10. <http://www.fridomks.org/> [accessed July 10, 2010].

## Resources (Practice) – 2

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

The Public Sector Union has protested against low salaries of public sector employees. Since the end of the war in 1999, civil service salaries have been regulated by quotients from 1 through 10; since 2007 there is no salary under the quotient of 4 and one quotient equals 32.25 Euros monthly.<sup>299</sup> Quotient 4 is used for janitorial or security employees, and 10 for Department Directors at Ministries. However, salaries in the healthcare, education and police sector are fixed. As of April 2011, salaries of civil servants increased by 23%. The International Monetary Fund reacted by restricting the Kosovo government to some of the IMF's fiscal assistance programs.

The Assembly of Kosovo has approved the Law on Civil Service and the Law on Salaries for Civil Servants. These two laws would meet some of the demands of the unions as well as establish the classification of various types of service in the public sector; by also taking into account experience, job environment dangers, etc, which is not in place now.

Overall, the Kosovo public sector suffers from a lack of resources, be it human or financial, to be able to effectively carry out its duties. According to a report by SIGMA,<sup>300</sup> 'The civil service is still not attractive for qualified and experienced staff. Salary levels are low compared to the private sector. Qualified young civil servants still tend to remain in the civil service only the minimum time needed to acquire the experience and practice that will allow them to move to the private or international sectors.'<sup>301</sup> The public administration in Kosovo continues to be weak and politicized.<sup>302</sup>

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<sup>299</sup> SIGMA, 2008: 11.

<sup>300</sup>Support for Improvement in Governance and Management (SIGMA) is a joint initiative of the OECD and the European Union, principally financed by the EU.

<sup>301</sup>SIGMA, 2008: 15.

<sup>302</sup> Ibid.

## Independence (Law) – 4

*To what extent is public sector independence protected by law?*

UNMIK Regulation 2001/36 'On the Kosovo Civil Service' sets forth provisions and mechanisms for the protection of civil servants from political interference and for ensuring a professional civil service.<sup>303</sup> Section 2.1 of this Regulation determines the governing principles for the civil service, such as: equity, political neutrality and impartiality, integrity, honesty and accountability, transparency, merit, non-discrimination, etc. Whereas Chapter III of this Regulation establishes the Kosovo Independent Oversight Board (KIOB), which among other things is responsible to: ensure that the governing principles for the civil service are implemented in the manner prescribed by this Regulation, protect civil servants from unnecessary political interferences, and also ensure that this service is governed by these principles. If a civil servant considers she/he has been discriminated against or unfairly dismissed, Section 11 of the Regulation determines that the civil servant may appeal to the IOB upon exhausting the internal appeals procedures of the employing authority concerned.

Also, the IOB takes part in employment or promotion appointment committees in an observer capacity. According to Regulation 2001/36, if the IOB members found the decisions of the employing authority in non-compliance with Section 2.1 they immediately inform the Prime Minister and the Special Representative of the Secretary-General (SRSG) in writing. Regulation 2008/12 'Amending UNMIK Regulation 2001/36 on the Kosovo Civil Service' determines that the IOB shall make an annual report to the Assembly of Kosovo on the compliance with the principles set out in Section 2.1 and therefore also in violation of Regulation 2001/36.

Civil servants may appeal the decisions of the IOB before the Kosovo Supreme Court. The Commission on Senior Public Appointments (CSPA) is responsible for senior level appointments, such as Permanent Secretary, Chief Executive Officer at a municipality or independent agency.

Section 28 of Administrative Direction (AD) 2003/2 implementing UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, 'Political Activities' determines that 'Civil servants may be members of political parties and other political organizations, but shall not be actively involved in political activity, which shall be understood as holding leadership or paid positions at any level of a party or political organization.'

<sup>303</sup> Regulation No. 2001/36 On the Kosovo Civil Service. All UNMIK Regulations can be accessed at <http://www.unmikonline.org> at Official Gazette, while Kosovo Laws at <http://www.kuvendikosoves.org>

## Independence (Practice) – 2

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

The Kosovo public sector is not free of external interference in performing its duties.

There has been a tendency upon the assumption of power by the current Government,<sup>304</sup> but also the previous ones, to appoint to the position of Permanent Secretary persons close to the relevant Minister.<sup>305</sup> This forced the hand of the International Civilian Office (ICO) to exercise pressure on the Government of Kosovo to dismiss several of these secretaries. In March 2009, Prime Minister Thaçi dismissed eight permanent secretaries of ministries of the Government of Kosovo, who had previously been political advisors to the relevant ministers.<sup>306</sup> The Permanent Secretary is the highest civil service position within an institution meant to ensure a continuance of policies regardless of government change, therefore appointing politically affiliated persons in these positions is a violation of the civil service regulations. Also, for a long time the Prime Minister of Kosovo had left the CSPA non-operational, meaning many secretaries and other civil service posts could not be appointed. Thus a number of positions were appointed either illegally or as acting posts without term, a practice broadly exercised in Kosovo institutions, appointing politically affiliated persons as is the case with the Permanent Secretaries mentioned above.

According to SIGMA, despite all efforts, the civil service in Kosovo remains highly politicized and hindered by nepotism.<sup>307</sup> In spite of the apparent legality in the recruitment procedure, it is nearly impossible to be employed without political or affiliated connections.<sup>308</sup> Certain individuals hold several posts concurrently and inexperienced people are appointed managers ignoring those with years of experience.<sup>309</sup> In municipalities in particular, the civil service shows a general lack of professionalism in implementing transparent, non-politicized and ethnically balanced procedures, including the areas of recruitment and promotion.<sup>310</sup>

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<sup>304</sup> The previous government, also known as the Thaçi Government, a governing coalition of PDK and LDK has assumed power in beginning of 2008 after emerging victorious from the 2007 parliamentary elections. This coalition split on November 2010.

<sup>305</sup> The issue of appointing Permanent Secretaries persons close to the relevant ministers has been widely reported in Kosovo dailies and electronic media.

<sup>306</sup> Bota Sot, *Ditë e zezë për 8 sekretarë të përhershëm!* (Gloomy Day for 8 Permanent Secretaries!) March 26, 2009. <http://www.botasot.info/home.php?gjuha=0&category=3&id=10767> [accessed May 21, 2010].

<sup>307</sup> SIGMA, 2008: 9.

<sup>308</sup> *Ibid*

<sup>309</sup> Interview with Ndue Kalaj by the author, Pristina, May 27, 2010.

<sup>310</sup> SIGMA, 2008: 7.

Contracts represent another issue that generates insecurity for civil servants. According to Regulation 2001/36, contracts for employment in the Civil Service shall be for a period of up to three (3) years, and may be extended. However, neither this Regulation nor the AD implementing it, specify the criteria for contract extension, making this an arbitrary decision by the employing authority.<sup>311</sup> The majority of employees are granted extensions on a year by year basis, keeping them in a constant state of anticipation.<sup>312</sup> During 2009, there were a total of 288 appeals to the IOB, of which 30% dealt with Termination of Employment Contract (22.56% or 65 cases) and Non-Extension of Contracts (6.94% or 20 cases.)<sup>313</sup> These appeals were mostly against ministries, municipalities and executive agencies.

During 2009, the IOB resolved 358 appeal issues, a part of which was carried over from previous years unresolved in time due to a lack of staff.<sup>314</sup> However, the problem of the IOB is the non-implementation of its decisions. The IOB notifies the Assembly, they notify the Prime Minister and thus they move in a circle while the implementation of decisions is delayed. If appeal mechanisms such as the IOB are powerless to enforce their decisions, this creates insecurity among public sector employees thus affecting their independence and commitment to public service.

## Transparency (Law) - 4

*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 provisions foreseen by Kosovo laws, some of them recently enacted and amended, ensure transparency in the management of human and financial resources and in information management in a satisfactory manner.

With the new law on the 'Disclosure, Origin and Control of Assets and Gifts of Senior Public Officials' (No. 03/L-151) all senior public officials must disclose their and their family member's assets, income and other materials benefits, financial obligations of the public officials, family members and

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<sup>311</sup> SIGMA, 2008: 6.

<sup>312</sup> Interview with Ndue Kalaj by the author, Pristina, May 27, 2010.

<sup>313</sup> Independent Oversight Body of Kosovo, Raporti Vjetor i Këshillit të Pavarur Mbikëqyrës të Kosovës (Independent Oversight Body of Kosovo Annual Report) 2009, (Pristina, March 2010), p.7.

[http://www.ks-gov.net/kpmk/document/shqip/publikime/raporti\\_2009.pdf](http://www.ks-gov.net/kpmk/document/shqip/publikime/raporti_2009.pdf) [accessed on May 20, 2010].

<sup>314</sup> Of these, 115 were affirmed in favor of civil servants, 46 were affirmed partially, while 122 civil servant appeals were rejected by the IOB. Independent Oversight Body of Kosovo, 2010: 19.

persons related to them (Article 2.) There are four types of disclosure of assets: regular annual disclosure, disclosure upon taking office by senior public officials, disclosure by order of the Kosovo Anti-Corruption Agency (KACA) and disclosure upon leaving office.

However, the law on the disclosure of assets foresees light financial penalties for officials who refuse to declare their wealth or who make false/incomplete declarations, from 150 Euros up to 1500 Euros. This deficiency in the law has been subject to criticism by civil society<sup>315</sup> and according to the director of KACA, work is ongoing in amending the Kosovo Criminal Code to make the non-declaration and false/incomplete declaration of assets a criminal offense.<sup>316</sup>

Senior public officials may accept 'protocol gifts' the value of which does not exceed 100 Euros. If the gift exceeds this value, then it becomes property of the institution in which the official person exercises his duty. Senior Public Officials may also accept 'occasional gifts of small value' the value of which does not exceed the amount of 50 Euros.

The institution where the relevant official serves is required to designate a person responsible for keeping the register of gifts and registering received gifts. The KACA controls the register of gifts and in case of any deviation may take measures foreseen by the law on the disclosure of assets.

According to the law on asset disclosure, the KACA is the responsible institution for the maintenance and verification of facts reflected in the registry of disclosure. This law also determines that data kept in the register can be used only for purposes of corruption investigation or prevention and binds the KACA officers to full confidentiality of information emanating from the registry. The Law on Access to Official Documents (2003/12) is the legal instrument enabling the citizens of Kosovo to access these registers, and official documents in general.

Chapter IV of UNMIK Administrative Direction 2003/2 regulates the manner in which civil servant records should be managed. These include personal data such as age, gender, residence, professional qualifications, etc. These personnel records are confidential and access to them shall be restricted to the employer, personnel manager, promotion or disciplinary boards, and solely for the purposes of carrying out their official duties.

<sup>315</sup> Organization ÇOHU! Analizë e Kornizës Ligjore kundër Korrupsionit (An Analysis of the Anti-Corruption Legal Framework), May 2010. <http://www.cohu.org> [accessed on June 8, 2010].

<sup>316</sup> Hasan Preteni, interviewed by Arton Konushevci, Preteni: Korrupsionin duhet ta luftojmë të gjithë (Preteni: We all must fight corruption), Radio Free Europe Albanian Section RFE/RL, 05 June, 2010. <http://www.evropaelire.org/content/article/2062937.html> [accessed on June 10, 2010].

Public procurement records are managed in accordance with the Law on Public Procurement in Kosovo 2003/17 (amended and supplemented in February 2007, as well as in September 2010.) This law established three institutions at the central level managing public procurement: the Procurement Review Body (PRB), the Public Procurement Regulatory Commission (PPRC) and the Public Procurement Agency (PPA.) The PPRC is the 'legislature' of public procurement because it is the responsible authority for developing secondary legislation on procurement. A PPRC report on the state of public procurement in Kosovo based on its monitoring activities is submitted annually to the Assembly of Kosovo, and the PPRC is responsible for the overall development, operation and supervision of the public procurement system in Kosovo.<sup>317</sup> The PPRC also manages the relevant information on the area of public procurement in Kosovo.<sup>318</sup>

Recruitment and appointment to the Civil Service of Kosovo is regulated by AD 2003/2. Section 3.3 of this AD foresees that 'Recruitment to the Civil Service shall be done after fair and open competition, on the basis of merit and in conformity with the principle of equitable representation of communities in Kosovo, and equitable gender representation at all areas and levels.' Section 4 determines that Civil Service job vacancies shall be advertised Kosovo wide in the relevant media in the Albanian and Serbian languages and, where deemed necessary, by the employing authority, outside of Kosovo. The candidate is then interview and selected by a multi-ethnic, gender balanced selection panel of three (3) members. Section 8 determines that each employing authority shall designate the personnel manager and one or two staff members under his/her supervision to serve as the sole appointing authority to make appointments for Civil Service posts based on the recommendations of the selection panel.

## Transparency (Practice) - 2

*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 media represent almost the only way for Kosovo citizens to obtain information on the activities of the public sector.

In 2003, the Law on Access to Official Documents (2003/12) was promulgated in Kosovo, providing citizens access to official documents. The Administrative Direction 2006/03 implementing this law was issued subsequently. According to local and international organizations the implementation of

<sup>317</sup> Portal of Public Procurement Regulatory Commission of Kosovo <http://www.ks-gov.net/krpp/>

<sup>318</sup> Ibid.



this law in Kosovo continues to be weak, either because of the institutional lack of readiness to allow access or because of a lack of knowledge of the law by the officials, on one hand, and because of a lack of interest by the citizens or a lack of knowledge of their rights granted by this law, on the other.<sup>319</sup>

In general, the level of public institution transparency and proper and timely information for the citizens is low.<sup>320</sup> However, recently, the Government of Kosovo engaged in the establishment of an on-line system for e-Governance, aimed at increasing administration transparency and facilitating access to services for the citizens. Through this service the citizens of Kosovo may access the civil status, find out whether their documents (passport, drivers license, etc.) are ready, see their electric bills, the status of retirement contributions, obtain business registration information online, etc.

Until the approval of the Law on the Disclosure of Assets, the citizens of Kosovo had no knowledge of the assets of senior public or elected officials. This matter was regulated by the Anti-Corruption Law (which has now been substituted with the Law on the Anti-Corruption Agency); however, the disclosure registries were not published. On June 1, 2010, the KACA, as forewarned, published on its website the disclosure of assets of senior Kosovo officials in conformity with the Law on the Disclosure, Origin, and Control of Assets and Gifts of Senior Public Officials, which were made public for the first time in Kosovo.<sup>321</sup> According to this law 1,560 senior officials were obliged to disclose assets, of which 69 failed to do so, while the then President of the opposition party, Aleanca Kosova e Re (New Kosovo Alliance) (AKR) disclosed his assets and requested they not be made public. Mr. Pacolli, a citizen of Switzerland and shareholder of several companies there, requested his assets not be made public for reasons of security, but also referring to the laws of Switzerland which protect the privacy of shareholders in various companies. In his letter addressed to the KACA, Mr. Pacolli also refers to Article 12, paragraph 5 of the Law on the Disclosure of Assets which determines that disclosed data can be used only for purposes of corruption investigation or prevention. In an analysis of the anti-corruption laws, the organization ÇOHU! warned of such a possible interpretation of paragraph 5, which could factually lead to a situation where there would be no disclosure of assets at all.<sup>322</sup> The KACA addressed the issue to the competent court in Kosovo for interpretation and it is

<sup>319</sup> See OSCE Report, Raporti mbi Implementimin e Ligjit për Qasje në Dokumente Zyrtare në Nivelin Komunal (Report on Implementation of the Law on Access to Official Documents in Municipalities) November 2007.

[http://www.osce.org/documents/mik/2007/11/27791\\_sq.pdf](http://www.osce.org/documents/mik/2007/11/27791_sq.pdf) [accessed on May 23, 2010].

Also see, Qendra për Politika dhe Avokim (Center for Policies and Advocacy), Gazetarët dhe qasja në dokumentet zyrtare (Journalists and Access to Official Documents)

<http://www.qpa-kosova.org/new/sq/publikime/45-publikime/119-gazetar-et-dhe-qasja-ne-dokumentet-zyrtare> [accessed on May 23, 2010]

<sup>320</sup> Global Integrity Report, Kosovo: Integrity Indicators Scorecard, 2009 Assessment.

<http://report.globalintegrity.org/Kosovo/2009/scorecard/15> [accessed on October 3, 2010].

<sup>321</sup> See asset disclosures on the KACA Webpage <http://www.akk-ks.org/?cid=1,115>

<sup>322</sup> See ÇOHU! analysis, Analizë e Kornizës Ligjore kundër Korrupsionit (An Analysis of the Anti-Corruption Legal Framework), May 2010. <http://www.cohu.org> [accessed on June 8, 2010].



expected to see what the decision will be on the case of Mr. Pacolli.

The Public Procurement Regulatory Commission (PPRC) publishes the Annual Report on Public Procurement Activities in Kosovo, which is submitted to the Government and the Assembly of Kosovo, and is published according to a deadline (end of February for the previous year.)<sup>323</sup> This report is quite comprehensive, contains data on public procurement in Kosovo, the number of awarded contracts, their value, etc. and provides recommendations for the improvement of public procurement in Kosovo. However, the Commission of the European Communities' in Kosovo under the UNSCR 1244/99 2009 Progress Report is very critical of public procurement management. It says that the PPRC cannot monitor the implementation phase of public projects and that the Procurement Review Body (PRB) does not systematically publish its decisions and these often lack legal arguments.<sup>324</sup> The PPRC and the PRB have their websites where decisions reached by these two institutions can be seen.

As it regards the inclusion of minorities in the public sector, there are often visits by senior Kosovo officials to encourage minorities to integrate into the institutions of Kosovo. All job vacancies are advertised in the local media in both official languages in Kosovo (as set forth by the Constitution) Albanian and Serbian. Job vacancies are also advertised in the Kosovo Serb newspapers and TV stations covering the entire territory of Kosovo, explicitly indicating that minorities are given an advantage for employment..<sup>325</sup>

## Accountability (Law) – 4

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

The Civil Service Code of Conduct and two chapters of Administrative Direction 2003/2 implementing the Law on Civil Service, Chapter VI 'Conduct and Discipline' and Chapter VII 'Violations as to Conduct, Penalties and Disciplinary Proceedings' regulate the issue of the reporting of violations by public sector officers and measures that may be taken against them.<sup>326</sup> Corruption and bribery of and by public officials are covered by the Law on the Anti Corruption Agency.

<sup>323</sup> PPRC Report for 2009 can be accessed at: <http://www.ks-gov.net/krpp/>

<sup>324</sup> European Commission, Enlargement Strategy and Progress Reports, Kosovo under UNSCR 1244/99 2009 Progress Report, p.31. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/ks\\_rapport\\_2009\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2009/ks_rapport_2009_en.pdf) [accessed on May 25, 2010].

<sup>325</sup> SIGMA, 2008: 8.

<sup>326</sup> SIGMA, 2008: 5.

Citizens of Kosovo can also address the institution of the Ombudsperson on violations of their rights by Kosovo institutions. However, the powers of the Ombudsperson are limited to the annual report that it sends to the Kosovo Assembly; it cannot pursue authorities before the courts.

Complaints and denouncements of civil or public sector officers are also lodged with the Anti-Corruption Agency. According to SIGMA, some cases of 'whistle-blowing' (reporting of ill-management or abuse by administration officers themselves) have been registered since the KACA maintains the confidentiality of all denouncements and of all information received from civil servants.<sup>327</sup> A Law on Whistle-blowing and Protection of Witnesses is being prepared.<sup>328</sup>

In the area of public procurement, the PRB is the highest legal instance that acts as a "judiciary" for procurement that examines complaints or requests by Economic Operators and Contracting Authorities and reaches pertinent decisions. The PRB is a higher institution than the PPRC and the PPA and may also examine their decisions. Parties that are unhappy with the decisions of the PRB may address the Kosovo Supreme Court.

Financial violations, ill-management and abuses by public institutions, i.e. institutions financed by the Kosovo Budget, are also evidenced by the Office of the Auditor General (OAG). The OAG audits all institutions that are more than 50% publicly owned or receive funding from the Kosovo Budget including 'but not limited to the Assembly of the Republic of Kosovo, the Office of the President of the Republic of Kosovo, each ministry and executive agency, municipalities, independent bodies, the Central Bank of the Republic of Kosovo (CBK) and other entities...'<sup>329</sup> Additionally, all Kosovo public institutions have their internal audit offices.

All independent agencies are required to report to the Assembly of Kosovo.

In general, the legal and institutional framework for public sector accountability exists and it is known to the civil servants and administration, and the citizens to a satisfactory extent.

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<sup>327</sup> SIGMA, 2008: 10.

<sup>328</sup> SIGMA, Public Integrity Assessment May 2009, p.19. <http://www.sigmaweb.org/dataoecd/31/41/43912949.pdf> [accessed on May 26, 2010].

<sup>329</sup> Office of the Auditor General Webpage <http://www.ks-gov.net/oag/>

## Accountability (Practice) – 2

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

Independent state agencies called upon to protect the general interest are impotent to hold state institutions accountable for their actions. As was mentioned above, the Ombudsperson is ignored by local authorities; ministries and municipalities engage in little cooperation with it, and its main weapon, the right to pursue institutions that do not provide the requested information before the court, has been eliminated.<sup>330</sup> Most complaints sent to the Ombudsperson were pertinent to the judicial system and the administration.<sup>331</sup> Reports and cases that the KACA turns over to the prosecution are ignored. The OAG Reports,<sup>332</sup> evidencing many violations at Kosovo institutions, and failure to act by the prosecutors have been a hot topic of debate between the latter and the media and civil society. In the area of procurement, the PRB has often been accused in the media of being a politicized institution and has been harshly criticized by the European Commission for a lack of transparency and professionalism. In fact, the procurement institutions were the most criticized in the European Commission Kosovo Progress Report for 2009 for a lack of transparency, professionalism, effective oversight of procurement activities, etc<sup>333</sup>.

According to the KACA annual report for 2009, most cases forwarded for further criminal proceedings to competent prosecutor offices by the KACA are referred to courts (18 cases), the central government (17 cases) and local government (also 17 cases.)<sup>334</sup> Whereas from “other public institutions” including public companies, socially owned enterprises, independent agencies, etc., 13 cases of corruption were forwarded for criminal proceedings to competent public prosecutor offices. However, not one of these cases has come before justice yet. In fact, no cases where the KACA collected evidence, since it has become operational in 2007, have been deliberated by the Kosovo Justice System.

The rather unsatisfactory level of accountability of the Kosovo public sector officers has been noted also in a SIGMA report: ‘Trust in public institutions (Assembly, government, presidency, judiciary, public administration in general, public companies) is rather low and even decreasing, and a culture of accountability is almost missing. Conflicts of interest seem to be a rather strange concept in Kosovo.’<sup>335</sup>

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<sup>330</sup> SIGMA, 2008: 6.

<sup>331</sup> Ibid.

<sup>332</sup> See the webpage of the Office of the Auditor General for full reports: <http://www.ks-gov.net/oag/>

<sup>333</sup> European Commission, 2009: 31.

<sup>334</sup> Kosovo Anti-Corruption Agency, Raporti Vjetor 2009, (Annual Report 2009) p.8.

[http://www.akk-ks.org/repository/docs/Raporti\\_vjetor%20i\\_Agjencise\\_kunderkorrupsionit\\_1\\_Janar\\_31\\_Dhjetor\\_2010.pdf](http://www.akk-ks.org/repository/docs/Raporti_vjetor%20i_Agjencise_kunderkorrupsionit_1_Janar_31_Dhjetor_2010.pdf) [accessed May 26, 2010].

<sup>335</sup> SIGMA, 2009: 2.

## Integrity Mechanisms (Law) – 5

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

There is a 'Civil Service Code of Conduct' (01/2006), as foreseen by Law on Civil Service, approved by the government in May 2006. This Code determines the general principles of conduct for civil servants, such as honesty, impartiality, integrity, non-discrimination, objectivity, etc., and stresses the general principles of the applicable laws on fighting corruption, conflict of interest prevention, confidentiality of institutional information, participation in political activities, etc.

In 2010 another law, in the process of being drafted for a long time, was approved, the 'Law on Disclosure, Origin and Control of Assets and Gifts of Senior Public Officials' (03/L-151) regulating the issue of gift receipt and disclosure of assets in the public sector. The 'Law on Preventing Conflict of Interest in Exercising Public Function' (02/L-133) was approved in 2007, and was amended and supplemented at the end of 2009 (03/L-155.) This law, in addition to setting forth general principles for avoiding conflicts of interest by public officials, in Article 11 also determines 'Actions Forbidden to the Official' prohibiting public officials from requiring or accepting any reward or promise for a reward for exercising his/her public function, misuse the authorizations resulting from exercising the public function, to use for personal interest or interest of close persons, information confidentially obtained for exercising the function, undertake action which in any method would suit the official's personal interest or the interest of relatives, etc.

Article 12 of the Law on Preventing Conflict of Interest, specifically 12.1 determines the 'Limitations for the Official upon Termination of Exercising the Public Function': 'Upon termination of exercising the public function, the same official does not have the right to be employed or to be nominated for leading positions or be involved in the auditing of public and private enterprises within the period of one (1) year, provided that, during the two (2) year period immediately before the end of exercising of public function, his/her duties were directly related to the monitoring or auditing of businesses of aforementioned enterprises.' The issue of information confidentiality is regulated by Article 5.3 of the Code of Conduct.

UNMIK Regulation 2001/36 and Administrative Direction 2003/2 implementing UNMIK Regulation 2001/36 on the Kosovo Civil Service cover pretty extensively the issue of integrity of civil servants, citing principles such as: equity, fair and equal treatment, political neutrality and impartiality, equitable representation of communities and equitable gender representation, fair and open recruitment competition etc.<sup>336</sup>

<sup>336</sup> See also Global Integrity Report, Kosovo: Integrity Indicators Scorecard, 2009 Assessment. <http://report.globalintegrity.org/Kosovo/2009/scorecard/54> [accessed October 3, 2010].

The central authority on the implementation of these two aforementioned laws is the Anti-Corruption Agency.

Giving or receiving money in exchange for favors by public sector officials is considered corruption according to the 'Law on Anti-Corruption Agency' (03/L-159.) Article 2 of this law defines corruption as: 'any abuse of power or any other behavior of official person, responsible person or other person for the purpose of achieving or obtaining an advantage for him/herself or for illegal profit for his/herself or any other person.' The term 'Official Person' is defined in the Criminal Code of Kosovo, Article 107: 1) A person elected or appointed to a public entity.<sup>337</sup>

In law, companies (Economic Operators) bidding for a public procurement project have to present to the concerning Contracting Authority evidence from a local court or an administrative authority that in order to qualify for public bidding, the company has not been penalized for corruption, money laundering, bribery.<sup>338</sup>

## Integrity Mechanisms (Practice) – 2

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

Officials dealing with corruption and strengthening institutional integrity are often provided with training, as the institutional capacity building in these areas is considered essential to a success in the long-term battle against corruption, and the government is investing in this direction.<sup>339</sup> A number of institutions operate in this area, i.e. the Kosovo Judicial Institute, in charge of training for judges and prosecutors, the Police School in Vushtri, which offers specialized training for police, Financial Intelligence Center (FIC) officials and others, and the Kosovo Institute of Public Administration (KIPA).<sup>340</sup>

However, a KIPA report on the training needs for civil servants finds that the participation of officials in trainings to be insufficient, where this may be due to repetitive training in certain areas, then KIPA's insufficient training capacities, trainings are more suitable to new officials rather than career officials, there is no comprehensive training program, etc.<sup>341</sup> The European

<sup>337</sup> Provisional Criminal Code of Kosovo, Chapter XII.

[http://www.ks-gov.net/ipk/docs/Kodi\\_i\\_Perkohshem\\_Penal\\_i\\_Kosoves.pdf](http://www.ks-gov.net/ipk/docs/Kodi_i_Perkohshem_Penal_i_Kosoves.pdf) [accessed May 26, 2010].

<sup>338</sup> Public Procurement Regulatory Commission, Standard Forms Documents of the Secondary Legislation Approved.

<http://www.ks-gov.net/krpp/Default.aspx?PID=StdForms&LID=2> [accessed October 3, 2010].

<sup>339</sup> SIGMA, 2009: 21.

<sup>340</sup> *ibid.*

<sup>341</sup> Kosovo Institute of Public Administration, VLERËSIMI I NEVOJAVE PËR TRAJNIM TË ADMINISTRATËS PUBLIKE NË QEVERISJEN QENDRORE (CENTRAL GOVERNANCE PUBLIC ADMINISTRATION TRAINING NEEDS ASSESSMENT), November 2009 – January 2010. <http://www.ks-gov.net/ikap/> [accessed May 26, 2010].

Commission Kosovo Progress Report for 2009 also stresses that KIPA continues to provide training and certification for civil servants, however, the Institute has limited capacity and resources, which affects the quality and amount of training provided.<sup>342</sup>

The Code of Conduct is partially implemented;<sup>343</sup> the Ministry of Public Administration in cooperation with the OSCE conducted an information campaign and provided training related to the Code, where booklets, pens and posters with the contents of the Code provided in all official languages were distributed.<sup>344</sup>

Despite the progress in setting up the legal and institutional framework ensuring integrity, according to SIGMA, Kosovo institutions are far from achieving integrity.<sup>345</sup> According to them, a number of factors, varying from high politicization, young institutions, incapacity to effectively fight corruption at high levels, fragile rule-of-law practices, poorly paid administration and lack of capacity and accountability in institutions, have favored the development of widespread practices based on nepotism and relationships rather than legal practices.<sup>346</sup>

Political interference in public sector, patronage, cronyism and nepotism are also mentioned as problems of public sector governance in Global Integrity Report's Scorecard on Kosovo.<sup>347</sup>

Companies bidding for a public procurement project have to present evidence from courts or administrative authorities that they have not been penalized for corruption, in order to qualify for public bidding. However, according to the European Commission 2009 Progress Report the implementation of the law on public procurement in Kosovo 'gives rise to serious concerns'.<sup>348</sup>

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<sup>342</sup>European Commission, 2009: 9.

<sup>343</sup> SIGMA, 2008: 10

<sup>344</sup> Ibid.

<sup>345</sup> SIGMA, 2009: 8.

<sup>346</sup> Ibid.

<sup>347</sup> Global Integrity Report, Kosovo: Integrity Indicators Scorecard, 2009 Assessment. <http://report.globalintegrity.org/Kosovo/2009/scorecard/54> [accessed October 3, 2010].

<sup>348</sup> European Commission, 2009: 31.



## Public Education (Practice) – 4

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

A public education and participation program is part of the Kosovo Anti-Corruption Agency's program on combating and preventing corruption. In March and April of 2008, the KACA in cooperation with the OSCE and UNDP conducted a campaign including 13 ministries and 15 municipal assemblies, where six debates were held. The targets of this campaign were civil servants and their introduction to the law on corruption, reporting methods, awareness raising, etc.<sup>349</sup> In 2009 also in cooperation with the OSCE and UNDP, similar citizens' debates were held in 14 municipalities with participants from the courts, prosecution offices, police, civil servants, NGOs, etc. entitled 'Joint Efforts in Fighting and Preventing Corruption in Kosovo.'<sup>350</sup> Whereas in 2010, in cooperation with the Kosovo Education Center (KEC) 12 seminars were organized in 10 Kosovo municipalities, where 'the Anti-Corruption Strategy and Action Plan, Anti-Corruption Law and Kosovo Anti-Corruption Agency legal mandate and activities it has conducted were presented.'<sup>351</sup> The KACA also participates in various debates and seminars and conferences organized by local and regional NGOs.

There was no participation by senior government officials in these campaigns; however, the participation of UNDP and OSCE attributes a high profile to them. As a result of these campaigns utilizing the distribution of booklets and posters, as well as billboards and other KACA public activities, the agency achieved high public visibility and its activities (such as the publishing of the annual report or the publishing of the assets of senior public officials) are widely reported in the media. The KACA has also established special toll free phone lines, made public through billboards, for reporting corruption. Nonetheless, the KACA lacks an assessment of the impact of its public education campaigns.<sup>352</sup> According to the KACA's 2009 annual report, 175 cases of alleged corruption were reported by citizens to this agency which marks an increase by 34% compared to 2008 when 130 cases were reported.<sup>353</sup>

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<sup>349</sup> Kosovo Anti-Corruption Agency, Aktivitetet e AKK-së për edukimin e publikut, gjatë vitit 2008. (KACA Public Education Activities, during 2008) <http://www.akk-ks.org/?cid=1,14,126> [accessed June 6, 2010].

<sup>350</sup> Kosovo Anti-Corruption Agency, Aktivitetet e AKK-së për edukimin e publikut, gjatë vitit 2009. (KACA Public Education Activities, during 2009) <http://www.akk-ks.org/?cid=1,14,238> [accessed June 6, 2010]

<sup>351</sup> Kosovo Anti-Corruption Agency, Edukimi/Pjesëmarrja e Publikut (Public Education/Participation). <http://www.akk-ks.org/?cid=1,14> [accessed June 6, 2010].

<sup>352</sup> Interview with Hasan Preteni by the author, Pristina, April 13, 2010.

<sup>353</sup> Kosovo Anti-Corruption Agency, 2009: 8.

## Corruption Risk Reduction through Protection of Integrity in Public Procurement (Law and Practice) – 3

*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 Public Procurement Regulatory Commission (PPRC) and the Public Procurement Agency (PPA) are two central institutions managing the procurement system in Kosovo. Members of the boards of these two institutions are nominated by the Government and appointed by the Assembly.

The PPRC is the responsible institution for ‘the overall development, operation and monitoring of the public procurement system in Kosovo, establishing detailed rules ensuring adequate implementation of the LPP, proposing to the Government and Assembly measures for the improvement of the public procurement system and this law.’<sup>354</sup> The PPRC publishes an annual report on procurement activities in Kosovo which is submitted to the Government and the Assembly. This report is a very good compilation of facts on how the public procurement system works in Kosovo.<sup>355</sup> Also, with the assistance of the European Commission, the PPRC has established and maintains a website ensuring unrestricted access to the public.<sup>356</sup>

The PPA is an autonomous executive agency. If the Government determines that for reasons of professional expertise, efficiency, cost-effectiveness, or other legitimate concerns, a certain procurement activity should be conducted by the PPA, then the Government has the authority to designate the PPA as the contracting authority of only that concerned tender. CAs may invite the PPA to conduct a procurement activity on their behalf or assist them with any procurement activities.<sup>357</sup>

The Procurement Review Body (PRB) is the responsible institution for review procedures. The PRB is independent of the PPRC and the PPA and is the highest entity in the area of procurement in the sense that it can review the decisions of the two above-mentioned entities. Any in-

<sup>354</sup> Law on Public Procurement, Section 81 and 82, and Raporti mbi Aktivitetet e Prokurimit Publik në Kosovë për vitin 2009 (Report on Public Procurement Activities in Kosovo for 2009), PPRC, 2010, p.4.),

<sup>355</sup> SIGMA, 2009: 11.

<sup>356</sup> Portal of the PPRC <http://www.ks-gov.net/krpp>

<sup>357</sup> SIGMA, 2009: 8.



interested party may appeal to the PRB at any stage of a tender, where a review expert shall be designated and a Review Panel shall be established for the expert to submit the assessment based on conducted investigations and then the panel shall render a decision on the case.<sup>358</sup> Decisions of the PRB parties may be appealed at the Supreme Court. According to the European Commission, the PRB does not systematically publish its decisions and these often lack legal arguments.<sup>359</sup>

The PRB may impose a fine of at least 5 thousand Euros on any contracting authority that fails to implement a decision of the PRB, a review panel or the PPA within three (3) business days (Section 118.) The civil servant, officer or official of the contracting authority causing such failure shall be dismissed and fined not less than 1,000 Euros. Such a person is not eligible to again become a civil servant, officer or official for a three (3) year period following that date of dismissal.

One of the flaws in the work of the PPRC is that it cannot monitor project implementation, emanating from the PPL and noted in the European Commission Progress Report for Kosovo.<sup>360</sup> It also says that CAs have been provided with very little assistance. With respect to the PPA, this report stresses that its role as central authority is weakened by a discontinuation of its use in central procurement, including framework agreements. Administrative capacity is weakened by high turnover among procurement officers at both the central and local levels; procurement officers in Kosovo remain vulnerable to interference and intimidation; all this has a negative impact on the quality of public procurement.<sup>361</sup>

The Law on Public Procurement (LPP) (2003/17), amended in 2007, determines that in general tender procedures are open. However, the law foresees three types of procedures, including exceptions to the open procedures: open, restricted and negotiated procedures. The use of negotiated procedures is regulated by law, though the use of negotiated procedures has increased significantly in 2008 and 2009 which is not recommendable due to its less transparent nature.

In 2008, negotiated procedures represented only 3.39% of the overall number of contracts, however, marking an increase of 227% in comparison to 2007.<sup>362</sup> Nevertheless, even the use of open procedures in 2008 marked an increase of 96% in comparison to 2007. In 2009, the value of contracts signed by CAs was approximately 780 million Euros or approximately 6% less than in

<sup>358</sup> Decisions of the PRB can be accessed on its Webpage: <http://www.oshp-ks.info/>

<sup>359</sup> European Commission, 2009: 31.

<sup>360</sup> European Commission, 2009: 31.

<sup>361</sup> Ibid.

<sup>362</sup> Public Procurement Regulatory Commission, Raporti mbi Aktivitetet e Prokurimit Publik në Kosovë për vitin 2008 (Annual Report on Public Procurement Activities in Kosovo for 2008), February 2009, p.21. <http://www.ks-gov.net/krpp/> [accessed May 29, 2010].

2008<sup>363</sup> (the Budget of Kosovo is a little over 1 billion Euros.) The year 2009 marked a slight increase in the use of open procedures which is considered a positive trend by the PPRC since open procedures are also more transparent.<sup>364</sup>

According to the PPL, the two key criteria to awarding a tender are 'lowest price' and 'Most Economically Advantageous Tender – MEAT', where advantage should be granted to the lowest price while the most economically advantageous tender is used in specific cases.<sup>365</sup> In 2008, 56% of tenders were awarded based on the 'lowest price' criterion, while 44% were awarded based on the 'most economically advantageous tender' criterion, whereas in 2009 the result is 54% to 46% respectively.<sup>366</sup> According to SIGMA, contracting authorities have limited discretion to decide on the award criteria, and it appears to be very difficult to design tender dossiers where price and quality play a central function, consequently, contracting authorities prefer to use the lowest-price criterion, which may result in contracts that hardly consider quality and life-cycle costs.<sup>367</sup> Nevertheless, the 'lowest price' criterion is very clear and does not allow much space for manipulation, in contrast to the 'most economically advantageous tender' criterion which allows space for interpretation.

All public procurement officers from the central level (ministries, executive agencies, etc.) and those from public companies or any other public institutions, must undergo training and certification every year. Trainings are organized by the KIPA in cooperation with the PPRC. This is done to introduce procurement officers to the law and to refresh their knowledge, but has been deemed to be an excessive burden, with more emphasis on the theory than practice.<sup>368</sup>

According to the PPL, every contracting authority must designate a person to act as Procurement Department Head, Officer, who must hold a university degree and a Procurement Professional Certificate issued by the KIPA.<sup>369</sup> The Procurement Department is usually comprised of two to four persons.

According to the PPL, Section 20, on the initiation of a procurement activity, the Head of Administration, Personnel Manager or Chief Executive Officer of a Contracting Authority shall designate an Authorizing Officer (AO) for each procurement activity organized by their insti-

<sup>363</sup> Public Procurement Regulatory Commission, 2010: 7.

<sup>364</sup> Public Procurement Regulatory Commission, 2010: 15-16.

<sup>365</sup> SIGMA, 2009: 5.

<sup>366</sup> Public Procurement Regulatory Commission, 2010: 21.

<sup>367</sup> SIGMA, 2009: 7.

<sup>368</sup> SIGMA, 2009: 12.

<sup>369</sup> Ibid.

tution. The latter may initiate procedures on the proposed activity only upon obtaining the written consent of the Finance Director that the legal requirements have been met. The AO initiates the procurement activity by submitting a written “Statement of Needs and Availability of Funds’ to the Procurement Officer (PO) and after this the management of the public procurement becomes an exclusive right of the PO. After this an Evaluation Committee comprised of three officers is appointed by the Contracting Authority in co-operation with the PO. The latter determines the criteria to be used in that tender, while based on those criteria the Evaluation Committee, who will also sign the contract on behalf of the CA, recommends the winning company to the PO.

According to the procurement law any economic operator may request additional information on the tender and upon examination the CA may approve or reject the request. The CA may determine that additional requested information is needed by the economic operators, it shall immediately provide such information by the most rapid means possible.

According to the law, notices of tender award must be sent to the winning company or economic operator, and the PPRC who will publish this on its website, and a notice on the winner should be placed in one of the daily papers. The notices must be in Albanian and in Serbian, and for large-value contracts in English as well, if considered necessary. The PPRC publishes all language versions on its website and in the Public Procurement Register.<sup>370</sup> Also, it is required that other tender participants are notified on the tender winner and also their elimination.

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<sup>370</sup> SIGMA, 2009: 5.

## Recommendations

- Higher salaries must be ensured for civil servants which would allow for a dignified living in accordance with their needs.
- Steps must be taken to depoliticize the public administration as well as for increasing the professionalism of civil servants.
- Though the legislation on civil service foresees open procedures for employment, nepotism has become endemic in the civil service, therefore strict measures must be taken to fight it in the public sector.
- Officials must be trained on how to implement the Law for Access to Official Documents which ensures transparency of the public sector in relation to Kosovo citizens.
- The right which the Ombudsperson had in the past to take to court the institutions which violate the rights of citizens should be returned to it to ensure justice and return the trust of citizens in the institutions.
- There must be a monitoring of the implementation of the Code of Conduct for Civil Servants and strict measures must be taken to ensure its full implementation.
- Continual trainings must be ensured for public sector officials in order to build a professional and impartial administration as is foreseen by the legislation.
- The capacities of the Kosovo Institute for Public Administration must be further built in order for this institution to offer trainings in accordance with the needs of Kosovo administration.
- The Procurement Review Body must be more transparent regarding the publication of its decisions and must improve the quality of its legal decisions.
- The use of negotiated procedure in public procurement by contracting authorities must be reduced substantially, because it is not an altogether transparent procedure.
- Contracting Authorities must respect the 'lowest price' criterion in public procurement, respecting the sub-criteria as well, since by law it is the main criterion and it allows less space for misuse.

**5.**

**LAW**

**ENFORCEMENT**

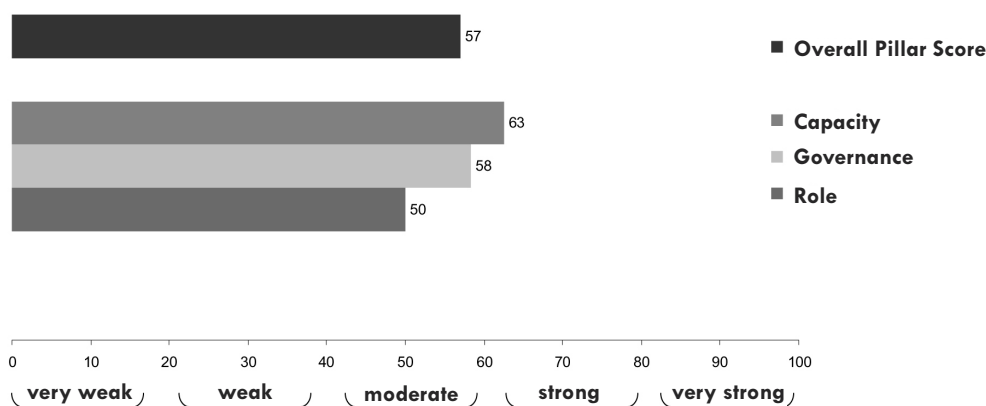
**AGENCIES**

## Overview

Law Enforcement agencies in Kosovo receive inadequate financial support while despite strong legal protection, they are subject to political interference. The budget for the Prosecution is 1.4% of the overall Kosovo budget which is not sufficient for an effectively functioning prosecution in Kosovo. Police officers have gone on strikes during 2010 as a result of their low wages. Oversight and disciplinary mechanisms within the police are not strong enough and need to be reinforced. The European Commission in its 2010 Progress Report for Kosovo notes that “Corruption, nepotism and political interference [in the law enforcement agencies] remain issues of serious concern.”

Legislation regulating the law enforcement agencies provides sufficient safeguards for independence, integrity and accountability, however, these safeguards lack effective implementation.

Transparency and accountability of law enforcement agencies are rather weak. Law enforcement agencies of Kosovo do not receive training nor are they encouraged to apply principles of transparency and accountability. Senior appointments in law enforcement agencies are politically motivated. The State Prosecutor in Kosovo does not have a website and most people in Kosovo cannot link the face of state prosecutor with his name. Prosecution of corruption by law enforcement agencies is weak mainly as a result of political interference.



## Structure & organisation

Law enforcement agencies operating in Kosovo include: State Prosecutor, Police, Special Prosecutor, the Task Force against Corruption and the European Union Rule of Law Mission (EULEX).

The State Prosecutor is an independent institution with authority and responsibility for the prosecution of persons charged with committing criminal acts or other acts as specified by law. The State Prosecutor is an impartial institution and acts in accordance with the Constitution and the law. The organization, competencies and duties of the State Prosecutor are defined by law (no: 03/L-225) approved by Kosovo Parliament on September 30, 2010. The State Prosecutor reflects the multi-ethnic composition of the Republic of Kosovo and respects the principles of gender equality.

European Union Rule of Law Mission (EULEX) for Kosovo is established by the Council Joint Action 2008/124/CFSP of 4 February 2008. EULEX's mission is to assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs services, ensuring that these institutions are free from political interference and adhere to internationally recognized standards and European best practices. EULEX is managed by the Chief of Mission who is under political control and strategic direction from the Political and Security Committee

EULEX has a police component, co-located where appropriate with the Kosovo Police Service, including at the border crossing points: a justice component (co-located where appropriate with the relevant Ministries), the Kosovo judiciary, the Kosovo Property Agency, the Kosovo Correctional Service, and a customs component (co-located where appropriate with the Kosovo Customs Service.)

In February 2010, the Government in cooperation with EULEX established the "Task Force" against corruption and organized crime.<sup>371</sup> The Task Force has 30 police investigators and 10 special prosecutors.<sup>372</sup>

The Special Prosecution Office of the Republic of Kosovo (SPRK) is established as a permanent and specialized prosecutorial office operating within the Office of the State Prosecutor of

<sup>371</sup> FOL Movement [http://levizjafol.org/images/uploads/files/Corruption\\_Monitor\\_-\\_February\\_20101.pdf](http://levizjafol.org/images/uploads/files/Corruption_Monitor_-_February_20101.pdf)

<sup>372</sup> See KIPRED report "Strengthening Rule of Law: Fight against corruption and organized crime" page 22

Kosovo. The SPRK is composed of ten Kosovo Public Prosecutors. The Head of the SPRK will be selected from amongst the Special Prosecutors. Currently the head of SPRK is an EULEX Prosecutor while the Deputy Head of SPRK is a local prosecutor.

### **Resources (practice) – 3**

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

Financial resources are limited for law enforcement agencies despite the overall progress that Kosovo made in the last two years (2009 and 2010) in fostering the rule of law. The Parliament of Kosovo in 2010 approved the law on the Courts, State Prosecutor and Prosecutorial Council.

While salaries for Prosecutors have increased since January 2011,<sup>373</sup> the salaries for the administrative staff that work for prosecutors remain at the same level; thus it is a hindrance in attracting qualified and committed staff. In general State Prosecutor in Kosovo is heavily dependent on technical/consultancy support by international donors in the absence of qualified local staff.

The budget for the Kosovo police is not sufficient. The Kosovo Police salaries are within the average salary of Kosovo. In February 2010 some units of Kosovo Police went on strike demanding higher salaries. The strike ended after an agreement with the Kosovo Government to increase the salaries.<sup>374</sup> In 2011 the Parliament has raised the salaries for 23% for public servants including the Police. Different departments of the Kosovo Police are not fully staffed while regional units lack expertise and equipment.<sup>375</sup> Furthermore the European Commission 2010 progress report for Kosovo notes that “the strikes within the police during 2010 have illustrated managerial deficiencies, dysfunctional trade unions and political interference.”

The Kosovo Police is also heavily supported by European Union Rule of Law Mission in Kosovo. This support is financial and also in terms of human capacity. Kosovo police equipment allows the institutions to provide basic services. The special police branches such as the Riot Control Police are well equipped. However the European Union Progress Report for 2010 for

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<sup>373</sup> Law on Courts came into power from 01 January 2011. The law foresees the salary of the Judges and Prosecutors to be at the same level with the Government Minister.

<sup>374</sup> <http://www.koha.net/index.php?cid=1,7,10756>

<sup>375</sup> 2010 Progress Report for Kosovo of the European Commission, page 52



Kosovo notes that some aspects of the Kosovo Police need to be upgraded, such as Kosovo Police Information System. Kosovo's vehicle information system is not connected to this system, which limits performance of the police.<sup>376</sup> EULEX has successfully sought to mentor and advise the relevant senior KP staff on the development of a strategy to recruit, train and, most importantly, retain a team of local IT/Comms specialists in order to end the dependency on foreign specialists.<sup>377</sup>

The 2010 Progress Report for Kosovo by the European Commission notes that the Directorate against economic crime and corruption in the Kosovo Police lacks proper equipment and needs strengthening and furthermore the Prisoner Escort Unit still cannot perform its task adequately, due to a lack of equipment and low security standards.<sup>378</sup>

Every prosecutor has a computer, a desk and an office although in terms of space it may happen that a very small office is shared by two or three prosecutors. The issue of the offices and space for the Judiciary in general and Prosecutors in particular, is expected to be addressed when the "Justice Palace" is constructed. This project is supported by the European Commission. In April 2010, the Liaison office of the European Commission in Kosovo presented the feasibility study for the building and declared that 25 Million Euros have been allocated<sup>379</sup> for the project.

The district prosecutor's office for Prishtina municipality, the busiest Prosecutor, lacks prosecutors. According to the chief Prosecutor of the state, this problem has been addressed recently, as 45 vacancies for prosecutors have been opened. The resources required to address the backlog of the files with Prosecution are limited. Kosovo has the lowest number of Prosecutors per 100.000 inhabitants<sup>380</sup>.

## Independence (law) - 4

*To what extent are law enforcement agencies independent by law?*

The legal bases in Kosovo are sufficient in ensuring that the law enforcement agencies are protected from political interference. The Constitution of the Republic of Kosovo in article 109, point 1 and 2 says that the State Prosecutor must be independent and impartial in exercising

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<sup>376</sup> Kosovo 2010 Progress Report by European Commission, page 54

<sup>377</sup> EULEX Programme Report 2010, page 2

<sup>378</sup> 2010 European Commission Progress Report for Kosovo, page 15

<sup>379</sup> <http://www.koha.net/index.php?cid=1,7,18532>

<sup>380</sup> See KIPRED report "Strengthening Rule of Law: Fight against corruption and organized crime" page 14

its duties in prosecuting crime and other offenses as described by law.<sup>381</sup> The Law on the State Prosecutor secures, legally, the independence and impartiality for prosecutors.<sup>382</sup> Prosecutors are appointed by the President of the Republic of Kosovo.<sup>383</sup> Prosecutors are legally protected from receiving instructions or interference from other authorities, according to the law any attempts to interfere with the process of investigations is considered illegal.<sup>384</sup>

Prosecutors in Kosovo are appointed and removed by the President of the Republic based on the proposals from the Kosovo Prosecutorial Council.<sup>385 386</sup> Article 19 of the Law on the State Prosecutor establishes the criteria and conditions for someone to qualify as a candidate for becoming a Prosecutor. Articles 109 and 110 of the Constitution are insurance for the independence of the prosecutors. Additionally, the principle of independence of prosecutors is enshrined in the law on State prosecutor and the Law on the Kosovo Prosecutorial Council. The respective laws establish a sound framework for the recruitment, selection and disciplining for the prosecutorial system.<sup>387</sup>

The mandate of the Chief State Prosecutor is seven years, without the possibility of reappointment. The State Prosecutor is organized and structured based on the Law for State. The State Prosecutor, according to the respective law, is defined as the independent institution responsible for prosecution of individuals involved in illegal acts. The State prosecutor is comprised of: Prosecutors, Appeals Prosecutor, Special Prosecutor and office of the Chief State Prosecutor. Each Chief Prosecutor shall be the administrative head of the office to which he/she is appointed.<sup>388</sup>

The Kosovo Special Prosecution is established by law number 03/ L-052, promulgated as law on March 13, 2008. The Special Prosecution is led by an EULEX prosecutor<sup>389</sup> while the deputy head of special prosecution is a local prosecutor. The Special Prosecution specializes in fighting organized crime and war crimes, among other responsibilities.<sup>390</sup> The Chief Prosecutor of the Special Prosecution reports to the EULEX Chief Prosecutor.<sup>391</sup>

<sup>381</sup> Article 102, point 4 of the Constitution of Kosovo

<sup>382</sup> Article 3, point 1 of the Law on State Prosecutor

<sup>383</sup> Article 84 of the Constitution of the Republic of Kosovo on the responsibilities of the President of Kosovo (, points 15,16 and 17)

<sup>384</sup> Law on State Prosecutor – Article 3, point 3

<sup>385</sup> Article 84, points 17 and 18 of the Constitution of the Republic of Kosovo

<sup>386</sup> Article 84 of the Constitutions of Republic of Kosovo, points 15, 16,17 and 18

<sup>387</sup> EULEX interview with the author

<sup>388</sup> Law on State Prosecutor, article 13.2

<sup>389</sup> Law on Special Prosecution no. 03/ L-052, article 16.3

<sup>390</sup> Law on Special Prosecution no. 03/ L-052, article 5, letters (n) and (f)

<sup>391</sup> Law on Special Prosecution no. 03/ L-052, article 16.4

Political interference with the activities of the State Prosecutor is illegal and prohibited by law.<sup>392</sup> The Kosovo prosecutorial council guarantees the independence and impartiality of the State Prosecutor.<sup>393</sup> The Prosecutor cannot be instructed by another authority not to prosecute specific cases, however Regional or Municipal Head Prosecutors may request the Chief Prosecutor of the Special prosecution to review the decisions to investigate a specific case.

In February 2010, the Kosovo Government established the anti-corruption task force that operates as part of the Special Prosecution. 8 prosecutors, 5 local and 3 international work on the task force<sup>394</sup>.

## Independence (practice) – 2

*To what extent are law enforcement agencies independent in practice?*

In its 2010 progress report for Kosovo, European Commission states that the [prosecution] remains weak and vulnerable to political interference. The same report also notes that there are cases when Prosecutors' refused to deal with sensitive cases.

According to Transparency International, 38% believe the justice sector in Kosovo, which includes the State Prosecutor, to be Kosovo's most corrupt institution.<sup>395</sup> Around two hundred (200) candidates, that had previously worked as Judges or Prosecutors, did not pass the first ethics exam during the appointment process of judges and prosecutors.<sup>396</sup>

The Ethics test is designed to test the independence, impartiality and links with corruption or other illegal activities of the potential candidates for Prosecutors. This result demonstrates that in practice the Prosecutors are highly exposed to political interference and corruption.

Appointment of senior staff in the law enforcement agencies is seen as a highly political process not based on merit and professionalism.<sup>397</sup> Clans or groups of interest are well established in the Kosovo Police, thus influencing appointments in this institution.<sup>398</sup>

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<sup>392</sup> See article 3.3 of the Law on State Prosecutor (03/L-225)

<sup>393</sup> See article 110.1 of the Constitution of the Republic of Kosovo

<sup>394</sup> FOL Movement's Corruption Monitor report for 2010, February 2011, , page 6

<sup>395</sup> The Economist. "Time to go straight." March 18, 2010

<sup>396</sup> Interview of Mr. Betim Musliu, journalist for TV show "Justice in Kosovo" of Balkan Investigative Reporting Network

<sup>397</sup> Kosovo Police Director Mr. Behar Selimi is now a Member of Parliament from Kosovo Democratic Party.

<sup>398</sup> Interview of Florian Qehaja, PhD Candidate, Senior Researcher at NGO "Kosovar Center for Security Studies"

On October 22, 2010, the acting President of the Republic, Mr. Jakup Krasniqi, appointed 182 Judges and 45 Prosecutors.<sup>399</sup> The media reported that Mr. Krasniqi edited the list that was sent from the Kosovo Judicial Council.<sup>400</sup> While Mr. Krasniqi as acting President had the constitutional right to do this, as described in article (84) of the Constitution, he was at the same time exercising also the duties of the General Secretary of the Democratic Party of Kosovo. Civil Society of Kosovo considered the appointment of judges and prosecutors by Mr. Krasniqi and also the editing of the list proposed by the Kosovo Judicial Council as a conflict of interest.<sup>401</sup>

The FOL Movement! criticized some members of the Kosovo Judicial Council for having conflicts of interest in the process of appointment of judges and prosecutors. Three members of the Kosovo Judicial Council: Chairwomen Mrs. Lirie Osmani, Mr. Bilgaip Maznikar and Mr. Zhivojin Jokanovic were also active lawyers.<sup>402</sup> The Kosovo anti corruption agency later confirmed the allegations of the FOL Movement! thus causing the three members to resign from their positions.<sup>403</sup>

A lack of effectiveness of law enforcement agencies has contributed to widespread corruption in the government.<sup>404</sup> In the highly political environment of Kosovo and because of threats, prosecutors hesitate to take the lead in bringing forward cases of corruption or organized crime.<sup>405</sup>

Although EULEX has powers to investigate and try cases of corruption and organized crime, the mission has failed to meet the expectations of the public with any tangible results. The EULEX Anti-Corruption Task Force was called moribund in the report by the National Committee on American Foreign Policy in a report titled "Realizing Kosovo Independence" published in May 2010. The report further noted the bureaucratic challenges that EULEX faces with a divided Brussels on Kosovo. EULEX investigations of corruption at the highest levels have shown gaping holes in regulation and enforcement.<sup>406</sup>

<sup>399</sup> <http://www.gazetaexpress.com/?cid=1,15,40492>

<sup>400</sup> Indeksonline.net news agency

[http://indeksonline.net/portal/index.php?option=com\\_content&view=article&id=66229:krasniqi-nderron-listen-e-gjyqtareve-ne-zyre&catid=1:lajme&Itemid=29](http://indeksonline.net/portal/index.php?option=com_content&view=article&id=66229:krasniqi-nderron-listen-e-gjyqtareve-ne-zyre&catid=1:lajme&Itemid=29)

<sup>401</sup> The 2010 Progress Report for Kosovo by European Commission states that: "Political interference in the re-appointment process and proposals made by the Kosovo Judicial Council is an issue of serious concern"

<sup>402</sup> FOL Movement report "The Odyssey of appointment of Judges and Prosecutors", February 2010, page 1

<sup>403</sup> Interview with Mr. Ramadan Ilazi, executive director of FOL Movement

<sup>404</sup> Department of State 2009 Human Rights Report – Kosovo (March 11, 2010) concluded that: a lack of effective judicial oversight and general weakness in the rule of law contributed to corruption in the government

<sup>405</sup> EULEX Programme Report 2010, page 32 (<http://www.eulex-kosovo.eu/docs/tracking/EULEX%20Programme%20Report%202010%20.pdf>)

<sup>406</sup> International crises group - Europe report n°204 (19 may 2010) - The rule of law in independent Kosovo, page 1

Although EULEX is required by the Joint Action Plan to be operational throughout the country, the north of Kosovo is an exception, where EULEX is almost invisible thus supporting a lawless situation in Mitrovica, the north especially. The International Crises Group report on May 2010 notes that “out of excessive caution, the EU has not based its police in the North, leaving the area free for organized criminal gangs.”<sup>407</sup>

Overall, in practice law enforcement agencies need to work further on ensuring adequate internal investigation of corruption and stop political interference in their work. The 2010 Progress Report for Kosovo by the European Commission states that the “Law enforcement agencies need to step up considerably their efforts to fight internal corruption, free of political interference.”

The general perception is that there is political interference in the investigations and on the work of the Kosovo Police Inspectorate.<sup>408</sup> Political interference in the re-appointment process of judges and prosecutors was noted as a concern in the 2010 progress report for Kosovo by the European Commission<sup>409</sup> Senior appointments in the Kosovo Police are perceived as political appointments of people linked with SHIK.<sup>410</sup> Kadri Arifi, director of the Crime Department of the Kosovo Police was a former SHIK official.<sup>411</sup> Furthermore, four out of six regional directors of Kosovo Police are former members of SHIK.<sup>412</sup>

The political level of public institutions tends to interfere in the work of law enforcement agencies. In 2009 the safe room for evidence of the Kosovo Police in Prishtina was broken into and a lot of evidence and other materials inside were stolen. The Minister of Internal Affairs created a special task force to investigate the crime without the participation of a Prosecutor on the team, thus interfering politically in the process.<sup>413</sup> The 2010 progress report for Kosovo of the European Commission notes that “the strikes within the police during the reporting period have illustrated managerial deficiencies, dysfunctional trade unions and political interference.”

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<sup>407</sup> International Crisis Group – Report on Europe n°204 (19 May 2010) – Rule of Law in the independent Kosovo

<sup>408</sup> Interview with Mr. Burim Ramadani

<sup>409</sup> Progress Report 2010 for Kosovo, page 10

<sup>410</sup> SHIK – Kosovo Informative Service operated as informal intelligence agency until 2008 when its chief Mr. Kadri Veseli made a public statement in Radio Television of Kosovo that SHIK was dissolved. SHIK operated under the authority of Kosovo Democratic Party (PDK)

<sup>411</sup> Interview with Mr. Burim Ramadani

<sup>412</sup> Interview with Mr. Burim Ramadani

<sup>413</sup> Interview with Mr. Burim Ramadani

## Transparency (law) – 4

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

The Law on the disclosure of wealth and assets of high public officials ensures the transparency and access to assets and wealth of public officials. Regarding access to case files, everyone can access his/her case files if he /she is party to the case.<sup>414</sup> This applies to victims of crime as well. Furthermore, the victims of crime may access case files also based on the law for access to public documents.

Prosecutors have to declare their assets, wealth and gifts every year; these declarations are compiled and published.<sup>415</sup> In 2003 the Kosovo Parliament passed the Law on Access to Official Documents<sup>416</sup> which regulate the right of the citizens of Kosovo to demand and have access to official information. In October 2010 the Kosovo Parliament adopted a new law on access to public documents which replaces the 2003 law.

In 2010, Kosovo also adopted the law on classification of official information and documents and the law on protection of personal data. The scope of the law is described under article two and it states that the Law regulates the public control of the property of senior public officials, income or other material benefits, financial obligations of the public officials, family members and persons related to them, including the sanctions defined by this law. Senior public officials are obliged to declare their property to the Agency no later than 31 March of each year.<sup>417</sup> Senior Public Officials who have declared their property in the previous year, are obliged before 31 March of every year to declare every change in their property situation.<sup>418</sup> Based on article 8 of the law on declaration and origin of the property and gifts of senior public officials, the Agency may request at any time from the Senior Public Official to submit information on their assets and wealth.

Article 10 of the law restricts senior public officials from gaining wealth and receiving gifts for performance of their duties. The article states that “Official persons cannot require or receive gifts or other preferences for himself, nor for close family members, related to exercising the official duties and which influence or may influence in exercising the official duties, except protocol gifts or casual gifts with a small value.” All received gifts must be registered according to the law.<sup>419</sup> Article 16 of the law establishes punitive provisions. Senior public officials who do not declare their property and gifts can be fined from 300 Euros up to 1,000 Euros <sup>420</sup>.

<sup>414</sup> Interview of EULEX with the author

<sup>415</sup> EULEX Interview with the author

<sup>416</sup> Law no 2003/12, approved on 16 of October 2003

<sup>417/418</sup> Article 6 of the Law on declaration and origin of the property and gifts of senior public official No. 03/L-151,

<sup>419</sup> Article 11.1 of the Law on declaration and origin of the property and gifts of senior public official.

<sup>420</sup> Article 16.1 of the Law on declaration and origin of the property and gifts of senior public official



### Transparency (practice) – 3

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

In practice the assets are disclosed through the website of the agency against corruption. Also, the Central Election Commission makes public the asset statement of candidates running for the Kosovo Parliament.

However, there is no oversight or verification of the statements. Furthermore the statements on wealth, gifts and assets of high public officials became accessible to the public only in 2010 and the agency against corruption withholds statements from previous years, making independent verification of the statements impossible.

The state budget which also allocates the budget for law enforcement agencies is allocated through a transparent process through hearings in the Kosovo parliament, however, influencing this process is almost impossible from the public side.

Almost all law enforcement agencies, besides the Special Prosecution and State Prosecutor, maintain relatively good contact with the public; however the information that is received is by the chosen of the respective agencies rather than responses to requests for information.<sup>421</sup> Also, almost all law enforcement agencies operate websites that provide at least basic information on their particular agency.

The State Prosecutor does not have a website and it was difficult in 2009 for the FOL Movement to find the offices of the State Prosecutor for even the Ministry of Justice and other justice institutions did not know the exact address of the State Prosecutor. In 2010 the FOL Movement made efforts to support the State Prosecutor in establishing a website, however, BIRN-Kosovo<sup>422</sup> killed the initiative claiming it was a conflict of interest although the Agency against Corruption later confirmed there was no conflict of interest for an NGO to fund the website of the State Prosecutor.

Senior management in the Kosovo Police does not declare their wealth and assets. Kosovo does not have witness protection law or program,<sup>423</sup> thus hindering fight against corruption, organized crime and abuse of public authority.

<sup>421</sup> Interview with Mr. Ramadan Ilazi, executive director of FOL Movement.

<sup>422</sup> BIRN – Kosovo, Balkan Investigative Reporting Network Kosovo slammed the FOL Movement's initiative in their weekly Justice in Kosovo TV show.

<sup>423</sup> Interview with Mr. Burim Ramadani with the author

However, the implementation of the law is very weak, with public institutions using the law more often to refuse rather than allow access to official documents. In 2010 the Ministry of Transport and Telecommunication refused the FOL Movement and the GAP Institute access to the contract for building the highway Morine-Merdare on the basis that the document was a public interest thus contradicting the legal principle itself. The FOL Movement filed a lawsuit against the ministry and the organization which is pending.

## **Accountability (law) – 4**

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

In general, prosecutors investigate and prosecute officials if charged with corruption.<sup>424</sup> The agency against corruption has the authority to investigate any public official who is suspected of misconduct or corruption.<sup>425</sup> Law enforcement officials are not immune from criminal prosecution, with the exception of EULEX staff.

All Prosecutors in the Republic of Kosovo report and are accountable to the Chief State Prosecutor and the Prosecutorial Council of Kosovo.<sup>426</sup> The Prosecutorial Council of Kosovo is also responsible to propose the dismissal or appointment of Prosecutors in Kosovo. In this context Prosecutors, if asked, are obliged to give reasons/information to the Chief State Prosecutor and/or Prosecutorial Council on their decisions whether or not to prosecute. According to article 13 of the Law on State Prosecutor, respective Chief Prosecutors assign duties for prosecution or investigation to Prosecutors with the permission/awareness of the Chief State Prosecutor.

The injured party can prosecute even if the prosecutor has dismissed the case, thus pursuing a private prosecution with the institutions.<sup>427</sup> Public officials up to now have had immunity from prosecution for their misconduct. The State Prosecutor of Kosovo who is at the same time chairperson of the Kosovo Prosecutorial Council is appointed and may be dismissed by the President of Kosovo, therefore the State Prosecutor is accountable to the President of Kosovo.<sup>428</sup>

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<sup>424</sup> Law on State Prosecutor

<sup>425</sup> Law on Agency against corruption

<sup>426</sup> See article 13.1 of the Law on State Prosecutor

<sup>427</sup> EULEX Interview with the author

<sup>428</sup> Article 109.7 of the Constitution of the Republic of Kosovo



The Ombudsperson Institution is an important provider of support and legal aid to citizens who have faced abuse of public authority. Citizens can complain to the ombudsperson institutions violations of ethics and misconduct by public officials. There is an office of the Disciplinary Prosecutor who is in charge of investigating internal violations of ethics by Prosecutors and Judges.<sup>429</sup>

The Kosovo Prosecutorial Council is responsible to recruit, propose, promote, transfer and discipline prosecutors as regulated by the law<sup>430</sup> and there is also the office of the Disciplinary Prosecutor. The Kosovo Judicial Council is responsible for recruitment and disciplining of judges in the Judiciary of Kosovo.<sup>431</sup> Judges are accountable to the Kosovo Judicial Council and Prosecutors are accountable to Kosovo Prosecutorial Council. The Chief Prosecutor of the Special prosecution reports to the EULEX Chief Prosecutor.<sup>432</sup>

Citizens can report police misconduct to the Police Inspectorate<sup>433</sup> and every police station has an ethics office that is charged with receiving complaints from citizens on police misconduct. Furthermore, citizens can also present their complaints to and seek assistance from the Ombudsperson institution<sup>434</sup> and Legal aid commission and receive pro-bono legal services. In Kosovo there are no public officials immune from criminal proceeding.

The International Crisis Group in their report of May 2010 titled the "Rule of law in independent Kosovo" says: "Institutions that monitor the justice system – the Kosovo Judicial Council (KJC), which oversees judges, the Police Inspectorate of Kosovo (PIK) and the justice ministry, which supervises prosecutors – are not working properly."<sup>435</sup>

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<sup>429</sup> Interview with Mr. Betim Musliu

<sup>430</sup> Article 110.2 of the Constitution of the Republic of Kosovo

<sup>431</sup> Article 108.3 of the Constitution of the Republic of Kosovo

<sup>432</sup> Article 16.4 and 16.6 of the Law on Special Prosecution

<sup>433</sup> EULEX interview with the author

<sup>434</sup> Interview of Florian Qehaja with the author

<sup>435</sup> International crises group - Europe report n°204 (19 may 2010) - The rule of law in independent Kosovo, page 2

## Accountability (practice) – 3

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

In practice the relationship between the law enforcement agencies and the public is not in line with the principle of accountability. Public officials do not see citizens as eligible to hold them accountable or as someone to whom they should answer.<sup>436</sup> Many citizens in Kosovo cannot link the name of the State Prosecutor with his face which proves for a very low public profile of the state prosecutor.<sup>437</sup> While the Special Prosecution of Kosovo issues quarterly, biannual and annual reports which they submit to the State Prosecutor.

Furthermore, the lack of a program and legislation for witness protection presents a serious obstacle in effectiveness of law enforcement agencies as they face difficulties in building cases for criminal proceedings.

The Human Rights Review Panel serves as an independent body to receive and treat the complaints of citizens for EULEX personnel misconduct.<sup>438</sup> This panel is comprised of only international members and the demand by civil society for having local members in the panel was refused.<sup>439</sup> The effectiveness of the panel is not yet assessed by an independent institution. However, the panel is open to receive and proceed complains by citizens.

The Disciplinary Commission within the Kosovo Police has been non-functional in practice since 2008.<sup>440</sup> Police officers are disciplined on a selective basis meaning that disciplinary actions are sometimes used for political purposes against police officers who are investigating important cases.<sup>441</sup>

The Comprehensive Proposal for the Kosovo Status Settlement also known as “Ahtisaari Plan” is embodied in the constitution of Kosovo and it is obligatory for Kosovo institutions to implement as stated in the declaration of independence of Kosovo.<sup>442</sup> The Plan establishes the institution of the International Civilian Officer which in the eyes of this report is seen as a crucial mechanism of accountability for public institutions in Kosovo and a tool to ensure the integrity of law enforcement agencies.

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<sup>436</sup> Interview with Mr. Ramadan Ilazi, Executive Director of FOL movement

<sup>437</sup> Interview of the author with Mr. Ramadan Ilazi, Executive Director of FOL Movement

<sup>438</sup> The European Union established the Human Rights Review Panel (the Panel) on 29 October, 2009 with a mandate to review alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate. <http://www.hrrp.eu>

<sup>439</sup> Interview with Mr. Ramadan Ilazi, Executive Director of FOL Movement

<sup>440</sup> Interview with Mr. Burim Ramadani, with the author

<sup>441</sup> Ibid

<sup>442</sup> [http://kuvendikosoves.org/common/docs/Dek\\_Pav\\_sh.pdf](http://kuvendikosoves.org/common/docs/Dek_Pav_sh.pdf) (Point 3 of the declaration states that Kosovo institution accept to implement all provisions of the Ahtisaari Plan)

The International Civilian Representative (ICR) according to annex XIV, article 2, has the power to take corrective measures in order to ensure the implementation of the Ahtissari Plan that include, but are not limited to, annulment of laws or decisions adopted by Kosovo authorities.<sup>443</sup> Furthermore the ICR shall have the authority to sanction or remove from office any public official.<sup>444</sup>

Supervision based on performance of judges and prosecutors is weak.<sup>445</sup> The State Prosecutor's office has failed to effectively supervise regional prosecutors<sup>446</sup> which is a hindrance to internal accountability thus causing a lack of effectiveness and efficiency in the Prosecution. Furthermore, this also means or brings into light hierarchical issues within the institution of the Prosecution in Kosovo.

## Integrity (law) – 4

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

There is an ethics code for the Kosovo Police.<sup>447</sup> There is a Code of Ethics and Professional Conducts for Prosecutors adopted in April 2006. Some professional activities may be deemed incompatible with prosecutorial activities during the exercise of or after the completion of prosecutorial duties, some can be or have to be authorized by the Chief State Prosecutor or expressly permitted by law or sub-legal act issued by the council. A disciplinary council is established with the law on the Kosovo Prosecutorial Council in order to investigate prosecutors.

In the exercising of their official duties, officers of the Agency against Corruption enjoy full independence and it is illegal for anyone to impose or pressure them when they take certain concrete actions in accordance with the law.<sup>448</sup>

Kosovo has a law on the prevention of conflicts of interest which applies to all public personnel including law enforcement officers.<sup>449</sup> While exercising public functions, public officials cannot establish or create dependence from other persons who could influence the impartiality and the expression of free will in decision making.<sup>450</sup>

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<sup>443</sup> Annex XIV of the Ahtisaari Plan, article 2

<sup>444</sup> Annex XIV of the Ahtisaari Plan, article 2

<sup>445</sup> 2010 Progress Report for Kosovo by European Commission, page 11

<sup>446</sup> 2010 Progress Report for Kosovo by European Commission, page 11,

<sup>447</sup> Interview with Mr. Betim Musliu

<sup>448</sup> Article 21 of the Law on Agency Against Corruption, no 03/L - 159

<sup>449</sup> Law on Prevention of Conflict of interest no. 02/L-133 approved by the Parliament of Kosovo on 2 of November 2007

<sup>450</sup> Article 9.5 of the Law on Prevention of Conflict of Interest

Article 9.6 of the Law on the Prevention of Conflict of Interest prohibits public officials from accepting or receiving other compensation or rewards other than their salary.

Upon termination of exercising of the public function, the same person does not have the right to be employed or to be nominated for leading positions or in auditing of the public and private enterprises within a period of one year, provided that, during the two year period immediately before the end of exercising a public function, his/her duties were directly related to monitoring or auditing of the businesses of the aforementioned enterprises.<sup>451</sup>

The Law on declaration of the origin of the property and gifts of senior public officials was approved by the Parliament of Kosovo on 11 February 2010.<sup>452</sup> The law mandates the agency against corruption to collect and analyze the statements on gifts, assets and wealth of senior public officials.

Punitive provisions on declaration of property by senior public officials are regulated in chapter V of the law. For not declaring the property when requested by the Agency, the senior public official or natural legal persons related to the senior public official will be punished with a fine from 500 (five hundred) Euros up to 1500 (one thousand five hundred) Euros. For not declaring the property regularly every year, the senior public official will be fined from 300 (three hundred) Euros up to 1000 (one thousand) Euros.

An Official cannot require or receive gifts or other preferences for himself, nor for close family members, related to exercising the official duties and which influence or may influence in exercising the official duties, except protocol gifts or casual gifts with a small value<sup>453</sup>.

The director of the agency against corruption must not have been convicted of a criminal offense, have high moral integrity and have at least five (5) years of professional work experience<sup>454</sup>.

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<sup>451</sup> Article 12.1 of the Law on Prevention of Conflict of Interest

<sup>452</sup> Law on Declaration, control and origin of , wealth, assets and gifts of senior public officials Nr. 03/L-15, approved by the Parliament on 11 of February 2010

<sup>453</sup> Article 10.1 of the Law on Declaration, control and origin of , wealth, assets and gifts of senior public officials Nr. 03/L-15

<sup>454</sup> Law on anti-corruption agency, article 8.3

## Integrity (practice) – 3

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

Kosovo has a law on prevention of conflict of interest and all laws establishing law enforcement agencies have specific provisions on conflicts of interest. The agency against corruption of Kosovo is responsible for the implementation of the law on conflicts of interest. Under this authority the agency investigates and issues verdicts on potential cases of conflict of interest. Furthermore, the law on the declaration of wealth and assets, the statement that the public officials need to file, is in a way a declaration of conflicts of interest. All law enforcement agencies have Codes of Ethics. These codes establish firm principles on the behavior of law enforcement officers and the values they need to respect. The codes also establish preventive measures for conflicts of interest. Nevertheless there is little or no independent information and assessment as to what extent these codes are respected or need revisiting.<sup>455</sup>

The European Commission's 2010 progress report for Kosovo notes that the declaration of assets of some senior officials has not been published and the available information revealed discrepancies between the income and properties of senior Kosovo officials. This according to the European Commission indicates widespread corruption at high levels in Kosovo and shows a lack of political will to fight corruption.

## Corruption prosecution (law and practice) – 3

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

Prosecutors are independent and autonomously lead their investigations. Prosecutors have the powers to do so vested in them by the Law.<sup>456</sup> Some investigation steps need to be authorized by the prosecutor, some by the judge upon the request of the prosecutor.

During 2009 the Kosovo Agency against Corruption stated that it had received 150 reports of corruption and estimated that corruption during the year had cost the government at least 30 million Euros (\$43 million.)<sup>457</sup> The report also notes the anti-corruption law and the provisional penal code each define corruption differently.<sup>458</sup> During 2010, the Kosovo police investigated

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<sup>455</sup> Interview with Mr. Ramadan Ilazi, executive director of FOL Movement

<sup>456</sup> Law on the State Prosecutor, article 3

<sup>457</sup> State Department Report on Kosovo / <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136039.htm>

<sup>458</sup> State Department Report on Kosovo / <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136039.htm>

228 individuals on suspicion for abuse of public authority.<sup>459</sup> Based on the annual report for 2010 the Kosovo Anti-corruption Agency has received 430 cases, where for 139 it has found enough evidence to commence the investigations. From 139 cases proceeded, 3 cases were evidenced against public prosecutors’.

In 29 cases the KACA had succeeded in proving the corruption and charges of criminality, which proceeded to the Kosovo Public Prosecutors, police and EULEX prosecutors.

There is lack of financial support and resources for judges and prosecutors to tackle some problems such as money laundering.<sup>460</sup> The prosecution of corruption is limited as a result of the lack of structural and professional capacities of the Kosovo Police.<sup>461</sup>

The law on the declaration of wealth and assets does not make a criminal act the false declaration of assets and wealth by public officials thus presenting a hindrance to prosecution of corruption since public officials may provide fake information and yet will not be held accountable.

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<sup>459</sup> FOL Movement 2010 Corruption Monitor page 21

<sup>460</sup> Kosovo Progress Report for 2010 by the European Commission

<sup>461</sup> See KIPRED report “Strengthening Rule of Law: Fight against corruption and organized crime” page 19

**Recommendations:**

- The Government needs to increase the budget for law enforcement agencies, and especially for the State Prosecutor and the Kosovo Police directorate against organized crime.
- The false statement of wealth and assets should be foreseen by the law as a criminal act.
- The coordination between law enforcement agencies should be further improved.
- Law enforcement agencies need to increase their participation in the budget making process.
- The code of ethics for the law enforcement agencies should be unified.
- The ethics tests for law enforcement officers should be unified.
- The oversight role and powers of the police inspectorate should be strengthened.
- Parliament should take a more active oversight role towards law enforcement agencies.
- The State Prosecutor should develop an interactive website for public relations.
- Special prosecution should inform the public on its work as is required by law.
- Law enforcement agencies should organize meetings with citizens to build trust and cooperation.





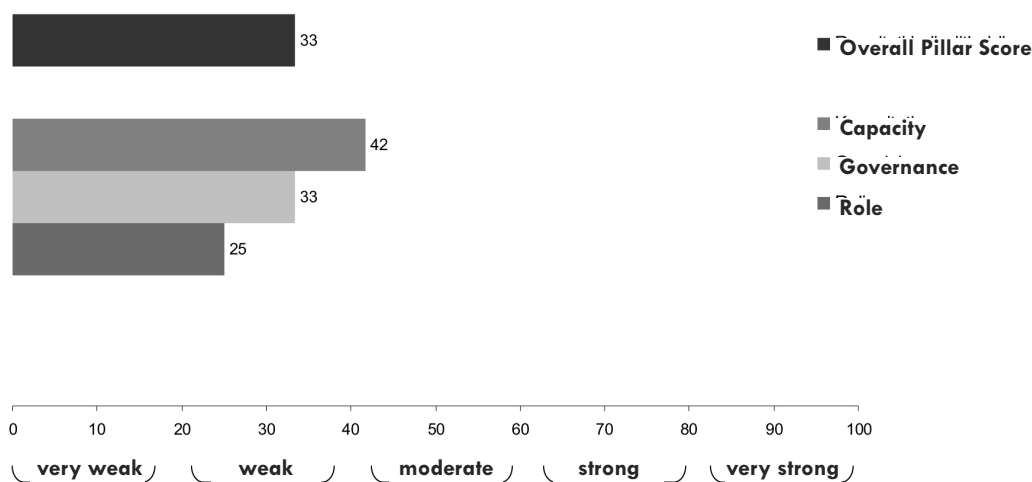
**6.**  
**CENTRAL**  
**ELECTION**  
**COMMISSION**

## Overview

The CEC's implementation of relevant laws is deficient and consequently legal violations are a frequent occurrence. In the past, violations were much more numerous due to the lack of competencies. The majority of observer reports emphasize the space created for manipulation with conditional votes and the poor voters' list, which in many aspects remains the Achilles' heel of Kosovo elections. Whether for cultural reasons or in order to gain benefits, family and group voting still perseveres, as is the case with assisted voting, especially in rural areas. There are recommendations to totally remove conditional voting and to remove by-mail voting for local elections only.

From the elections of 2000 until 2007, the Central Election Commission (CEC) was under the management and direct supervision of the OSCE Mission in Kosovo. Despite the international involvement and ample investments in capacity building, the recent bungling of elections in 2009 and 2010 showed that the situation has significantly worsened. After staff fluctuations at the beginning of summer 2009, the Central Election Commission appointed its senior leadership; however this has also proved itself insufficient for the great challenges ahead. CEC's lack of capacity was clearly demonstrated through the problems in managing its own budget. Irregularities in the electoral process were numerous and CEC relationship with other institutions remains unclear. Its political composition precluded an independent role and at best we have an institution that should be balanced politically, but in reality it is an entity subject to severe interferences, with consequent political bias, blockades, difficulties and procrastination.

A serious legal deficiency as identified by the majority of observer' reports, is that the legislation is not sufficiently clear with regard to complaints and appeals. Furthermore, a dysfunctional judiciary as the last instance for electoral disputes increases the pressure of political parties over the CEC in order to influence their decisions. Therefore, delays in results or inaccuracies on the voters' lists raised doubts beyond their perception as mere technical issues. Legislation needs to be amended in order to remove inaccuracies and the legal gap and it needs to take over competencies of drafting secondary legal acts and ensuring inclusion thereof in a comprehensive Election Code. Despite the fact that the legislation may be improved sufficiently, the implementation of existing provisions would improve the situation significantly.



## Structure and Organisation

Kosovo has a proportional electoral system whereby the whole country is made up of one district and citizens are able to vote for individual candidates as well. In order to be elected, a political entity needs to pass a 5% threshold in general elections. There is no threshold at the local level and every municipality is a district in its own right in local elections. The mayor and the municipal assembly are elected directly by the citizens, and in case there are no winners in the first round, two other candidates for mayor are elected in the second round from two final candidates.

The legal framework on elections in terms of its significance has the following hierarchy: (a) Comprehensive Status Settlement Proposal,<sup>462</sup> (b) Constitution,<sup>463</sup> (c) Law on Elections,<sup>464</sup> (d) Law on Local Elections,<sup>465</sup> (e) rules adopted by the CEC,<sup>466</sup> and (f) CEC decisions<sup>467</sup>. Transfer of legal competences and institutional independence from the OSCE was very difficult and did not create a sustainable capacity building effect for CEC. Also of significance are laws on local self-governance and law on administrative municipal borders.

<sup>462</sup> UNOSEK. Comprehensive Proposal for Kosovo Status Settlement. (26 March 2007). <http://www.unosek.org/unosek/en/status-proposal.html>

<sup>463</sup> Republic of Kosovo Constitution; <http://www.kushtetutakosoves.info/repository/docs/Kushtetuta.e.Republikes.se.Kosoves.pdf>

<sup>464</sup> Law Nr. 03/L-073 on General Elections in the Republic of Kosovo; [http://www.kqz-ks.org/SKQZ-WEB/al/legjislacioni/materiale/ligjetezgjedhjeve/zgjedhjetpergjithshme\\_al.pdf](http://www.kqz-ks.org/SKQZ-WEB/al/legjislacioni/materiale/ligjetezgjedhjeve/zgjedhjetpergjithshme_al.pdf)

<sup>465</sup> Law Nr. 03/L-072 on Local Elections in the Republic of Kosovo; [http://www.kqz-ks.org/SKQZ-WEB/al/legjislacioni/materiale/ligjetezgjedhjeve/zgjedhjetlokale\\_al.pdf](http://www.kqz-ks.org/SKQZ-WEB/al/legjislacioni/materiale/ligjetezgjedhjeve/zgjedhjetlokale_al.pdf)

<sup>466</sup> <http://www.kqz-ks.org/SKQZ-WEB/al/legjislacioni/mregullatezgjedhjeve.html>

<sup>467</sup> <http://www.kqz-ks.org/SKQZ-WEB/al/legjislacioni/vendimet.html>

The law regulates specifically how the members are appointed, their mandate etc. The CEC is made of eleven members (Chairperson and ten other members). The Chairperson is appointed by the Kosovo President from among the Supreme Court judges. Its core term of office is seven years. Ten other members are appointed after receiving nominations from the six largest political entities in Kosovo Assembly and four members represent the smallest ethnic communities.

The Election Complaints and Appeals Panel (formerly known as Commission – ECAC) is an independent body in charge of adjudicating complaints and appeals concerning the electoral process. It is independent from the CEC and its decisions are binding for the latter.

**Constitution and Law on General Elections:** The Constitution stipulates that the President shall be elected by the Assembly on a five-year term of office. Main issues related to elections are stipulated in the Comprehensive Status Proposal (frequently referred to as Ahtisaari’s Plan). This plan stipulated that the Constitution should define Kosovo Assembly as having 120 deputies elected by open lists (through a proportional system), with twenty of them set-aside for community representatives. The Proposal also foresees gender representation and it allows that apart from parties, coalitions, citizens’ initiatives and independent candidates also run for a seat. The Proposal stipulates that the Law on Local Elections may not be amended without a double majority, 2/3 of the total number of deputies and 2/3 of the number of minority deputies (after the first adoption).

The **Law on Elections** regulates the majority of aspects related to elections, including media, monitoring, campaign expenditures, appeals and complaints and political party registration, responsibilities and CEC operation etc. Notwithstanding this, frequent criticisms were addressed that this law is not a Code regulating all aspects related to elections.<sup>468</sup> This law gives great authority to the CEC and is criticized for giving huge power to the CEC in drafting secondary legislation.<sup>469</sup> This is a particularly grave problem because the CEC, through these means, regulates core election issues which should be codified by law.

The Constitution defines the CEC as a permanent independent body<sup>470</sup> and it also defines the number of members and appointment of its Chairperson. CEC is defined not only in the Constitution but also in the Comprehensive Status Proposal. The Chairperson is appointed by the President of Kosovo, drawn from the ranks of the Supreme or District Courts. Six members

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<sup>468</sup> Interview of Lutfi Haziri with Leon Malazogu, Prishtine, April 14, 2010.

<sup>469</sup> European Union Election Expert Mission to Kosovo. 15 January 2010. FINAL REPORT

<sup>470</sup> CEC was founded in accordance with Article 139 of Kosovo Constitution.

represent the main caucuses coming from the ethnic majority. The other two come from other communities, one from the Serbian community and the other from Non-Serbian minorities. The Constitution also defines the Assembly mandate, time of elections and when the President may announce new elections.

## Resources (Practice)

*To what extent does Central Election Commission possess adequate resources to achieve its objectives in practice?*

The CEC has not faced any funding issues and the budget allocated to them always met their needs. It has an allocated amount from the Kosovo Budget to cover expenses of the proper operation of the Secretariat, supported by the CEC budgetary proposal. The CEC prepares the request for the special budget sent to the Kosovo Government for every electoral year.<sup>471</sup> There is no regular increase of financial resources considering that there was no need for such.<sup>472</sup>

According to the Law on General Elections, the Kosovo Government finances the administration of election<sup>473</sup> whereas the CEC administers separate funds for elections according to the norms stipulated by the law.<sup>474</sup> The CEC adopts rules on allocation and use of funds necessary to hold elections by election commissions and proper operation of the CEC Secretariat in accordance with its competencies, taking into account applicable laws on the management of public finances.<sup>475</sup> Also, the CEC may receive donations, apart from money used for the electoral process, by not interfering in its independence and authority.<sup>476</sup> This possibility has until now not posed any risk of corruption as only international donor organizations have provided assistance to the CEC.

The CEC received timely and sufficient funding from public sources; however it had difficulties in managing its own budget to conduct elections.<sup>477</sup> The CEC receives financial assistance from international donors on a regular basis, however, at the same time, it has not succeeded in spending its budget in full after the 2009 elections. At the end of elections, CEC had a 3 million Euros surplus in its budget. Consequently, it may be said that there are sufficient funds but there is no managerial capacity and human resources. For example, investment of the surplus

<sup>471</sup> Article 66.8 Law on General Elections.

<sup>472</sup> Interview of an internal source from CEC with the author. 20 April 2010

<sup>473</sup> Article 113.1.

<sup>474</sup> Article 113.2.

<sup>475</sup> Article 113.4.

<sup>476</sup> Article 113.

<sup>477</sup> Ahmeti, Syle. 21 March 2010. 'KQZ-së i tepruan 3 milionë'. Kosova Sot <http://www.kosova-sot.info/politike/kqzse-i-tepruan-3-milione>

budget in voter education to increase the voter turn-out would have been a wise use of resources. Additionally, in relation to donors, CEC also experienced problems and failed to demonstrate full transparency.

The Secretariat of the Elections Complaints and Appeals Panel (ECAP) has an annual budget allocated from Kosovo Budget in order to cover expenses for proper operation of the Secretariat, based on the budget proposal submitted by the Supreme Court President.<sup>478</sup> There was a problem related to the ECAP budget at the time of its establishment around a month before the Election Day (October 2010). The funds were not put at the disposal in a timely manner and the opposition called this a political obstruction.<sup>479</sup> On a formal level, a contest existed as to whether ECAP was a part of CEC or not. Consequently, a question arose whether the ECAP should be funded by CEC funds or it was a special body requiring a special budget. Even though some expressed their concern that this might have been purposeful, it seems that this delay created confusion on whether or not the ECAP would be covered from the CEC budget.

Recently, there was another case when the CEC received less than half the funds it requested (230,000 out of 500,000 in total) in order to proceed with the run-off elections.<sup>480</sup> Some may interpret this as pressure, however, failure to complain and the ability to implement elections with as much, along with earlier arguments, merely illustrate the fact that CEC is not managing its budget properly. It is not clear what was the rationale or the discretionary powers, but there are no indications that this was an instance of limiting the independence of the CEC. Some analysts say that the dependence on Government dictates good relations and subordination of the CEC considering that the authorities may limit the budget significantly if they desire to do so.<sup>481</sup>

CEC capacities are rather low and this is especially true for the Secretariat. As throughout the public administration in Kosovo, hiring staff is not only conducted to carry out the tasks, but is also a form of social assistance to party fans. In this case, a senior opposition figure argued that the staff come exclusively from the ranks of the two main parties, PDK and LDK.<sup>482</sup> Financial and technical resources exist and fulfil the required standards. Human capacities are poor, weak management and staff politicization are the main issues, as is the lack of skills. Offices, transport and communication were not problematic thus far.<sup>483</sup> The Constitution stipulates

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<sup>478</sup> Article 123.5.

<sup>479</sup> Interview of Ardian Gjini with Leon Malazogu, Prishtinë, 14 July, 2010.

<sup>480</sup> Koha Net. 10 March 2010. <http://www.koha.net/index.php?cid=1,22,14190>

<sup>481</sup> Interview of Kujtim Kërveshi with Leon Malazogu, Prishtinë, 17 May, 2010

<sup>482</sup> Interview of Ardian Gjini with Leon Malazogu, Prishtinë, 14 July, 2010.

<sup>483</sup> Interview of an internal source from CEC with the author. 20 April 2010

that in case the Government is not established, the President calls for new elections within 40 days. The majority deem that the CEC is not capable of organising elections in the envisaged time-line.<sup>484</sup> However, despite the big challenges during the extraordinary parliamentary elections of 12 December, CEC showed a willingness and ability that within a very short period of time to achieve to organise and administer the electoral process. Rules and Guidelines of the CEC have helped the smooth running of the electoral process. On the other hand, despite this effort, some irregularities have been noted, which to some extent have resulted in damaging the electoral process.<sup>485</sup>

The majority of staff members have proper qualifications, but lack experience<sup>486</sup>. Equal opportunities for women and minorities are sufficiently ensured, however it is difficult to conclude whether this would have happened without the presence of the OSCE. There were many opportunities to train the core staff both by OSCE and IFES. However, some argued that the international community did not channel the funds for proper capacity building.<sup>487</sup> Apart from trainings and adequate qualifications some sources say that the biggest issue arises with personal and party agendas of one part of personnel.<sup>488</sup>

It has been stated that staff are not committed to professional development initiatives<sup>489</sup>. OSCE held a range of trainings, however there are no initiatives coming from the personnel itself. OSCE established and transferred its archives to the CEC, including its electronic form. OSCE also trained the personnel, although it is worth mentioning that only 10-15% of personnel may serve for the transfer of their knowledge as institutional knowledge of the organization where they work.<sup>490</sup>

In conclusion, CEC is a relatively young institution. Factors with influence include different parties ranging from political parties, donors and international community officers. There is a wide agreement that without external help, the CEC cannot organize elections on its own. The CEC and the Secretariat are in need of capacity building and a clear determination of where their competences begin and end, their division in particular. Despite the fact that it is referred to as a technical institution, the Secretariat has and must have a greater role.

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<sup>484</sup> Ibid.

<sup>485</sup> Ibid.

<sup>486</sup> Ibid.

<sup>487</sup> Comment by Ramush Tahiri (July 2010).

<sup>488</sup> Interview of an internal source from CEC with the author. 20 April 2010

<sup>489</sup> Interview of an internal source from CEC with the author. 20 April 2010

<sup>490</sup> Interview of an internal source from CEC with the author. 20 April 2010

## Independence (Law)

*To what extent is the Central Election Commission independent according to the law?*

CEC is an independent institution. Its budget is allocated through the Government, creating a degree of dependence. Considering that the President appoints the Commission Chairperson, it may be concluded that there is a certain level of accountability towards the President as well. This is positive, considering that the President, at least according to the Constitution, represents the unity of people. However, according to the opposition and numerous commentators, this is not true in reality, as long as he is negotiating for Government reformatting on behalf of the entity represented by him.

Unlike the CEC, the ECAP is better protected from external influence. The Supreme Court President appoints ECAP members from the ranks of the Supreme Court and District Courts.<sup>491</sup>

The Constitution regulates more than the mere major aspects of CEC work and more than what is usually the practice in other countries. The rest is regulated by the Law on General Elections.

Theoretically, the legal framework provides that the CEC shall operate transparently and impartially. However, its independence is damaged due to the political formula regulating its composition. All its bodies are elected on the basis of a political formula, including the Municipal Election Commissions (MEC) and Polling Station Committees (PSC).

The Secretariat is a technical body, established by the CEC with a task of assisting the CEC in its functions and responsibilities. The CECS implements CEC decisions and prepares reports and recommendations for CEC decisions.<sup>492</sup> The CECS's CEO is responsible to manage the CEC budget and prepare CEC decisions.

The CEC relies on the CEO to run the Secretariat, but it retains close supervision. Apart from routine duties that the CEO undertakes with the Secretariat, the CEO is responsible to liaise with the CEC regularly: a) to organize the agenda of CEC meetings under the leadership of the Chairperson and prepare the necessary materials before the meeting; b) to report to the CEC on all CECS tasks, excluding the Office Executive Director; c) to prepare proper instructions intended for the CEC and impartial committees qualified by the Secretariat.<sup>493</sup>

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<sup>491</sup> Article 115.2, Law on General Elections.

<sup>492</sup> Regulated in accordance with Article 65 of the Law on General Elections.

<sup>493</sup> Regulated in accordance with Article 66.5 of the Law on General Elections.



Professionalism and non-discrimination of Secretariat personnel are to be ensured based on the Law on Civil Service; however this does not occur in practice. Chief Executive Officer, his/her deputy, and the senior directors are elected by the CEC. The other part of the staff is elected by the Chief Executive Officer. The Law protects the staff from being dismissed. Opposition and independent analysts have no dilemmas that the major part of the personnel comes from the political entities in power.<sup>494</sup>

Distribution of competencies between the CEC and ECAP is less clear. Complaints and appeals are treated by the ECAP composed of five members, including the chairperson. All members are judges and serve a five years term of office. The ECAP is assisted in its operation and functions by the Secretariat working in accordance with this law. The ECAP Secretariat: a) receives complaints and appeals; b) archives, translates and investigates cases; c) maintains official addresses and access to information at all times in relation to ECAP decisions on all official languages in accordance with the Law on Use of Languages.<sup>495</sup>

The legal framework is satisfactory in general. It allows reasonably independent functioning of the CEC to the limits that this is possible considering its composition by party officials. The dissatisfactory level of detail or confusing language in the law, however, increases the discretionary powers of the Chairperson. To this effect, there is a need for additional provisions limiting the possible violations committed by the human factor.

## Independence (Practice)

*To what extent does the Central Election Commission operate independently in practice?*

CEC's lack of independence has eroded its credibility and trust among the citizens. Apart from the loss of trust among citizens, the opposition openly accuses that votes are being stolen.<sup>496</sup> CEC certified the election results very late, around three weeks after the Election Day. This is explained by the conditional voting and poor completion of counting forms by the PSCs. Long delays and lack of information decreased the trust in the impartiality of election administration bodies.<sup>497</sup>

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<sup>494</sup> Interview of Ardian Gjini with Leon Malazogu, Prishtinë, 14 July, 2010. Two analysts also argued the same but declined to go on-record with this statement.

<sup>495</sup> Regulated according to Article 123 of the Law on General Elections.

<sup>496</sup> Interview of Ardian Gjini with Leon Malazogu, Prishtinë, 14 July, 2010.

<sup>497</sup> Even though Ahtisaari's Package envisages an international monitoring institution certifying elections, OSCE and International civil Representative (ICR) were of an opinion that the CEC should certify elections itself.

There are some opinions that now that the chairperson has a life-long post as a judge in the Supreme Court, the work will be more qualitative and the effect will be observable at a later stage.<sup>498</sup> If the CEC chairperson has a certain appointment in the Supreme Court, the expectations are that he/she shall be more impartial considering that his/her future shall not be dependant on the President's will.

The CEC formally remains an independent institution. Upon taking the oath of office, CEC members are considered independent, however in reality, members have regularly expressed political entity opinions. External interferences are numerous, however the composition based on the political key makes it impossible for the CEC to be independent. Many raise the argument that there were direct interferences from the Government, for example, the opposition provides the argument that there are even daily interventions from the heads of public authorities.<sup>499</sup> The composition of parties and wider CEC forces vis-à-vis the CEC Secretariat require this. The CEC is not seen as an independent and responsible institution. Therefore, it is more accurate to say that the CEC is at best a balanced institution but often not even that, because the interferences from the largest entities are strong. The CEC in Macedonia operates with approximately 23 employees, whereas in Kosovo it has around 60.

In theory they can operate professionally and in a democratic manner, but in practice there are a number of barriers. Previous examples when there were cases of the CEC being blocked or not respecting the Guidelines of ECAP, as in the case with the Guideline of ECAP on repetition of local elections in Gjilan. However, the amendment of the Law on General Elections in Kosovo that was approved in October 2010, where its substantive amendment had to do with defining deadlines of appeals and the latter reviews by the ECAP and the Supreme Court, have given positive results in closing the process, resulting in the certification of results

There were frequent changes on the senior level between May - June 2009, however in general personnel changes did not occur that often. The biggest party, PDK, boycotted the work in the CEC for several months – seemingly attempting to exert undue influence upon its functioning.<sup>500</sup> It is public knowledge that the public sector in Kosovo is staffed largely from the ruling party, and the CEC Secretariat is no exception.

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<sup>498</sup> Interview of Hajredin Kuci with author, Prishtina, April 26, 2010.

<sup>499</sup> Interview with Ardian Gjini conducted by the author, Prishtinë, 14 July 2010.

<sup>500</sup> Zëri, 22 January 2009

ECAP delays and inefficiency are also problematic. The ECAP did not use hearings and oral witness statements and it primarily made decisions based on written statements. This shows that ECAP performed its duties as an administrative body, and not as a judicial body. This dimmed trust in the transparency and effectiveness of this institution.<sup>501</sup>

Approximately six months before the elections, accusations were made regarding the CEC's lack of independence. All TV stations broadcasted an interview with the President of the major opposition party accusing the leader of the main party that he had been attempting to put the CEC under full control in order to manipulate the elections.<sup>502</sup>

Another issue with independent implementation of duties on Election Day lies with the Polling Center Managers, a duty usually performed by the school principals themselves. This leads to an additional politicization of school principals that are already appointed as a result of party bargaining. The political affiliation of school directors (Polling Center Managers on Election Day) was the subject of criticism with numerous stories of their undue influence on Election Day inside the of polling centers premises.

CEC decision-making is not clear. The European Union Monitoring Mission recommended this to be better clarified after reviewing the Law on General Elections. For instance, the CEC is entitled to impose fines up to 2,000 Euros but it chose not to exercise this right. This is a conflict of interest considering that it is much softer in issuing fines to the parties than its own members.

In practice, none of the election management levels can be impartial when taking into account the political formula to elect them. However, if not apolitical or neutral, it may ultimately be said that the CEC is rather balanced and consequently relatively impartial. Impartiality results in an equal treatment of political entities, but not in the proper implementation of the law. Implementation of the law is balanced between the entities within the CEC, resulting in a partial and selective implementation. Even though this is denied, some officials stated anonymously that numerous staff have been politically appointed, but cannot be dismissed since they enjoy political protection.<sup>503</sup>

<sup>501</sup> European Union Election Expert Mission to Kosovo. 15 January 2010. FINAL REPORT

<sup>502</sup> TV21, KTV, RTK, 15 April 2009.

<sup>503</sup> Interview of an internal source from CEC with the author. 20 April 2010

## Transparency (Law)

*To what extent are there legal provisions ensuring that the public may obtain relevant information on Central Election Commission decision-making activities and processes?*

Considering the fact that the law generally requires the CEC to hold open meetings, the CEC appears rather transparent. However, access to documentation and to sensitive processes and voting trends remains closed. CEC meetings have been open to the public since 2009. The Law allows, in some cases, meetings to be closed. Considering that the legal space permits this while discussing budget and personnel issues, these may be used for sensitive topics as well.

In the legal aspect, every accredited observer has access to all MEC meetings and documentation. In case the Municipal Election Commission does not permit participation to a meeting or access to a document, a complaint may be filed to the CEC. The CEC makes a decision in relation to the complaint within 48 hours and takes the 'proper actions', it considers appropriate.<sup>504</sup> However, domestic observers from Democracy in Action complained that some parts can be held in private.<sup>505</sup> The CEC provides the rationale that almost all information from CEC procedures is public, except for personal information. However, several times they included sensitive topics in the agenda on the same day they discussed personnel issues, clearly in an attempt to stave off public scrutiny.

The fact that the CEC is competent to draft secondary legislation regulating substantive election aspects is detrimental to transparency. The CEC is an implementation body and should not be able to draft legislation. Since the Law on Elections leaves many important issues out, these are decided by the CEC. It is problematic that the CEC is at the same time the body that implements the same rules that it legislates upon. ENEMO stresses that it is an international practice that political party registration, their finances, candidate registration and Election Day procedures are codified in the main law.

The legal disposition of legal authority to fine observer organizations up to 200,000 Euros was criticized and assessed as in contradiction with international conventions thus was amended by taking this clause out, while leaving a fine for political parties of 50,000 Euros. This was seen as relevant for transparency, since the high fines may deter observer organizations from exercising their role.

<sup>504</sup> According to Article 73, Law on General Elections.

<sup>505</sup> Interview of Valmir Ismaili with Leon Malazogu, Prishtinë, 30 May, 2010

Political party accounting is required to be disclosed. According to the law, The CEC also maintains donors' registers etc; however these are not posted on the official CEC website although requested by law. It is recommended that legal provisions on imposing fines on observers be amended and that all CEC rules be unified under the Election Law.

## Transparency (Practice)

*To what extent are Central Election Commission reports and decision made public in practice?*

The public may in general obtain relevant information related to the organization and operation of the CEC, also decisions related to them and on the manner in which these decisions were taken.

The CEC has a website on which it publishes information, including all laws, decisions, results, forms etc. However, the dearth of information presented on the website reflects the closed nature of its decision-making process. Additionally, the lack of financial information is a serious deficiency. Call centre information is also missing. The CEC does not issue many press releases, especially considering that the CEC meetings are open to the public. The schedule of activities is made public beforehand, including dates of registration. The Election Day is announced 4 months before, as required by law.

Counting delays occurred primarily due to conditional voting. Regular ballot counting is conducted on the spot. However, later on, conditional and by-mail ballots are counted in the Counting and Results Centre. This Centre is not as transparent as needed. There is wide consensus to take out conditional voting as a post-war election feature; however, this feature prevailed due to the inability to regulate voters' lists.

Public transparency was somewhat compensated by a domestic observer coalition, "Democracy in Action", which monitored the campaign and elections. In Local Elections 2009 and the extraordinary parliamentary elections 2010, they held regular press conferences, called upon voters to go out and vote, and called upon political entities publicly to abide by the Code of Ethics. However, Counting Centre observers had complaints alleging that they were not in a position to observe the process properly.

An issue of concern relates to the fact that international observers had no access to important documents they requested in writing during the election period.<sup>506</sup> Lack of debate and voting speed were an indication that the decisions are often made somewhere else.

<sup>506</sup> European Union Election Expert Mission to Kosovo. 15 January 2010. FINAL REPORT, page 7.

A criticism articulated by all observer organization involves the fact that elections were not repeated on annulled polling stations, and what is even worse, this decision was made far from the public eye. Moreover, even international election monitoring missions reported difficulties in gaining access to documents that should have been public. The poor quality of the spokesperson further diminished the transparency and image of the CEC.<sup>507</sup>

Another dispute resulting in a loss of trust due to the lack of transparency was regarding the refusal to install cameras at the polling stations. While the opposition insisted on cameras in each polling station, the authorities had full support of the international community in this regard and the experts deem this wouldn't have significantly improved transparency. While the decision may have been justified, insufficient discussion and refusal created a perception of secrecy. With distrust that the problems might be resolved with the assistance of the CEC, the LDK sent a letter to all embassies and missions in Kosovo and asked them to protect the citizens' votes at problematic polling stations, in order to conclude the process as freely and fairly as possible.<sup>508</sup>

Not all results required by the law had been presented by the CEC. More importantly, international observers stressed that the results for every region, polling station or municipality were presented in two separate tables. This hampered understanding of what the general voting results were at a polling station or in a municipality.<sup>509</sup>

Early results are as important for transparency and trust in elections. However, unlike 2007 when the 'Parallel Tabulation of Votes' was conducted by civil society, the CEC's project for SMS reporting failed this time. As assessed by ENEMO, "in order to publish early results, the CEC had decided to launch a system sending SMS messages from every polling station. This system did not function however, and the CEC managed to publish early results two days after the tabulation at the MEC level."<sup>510</sup> The SMS reporting was experimented with the assistance of IFES. Unofficially, it was known that it failed primarily due to the massive incidence of human error as well as technical malfunctions. Except the delay of results and the resulting sense of insecurity, the SMS failure did not result in any other problems. For the 12 December 2010 Elections, DiA had engaged around 5,000 field observers, and 100 volunteers for the Call Centre, the latter contacted the 5,000 field observers via telephone. Also, DiA, in its Call Centre had an electronic system of data processing with a triple control of received and processed

<sup>507</sup> ENEMO (Final Report, page 27), EUMM (Final Report, Page 28), Democracy in Action (Koha Ditore, 25 December 2009. Anulimi pa rivotim shkel demokracinë. Page: 3.)

<sup>508</sup> LDK (8 December 2009). Letter entitled "Second Round of Local elections - December 13, 2009".

<sup>509</sup> European Union Election Expert Mission to Kosovo. 15 January 2010. FINAL REPORT, page 20

<sup>510</sup> ENEMO Final Report, page 25.



data. This to some extent influenced the delay of publication of preliminary results. Still, DiA, at a Press Conference around 23:00 came up with the first preliminary results for 30% of the polling stations, then at around 02:30 the following morning, for 51% of the Polling Stations.

## Accountability (Law)

*To what extent are there legal provisions to ensure that Central Election Commission reports and is accountable for its actions?*

The CEC reports to the legislature and its only reporting requirement is the annual report to the Assembly of Kosovo. It is not clear whether the CEC's annual report should be public. It remains problematic that the CEC may decide whether or not this needs to be made public, while this should in fact be regulated by law.

In terms of the legal situation, there are a number of other accountability issues which need to be addressed. The CEC is allowed to conclude agreements and receive external assistance from donors. However, the CEC budgetary accountability to the Government is not clear, and to whom is it accountable for its work.

Accountability and the division of tasks among various institutions is ill-defined. Deadlines are not well defined by the law. Also, it depends on the issue; the law foresees consideration by the Supreme Court or by the Constitutional Court. The Municipal Court is responsible for the failure to include citizens in the voters' list. For aspects under ECAP competence, deadline for some disputes is 2 days; however deadlines are missing for some other issues. A legal expert provides arguments that in these cases passive liability is also applicable and institutions may have a criminal liability for their failure to act.<sup>511</sup>

The complaint and appeal procedures are complex and often unclear. Legal responses to complaints are treated by different institutions. A solution with the ECAP, an administrative body composed of judiciary members, was considered as a typical post-conflict solution. However, the ECAP operates in accordance with rules it adopted itself. This resulted in several legal issues and potentially in conflict with the Constitution itself. According to the Rule, commissioners need to "keep confidential any information submitted to them in the capacity of commissioners."<sup>512</sup> ENEMO notes that this can even be unconstitutional and that it had been used largely in order not to provide information to the observers, including also their access to copied documents.<sup>513</sup>

<sup>511</sup> Interview of Kujtim Kërveshi with Leon Malazogu, Prishtinë, 17 May, 2010

<sup>512</sup> According to Section 1.3 of ECAC Rules.

<sup>513</sup> European Union Election Expert Mission to Kosovo. Final Report. Page: 7

Another problem also arises with fines up to 5,000 Euros imposed by the ECAP, considering that there is no right of appeal. The ENEMO drew attention to this issue considering that these may include sanctions related to fundamental civil and political rights.<sup>514</sup> The ECAP decisions may be reviewed by ECAP itself or by the Supreme Court in case the fine exceeds 5,000 Euros or if fundamental rights are violated.

According to the Rule 14/2009 on sanctions and fines, CEC decisions on sanctions and fines may be appealed in accordance with the Law on General Elections.<sup>515</sup> There is a legal gap allowing the CEC to certify election results even when a case is still pending before the Supreme Court. This is problematic considering that the result may be concluded without resolving contests and in opposition with good international practices.

Every person, legal or natural, whose legal rights were affected by any of the following decisions, may appeal decisions taken by the CEC before the ECAP.<sup>516</sup> While legally this may be the case, the problem of the legislation regulating complaints and appeals being rather problematic and confusing remains.

## Accountability (Practice)

*To what extent should the Central Election Commission report and be accountable for its actions in practice?*

The Chief Executive Officer is accountable to the CEC on a regular basis and there are no indications of problems in this regard. The CEO has generally been able to run the rest of the executive, but has proven unable to control the Polling Station Committees (PSC). Problems such as inadequate lamps and expired batteries may happen only in the chain link between the Secretariat and the PSCs. However, as is the case throughout the public sector, it is very difficult to promote and punish staff (let alone to discharge them.) That this is even more difficult in a politically-charged environment (political parties have greater incentive to employ their close cronies where elections are administered) limits the ability of the CEO to effectively run operations.

In terms of reporting, the CEC posts meeting reports on its website, but these are not comprehensive.<sup>517</sup> The Annual report submitted to the Assembly is comprehensive and it includes around 40-50 pages.

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<sup>514</sup> As stipulated by the Law on General Elections (Article 29.1).

<sup>515</sup> Law 03/L-037.

<sup>516</sup> Article 122.1 Law on General Elections

<sup>517</sup> <http://www.kqz-ks.org/SKQZ-WEB/al/legjislacioni/vendimet.html>



In practice, political parties and candidates have no means by which to resolve election irregularities. Although small parties have no human and material resources for this purpose, even in some cases when entities mobilized all of them, a lack of readiness to treat grievances was observed with massive rejections by the Election Complaints and Appeals Committee. The best example is the case of Gjakova where despite strong evidence no decision was taken to repeat elections in the first round.

CEC has no meetings with the media and this is not seen as necessary primarily due to the fact that its meetings are open to the public. Also, it was not seen that there was any need to meet with political entities, considering that political party members themselves make up the CEC. The Political Party Registration Office holds regular consultative meetings during the election period. During the election period, meetings are held with international observers, however, it is not recognized that there is a need to hold meetings with national observers, and thus far this was not stressed as a problem by observers.

## Integrity (Law)

*To what extent are there mechanisms to ensure Central Election Commission integrity?*

Conduct of CEC members is regulated by the Law on General Elections and by a CEC internal decision. The Law on Conflict of Interest is also valid for the CEC.<sup>518</sup> CEC Rules of Procedure are an internal decision defining the manner of scheduling meetings and agendas, necessary quorum for work and decision-making, CEC transparency, conflict of interest, languages in use, meetings' recording, and establishment of committees.

There is a general request to preserve the integrity of the electoral process. The rules include the issue of conflict of interest in the sense of qualifications, but there are no rules on gifts given to CEC members. CEC Secretariat is subject to Civil Service Law. While there are no post-employment restrictions, the three highest CEC officials cannot hold any public post or official position in a political party and should not have a criminal record.<sup>519</sup>

Appointment of an MEC member is subject to an oath taking and signing of the CEC Code of Conduct adopted by the CEC, before beginning work.<sup>520</sup> Appointment of every PSC member is condi-

<sup>518</sup> Specifically Articles 5, 6, and 7.

<sup>519</sup> Article 66.3 of the Law on General Elections.

<sup>520</sup> Article 67.8 of the Law on General Elections.

tioned by oath taking and signing of the Code of Conduct, as stipulated by a CEC Rule.<sup>521</sup> There is a condition that MEC members should come from that municipality however they also need to have 'high professional and moral positions' and to have sufficient knowledge and experience.<sup>522</sup> Attempts should be made to require that MECs fulfil ethnic criteria.<sup>523</sup>

An aspect ensuring high integrity, but at the cost of dynamics, is the high threshold created for important decisions. According to the law on "electoral rules, political party registration and political party certification, announcement of election results and decisions in relation to complaints on announcement of results, CEC makes efforts to take a decision by consensus, and when this is impossible, to decide with two thirds (2/3) of the votes."<sup>524</sup> Other decisions are taken by a simple majority.

## Integrity (Practice)

*To what extent is the Central Election Commission integrity ensured in practice?*

The integrity of the electoral process in practice experienced a visible fall. Elections used to enjoy high credibility from 2000-2007 but as the role of the international community in managing them was reduced, their credibility gradually suffered. A stressed attempt to preserve integrity is noticed; however in reality there are deadlocks. The ENEMO criticized the fact that none of the 2007 violations were dealt with in the court, creating an impression of a culture of impunity that is not appropriate for the good development of elections.<sup>525</sup>

The Law on Civil Servants is applicable to the CEC Secretariat, however in case of violations cases are not initiated nor processed. Many people are around Polling Centres and this hasn't hampered polling managers.<sup>526</sup> The list of authorized persons to be present wasn't strictly followed in some parts. Most polling centres observed by the author on Election Day had dozens of individuals roaming inside and disturbing the process.

The CEC Code of Conduct is only an internal document, but it is observed by the members. All staff members have contracts and both signed a statement and took an oath to abide by the Code of Conduct. However, the fact remains that a major part of the provisions, including those originating from the higher level of legislation, are not being followed.

<sup>521</sup> Article 81, of the Law on General Elections.

<sup>522</sup> Article 67.2.

<sup>523</sup> 67.3 of the Law on General Elections

<sup>524</sup> Article 63.4 of the Law on General Elections.

<sup>525</sup> ENEMO. Final Report, page 21.

<sup>526</sup> Personal observation by the author, and numerous media reports by the media and by various observation missions.

The CEC is not transparent in exhibiting violations or other illegal staff actions. A positive action involved a change of personnel at polling stations with violations in the first round, with a completely new set up for the second round. It is not clear whether the CEC brought charges against them in the court. Some cases arrived in the court, while the ECAP forwarded them to prosecutors for further investigations. If courts issue sanctions, tests will be conducted to see whether the CEC will pass the will of the courts properly. However, not one case has been taken on by courts, even a year after the elections.

## **Political Finance Regulation (Law and Practice)**

*Does the Central Election Commission regulate effectively candidate and political party finances?*

Finances of political parties are now regulated by the Law on Financing of Political Parties, ratified by the Assembly of Kosovo on 16 September 2010. This law regulates the conditions for the financing, administration, oversight, transparency and reporting of the expenditures of the assets and income of political parties in Kosovo. Previously, the issue of financing political parties and their activities was regulated by Regulation Nr. 01/2008 for the Registration and Action of Political Parties and partly also with the Law on General Elections in Kosovo. Public funds received by the political parties from the budget are not audited by the Kosovo Auditor-General. When the OSCE was in charge of elections between the years 2000-2007, the financial aspects were a bit more rigorous, but both the legislation and its enforcement have been lax ever since.

In relation to political party campaign expenditures, only expenditures and the total amount are supposed to be made public. Other information is not made public. The CEC is obliged to audit expenditures, however only to ensure that the total amount is not exceeded. Electoral Rule 12/2009 on Campaign Spending Limits and Financial Disclosure defines the spending limitations. Every party may spend at most 0.5 Euros per every voter; this is valid both for central and local elections. The total amount is calculated on the basis of the last voters' list reviewed by the CEC. The Rule clearly defines that a product or service is seen as bought for electoral purposes, if intended for this purpose, not taking into account the time it was bought.

Considering that this was the first time the CEC was transformed into a completely national organization, this was the first time the CEC ever prepared an annual report. This report was still not finalized at the time of NIS report development. Moreover, there are tendencies at this moment to amend the legislation so that CEC reporting to the Assembly is not done just for information purposes, but to report and be accountable. It is unclear if party finances will have been included in this report, or only CEC's functioning. Until now, the CEC has never vigorously pursued party finances, which remains almost entirely unregulated, but even the few regulated aspects are not put into practice.

Overall, there is no focus on elections spending by the authorities. The auditing is conducted pro forma and no violations have been found in the past decade. It is recommended that more focus be placed on the transparency of party funds and less on spending limits.

## **Election Administration (Law and Practice)**

*Does the Central Election Commission oversee and administer effectively free and fair elections and ensure the integrity of the electoral process?*

12 December 2010 Elections were the first parliamentary and extraordinary elections where the CEC was entirely responsible for organising and administering the elections. Despite some significant omissions, the CEC undertook some steps to preserve the integrity of these elections. For instance, after the annulment of elections on a number of polling stations, the CEC dismissed polling station committees on all these stations for the second round.

One of the main obstacles identified by international observers was the “inability of one part of the electorate to use its suffrage in specific districts”.<sup>527</sup> Some interlocutors of the European Union Monitoring Mission expressed their concerns that the voters are returning from the regular polling stations and are incorrectly told that they are not on the voters’ list and that they need to vote by conditional ballot, whereby an illegitimate person votes on behalf of a returned person. As long as regular voters return and vote conditionally, there is a fear that someone may have voted at their regular polling stations.

There was no active voter registration in Kosovo and the voters’ list is an extract from the Civil Registry that is a composite part of the civil administration structure in every municipality. Despite the efforts of the CEC to resolve the issues with the voters’ list, there are still discrepancies on the Civil Registry that create problems for a more qualitative list and open up the door for speculation and manipulation on Election Day. The CEC itself gave alarm that a very small number of people confirmed their polling station with the Municipal Election Commission, only 2,788 Kosovo-wide.<sup>528</sup>

<sup>527</sup> ENEMO. Final Report, page 3.

<sup>528</sup> KTV, 23 September 2009.

The right to vote is confusing for minorities due to ambiguities on admissible documentation. The ambiguities derived from official statements that Serbian documents would be inadmissible, which was later on proven untrue. The Law doesn't stipulate the origin of documents and the CEC was rather late in instructing which documents would be admissible. This created an opinion among the minorities that earlier identification documents are not accepted, partially decreasing the integrity of election in the eyes of Serbs.

### **Turnout**

Another integrity indicator involves the turnout. Voter motivation, their education and election observation are segments in which civil society needs to take part. In relation to this, ENEMO stated that "it has not noticed any structured motivation campaign, either by the election administration or by the civil society that would influence voters to take an active part in elections and to increase the turnout".<sup>529</sup>

### **Voter Education**

Regarding the education of voters, the CEC launched an awareness campaign which lasted 25 days. In it were included more than one thousand television transmissions. There were also transmissions on local television. When we consider that the number of invalid voting ballots was evidently smaller than the previous elections, it may be considered that this campaign has to some degree had an effect; though at a very high cost.

### **Campaign**

Based on the CEC Electoral Rule No. 15/2010 on the extraordinary elections, and for the early elections, the electoral campaign for the 12 December Elections was shortened to just ten (10) days, finishing one (1) day prior to Election Day. The spirit of the election campaign was relatively quiet. The election campaign was developed freely and without any hindrance in all towns and cities monitored by the observers of the Democracy in Action (DiA).

Also, during this electoral campaign some cases of violation of the Code of Ethics by the political entities and the latter candidates were noted. Such cases include: damaging of promotional material by the political parties and usage of public resources. Then, the presence of children in some activities of the political parties was noted. Another violation was the place-

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<sup>529</sup> ENEMO. Final Report, page 19.

ment of political material in public buildings. Other violations included the forbidden acts of civil servants, offending vocabulary and threats, up to the non-publication of the calendar of activities of the political parties to the Municipal Election Commission (MEC).

Although the time period for electoral campaigning (only 10 days) was limited, the large expenses of political parties during the campaign were visibly evident, especially the expenses of the big parties. DiA encouraged all the competent institutions to implement fully and in detail the legal dispositions regarding the verification of the financial resources of the election campaign.

### **Technical Issues: Counting, Central-municipal coordination, failure to specify acceptable minority verification documents**

Almost all stages of the electoral process were administered properly and timely, with the exception of the counting process. Packing and delivery took more time than needed. Lack of technical knowledge on the part of election officers was noticeable and in the end it resulted in the incorrect completion of results forms. Integrity also suffered, considering that four weeks passed between the first and second round of elections.<sup>530</sup>

Sensitive election materials were effectively procured and preserved. It is believed that ballots were safe even though there were accusations made that they were printed without any security features which had been integrated several years earlier.<sup>531</sup>

Coordination with municipalities and with some central institutions was rather difficult. At a meeting with mayors, just half of the municipalities (out of 33) came to coordinate activities with the CEC. The purpose was to ensure equipment and working conditions for the Municipal Election Commissions (MEC).<sup>532</sup>

Package interpretation and the rhythm of the establishment of new municipalities created confusion and the CEC didn't know in how many municipalities to organize elections just several months before the elections..<sup>533</sup>

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<sup>530</sup> Interview of an internal source from CEC with the author. 20 April 2010

<sup>531</sup> Ibid.

<sup>532</sup> Atashi, Arben, (15 April 2009). Mayors ignore the Government and the CEC ("Kryetarët e komunave injorojnë Qeverinë dhe CEC-në") Koha Ditore. Page. 7.

<sup>533</sup> Koha Ditore, 1 September 2009. Page 3.

## **Election Day**

Notwithstanding that the law envisages that only one person may be in a polling booth at any time, apart from cases when assistance was requested, this principle is violated routinely. Apart from family voting, the principle that one person is entitled to provide assistance only to one person asking for assistance is also frequently violated. Observers reported that family voting is the most frequent violation on these elections and sufficient numbers of cases of group voting and voting on behalf of others have been reported. There were also cases of ballot stuffing, arrests and procedural mistakes, unauthorized persons and multiple voting. Finally, persons with inadequate identification documents are routinely allowed to vote.

From the DiA observers' reports, the most irregularities were evident to be in the cases where the ballots in the box exceeded the number of those who signed in the voters register in the Municipality of Skenderaj and in that of Drenas. There were reports of signature falsification cases in the Final Voters List (where one person has signed many times). There were also cases identified where 100% of registered voters in the Voters List had voted. Other irregularities noted in the observers' reports include the non-publication of results on the doors of Polling Stations in the Municipalities of Mitrovica, Ferizaj, Prizre, Fushë Kosovë and Gjilan. Irregularities were also made by the observers of political parties, in cases when the latter make pressure on the Commissioners of Polling Stations for faster counting of the votes and in the cases of their entries and exits from the Polling Stations during the ballot counting.<sup>534</sup>

## **Counting and results auditing**

There are detailed rules in relation to audit and investigation result forms;<sup>535</sup> however serious discrepancies were never clarified. In addition to violations at Polling Stations, there have been media accusations and candidate complaints regarding violations at the Counting and Results Centre during the results re-count process.

Results for candidates are not disaggregated by polling stations. This is not a legal violation considering that the law doesn't stipulate this. However, this is in contradiction with the best international practices. Publication of the final results for the 12 December 2010 Elections by the

<sup>534</sup> 2010 Parliamentary Elections Monitoring Report (DIA) page 33

<sup>535</sup> Election Rule no. 06/2008 - Count and Results Centre.

[http://www.kqz-ks.org/SKQZ-WEB/en/legjislacioni/materiale/mregullatkqz/06-2008\\_en.pdf](http://www.kqz-ks.org/SKQZ-WEB/en/legjislacioni/materiale/mregullatkqz/06-2008_en.pdf)



CEC was delayed, due to the re-election process in some municipalities: Drenas, Skenderaj, Decan, Mitrovica, as well as partial re-election process in the municipalities of Lipjan, and Malisheve on 9 and 23 January 2011. Delay was also caused due to the decision of the CEC to recount a large number of polling stations by the Counting and Results Centre (C&RC).

CEC, more specifically, the CEC Counting and Results Centre, was also unable either to calculate and disaggregate the results accurately or to validate the results efficiently and objectively. To some extent the damage was reduced with the assistance of organizations specializing in elections funded by external donors.

### **Complaints and Appeals**

Previous electoral practices in Kosovo identified some problems or gaps in the current electoral legislation, with special emphasis on the appeals deadlines, as well as the competencies of bodies that deal with the appeals of the political parties, candidates, and all those that presume that their rights were violated or breached during the electoral process. The Kosovo Assembly in October 2010, amended the Law on General Elections in Kosovo where substantial amendments had to do with the definition of deadlines for the appeals, as well as the review of those by the ECAP and the Supreme Court.

### **Review and Appeals Process**

Opposition complains of huge pressures during the voting process, when their members were threatened with weapons, they were forcefully removed from polling stations, were bought off with money and switched the ballot boxes, etc.<sup>536</sup>

The Complaints and Appeals Panel is an independent body with a mandate to treat appeals and complaints relating to the electoral process. The ECAP is made of 5 judges appointed by the Supreme Court President. The Law on General Elections stipulates that the appointed ECAP members need to prioritize the issues relating to the ECAP, starting from sixty days before the Election Day until after the certification of results and all Kosovo authorities need to assist the ECAP during this period.

The ECAP is a very important institution to protect and preserve the integrity, credibility and transparency of the entire electoral process. Therefore, it is of concern that, even though the judges were appointed in 2008, the Kosovo authorities didn't release the funds necessary for the ECAP to function in a timely manner.<sup>537</sup>

<sup>536</sup> Interview of Ardian Gjini with Leon Malazogu, Prishtinë, 14 May, 2010

<sup>537</sup> ENEMO. Final Report, page 21.



During, before, and after the 12 December 2010 election process, there were a total of 363 appeals by the political parties and the civil society submitted to the EACP. Out of this number, 238 appeals were either refused or considered to have no basis to be reviewed by the ECAP, while only 125 appeals in total were approved, including 99 approved appeals with fines. Due to the large number of appeals to the EACP that seemed to be based in convincing facts, they decided to guide the CEC in the re-election process in some municipalities: Drenas, Skenderaj, and Decan, as well as for the partial re-election process in the municipalities of Lipjan and Malisheve. Based on the decisions and guidance of the ECAP, the CEC at the 16 December 2010 meeting decided to repeat the voting/election process for the Assembly of the Republic of Kosovo, in the above mentioned municipalities (on 9 January 2011).

Based on the significant number of appeals processed by the ECAP after the re-election process it is concluded that this process also contained a number of irregularities. In total, the number of appeals received in the ECAP, after the re-election process, reached the number of 71, where 46 appeals were refused and voided by the ECAP, while 25 appeals were approved, including one appeal with fine.<sup>538</sup>

The observers gave many recommendations on the technical administration of elections. The majority of comments are serious and relate to procedural and human capacities. Priority has to be given to complaints, voter education, and the removal of conditional and out of Kosovo voting.

The main recommendation given is to re-regulate the legal framework from its roots, and most importantly to develop the Kosovo Election Code, regulating all election aspects in a comprehensive document.

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<sup>538</sup> 2010 Parliamentary Elections Monitoring Report (DIA) page 16

## Recommendations

- A broad debate should be opened on:
  - o Electoral System reform, with special emphasis on electoral districting, and
  - o Electoral Process reform, aimed to prevent violations during voting and counting
- Electoral System change:
  - o Seek an Electoral System that maintains Open Lists and Gender Representation, but creates seven Electoral Districts and decreases the threshold from 5% to 2-3%.
- Increased CEC transparency, including donor relations
- Drafting a new Electoral Code, aimed to:
  - o Codify new legislation amendments
  - o Narrow the legal and procedural gap for vote manipulation
  - o Legally regulate many aspects that for the moment are regulated through CEC secondary legislation
- It is recommended to totally remove conditional voting and remove by-mail voting for local elections only.
- Seek opportunities to increase CEC independence and diminish opportunities for political interference.
- Legislation should demand clarification of sources, donor names, conflict of interest, misuse, etc.
- Identify party finances as a key Kosovo priority and regulate their transparency by law, in addition to strict implementation.
- In order to regaining trust in election management, the de-politicization of CEC Secretariat personnel should be debated and ways to achieve this should be sought.
- Voters' List update and the transparency of this process represent a primary priority.

**7.**

**OMBUDSMAN**

## Overview

The Ombudsperson Institution<sup>539</sup> (OI) does not, in practice, have sufficient resources to implement its mission. Based on the law the OI is a fully independent institution, however, due to the lack of implementing legislation and its dependence on the executive for its budget, it does not enjoy independence in practice. OI institutional independence was constantly challenged by the lack of the relevant law that has only recently been adopted by the Kosovo Assembly, and its dependence on the Kosovo Government budget. The concerns of political interferences were also stressed in the European Commission 2009 Progress Report.

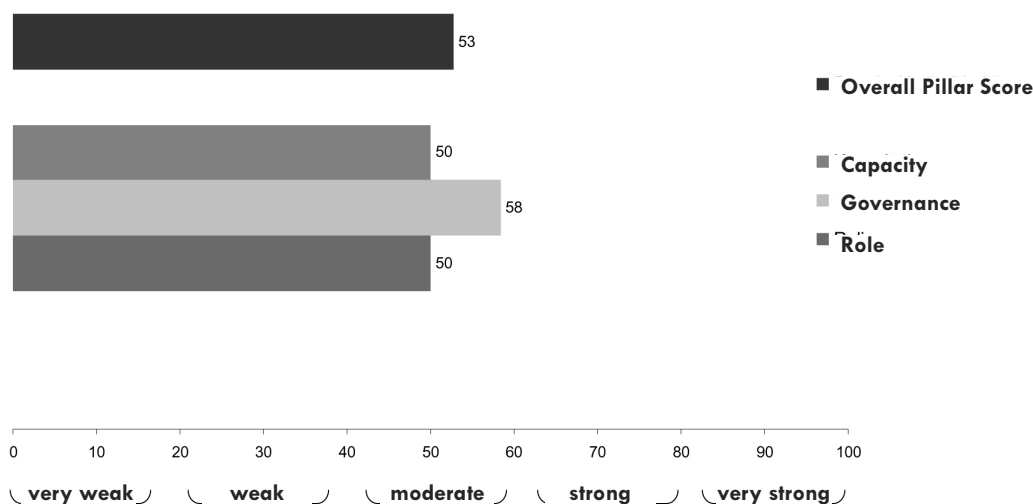
One of the key problems is that the recommendations of the Ombudsman are not acted upon by the legislature or other central institutions. The EU Commission Progress Report 2008 and 2009 assesses the cooperation of the Kosovo Anti-corruption Agency and the Office of Good Governance with the Ombudsperson Institution as 'weak'. According to Global Integrity 2009, the government does not satisfactorily act on the reports of the Ombudsperson Institution, and at times the agency's findings are ignored or given superficial attention. The 2010 Progress Report seriously addresses the lack of recruitment of Deputy Ombudspersons, which to date are still missing.

The Ombudsperson Institution made several transparency instruments available to the public that allow obtaining relevant information on activities and decision-making processes within this Institution. Despite OI's limited budgetary and human capacities, an attempt was made to make public all activities of this institution through its website, press releases intended for the media and information campaigns. OI has shown its readiness to create a functional rapport with members of the civil society and it is seen by the civil society as an open institution that is also willing to cooperate with the public.

Legal provisions ensuring OI integrity are on a satisfactory level considering the provisions of Kosovo Constitution relating to OI (Articles 132, 133, 134, 135). Lack of the specific Law on OI for a considerable period negatively impacted the issues related to the capacity, governance and the role of this institution. The Law on Ombudsperson (No. 03/L-195) was adopted by the Assembly of Republic of Kosovo on 22 July 2010 and entered into force on 9 August 2010.

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<sup>539</sup> With the entry into force of the Republic of Kosovo Constitution on 15 June 2008, the Ombudsperson Institution (founded in 2000 based on UNMIK Regulation Nr.2000/38), was defined in Albanian as *Zyra e Avokatit të Popullit* (literally Office of People's Advocate), even though its official website and other documents still contain the term *Institucioni i ombudspersonit*. In this report we will refer to this Institution on the basis of the Constitutional definition, i.e. *Zyra e Avokatit të Popullit*.



## Structure and organization

The Ombudsperson is elected by the Assembly of Kosovo. The Ombudsperson Institution is an independent institution, which responds to disputes concerning alleged human rights violations or abuse of authority between individuals and central or local institutions in Kosovo. The Ombudsperson accepts complaints, initiates investigations and monitors the policies and laws adopted by the authorities to ensure that they respect human rights standards and the requirements of good governance.

The mandate of the Ombudsperson Institution has been strengthened by allowing it to initiate proceedings before the Constitutional Court to address the question of compatibility with the Constitution of laws, decrees, regulations and municipal statutes. The Ombudsperson Institution in Kosovo (OIK) was first established in 2000 under UNMIK Regulation No. 2000/38, which gave the Institution a mandate to investigate complaints against UNMIK and the local public administration. In February 2006, UNMIK Regulation No. 2006/06 was promulgated, superseding Regulation No. 2000/38.

Under the new Regulation, the OIK has a mandate to investigate complaints against local authorities or other organs of Kosovo's Provisional Institutions of Self-Government (PISG), but can no longer investigate complaints against international administrative bodies in Kosovo. UNMIK Regulation No. 2006/06 also prescribes a new organizational structure reflecting the

OIK's ongoing transition of the institution into local hands. That process began at the end of 2005, when the UN Special Representative of the Secretary-General (SRSG), Mr. Søren Jessen-Petersen, appointed one of the two (local) Deputy Ombudspersons, Mr. Hilmi Jashari, to replace the international Ombudsperson. Upon entry into force of the respective law in the second part of 2010, the composition of this institution consists of the Ombudsperson, five (5) deputy Ombudspersons; professional staff; and administration.

## Resources (Practice)

*To what extent does the Ombudsperson Institution have adequate resources to achieve its goals in practice?*

Ombudsperson Institution (OI) does not have sufficient resources to fulfill its mission in practice. The budget of this Institution for 2010<sup>540</sup> amounts to 523.735 Euros for 47 employees in total. In this context, for salaries and wages 278.413 Euros were allocated, 193.322 Euros for goods and services and 54.000 Euros for Utilities. The budgetary lines on Grants and Transfers and budgetary lines on Capital expenditures and Stocks, amount to zero. Financial and human resources' sustainability of this institution is not ensured on the appropriate level.

In relation to the issue of internal staff training, since 2005 a significant contribution was made by foreign donors, such as by the Swedish Corporation for International Development (KZZHN) and the governments of Austria, Belgium, Finland, Liechtenstein, Norway, Turkey and the USA.<sup>541</sup> However, the primary obstacle to maintaining quality professional staff for the long term remains the level of salaries, due to a very small budget.<sup>542</sup>

Officially OI started to operate on 21 November 2000. Until 2005, OI was chaired by an international ombudsperson. OI has started expanding its capacities, opening regional offices and raising the number of employees from 18 to 47.<sup>543</sup> However, there are constant complaints, especially from the OI itself, that the staffing is insufficient and that the employers would need addition professional upgrading. The ombudsman was considered moderately effective, but was restricted by funding problems. The OSCE reported that, because donor funding ended in 2008, the ombudsman's office in the Serb village of Vidanje in Peja municipality closed in March. Additionally, the staff numbers

<sup>540</sup> Law on Budget of the Republic of Kosovo for 2010 (Nr.03/L-177), that entered into force on 1 January 2010, pg. 108.

<sup>541</sup> Interview with the author, 15 April 2010.

<sup>542</sup> Interview with Ibrahim Makolli, MP, 20 April 2010.

<sup>543</sup> Ombudsperson Institution, 2008-2009 Ninth Annual Report (Prishtinë, 2010), pg. 12, at [http://www.ombudspersonkosovo.org/repository/docs/RAPORTI%20VJETOR%202009%20anglisht\\_OK.pdf](http://www.ombudspersonkosovo.org/repository/docs/RAPORTI%20VJETOR%202009%20anglisht_OK.pdf) (accessed on 26 October 2010)

were reduced at the ombudsman's office in Gracanica in March for the same reason.<sup>544</sup>

Related to the issue of obtaining proper information from this institution, based on the Constitution of the Republic of Kosovo, every institution or other authority, with legitimate power in the Republic of Kosovo, is obliged to answer the requests of the Ombudsperson and to submit him/her all documents and information requested in accordance with the law. However, the main challenges in ensuring information in the future are still the Kosovo Security Force (KSF) and the Kosovo Intelligence Agency.

## Independence (Law)

*To what extent is the Ombudsperson Institution independent according to the Law?*

Ombudsperson Institution, according to the Constitution, is an independent institution in its activities, that doesn't take any instructions and interferences from institutional bodies or any other authorities, in power in the Republic of Kosovo.<sup>545</sup> The Ombudsperson is elected by the Assembly of Kosovo by a majority of all its deputies for a non-renewable five (5) year term. Any citizen of the Republic of Kosovo, who has a university degree, high moral and honest character, distinguished experience and knowledge in the area of human rights and freedoms, is eligible to be elected as Ombudsperson.<sup>546</sup>

Before the Law on OI was passed, this institution operated on the basis of UNMIK Regulations Nr. 2000/38 and 2006/6. Also, based on the Constitution, OI activity and Deputy Ombudspersons is limited explicitly in the sense of his/her membership in political parties, limiting thereby his political, state and private professional activity and participation in steering mechanisms of civil, economic and trade organizations.<sup>547</sup> The Ombudsperson may be dismissed only upon the request of more than one third (1/3) of all deputies of the Assembly and upon a vote of two thirds (2/3) majority of all its deputies.<sup>548</sup> In this context, Ombudsperson enjoys immunity from prosecution, civil proceedings or dismissal for actions or decisions within OI scope of activity.

<sup>544</sup> US Department of State, 2009 Human Rights Report, Kosovo, at <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136039.htm> (accessed on 12 December 2010)

<sup>545</sup> Constitution of the Republic of Kosovo, Chapter XII Independent Institutions, Article 132 (Role and competences of the Ombudsperson).

<sup>546</sup> Constitution of Kosovo, Article 134, Qualification, Election and Dismissal of the Ombudsperson, at <http://www.kushtetutakosoves.info/?cid=2,248> (accessed on 3 December 2010)

<sup>547</sup> Article 134 (ibidem).

<sup>548</sup> Constitution of Kosovo, Article 134, Qualification, Election and Dismissal of the Ombudsperson, at <http://www.kushtetutakosoves.info/?cid=2,248> (accessed on 3 December 2010)

Having authority only to issue recommendations, OI activities are not subject to judicial proceedings, except that it is also entitled to refer cases to the Constitutional Court in accordance with the provisions of Kosovo Constitution.<sup>549</sup> It is worth mentioning that the Constitution stipulates clearly that the OI is independent and proposes and administers its own budget, in accordance with the law.<sup>550</sup>

## Independence (Practice)

*To what extent is the Ombudsperson Institution independent in practice?*

OI institutional independence was seriously challenged by the lack of relevant law until it was adopted by the Kosovo Assembly, and by the budgetary dependence on the Kosovo Government. Concerns related to political interferences were also stressed in the European Commission 2009 Progress Report, together with some specific recommendations on strengthening OI capacities, functionalising and operationalising the Institution Kosovo-wide and there were requests to ensure sufficient funding to enable OI independence.<sup>551</sup>

In addition to this, another challenge that remains is the “treatment of OI employees as civil servants, who are not considered at the same level as employees of the Constitutional Court. This was seen as a significant impediment in the work of the OI by the Kosovo Government that drafted the Draft Law on OI.”<sup>552</sup> The Parliamentary Committee on Legislation and Judiciary held only one public discussion in relation to this draft law. The law was approved by the Assembly on 22 July 2010 and promulgated by the Decree of the President of the Republic of Kosovo on 9 August 2010.

According to former Kosovo Assembly member, Ibrahim Makolli, the Kosovo Government approach to continue the policy of determining the OI annual budget as a budget of an independent institution elected by Kosovo Assembly, casts great doubt on the compliance with Section 132 of the Kosovo Constitution.<sup>553</sup> The “OI expressed its concern in relation to the lack of information and failure of the government to consult this institution on drastic changes that the Draft Law on OI has undergone. This would essentially violate the independence of this

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<sup>549</sup> Article 135 (ibidem).

<sup>550</sup> Article 133 (ibidem).

<sup>551</sup> Commission of the European Communities, Kosovo under UNSCR 1244/99 2009 Progress Report (Brussels, 15 October 2009), pg. 8.

<sup>552</sup> Author’s interview with a Senior OI official, Prishtinë, 15 April 2010.

<sup>553</sup> Interview with Ibrahim Makolli, 20 April 2010.



mechanism, and therefore this issue has been raised officially with the Kosovo Assembly Speaker."<sup>554</sup> Nonetheless, upon entry into force of the Law on Ombudsperson in the second part of 2010, the financing issue was regulated in explicit manner by ensuring managerial independence through article 34 and despite provisions in other laws, this institution prepares its annual the draft budget and submits it to the Assembly of the Republic of Kosovo for adoption.

## Transparency (Law)

*To what extent are there legal provisions to ensure that the public may obtain relevant information on Ombudsperson Institution activities and decision-making processes?*

The OI is required by law to put at the disposal of the public several instruments that enable collection of relevant information on activities and decision-making processes within this institution, such as: Case Reports, Special Reports, different publications, Press releases, information campaigns and media contacts. Also, Comprehensive Annual Reports as above mentioned legal obligations are posted on the OI website.<sup>555</sup>

The responsibility for maintaining confidentiality for the Ombudsperson is regulated in Article 1.10 and 1.11 of the respective Law. The Ombudsperson, the Deputy Ombudsperson and his staff shall preserve confidentiality of all information and data received by them, by paying special attention to the security of complainants, injured parties and witnesses, pursuant to the law on the protection of data. The obligation of preservation of official secrets extends beyond the mandate or employment contact.

OI and Senior Institution Staff are obliged to disclose their assets in accordance with the Law on the Declaration and Origin of Property and Gifts of Senior Public Officials<sup>556</sup> to the Anti-Corruption Agency within the legal deadline set for 31 March of every calendar year.

<sup>554</sup> Author's interview with a Senior OI official, Prishtinë, 15 April 2010.

<sup>555</sup> <http://www.ombudspersonkosovo.org/?id=2a,74> (accessed on 27 April 2010).

<sup>556</sup> Law Nr. 03/L-151, adopted on 11 February 2010.

## Transparency (Practice)

*To what extent is the transparency present in Ombudsperson Institution activities and decision-making processes in practice?*

Despite the limited budgetary and human capacities of the OI, an effort has been made for all activities of this institution to be publicized on its official website, by press releases intended for the media and information campaigns. Notwithstanding this, the OI web page is not updated very often, i.e. in the part relating to public documents, until 17 June 2011, 2010 the Annual Report was still not posted.<sup>557</sup> In this context, there is also no information related to OI Open Doors in Kosovo municipalities, i.e. the last activity that can be found on the website is the one that was organized on 23 July 2009 in Prishtina Municipality.

Related to cooperation with the civil society, the OI has shown its readiness to establish comprehensive relations, especially on crucial issues related to the OI Constitutional mandate. In this direction, a roundtable was held related to the Draft Law on Ombudsperson organized by KDI organization on 14 April 2010 in Prishtina.<sup>558</sup> In order to facilitate the access of Kosovo citizens, OI, apart from its main office in Prishtina, opened also regional offices in Gjilan, Pejë, Mitrovicë, Prizren and Gracanica. Also, the OI regional office has its Sub-Office in the northern part of the town of Mitrovica.<sup>559</sup>

## Accountability (Law)

*To what extent are there legal provisions to ensure that the Ombudsperson Institution should report and be accountable for its actions?*

Legal provisions regulating the issues of reporting on OI activities are stipulated by the Constitution (Article 135) and the Law on OI (Articles 27 and 28). As an institution elected by the Kosovo Assembly, OI is responsible to submit an annual report before the Assembly members and upon its request, to submit periodical or other reports that may also include recommendations and other necessary measures if it notices that there have been violations of human rights and freedoms by public administration institutions and other state bodies.

<sup>557</sup> OI web page until 20 June 2010, contained only the 2007-2008 Report submitted to Kosovo Assembly on 28 July 2008.

<sup>558</sup> Kosova Democratic Institute, Draft Law on Ombudsperson Discussed, 14 April 2010, at [http://www.kdi-kosova.org/alb/index.php?subaction=showfull&id=1271278385&archive=&start\\_from=&ucat=&](http://www.kdi-kosova.org/alb/index.php?subaction=showfull&id=1271278385&archive=&start_from=&ucat=&) (accessed on 2 May 2010)

<sup>559</sup> Ombudsperson Institution, 2007-2008 Eighth Annual Report (Prishtinë, 21 July 2008), pg. 9, at <http://www.ombudspersonkosovo.org/?id=2,a,74> (accessed on 27 April 2010).

According to Rule 15 the Ombudsperson shall make public her/his intervention letters and case-reports. If she/he considers that these reports contain confidential information, or if the complainant has expressly requested that her/his/its identity and the circumstances of the complaint are not to be revealed, the Ombudsperson shall ensure that certain parts of the case-report are changed so as not to reveal the above information or identities. In addition all intervention letters, case-reports and recommendations should be available in Albanian, Serbian and another language, if the OI so decides.<sup>560</sup>

Article 27 par 2 requires that the OI provides an annual report to the Kosovo Assembly covering the activities during the complete calendar year 1 January – 31 December. The annual report shall be submitted to the Kosovo Assembly no later than 31 March. The Ombudsperson may issue a special report whenever she/he deems it appropriate. These reports shall be made public. Annual and special reports will be available in Albanian, Serbian and another language, if the Ombudsperson so decides.<sup>561</sup>

## Accountability (In practice)

*To what extent does the Ombudsperson Institution report and be accountable for its actions in practice?*

The last report covering period July 2008 – 31 December 2009 was deliberated at the Parliamentary Committee for Human Rights as well as at the plenary session of the Assembly of Kosovo for the first time. One flaw in the entire debate was that the Ombudsperson was not given the opportunity to respond to questions posed by assembly members. Whilst the main problem is that Assembly voted on the Ombudsperson Report. Voting on the Ombudsperson Report is in contradiction to the constitutional and legal mission vested in the Ombudsperson, because it directly touches the independence of the institution.

Issues reflected in the last annual report (July 2008 – 31 December 2009) in its 100 pages primarily relate to: selection of human rights issues in Kosovo, pursuant to Chapter II of the Constitution of the Republic of Kosovo, OI activities, summary of cases and statistics, summary of interim measures, to-

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<sup>560</sup> Ombudsperson Institution, Amended Rules of Procedure for the Ombudsperson Institution in Kosovo, Rule 15, Publishing the Intervention letters, Case-reports and Recommendations, at [http://www.ombudspersonkosovo.org/repository/docs/AMENDED\\_RULES\\_OF\\_PROCEDURE\\_FOR\\_THE\\_OMBUDSPERSON\\_INSTITUTION\\_IN\\_KOSOVO.pdf](http://www.ombudspersonkosovo.org/repository/docs/AMENDED_RULES_OF_PROCEDURE_FOR_THE_OMBUDSPERSON_INSTITUTION_IN_KOSOVO.pdf) (accessed on 22 November 2010)

<sup>561</sup> Ombudsperson Institution, Amended Rules of Procedure for the Ombudsperson Institution in Kosovo, Rule 16, Annual and Special Reports, at [http://www.ombudspersonkosovo.org/repository/docs/AMENDED\\_RULES\\_OF\\_PROCEDURE\\_FOR\\_THE\\_OMBUDSPERSON\\_INSTITUTION\\_IN\\_KOSOVO.pdf](http://www.ombudspersonkosovo.org/repository/docs/AMENDED_RULES_OF_PROCEDURE_FOR_THE_OMBUDSPERSON_INSTITUTION_IN_KOSOVO.pdf) (accessed on 22 November 2010)

gether with the list of employees.

## **Integrity mechanisms (Law)**

*To what extent are there any legal provisions to ensure integrity of Ombudsperson Institution?*

Legal provisions to ensure the integrity of the OI are at a satisfactory level taking into account that the Kosovo Constitution lists OI as the first independent institution in the political system (Articles 132, 133, 134, 135.) The areas on conflicts of interest and acceptance of gifts are regulated specifically by the Law on Preventing Conflict of Interest while Exercising a Public Function,<sup>562</sup> and the Law on Declaration and Origin of Property. Moreover, there are Procedural rules valid for the Ombudsperson Institution in Kosovo.<sup>563</sup> Issues pertaining to professionalism and engagement and political/business activities are regulated based on Article 134 of the Kosovo Constitution.

In relation to information confidentiality, any applicant may, of their own free will, make a statement anonymously or publicly, by using one of several methods to file a complaint, such as: by filing a complaint personally in the OI main office or regional offices; writing to addresses posted on the official website; calling the free phone number (help line,) sending a fax or writing an E mail.<sup>564</sup>

## **Integrity Mechanisms (Practice)**

*To what extent is the integrity of Ombudsperson Institution ensured in practice?*

The issue of OI staff training is completely influenced by the inadequate and insufficient finances provided to this institution. Further professional development of OI staff is ensured only through donations from different international partners. Also, former Assembly member Ibrahim Makolli confirmed that the limiting of the OI mandate with just recommendation giving power to public administration institutions does little to strengthen the OI integrity mechanisms.<sup>565</sup>

<sup>562</sup> Law Nr. 02/L-133, adopted on 2 November 2007.

<sup>563</sup> Ombudsperson Institution, Rules of Procedure, at [http://www.ombudspersonkosovo.org/repository/docs/Rregullat\\_e\\_Ndryshuara\\_Procedurale\\_të\\_Institucionit\\_22-12-05\\_albAS.pdf](http://www.ombudspersonkosovo.org/repository/docs/Rregullat_e_Ndryshuara_Procedurale_të_Institucionit_22-12-05_albAS.pdf) (accessed on 2 May 2010)

<sup>564</sup> For more information, please see Complaint Form, posted on OI web page <http://www.ombudspersonkosovo.org/repository/docs/ComplaintFormPDF.pdf> (accessed on 28 April 2010).

<sup>565</sup> Interview with the author, 20 April 2010.

## Investigation (Law and Practice)

*To what extent is the Ombudsperson Institution active and effective in treating public complaints?*

The procedure of filing a complaint to OI is fairly easy and quick. Each citizen may file a complaint to the OI main office or regional offices by filling in the Complaint Form, that is a simple document and requires filling in basic information about the Complainant and the details of the issue he/she is raising. According to the 2007–2008 OI annual report, 523 cases were submitted.<sup>566</sup> During this period, approximately 3800 persons contacted the OI in its Main Office in Prishtina or in Regional Offices to file complaints or to request advice and assistance.<sup>567</sup> For 2009–2010 this number has increased significantly, reaching 2, 548 complaints.

The Ombudsperson Institution has proven itself as an open and co-operative institution, however, the obstacle that still remains is the low level of institutional feedback on the OI reports and recommendations. Citizens in general are not well informed about the existence of this institution and the opportunities, ways and procedures to file a complaint. The general public impression of the OI is positive, however citizens' trust may well be increased with the enforcement of OI recommendations by other state institutions. Consequently, OI recommendations would largely be put in practice, at the same time increasing the credibility of the institution in the eyes of the public.

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<sup>566</sup> Ombudsperson Institution, 2007-2008 Eighth Annual Report (Prishtinë, 21 July 2008), pg. 108 and 109, at <http://www.ombudspersonkosovo.org/?id=2,a,74> (accessed on 27 April 2010).

<sup>567</sup> Ibid

## Promotion of Good Practice (Law and Practice)

*To what extent is the Ombudsperson Institution active and effective in raising the awareness of the Government and public on ethical standards and conduct?*

The lack of traction of the Ombudsman reports is among the greatest challenges this institution faces. Its findings are mainly ignored by state institutions and this seriously hampers the effectiveness of the institution. The persisting weakness of this institution should be addressed. The authorities should ensure prompt responses to all inquiries and recommendations from the ombudsperson.<sup>568</sup> The central human rights units remain constrained by a lack of funding and training. Their poor interaction with the ministries' administration and poor communication with the OI do not contribute to enhancing awareness of human rights.<sup>569</sup>

The OI continued to assert that the courts, ministries, police and municipalities were the most frequent violators of human rights in the country. The ombudsperson also noted that recent reforms in the judiciary were insufficient, and the system still suffers from grave defects. While the ombudsperson actively issued intervention letters, reports, and recommendations, his recommendations were not always followed by the government, local courts, or the police. The ombudsperson investigated cases concerning property rights, abuse of official authority, administrative acts or omissions by public authorities, a lack of proper investigations into criminal acts, issues involving the length of court proceedings and the execution of court decisions, employment-related disputes and discrimination cases.<sup>570</sup>

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<sup>568</sup> Commission of the European Communities, Kosovo under UNSCR 1244/99 2010 Progress Report (Brussels, 9 November 2010), pg. 9, at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/ks\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ks_rapport_2010_en.pdf) (accessed on 15 November 2010)

<sup>569</sup> Ibidem

<sup>570</sup> US Department of State, 2009 Human Rights Report, Kosovo, at <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136039.htm> (accessed on 12 December 2010)

## Recommendations

- Implement Ombudsperson's recommendations intended to protect the fundamental rights and freedoms of natural and legal persons against illegal and irregular actions of public authorities, an obligation based on the Constitution of the Republic of Kosovo, the Law on Ombudsperson Institution and other national and international instruments. Beyond its advisory and recommending authority, the Ombudsperson Institution should be empowered through executive mechanisms in relation to public administration institutions;
- Increase unannounced inspection activities in public administration bodies and establish direct unimpeded and uncontrolled correspondence of public sector employees and the Ombudsperson Institution;
- The Ombudsperson Institution reports should become mandatory for discussion in the Republic of Kosovo Assembly;
- Increase professional and administrative capacities of the OI, empower and increase the number of regional offices in other municipalities. Organize periodically promotional-information campaigns in the Republic of Kosovo municipalities as well;
- The Republic of Kosovo Assembly should adopt the budgetary request of the Ombudsperson Institution, in order to ensure independent and sustainable operation of the Ombudsperson Institution.
- Establish a unit within the Ombudsperson Institution dealing with procedures and access to official documents;
- Strengthen the cooperation with civil society on the central and local levels and increase the cooperation in the justice system;
- The Assembly should act urgently to elect Deputy Ombudspersons;

- Increase the effectiveness of the official website and create better virtual opportunities in terms of promoting the role of the Ombudsperson in the protection, supervision and promotion of fundamental rights and freedoms of natural and legal persons against illegal and irregular actions of public authorities or lack thereof;
  
- The Republic of Kosovo Assembly should act urgently to offer a permanent solution and an appropriate venue for the Ombudsperson Institution HQ.



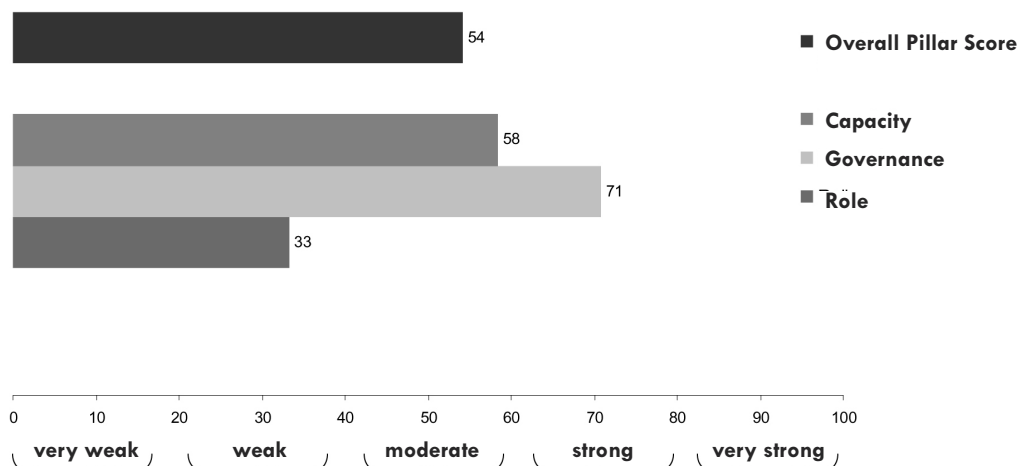
**8.**

**OFFICE OF  
THE AUDITOR  
GENERAL**

## Overview

The Office of the Auditor General in Kosovo is a relatively new institution. It has existed since 2003 and it was founded based on UNMIK Regulation 2002/18, whereby the UN Special Representative of the Secretary General appointed the Auditor General in November 2003. The Republic of Kosovo Constitution, in Article 136, defines it as an independent institution for economic and financial oversight of public institutions reporting to the Kosovo Assembly. The mandate, organization, responsibilities, funding and accountability are regulated by Law Nr. 03/L-075, adopted by the Kosovo Assembly in June 2008.

The Constitution and the law stipulate that the Auditor General shall be an international, appointed by the International Civilian Representative until the end of the international oversight and implementation of the Comprehensive Status Proposal on Kosovo. This form of appointment represents in fact a sign of dualism, however, it has not created any obstacles to the operational work of the Auditor. He reports only to the Assembly. However, the major issues lie in the fact that there is no enforcement mechanism to implement or comply with the Auditor's remarks and recommendations.



## Resources (Practice)

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

The budget of the Kosovo Office of the Auditor General is adopted by the Kosovo Assembly, upon the proposal of the Kosovo Government. Initially, a request is made by the Auditor General, that is, after its submission to the Ministry of Finance and receipt by the Government, it is discussed in the Parliamentary Committee on Budget and Finance and adopted in the Assembly.<sup>571</sup> The amount of the budget is set based on the needs of this office taking into consideration the capacities of the Kosovo budget.

For 2010, the OAG had a budget of €1,309,824, which was a 1.5 % increase compared to the 2009 budget. In the mid year review, an additional €200,000 were proposed in order to cover premises expenses. The budget request for 2011 is €1,709,000 (including 14 more audit posts and the surrounding costs).

The initial budget for 2009 amounted to €1,106,963, which was lower than the 2008 budget.

<sup>571</sup> <http://www.ks-gov.net/oag/Raportet%20shqip/Performanca%20-2008/APR%202009%20shqip.pdf>

After the mid-year review, funds were requested for an additional 16 staff members, in accordance with the agreement between Kosovo and the EU. This wasn't put into effect until the end of November 2009. Consequently, the utilization of the budget for salary and wages, was not as good as it should have been.<sup>572</sup> Moreover, in case the OAG needs additional finances, the request should go through the Assembly of Kosovo.

During 2009 this situation changed. The number of full time international experts reduced. Currently, the International Civilian Office (ICO) in Kosovo finances the (international) Auditor General and his Head of Cabinet. Moreover, the ECLO is financing a Twinning project with the UK National Audit Office and the Slovenian Audit Court. The Twinning projects ends in August/September this year. Thereafter the OAG will not be supported by the ECLO. A request for support has been made under IPA 2011. If a positive decision is taken a new support process can start in autumn 2012. The Auditor General has taken measures towards securing bi-lateral cooperation ensuring bridging support during the gap.

According to 2008 EPAP, this small EU support needs be compensated with a higher number of local auditors. The foreseen increase in the national staff was set to increase by 20% a year, for a 5-year period. Apart from the additional number of posts, the set number was not achieved.

The number of staff was 80 in the end of 2008, 85 in the end of 2009 and 114 in the end of 2010, whilst the number of post was 116. All auditors have university degrees. The percentage of auditors in relation to the total number of staff has increased from 73% to 76% over the last three years.

For the sake of professional development, the Regularity auditors attend different trainings according to a certification scheme that is currently provided by the Association of Kosovo Certified Accountants and Auditors. By the end of 2009, 61 persons or 90% of auditors obtained some type of certification. This proportion decreased with the arrival of a high number of new staff and the introduction of Performance audits. The Performance auditors do not undergo the same certification. In 2009 the staff had 454 training days, which is less than in 2008 due to a greater focus on operational work.<sup>573</sup> The number of training days in 2010 has again raised due to the high number of new staff.

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<sup>572</sup> (ibid)

<sup>573</sup> <http://www.ks-gov.net/oag/Raportet%20shqip/Performanca%20-2008/APR%202009%20shqip.pdf>

From the financial point of view, the OAG is not completely independent since the employees of this institution are civil servants and the Government after all has an impact on the allocated budget. However, the Government exerts no pressure through budget allocation.<sup>574</sup> The budget dialogue should follow the accountability line and be developed between the Assembly and the OAG, which in practice is not always the case.

## Independence (Law)

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

Pursuant to the Kosovo Constitution,<sup>575</sup> the Auditor General of the Republic of Kosovo is the highest institution of economic and financial control. Its organization, operations and competences are stipulated in the Constitution and law. According to the Law on the Establishment of the Office of Auditor General and Kosovo Audit Office,<sup>576</sup> the Auditor reports only to the Assembly.

In accordance with the Corporate Development Plan of the OAG and the Government PFM Action Plan the law is in the process of being amended with the aim of securing the independence of the institution, reduce ambiguities and securing consistency.

This relationship is also stipulated by the Kosovo Constitution, considering that the Auditor General should be elected by the Assembly of Kosovo. She/He can be dismissed by a 2/3 vote of Members of Parliament, upon the President's proposal, or at the motion of 1/3 of MPs. Due to Kosovo's specific position, namely the presence of the EU mission, according to the law, until the end of the international oversight over the implementation of the Comprehensive Status Settlement, the Auditor General shall be an international appointed by the International Civilian Representative.<sup>577</sup>

The Auditor General shall enjoy full freedom of action in his/her functions and competences. Specifically, the Auditor General may not be subject to any orders as to whether or not to carry out any audits; on the manner of performing an audit and on the priority given to any specific issue. In accordance with the law the Auditor General and the audit staff should have professional qualifications. The OAG Code of Ethics and the Code of Conduct are based on interna-

<sup>574</sup> Lars Lage Olofsson, Auditor General, interview, April 2010

<sup>575</sup> <http://www.ks-gov.net/oag/te%20tjera/Kushtetuta.e.Republikes.se.Kosoves.pdf>

<sup>576</sup> [http://www.ks-gov.net/oag/te%20tjera/2008\\_03-L075\\_SHQIP.pdf](http://www.ks-gov.net/oag/te%20tjera/2008_03-L075_SHQIP.pdf)

<sup>577</sup> Ibid, Article 8

tionally recognized auditing standards. They specify how the whole staff shall carry out duties in an impartial and professional way.<sup>578</sup>

Taking into account the practices thus far, the selection of the Auditor General by international structures warrants him/her independence in relation to local structures, but at the same time it displays the paternal approach of internationals towards Kosovo institutions.<sup>579</sup>

The Auditor General is accountable to the Assembly of Kosovo in all operational aspects and also – as a head of an independent organization – for the way his budget is executed. The aspects of Auditor General’s accountability to the Head of the ICO mission in Kosovo are related to contractual obligations.<sup>580</sup>

The Law on the OAG specifies that the Auditor General cannot be dismissed from the post without reason. He can only be dismissed by the Assembly of Kosovo when not able to carry out his responsibilities due to illness, in cases of improper and inappropriate behavior, if he is incompetent, has been found guilty based on a final court decision, bankrupts or seeks to benefit from any law or rule on releasing debtors that went bankrupted or are insolvent or is not able to pay his dues and awards to his/her debtors.<sup>581</sup>

The Auditor General has a five (5) years mandate, and according to the law needs to have specific qualifications, to exhibit outstanding morals, impartiality and fairness, necessary for its functions, and have a university degree and relevant experience of at least 10 years in the field of accounting and auditing, public finance or public administration.

The law on the OAG provides no clarifications on the possibility of reappointment, as well as on immunity from criminal prosecutions resulting from improper work.

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<sup>578</sup> OAG ratified the INTOSAI Code of Ethics and it uses it in support of developing its own internal manual that is obligatory for every employee.

<sup>579</sup> Avni Zogiani, NGO “ÇOHU”, interview, April 2010

<sup>580</sup> Lars Lage Olofsson, interview, April 2010

<sup>581</sup> [http://www.ks-gov.net/oag/te%20tjera/2008\\_03-L075\\_SHQIP.pdf](http://www.ks-gov.net/oag/te%20tjera/2008_03-L075_SHQIP.pdf), Article 2

## Independence (Practice)

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

The law provides auditors an opportunity to act independently and without any interference. Article 2 of the Law on the OAG stipulates that auditors have complete freedom of action when exercising their competences. They are not subject to the orders, or control of any institution.

However, during the work of the auditors, there have been cases of interference. A team of auditors has been expelled from the Ministry of Transport and Communications. The justification for this was that a member of the team had close ties with an official of this ministry, while the other was ill. If this was true, these obstacles could have been made known from the outset.

Also, the Audit Report on Radio Television of Kosovo, compiled by a private auditor, despite the defined terms, was held for too long by the officials of the Assembly and the Government and this adds to the suspicion of possible interference.<sup>582</sup>

During the last year, the OAG began audits of public enterprises. At the beginning of these processes, doubts were raised by Government officials regarding the OAG's legal mandate. The Law on Public Enterprises and the Law on Auditor General may be interpreted as inconsistent. This issue was resolved based on Constitutional provisions, providing wide competencies to the Auditor General in this respect. The Law on Public Enterprises needs to be clarified further. Since the law requires the auditor to send the report to the audited organization prior to its publication, this creates the possibility for interference.<sup>583</sup>

In some Serbian municipalities, the willingness to produce Annual Financial Statements is lacking. Leposavic is one example. Due to this, the OAG has no basis on which to conduct an audit.

<sup>582</sup> Avni Zogjani, OJQ "ÇOHU", interview, April 2010

<sup>583</sup> Avni Zogjani, NGO "Cohu", interview, April 2010

In cooperation with the Ministry of Finance, measures are currently being taken in order to secure sufficient external reporting. In some few individual cases, the OAG has encountered difficulties in obtaining information: one example was when auditing the northern part of “Trepca.” In the current audit of Trepca these problems are no longer occurring.

Since the Auditor General is appointed by the International Civilian Representatives in Kosovo and is an international, this is the strongest guarantee of his impartial approach. On the other hand, it is not known whether someone from this office was involved in other activities prohibited by the law.<sup>584</sup>

The law on the OAG doesn’t contain a specific article describing other tasks that cannot be undertaken by the auditor, apart from the fact that he should not be subject of a criminal investigation and shouldn’t have been sentenced by a competent court for committing a crime.<sup>585</sup>

On the other hand, the Auditor General works full time and cannot be employed anywhere else while serving as the Auditor General.<sup>586</sup>

## Transparency (Law)

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

According to the law, audit reports shall be made public. Regularity Audit reports (including opinions on the Annual Financial Statements,) Performance Audit reports, the Comprehensive Annual Audit Report (AAR) as well as the OAG Annual Performance Report (APR) are all public and may be found on the website. The AAR covers the Kosovo Consolidated Budget and all other audits carried as well as conclusions on an aggregated level.

The OAG Annual Performance Report also includes Annual Financial Statements. This report needs to be submitted to the Assembly by the end of April.<sup>587</sup> The Auditor General shall not publish any information classified as secret (confidential) according to the specific laws regulating this. If information is classified, the OAG shall prepare and submit a secret report, iden-

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<sup>584</sup> Ramadan Ilazi, “FOL” movement, interview, April 2010

<sup>585</sup> [http://www.ks-gov.net/oag/te%20tjera/2008\\_03-L075\\_SHQIP.pdf](http://www.ks-gov.net/oag/te%20tjera/2008_03-L075_SHQIP.pdf), Article 5

<sup>586</sup> Ibid, Article 2

<sup>587</sup> [http://www.ks-gov.net/oag/te%20tjera/2008\\_03-L075\\_SHQIP.pdf](http://www.ks-gov.net/oag/te%20tjera/2008_03-L075_SHQIP.pdf), Article 3



tifying information not included in the published report. In the secret report reasons for the non-inclusion shall be provided upon the request of the Presidency of the Assembly of Kosovo.<sup>588</sup>

The law does not define the nature of this information. Other than the obligation to submit the annual report, the law does not stipulate that these reports need to be subject to discussion.

## Transparency (Practice)

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

The OAG website<sup>589</sup> publishes all reports since 2005. On this web page, the public may find general information, the legal basis, policies, standards, manuals and guidelines. Moreover, it provides information on tenders and addresses, phone numbers or electronic addresses of the OAG contact persons.

In September 2009, the Assembly of Kosovo discussed the OAG Annual Audit Report.<sup>590</sup> For the 2008/2009 audit season, the auditor, besides the CBK Annual Financial Statements (AFS) audit, reported on 23 regularity audits from the Kosovo Consolidated Budget and one regularity audit outside the CBK. It also conducted the first two performance audits providing analysis and recommendations on the efficiency and effectiveness of the programs and public organizations. In total 25 audits were reported. The comprehensive annual audit report was delivered on time for the first time.

In September 2010, the Assembly of Kosovo discussed the OAG Annual Audit Report.<sup>591</sup> For the 2009/2010 audit season The auditor reported on the audit of the CBK AFS on 66 regularity audits from the Kosovo Consolidated Budget, two regularity audits and two management audits outside the CBK and one performance audit. In total 72 audits were reported. The comprehensive annual audit report was delivered in time for the second time.

All in all, the OAG during the 2010/11 audit season is carrying out 90 audits of different kinds. The AAR has also, in the two latest years, been printed in 500 copies and sent to every Minister, General Secretary, CAO, Mayor and other stakeholders. This was not done earlier.

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<sup>588</sup> Ibid, Article 4

<sup>589</sup> <http://www.ks-gov.net/oag/>

<sup>590</sup> Ramadan Ilazi, "FOL" movement, interview, April 2010

<sup>591</sup> Ramadan Ilazi, "FOL" movement, interview, April 2010

During the two latest seasons the audit approach has changed, introducing interim audits. The interim audit is carried out in the second part of the budget year and allows the OAG to give advice to the audited entities and to play a more preventive role by pinpointing shortcomings before the AFS are drafted. This approach in itself also makes the audit more transparent.

In addition to this, the OAG has also started to carry out so called Health checks in small institutions not under full audit with the ambition that every budget spender shall have some kind of audit carried out annually. Further on, during this audit season a cooperation with the Government in the end of the AFS production process has been developed with the aim to get fewer mistakes in the final AFSs. This approach will most likely make the quality of information better and more transparent.

The establishment of the COPF and the fact that this committee during 2010 started to hold the necessary people accountable for the budget execution is a step forward. The cooperation between the COPF and the OAG is established, although much remains to be done to secure good practices. It is still early to have a view as to how the Government will implement the amendments in the LPFMA (see above.)

## **Accountability (Law)**

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

As stated earlier, the Auditor General produces Annual Financial Statements and an Annual Performance Report. The latter shall include the former and the opinion given by an external auditor. The auditor must be an internationally recognised auditing firm. The report shall be submitted to the parliament by the end of April.

The Assembly shall appoint the external auditor. The Assembly may dismiss the external auditor if there are good reasons to do so. An external auditor can not be hired for more than five consecutive years.<sup>592</sup>

Also, when requested, the Auditor General may argue the budget request in the Parliamentary Committee on Budget and Finance and discuss the report related to plans and priorities, performance goals, annual performance report and management practices.<sup>593</sup>

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<sup>592</sup> Ibid, Article 6

<sup>593</sup> Ibid

## Accountability (Practice)

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

The Annual Performance Report of the Auditor General is comprehensive. It contains a performance summary, general information, result indicators, resources, achievements, accountability and financial statement.

This office should have an internal auditor to audit the managing and administrative practices, to ensure that the work is done according to the law. The Internal Auditor was appointed in March 2010 following the Assembly decisions to add 16 more posts in the office.<sup>594</sup>

When the OAG Annual Financial Statement was audited for the budget year 2007 the OAG purchased this service itself. Following internationally recognized auditing and good governance standards this should be done by the principal, the Assembly. In 2010, and too late to be included in the APR, the Assembly appointed an internationally recognised private auditing firm for the audit of the OAG AFS for two consecutive years, 2008 and 2009. These audits were reported in September 2010. For both years an unqualified opinion was given. The reports are published on the OAG's website.

Currently it looks like the audit of the OAG AFS for 2010 will also be delayed and not included in the APR as intended.

The quality of the work carried out by the OAG is also assessed by the Twinning partners, the EU and other international partners. Shortcomings found will be reflected in the official reports of these partners and forms a good basis for accountability.

Analysts assess that the audit method of the Auditor's office, but also of other budget agencies, creates a basis for suspicion of interference. Especially when taking into account the fact that the OAG auditor is appointed by the Kosovo Assembly, its founding institution, but also at the same time its administration is audited by the OAG. This raises doubts that these two institutions may be mutually influenced.<sup>595</sup>

<sup>594</sup> <http://www.ks-gov.net/oag/Raportet%20shqip/Performanca%20-2008/APR%202009%20shqip.pdf>

<sup>595</sup> Avni Zogjani, NGO "Cohu", interview, April 2010

## Integrity Mechanisms (Law)

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

The Auditor General is authorized to issue secondary legislation to implement the Law on Audit.<sup>596</sup> In accordance with the Law, the OAG adopted the INTOSAI Code of Ethics. Based on this, a Professional Code of Conduct was developed, with the aim of its application by all staff, including those working under the auspices of this office. This document includes the code of professionalism, credibility, competences, independence, objectivity, diversity, political activities, professional responsibility, confidentiality, responsibilities, respect for others and conflicts of interest.<sup>597</sup>

All standards applicable to the staff of this office were taken out of the INTOSAI code. Its signatories are obligated to avoid all situations where conflicts of interest are possible or perceptible.<sup>598</sup>

Auditors should protect their independence and avoid conflicts of interests by refusing gifts or benefits that may affect their independence and integrity, avoid all relationships with the manager and staff of the audited entity and other entities threatening their independence, should not use their official position for private purposes and should avoid relationships that carry a risk of corruption or that may raise doubts as to their objectivity and independence.<sup>599</sup>

According to the law, during the auditing process, the person conducting the audit should not disclose information. Any person that fails to comply with this provision shall be seen to commit a criminal offense punishable by a fine of up to five-thousand (5000) Euros or imprisonment of up to three (3) years.<sup>600</sup>

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<sup>596</sup> [http://www.ks-gov.net/oag/te%20tjera/2008\\_03-L075\\_SHQIP.pdf](http://www.ks-gov.net/oag/te%20tjera/2008_03-L075_SHQIP.pdf), article 7

<sup>597</sup> <http://www.ks-gov.net/oag/Standardet/shqip/Manuali%20i%20auditimit%20te%20Rregullise.PDF>

<sup>598</sup> <http://www.ks-gov.net/oag/Standardet/shqip/Manuali%20i%20auditimit%20te%20Rregullise.PDF>

<sup>599</sup> <http://www.ks-gov.net/>

<sup>600</sup> [http://www.ks-gov.net/oag/te%20tjera/2008\\_03-L075\\_SHQIP.pdf](http://www.ks-gov.net/oag/te%20tjera/2008_03-L075_SHQIP.pdf), article 4

## Integrity Mechanisms (Practice)

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

Each staff member of the Office of Auditor General should be acquainted with the entire content of the code and should endorse the acceptance of the Code by his/her signature. The Code should also be signed by the members of each specific auditing team, confirming thereby that they will implement the Code in practice. This is kept with other Audit Office records.<sup>601</sup> Besides this each auditor has to sign a paper annually, prior to starting an individual audit assignment, asserting that she/he has no specific interest in relation to the assigned project.

Training is an important aspect of the Audit institution. For this reason a substantial portion of the budget has been invested in professional training of the staff conducting regularity audits by a specific certification scheme. The number of auditors who pass the different stages of certification has been growing slowly but consistently, despite the fact that a number of the certified staff left in order to find employment on other positions. During the past three years, intensive training has been developed in the area of integrity. Mainly, trainers came from internal staff but also from local and international experts with various fields of expertise.

Formally, the Assembly has to guarantee the integrity and independence of auditors. However, it did not react at all to protect the auditors who were expelled by the Ministry of Transport and Telecommunications. Therefore, their integrity is violated considering that the institutions do not respect the Constitution and the law.<sup>602</sup>

## Effective Financial Audits

*To what extent the OAG offers effective audit on public expenditures?*

In addition to the mandatory audit requirements, the Auditor General may make arrangements with any institutions or entities authorized for audits, to carry out regularity audits, process audits or to offer other common services provided by an auditor.<sup>603</sup>

The reports generally relate to the regularity audit of the Kosovo Consolidated Budget. In 2009, for the first time, two performance audits were reported. The Performance audit on the Min-

<sup>601</sup> <http://www.ks-gov.net/oag/Standardet/shqip/Manuali%20i%20auditimit%20te%20Rregullise.PDF>

<sup>602</sup> Avni Zogiani, NGO "Cohu", interview, April 2010

<sup>603</sup> [http://www.ks-gov.net/oag/te%20tjera/2008\\_03-L075\\_SHQIP.pdf](http://www.ks-gov.net/oag/te%20tjera/2008_03-L075_SHQIP.pdf), article 3

istry of Labour and Social Welfare was done in terms of its Disability Pension Scheme and also on the Ministry of Health performance in the distribution of essential medications.<sup>604</sup> In 2010 another Performance audit was reported on the effectiveness of the Certification function. Currently three other Performance audits are in progress.

An internal audit is a process conducted within an institution. It does not involve a preliminary spending plan.<sup>605</sup> Budget lines are general and this undermines the effectiveness of the internal audit.

Previously, audited entities only implemented recommendations to a small degree. The reason for this can be found in the way these recommendations were given and formulated and in the perception that audit results are not fully consistent with internationally recognized standards. At the same time, the auditor's advice was not taken into consideration sufficiently. The way the recommendations were given during 2009, and the change of the audit approach speak to the managers' accountability to address deficiencies in a more direct way. A tendency has been observed that the action plans of the audited entities are becoming more rigorous and the recommendations are being addressed in a more cautious way. There have been talks with the Government about cases of mismanagement that resulted in a series of measures intended to strengthen managerial accountability.<sup>606</sup>

Audits are primarily focused on compliance and are focused on ensuring conformity with applicable INTOSAI auditing standards. In general, regularity audits included organizations with 80% of total expenditures and 95% of total CBK revenues.<sup>607</sup>

It is also worth noting that when the OAG draws conclusions from the audit on an aggregate level (system level) and works with these issues together with the Government and different international projects, this creates a very good basis for change and understanding.

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<sup>604</sup> <http://www.ks-gov.net/oag/Raportet%20shqip/Performanca%20-2008/APR%202009%20shqip.pdf>

<sup>605</sup> Avni Zogiani, NGO "Cohu". Interview, April 2010

<sup>606</sup> <http://www.ks-gov.net/oag/Raportet%20shqip/Performanca%20-2008/APR%202009%20shqip.pdf>

<sup>607</sup> <http://www.ks-gov.net/oag/Raportet%20shqip/Performanca%20-2008/APR%202009%20shqip.pdf>

## Finding and sanctioning of irregularities

*Does the auditor investigate and find irregularities with public servants?*

The Auditor General has no specific mechanism to identify irregularities besides the internationally recognized auditing standards. The law gives him the authority to perform, at any time, an audit of the work of institution, or entities for which he has authorization.<sup>608</sup>

In carrying out audits, errors, mistakes, irregularities, suspicions on fraud and/or, corruption are found. Findings are communicated with the audited entities and recommendations are given as to how to address them. If accountable managers are not taking needed measures, the next level in the accountability chain shall react. While the system for this exists, in practice has not been fully implemented. The OAG as an SAI does not have and shall not have constitutional or other legal power to investigate and punish public servants. When it comes to suspicions regarding criminal offenses these are reported to the prosecutors and to the Anti Corruption Agency. A Cooperation Agreement is signed regarding securing this mutual information.

However, the Auditor General may instruct a person in writing, while specifying a reasonable time period to fulfill all tasks, to provide any information he/she requires, to present and ensure testimonies and provide necessary documents. A person not complying with instructions, shall be seen to commit a criminal offense punishable by a fine of up to five thousands (5000) Euros, or imprisonment of up to three (3) years.

The Auditor General or an authorized person a) may enter and stay in the premises of any audited entity at any reasonable time, enjoys full right to search assets or documents, whether in paper or electronic form and make copies or make copies of this information at any reasonable times.

If an unauthorized officer enters or attempts to enter the premises under the Auditor General's authority, he/she shall have thereby committed a criminal offense punishable by a fine of up to five thousand (5000) Euros, or imprisonment of up to three (3) years.<sup>609</sup>

From the practical point of view, there are deficiencies, since the auditor was prevented access to some municipalities, or companies under the Kosovo budget. In this case, the Assembly of Kosovo did nothing to enable the audit.

At the same time, in terms of the ability to verify the regularity of expenditures and payments, the auditor has no authority to examine bank accounts of audited entities, considering that this is a re-

<sup>608</sup> [http://www.ks-gov.net/oag/te%20tjera/2008\\_03-L075\\_SHQIP.pdf](http://www.ks-gov.net/oag/te%20tjera/2008_03-L075_SHQIP.pdf), article 3

<sup>609</sup> Ibid, Article 4



served “power” of another authority.<sup>610</sup>

## Improvement of financial management

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

The Auditor General gives recommendations in all reports and makes an effort to be clear in order to ensure ease of implementation. Entities audited earlier, implemented the given recommendations to a very low percentage. The reason behind this may be found in the way the recommendations were given and formulated, as well as in the perception that audit results are not entirely in accordance with the recognized international standards. At the same time, it may be emphasized that the willingness or the opportunity to take into consideration the advice of the auditor is unsatisfactory.<sup>611</sup>

Another aspect is also the limited interest of the Assembly to undertake actions for any report not in compliance with the schedule of the budget process. The importance of this level of chain of command is subject to discussions. Lately, the Kosovo Assembly held a public hearing with the managing staff of the audited entities holding unfavorable opinions. If we assess the level of reaction of the Government to the OAG recommendations on a 1-5 scale, then we can say that this reaction initially was 1 but now is closer to 2.<sup>612</sup>

There is no mechanism for reviewing whether or not the Government has implemented the OAG recommendations. Relations between the OAG and the Government should improve whereas the ministers should take actions. Precisely because of these deficiencies, almost every year the auditor has the same remarks and recommendations, which are not implemented in practice by the agencies.<sup>613</sup>

The auditor in his reports provides remarks and recommendations. The manner and the extent of their implementations remain under the responsibility of the audited agencies, the government or the Assembly. Last year, 21 opinions were reported as unqualified, four were qualified. For 31 municipalities, auditors could not draw a conclusion due to the ambiguities about the material parts of financial statements, while one municipality has refused to provide annual financial statements.<sup>614</sup>

<sup>610</sup> Avni Zogiani, NGO “Cohu”, interview, April 2010

<sup>611</sup> Ibid

<sup>612</sup> Lars Lage Olofsson, General Auditor, Interview, April 2010

<sup>613</sup> Avni Zogiani, OJQ “ÇOHU”, interview, April 2010

<sup>614</sup> <http://www.ks.gov.net/oag/Raportet%20shqip/Performanca%20-2008/APR%202009%20shqip.pdf>



## Recommendations

- Amend the Kosovo Constitution and the Law on the Office of Auditor-General, considering that there is no need any longer to necessarily have an international auditor-general appointed by the International Civilian Representative (ICO.) His/her appointment may be done within a wide competition, where also those who are not Kosovo citizens would have an opportunity to apply.
- The Kosovo Assembly needs to adopt bylaws, administrative instruction or even amend the Law on the Office of Auditor-General, whereby every budgetary organization, audited by the OAG, would need to report on the stage of remedying omissions recorded and eliminating the remarks given by the auditor.
- The report of the Auditor-General should necessarily serve as substantive evidence based on which the prosecutor could initiate an investigative procedure to assess the dimensions of legal violations, individual responsibility, damage caused and measures to be undertaken.
- Accurately abide by the law, according to which the Office of the Auditor-General needs to be audited once a year by a commission composed of qualified professionals and appointed by the Kosovo Assembly. The Commission needs to audit the performance and regularity of the OAG. Its report is to be presented before the Assembly of Kosovo, as the founder of the OAG.
- The Office of the Auditor-General should also necessarily audit the performance of every budgetary agency, namely the manner of financial management.
- The Kosovo Assembly should find a mechanism so that all users of public funds in municipalities inhabited by Serbs, and also in the northern part of "Trepça," are subjected to the audit performed by the Office of the Auditor-General. If this is still refused, sanctions should be foreseen, even by cutting the grants they get from the Kosovo budget.
- Office of Auditor-General should audit public enterprises owned by the Republic of Kosovo, namely those where the Kosovo Government is a sole shareholder, notwithstanding that they are using assistance from the Kosovo budget;

- Harmonize the Law on Office of Auditor-General and Law on Public Enterprises, enabling the Auditor-General to audit public enterprises, especially related to the Kosovo Energy Corporation that is the biggest beneficiary of Kosovo budget funds.

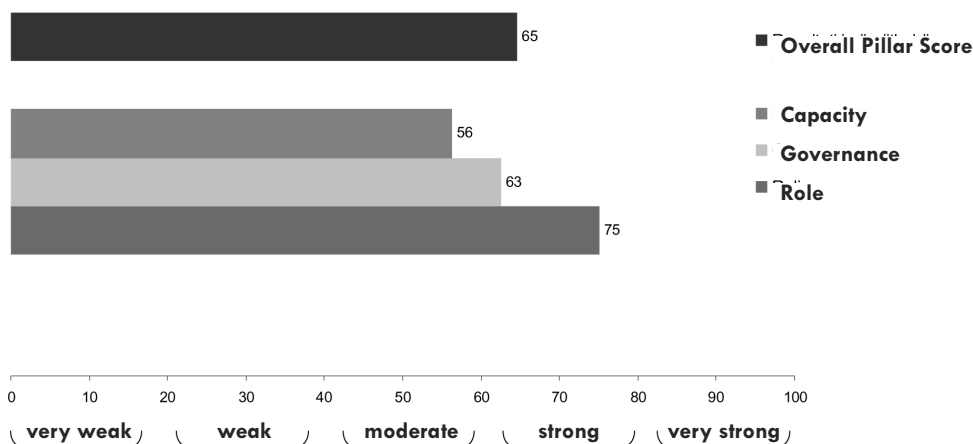
- Related to the Law, clarify accurately what is deemed as “secret information,” or any other information that cannot be made public. Also, the law should define who may qualify “secret information,” but nevertheless, this should not be done at the individual’s responsibility.

**9.**  
**ANTI-**  
**CORRUPTION**  
**AGENCY**

## Overview

Resources allocated to the Kosovo Anti-Corruption Agency (KACA) by the Government to fight corruption have not been sufficient or consistent. Nevertheless, in 2010 an improvement can be seen so that the KACA is now fully staffed and additional salaries and work space have been provided. With the new Law on Anti-Corruption Agency as well as with the establishment of the Agency Oversight Committee by the Assembly of Kosovo, an attempt was made to improve the position of the KACA in relation to the Executive and the Legislature. However, tendencies to influence or utilize the KACA for political benefit by the Government have appeared. Failure to disclose 168 cases which were investigated and closed by the KACA, in addition to the failure to disclose property by a senior official, which may establish a precedent for other officials, are considered a lack of transparency.

The KACA Report for 2010 marks a progress in comparison to previous years. The Civil Service Code of Conduct is also applicable to the KACA officials, but to date there have been no cases of penalization of its officials as a result of violations. However, there is a conflict of interest and ambiguity about the disclosure of assets by KACA officials, since they do this with the Oversight Committee, whose members as deputies of the Kosovo Assembly disclose their assets to the KACA. With respect to corruption investigation, there are some ambiguities in the law on the agency which contradicts the Criminal Procedure Code. Nevertheless, the number of corruption cases reported to the KACA in 2010 has increased significantly in comparison to previous years.



## Structure and Organization

The Kosovo Anti Corruption Agency employs a staff of 35 people including its director and is composed of three departments: the Department of Investigations, the Department of Corruption Prevention and the Department of Administration.<sup>615</sup> The KACA is the institution responsible for fighting and preventing corruption in Kosovo. There seems to be, however, an overlap and even conflicting competences between The KACA and the European Union Rule of Law Mission in Kosovo (EULEX) and the Special Prosecutor's Office of the Republic of Kosovo (SPRK.) Five out of fifteen prosecutors in SPRK are EULEX Prosecutors including the Head of SPRK. The SPRK has the right to investigate and prosecute giving and accepting bribes, misappropriation in office and fraud in office.<sup>616</sup> According to the Law on the KACA, it too has the right to initiate investigations into suspected cases of corruption but only the cases which are not being investigated by other investigating authorities. However up to date there has been only cooperation between the KACA and SPRK/EULEX. The KACA's budget for 2010 was around 500,000 Euros (five hundred thousand.)<sup>617</sup>

<sup>615</sup> See the website of KACA for further information on its organizational structure: <http://akk-ks.org/>

<sup>616</sup> See below under 'Investigations (Law and Practice)' for a detailed account of conflicting articles.

<sup>617</sup> Interview with Lorik Bajrami by the author, Prishtina, April 19, 2010.

## 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 Kosovo Anti-Corruption Agency (KACA) has its own budget, proposed by the Agency itself, allocated by the Ministry of Economy and Finance (MEF) and approved by the Assembly of Kosovo. This is confirmed also by Article 4 of the Law on the KACA.<sup>618</sup> It also stipulates that the Agency decides independently on the utilization of its budget. Salaries and supplements for the KACA officials are foreseen in Article 6 of the Law on KACA which says that those are 'based on the specific conditions under which they perform their duties and functions.'

However, there is no guarantee for fiscal sustainability, as the budget for different institutions varies from one year to the next, dependent on Government priorities. The Ministry of Economy and Finance (MEF) has the authority to review budgets proposed by state agencies, ministries or municipalities and is not required to approve them in the form required by the institution itself. Consequently, there are no objective criteria for the increase or decrease of the KACA budget; this is up to the arbitrariness of the central institutions.

The KACA cannot generate its own income from asset seizure or in any other way. However, the law for managing the Seized and Sequestered Assets exists; on 8 March 2010 the government had approved the decision to raise the number of employees of the Agency for Managing Seized and Sequestered Assets.

The completion of the legal framework in the beginning of 2010 with several basic laws on combating corruption, such as the Law on Disclosure of Assets and the Law on Conflict of Interest, as well as the development of the Anti-Corruption Strategy and Action Plan, have provided the KACA with a firmer and definite position to fulfill its mandate, while the law for illegally earned assets is still lacking. Previously the work of the KACA was hindered by the lack of these basic laws and the lack of the Anti-Corruption Strategy and Action Plan which meant that the scope of its work was limited and often conducted on an ad-hoc basis.

<sup>618</sup> Law on Kosovo Anti-Corruption Agency (03/L-159). All laws approved by the Assembly of Kosovo can be accessed at <http://www.kuvendikosoves.org>

## Resources (Practice)

*To what extent does KACA have sufficient resources to achieve its goals in practice?*

While clear improvements have been made in providing the KACA with sufficient resources to fulfill its obligations, representatives of civil society and those of the KACA are divided concerning the sufficiency of resources allocated to the latter. The former consider the KACA budget insufficient to effectively combat corruption because they deem that the small salaries allocated by this budget and insufficient human resources make it impossible to effectively fight corruption.<sup>619</sup> The KACA budget has grown symbolically in the passing years, insufficiently, and in the past years this has caused staff turn-over due to small salaries. The KACA budget for 2010 was increased by only one Euro.<sup>620</sup>

The budget of the KACA for 2010 was approximately 500 thousand Euros,<sup>621</sup> while the lowest salary in the KACA is 450 Euros.<sup>622</sup> Also, the KACA is limited to Prishtina only; it lacks decentralization through municipalities in order to mount a more effective fight on corruption.

Nevertheless, the current budget provides the KACA with the foreseen staff of 35 persons and offices it needs. According to the Director of the KACA, Hasan Preteni, working requirements of the institution have been met entirely for the first time since up to now the necessary staff and offices have been lacking: staff have been accommodated in a separate government facility providing adequate work space, also supplemental wages have been provided for agency officials, which according to the Director represents additional motivation for the officials but also for attracting external professionals, an anti-corruption action plan and strategy has been approved, etc.<sup>623</sup>

However, the KACA staff lacks adequate academic and work experience, lacks professionalism in fighting corruption.<sup>624</sup> It is important to bear in mind that the KACA was established only in 2006 and started operations in 2007, which means that it is a new institution and it has not

<sup>619</sup> Interview with Lorik Bajrami by the author, Prishtina, April 19, 2010. Interview with Ramadan Ilazi by the author, Prishtina, April 23, 2010.

<sup>620</sup> Interview with Lorik Bajrami by the author, Prishtina, April 19, 2010.

<sup>621</sup> Interview with Lorik Bajrami by the author, Prishtina, April 19, 2010.

<sup>622</sup> Comment by Hasan Preteni in the third meeting of the NIS Advisory Group, Prishtina, January 19, 2011.

<sup>623</sup> Hasan Preteni, interview by Arton Konushevi, Preteni: Korrupsionin duhet ta luftojmë të gjithë, (Preteni: Corruption Should be Fought by All), Radio Free Europe RFE/RL, June 05, 2010.  
<http://www.evropaelire.org/content/article/2062937.html> [accessed June 10, 2010].

<sup>624</sup> Global Integrity, Global Integrity Scorecard: Kosovo 2009, (Global Integrity Report: Kosovo 2009), p.146.  
<http://report.globalintegrity.org/reportPDFS/2009/Kosovo.pdf> [accessed on June 12, 2010].

yet managed to develop staff experienced and knowledgeable enough to effectively combat corruption. It is considered that for successful operation the KACA's staff needs to double in size.<sup>625</sup> However, to compensate for the lack of adequate academic training and experience, the KACA officials are offered short training opportunities abroad. Also, the KACA officials participate in seminars and conferences on fighting corruption organized by local and international organizations.<sup>626</sup> The KACA's work has improved through experience accumulated and in the future an increase of the KACA's staff is expected.<sup>627</sup>

During recruitment, a test on ethics is conducted only for those candidates that are shortlisted; while no special training courses are offered for new staff.

On the selection of a new Director of the KACA, according to Article 8 of the Law on Kosovo Anti-Corruption Agency, an open competition is announced where the Agency Oversight Committee that oversees the KACA selects the best two candidates from the pool of applicants and sends these two names to the Assembly of Kosovo. The latter elects one of them by secret and simple majority votes. According to some civil society representatives, although the Director of the KACA is selected by regular procedure, he may still be considered a political appointee since the parties that run the Government also have the majority in the Assembly.<sup>628</sup>

## Independence (Law)

*To what extent is KACA independent according to law?*

The KACA is an independent agency established in accordance with the Corruption Suppression Law (2004/34,) which at the beginning of 2010 was substituted by the Law on Kosovo Anti-Corruption Agency. Article 3 of the new law says that the Agency is an independent and specialized body responsible for the implementation of state policies for combating and preventing corruption in Kosovo. The KACA operates as an independent entity and not as part of any ministry or other institution. Although of independent status, there are no special mechanisms protecting the KACA from political interferences, except for the law establishing the KACA. Article 21 of this law says that the KACA officials have full independence in exercising their duties.

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<sup>625</sup> Ibid.

<sup>626</sup> Interview with Hasan Preteni by the author, Prishtina, April 13, 2010.

<sup>627</sup> Comment by Hasan Preteni in the third meeting of the NIS Advisory Group, Prishtina, January 19, 2011.

<sup>628</sup> Interview with Ramadan Ilazit by the author, Prishtina, April 23, 2010.



According to the Law on Kosovo Anti-Corruption Agency, the Assembly of Kosovo establishes the Agency Oversight Committee which reviews Agency reports and oversees and assesses periodically the performance of the Director of the Agency (Article 13, 14 and 15.) The KACA reports to the Agency Oversight Committee two times per year, and as demanded by the latter. According to the old law, the KACA reported to the Oversight Council (its name at the time.) The composition of the Oversight Council included representatives from political institutions (Assembly, Government, Presidency) which led to a conflict between the KACA and the Council because the latter wanted access to the KACA files.

Legally, the Government may influence the KACA when the KACA budget is approved, which must go through the Government before passing to the Assembly. This potentially presents an opportunity for the Government to influence the KACA.

The Director of the KACA is elected for a term of office of five (5) years with the possibility of re-election to only one additional term. The Director is protected by law from termination without cause. He may be dismissed by the Assembly of Kosovo in the event he fails to fulfill the legal mandate, is convicted of a criminal offense, there is a conflict of interest between the Director's function and any other duty, through resignation, loss of ability or sickness, etc.<sup>629</sup> The KACA staff are dismissed by the Director in conformity with the Law on Civil Service, who makes such decisions based on annual performance appraisals, while employment contracts are signed for three year terms.<sup>630</sup>

According to civil society representatives the law is ambiguous with respect to the criteria on which staff is employed.<sup>631</sup> Indeed, the law is not clear on the criteria to be utilized for the employment of the KACA staff, except for the general criteria such as: must be a citizen of Kosovo, must have education relevant to the advertised position, experience, etc. established by the Law on Civil Service.

## Independence (Practice)

*To what extent is KACA independent in practice?*

The KACA has endeavored to remain independent and impartial despite tendencies to influence it. The possibility of conflicts of interest and political interference existed with the Oversight Council, because the Council included representatives of institutions that the KACA

<sup>629</sup> Article 10 of the Law on KACA.

<sup>630</sup> Interview with Hasan Preteni by the author, Prishtina, April 13, 2010.

<sup>631</sup> Interview with Ramadan Ilazi by the author, Prishtina, April 23, 2010.

<sup>632</sup> Freedom House, Nations in Transit: Kosova (2009), p.289.

oversees.<sup>632</sup> This led to an open conflict between the Director of the KACA and several Council members who wanted access to agency's investigation files. An attempt to resolve this problem was made with the new Law on the KACA through the establishment of the Agency Oversight Committee within the Assembly of Kosovo. This Committee is comprised only of deputies of the Kosovo Assembly and chaired by a representative of the opposition.<sup>633</sup> However, even the establishment of the new Agency Oversight Committee did not resolve the problem of conflicts of interest entirely because its members disclose their assets to the KACA, while according to the Law on KACA the officials of the latter disclose their assets to the Oversight Committee.

There have been other incidences where political interference appears to have taken place. In the summer of 2008, for example, Deputy Prime Minister Hajredin Kuçi met with the Director of the KACA upon the publishing of the annual report of the agency, where the KACA had found that the majority of cases which it had investigated dealt with the Thaçi Government. This meeting was viewed by the public as an attempt to influence the KACA, where after the meeting it was not clarified whether the majority of cases pertained to that government or not.<sup>634</sup> In the same manner, a day after the publishing of the Registry of Senior Official Property Disclosure on the KACA website, on June 2, Prime Minister Thaçi invited the Director of the KACA to a meeting to express his support. However, more than for support, this meeting was used by the Prime Minister for political benefit at a time when EULEX warned of arrests of government ministers on charges of corruption, at which occasion the Prime Minister declared that he and his government shall lead the fight against evil.<sup>635</sup>

However, to date there have been no cases where Agency officials were dismissed before the expiration of their term due to their work and they have not been subject to pressure or direct intimidation either. However, the Government, if it so chooses, can find an excuse to remove the Director of the KACA.<sup>636</sup> The KACA reports of 2009 and 2010 are more professional and de-

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<sup>632</sup> <http://www.freedomhouse.org/uploads/nit/2009/Kosovo-final.pdf> [accessed on June 12].

<sup>633</sup> The composition of the former Oversight Council included three representatives from the Assembly, one from the Government, one from the Presidency, one from the Municipalities, one from the Prosecution, one from the Supreme Court, as well as one representative of the civil society. The composition of the Agency Oversight Committee does not have a representative of the civil society.

<sup>634</sup> See a report by Organization ÇOHU! THAÇI GOVERNMENT IN ITS SECOND 100 DAYS, July 2008, p.6.

[http://cohu.org/index.php?option=com\\_content&view=article&id=52:the-report-on-thaci-government-on-its-second-100-days&catid=2:raporte&Itemid=4](http://cohu.org/index.php?option=com_content&view=article&id=52:the-report-on-thaci-government-on-its-second-100-days&catid=2:raporte&Itemid=4) [accessed 10 October, 2010]. Also interview with Ramadan Ilazi by the author, Prishtina, April 23, 2010.

<sup>635</sup> Bota Sot Online, Kryeministri Thaçi pret në takim Drejtorin e AKK-së, Hasan Preteni (Prime Minister Thaçi meets KACA Director, Hasan Preteni) 2 June, 2010. <http://www.botasot.info/def.php?category=3&id=64163> [accessed 10 October, 2010].

<sup>636</sup> Global Integrity, 2009: 146.

tailed than previous reports and there have been statements by the Director of the KACA that corruption has grown with this Government (Thaçi Government)<sup>637</sup> thus taking steps towards establishing its independence from politics. According to the KACA's annual reports of 2010, 44 cases appear to be from the Government sector, where in 2009 this number was 34.

However, there are 168 cases investigated and closed by the KACA that have not been published. Without their publishing, in order to know more on the nature of these cases, the institutions involved, etc, it cannot be ascertained how impartial the KACA has been.<sup>638</sup> It is considered that pressure and intimidation have not taken place because the KACA does not have the power or the authority to 'threaten' anyone (i.e. prosecute) unlike the judiciary.<sup>639</sup>

## Transparency (Law)

*To what extent are there provisions that ensure the public can obtain relevant information on the activities and decision-making processes of KACA?*

There are three laws that ensure KACA transparency and provide the public with access to its activities: the Law on Kosovo Anti-Corruption Agency, the Law on Disclosure, Origin and Control of Assets and Gifts of Senior Public Officials (03/L-151) and the Law on Access to Official Documents (2003/12.)<sup>640</sup>

The Law on the Kosovo Anti-Corruption Agency requires the KACA to report to the Assembly of Kosovo on the previous year, once per year, no later than March 31. The KACA annual report is also presented to the media through a press conference, and is then also posted on the KACA website. Citizens and NGOs have the right to request access to KACA documents in accordance with the Law on Access to Official Documents.

According to the Law on Disclosure, Origin and Control of Assets and Gifts of Senior Public Officials, Article 12, access to registries of assets of senior public officials maintained by the KACA can be granted through procedures determined by the Law on Access to Official Documents. These registries can also be accessed through the official KACA website where registries of assets of senior public officials are published. Within sixty (60) days from the deadline

<sup>637</sup> Interview with Ramadan Ilazi by the author, Prishtina, April 23, 2010.

<sup>638</sup> Interview with Ramadan Ilazi by the author, Prishtina, April 23, 2010.

<sup>639</sup> Interview with Lorik Bajrami by the author, Prishtina, April 19, 2010.

<sup>640</sup> Law on Access to Official Documents was approved by the Assembly of Kosovo in June 2003, whereas it was promulgated in November of same year through UNMIK Regulation 2003/32. All UNMIK Regulations and Administrative Directions can be accessed at <http://www.unmikonline.org/regulations/unmikgazette/index.htm>

<sup>637</sup> Intervis

for the submitting of the disclosure of assets, the KACA is also required to publish on its website the names of the senior public officials who have failed to disclose their assets.

However, in an analysis of the anti-corruption laws, civil society organizations had warned of a possible interpretation of article 12, paragraph 5, of the Law on the Disclosure of Assets which determines that disclosed data can be used only for purposes of corruption investigation and prevention which could factually lead to a situation where there would be no disclosure of assets at all.<sup>641</sup>

The KACA is also responsible for overseeing gift registries maintained individually by institutions on their officials. According to the Law on Disclosure, Origin and Control of Assets and Gifts of Senior Public Officials, registers are public and citizens should be granted access to them by the Law on Access to Official Documents.

## Transparency (Practice)

*To what extent is there transparency in practice in KACA activities and decision-making processes?*

The KACA submits its annual report to the Assembly of Kosovo on the previous year on March 31, which is then deliberated upon by the Kosovo Assembly Members. To date, the KACA has submitted its report to the Assembly in a timely fashion. This report contains statistics on the number and nature of legal violations, statistics on the reporting of corruption and cases forwarded to the prosecution, institutions where the alleged violations took place, corruption prevention and public education activities that have been undertaken, etc.<sup>642</sup> The KACA also publishes its annual report through a press conference, which is broadly attended by Kosovo media and raises considerable interest with the citizens, and additionally publishes it in its website.

According to a research conducted by the Lëvizja (Movement) FOL, the KACA is the second most open institution in Kosovo, second to Customs, nevertheless it is awarded 69 points as a 'semi open' institution.<sup>643</sup> In overall, the KACA's transparency was evaluated on the basis of its openness to public, on its readiness to guarantee access to official documents, on the basis of its cooperation with the media and civil society, the implementation of laws pertaining to this agency, etc.

<sup>641</sup> Please see below under "Transparency (practice) the case of Mr. Paçolli who refused that his assets be made public. ÇOHU! analysis, *Analizë e Komizës Ligjore kundër Korrupsionit (An Analysis of the Anti-Corruption Legal Framework)*, May 2010. <http://www.cohu.org> [accessed on June 8, 2010].

<sup>642</sup> KACA annual reports can be accessed in its website: <http://www.akk-ks.org>

<sup>643</sup> Lëvizja FOL, *Kosovo Public Institution and Enterprise Transparency Index*, July 2010. [www.levizjafol.org](http://www.levizjafol.org) [accessed June 30, 2010].

An issue that is considered a non-transparent practice by representatives of civil society is the 167 corruption cases investigated and closed by the KACA that have not yet been made public. The civil society demands these closed cases be open to see how they were handled, which cases were these, of what nature, which institutions were involved, why were they closed, etc. According to them, this would ensure greater transparency in the fight against corruption, in addition to providing an opportunity to assess the extent of the KACA's impartiality.<sup>644</sup>

On June 1, 2010, the KACA, as forewarned, published on its website the disclosure of assets of senior Kosovo officials in conformity with the Law on the Disclosure, Origin, and Control of Assets and Gifts of Senior Public Officials, which were made public for the first time in Kosovo.<sup>645</sup> According to this law 1,746 senior officials were obliged to disclose assets, of which 84 failed to do so, while 26 did not disclose according to the law.

## Accountability (Law)

*To what extent are there provisions ensuring KACA reports and is held accountable for its actions?*

The KACA is accountable to the Assembly of Kosovo on the work it does, and to the Agency Oversight Committee, which is yet to be established to oversee its work in conformity with the Law on Kosovo Anti-Corruption Agency. According to this law, the KACA reports to the Assembly of Kosovo once per year and to the Committee every six months. However, the Committee may require even more frequent reporting by the KACA. e.g. the Committee may demand a special report on cases the KACA has ceased investigating, without revealing the identity of the investigated persons, indicating the rationale for closing those cases. The Oversight Committee is also responsible for the review of the KACA reports, initiation of procedures for the dismissal and selection of the new Director, overseeing and assessing periodically the performance of the Director of the KACA, oversight and control of asset disclosure by senior KACA officials, etc.

In addition, the annual report on its operations, that the KACA is required by law to prepare, is delivered to the Oversight Committee where it is reviewed and prepared for discussion at the Assembly of Kosovo. The KACA is required to submit this report on the previous year no later than March 31. The report is also published on the KACA website and is presented to the broader audiences through a press conference. Except for the general annual report, the KACA does not publish reports on its investigations.

<sup>644</sup> Interview with Ramadan Ilazi by the author, Prishtina, April 23, 2010. Interview with Lorik Bajrami by the author, Prishtina, April 19, 2010.

<sup>645</sup> See asset disclosures at the KACA website: <http://www.akk-ks.org/?cid=1,115>

According to Article 19 of the Law on Kosovo Anti-Corruption Agency, when public officials become aware of corrupt actions within the institution they must report the case to the KACA and take measures to protect the data pertinent to the corrupt action (whistle-blowing provision.) A special law on 'whistle-blowing' and protection of witnesses is being prepared.<sup>646</sup>

With regards to financial accountability, the KACA is subject to an annual external audit of its budget expenditures conducted by the Office of the Auditor General; responsible for auditing all institutions that are more than 50% publicly owned or receive funding from the Kosovo Budget.

The public may appeal against the KACA, but not with this institution. There is neither a special judicial review mechanism for the KACA's operations, because its decisions are administrative, nor are there citizens' oversight committees.<sup>647</sup>

## Accountability (Practice)

*To what extent does KACA report and is held accountable for its actions in practice?*

In practice, the Director of the KACA is accountable for the actions of his staff, and according to the Law on the KACA he is held accountable for his work, while the Director himself reports to the Agency Oversight Committee every six months. The KACA submits its annual reports to the Assembly of Kosovo where the report is discussed and later becomes public also through a press conference and by its posting on the KACA website. To date, the KACA has submitted its annual reports to the Assembly of Kosovo in a timely fashion. The KACA annual reports, in addition to their other public appearances, are broadly covered by the media and rouse the interest of the public in Kosovo by taking into account the fact that since the proclamation of independence in February 2008 corruption is the hot topic in the public opinion. However, there are 168 corruption cases investigated and closed by the KACA that have yet to be made public. The civil society demands these closed cases be opened to see how they were handled, which cases were these, of what nature, which institutions were involved, why were they closed, etc, thus ensuring greater transparency in the fight against corruption. Lack of transparency on these cases produces a lack of accountability against Kosovo citizens who have a right and are eager to know about such a sensitive a matter as corruption.

<sup>646</sup> SIGMA, Kosovo Public Integrity System Assessment May 2009, p.19. <http://www.sigmaxweb.org/dataoecd/31/41/43912949.pdf> [accessed June 13, 2010].

<sup>647</sup> Interview with Hasan Preteni by the author, Prishtina, April 13,, 2010.



Citizens may complain against the KACA without fear of possible retaliation; however citizens' oversight committees and special judicial mechanisms are nevertheless absent. Citizens or senior officials cannot report a case suspected of corruption without fear of recrimination, though.<sup>648</sup> Nonetheless, in the KACA's annual report covering 2010 there was an increase in corruption reporting, as of 175 cases reported in 2009, in 2010 this number jumped to 430.<sup>649</sup>

Complaints and denouncements of civil or public sector officers are also lodged with the Anti-Corruption Agency. According to the SIGMA, some cases of 'whistle-blowing' (reporting of ill-management or abuse by administration officers themselves) have been registered since the KACA maintains the confidentiality of all denouncements and of all information received from civil servants.<sup>650</sup>

## Integrity Mechanisms (Law)

*To what extent are there mechanisms that ensure the integrity of KACA officials?*

The 'Civil Service Code of Conduct' (01/2006) approved by the Government in May 2006 is also applicable to the KACA officials and officers. This Code determines the general principles of conduct for civil servants, such as honesty, impartiality, integrity, non-discrimination, objectivity, etc., and stresses the general principles of the applicable laws on fighting corruption, conflict of interest prevention, confidentiality of institutional information, participation in political activities, etc. While gifts are covered by this code but also by law, the KACA asset disclosure and conflict of interest is managed by the Agency Oversight Committee. This has caused conflict of interest since the KACA and members of the Agency Oversight Committee as deputies of Kosovo Assembly oversee each others assets. The KACA staff is subject to a standard integrity check before employment at the Agency by the Director of the KACA personally; however, there is no general institutional practice on integrity standards.<sup>651</sup> There are no rules restricting the employment of the KACA staff upon departure from this institution.

<sup>648</sup> Global Integrity, 2009: 149.

<sup>649</sup> Kosovo Anti-Corruption Agency, Raporti vjetor i Agjencisë kundërkorrupsionit (1 janar – 31 dhjetor, 2009 dhe 2010) (Anti-Corruption Agency Annual Report, January 1-December 31, 2009 dhe 2010), p.7. <http://www.akk-ks.org/?cid=1,16> [accessed June 5, 2010 and 2011].

<sup>650</sup> SIGMA, Public Service and the Administrative Framework Assessment May 2008, p.10. <http://www.sigmaweb.org/dataoecd/48/31/41637624.pdf> [accessed June 13, 2010].

<sup>651</sup> Interview with Hasan Preteni by the author, Prishtina, April 13, 2010.

## Integrity Mechanisms (Practice)

*To what extent is the integrity of KACA officials ensured in practice?*

The Code of Conduct is applicable for the KACA as it also is for all other Kosovo institutions, however, to date there have been no cases of penalization as a result of Code's violation by KACA officials.<sup>652</sup> In June 2010, there was a conflict of interest between the KACA members and members of the Agency Oversight Committee, regarding the institution where the KACA members should disclose their assets, which is yet to be resolved.

The disclosure of assets of senior public officials on June 1 also provoked great interest among the public, when for several days it was almost impossible to access the KACA website due to the high traffic of visitors downloading asset disclosure files. To ensure that asset declarations appear as disclosed by senior officials themselves and to avoid any misunderstandings, the KACA officials scanned asset disclosures and uploaded them into their official page on the internet, as completed by officials personally. Although, these were not all completed properly and in sufficient detail by public officials, the KACA fulfilled its duty by publishing them on its website.

The KACA staff is not trained on integrity issues,<sup>653</sup> however, the Ministry of Public Administration in cooperation with the OSCE conducted an information campaign and provided training related to the Code to all civil servants, where booklets, pens and posters with the contents of the Code provided in all official languages were distributed.<sup>654</sup>

## Prevention (Law and Practice)

*To what extent is KACA engaged in corruption prevention activities?*

The KACA has corruption prevention competences based on the mandate it is given not only by the law on the agency but also by other basis laws against corruption, such as the Law on Prevention of Conflict of Interest and Law on Disclosure of Assets. In conformity with these laws the KACA prevents conflicts of interest, tracks assets of senior officials, tracks gifts received by them in addition to conducting other duties, i.e. cooperation with other institutions

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<sup>652</sup> Ibid.

<sup>653</sup> Ibid.

<sup>654</sup> SIGMA, 2008: 10.



such as the Kosovo Judicial Council, ministries, municipalities, etc. A special department on this matter exists at the KACA, the Department on Corruption Prevention. The work of this department is based on three pillars: asset oversight and control, gift oversight and conflict of interest prevention.

On asset oversight and control, the Department on Corruption Prevention has developed special forms for asset disclosure by senior public officials and has also designated contact points at each institution responsible for contacting the KACA on asset disclosure. As mentioned above, of 1,746 senior public officials required to disclose assets, 84 failed to disclose assets and 24 did not disclose their assets according to the law. The stage of disclosure scrutiny follows, with the imposition of fines for those who failed to disclose assets. However, fines are considered to be too soft, which could lead to the poor implementation of the law on asset disclosure and consequently poor corruption combat and prevention.<sup>655</sup>

The KACA has declared that very soon it will demand the initiation of procedures foreseen by the Law on Disclosure of Assets against officials who have failed to disclose assets, where soft financial fines are foreseen.<sup>656</sup> These light measures and non-penalization of failure to disclose assets and false declaration have also been criticized.<sup>657</sup> However, according to Director Preteni, work on the amendment of the Criminal Code is ongoing and there are efforts to include articles which define failure to disclose and false declaration as criminal acts.<sup>658</sup>

The most sensitive stage of the implementation of this law starts now when the veracity and accuracy of the disclosure of assets should be scrutinized. According to Hasan Preteni, this stage is already ongoing and the KACA has received a lot of information from the citizens on false declarations or incomplete disclosures.<sup>659</sup> Disclosure of assets has also been carried out by Kosovo state leadership, such as, the President, Prime Minister and President of the Assembly of Kosovo; however, suspicions have arisen with respect to the accuracy of their disclosures.<sup>660</sup>

<sup>655</sup> Organization ÇOHU!, 2010.

<sup>656</sup> Punitive measures foreseen by Article 16 of the Law on Disclosure, Origin and Control of Assets and Gifts of Senior Public Officials range from 150 Euros to 1,500 Euros depending on the position of the official and the committed violation.

<sup>657</sup> ÇOHU! analysis, *Analizë e Kornizës Ligjore kundër Korrupsionit* (An Analysis of the Anti-Corruption Legal Framework), May 2010. <http://www.cohu.org> [accessed on June 8, 2010].

<sup>658</sup> Hasan Preteni, interview by Arton Konushevci, *Preteni: Korrupsionin duhet ta luftojmë të gjithë*, (Preteni: Corruption Should be Fought by All), Radio Free Europe RFE/RL, June 05, 2010. <http://www.evropaelire.org/content/article/2062937.html> [accessed June 10, 2010].

<sup>659</sup> In 'Jeta në Kosovë' TV show, Preteni declared that only during the first day of the publishing of asset forms, he received 20 pieces of information from citizens on incomplete disclosure or false declaration by senior officials. Balkan Investigative Reporting Network, 'Jeta në Kosovë' TV show, *Debat Parlamentar: Masat Anti-korrupsion* (Parliamentary Debate: Anti-Corruption Measures), broadcast on Kosovo Public TV (RTK), June 10, 2010. <http://www.jetanekosove.com>

<sup>660</sup> *Ibid.*

On gift receipt oversight, the KACA has also designated contact points at institutions that maintain and register gifts in the respective registry for their institution. In 2010, nine Kosovo institutions forwarded their gift registry to the KACA in a timely fashion, while fifty others declared that their officials had not received any gifts.<sup>661</sup> Sanctions for non-compliance are imposed by the institution where the official works on the KACA's recommendation.

On the issue of conflict of interest prevention, the Department on Corruption Prevention investigates and if it finds there is a conflict of interest then it sends a letter to the relevant institution (ministry, municipality, etc.) notifying of the conflict. If the institution fails to reply, the KACA forwards the case to the court if it suspects corruption. Here the KACA competences end. In 2010, also the cases of conflict of interest has rouse, the KACA recorded 65 cases of conflicts of interest, resulting with 28 cases where a conflict of interest was evaded, 21 are in proceedings, and in 16 cases it was established that there was no conflict of interest involved.<sup>662</sup>

As part of corruption prevention, the KACA may propose legislative reforms in fighting corruption. During 2009, according to the KACA annual report, this agency participated in the amendment and supplement of the Law on Anti-Corruption, Law on Prevention of Conflict of Interest, amendment of the Kosovo Criminal Code, drafting of the Draft-Law on Disclose of Assets, etc. Also, the KACA was part of the government anti-corruption sub-group within the Public Administration Reform lead by the Ministry of Public Administration. Recently, the KACA has been requiring the new law for confiscating the illegally earned assets and against organized crime.

The KACA is responsible for the coordination of activities combating corruption with respect to i.e. the implementation of the Anti-Corruption Strategy and Action Plan, but not including extra-institutional actors such as Government-EULEX Task Force because it failed to include these into the strategy. The KACA initiated the development of the Anti-Corruption Strategy in 2008 and later also development of the Action Plan, in cooperation with a series of other institutions such as ministries, municipalities, independent institutions, civil society, media, international experts, etc. According to the Anti-Corruption Action Plan, the KACA is responsible for the implementation and oversight of implementation of the Anti-Corruption Strategy and Action Plan by other institutions.<sup>663</sup> However, several civil society organizations withdrew from the participation in the drafting of the Strategy and Action Plan because their remarks were ignored.

<sup>661</sup> Kosovo Anti-Corruption Agency, 2010: 34.

<sup>662</sup> Ibid.

<sup>663</sup> Ibid.

Except for its departments, the KACA does not have a special unit for in-depth research and study of the extent of corruption. Therefore the only reports and research completed to date are the annual reports it submits to the Assembly. However, with the new Law on the KACA it is foreseen that the Oversight Committee may demand reports at any time.

The Agency regularly receives reports on corruption by the citizens of Kosovo through a form that must be completed and also through interviews that the KACA staff conducts with the reporting citizens. Otherwise, they receive very few suggestions on corruption combating or prevention from other institutions.<sup>664</sup>

## Education (Law and Practice)

*To what extent does KACA engage in public education on fighting corruption?*

A public education and participation program is also part of the Kosovo Anti-Corruption Agency's program on combating and preventing corruption, where a special division on education also exists within the Department for Investigations. In March and April of 2008, The KACA in cooperation with the OSCE and UNDP conducted a campaign including 13 ministries and 15 municipal assemblies, where six debates were held. The targets of this campaign were civil servants and their introduction to the law on corruption, reporting methods, awareness raising, etc.<sup>665</sup> In 2009, also in cooperation with the OSCE and UNDP, similar citizens' debates were held in 14 municipalities with participants from the courts, prosecution offices, police, civil servants, NGOs, etc. entitled 'Joint Efforts in Fighting and Preventing Corruption in Kosovo.'<sup>666</sup> Whereas in 2010, in co-operation with the Kosovo Education Center (KEC) 12 seminars were organized in 10 Kosovo municipalities, where 'the Anti-Corruption Strategy and Action Plan, Anti-Corruption Law and Kosovo Anti-Corruption Agency legal mandate and activities it has conducted were presented.'<sup>667</sup> The KACA also participates in various debates and seminars and conferences organized by local and regional NGOs.

As a result of these campaigns utilizing the distribution of booklets and posters, as well as billboards and other KACA public activities, the agency achieved high public visibility and its ac-

<sup>664</sup> Interview with Hasan Preteni by the author, Prishtina, April 13, 2010.

<sup>665</sup> Kosovo Anti-Corruption Agency, Aktivitetet e AKK-së për edukimin e publikut, gjatë vitit 2008 (KACA Public Education Activities during 2008) <http://www.akk-ks.org/?cid=1,14,126> [accessed June 6, 2010].

<sup>666</sup> Kosovo Anti-Corruption Agency, Aktivitetet e AKK-së për edukimin e publikut, gjatë vitit 2009 (KACA Public Education Activities during 2009) <http://www.akk-ks.org/?cid=1,14,238> [accessed June 6, 2010].

<sup>667</sup> Kosovo Anti-Corruption Agency, Edukimi/Pjesëmarrja e Publikut (Public Education/Participation) <http://www.akk-ks.org/?cid=1,14> [accessed June 6, 2010].

tivities (such as the publishing of the annual report or the publishing of the assets of senior public officials) are widely reported in the media. The KACA has also established special toll free phone lines, made public through billboards, for reporting corruption. Nonetheless, the KACA lacks an assessment of the impact of its public education campaigns.<sup>668</sup>

<b>KACA Annual Reports</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Cases reported/investigated	146	175	430
Closed for lack of evidence	71	103	67
Forwarded for prosecution	53	68	39
In legal proceeding	22	26	67

The cooperation with the civil society in this regard is average; their withdrawal from the Anti-Corruption Strategy is an indicator of an unsatisfactory relationship and cooperation. Nevertheless, the Director of the KACA or his subordinates have usually participated in public anti-corruption debates organized by the NGOs. The lack of cooperation with the businesses is another flaw of the KACA, while the cooperation with international institutions such as UNDP and OSCE has been satisfactory.

The KACA cooperates with other rule of law institutions. It entered into Memoranda of Understanding with the Kosovo Police, EULEX Prosecution, the State Prosecution, the Customs, Public Procurement Regulatory Commission, Financial Intelligence Center, Independent Judicial Council, Kosovo Tax Administration, the Ombudsperson Office and the Office of Auditor General. However, these Memoranda have not produced concrete results to date. Even the European Commission Kosovo Progress Report for 2009 says that there is a lack of cooperation among relevant actors, notably between the Agency and the prosecutor's office.<sup>669</sup> This led to the signing of a cooperation agreement between the KACA and the State Prosecutor's Office at the beginning of June 2010. In the past, the KACA had complained that the cases it forwards to the Kosovo Prosecutors' Offices are not being processed by prosecutors, especially cases involving judges or prosecutors as suspects. According to Director Preteni, at a meeting with the Justice Minister, the KACA, the State Prosecutor's Office, the Kosovo Judicial Council and the Supreme Court have agreed that the fight against corruption should be a priority in the subsequent period.<sup>670</sup>

<sup>668</sup> Interview with Hasan Preteni by the author, Prishtina, April 13, 2010.

<sup>669</sup> European Commission, Enlargement Strategy and Progress Reports, Kosovo under UNSCR 1244/99 2009 Progress Report, p.11. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/ks\\_rapport\\_2009\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2009/ks_rapport_2009_en.pdf) [accessed June 5, 2010].

<sup>670</sup> Hasan Preteni, interview by Arton Konushevc, Preteni: Korrupsionin duhet ta luftojmë të gjithë, (Preteni: Corruption Should be Fought by All), Radio Free Europe RFE/RL, June 05, 2010. <http://www.evropaelire.org/content/article/2062937.html> [accessed June 10, 2010].

## Investigations (Law and Practice)

*To what extent does KACA engage in investigations pertinent to corruption suspected cases?*

The KACA has competences to investigate corruption; according to the law on the agency, Article 5, the KACA 'initiates and undertakes the detection and preliminary investigation procedure of corruption.' There is a special department on this issue at the KACA, the Department of Investigations. The KACA has 12 investigation officials and 10 corruption prevention officials.<sup>671</sup> However, there is ambiguity in laws and provisions with regards to the competences, in addition to multiple institutions fighting corruption such as the Financial Intelligence Center, Government-EULEX Task Force, Special Prosecution Office of Kosovo, Kosovo Police Department on Economic Crimes and Corruption, Inter-Ministerial Anti-Corruption Group, etc.<sup>672</sup>

There has been criticism regarding the 'preliminary investigations' category of alleged criminal acts which as such is not defined clearly either by the law on the agency or by the Criminal Procedure Code of Kosovo (CPCK); it is even considered to be in conflict with the latter.<sup>673</sup> According to the CPCK, only the public prosecutor and judicial police by the order of the prosecutor have the right to initiate investigations 'ex officio' (Article 220 and 221;) whereas Article 18 of the Law on the KACA on the undertaking of 'preliminary investigations' 'ex officio' by the KACA is in conflict with these articles of the CPCK, as is item 2.2 of this article on the interviewing of witnesses or suspects, a right which according to the CPCK belongs only to the public prosecutor and judicial police.<sup>674</sup>

Nevertheless, according to the KACA Annual Report for 2010, the KACA conducted investigations on cases reported by the citizens as well as 'ex officio' investigations. Out of a total of 430 reported cases, the KACA has managed to collect factual evidence on 139 cases. Whereas, on 29 cases it had succeeded to prove facts and criminal charges which had been proceeded to the competent courts of the Republic of Kosovo and EULEX Prosecution Office.<sup>675</sup>

<sup>671</sup> Interview with Hasan Preteni by the author, Prishtina, April 13, 2010.

<sup>672</sup> Interview with Lorik Bajrami by the author, Prishtina, April 19, 2010. Interview with Ramadan Ilazi by the author, Prishtina, April 23, 2010.

<sup>673</sup> According to ÇOHU!, CPCK recognizes only three types of investigations: criminal investigations, administrative investigations and civil investigations, and there is no mention anywhere of 'preliminary investigations'. Also, in its analysis ÇOHU! stresses that the Law on the Agency does not determine the length of 'preliminary investigations' in contrast to the 'pre-trial proceedings' category which is defined in CPCK as the period covering the moment an investigation was initiated all the way to the confirmation of the indictment. Organization ÇOHU!, 2010: 5.

<sup>674</sup> Ibid.

<sup>675</sup> Kosovo Anti-Corruption Agency, 2010:98.

Of these 139 cases, 26 were proceeded from the year 2009, 67 were closed for lack of evidence, 39 were forwarded to the prosecution, 2 for infringement, and 67 are in proceedings.<sup>676</sup> In total, since its fictionalization, the KACA has forwarded to the Public Prosecution and EULEX 201 cases, where 58 criminal investigations were initiated, out of them 6 indictments were raised, only 5 arrests and 5 indictments were made, 44 cases were dismissed, whereas for 88 cases there is no information returned.

However, for the public it is hard to know which cases are investigated by the KACA, especially in cases of greater interest, those of senior government officials, since the investigated cases are not made public by the KACA, either during or upon completion of investigations. In a statement for the media during April 2010, the Director of the KACA neither denied nor affirmed the existence of a list of ministers suspected of corruption.<sup>677</sup> However, to date no 'big fish' has been indicted of corruption

The establishment of the Anti-Corruption Task Force operating within the Special Prosecution Office of Kosovo composed of five local and three EULEX prosecutors is a positive development.<sup>678</sup> This Task Force is responsible for investigating and fighting high profile corruption cases. EULEX investigations conducted on the tenders of the Ministry of Transport, in addition to announcements of arrests and investigations at other institutions as well, have created high expectations amongst the citizens of Kosovo. However, this process has moved slowly and the announced arrests have not taken place.

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<sup>676</sup> Interview with Hasan Preteni by the authori, Prishtina, April 13, 2010.

<sup>677</sup> Statements by the Director of KACA, Hasan Preteni, given to TV Klan Kosova and RTK, April 17 and 18, 2010.

<sup>678</sup> EULEX, Programme Report 2010, p.43.

<http://eulex-kosovo.eu/docs/tracking/EULEX%20Programme%20Report%202010%20.pdf> [accessed July 12, 2010].



## Recommendations

The office premises and additional salaries secured for the KACA officials as well as the passing of a number of basic anti-corruption laws, the strategy and anti-corruption action-plan put the KACA in an improved and firm position to fight corruption. However, the KACA budget is considered by civil society representatives not to be sufficient and consistent for a successful fight against corruption. Therefore we recommend:

- The Kosovo Government to allocate additional resources for the KACA not only in accordance with its needs but also to make it the central agency against corruption in Kosovo and thus further strengthen its position. It is vital for Kosovo to fight corruption successfully, thus it is essential for the KACA to attract skilled and experienced staff.
- The KACA needs additional staff to follow-up on the declaration of assets and gifts by Kosovo officials and verify the veracity of those declarations. The new basic laws passed and the anti-corruption strategy and action-plan burden the KACA with additional duties which will be ever more challenging to fulfill, especially verifying the veracity of asset declarations.
- In this direction, the KACA too needs to improve and strengthen its relations with civil society and the media in order to utilize and even outsource whatever resources are there to be used for a more successful and coordinated fight against corruption like in reviewing the anti-corruption package. Though the KACA managed fairly well the process of disclosing the registry of asset declarations, improving its transparency and accountability will help the KACA gain further public trust and thus establish it as a trusted authority in the fight against corruption.
- Concerning the anti-corruption laws, the existing ambiguities must be clarified such as in the case of Article 12 of the Law on the Disclosure of Assets determining that disclosed data can be used only for purposes of corruption investigation and prevention which allows officials to claim that they may not disclose their property to the public; or the 'preliminary investigations' category of alleged criminal acts which as such is not defined either by the law on the KACA or by the Criminal Procedure Code of Kosovo (CPCK). These and other ambiguities must be clarified so as not to allow room for conflicting interpretations.
- Also the initiative to make the false or non-declaration of assets a criminal act by the Kosovo Criminal Code must be finalized as it is a necessary measure strengthening the tools against corruption.
- Two new laws have to be passed as part of the fight against corruption: the Law on Confiscation of Assets and the Anti-Mafia Law.



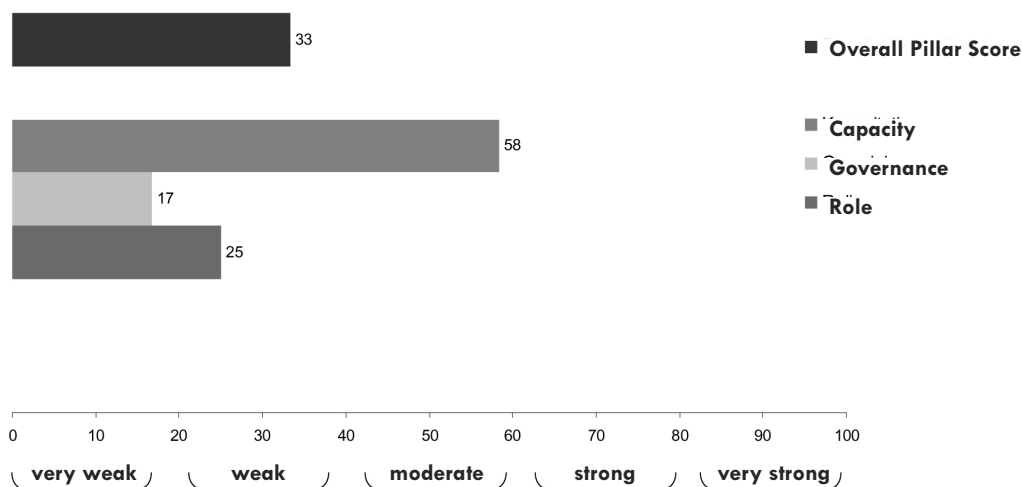


**10.**  
**POLITICAL**  
**PARTIES**

## Overview

Although the legal framework that regulates the political parties is almost enough, the main problem and concern remains its implementation. Registration and monitoring of political parties is done by the Central Election Commission. The threshold applicable for election participation of new political entities is rather high and it may be increased even more considering that this issue is left to the discretion of the CEC. According to the applicable law, Kosovo has a 5% threshold. New entities wishing to enter the political sphere are faced with the disproportionate resources of existing parties. They also face unpredictability in terms of number of signatures and the deposit needed for registration, considering that these may change in the short term, as they are regulated by secondary legislation and not by laws.

Public funds are dedicated to supporting the political entities, except they are used for regular activities of the political parties and they may be used to finance the electoral campaigns. The latter remain as the only public funds that are not directly audited by the Office of Auditor General. The new law on the financing of political entities, which came into force at the end of 2010, tried to influence an increase in transparency of the financing of political entities. This aspect continues to remain a weak point for the majority of political entities, which regularly hesitate to report in a correct manner on their financing. The parties are extremely centralized, undemocratic and enjoy the image of being the least trusted of institutions.



## Structure and Organization

The functioning of political parties is regulated through a Rule issued by the Central Election Commission. Rule No 01/2008 On Registration and Operation of Political Parties regulates the registration and operation of political parties.

The responsibility for registering and maintaining a registry of political parties, certifying all political entities, their inclusion in a ballot and implementing campaign spending limits and financial disclosure is entrusted to the Office of Political Party Registration and Certification.<sup>679</sup>

Until recently, this was the only legal document that regulated the functioning of the political parties. With the approval of the special law which regulates financial matters of political entities, it may be said that a new era is marked in terms of transparency, regulating funding, conditions, administration, oversight and financial reporting. On the eve of the 2010 elections, there were: 7 (seven) Albanian political parties, 8 (eight) Serbian, and 2-4 parties that were representing the Turkish, Bosnian, Ashkali, Egyptian, Gorani, and Montenegrin communities reg-

<sup>679</sup> Article 2.1 of the Rule No 01/2008 On Registration and Operation of Political Parties.

istered in Kosovo. The 5% threshold has resulted in that many parties representing Albanians decided not to run in the elections, many have merged with other parties during the last two years.

## Resources (Law)

*To what extent does the legal framework offer an environment enabling the foundation and operation of political parties?*

The legal framework creates a partially suitable environment for the founding and functioning of political parties. In the absence of a special law for the political parties, their registration and functioning are regulated through the Law on General Elections, as well as with the CEC Election Rule on the registration and functioning of political parties. Before, this matter was regulated by UNMIK Regulation 2004/11. Political parties are not mentioned at all in the Constitution, but until now this has never been a problem. The law on general elections defines political parties as “an organization of individuals which have come together voluntarily based on joint ideas, interests, and viewpoints, aiming at exercising effect and possessing their own elected representatives in public offices, or how it is otherwise defined with the legislation in force.”<sup>680</sup>

The Law stipulates that the Central Election Commission (CEC) shall conduct the registration of political parties. For this purpose, the CEC established the Political Party Registration and Certification Office, responsible to maintain the Political Party Register, conduct certification of all entities running in elections, limit campaign expenditures and implement provisions on financial reporting stipulated by this law.<sup>681</sup> Earlier, this office used to be positioned under the auspices of UNMIK. The office is led by an executive director reporting directly to the CEC.<sup>682</sup> In accordance with its competences, the CEC drafted Regulation 1/2008 regulating this issue further as a secondary legal act.

When a political party submits a registration application, it needs to enclose a number of documents, the majority of which are routine, such as the list of party senior officials. However, it also needs to supply a statement confirming that it will abide by the code of conduct, the latest financial report, the date of the last party convention held, names, signatures and addresses of at least 500 members living in Kosovo and eligible to vote, the Party Statute, and also the Party Political Program stipulating policy objectives and party activities.

<sup>680</sup> Article 2, Law on General Elections.

<sup>681</sup> Article 11.1 Law on General Elections.

<sup>682</sup> Article 11.2

The legislation clearly establishes the basis on which an application for party registration may be refused and the majority of these conditions are reasonable. Some criteria are not present in the legislation of developed countries; however, they are thought by most commentators to be appropriate due to the transition Kosovo is undergoing. One example, for instance, the prohibition of incitement to hatred, is justified by the sensitive nature of the conflict in Kosovo, however, some international organizations stressed their fear that this may be abused by authorities in order to close a specific party. In the future, when Kosovo starts coming out of the post-war stage, it will need to amend legislation in order to make it more liberal and less limiting, considering that the risk of destabilization will then be much lower.

There are no limitations in terms of party activities, except that the Law requires entities to comply with democratic standards and hold party conventions on a regular basis. The new law on the registration and functioning of political entities foresees that Party conventions are held every three years (unlike the previous UNMIK Regulation, stipulating a term of 2 years.)

There are no other criteria for registration, only criteria for being certified to run in elections. The main burden of certification lies on political parties not represented in the Assembly, considering that they need to collect signatures and pay a deposit. The number of signatures and the amount of the deposit are not defined by the Law on Elections, and are thus left to the discretion of the CEC. This is in contradiction with international practices considering that it makes the competition unpredictable and it offers an opportunity for entities in the Assembly to increase the threshold of democratic competition by making the involvement of new entities in politics difficult.

The CEC may also suspend a registered political party. This may arise if the party (a) doesn't inform the Office that it held its Electoral Convention within six (6) months from registration or within thirty six (36) months since the last Electoral Convention, (b) doesn't submit the full updated annual information or the financial report once a year to the Office, (c) approves the Party Statute or Program in contradiction with legal requirements or (d) doesn't pay the fine imposed by the CEC or the Election Complaints and Appeals Commission within the applicable deadline.

In March 2009, the CEC suspended eight political parties that didn't submit their reports on time. They were also given a two weeks deadline to appeal and resubmit reports in order to avoid re-registration.<sup>683</sup> After suspension, the Office is obliged to inform the political party, in writing, on the necessary steps to regain regular party registration, and on its right to file a complaint. The party may be denied certification for elections while being suspended.

<sup>683</sup> Kosova Sot, 20 March 2009.

The Office may deregister a political party in agreement with the CEC. The following may be used as a basis for deregistration: criminal liability, failure to submit or late submission of registration forms, non-certification by the CEC to take part in three consecutive elections, voluntary dissolution, suspension for forty eight consecutive (48) months, or termination of work by a competent court.

There are legal provisions applicable for political parties appealing deregistration or denial of registration. The CEC serves as the first body to deal with complaints on the work of the Office. During elections, the ECAC serves as the second body in addition to the CEC. Beyond the Election period, the Law does not stipulate clearly which institution serves as the second instance to the CEC, however, administrative law may also be applied in these cases in order to file a complaint or lodge an appeal to the CEC's decision.

A rather large amount of public funds are at the disposal of the established political parties. The new Law on Financing of Political Parties regulates a fund for supporting political parties. According to this law, public finances are provided for political parties from Kosovo's budget.

The new law regulates the sources of funding for political parties. Article 4 allows parties to draw funding from membership fees, contributions, financing from the Budget of the Republic of Kosovo, any income gained as allowed by law, and income from activities of political parties. Contributions are limited up to 2,000 Euros for a calendar year for individual contributions and 10,000 Euros for legal entities. All contributions need to declare the origins of the funds, and if this cannot be proved, the receiving political parties are obliged to report the dubious donation to the authorities and the funds are to be given to the Kosovo budget. Parties are also allowed to generate income, but only through publications, sales of advertising material, posters with its emblem or its acronym and other sources allowed by law. All income and expenses must be registered in their financial registries.

The fund for the support of political entities that functions within the CEC is the main financial source for parliamentary parties. The overall sum dedicated to this Fund cannot exceed 0.17% of Kosovo's Budget (Article 7.) Whereas in the past, this fund was allocated only for the functioning of parliamentary groups, now the law also allows its use for different purposes, including: the financing of electoral and pre-electoral activities of political parties, financing of the branches of the parties, for annual material expenses of the MPs and the works of the parliamentary groups. 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.

Out of the aforementioned Fund<sup>684</sup> 0.05% of the Kosovo budget is specifically granted to support electoral activities. Until months ago, large amounts of public funds were at the disposal of established political parties, but none for new entities. Nine tenths of this fund is allocated to parties already in the Assembly, and 10% to those outside the Assembly.

## Resources (Practice)

*To what extent do existing political party financial resources enable effective political competition?*

Political competition leaves a lot to be desired. Differences in financial resources are large and new parties are in a very difficult condition. Access to private funds is unclear but massive electoral spending is proof that the main 2-3 parties (ruling parties and opposition parties) have stable business sector funds. Massive investment in political parties that significantly exceeds the legal proceeds allocated from Kosovo's budget is obvious.

As described above, Kosovo's political parties have access to public funding, but also to private contributions. The public funding has increased in the past years, but judging from their spending power, so have private contributions. For the public funding, the total amount is allocated based on (a) representation in the Parliament, (b) the number of MPs they control, and for non-parliamentary parties, (c) the number of votes won.

An extreme businesses' client-oriented environment favours the entities in power. The Government is the biggest investor. This makes businesses careful about cooperating with opposition parties. Consequently, several opposition parties are financially stable; however, they are not financially comparable to the entities in power.<sup>685</sup>

The lack of transparency leads analysts to the conclusion that contributions relate to the return of favours while in power and not by pushing of specific ideological policies. In general, after seeing expensive campaigns, analysts think that there are funds from the business sector that are based on client-orientation and the return of favours at the time when the entity gains control over public resources.<sup>686</sup>

Besides the report on monitoring the costs during the pre-election campaign 2010 which was prepared by KDI, never before was an analysis made regarding the balance between the private and public funding of political parties. Based on the expenses of all political parties evidenced in this report, which ex-

<sup>684</sup> Regulated by Article 10, Law on the Financing of Political Parties (22).

<sup>685</sup> Interview of Ardian Gjini with Leon Malazogu, Prishtinë, July 14, 2010.

<sup>686</sup> Interview of Ramadan Ilazi with Leon Malazogu, Prishtine, July 08, 2010.

ceeds 3 million Euros, one can conclude that to realize a successful campaign, political parties had to secure funding from private donors and companies in the amount of 2,513,972 Euros, taking in consideration that from the State Fund they had at their disposal only 548,940 Euros. According to the same report, financial declarations of the political parties that are submitted to the CEC do not correspond at all with the reality in the ground. This is mainly a characteristic of big political parties, which often declare half reports, under-evaluating income and expenses, not declaring private donations, as well as not submitting relevant documentation that shows the bank transactions, which would eventually uncover a totally different reality.

For the regular functioning of the political entities, the main source is the Fund for the supporting the political parties which for 2010 was in the amount of 1,820,622 Euros. Out of this Fund, PDK received the most with around 383,312 Euros, AKR around 198,792 Euros, LDD 150,970 Euros, AAK around 150,825 Euros, and so on.

Nevertheless, no political party declared the total sum of money spent for the 2009 Local Elections.<sup>687</sup> Since total expenses are now known, and have not been made public, no further assessment can be made with any degree of accuracy.

## Independence (Law)

*To what extent are there legal guarantees to prevent external interferences in political party activities?*

Generally speaking there is no legal basis enabling state institutions to interfere in political party activities. There are no laws preventing this occurrence, however, there are also no laws offering a basis for such interferences.

There is no legal basis on which to close a party. The only basis that may amount to the closure of a party, is its failure to reregister which results with the party's removal from the register of political parties. Grounds for the suspension of registration of political parties are provided in Article 6.1 of the CEC's Rule on Party Registration. If the party:

- (a) fails to inform the Office in accordance with section 13.5 that it has held an Electoral Assembly within six (6) months of its registration or within thirty six (36) months of its previous Electoral Assembly;

<sup>687</sup> Zëri (30 June 2009). Who finances the political parties?



- (b) fails to submit a complete Annual Update or Financial Report to the Office pursuant to sections 10 and 20, respectively;
- (c) adopts a Statute or Political Program that does not conform to the requirements of this Rule;
- (d) is in violation of sections 16.2, 16.3, 22.3;
- (e) fails to pay fines imposed by the CEC, or the Election Complaints and Appeals Commission within the applicable deadline;
- (f) fails to return a Contribution that is not a permitted Contribution to the contributor or remit it to the Kosovo Consolidated Budget as required under sections 17.7 and 17.8.

The Political Party Registration Office within the CEC conducts two types of monitoring activities: (a) It requires holding of periodical conventions and (b) monitors expenditures. In both these areas, there are legal gaps enabling parties to avoid some obligations. In the legal sense, oversight of authorities is primarily designed to protect public interest, but only very basic oversight takes place, if any.

There are two exceptions in relation to the participation of authorities on political party meetings. The first is the police presence at election campaign events. The second relates to the request that the Office or Municipal Election Commission is present at political party conventions. Investigations and tapping may be conducted only based on the Criminal Code.

International Observer reports emphasized the issue of the CEC's primary authority to make important decisions. Contrary to standard international best practice, issues that should be defined in the law, in Kosovo, are left to the CEC to codify in secondary legislation.<sup>688</sup> The authority to determine the number of signatures and the amount of deposit is in contradiction with international practices. This makes the competition less predictable and it offers an opportunity to political entities within the system to increase the threshold of democratic competition by making it difficult for new entities.

## **Independence (Practice)**

*To what extent are political parties free from external interferences in their activities in practice?*

Generally speaking, political parties are free from external interferences in their activities. There are no examples of authorities that dissolved or prohibited any political party and there have been no attempts in this regard. Also, there are no examples of the interference of authorities in political party activities.

<sup>688</sup> European Union Election Expert Mission to Kosovo. 2010. Final Report. Page: 4.

Electoral related incidents are steadily falling. There are a few instances of intimidation and attacks against party activists, however, primarily by individuals and not by state authorities. One exception was the criticism of the Government Spokesperson directed against several civil society members that was interpreted as a public lynching. Several of the activists formed a party in late 2010.<sup>689</sup> It was interpreted as threatening; even though the majority agreed that it was more accusatory. There is no evidence on such a planned policy.

Party members are not banned by authorities due to their work. However, in case of an attack or a sporadic incident, the lack of a legal state is observable, considering that the protection and investigations are not conducted properly, e.g the attack on President Rugova, the murder of the mayor of Suhareke and other cases. This is an issue pertaining to the legal state in general and not to the pressure exerted against political parties specifically.

Not all parties are treated equally by national institutions. The major difference lies in the budget and an extreme bias and clear discrimination of municipalities governed by the opposition parties may be noted.<sup>690</sup> Authorities justify this with larger needs in several poorer municipalities however, this barely justifies the largest extent of the differences. Budget disbursements amount to provincialism and favouring. The ruling parties, especially PDK, enjoy massive privileges, not only in relation to the budget, but also in relation to representation in different public organizations, they lead the most important committees, position, even their offices in the Assembly are visibly more favourable.

On a more positive note, it is important to state that such differences are not made by municipal election commissions. During the election period, there were no accusations that the opposition parties had no access to the public venues in order to hold their political events. As stipulated by the law, public institutions were enabled equal access to all political entities.

<sup>689</sup> Llapashtica, Jeton. Qeveria po kërcënon demokracinë. Zëri, <http://www.zeri.info/artikulli/1/1/4182/qeveria-po-kercenon-demokracine/www.flyksa.com>.

<sup>690</sup> Article quoted Ardian Gjini, 12 July 2010. Koha Ditore, "Skenderaj dhe Prizreni – përfituesit më të mëdhenj të rishikimit të buxhetit". <http://www.kohaditore.com/index.php?cid=1,5,27811> (last accessed on 7 December 2010).

## Transparency (Law)

*To what extent are there legal provisions requiring political parties to disclose information on their funds?*

Transparency in Kosovo is one of the main weaknesses. Due to the nature of party operation in years, the nature of secret operations continues. In the absence of the Law on Political Parties, the major part of financial transparency is not mandatory. The Law on General Elections stipulates an annual audit of 'financial statements of political parties.'<sup>691</sup> Another CEC Electoral rules details this requirement further. This issue may also be subject to UNMIK Regulation 2004/11, the Law on Auditor-General, the Law on Public Funds Management, the Law on Conflict of Interest, and the Law on Budget Management.

The campaign period is established in accordance with the Law on General Elections. In accordance with this law, any political entity running in an election needs to publish its income and expenditures, together with a balance sheet showing its assets and liabilities for a 90 day period preceding Election Day and ending on the Election Day. This report includes all branches and components of the political entity and needs to be submitted 45 days after the Election Day. This report needs to include: (a) political entity income during the relevant period, including the source and date of contributions made in cash, (b) all expenditures, including campaign expenditures, and (c) a balance sheet showing assets, liabilities and the balance sheet of the political entity from the first to the last day. This information needs to be maintained for a period of 7 years, including invoices, bank statements, contracts, accounting books, and the contributions' register. The CEC adopted Regulation 11/2009 on campaign expenditures and financial reporting. The Law obliges the CEC to establish the amount that may be spent per number of voters before every election by an Electoral Rule.

There are limitations in relation to contributions that may be accepted by political entities. Political subjects are allowed to receive contributions from legal entities in an amount not exceeding ten thousand (10,000) Euros per calendar year, respectively two thousands (2,000) from the natural persons.<sup>692</sup> Another condition that needs to be fulfilled is that this money needs to be in accordance with Regulation 2004/02 regulating the Prevention of Money Laundering and other crimes. Other sources include (a) Membership fees in accordance with Party Statute, and (b) other support from the Kosovo budget, as stipulated by Article 18 of Regulation 01/2008. Also, for every contribution, political entities need to register a full name, address and a personal number of the contributor.

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<sup>691</sup> Article 13.

<sup>692</sup> Law on the Financing of the Political Parties, Article 5, Contributions for political subjects.

Regarding the funds not related to elections, any political entity shall submit an annual financial report to the Office every year.<sup>693</sup> This report should include: (a) a balance sheet showing assets liabilities and entity balance, including all branches, (b) profits and losses, (c) a statement identifying any payment made to another person if the total amount of payment to this person exceeds 100 Euros. This Rule stipulates rather detailed rules on the content of the report and protection of data within a period of 7 years.

The Office may audit annual financial reports. An audit of expenditures during the campaign may be conducted by an externally contracted organization charged with the task of auditing campaign expenditures by the Office. Regulation obliges political entities to cooperate fully with the Auditor of the CEC Office. The Office audits any Report on Campaign Expenditures or Candidate Campaign Expenditures Form. Unfortunately, the Auditor General does not audit public funds allocated to political entities.

Not only are they not being audited by the Auditor-General, but also the Anti-Corruption Agency is not entitled to investigate political party funds. The chief of this agency stressed that there is a space for abuse here and quoted general civic perceptions that corruption is present among political parties on a very concerning level.<sup>694</sup>

The CEC transfers all administrative payments to the Kosovo Budget. The Office within the CEC maintains a Public Information File containing of: a) 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. Information such as full name and surname, personal information of every contributor that donated more than 100 Euros, contribution values and the date they were given need to be provided for every donor. This information, according to the legislation, shall be made public; however, it has so far never been posted on the CEC's official website.

In order to implement more long-term, stable, transparent procedures, it was recommended to approve separate laws in relation to the registration and operation of political parties. A special law on political parties should clarify the Rule on Registration, but this has not been initiated yet. It is inappropriate that party functioning is regulated by secondary legislation drafted by the Central Election Commission.

<sup>693</sup> According to CEC Election Rule 01/2008.

<sup>694</sup> RTK, 9 June 2009.

## Transparency (Practice)

*To what extent do political parties disclose information on their finances?*

Political parties are not yet ready to publish any financial information on their websites. Moreover, Financial Statements are submitted to the CEC just before the deadline and the following elections. Although according to the law on the financing of the political parties the CEC is obliged to publish the financial declarations of political parties in its official website, in practice this does not happen. Beside the publication of the Audit Report for the local elections in 2009 that was published a year and a half later, so far, none of the financial declarations of political parties has been published on the CEC's official website. The first initiative coming from civil society organizations to increase transparency in the financing of political parties is the latest report of KDI, which monitored the cost of the campaign of the 12 December 2010 elections to find out what irregularities and breaches of the Law took place. According to this report, financial reports of expenses that are submitted to the CEC cannot be qualified as reliable, because they are in almost all cases half. Besides, these reports are also not submitted on time, to the CEC: they are usually submitted only slightly before the following elections, and this phenomenon is more often expressed at the big political parties.

A problematic issue that needs to be stressed is that funds for the support of the political parties are not being audited by the Kosovo Auditor-General (KAG). The KAG holds a position that the institution responsible for this [Assembly of Kosovo] type of grants should have proper mechanisms to install an internal auditing system in order to ensure the payments arrive at their proper destinations. When the grants are given by the state it is important to devise clear and transparent criteria, but that is not the case here. The failure to audit the Democratization Fund is seen by some as an absence of auditor' valor to do so or as a legal gap. The Auditor-General claims that political parties should not be audited by the Office of Audit General directly, but rather by the internal auditors of the CEC. According to the Auditor General, if the OAG audits the political parties there are two clashes: a conflict of interest as the OAG audits the reports of the CEC and then for the CEC audits the political parties finances, AND political parties finances are not all from the Fund, but there is funding from private donations. In any cases, as it stands now there is no legal audit, which is a clear gap in ensuring party political financing transparency.

Even though there are rules that oblige the political parties to publish information regarding their finances, these are not implemented. Basic financial information (level of spending) on expenditures are submitted to the CEC, however, it is not known whether all have submitted

them, or whether they are complete or not, considering that the CEC did not publish and did not report on these.

## Accountability (Law)

*To what extent are there legal provisions regulating political party financial oversight?*

Applicable rules on election and non-election accounting procedures are not well developed. Any certified political entity, needs to submit financial disclosure reports covering campaign period and all entity branches (starting 90 days before the Election Day, up to the Election Day.) These reports need to include (a) political entity income generated during the reporting period, including source and date of all cash contributions, (b) all expenditures, including campaign expenditures, incurred by the political entity during the reporting period, and (c) a balance sheet showing all entity assets, liabilities and equity from the first day to the last day of the reporting period. (Article 40, Law on General Elections.)

Entities are also allowed to receive funds from the Kosovo Budget.<sup>695</sup> Regarding the non-election funds, political entities need to prepare annual financial reports at the latest by 1 March of the following year.<sup>696</sup> Every annual financial report contains the balance, profit and loss statement and payment statement. The Political Party Registration Office conducts the financial review of annual financial reports. For any violations, the Office may impose a fine up to 10,000 Euros. The Law on Political Party Financing, adopted by the Assembly, also regulates the issue of donations. For every contribution over 100 Euros, there should be registered along with the name of the contributor, the amount contributed, the address, and the personal number of the contributor.

The CEC shall control each financial statement of political entities, and through the contracting an external auditing company shall audit these reports in accordance with international standards of auditing applicable in Kosovo, within 60 days from the time of controlling. Article 2 of the CEC Election Rule 12/2009 limits the expenditures of political parties during the campaign and the contributions. These sums are defined by the CEC not later than 5 days from the date of elections is declared. For the previous elections, the limited sum for expenditure was set to be 0.50 Euro per registered voter.

<sup>695</sup> Section 17, UNMIK Regulation 2004/11.

<sup>696</sup> Neni 15pika 1, Ligji Mbi Financimin e Subjekteve Politike 03/L-174.

The main issue has to do with the fines, which are proportionally low compared to violations and breaches of the law for which are pretended that will be punished. Other problems are the low fines. The ECAP annual report shows that there have been 210.000 Euros of fines during 2009,<sup>697</sup> The ECAP emphasis that if the political parties do not pay their fines within 15 days, they cannot be accredited for the following elections. Although the fines are not paid in time (they have been paid shortly before the process of accreditation in 2010) the parties were allowed to participate in the elections of 2010.<sup>698</sup>

Detailed abidance by the rules is especially challenging considering that parties do not have a managerial centre and have no adequate accounting staff. This also relates to the intra-party structures and accountability. They still see themselves as voluntary movements and are not aware of institutional accountability. Parties are also seen by supporters, as only a bridge towards institutions. It's indicative that parties are not at all seen as organizations in which a person may find a job as a professional or even be retired.<sup>699</sup>

The CEC may fine a political entity for submitting its campaign finance report after the deadline, with administrative fees in accordance with the rules. The clause above is a good illustration of most regulation that gives power to the CEC to punish parties for violations, but does not oblige it to do so. The CEC fines denote that The CEC 'may' instead of saying 'shall,' giving it discretion in case the CEC imposes fines for a committed violation.

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<sup>697</sup> Komisioni Zgjedhor për Ankesa dhe Parashtrës. (Gusht 2010). Raport i Parë Vjetor: Tetor 2009-Korrik 2010.

<sup>698</sup> Sipas një zyrtari të PZAP-it, Florie Krasniqi. <http://www.kohaditore.com/index.php?cid=1,7,1717>.

<sup>699</sup> Interview of Kujtim Kërveshi with Leon Malazogu, Prishtinë, July 16, 2010.



## Accountability (Practice)

*To what extent is there an effective political party financial oversight in practice?*

In practice, there is a little accountability when it comes to the political parties. An internal anonymous source within the Central Election Commission claims that parties report on some aspects, however even these reports arrive with delays.<sup>700</sup> Several political parties prefer paying lower fines and not reporting at all. Non-election reports are completely formal and they neither reflect party income nor expenditures. An analyst who preferred to remain anonymous says that the reports are fictitious and there are multiple financial statements, one for the tax administration, another for the CEC, a different one for the bank etc.

This is standard practice for many businesses and there are sources who claim the same is done with political parties. Such a thing is also confirmed by the KDI, which through a media conference alarmed that the political parties declare unreal income and expenditures. Moreover, the financial resources remain undiscovered, being against the Law on the financing of the political parties.<sup>701</sup> There are parties that clearly have exceeded the maximum spending limit because massive expenditures during the campaign were visible.<sup>702</sup> This also lead one to the conclusion that the biggest contributors are not registered or they only register with lower amounts to bypass the obligations towards the reporting. Some analysts consider that the campaign is a good period of time for money laundering.<sup>703</sup>

## Integrity (Law)

*To what extent are their organizational rules on internal democratic governance of major political parties?*

Legislation foresees no detailed organizational rules on internal democratic governance of political parties. The only existing provision is the request to hold Party General Conventions periodically. According to the new law, the conventions need to be held every 3 years, unlike the 2 year requirement stipulated by UNMIK Regulation. All parties have their own statutes, but the power of the leader is generally unquestioned.

<sup>700</sup> The fact that these reports are not to be found on CEC's web-site is also a testimony to their absence.

<sup>701</sup> Konferenca per Media, KDI, Prishtine 24 mars 2011

<sup>702</sup> Raporti i Monitorimit te kosos se fushates parazgjedhore 2010, f 14

<sup>703</sup> Intervistë e Ramadan Ilazit me Leon Malazogun, Prishtinë 8 korrik 2010.



It emanates that internal party integrity is generally unregulated and that internal statutes are insufficient. Party Presidents remain unchallenged and run the parties through a narrow coterie of officials.

The law on Elections foresees that Conventions are held by the registered political party in order to elect, democratically and transparently, the President, highest party executive body, within six (6) months from the party registration date and then at least every thirty six (36) months. 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 party highest executive body. The Party President is obliged to report on the Party financial situation and to submit an annual financial report between conventions.

A Political party should invite the "Office (for Registration of Political Parties; within the CEC)" to monitor the Party Convention. Branch Conventions are monitored by the Municipal Election Commission 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 the democratic participation of party members in the election of party electoral candidates. Candidates of a registered political party on Municipal Elections are chosen from the branch or branches of the party in the relevant municipality.

Rule 1/2008 also obliges parties to maintain and keep a members' register including names, addresses and civil registration, passport or driver's license 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 twelve (12) Euros per member within a calendar year. On a positive note, the Rule strips the party members, including its officials, from the liability for party debts.

## **Integrity (Practice)**

*To what extent is the internal democratic governance effective in political parties in practice?*

In practice, effective democratic governance within political parties leaves a lot to be desired. Political Party policies have the same denominator, and that is power. AAK even changed its status. Now, the Members of the Presidency (sort of a Cabinet) is proposed by the President as an office-holder, further centralizing the decision-making process.

A senior official justifies the leader-centrism of political parties in the Eastern Europe, by say-

ing that, according to him, there are no strong parties and weak leaders.<sup>704</sup> This political culture imposes party investments in the leader in order to strengthen the party. According to him, there are 7-8 people with influence and the political culture itself imposes that the party cannot be successful otherwise.

It is difficult to rely on legal reforms to improve governance since most attempts are blocked, delayed or watered down by the authorities. In order to improve governance, time is necessary and some tendencies towards improvements are noticeable, however, this evolutionary process is very slow. Internal party policy culture requires the reaching of compromises without debates. For real reform to take place, it must be in the interest of the ruling party, which is currently not the case.

Starting from the election of leaders, democratic contest is minimal when the winner is already known beforehand. This lack of democracy may be noticeable on lower levels as well. A problem that arises in relation to the management is factions. One analyst argued that an imposed democracy may be cut out only by the departure of a leader.<sup>705</sup> The only party that has seen some democracy was LDK which faced the death of its founding leader and later the departure of his heir due to a violation of the Constitution. Another party whose leader passed away didn't lead towards a very advanced democracy considering that the same governance culture was inherited by its followers. The pressure that LDK stays in power also contributed to this, sacrificing its internal democratization.

Party funds are also reviewed by some individuals, and even a smaller number of officials make all the decisions. The Opposition at the Assembly of Kosovo rightfully makes accusations that the main party in Government controls the Assembly and its agenda. Short-notice changes in the agenda, late distribution of material on sensitive topics, and the lower number of interpellations of ministers are some illustrations to this effect.

## **Aggregation of interests and representation (Practice)**

*To what extent do political parties aggregate and represent relevant social interests in the political arena?*

Party programs do not have ideological leanings. The parties are still mechanisms to take the power in the hands of individuals associated to form a number and believing in the leader, and not because they share similar opinions on public affairs. Political programs of most parties, and frequent trans-

<sup>704</sup> Interview of Hajredin Kuçi with Leon Malazogu, Prishtinë, July 16, 2010.

<sup>705</sup> Interview of Valmir Ismaili with Leon Malazogu, Prishtinë, July 12, 2010

fers from one party to another, is an indication of the lack of ideological lineage in Kosovo's party spectrum. It may be said with difficulty that interest groups around powerful individuals dominate and lead political parties. The only differences noticeable and mobilizing the people at this moment are geographic ones. As long as there are some regions connected to parties, trade unions, business or agricultural associations, they are not officially close to any political parties. The leaders of such groups remain politicized making it difficult to reach a consensus among them in order to ask the support of a political entity.

Consequently, client reports are established between the individuals and close groups and some political parties. Interest groups do not lobby in the Assembly but primarily in the Government through private channels. Consequently, governance is still identified with the Government.

Political party image is rather low and only the courts are behind them in terms of public trust.<sup>706</sup> There were expectations that open lists would have a greater impact, however, they have still not created any conceptual differences. Direct election of mayors created leaders that insist more on their independence. Some of them started challenging their parties in the interest of their voters. The mayors of several municipalities clearly posed conditions on their respective party heads (e.g. Gjilan.)

Political parties see few incentive to customize their messages to specific voter groups. One obstacle stressed in this regard is patriotism in relation to the whole public space, preventing the debate. For instance, the highway that is being built towards Albania is not being discussed as an infrastructural project that would shorten the journey, decrease accidents etc, but as 'the road of the nation.' This hampers the process of representing different interests in the public arena.

Still, the relationship between the parties and civil society is rather difficult. There is no cooperation on issues of public policies and some of parties see nongovernmental organizations as negative and even as the fifth pillar.<sup>707</sup> On the other hand, very often they make efforts to use them as a means or to recruit some of their members. At the same time, parties themselves complain that NGOs are not articulate enough on different issues.<sup>708</sup>

<sup>706</sup> Global Corruption Barometer 2010, f. 29.

<sup>707</sup> Interview of Ramadan Ilazi with Leon Malazogu, Prishtine, July 08, 2010

<sup>708</sup> Interview of Ardian Gjini with Leon Malazogu, Prishtinë, July 14, 2010.

## Anti-Corruption Commitment (Practice)

*To what extent political parties give proper significance to public accountability and fight against corruption?*

Party platforms are generally not paid attention to. They are usually drafted weeks before the elections and are similar across party lines. There are no program or ideological differences among the parties. 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 programs. No party has put their platform on its website.

The fight against corruption has been just rhetoric for some time and this trend is continuing. A change has been observed in the past weeks due to the enormous pressures of international missions present in Kosovo. Political entities themselves are considered as the most closed institutions; especially their finances and internal functioning are not transparent. The issue of corruption is a part of party programs; however, none of the governments thus far undertook any serious actions after taking power.<sup>709</sup>

Authorities usually do not address opposition arguments and these are eliminated very often by saying that this is their duty. The silence of mutual attacks creates the impression that businesses and clients have been separated and that some political parties made an agreement to stay silent on abuses committed by each other.

Research conducted by Transparency International, an NGO dealing with anti-corruption and transparency, shows that political parties are among the structures perceived as the most corrupt in the country.<sup>710</sup> Political parties in our country are evaluated with the scale of 4.2, and compared with 2009, this scale was 3.8, which still means a very high scale of corruption, knowing that the scale 5 shows extreme corruption.<sup>711</sup> It is considered that as a result of non-implementation of the legislation in force, political parties are identified with this high scale of corruption.<sup>712</sup>

<sup>709</sup> Interview of Ramadan Ilazi with Leon Malazogu, Prishtine, July 08, 2010.

<sup>710</sup> Transparency International. 2009. Global Corruption Barometer.

<sup>711</sup> Transparency International. 2010. Global Corruption Barometer.

<sup>712</sup> According to Merita Mustafa, KDI, Press Conference 9 December 2010.

## Recommendations

- The functioning of political parties and financial transparency are regulated with the Law on the financing of political parties, and partly with the Law on General Elections in the Republic of Kosovo. For the start this legislation is enough, if it was implemented. Still, there are many clauses that need to be amended, especially in terms of deadlines on publication of the official public documents, as well as the clauses on the appeals of political entities.
- If the political parties lack transparency within their own houses, there will not be transparency for Kosovo public funds either. The transparency of political party finances should be priority, for both their sources of income (public, non-public) and their expenditures (election or non election related.)
- The Fund for the Support of the Political Parties gives around 2 million Euros of the Kosovo Budget to political parties which is unprecedented and against every democratic principle, especially when considering the needs of Kosovo. Furthermore, these funds are not audited and are not spent for their foreseen purpose. This issue should be raised and challenged.
- The election contest between political parties is not fair due to extreme financial divergences. Influence should be exerted in order to make the political contest fair and equal from the very start as this is a principle in consolidated democracies. Extensive power of several parties derives especially from the clientele patronage which also impairs the economy and fiscal policies in the country. Irradiation of close ties and favoring businesses with public resources is a precondition for proper democratic development in every country and it should be a priority for Kosovo.
- Development of voluntary associations in classical meaning of Tocqueville in Kosovo, has lagged behind and the dynamics of interaction of citizens with political entities occurs in mobilizing rather than the level of dialogue. In order to enable a transformation of Kosovo society and political culture, the political parties should develop a more dynamic relationship with specific groups of citizens and push for development of interest groups and lobbying groups.

- The approach towards interest groups will call for clearer profiling and crystallization of positions of the political parties which will in turn increase transparency and the dynamics of inclusion of the citizens in creation of policies and in affiliation in political parties. It is of the utmost importance for this process to include the broad political party membership and be a dialogue process rather than merely a process of hiring experts for drafting programs which are rarely read by anyone.

The political parties should engage in improving their image, which has decreased and is one of the institutions with the poorest image. If citizens have such a poor trust in political parties, this distrust will be transferred to the institutions and the will for change will not be channeled through voting and affiliation in alternative political parties but potentially through other ways.

**11.**

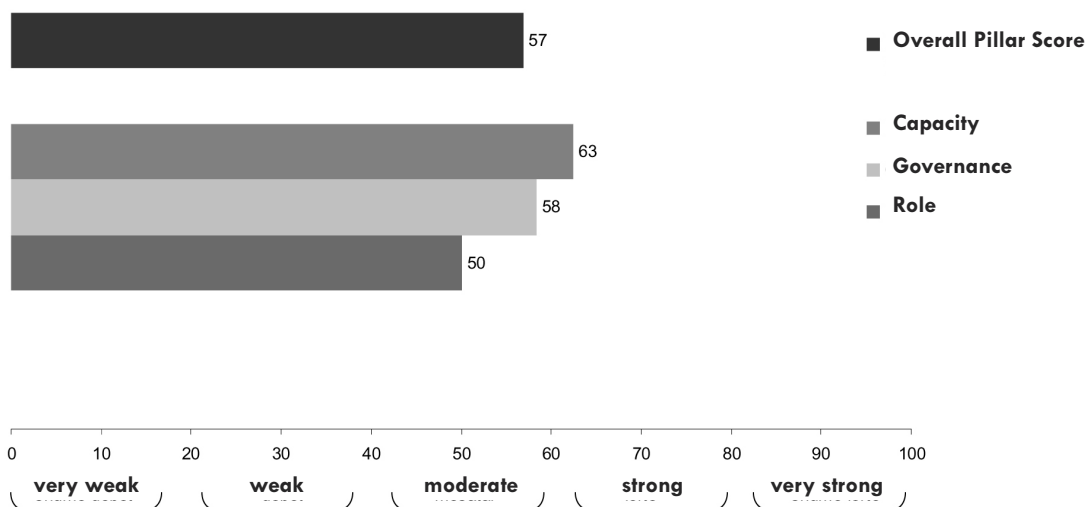
**MEDIA**

## Overview

The following report concludes that the legal framework regulating the media in Kosovo is in general sufficient, however, it identifies several practical difficulties in the implementation of legal provisions. Although the existing laws certainly need to be amended, they do offer a satisfactory basis for the activity of the media in Kosovo. Media capacity and resources in Kosovo vary regionally (the capital or outside of the capital.) Media independence in Kosovo is jeopardised by the issue of financial sustainability, that usually depends on purchase of advertising space by public institutions. The Media in Kosovo do not show high levels of transparency in relation to their internal activity, whereas the existing accountability mechanisms thus far have not proven themselves powerful enough to ensure the full accountability of journalists.

Internal organization of the media sector faces the issues of unity and joint activity, negatively impacting efforts to protect the integrity of journalists in Kosovo. Investigative journalism still remains a weak point of this profession and the media in Kosovo has not proven itself in investigating and reporting corruption cases. Even though the media widely cover the activities of government institutions, a large portion of these activities are covered in a protocolled manner where a major part of media tend to promote and advocate in favour of specific governmental policies.





## Structure and Organisation

Number of print outlets, radio stations, television stations: 9 daily newspapers; 92 radio stations; 22 Television

Newspaper circulation statistics (total circulation and largest paper): N/A, Koha Ditore is the leading newspaper, followed by Kosova Sot

Broadcast ratings: RTK 52%, KTV 28%, RTV21 49%; Radio Dukagjini 8%, Radio Kosova 5%, Radio 21.2% (Index Kosova, 2009)

News agencies: Kosova Live, Kosova Press

Internet usage: Households with Internet access 53%<sup>713</sup>

There are two independent regulatory institutions in the media sector, the Independent Media Commission and Kosovo Press Council. While the IMC deals with the broadcasting licensing and promotion of ethical, technical and professional standards, the KPC on the other hand is a self-regulatory body intended for print media, advocating freedom of expression and ensuring compliance with the principles contained in the Press Code.

<sup>713</sup> IREX, Media Sustainability Index 2010 – Kosova, 62

## Resources (Law)

*To what extent does the legal framework provide an enabling environment for an independent and varied media sector?*

The current legal framework in Kosovo offers a relatively enabling environment for the activity and independence of the media. Entry into the journalism profession is not regulated by a specific legal act. At the same time, there are no legal limitations in relation to founding print media. Print media activity is regulated by an independent mechanism, founded based on the initiative of these media themselves (self-regulation.) The activity of the Kosovo Press Council<sup>714</sup> is based on the Code of Conduct<sup>715</sup> of this organization.

The rules on broadcasters' founding and operation are specified by the Law on Independent Media Commission and Broadcasting<sup>716</sup>. On the basis of this law, in order to broadcast in Kosovo, the broadcaster needs to obtain a broadcasting license issued by the Independent Media Commission<sup>717</sup> (Section 11.) According to the same law, the IMC Council (at the recommendation of the IMC Executive Chief), decides on a competitive basis, within one hundred and twenty (120) days following the closing day for the application, whether or not to issue a broadcasting license to the applicant(Section 13.)

In case the licensing application is refused, but also in case of other disputable cases, the parties may appeal to the Media Appeals Board<sup>718</sup>, that adjudicates complaints in relation to IMC decisions (Section 21). One of the duties of the third IMC body, the Council, according to this law, is to prevent monopolization of broadcasting in Kosovo, in order to promote fair broadcasting competition (Section 3.)

The factors taken into account during the licensing process include: the nature and extent of the applicant's financial resources, the financial viability of the applicant's proposal, the applicant's technical capacity to offer qualitative broadcasting, the need to provide a varied program for all Kosovo citizens, the degree to which the offered program contributes to the development of the individual program production, competitive applications and other accepted applica-

<sup>714</sup> Kosovo Press Council, for more <http://www.presscouncil-ks.org/> (accessed on 14 June 2010)

<sup>715</sup> Kosovo Press Council Code of Conduct, at [http://www.presscouncil-ks.org/repository/docs/Press\\_Code\\_for\\_Kosova-alb.pdf](http://www.presscouncil-ks.org/repository/docs/Press_Code_for_Kosova-alb.pdf) (accessed on 14 June 2010)

<sup>716</sup> Law Nr. 02/L-15, adopted on 21 April 2005

<sup>717</sup> KPC independence is guaranteed also by Kosovo Constitution (Article 141)

<sup>718</sup> Appeals Board is a composite part of KPC, but it is independent in its functions

tions.<sup>719</sup> Also, this law stipulates that the broadcasting license shall not be issued to: a) political party, group or organization managed by an individual holding an elected office or a member of any executive body of a political party and b) an individual, or an entity managed by an individual, convicted within the due process, in accordance with international standards, of crimes stipulated by the applicable law (Section 12.)

## Resources (Practice)

*To what extent are media varied and independent and offer different perspectives?*

Kosovo has a considerable number of media outlets, both in the capital and other parts of the country. Television and radio stations and newspapers have a rather wide distribution Kosovo-wide, targeting different societal groups. Notwithstanding this, when referring to resources and the access to resources, a huge difference may be observed between the media at the central and local levels. The Media Directory, compiled by the Independent Media Commission, contains 110 broadcasting entities licensed in Kosovo.<sup>720</sup> The number of daily newspapers in Kosovo is around ten, whereas it is estimated that the newspaper readership in the country is rather low, with approximately 30,000 copies sold daily.<sup>721</sup> An OSCE report on print media in Kosovo finds that this number ranges between 25,000 and 35,000.<sup>722</sup>

The television sector in Kosovo is composed of three national broadcasters and 18 local TV stations, with four national radio stations, two public and two private (and around 90 local radio stations.)<sup>723</sup> Even though there is a solid geographic distribution, media active in the capital are more powerful (especially financially) and influential.

Private broadcasters in Kosovo were financially supported by foreign donors at the very outset of their operation, in an effort to create and consolidate an independent and powerful media sector in Kosovo. According to an OSI study, this condition started to change in 2006, when some of these media started providing their own revenues from the advertising.<sup>724</sup> Another study shows that the major media outlets develop and implement business plans, but this is not

<sup>719</sup> Assembly of Kosovo, Law on Independent Media Commission and Broadcasting, Section 12 (Nr. 02/L-15, adopted on 21 April 2005)

<sup>720</sup> Independent Media Commission, Directory of licensed broadcasters in Kosovo, 2009

<sup>721</sup> Open Society Institute, Television across Europe: regulation, policy and independence – Kosova Monitoring Report 2009, 24

<sup>722</sup> OSCE Kosovo, Circulation and Politicization of the Print Media in Kosovo, March 2010, 3

<sup>723</sup> Ibid

<sup>724</sup> Open Society Institute, Television across Europe: regulation, policy and independence – Kosova Monitoring Report 2009, 59

ordinary for small media outlets, that are financially unstable.<sup>725</sup> Even though, in general, there are reports about difficult financial conditions for the operation of media outlets (especially outside of the capital), some deem that “such a big number of media (outlets) in Kosovo, after all, is an indicator that they are somehow managing to survive and operate”.<sup>726</sup> Another explanation for this may be that media outlets in Kosovo take funds from different sources. In such a small market (two million), with such a large number of media outlets, definitely no media outlet depends on only a single source of revenue.<sup>727</sup>

Professionalism and qualifications of journalists is an issue of great concern in Kosovo. Opinions on journalists' salaries range between those who find that their level is rather low<sup>728</sup>, to those who find them on a reasonable level, especially in comparison to the salaries in the civil sector in Kosovo.<sup>729</sup> Both conclusions contain a concern about the potential of journalists' corruption, which can easily slip into biased journalism, in exchange for different favours from political parties, businesses or other groups. According to a media analyst, the fast growth of the number of media organizations in Kosovo, was not followed by capacity building of the journalists already working in the media sector. According to him, the OSCE Mission in Kosovo and the Kosovo Media Institute<sup>730</sup> offer trainings for journalists, but this is insufficient.<sup>731</sup> Some Kosovo universities offer journalism courses, but so far they have not been able to produce a competent generation of local journalists. The Kosovar Institute for Journalism and Communication (KIJAC)<sup>732</sup> is the leading graduate school of journalism, operating with European standards. Many journalists in Kosovo have no experience in writing, researching, or developing news stories. The region lacked a formal university degree in journalism or a technical training institute with the capacity to teach professional writing and analysis skills to a large number of reporters.<sup>733</sup>

The KIJAC is closed and no longer functions, due to allegations of abuse. The students who were unable to complete their degrees are discussing the possibility of continuing the course at the American University of Kosovo (AUK.) In recent years, the University of Prishtina opened up the Branch of Journalism within the Faculty of Philosophy, while the AAB-Rinvest private University College opened up the Massive Communication branch.

<sup>725</sup> IREX, Media Sustainability Index 2010 – Kosova, 62

<sup>726</sup> Interview with Naile Selimaj Krasniqj, Independent Media Commission Executive Chief

<sup>727</sup> IREX, Media Sustainability Index 2010 – Kosova, 62

<sup>728</sup> Open Society Institute, Television across Europe: regulation, policy and independence – Kosova Monitoring Report 2009, 36

<sup>729</sup> IREX, Media Sustainability Index 2010 – Kosova, 59

<sup>730</sup> Kosovo Media Institute, for more information see <http://www.imk-ks.org/> (accessed on 14 June 2010)

<sup>731</sup> Interview with Ardian Arifaj, media analyst

<sup>732</sup> For more, see KIJAC web-page <http://www.kijac.org/>

<sup>733</sup> Maureen Taylor, Protocol journalism as a framework for understanding public relations–media relationships in Kosovo, 27

## Independence (Law)

*To what extent are there legal guarantees to prevent external negative interferences in the media activity?*

Section 3, Paragraph 2 of the Law on Independent Media Commission and Broadcasting, expressly stipulates that broadcasting policy needs to be in compliance with accepted international broadcasting standards and human rights, while fully respecting democracy and the rule of law and the protection of freedom of expression. Moreover, Article 40, Paragraph 1 of the Kosovo Constitution, guarantees freedom of expression by stipulating that it includes the right to express one's self, to disseminate and receive information, opinions and other messages, without any impediments. Also, the Kosovo Constitution guarantees the right of access to public documents (Article 41) and freedom of media (Article 42), while at the same time expressly prohibiting censorship (Section 42, paragraph 2.)

Other mechanisms to implement the freedom of expression are the Civil Law on Defamation and Insult<sup>734</sup> and the Law on Access to Official Documents.<sup>735 736</sup> The legal provisions with regard to the protection of sources lack clarity in the Kosovo case. The Kosovo Provisional Criminal Code<sup>737</sup> stipulates that a court proceeding is required to uncover sources of information provided in the media. However, Flaka Surroi, KOHA media company head, asserts that this Code is confusing and that the position of the media is that prosecutors must not interfere in this issue.<sup>738</sup>

Licensing of broadcasters in Kosovo is an apolitical process, in relation to the legal framework. Regulatory authority in this field is in the hands of the Independent Media Commission, that according to the law is a body independent from political interferences of any type (Section 2.) Moreover, according to Section 4 of this law, the IMC Council members are proposed and appointed by civil society (four) and the Kosovo Assembly (one.)<sup>739</sup> The licensing procedure, according to the IMC Executive Chief goes far beyond analyzing technical aspects of broadcasting, by focusing on the programming part as well (content) as on ownership issues (in order to avoid political influences.)<sup>740</sup>

<sup>734</sup> Law Nr. 02/L-65, adopted on 15 June 2006

<sup>735</sup> Law Nr. 2003/12, adopted on 16 October 2003

<sup>736</sup> Law on Access to Official Documents is in the redrafting (review) process, considering that there were some difficulties in its implementation (access procedure, document classification, public information, sanction mechanisms)

<sup>737</sup> Kosovo Provisional Criminal Code, at [www.ks-gov.net/ipk/docs/Kodi\\_i\\_Perkohshem\\_Penal\\_i\\_Kosoves.pdf](http://www.ks-gov.net/ipk/docs/Kodi_i_Perkohshem_Penal_i_Kosoves.pdf) (accessed on 15 June 2010)

<sup>738</sup> Interview with Flaka Surroi, KOHA company head

<sup>739</sup> Two other members, who were international before the declaration of Kosovo independence, nominated by the SRSG, now need to be Kosovo citizens

<sup>740</sup> Interview with Naile Selimaj Krasniqi, Independent Media Commission Executive Chief

## Independence (Practice)

*To what extent are the media free from negative external interferences in its work in practice?*

In 1999, the international mission in Kosovo made a decision to regulate the media sector through an international authority that used to be called the Temporary Media Commissioner. During its activity, the TMC had a very centralized decision-making and activity structure.<sup>741</sup> This had an impact on the preservation of the independence of this institution from possible political interference. The first national commissioner was appointed in July 2006, even though immediately thereafter the Temporary Media Commissioner was transformed into the Independent Media Commission, by transferring media regulation solely to nationals.<sup>742</sup> The respect towards the independence of this institution from political and business circles has continued since this transition. Another contributing factor to its independence is the fact that a large number of people came into the IMC from the civil society,<sup>743</sup> whereas the only possible indirect impact is financial, considering that, according to the IMC Executive Chief, the government thus far never fully complied with their budgetary requests.<sup>744</sup> She concludes that it cannot be said that the IMC enjoys financial independence.

Kosovo journalists complain very often about the lack of access to the sources of official (public) information, due to a possessive stance of state institutions and the international administration.<sup>745</sup> Very often the importance of creating an environment and culture within the government and public administration that would enable the media to fulfill their functions, i.e. taking and disseminating information on government activities, is mentioned.<sup>746</sup> Journalists cannot conduct investigative journalism in a country where organizations – even those international organizations that are charged with creating transparency – are not willing to provide information mandated by the law.<sup>747</sup> Even the 2009 Progress Report on Kosovo finds that the Law on Access to Official Documents is not fully implemented and this hampers the work of journalists.<sup>748</sup>

<sup>741</sup> Open Society Institute, Television across Europe: regulation, policy and independence – Kosova Monitoring Report 2009, 27

<sup>742</sup> Ibid

<sup>743</sup> Interview with Flaka Surroi, KOHA company head

<sup>744</sup> Interview with Naile Selimaj Krasniqi, Independent Media Commission Executive Chief

<sup>745</sup> Freedom House, Nations in Transit 2009 – Kosova, 285

<sup>746</sup> OSCE, The State of Media Freedom in Kosova, 2006, 10

<sup>747</sup> Maureen Taylor, Protocol journalism as a framework for understanding public relations–media relationships in Kosovo, 29

<sup>748</sup> European Commission, Kosova 2009 Progress Report, 42



Censorship in the Kosovo media is a present phenomenon that appears in different forms. One of most often mentioned addresses is Radio Television of Kosovo, where many problems with the editorial policy and the control over this media by the party currently at power, the Democratic Party of Kosovo, are often mentioned.<sup>749</sup> In a letter sent on 26 October 2009, the EBU Director-General<sup>750</sup> accused Prime Minister Thaçi of transforming RTK from a balanced news provider into a media wing of the party at power and of the Prime Minister himself.<sup>751</sup>

In another case, Post and Telecommunication of Kosovo withdrew its rather profit-making commercial from the KOHA Group – KTV and Koha Ditore – for several months, which was considered a response to the latter’s criticism of its work in 2009.<sup>752</sup> After a specific time period, PTK returned its commercials to the KOHA Group, even though, according to KOHA leadership, critical writings against this public enterprise continued in the same rhythm after the return of its advertisements.<sup>753</sup> Other newspapers such as Zëri, Lajm and Express rely on income generated by their businesses. Even though, with Kosova Sot holding a second position, gained with a slight difference, Koha Ditore remains the most widely read newspaper, government advertising has moved away from this criticism, in the direction of newspapers with smaller readership, led by party people: Infopress and Tribuna Shqiptare.<sup>754</sup> Media analyst, Ardian Arifaj deems that there is no censorship in Kosovo per se. The Government, according to him, is influencing the media through marketing (indirect pressure), considering that it is the largest purchaser of advertising space in Kosovo media.<sup>755</sup> According to a renowned Kosovo journalist and former head of the Association of Professional Journalists of Kosovo, there are often cases of harassment and intimidation of journalists in Kosovo, but they usually lack proper prosecution and judicial procedure.<sup>756</sup>

On the other hand, almost all interviewees acknowledge that the most widely used form is self-censorship. Many journalists give up specific topics due to fear or in order to protect specific political and economic interests within certain media outlets.<sup>757</sup> In some cases, owners themselves ask that their journalists give up on some sensitive topics. Very often they themselves impose self-censorship towards their own newspaper, in order not to criticize government performance, to preserve good relations with them and not to lose potential contracts.<sup>758</sup>

<sup>749</sup> IREX, Media Sustainability Index 2010 – Kosova, 58

<sup>750</sup> European Broadcasting Union, for more see <http://www.ebu.ch/>

<sup>751</sup> European Broadcasting Union, Director General’s letter to Prime Minister Hashim Thaçi, 26.10.2009, [http://www.ebu.ch/CMSImages/en/579\\_Thaci%20H\\_Prime%20Minister%20of%20Kosovo\\_RTK\\_26.10.2009\\_tcm6-66518.pdf](http://www.ebu.ch/CMSImages/en/579_Thaci%20H_Prime%20Minister%20of%20Kosovo_RTK_26.10.2009_tcm6-66518.pdf) (accessed on 15 June 2010)

<sup>752</sup> Youth Initiative for Human Rights, State of Constriction – Governance and Free Expression in Kosova, 24 May 2010, 18

<sup>753</sup> Interview with Flaka Surroi, KOHA company head

<sup>754</sup> Youth Initiative for Human Rights, State of Constriction – Governance and Free Expression in Kosova, 24 May 2010, 18

<sup>755</sup> Interview with Ardian Arifaj, media analyst

<sup>756</sup> Interview with Imer Mushkolaj, journalist

<sup>757</sup> IREX, Media Sustainability Index 2010 – Kosova, 59

<sup>758</sup> OSCE Kosova, Circulation and Politicization of the Print Media in Kosova, March 2010, 11

## Transparency (Law)

*To what extent are there legal provisions to ensure transparency of media activities?*

Kosovo legislation offers a solid foundation to regulate transparent operation of Kosovo media. The Law on Independent Media Commission and Broadcasting obliges broadcasters to submit an annual report to this institution, including information in relation to the program and activity in accordance with license conditions, together with a detailed financial report (Section 18.)<sup>759</sup> According to this report, the violation of licensing conditions (Section 19) may lead to Sanctions (Section 20) that may go even to the termination or refusal of a broadcasting license.

The Independent Media Commission, on the basis of its license agreement with broadcasters, separate from technical conditions and program requirements, also requires disclosure of ownership over the media. Ownership of private broadcasters is regulated by Regulation 2005/1<sup>760</sup> on the Independent Media Commissioner, defining conditions to obtain a broadcasting license.<sup>761</sup> On the basis of this Regulation, selling of over 10% of stocks in a media company should initially require the permission of the Regulatory authority. External ownership over a broadcasting license is allowed only for companies with an office registered in Kosovo.<sup>762</sup> The IMC licensing package, apart from other application documents, contains also the document entitled 'Ownership proof', where owner(s) financial details need to be disclosed. Notwithstanding that, the IMC admits that this institution has no mechanisms to further investigate this formal disclosure of ownership, in order to find out who in fact stands behind specific media outlets.

Based on international practice and standards, there are also limitations for multiple ownership. Owners of television stations are allowed to own a radio station or a newspaper, but not all three.<sup>763</sup> Considering that there are no specific legal provisions in Kosovo regulating licensing and operation of print media, consequently transparency requests are primarily general and principled. The Print Media Code stipulates that media/news organizations shall prove their

<sup>759</sup> Annual reports are submitted not later than 90 days after the end of the year, and are submitted through the IMC Office of the Executive Chief

<sup>760</sup> IMC Regulation 2005/1 on broadcasting licence eligibility

<sup>761</sup> Open Society Institute, Television across Europe: regulation, policy and independence – Kosova Monitoring Report 2009, 56

<sup>762</sup> Open Society Institute, Television across Europe: regulation, policy and independence – Kosova Monitoring Report 2009, 57

<sup>763</sup> Open Society Institute, Television across Europe: regulation, policy and independence – Kosova Monitoring Report 2009, 58



transparency in media ownership and management issues, enabling thereby citizens to have clarity in relation to the identity of their owners and amount of their economic interest in the media (General Provisions, item 6.) Every media outlet registered in Kosovo is obliged to declare its owners, and information on ownership is open to the public, but Kosovo has no specific law or regulation on media ownership.<sup>764</sup>

## Transparency (Practice)

*To what extent is the transparency present in media in the practice?*

All broadcasters in Kosovo offered information on ownership issues to the Independent Media Commission.<sup>765</sup> Considering that there is no licensing procedure for the print media, their ownership may be known only from the business registration certificate. In both cases, and primarily as a consequence of lack of IMC mechanisms to conduct deeper investigations related to broadcasters' ownership, ownership issues remain very unclear in the media sector. The IMC has several times tried unsuccessfully to launch the drafting of a media ownership regulatory framework, but there has not been much progress in this respect.<sup>766</sup> Media entities so far has shown a serious attitude to submit reports, including financial ones, with the correct amount of detail.<sup>767</sup>

Media activity in Kosovo is public up to a certain degree. It is unusual to see Kosovo media disclosing information about their internal staff, reports or information on editorial policies. Still, compared to other countries of the region, Kosovo is probably the most transparent country with regard to declaring media ownership and the background of the money invested in media outlets. Electronic media declare their owners, assets, and financing sources.<sup>768</sup>

<sup>764</sup> IREX, Media Sustainability Index 2010 – Kosova, 61

<sup>765</sup> Interview with Naile Selimaj Krasniqi, Independent Media Commission Executive Chief

<sup>766</sup> IREX, Media Sustainability Index 2010 – Kosova, 61

<sup>767</sup> Ibidem

<sup>768</sup> IREX, Media Sustainability Index 2010 – Kosova, 61

## Accountability (Law)

*To what extent are there legal provisions ensuring that media are accountable for their actions?*

There are two independent regulatory institutions in the media sector, the Independent Media Commission and the Kosovo Press Council. Whereas the IMC deals with the broadcasting licensing, promotion of ethical, technical and professional standards, the KPC on the other hand is a self-regulatory body intended for print media, advocating freedom of expression and ensuring compliance with the principles contained in the Press Code.

The Law on Independent Media Commission and Broadcasting entitles the Office of the IMC Executive Chief to monitor broadcasters and provides it with an opportunity to initiate and receive complaints in relation to noncompliance with license conditions, codes of conduct and other legal acts in accordance with this law (Section 19.) At the recommendation of the Office of the IMC Executive Chief, the IMC Council may issue written warnings or impose one or more sanctions stipulated by this law for those broadcasters found in violation (Section 20).

Kosovo legislation also foresees the right to react in cases when a person alleges that he was publicly harmed as a consequence of news published in the media. The Law against defamation and insult warrants the right of reaction in order to remedy facts of concern, to any person, and on the request of the applicant, specific media are obliged to publish the applicant's response sent to it (Section 13.) Here, it also stipulates that the response needs to be published without delays and it has to receive the same significance as with the initial information containing allegedly inaccurate facts. Media (both broadcast and print) in Kosovo have not instituted 'ombudsperson' institutions to deal with citizens' feedback and complaints.

## Accountability (Practice)

*To what extent can media be held accountable in practice?*

Media accountability in practice has proven itself quite challenging, primarily due to a low impact of regulatory and self-regulatory mechanisms. Although the Independent Media Commission is free from political interference, there are cases where this institution faced difficulties in implementing a sanctioned decision. The IMC made a decision to close TV Mitrovica, although the issue was politicized under the pretext that this television couldn't have been closed, considering that it was the only Albanian broadcaster in the area. On the other hand, interviewees primarily agree that the media in

Kosovo offer space for reaction at a satisfactory level. The newspapers are much more attentive to remedying incorrect information or offering space for a reaction,<sup>769</sup> although television stations frequently fail to comply with this standard.

Interaction forums between media and the public are still at an under-developed level in Kosovo, even though Kosovo news web portals<sup>770</sup> are encouraging an alternative channel of communication. News readers in these portals are being transformed into active commentators, enabling the creation of discussion forums on relevant issues.

## Integrity mechanisms (Law)

*To what extent are there legal provisions to ensure integrity of media employees?*

Professional integrity of Kosovo journalists is protected and regulated by the means of two documents: the Kosovo Broadcasting Media Code of Conduct and the Kosovo Press Code. Neither document explicitly provides provisions to foresee sanctions for lack of compliance with their principles. The Broadcasting Media Code of Conduct was adopted in 2000 by the Temporary Media Commissioner and it requires broadcasters to implement human rights standards as leading principles in their every day work. This Code enabled programming based on recognized international standards of conduct and respect for ethnic, cultural and religious diversity,<sup>771</sup> at the same time covering areas such as competition, provocative statements, justice and impartiality, the difference between news and opinion, false and fraudulent materials, language, the right to denial, public complaints etc.

On the other hand, the Kosovo Press Code adopted, in 2005, apart from other conduct provisions, expressly refers to corruption as well: journalists shall not accept posts, bribe or other incentives, causing conflicts of interest with their profession, and compromising their moral and professional credibility (Section 8, Corruption and Bribe.) The Kosovo Press Code covers the issues of professional integrity and journalist's conduct: truthful reporting, inciting and the language of hatred, the right to respond, people accused of crimes, children and juveniles' protection, intimacy, corruption and bribe, copyright, advertising and sponsorship, etc.

According to an interviewed media analyst, the media in Kosovo has not developed the practice of individual (internal) codes of conduct nor have they founded internal ethics committees.<sup>772</sup>

<sup>769</sup> It has been noticed from the practice that newspapers tend not to offer adequate treatment to the reaction to an allegedly inaccurate information, by publishing it in the secondary part of the newspaper

<sup>770</sup> Some of these portals include: Koha.net, Express Online, Telegrafi

<sup>771</sup> Open Society Institute, Television across Europe: regulation, policy and independence – Kosova Monitoring Report 2009, 59

<sup>772</sup> Interview with Ardian Arifaj, media analyst

## Integrity mechanisms (Practice)

*To what extent is the integrity of media employees ensured in practice?*

Kosovo media outlets have huge difficulties in practicing principles of media ethics. The two documents (Codes) discussed in the previous section, are not well known to the journalists and they are not in practice effectively implemented.<sup>773</sup> Though the MSI 2010 points that although the media sector has no overarching ethical code observed by all, panelists agreed that most journalists follow general ethical standards, and corruption is not pervasive.<sup>774</sup> A lack of professional organizations protecting journalists' rights and regulating media ethics in Kosovo is still a major issue. The media sector in Kosovo has still not achieved unification of media and journalist associations in drafting and adopting self-regulatory profession mechanisms and acting jointly on issues of media freedom and professional standards. Analysts of the media sector in Kosovo, very often stress the need to improve the quality of media by strengthening media and journalist associations.<sup>775</sup>

One of the most important issues related to integrity mechanisms, according to Flaka Surroi, is the lack of journalists' trade union organizations. Moreover, she adds that journalists in Kosovo are dispersed into several associations and there is a lack of unity among them.<sup>776</sup> The Association of Professional Journalists of Kosovo<sup>777</sup>, founded in 2002, proclaimed as its objectives the establishment of solidarity among Kosovo journalists, capacity building and raising of the level of professionalism.<sup>778</sup> However this association has still not proven to have fulfilled these objectives, whereas constant requests are heard that it becomes more vibrant in the protection of journalist rights and promotion of professional standards. APJK, like other organizations in the media sector in Kosovo (the Kosovo Press Council, the Kosovo Association of Independent Broadcasters and the Independent Media Commission) are asked to actively monitor and ensure compliance with the principles of Codes of Conduct by journalists.<sup>779</sup> The European Commission's 2009 Progress Report on Kosovo finds that the Kosovo Press Council is donation-dependent and has weak implementation and action capacities.<sup>780</sup>

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<sup>773</sup> Interview with Imer Mushkolaj, journalist

<sup>774</sup> IREX, Media Sustainability Index 2010 – Kosova, 58

<sup>775</sup> Interview with Imer Mushkolaj, journalist

<sup>776</sup> Interview with Flaka Surroi, Koha company head

<sup>777</sup> For more information, visit <http://www.apjk.org/> (accessed on 15 June 2010)

<sup>778</sup> Association of Professional Journalists of Kosovo, What is APJK, <http://www.apjk.org/?cid=1,15> (accessed on 15 June 2010)

<sup>779</sup> Open Society Institute, Television across Europe: regulation, policy and independence – Kosova Monitoring Report 2009, 76

<sup>780</sup> European Commission, Kosova 2009 Progress Report, 42

Multiple source reporting and hearing both (all) sides of a story, is not a usual practice in Kosovo journalism. According to an expert, the use of several sources of reporting depends on the media outlets themselves, adding that the ones that are the most professional, like Koha Ditore and Zëri already have this practice, while the newspaper Express, for example, does not.<sup>781</sup>

## Investigation and publishing of corruption cases (Practice)

*To what extent are media active and successful in investigating and publishing corruption cases?*

According to an OSCE report, newspapers in Kosovo primarily publish simple reports on daily events, instead of focusing on analytical reporting and investigative journalism.<sup>782</sup> Difficulties with financial sustainability and disproportional purchase of advertising time by the Government, according to the Freedom House report, have the effect of discouraging critical debate and investigative journalism by reducing the role of the media to mere reporting.<sup>783</sup>

In the 2008 Media Sustainability Index (IREX), interviewed panelists found the resistance of editors in chief and the pressure of politicians and international stakeholders were hindering investigative journalism, in order to preserve the political stability before the final status resolution.<sup>784</sup> The 2009 IREX report found that there were still no conditions in Kosovo for genuine investigative journalism.<sup>785</sup> In 2010, the Media Sustainability Index panelists deemed that investigative journalism was one of the most attractive areas where journalists were being specialized, however, they expressed concern over the training programs developed by unprofessional trainers.<sup>786</sup>

In relation to private television outlets, a large amount of news and news programs are produced by editorial offices themselves and they do not involve simple relaying of news produced by other sources. Generally speaking, there is an impression that private television stations offer a different perspective, compared to RTK. Even though the reports covering corruption cases were given a wide space in RTK, these stories are not considered substantial reporting.<sup>787</sup> The 2008 IREX report panelists singled out Koha Vision as the producer of

<sup>781</sup> Interview with Ardian Arifaj, media analyst

<sup>782</sup> OSCE Kosova, Circulation and Politicization of the Print Media in Kosova, March 2010, 7

<sup>783</sup> Freedom House, Nations in Transit 2009 – Kosova, 284

<sup>784</sup> IREX, Media Sustainability Index 2008 – Kosova, at [http://www.irex.org/programs/msi\\_eur/2008/kosovo.asp](http://www.irex.org/programs/msi_eur/2008/kosovo.asp) (accessed on 15 June 2010)

<sup>785</sup> IREX, Media Sustainability Index 2009 – Kosova, në [http://www.irex.org/programs/msi\\_eur/2009/kosovo.asp](http://www.irex.org/programs/msi_eur/2009/kosovo.asp) (accessed on 15 June 2010)

<sup>786</sup> IREX, Media Sustainability Index 2010 – Kosova, 64

<sup>787</sup> KIPRED, Monitoring news programme of the Radio Television of Kosova, September 2010, 17

investigative materials.<sup>788</sup> According to one media company leader, it is very difficult to develop and exercise investigative journalism in Kosovo, at the same time mentioning the absence of investigative shows on Kosovo TV, such as Fiks Fare, broadcast on Top Channel<sup>789</sup>, or Insider, broadcast on B92.<sup>790 791</sup> One of the rare cases of investigative journalism in Kosovo includes the show “Jeta në Kosovë” (Life in Kosovo),<sup>792</sup> a production of the Balkan Investigative Reporting Network (BIRN)<sup>793</sup>, broadcast by RTK.

## Public information on corruption and its impact (Practice)

*To what extent are media active and successful in informing the public on corruption and its impact on the country?*

The Media in Kosovo has shown itself to be neither active nor successful in informing the public on corruption and its impact on society and the country. The media usually cover anti-corruption activities of NGOs, however, they do not invest in special programs aimed at raising the awareness of this phenomenon. Moreover, the present government in Kosovo promotes a rather powerful “anti-corruption” rhetoric, by positioning itself at the head of the fight against corruption, also including public information on issues related to corruption.<sup>794</sup> On the other hand, media centers are left to broadcasting news on investigations or arrests of public officials accused of corruption.

Notwithstanding this, public support for journalists who uncover corruption cases is not lacking. According to a media analyst, when a journalist of the “Jeta në Kosovë” show was threatened by a domestic politician, support for the journalist came from the government, international institutions and embassies.<sup>795</sup>

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<sup>788</sup> IREX, Media Sustainability Index 2008 – Kosova, në [http://www.irex.org/programs/msi\\_eur/2008/kosovo.asp](http://www.irex.org/programs/msi_eur/2008/kosovo.asp) (accessed on 15 June 2010)

<sup>789</sup> Top Channel is a private television in Albania, for more visit [www.top-channel.tv/](http://www.top-channel.tv/) (accessed on 15 June 2010)

<sup>790</sup> B92 is a private television in Serbia, for more [www.b92.net/](http://www.b92.net/) (accessed on 15 June 2010)

<sup>791</sup> Interview with Flaka Surroi, KOHA company head

<sup>792</sup> For more <http://www.jetanekosove.com/> (accessed on 16 June 2010)

<sup>793</sup> BIRN Kosova, for more <http://kosovo.birn.eu.com/> (accessed on 16 June 2010)

<sup>794</sup> Voice of America, interview with Prime Minister Hashim Thaci: “My government will have zero tolerance for corruption”, at <http://www.voanews.com/albanian/news/voa-hashim-thaci-2010-07-23-99120209.html> (accessed on 29 September 2010)

<sup>795</sup> Interview with Ardian Arifaj, media analyst

## Public information on governance issues (Practice)

*To what extent are media active and successful in informing the public of the activities of the government and other governance stakeholders?*

Kosovo has a significant number of media entities and they comprehensively cover the activity of the government. Political and institutional events take a central and rather large position in Kosovo media, especially in daily newspapers. A considerable number of the media practice protocol reporting on the work of the government and other state institutions. Twenty of the 40 key informants in a study by Maureen Taylor noted the prevalence of protocol journalism when discussing media credibility in Kosovo, while it states that the prevalence of protocol journal may be an obstacle to media development.<sup>796</sup> According to an OSCE report on the politicization of print media in Kosovo, reporting on political issues dominates the daily newspapers, whereas the reports on social issues and different industries remain minimal.<sup>797</sup>

While the quantity of reporting on government activities is great, the quality is another matter. One often finds that in the media reports on government activities, there is a bias, with these reports serving to promote and advocate certain government policies.<sup>798</sup> As said earlier in this report, the media are subject to different pressures in their work, whereas the institutions exert pressure on them by conditioning the positive reporting on their activities and performance, by publication of advertising in newspapers that are crucial for their sustainability.<sup>799</sup>

<sup>796</sup> Maureen Taylor, Protocol journalism as a framework for understanding public relations–media relationships in Kosovo, 28

<sup>797</sup> OSCE Kosova, Circulation and Politicization of the Print Media in Kosova, March 2010, 10

<sup>798</sup> Interview with Imer Mushkolaj, journalist

<sup>799</sup> OSCE Kosova, Circulation and Politicization of the Print Media in Kosova, March 2010, 7



## Recommendations

- Purchase of advertising space by public institutions needs to be regulated by the law whereas equality in purchasing of this space by public funds should be ensured
- Media need to prove high levels of transparency by publishing their internal activities, especially the details pertaining to their management, finances, personnel etc.
- Strengthening of accountability mechanisms is a precondition for responsible journalism in Kosovo, where the best manner to achieve this is self-regulation of the sector (internal codes, review procedures, sanctions)
- Internal organization of the media sector, in the sense of networking and lobbying for the interests of this sector, remains at the level of several networks, that primarily are nonfunctional. Journalists need to have strong action mechanisms in order to protect their integrity.
- Investigative journalism is in an embryonic stage of development, where it needs to be a priority in professional and journalism school programs. Moreover, the media need to invest much more in investigative journalism, together with the donors that offer donations in sensitive governance fields (anti-corruption, transparency, judiciary, rule of law etc.)
- The Law on Independent Media Commission needs to be supplemented with a specific article, obliging the Board of the public broadcaster (RTK) to keep the public broadcaster away from the Government, by sanctioning biases in reporting, and obliging the electronic media with a specific article to abide by the Code of Conduct.

The Media sector in Kosovo also needs another law that regulates the legal infrastructure on print media as well as a law on the establishment and licensing of print media (newspapers and magazines).



**12.**

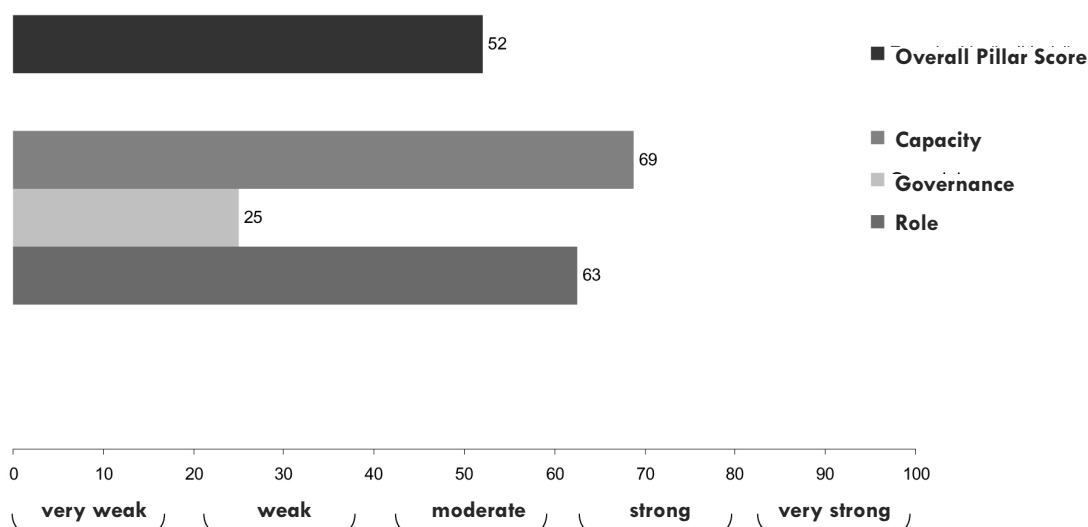
**CIVIL SOCIETY**

## Overview

Generally, the field of action of Civil Society Organizations (CSOs) in Kosovo is favourable, despite several attempts of the Government to exert pressure over critical organisations and some procedural delays in registration and excessive tax duties. The year 2010 saw a decrease in the number of international donors in Kosovo with some completely withdrawing from the country which meant less funding opportunities for NGOs. Moreover, donations are not on the level that would guarantee financial sustainability; national grants are low and income generation from CSOs' own activities remains low. The law on NGOs and the Kosovo Constitution protect CSOs from unjustified external interference. Despite this, in practice, governmental tendencies may be observed, of exerting pressure over critical NGOs and the environment for critical CSOs is not completely favourable.

NGO transparency is low, the boards are mainly non-operational and a very small number of CSOs publish names of board members or their reports, though these are not required by law. Likewise, Kosovo CSOs' accountability is low, contacts with the grassroots are low and the boards exist primarily at the donors' request. As for now, the issue of self-regulation of CSO activities remains an issue of the individual CSO's will. Integrity also, just like the issue of transparency and accountability, is more respected due to donor requests in individual cases than as a legal requirement or a form of self-organization of the whole CSO sector, though some of the NGOs publish their financial audit reports on their websites.

There is a rising trend of watchdog activities by NGOs that attempt to hold the Government accountable for its actions, especially in the fight against corruption. Several international reports mention some influential activities of the civil society sector in Kosovo. Several NGOs are active in initiating and suggesting anti-corruption reforms in Kosovo, though with a limited effect.



## Structure and Organization

The first civil society cells in Kosovo were born in the beginning of 1990s as part of the parallel system which was established by Kosovo Albanians to counter the oppressive Serbian regime. The first organizations were established in the field of education, health and human rights such as Mother Theresa charity association or the Council for the Defence of Human Rights and Freedoms. After the war of 1999 there was a flood of international NGOs but also of international donors which facilitated a boom in the Kosovo NGO sector.

CSOs in Kosovo can be classified as trade unions, sports clubs, associations of different categories such as pensioners' association, missing persons' associations, war veterans' associations, etc. In one word CSOs encompass all organizations of civil society excluding here businesses and political parties. The largest number of CSOs in Kosovo is composed of what are defined as Non-Governmental Organizations (NGOs.) The NGOs are technical organizations by nature specializing in various fields. The Kosovo Law on Freedom of Association in Non-Governmental Organizations defines NGOs as 'associations' (membership-based) and 'foundations' (non-membership based) established either for the public benefit or mutual interest. The law on NGOs does not apply to political parties, union organizations and trade unions, religious temples and centres and other fields regulated by specific laws.

The number of NGOs in Kosovo in 2009 reached around 5,000.<sup>800</sup> However many of these NGOs are small and survive on donations; they are active or non-active depending on the availability of funds.<sup>801</sup> The media remains both in and outside civil society. Since most of the media are officially registered as private businesses, they can be seen as part of that sector.<sup>802</sup>

## Resources (Law)

*To what extent does the legal framework offer favourable environment for the civil society?*

Freedom of association in Kosovo is guaranteed by Article 44 of Kosovo Constitution.<sup>803</sup> This freedom is also guaranteed by Section 3 of the Law on Freedom of Association in Non-Governmental Organizations (03/L-134.) However, this law (hereinafter 'Law on NGOs') doesn't include trade unions which are regulated by a special law.<sup>804</sup> The law on NGOs allows freedom of association in two ways: by creating an association or by creating a foundation. The first law on NGOs was drafted after the war in 1999 in order to create a legal basis that would enable undisrupted activity of NGOs and donors who flooded Kosovo in order to reconstruct the country and create Kosovo civil society. The law in force was adopted in February 2009, however, CSOs in cooperation with the Ministry of Public Administration (MPA), i.e. the NGO Monitoring and Liaison Department, initiated the review and amendment of this law. According to the Legislative Strategy of the Government for 2011 the draft law on amending the Law no 03/L-134 on the freedom of association with non governmental organisations, was supposed to be brought to the Assembly by the Government on 31 May 2011.<sup>805</sup>

Pursuant to the law, the NGO registration procedure is simple and not costly; however, the NGO Registration Department is slow in processing information, delaying the registration by requiring status amendments several times and for NGOs operating out of capital city incurring unnecessary travel costs.<sup>806</sup> The Law allows the activity of unregistered NGOs, however, in order to benefit from donations they need to register with the NGO Monitoring and Liaison Department.

<sup>800</sup> USAID, The 2009 NGO Sustainability Index for Central and Eastern Europe and Eurasia, p.123.

[http://www.usaid.gov/locations/europe\\_eurasia/dem\\_gov/ngoindex/2009/kosovo.pdf](http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2009/kosovo.pdf) [accessed October 4, 2010].

<sup>801</sup> UNDP, Human Development Report, Civil Society and Development. Kosovo 2008, p.42.

[http://www.ks.undp.org/repository/docs/HDR\\_final\\_eng\\_small.pdf](http://www.ks.undp.org/repository/docs/HDR_final_eng_small.pdf) [accessed 4 October, 2010].

<sup>802</sup> CIVICUS, Civil Society Index, Analytical Country Report for Kosovo

<sup>803</sup> Constitution of the Republic of Kosovo: <http://www.kushtetutakosoves.info> [accessed on 07 June 2010].

<sup>804</sup> All Kosovo laws may be accessed at: <http://www.kuvendikosoves.org>

<sup>805</sup> Republic of Kosovo Government – Legislative Strategy for 2011

<sup>806</sup> USAID, 2009: 124.

There's a rising trend of NGOs active in advocating and criticizing the government; donors are increasingly supporting the watchdog groups.<sup>807</sup> After the declaration of independence in 2008, an increasing role of watchdog NGOs has been observed in monitoring the work of the government.<sup>808</sup> This is particularly noticeable in the fight against corruption. However, there have also been instances of direct or indirect pressure exerted by the Government over critical NGOs by sending the NGO Registration Department to conduct inspections that are primarily within the scope of activity of the Tax Administration.<sup>809</sup>

The tax system is considered favourable, however some NGOs complain that bureaucratic rules they must abide by are the same as for businesses, such as for instance fiscal number.<sup>810</sup> Also, only NGOs are obliged to pay Rent Tax as lessees. All NGOs pay VAT, whereas those with Public Benefit Status enjoy the right to being tax exempt and having tax and fiscal concessions, with the exception of public utility expenses.

In general, the legal basis on CSOs in Kosovo may be described as favourable and local NGOs consider it more comprehensive than other regional NGO laws,<sup>811</sup> though parts of secondary legislation have not been adopted yet to provide for the full implementation of the Law on NGOs.<sup>812</sup>

## Resources (Practice)

*To what extent do civil society organizations (CSO) have proper/sufficient resources to operate and act effectively?*

The year 2009 saw a decrease in the number of international donors in Kosovo with some completely withdrawing from the country, thus affecting NGO financial viability.<sup>813</sup> This meant less funding choices for NGOs. Even though there are local funding sources, they are scarce, and usually the Ministry of Culture and several municipalities support some cultural and sport associations with minimal grants. The central and local government hired domestic CSOs to offer services, advice and goods for their needs.<sup>814</sup> Local philanthropy is rare, with occasional activities and only rarely do CSOs manage to generate income from the services they offer,

<sup>807</sup> Author's interview with Luan Shllaku, Prishtinë, 28 April, 2010.

<sup>808</sup> USAID, 2008 NGO Sustainability Index for Central and Eastern Europe and Eurasia (Washington: U.S. Agency for International Development, Bureau for Europe and Eurasia, Office of Democracy, Governance and Social Transition, 2009), p.129.

<sup>809</sup> Ibid.

<sup>810</sup> Author's interview with Igballe Rogova, Prishtinë, 30 April, 2010.

<sup>811</sup> USAID, 2009: 124.

<sup>812</sup> European Center for Not-for-Profit Law, Assessment Report on the Legal Environment of Civil Society in Kosovo, April 2009, p.6.

<sup>813</sup> USAID, 2009: 125.

<sup>814</sup> USAID, 2008: 132.

therefore a need arises for CSOs to be supported by foreign donors. This in turn, created dependency on the donors due to the fact that most of the money that NGOs receive comes from international donors.<sup>815</sup> In the 2009 Progress Report of European Commission on Kosovo it is stated that: 'Civil society continues to depend mostly on international funding, leading to project-based and donor-driven agendas with limited sustainability and long-term strategic positioning.'<sup>816</sup> Beside this note made on the 2009 Progress Report, the situation has not improved in 2010 either. The 2010 Progress Report of the European Commission writes: "The NGOs continue to depend mostly on international funding preventing any long-term strategy. The monitoring capacity of NGOs is increasing, but remains limited."<sup>817</sup>

However, it can be said that the civil society experienced a revival and reorganization after the declaration of independence, whereby a great number of CSOs specialized in specific fields.<sup>818</sup> Especially the number of NGOs focusing in anti-corruption increased, the watchdog groups, groups monitoring the National Assembly but also: public policy, social and economic issues, policy-making, etc.

The majority of CSOs are detached from the grass-roots they claim to represent. Moreover, those concentrated in the capital, may be considered elite organizations, considering that they have no direct communication with the citizens, their activities are targeted towards governmental institutions based on normative perspectives as to how the society and the state should function. The majority of NGOs are organized around their steering structures managing their every-day operation, communicating with the public only through press conferences and public performances. However, there are professional associations and charity organizations such as "Mother Theresa" Society that inherited a wide network from the parallel system of the '90s which has direct contacts with the groups in need, offering social services to them.<sup>819</sup>

NGOs, especially those based in the capital, Prishtina and those that enjoy a good reputation and are able to benefit from donors, attract professional and skilled staff unlike the Kosovo Government, considering the fact that they offer better salaries. Some of Kosovo think-tanks have succeeded in attracting some of the most skilled people in their relevant fields of activity.

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<sup>815</sup> USAID, 2009: 126.

<sup>816</sup> European Commission, Enlargement Strategy and Progress Reports, Kosovo under UNSCR 1244/99 2009 Progress Report, p.14. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/ks\\_rapport\\_2009\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2009/ks_rapport_2009_en.pdf) [accessed 5 October, 2010].

<sup>817</sup> Kosovo 2010 Progress Report, p.16

<sup>818</sup> Freedom House, Nations in Transit: Kosovo (2009), p.283.

<sup>819</sup> USAID, 2008: 131.

## Independence (Law)

*To what extent are CSOs protected by law in preventing unjustified external interference in their activities?*

The law on NGOs protects CSOs from unjustified external interferences and also contains provisions that stipulate how and why a CSO may be dissolved, such as due to failure to submit tax statements. Also, it stipulates the administrative-court proceedings and appeal process in cases of conflict between the CSO and national bodies. A CSO may be denied registration if its Statute and Program promote ethnic, religious, racial and gender inequality or if it violates provisions of the applicable laws. The Law on NGOs prohibits participation in activities that violate the constitutional order of Kosovo. Also, CSOs must not collect funds and support a political party or a specific candidate for public post. Section 22 of the Law on NGOs stipulates that Kosovo institutions support and encourage activities of NGOs, but do not interfere in their activities.

Article 44, Paragraph 3 of the Kosovo Constitution stipulates that Organizations or activities that infringe on the constitutional order, violate human rights and freedoms or encourage racial, national, ethnic or religious hatred may be prohibited by a decision of a competent court.

Kosovo citizens are free to work towards good governance and in the fight against corruption without being hampered from the outside, notwithstanding their ideological and other beliefs. There is no regulation obliging state officials to participate in NGO meetings. State oversight is conducted through the NGO Monitoring and Liaison Department, whose mandate is limited within its office boundaries, by reviewing only reports submitted by Public Benefit Status NGOs and those with grants over 100.000 Euros (one hundred thousand) within a fiscal year.

The right to privacy also includes NGOs, whereby officials and members of an NGO board, need to show their loyalty and to protect the confidentiality of NGO information that is not public.

## Independence (Practice)

*To what extent does the civil society operate and exist without excessive outside interferences?*

Although a number of Kosovo watchdog NGOs are very active in addressing criticism to the government, some of them believe that the government finds ways to silence them<sup>820</sup> or that if the government asks a donor not to fund a specific NGO, that request would be approved.<sup>821</sup> The Government can manipulate NGOs or ‘buy them off’ for its own interests, though this is much more present in municipalities where NGOs are weaker or where members of municipal assemblies create their own organizations. It is believed that the organization that led an NGO coalition that monitored 2007 local and general elections was ‘pro’ the biggest party in the current government coalition, PDK, that was in opposition at that time.<sup>822</sup> Two of this NGO’s main managers are Kosovo ambassadors today in two Western countries. The tilting of NGOs toward certain political parties or the government affects their independence and the image of civil society in the eyes of the public.

There were also cases when state officials threatened civil society members due to their criticisms of the government. According to the USAID NGO Sustainability Index 2008, the government exerted direct or indirect pressure towards critical NGOs by sending the NGO Monitoring and Liaison Department official to inspect their offices.<sup>823</sup> In 2005 and 2007, NGO INPO from Ferizaj was threatened by Municipal Assembly members.<sup>824</sup> On the first occasion, the Municipal CEO threatened the NGO for requesting access to official documents, whereas in 2007 they were threatened by a political party due to their municipal project entitled ‘Civil Society for a Clean Parliament’ whereby the past of candidates running for a seat in the Municipal Assembly elections was examined.

The offices of ÇOHU! were visited in 2007 by the NGO Monitoring and Liaison Department in order to ‘review the finances’ of this NGO after one senior official of a political party then part of the government declared that the state should check the activities of this organization. This statement and the subsequent visit were a consequence of constant activities conducted by ÇOHU! criticizing the Government for corruption and bad governance but especially due to the

<sup>820</sup> Author’s interview with Igballe Rogova, Prishtinë, 30 April, 2010.

<sup>821</sup> Author’s interview with Ramadan Ilazi, Prishtinë, 29 April, 2010.

<sup>822</sup> Author’s interview with Igballe Rogova, Prishtinë, 30 April, 2010.

<sup>823</sup> USAID, 2008: 129.

<sup>824</sup> Author’s interview with Ramadan Ilazi, Prishtinë, 29 April, 2010.



project 'Civil Society for a Clean Parliament.'<sup>825</sup> The second attempt by officials of the NGO Monitoring and Liaison Department to 'visit' ÇOHU! offices was unsuccessful after they were informed by the members of the NGO that by law their mandate was confined within their offices and that thus they were violating the law. In a televised debate on a Kosovo TV station, the Government Spokesperson declared that statements of some civil society members, including the director of the KIPRED Institute and two prominent journalists, are 'anti-state statements' and compared these statements to statements used in the indictments for war crimes against Slobodan Milosevic and Vojislav Seselj. This statement by the Government's Spokesperson prompted 17 Kosovo NGOs to react against the 'lynching rhetoric' of the Kosovo Government officials.<sup>826</sup> Later on, the deputy-Prime Minister Hajredin Kuçi apologized on behalf of the government for such a statement by the spokesperson.

Despite these verbal attacks and intimidation of CSO members, there were no arrests or imprisonment of civil society members due to their work. The critical NGOs have shown stubbornness and intransigence in their criticism against the government, though their working environment remains unfriendly and sometimes even hostile and threatening.

## Transparency (Practice)

*To what extent are CSOs transparent?*

CSO transparency in Kosovo is low in relation to citizens.<sup>827</sup> However, in relation to legal obligations, Public Beneficiary Status NGOs and the NGOs whose grants exceed the amount of EUR 100.000 (one hundred thousand) within a fiscal year are required to submit annual reports and to conduct an external audit that is submitted to the NGO Registering and Liaison Department. Usually, NGOs submit financial reports to the donors that is often a pre-condition to win grants. Notwithstanding the fact that more active NGOs have internal managing structures and defined missions, again many of them define their projects and activities according to donor priorities.<sup>828</sup> Therefore CSOs are more donor-oriented than towards the needs and demands of citizens.

<sup>825</sup> See also: Global Integrity Report, Global Integrity Scorecard: Kosovo 2009, (Global Integrity Report: Kosovo 2009), p.10. <http://report.globalintegrity.org/reportPDFS/2009/Kosovo.pdf> [accessed on 9 June 2010].

<sup>826</sup> KOHANet, OJQ: Retorika linquese, kërcënim për demokracinë (NGOs: Lynching rhetoric a threat to democracy), 2 April, 2010. <http://www.koha.net/index.php?cid=1,22,16740> [accessed 4 October, 2010].

<sup>827</sup> Luan Shllaku, the director of Kosovo Foundation for Open Society thinks that CSOs do not have 'moral obligations' towards the citizens because their transparency is regulated by law and while the CSOs comply with these legal obligations than they are fine. Author's interview with Luan Shllakun, Prishtinë, 02 Feb, 2011.

<sup>828</sup> USAID, 2008: 130.

However, NGOs are not obliged according to the Law on NGOs to make public their reports and a very small number do. A very small number of these organizations make public the names of board members which they usually posted on their websites. Many CSO board members serve in several boards concomitantly, sometimes with more than 10 boards, what raises doubts in terms of the effectiveness of these boards.<sup>829</sup>

According to UNDP's Human Development Report on Civil Society in Kosovo, less than one third of Kosovo's population think that CSOs are open to public participation, and among minorities the perception is worse, where only one out of ten respondents thought that CSOs were open for participation.<sup>830</sup> This negative perception on the openness of CSOs is reflected also by the view that only over 50% of the population think that the CSOs represent their personal interests, whereas the other half consider themselves not represented by CSOs.<sup>831</sup>

In one word, the low transparency of Kosovo CSOs reflects the citizens' perceptions about the rather closed nature of these organizations.

## Accountability (Practice)

*To what extent are CSOs accountable to their grassroots?*

Considering that the majority of NGOs are detached from the citizens, their accountability is rather low.<sup>832</sup> A small number of NGOs has succeeded in creating a support base however broadly speaking, a lack of volunteerism may be observed that is in striking contrast with the '90s when volunteerism served as a basis of the parallel movement.<sup>833</sup> The only groups today that have a volunteer bases and direct contact with the citizens are the Vetëvendosje! Movement (which though it has ran for parliament in the last central elections of December 2010 it has decided to remain a citizen movement as well), the UÇK War Veteran Organizations and to some degree trade unions and the Kosovo Women's Network which consists of more than 70 women's NGOs. The situation is rather good with charity organizations that are in direct contact with groups to which they are targeting their services such as the Mother Theresa Association.<sup>834</sup> At the local level a number of NGOs provide shelter, relief, health care, legal services, etc thus responding to more immediate needs of their constituents.<sup>835</sup>

<sup>829</sup> Ibid.

<sup>830</sup> UNDP, 2008: 79.

<sup>831</sup> UNDP, 2008: 81.

<sup>832</sup> Regarding the accountability of CSOs, Luan Shllaku, the director of Kosovo Foundation for Open Society thinks that, same as with transparency, the CSOs do not have 'moral obligations' towards the citizens but only towards the law.

Author's interview with Luan Shllakun, Prishtinë, 02 Feb, 2011.

<sup>833</sup> USAID, 2008: 130. <sup>834</sup> USAID, 2008: 131. <sup>835</sup> USAID, 2009: 127.

According to UNDP's Human Development Report, 5% of respondents thought that most CSOs are accountable to citizens and about one quarter thought that some CSOs are accountable.<sup>836</sup> Again the situation with minority communities appears worse where only 10% of respondents thought that most or some of the CSOs are accountable. Most of the citizens thought that Kosovo NGOs prioritize according to donor requests, while the majority (almost 50%) would prefer that NGOs report more to citizens and Kosovo institutions and less to donors.<sup>837</sup>

NGOs are obliged according to the law to have boards overseeing and directing them, however, they are mainly non-operational and the boards exist only formally.<sup>838</sup> As stipulated above, many CSO board members serve in several boards at the same time, raising doubts about the effectiveness of these boards.<sup>839</sup> The boards exist only because they are requested by the donors.

The same holds true for accountability, Kosovo CSOs' accountability is low which, again as with transparency, is reflected in citizens' perceptions.

## Integrity (Law)

*To what extent are there mechanisms to ensure CSO integrity?*

Even though there were several attempts to develop a sector-wide code of conduct for civil society, these efforts were unsuccessful until today. A Code of Conduct for NGOs in Kosovo is more an issue of individual organizations that strive to be self-regulated. The Kosovo Women's Network (including more than 70 women organizations) developed a code of conduct for the needs of the network in an effort to strengthen it through self-regulation.<sup>840</sup> There is also a USAID and CIVIKOS initiative to make a civil society code of conduct mandatory by law.<sup>841</sup>

For now, the issue of CSO self-regulation is left up to the will of each individual organization. The most active NGOs have internal managing structures and defined missions, however, many of them establish their projects and activities based on donor priorities.<sup>842</sup>

In overall, a legal mechanism to ensure the integrity of CSOs is absent.

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<sup>836</sup> UNDP, 2008: 81.

<sup>837</sup> UNDP, 2008: 82.

<sup>838</sup> Advocacy and Policy Centre, NGO sector in Kosovo: Development, challenges and opportunities. <http://www.qpa-kosova.org/> [accessed on 9 June 2010].

<sup>839</sup> USAID, 2008: 130.

<sup>840</sup> Author's interview with Igballe Rogova, Prishtinë, 30 April, 2010.

<sup>841</sup> Author's interview with Luan Shllaku, Prishtinë, 28 April, 2010.

<sup>842</sup> USAID, 2008 NGO Sustainability Index for Central and Eastern Europe and Eurasia (Washington: U.S. Agency for International De-

## Integrity (Practice)

*To what extent is the integrity of CSOs ensured in practice?*

In practice, NGO integrity is not sufficient and sustainable. There are no self-regulating mechanisms such as for instance a sector-wide Code of Conduct for CSOs.<sup>843</sup> A small number of NGOs strive to be self-regulated and to abide by principles of integrity. The Kosovo Women's Network monitors compliance with the Code of Conduct of the Network members through a questionnaire that is based on code requirements and then on the basis of calculating the score, thereby measuring compliance with the Code.<sup>844</sup>

Integrity, like transparency and accountability, is respected much more due to donor requirements in individual cases than as a legal requirement or a result of self-organization of the whole CSO sector.

An overview of the websites of some of Kosovo's largest NGOs reveals that not all of them publish their annual financial audit reports.<sup>845</sup> These reports can be downloaded and viewed online on their websites. This is to a degree a recent practice aimed to improve the commitment to principles of integrity of Kosovo NGOs, especially when it comes to finances since for years one conventional counter-attack by the government against critical NGOs was that we do not know 'who is behind them.' However, this overview of websites does not reveal any internal code of conduct or of ethics but just usually a 'Mission Statement' declaring that the organization is committed to democracy, rule of law, EU integration, human rights, etc.

The only state mechanism which obligates NGOs to abide by principles of integrity is the annual reports which should be submitted to the Department for NGO Registering and Liaison in the Ministry of Public Administration. However, this too is confined only to NGOs with Public Beneficiary Status<sup>846</sup> and NGOs whose grants exceed the amount of EUR 100.000 (one hundred thousand) within a fiscal year.

<sup>843</sup> Advocacy and Policy Centre, NGO sector in Kosovo: Development, challenges and opportunities. <http://www.qpa-kosova.org/> [accessed on 9 June 2010].

<sup>844</sup> Author's interview with Igballe Rogova, Prishtinë, 30 April, 2010.

<sup>845</sup> The NGOs which publish their financial audit reports are: KIPRED <http://www.kipred.net>; Lëvizja (Movement) FOL <http://www.levizjafol.org>; KDI <http://www.kdi-kosova.org/>; IKS <http://www.iksweb.org>

<sup>846</sup> UNDP, 2008: 50.

## Hold the Government accountable

*To what extent is the civil society active and successful in holding the government accountable for its actions?*

A rising trend of monitoring activities can be observed primarily by NGOs based in the capital, attempting to hold the government accountable for its actions. NGOs are increasingly producing periodical reports<sup>847</sup> monitoring the performance of the government, or they even hold press conferences on ad hoc issues or organize symbolic protest performances. Anti-corruption campaigns and activities have especially increased in number and quality. According to Freedom House, revival and reorganization of the civil society has been observed after the declaration of independence, whereby the majority of CSOs profiled fundamentally in specific directions.<sup>848</sup> Here it is worth mentioning profiling of some think-tanks in producing specific reports and recommendations in relation to economic and policy issues such as KIPRED, the GAP Institute, IKS, Forum 2015, KCSF and the Foreign Policy Club.<sup>849</sup>

Some of the best examples of successful campaigns include the NGO coalition led by ÇOHU! 'Civil Society for a Clean Parliament' 'scanning' candidates for Assembly members in 2007 General Elections against some integrity criteria; the Truth Meter by the Movement FOL that qualifies the statements of senior state officials on a weekly basis as 'true' or 'untrue' measured against actions of these officials, the campaign of Forum 2015 (a group of Kosovo intellectuals and institutes) followed by a group of NGOs and experts in campaigning against the project to build a 2100MW power-plant named 'Kosova C' (later on renamed as 'New Kosovo'); Kosovo Women's Network was very loud in gender issues and they have also opened up a hotline where citizens are increasingly reporting suspicious cases of corruption.

'Democracy in Action,' a coalition of 11 NGOs, monitored the local elections in Kosovo held in November and December 2009, even though they were criticized for not deploying observers at all polling centres and for failing to fully collect information.<sup>850</sup> Also, a group of NGOs organized to push for amendments in the Law on Freedom of Association in Non-governmental Organizations in co-operation with the Legal Department of the Ministry of Public Administration in order to amend some aspects of this law which were deemed as limiting.<sup>851</sup>

The USAID NGO Sustainability Index 2008 mentions the campaign of Forum 2015 against the

<sup>847</sup> See the webpages of Organization ÇOHU! <http://www.cohu.org>, KDI <http://www.kdi-kosova.org>, Lëvizja FOL <http://www.lvizjafol.org>, KIPRED <http://www.kipred.net>.

<sup>848</sup> Freedom House, 2009: 283.

<sup>849</sup> Ibid.

<sup>850</sup> Freedom House, Nations in Transit: Kosovo (2010), p.279.

<sup>851</sup> Ibid.

construction of the Kosova C power plant (later on renamed as ‘New Kosovo’) as one of their successful activities.<sup>852</sup> This Index lists as very influential the campaign organized by ÇOHU! for the improvement of licensing and accreditation of private universities in Kosovo. Some of the most influential initiatives include strikes and protests of police and health care trade unions.<sup>853</sup>

Lëvizja FOL and the Foreign Policy Club, in cooperation with a number of other organizations, were very vocal during 2010 in repeatedly demanding accountability and concrete results from the EU Rule of Law Mission in Kosovo (EULEX) in establishing rule of law in the north of Kosovo and for failing to catch the ‘big fish’ of corruption and organized crime.

Difficulties arise while attempting to measure the effect these activities have on preventing abuse of official duty by government officials. As stressed by one interviewee, ‘We cannot know whether the government will take just two out of three bad decisions it had in mind due to our work.’<sup>854</sup> Anyway, some of the above mentioned campaigns were clearly very influential.

Despite this, thus far, there were no massive protests or civic protests opposing any government decision or attempting to protect citizens’ rights, apart from the symbolic protests held on 1 May or on International Anti-Corruption Day, 9 December. Notwithstanding the fact that corruption and poor management are repeatedly reported in the media and there are many different surveys showing that citizens are very dissatisfied,<sup>855</sup> the civil society did not succeed to reap the benefits of this civic dissatisfaction and to unite in protest against corruption.

According to a survey, 33% of people think that CSOs’ role is to hold the government accountable<sup>856</sup> while almost 40% think that CSOs do ‘very little’ to protect the rights of the people from the government and 20% think that they do ‘little.’<sup>857</sup> The majority of respondents thought that the international community holds the government accountable, followed by the media.<sup>858</sup> Though there evidently can be observed a trend in the rise of CSOs to hold the government accountable and pressure it for anti-corruption reform and good governance, still CSOs need to do more to strengthen their capacities and improve their public outreach.

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<sup>852</sup> USAID, 2008: 132.

<sup>853</sup> Ibid.

<sup>854</sup> Author’s interview with Luan Shllaku, Prishtinë, 28 April, 2010.

<sup>855</sup> See UNDP Early Warning Report, at <http://www.ks.undp.org/>

<sup>856</sup> UNDP, 2008: 83.

<sup>857</sup> UNDP, 2008: 70.

<sup>858</sup> UNDP, 2008: 84.



## Anti-corruption reforms

*To what extent is the civil society actively engaged in initiatives to reform anti-corruption policies?*

In 2009, a number of NGOs were actively engaged in the development of an Anti-Corruption Strategy in cooperation with the Kosovo Anti-Corruption Agency and some other institutions, and also in the development of an Anti-Corruption Action Plan. Eventually, NGOs withdrew from this initiative due to the fact that their recommendations were ignored and weren't incorporated into the Strategy.<sup>859</sup>

Some NGOs are active in initiating and proposing anti-corruption reforms, such as ÇOHU!, FOL, the Kosova Democratic Institute, etc.<sup>860</sup> In 2010 ÇOHU! and KDI published analyses of packages of Anti-Corruption laws including the Law on Anti-Corruption Agency, the Law on Declaration and Origin of Property and Gifts of Senior Public Officials and the Law on Preventing Conflict of Interest while Exercising Public Function. Moreover, every month the FOL! Movement publishes a report on the anti-corruption activities of state institutions

During 2010 policy reports/analyses on the rule of law in general and on corruption specifically were produced also by NGOs not working in the field of anti-corruption, such as the Kosovar Institute for Policy Research and Development (KIPRED) and the Kosovar Stability Initiative (IKS.)<sup>861</sup> The Declaration of Independence in February 2008 has removed the status issue from the agenda and thus a re-orientation of CSOs towards internal problems has been observed.

However, the largest number of anti-corruption reforms in Kosovo are initiated and pushed forward due to international pressure, especially by the European Commission, where the Kosovo Government is motivated by the desire to have a Progress Report full of praises which it can use for its political benefit, for instance in the amendment of the Law on Public Procurement.

In general, governmental–civil society cooperation needs to be strengthened and understood as a partnership and not as an antagonistic relationship. The institutions need to be much more open and CSOs need to be more proactive and vibrant.<sup>862</sup> Cooperation with the Kosovo Assembly is also lacking, and extending an invitation to the civil society to take part in the law drafting process is not a part of the government strategy.<sup>863</sup>

<sup>859</sup> Author's interview with Lorik Bajrami, Prishtinë, 19 April, 2010; Author's interview with Ramadan Ilazi, Prishtinë, 29 April, 2010.

<sup>860</sup> See web pages of these organizations: <http://www.cohu.org>; <http://fol-08.org/>; <http://www.kdi-kosova.org/>

<sup>861</sup> See KIPRED's The fragile triangle – police, judges and prosecutors coordination during criminal proceedings response in Kosovo on <http://www.kipred.net> and IKS' Untying the Knot: the Political Economy of Corruption and Accountability in Kosovo on <http://www.iksweb.org>.

<sup>862</sup> Global Integrity, 2009: 10.

<sup>863</sup> European Center for Not-for-Profit Law, Assessment Report on the Legal Environment of Civil Society in Kosovo, April 2009, p.19.

## Recommendations

There are several positive developments that are observable in Kosovo civil society, such as the increase of activities of monitoring NGOs in an effort to request accountability. However, a lack of financial sustainability (especially through domestic philanthropy and donors) hampers NGO sustainability and the general development of the civil society sector. Government pressure exerted on critical NGOs needs to be stopped and the government needs to accept their activities as recommendations for better governance and not as conspiratorial attacks. Therefore, taking into account the interest for a developed civil society that fulfills and supplements the work of the government even at times when it is criticized, we recommend the following:

- A fiscal mechanism should be found, as is the case in some countries, for ensuring fund sustainability of CSOs, whereby for instance 1% of business profit could be allocated for CSO activities (as in Hungary) or as is the case in the Czech Republic where 40% of the state lottery is allocated to CSOs. Thereby, direct governmental influence to CSO independence could be avoided and they would also have sustainable funds to operate.
- Apart from the independence towards the government, the dependence of Kosovo CSO on international donors should be reduced and transformed into civic dependence. In this direction, CSOs should search for alternative resources, for instance: membership fees, the establishment of specific funds, own revenue generation etc.
- In this direction, setting up CSO priorities should be done corresponding to the needs and requests of Kosovo society and not pursuant to the requests of donors.
- CSOs need to undertake immediate steps towards improving their own transparency, accountability and integrity. Fulfillment of legal obligations on the submission of financial reports and making public the names of board members on websites are not sufficient. Much stronger steps need to be taken in order to go out publicly and be open towards the public. Press conferences, street performances and research reports are some of the activities that should come hand in hand with activities on the ground.
- Notwithstanding that Kosovo civil society sector has recovered greatly after the declaration of independence in February 2008, again CSOs need to be much more aggressive and vocal in addressing their criticism towards the government and they need to go out in public much more often if they want to have an impact and influence on the development of policies and decision making and be taken seriously by the public and the government itself.



**13.**

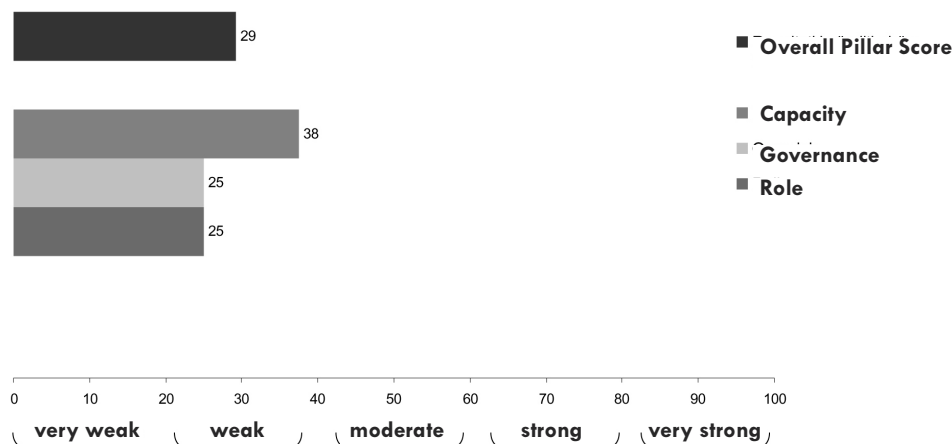
**BUSINESS**

## Overview

An initial legal framework is in place, consisting of basic laws, for the establishment and development of business. In parallel, several institutions have been established, which are supposed to guarantee fair competition and the independence of business vis-à-vis the state and its officials. Nevertheless, this has not been followed up with secondary legislation, the codes and standards which would determine operational standards for all partners, in business, as well as government institutions.

Despite the seemingly positive situation with the number of laws, still, the framework remains incomplete. There are no rules and obligations on financial reporting; there is a lack of laws which regulate the market of equities and valuable papers, as well as those for dispute resolution among businesses.

The experience indicates a considerable governmental influence over businesses, especially due to the fact that it is the largest employer in the country. The biggest business contracts are deals with the government. The individual interests of the governmental officials win out, procurement procedures are not fully respected and certain businesses are favored. In addition, the widest space for corruption is provided within public enterprises, which are owned by the government. Usually, people are employed with no public vacancy announcements, while big projects are contracted through nontransparent tendering. Over 92 thousand businesses are registered in Kosovo, but just over 50 thousand are operational. Keeping evidence of inactive businesses provides space for the operations of fictitious businesses (phantom companies,) which violate the law. No control is exercised in this case, as ministries, tax administration and customs have insufficient human resources to investigate their operation. A number of business associations play a secondary role in changing the business environment. The government engages in a formal dialogue with these associations, but at the end of the day it does not consider their suggestions and requirements.



## Resources (Law)

*What space does the legal framework offer for an enabling environment for business start-up and operation?*

Business registration, notwithstanding the property structure, is regulated by the Law on Business Organizations.<sup>864</sup> Competent registration authority includes Kosovo Registry of Business Organizations and Trade Names, an independent executive agency within the Ministry of Trade and Industry<sup>865</sup>.

The Law describes in detail the manner of business registration, without stipulating timelines. Every document submitted for registration needs to be submitted together with the evidence on tax payment. The Ministry shall ensure, as soon as possible, that the Registry develops and implements a system for: (a) electronic document submission and (b) electronic issuance of registration certificates as well as notifications and other communications from the Registry<sup>866</sup>.

According to the Law on Business Organizations, if a document received by the Registry fulfills conditions, it needs to be registered within ten days<sup>867</sup>. After the amendments in this law,

<sup>864</sup> [http://www.mti-ks.org/repository/docs/T-Ligji\\_per\\_shoqerite\\_tregtare\\_-\\_shqip.doc](http://www.mti-ks.org/repository/docs/T-Ligji_per_shoqerite_tregtare_-_shqip.doc)

<sup>865</sup> (ibid), Section 6

<sup>866</sup> (ibid), Section 13.12

<sup>867</sup> Law on Business Organizations, Section 14

businesses do not pay any registration fees, whereas the Minister enacts secondary legislation to determine a list of fees that will be paid for other services offered<sup>868</sup>. For Limited Liability Companies the fee is only 10 Euros, whereas Joint Stock Companies pay 20 Euros. All these payments are made in the bank and the law prohibits any other form of payment. The condition for registered businesses to have initial capital in the amount of EUR 1.000 was removed.<sup>869</sup>

A law on protection of contracts exists, however, there is no secondary legislation, thereby making it difficult to provide for its protection. Also, due to a high level of informal economy, there are hesitations to ensure and protect the contract. The sportswear company NIKE was interested to protect its products in Kosovo; however the answer from the relevant ministry was that this needed to be done through the Customs department, when the goods were imported. On the other hand the Customs had no instructions on how to act in such cases<sup>870</sup>.

If businesses are dissatisfied with the answer, in case of refusing registration, the law provides the right to file a complaint.<sup>871</sup> The complaint right starts with internal Ministry mechanisms and ends with the competent court. Two internal mechanisms of the Ministry deal with the issue in a period of forty days, whereas after the expiration of this term the process may be transferred to the court.

## Resources (Practice)

*In what practical space are the individual businesses able to be established and to operate effectively?*

The World Bank in its report “Doing business 2011”, from the perspective of business start up facility, ranks Kosovo as 119th out of 183 countries. According to this report, ten (10) procedures are needed to finalise business registration, requiring fifty eight (58) days. However, expenses reach 28.7% of income per capita (1.760 Euros), whereas the minimum capital reaches 112.4% of income per capita.<sup>872</sup>

The procedures are prolonged and the cost increased if a business needs to obtain a license or different permits. According to the World Bank, 21 procedures are needed in order to obtain a

<sup>868</sup> Draft law on amendment of the Law on Business Organizations:

<http://www.kuvendikosoves.org/common/docs/ligjet/2010-210.pdf>

<sup>869</sup> Minister Lutfi Zharku (until November 2010), interview with the author, April 2010

<sup>870</sup> Mimoza Kusari-Lila, interview, April 2010

<sup>871</sup> Law on Business Organizations, Section 17

<sup>872</sup> <http://www.doingbusiness.org/reports/doing-business/doing-business-2011>

construction permit, lasting 320 days and requiring a cost equal to 856.5% of per capita income<sup>873</sup>.

The former minister of Trade and Industry stated, during an interview with the author, that a registration certificate is issued to the business within three days. Only two documents are needed in this regard – identification document and a proof of company location or a lease contract<sup>874</sup>. The same information is posted on the Investment Promotion Agency website<sup>875</sup>.

Business representatives say that the procedures are more complicated than stipulated by law, considering that they depend on the officer's mood. In order to obtain the registration certificate the waiting time is several weeks, whereas the procedure takes much longer to obtain a license.

According to an economic expert and former the President of the American Chamber of Commerce in Kosovo, now Minister of Trade, the issue is further complicated due to the centralization of this process. Registration is done only in Kosovo's capital, Prishtina. Interested parties coming from within need to spend at least a day to submitting the application. If you want to expedite the procedure, you can do so only by personal connections and favours<sup>876</sup>.

Notwithstanding legal provisions, an alternate method needs to be found to expedite and facilitate new business start-up. The Former President of American Chamber of Kosovo says that she witnessed a case where, three weeks following the date of an application she had to inquire on business registration from a member of this association. Thereafter, they couldn't even find the records on the application and the procedure had to be repeated all over again. All this happens due to heavy bureaucracy and the negligence of authorized officers<sup>877</sup>.

Complaint rights are rarely exercised. A lot of time has to pass until an executive decision is taken. This happens especially with national businesses, whereas the foreign ones complain to business associations in this regard. Cases have been recorded when business registration was finalized in the foreseen time period, however, the certificate was held up by the relevant Ministry department. This is a signal of efforts to seek illegal benefits.<sup>878</sup>

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<sup>873</sup> *ibid*

<sup>874</sup> Minister Lutfi Zharku (until November 2010), interview with the author, April 2010

<sup>875</sup> <http://www.invest-ks.org>

<sup>876</sup> Mimoza Kusari-Lila, Minister of Trade and Industry and former President of American Chamber of Commerce in Kosovo (AmCham), interview, April 2010

<sup>877</sup> Mimoza Kusari-Lila, Interview with the author, April 2010

<sup>878</sup> Berat Rukqiqi, KCC Secretary, interview with the author, April 2010

Property security is one severe problem for businesses in Kosovo. Approximately 9 businesses out of 10 pay for their security services. For this purpose, they spend approximately 10% of the business's annual revenue, in comparison to 4% in South-Eastern European countries<sup>879</sup>.

In practice, businesses hesitate to address the courts, considering that, due to their negligence, the procedures require a lot of time and additional expenses<sup>880</sup>.

## Independence (Law)

*What protections does the law offer in order to prevent external illegal interferences in private business activities?*

The Law on Business Organizations stipulates that no person employed or engaged by the Registry should charge or solicit the payment of any amount, except as specifically provided for in the fee schedule<sup>881</sup>.

The internal dynamics of a business organization, as well as its independence are regulated by the Law on Business Organizations. According to this law, no public official or civil servant is authorized to change, add or lower requirements/conditions that are set down in this law.<sup>882</sup> The law also prohibits the interference of other persons in the work of business registration officials. None shall try, directly or indirectly, to exercise political or illegal influence over the Head of the Registration Office, any employee or anyone else working for the Registration Office, in fulfilling their officials duties.<sup>883</sup>

It also stipulates that no public official or civil servant shall have any authority to alter, add or diminish the requirements or conditions established by this law.<sup>884</sup> The Law is not that clear in relation to sanctions. One reason behind this is the absence of a standardized procedure.

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<sup>879</sup> World Bank, "Unlocking growth potential: Strategies, Policies, Actions", report, April 2010

<sup>880</sup> Berat Rukiqi, KCC Secretary, interview with the author, April 2010

<sup>881</sup> Law on Business Organizations, Section 12.3

<sup>882</sup> Law on Business Associations, Article 13.2

<sup>883</sup> Ibid, Article 9

<sup>884</sup> Law on Business Organizations, Section 13.2

In order to simplify the procedures and facilitate complaint mechanism to the businesses, efforts to establish arbitration bodies within business associations, such as the Kosovo Chamber of Commerce have also failed. Other possible conflicts that the businesses would have had among themselves would have been resolved through these mechanisms as well.<sup>885</sup>

At the same time, businesses have difficulties exercising their right to compensation, even in cases when they suffer material damages due to unfair interventions. Notwithstanding the opportunities offered by the law, the delay of procedures discourages businesses to undertake such actions.<sup>886</sup>

## Independence (Practice)

*To what extent is the private business free of external illegal interferences in its work in practice?*

Unlike the general perception on a high prevalence of corruption, in the survey on business and enterprise environment, conducted by the American Chamber of Commerce, only a few Kosovo companies responded to the survey on how often and how many unofficial payments they make. Although a hesitation of this kind is ordinary and expected, in other countries of the region companies respond that usually they pay 9% of the value in order to ensure a government contract. In these countries the perception on the prevalence of corruption is 50% lower than in Kosovo. Anecdotal evidence shows that there are similar practices in Kosovo as well.<sup>887</sup> Nevertheless, there are no exact figures that would precisely reflect this reality in Kosovo.

In order to exercise a right as soon as possible, a business must employ business associations' interventions, or private connections. This is the easiest path to achieve the goal, rather than attempting to achieve it through the courts<sup>888</sup>.

The courts are inefficient with a huge backlog of cases. Moreover, appeals of court decisions imply an additional procedure that lasts very long and discourages enterprises to invest in these appeals. Only a small number of contract disputes in Kosovo are resolved through the court. Its implementation is a process involving approximately 42 procedures and may be prolonged for about a year.

<sup>885</sup> Mimoza Kusari-Lila, former AmCham President, interview with the author, April 2010

<sup>886</sup> Berat Rukiqi, KCC Secretary, interview with the author, April 2010

<sup>887</sup> World Bank, "Unlocking growth potential: Strategies, Policies, Actions", report, April 2010

<sup>888</sup> Berat Rukiqi, KCC Secretary, interview with the author, April 2010

It is calculated that the expense of adjudicating a court case is equal to the level of income per capita.<sup>889</sup>

Impact is larger in the first stage of business activity. However, later on, new public faces appear, such as for instance from tax administration or from customs officials that intervene in an illegal manner. By adopting its Administrative Instruction on Meat Import, the Government attempted, directly, to select only one company that would actively conduct this business, by surpassing all other companies holding a license.<sup>890</sup> Also, due to the lack of coordination of border issues, any business needs to pay additional charges in order to bring goods into the country.<sup>891</sup> The customs officers work 24 hours a day, seven days a week, but phytosanitary inspectors do not work during the weekends. In order to conduct phytosanitary inspections during weekends, businesses say that they need to pay up to 200 Euros. Businesses also complain about the fact that if they file a complaint regarding tax payment, than tax inspectors will retaliate with extraordinary and brutal inspections.<sup>892</sup>

The business sector depends heavily on the government, even though it didn't succeed in detaching itself from this sphere. Over 60% of business contracts are signed with the Government. In these cases the Government is a party to the Contract and it enters into these relations as a business client.<sup>893</sup>

Business dependence on the government may also be observed through budgetary projections. In 2010 for example, 400.5 million Euros of budgetary funds are being spent on capital investments and an additional 192.7 million Euros for goods and services, on which business counts.<sup>894</sup>

The Law on Consumer Protection requires that the producers and providers of services provide or launch safe goods and services onto the market<sup>895</sup>. On the other hand, under the heading of farmer subventions, artificial fertilizer was imported, falling outside of every standard and containing substances detrimental to plants and people. This import passed the border without any obstacles or problems<sup>896</sup>.

While giving jobs through tenders announced by budgetary organizations, companies that offered lower prices were eliminated, with a justification that the bidder was economically more convenient.

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<sup>889</sup> Alban Hashani, senior researcher in "Riinvest" Institute, interview with the author, May 2010

<sup>890</sup> Berat Rukiqi, KCC Secretary, interview with the author, April 2010

<sup>891</sup> Berat Rukiqi, KCC Secretary, interview with the author, April 2010

<sup>892</sup> Berat Rukiqi, KCC Secretary, interview with the author, April 2010

<sup>893</sup> Mimoza Kusari-Lila, former AmCham President, interview with the author, April 2010

<sup>894</sup> <http://www.mef-rks.org/download/buxheti-i-konsoliduar-i-kosoves/2248-2010?lang=sq>

<sup>895</sup> [http://www.assembly-kosova.org/common/docs/ligjet/2004\\_17\\_al.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2004_17_al.pdf)

<sup>896</sup> Mimoza Kusari-Lila, former AmCham President, interview with the author, April 2010



Such an evaluation is done based on the documentation offered, that was even allegedly forged in some cases<sup>897</sup>. These claims may be found in the Auditor-General reports, which are published regularly.

The Auditor-General, while conducting an audit in the Ministry of Economy and Finance, found three cases where tax-payers with obligations to the Tax Administration of Kosovo accepted official evidence showing that they don't owe the Tax Administration a single cent.<sup>898</sup>

In terms of public procurement, there also appear to be serious deficiencies in practice. For example, three operators got contracts from the Ministry of Transport and Telecommunication, even though they didn't fulfill the minimum technical and financial criteria. Another contract of almost six million Euros was given to the highest bidder<sup>899</sup>.

## Transparency (Law)

*To what extent is there oversight, warranting transparency of business sector activities?*

The Law on Business Organizations obliges all registered businesses to submit information once a year, mainly in order to update the database. In case the report is not submitted, the Registry Director is obliged to send a notice to the business. If the report is not submitted after an additional 60 days, the business is unregistered.<sup>900</sup>

Businesses are obliged to submit financial reports or more precisely tax statements to the Tax Administration of Kosovo once a year. The latter uses such information only to calculate taxes and it has no other effect.<sup>901</sup> In 2001, the SRSG in Kosovo signed a Regulation on establishing the Kosovo Board on Standards for Financial Reporting and a Regime for Financial Reporting of Business Organizations.<sup>902</sup> Apart from dealing with the submission of financial reports,<sup>903</sup> this Board was also competent to adopt standards (in accordance with international standards) and to certify accountants. Now, accountant certification is conducted by a professional association, Financial reporting to this board has always been a formality and the situation is the

<sup>897</sup> Avni Zogiani, Director of NGO "Çohu", interview, April 2010

<sup>898</sup> <http://www.ks-gov.net/oag/Raportet%20shqip/Ministrit2008/Copy%20of%20Raporti%20%20final%20i%20%20MFE-is%2013%2007%202009.pdf>

<sup>899</sup> <http://www.ks-gov.net/oag/Raportet%20shqip/Ministrit2008/MTPT%20-%202008%20alb.pdf>

<sup>900</sup> Law on Business Organizations, Section 42

<sup>901</sup> [http://www.unmikonline.org/albanian/regulations/2005/RA2005\\_17\\_ALA2004\\_48.pdf](http://www.unmikonline.org/albanian/regulations/2005/RA2005_17_ALA2004_48.pdf)

[http://www.unmikonline.org/regulations/unmikgazette/03albanian/A2001regs/RA2001\\_30.pdf](http://www.unmikonline.org/regulations/unmikgazette/03albanian/A2001regs/RA2001_30.pdf)

<sup>902</sup>

<sup>903</sup> (ibid), Section 4

same even today. The Law on Financial Reporting has been held by the Government for two years now and has not been sent to Assembly for adoption<sup>904</sup>.

The Registry should publish, on a public website, basic information on all registered companies within one month of company registration and regularly update changes. This primarily involves business identification information such as name, type of company, address, business purpose description, founders, names of directors, duration and founding capital of the company.<sup>905</sup>

Only a small number of enterprises have their accounting records. The majority of them only maintain paper records. In relation to corporate organizations, they are regulated by a special law and requirements and procedures are largely in compliance with European Union legislation. They stipulate auditing and reporting procedures that need to be conducted in accordance with international financial reporting standards. However, implementation of this law leaves a lot to be desired.<sup>906</sup>

This issue of accounting records is still very new, and therefore it leaves an opportunity for a grey zone, i.e. for the presence of informality.<sup>907</sup> Also, due to the lack of laws and relevant mechanisms, a stock market has not been established and therefore there is no supervision over stock circulation.

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<sup>904</sup> Berat Rukiqi, KCC Secretary, interview, April 2010

<sup>905</sup> Law on Business Organizations, Section 11

<sup>906</sup> Alban Hahsani, senior researcher in "Rinvest" Institute, May 2010.

<sup>907</sup> Mimoza Kusari-Lila, former AmCham President, interview with the author, April 2010.

## Transparency (Practice)

*To what extent is the transparency practical in the business sector?*

In reality, the situation seems different. Ministry records list 97 thousand businesses. Tax Administration records show that 52 thousand businesses during the past three years at least once declared their tax liabilities. However, only 32 thousand businesses are regular tax payers. According to this, it is clear that the number of active businesses is visibly lower than the registered one<sup>908</sup>.

A prior practice of submitting reports to the Ministry of Trade and Industry, proved inefficient, i.e. a small number of businesses fulfilled this obligation, resulting in its removal.

Businesses are not obliged to publish reports, unless they voluntarily choose to do so. Businesses – public companies, owned by the state, or even others with wider interest for the public, such as commercial banks and insurance companies, publish their financial reports at least once a year. Their reports need to be audited by specialized companies<sup>909</sup>.

In the majority of cases, data is not updated, and therefore information is confusing or inaccurate. Lately, not even the Business Registry website has been operational. This implies that currently there is no information from this office<sup>910</sup>.

Enterprises do not report much on activities related to corruption. Even in cases where some reports are submitted, this is done through the Anti-Corruption Office,<sup>911</sup> or the Police, but they remain outside of the public domain or end up with a very little notification.

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<sup>908</sup> Behxhet Haliti, TAK Director, May 2010

<sup>909</sup> Lutfi Zharku, former MTI Minister, interview, April 2010

<sup>910</sup> Mimoza Kusari-Lila, former AmCham President, interview with the author, April, 2010

<sup>911</sup> Avni Zogiani, Director of NGO “Çohu”, interview, April 2010

## Accountability (Law)

*To what extent are laws and government regulations deviated from in the business sector and corporate governance in individual companies?*

Financial reporting is a closed issue for the Ministry of Trade and Industry, and apart from statements submitted to the Tax Administration, businesses are not obliged to submit any other reports. The Law on Public Enterprises<sup>912</sup> obliges businesses with this status to submit financial reports, that they publish on their website after audits performed by specialized companies. They are also obliged, pursuant to this law, to even have an internal audit commission, that is obliged to confirm whether their activity and company affairs are performed lawfully, responsibly and exclusively in the interest of the shareholders.<sup>913</sup> Also, the purpose of the Law on Internal Audit is to establish larger operational effectiveness, greater fiscal discipline and also compliance with the rules by the public sector units.<sup>914</sup>

On the other hand, independent experts say that the issue of reporting is closely related to the political will, which is lacking in this case. The best illustration of this would be the failure to adopt the law on financial reporting. Considering its absence, reporting is being done on the basis of good will and as a manner of establishing relationships within the business.<sup>915</sup>

The stock market has not been established and neither were the fundamental laws for its operation. Joint Stock Companies, with stocks of more of an internal character, need to inform the Business Registry of any change of information or their Charter.<sup>916</sup>

## Accountability (Practice)

*To what extent is the corporate governance effective in practice in a company?*

Corporate governance is instilled only in businesses owned by the state, namely in public companies where the Kosovo Government is a shareholder. Here as well corporate governance is in an embryonic stage.

<sup>912</sup> <http://www.mef-rks.org/sq/doenload/legjislacioni/ligjet/2008/392-ligji-nr>

<sup>913</sup> (ibid) Section 24

<sup>914</sup> [http://www.assembly-kosova.org/common/docs/ligjet/2006\\_02-L74\\_al.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2006_02-L74_al.pdf)

<sup>915</sup> Mimoza Kusari-Lila, former AmCham President, interview with the author, April 2010

<sup>916</sup> Law on Business Organizations, Section 36

Stockholder, i.e. the Government, is more interested to fulfill some goals related to tenders and employment policies than to build relevant oversight mechanisms. Boards, appointed on its proposal, are primarily composed of people coming from different political parties without any previous rich professional background.<sup>917</sup>

Every public enterprise has its Policy and Monitoring Unit founded by the Minister of Economy and Finance in order to support the Minister and the Government in exercising duties related to the enterprise. This unit prepares and submits to the Minister, to be transmitted to the Government, an analysis and recommendations in relation to the enterprise's affairs, proposal of supervision procedures and to collect data that will be published on its website.<sup>918</sup>

Corporate governance is not largely implemented in private enterprises. The only exceptions are financial institutions and public enterprises. In these enterprises as well, implementation of OECD principles is far from optimal.<sup>919</sup>

## Integrity Mechanisms (Law)

*To what extent are the mechanisms spread to ensure integrity of all stakeholders throughout the business sector?*

There are no laws obliging businesses to have codes of conduct or codes of ethics, except in relation to public enterprises. All these enterprises need to prepare, adopt and implement a mandatory code of ethics and corporate governance. Every director and officer needs to sign a written oath agreeing to abide by the code of ethics and corporate governance. The Ministry is authorized and obliged to sponsor a model of code of ethics and corporate governance to be put in practice by enterprises under its ownership<sup>920</sup>.

Then Law on Public Enterprises specifically describes problems related to conflicts of interest. Directors and officers shall disclose in full, in writing, before the Board of Directors, any personal interest of any nature they might have in relation to an action or a business decision taken by the company, specifically, they need to disclose all financial interests they might hold in re-

<sup>917</sup> Berat Rukiqi, KCC Secretary, interview, April 2010

<sup>918</sup> Law on Public Enterprises, Section 37

<sup>919</sup> Alban Hashani, independent researcher, "Riinvest" institute, interview, May 2020

<sup>920</sup> Law on Public Enterprises, Section 35

lation to the PE's (i) business competitors, (ii) creditors, (iii) goods or service suppliers, or (iv) business customers.<sup>921</sup> The only legal mechanism which is entitled to investigate cases of non-disclosure of conflicts of interest is the Anti-Corruption Agency of Kosovo.

Also, no cases have been reported where the businesses had an officer in charge of treating professional complaints. They are primarily reviewed by ad-hoc commissions, namely by those established to treat these cases.

## Integrity Mechanisms (Practice)

*To what extent is the integrity of those working in the business sector guaranteed?*

In principle, no one is allowed to interfere with the legal work of the business or individuals involved with it. But, there is no clear legal standard, which envisages a code of conduct for businesses. Illegal practices are sanctioned through the Penal or Civil Code. This environment provided room for practices that are in contradiction with the law and the business ethics.

The 2009 Anti-Corruption Agency report lists a number of cases investigated corrupt practices of officials in public enterprises, such as Prishtina International Airport, the Post and Telecommunication of Kosovo, the Kosovo Electricity Company, Kosovo Railways, the Kosovo Privatization Agency, formerly socially owned enterprises and Kosovo Customs. According to the report, there are 43 registered cases; 13 suspected cases were forwarded to the competent prosecutors due to suspicion about corrupt practices, implying that the trend hasn't changed in comparison to the previous year.<sup>922</sup>

The UNDP Mission in Kosovo, in its March 2010 "Early Warning" report, observes that The Kosovo Electricity Company continues to lead the list of Kosovo institutions perceived to have a "high degree" of corruption. Among other institutions is the Kosovo Privatization Agency, with the Central Administration and Customs immediately following.<sup>923</sup>

A survey conducted by the American Chamber of Commerce in Kosovo including 550 businesses found that there was a large presence of corruption. The survey shows that 40 percent of businesses owned by Albanians and 18 percent of businesses owned by Serbs had faced corruption. The highest percentage of respondents perceived local governance as the most cor-

<sup>921</sup> Law on Public Enterprises, Section 36

<sup>922</sup> [http://www.akk-ks.org/repository/docs/Raporti\\_vjetor%20i\\_Agiencise\\_kunderkorrupsionit\\_1\\_Janar\\_31\\_Dhjetor\\_2010.pdf](http://www.akk-ks.org/repository/docs/Raporti_vjetor%20i_Agiencise_kunderkorrupsionit_1_Janar_31_Dhjetor_2010.pdf)

<sup>923</sup> [http://www.kosovo.undp.org/repository/docs/Fast\\_Facts\\_27\\_ALB.pdf](http://www.kosovo.undp.org/repository/docs/Fast_Facts_27_ALB.pdf)

rupt, and only 28 percent of the respondents pointed to the central government. Also, more than 40 percent of businesses deem that bribery is the only manner of preserving business effectiveness. Half of the respondents say that this process is related to tenders and public procurement.<sup>924</sup>

Codes are more of a formal issue, then genuinely implemented in practice, whereas primarily, only senior officials are informed about their content<sup>925</sup>.

A survey on business and enterprise enabling environment found that only 6 companies out of ten mentioned corruption as a problem for their business activity, but this represents an increase of 46 percent when compared to 2006.<sup>926</sup> According to the analysts, the level of legal implementation in Kosovo is very low. The sanctions for bribe taking are very low to prevent officers from being involved in bribery. Bribery is very frequent. According to the information collected by the Riinvest Institute in surveys with SMEs,<sup>927</sup> in different years, over 25% of businesses base their perceptions on corruption on their personal experience, showing a very high percentage of private sector involvement in corruption.<sup>928</sup>

The Kosovo Chamber of Commerce considers that due to the absence of a functioning law and fragility of the justice institutions, sanctions are very rare. Also, the integrity of complaint officers is shaken, especially when facing pressures or requests from state officials.<sup>929</sup>

## Anti-Corruption Policy (Law and Practice)

*To what extent is the business sector active in engaging the internal government in the fight against corruption?*

The Kosovo Government's contacts and discussions with business associations, on general matters are frequent and they unfold without any difficulties. However, the effects of these contacts are lacking in the majority of cases. They mostly occur just for the sake of fulfilling the formality and imitating a dialogue with the business.<sup>930</sup>

<sup>924</sup> Effect of Corruption on Kosovo Business Community, Report, AmCham

<sup>925</sup> Berat Rukiqi, KCC Secretary, interview, April 2010

<sup>926</sup> World Bank: "Unlocking of growth potential", report, April 2010

<sup>927</sup> For more, see Riinvest Institute, [www.instituteriinvest.org](http://www.instituteriinvest.org)

<sup>928</sup> Alban Hashani, senior researcher, "Riinvest" Institute, interview, May 2010

<sup>929</sup> Berat Rukiqi, KCC Secretary, interview, April 2010

<sup>930</sup> Mimoza Kusari-Lila, former AmCham President, interview with the author, April 2010

The business has many remarks on the Government's work. However, government always simulates a very constructive approach towards the business sector. The government is only capable of listening to businesses, but not putting things in action. However, the political influence of the American Chamber of Commerce in Kosovo has been greater than the impact of local associations.<sup>931</sup> Business associations' appeals against corruption, however, remains only at the level of rhetoric and weak attempts to advocate against this phenomenon.

The American Chamber of Kosovo requested changes in state apparatus' procedures to avoid the direct contact of businesses with the bureaucracy and state officials, which is providing room for corruption.<sup>932</sup>

The Kosovo trade unions, although they protested heavily, have not received an answer regarding the privatization money of social enterprises. They suspect that the money is being misused.<sup>933</sup> The Kosovo Chamber of Commerce is worried about the single-source tendering in The Kosovo Energy Corporations. They have never received any reaction to their public appeals directed to the government regarding this issue.<sup>934</sup>

On the other hand, the government does not take into account these requests and they are largely ignored. Moreover, although the enterprises report that the level of corruption has increased in comparison to previous years, now they don't see it as a great impediment. This implies that the enterprises have started seeing corruption as a part of the business climate and instead of reporting it, they opt to take part in it themselves.<sup>935</sup>

There are no registered cases of adherence of any company to the United Nations Global Agreement.

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<sup>931</sup> Mimoza Kusari-Lila, former AmCham President, interview with the author, April 2010

<sup>932</sup> Telegrafi, <http://www.telegrafi.com/?id=46&a=4180>

<sup>933</sup> Haxhi Arifi, President of Kosovo Trade Unions, interview, September 2010

<sup>934</sup> Berat Rukiqi, KCC Secretary, interview, April 2010

<sup>935</sup> Alban Hashani, senior researcher, "Riinvest" Institute, interview, May 2010



## Support/Engagement with the Civil Society (Law and Practice)

*To what extent is the business sector spread to engage or promote support to the civil society in its fight against corruption?*

There are no recorded cases of coordinating actions or cooperation between business and civil society in the fight against corruption. Even in cases when there were such initiatives, civil society and businesses were not well coordinated and these efforts were primarily done separately. This consequently weakens the voice of protest and does not induce positive changes within the government.

The awareness of businesses needs to be raised in relation to negative effects of corruption in order to transform this segment of society into a strong weapon against this phenomenon.<sup>936</sup> On the other hand, business is not offering civil society funds or other material forms of support in the fight against corruption. This is, again, interrelated with a lack of legal spectrum regulating sponsorships and donations, but it is also a result of fear of repression that can be exerted by the authorities that in these cases, reacts through checks, or by taking revenge during their participation in tendering processes.<sup>937</sup>

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<sup>936</sup> Alban Hashani, senior researcher, "Riinvest" Institute, interview, May 2010

<sup>937</sup> Berat Rukiqi, KCC Secretary, interview, April 2010

## Recommendations

- Adopt the Law on stocks and valuables.
- Establish a stock and valuables market, including the presence of supervisory mechanisms regulating the stock exchange.
- Courts should give priority to dispute resolution among businesses themselves and the addressing of complaints of businesses against ministries and different state agencies.
- Operationalize a Court of Honor within business associations, namely within the Kosovo Chamber of Commerce.
- The Ministry of Trade and Industry, namely the Business Registration Agency, should properly implement the Law on Trade Associations, namely the articles requesting regular updates of business registers.
- The Ministry of Trade and Industry should ensure that the Registration Office develops and implements a system for: (a) electronic submission of documents and (b) electronic issuance of registration certificates and notifications and other releases by the Registration Office.
- Shorten the deadlines for consideration of business complaints within the Ministry of Trade and Industry mechanisms.
- Conduct a decentralization of Business Registration Offices. Such offices should exist at least in regional centers and thereby shorten the time needed for business registration and prevent superfluous expenses.
- Municipalities should develop their regulatory and urban plan and they should also regulate deadlines for the issuance of construction permits based on specific acts.
- Working hours of customs officers and phytosanitary inspectors should be fully coordinated, namely these services should be operational 24 hours a day, seven days a week.
- Operationalise the Financial Reporting Board
- Increase transparency and reporting of ministries on tenders funded by public funds. Amend those articles of the Law on Access to Official Documents leaving an opportunity for individuals to evaluate which documents are public or a state secret.

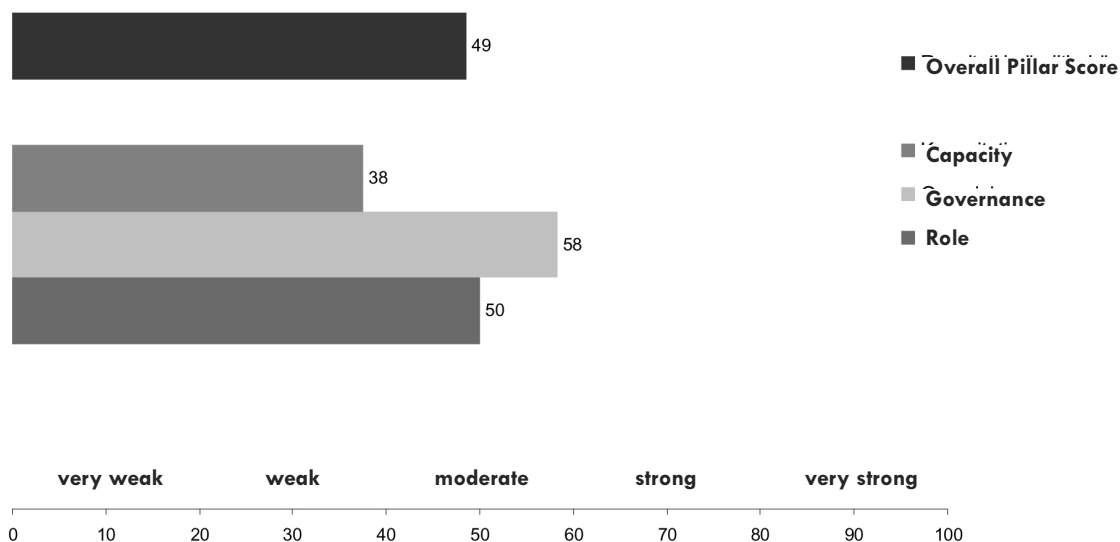
**14.**  
**LOCAL**  
**GOVERNANCE**

## Overview

The report on the local governance pillar finds that Kosovo possesses a legal framework which contains quite advanced European principles of local government as one of the most important pillars of government. While local government authorities are based in an overall system of asymmetric decentralisation, the implementation of such legislation in practice appears to be difficult for the Kosovo institutions and international authorities. Likewise, the independence of local government authorities is influenced by the constellation of forces the governing coalition at the central level, primarily due to appointments and recruitments for political grounds, nepotism, and favours, whilst the municipal budget priorities are often set and influenced by actors other than the elected municipal authorities. The Ministry of Administration of Local Government, as the supervising authority, has failed to successfully address the violations of the provisions of Law on Local Government which occurred in some municipalities, and committed primarily at the decision-making political levels. In order to prevent a constitutional violation in the municipality of Rahovec, even after the public resignation of the Mayor and the continuation of holding the office by the same person 47 days after the irrevocable resignation, the Constitutional Court ordered the announcement of elections in this municipality to ensure that citizens have the right to free and equal elections for the establishment of their local government.

Kosovo municipalities have no such credible mechanisms for enhancing the fight against corruption, conflicts of interest, and raising management capacities of the offices of public procurement, whereas the local transparency mainly remains concentrated only by the municipalities with larger populations. Local administrations, as the catalyst of law enforcement and provision of public services, remain without any financial incentives, overburdened due to a lack of genuine recruitment criteria, and affected and interfered with by the interests of the private sector.

Finally, it is worth mentioning that local government through its reform and decentralisation, which started in 2008, is facing serious challenges with regard to the issue of transfer of competencies from the existing municipalities to the recently established ones, and the process of establishing new municipal administrations within new municipal boundaries is becoming very difficult because of the politics, economy and social elements involved. A lack of human and financial resources, for carrying out functions and services, and the challenges in relation to the establishment of legitimate municipalities within the political system of Kosovo still remain deeply problematical issues. The political interference by the Serbian Government in non-cooperative municipalities without any legitimacy and controlled through parallel structures, by not respecting the applicable laws of the Republic of Kosovo, have become a source of anarchy, organised crime, and corruption.



## Structure & Organisation

The system of local government<sup>938</sup> is a part of the constitutional norm in the Republic of Kosovo, envisioned by the Chapter X of the Constitution,<sup>939</sup> whereas the municipalities are the basic territorial units of the local self-government. The structure and the competencies of the units of the local self-government are governed by three (3) substantial laws adopted by the Assembly of the Republic of Kosovo, respectively, the Law on Local Government (Nr.03/L-040), the Law on Local Government Finance (Nr.03/L-049), and the Law on Administrative Municipal Boundaries (Nr.03/L-041.)

In addition to the Constitution and applicable law, local governments (pursuant to the aforementioned article) take into account and apply the European Charter of Local Self-Government, at the level required for the member states.<sup>940</sup> Currently, out of thirty-eight municipalities foreseen by the Law on Administrative Municipal boundaries,<sup>941</sup> Kosovo has thirty-seven (37) municipalities, including four (4) newly established municipalities with a Serbian majority (Ranilug, Gracanica, Kllokot, Partesh and Mitrovica North) with delegated additional competencies. However, the municipality of Mitrovica North, due to political difficulties, has not been established until the publication of this report.

<sup>938</sup> Local government in Kosovo includes municipalities (municipal mayors, their staff and municipal assembly deputies) as well as other bodies under their authority. This report however does not reflect the overall situations of 37 current municipalities, even of the non-constituted municipality (Northern Mitrovica).

<sup>939</sup> Constitution of the Republic of Kosovo, Article 12, 123, and 124.

<sup>940</sup> The Republic of Kosovo is not a member state of the Council of Europe; however it has assumed the obligation to apply unilaterally the European Charter for Local Self-Government

<sup>941</sup> Law on Municipal Administrative Boundaries (Nr.03/L-041), article 5

The average population at the municipal level in Kosovo, with the exemption of Prishtina (the capital) is 45 thousand.<sup>942</sup> The Mayor is elected directly by citizen vote, as same as the Municipal Assembly, for the term of four years, in compliance with the proportional electoral system where the municipalities are considered one constituency within the election system. In the municipalities with at least ten per cent (10%) of inhabitants belonging to non-majority communities, the post of the deputy chair person for communities of the municipal assembly is reserved for one representative of such communities.

## Resources (law)

*At what level the local government authorities have adequate legal resources to effectively carry out their duties?*

As the constitutional category, and pursuant to Article 123 of the Constitution of the Republic of Kosovo, the local self-government shall be established upon the principles of good governance, transparency, efficiency and effectiveness in providing public services having due regard for the specific needs and interests of the communities not in the majority and their members.

The status and organization of the city of Prishtina<sup>943</sup> (as the capital city) should be regulated by a specific law, as foreseen by Article 13 of the Constitution. However, even after two years from entry into force of the Constitution and after almost three years of governance by the current Government, Prishtina hasn't got its law.<sup>944</sup> This concern was also raised in the Progress Report 2009, however the entry into force of this law did not happen during 2010.<sup>945</sup>

The Law on Local Self-Government provides wide scope of local self-government for the municipalities and the right to exercise three types of competencies:<sup>946</sup> their own, elected and delegated competencies. The municipal authorities include the Municipal Assembly and the Mayor who are elected directly by the citizens in accordance with the Law on Local Elections. The Municipal Assembly as the highest authority exercises its legislative powers through adoption of the budget and annual investment plans of the municipality, as well as through adop-

<sup>942</sup> Forum 2015, Local Reform in Kosovo, (Prishtina, February 2010), p. 34.

<sup>943</sup> Also, article 2, provides that The City of Pristina, as the capital city of Republic of Kosovo, shall be regulated by a separate Law on the City of Prishtina. The Law on Local Self-Government shall apply to the City of Prishtina except as may be provided for otherwise in the Law on the City of Prishtina

<sup>944</sup> GAP - The Institute for Advanced Studies, Law on City of Prishtina, <http://www.gapinstitute.org> (visited on 30 September 2010)

<sup>945</sup> Commission of the European Communities, Kosovo under UNSCR 1244/99 2009 Progress Report (Brussels 15.10.2009) p. 8.

<sup>946</sup> Law on Local Self-Government (Nr.03/L-040), article 16.

tion of other subsidiary acts,<sup>947</sup> and to constitute the Committee on Policy and Finance<sup>948</sup> which is responsible to review all the policy, fiscal and financial documents, plans and initiatives, including strategic planning documents, the annual midterm budget framework, the annual procurement plan, the annual regulation on taxes, fees and charges, the annual internal audit work plan, the annual midterm budget and any changes to the budget for the fiscal year, as well as the reports by the Mayor and submit recommendations to the Municipal Assembly.

The second permanent committee is the Communities Committee<sup>949</sup> with the responsibility to review the compliance of the municipal authorities with the applicable law and all municipal policies, practices, and activities to ensure that the rights and interests of communities are fully respected. This committee makes recommendations to the Municipal Assembly on measures to be taken in order to implement provisions related to the adequate protection of the rights of (non-majority) communities within the municipality. Depending on the needs and political will, the Municipal Assembly may establish other committees. The Municipal Mayor is responsible for execution of municipal assembly acts and a wide range of other executive authorities.<sup>950</sup>

In relation to financial resources, The Law on Local Government Finance (Nr.03/L-049) has created an advanced system of fiscal decentralisation where the municipalities are vested with considerable competence on expenses, provision of public services, authority to collect revenues and wide authority in managing finances. The Ministry of Economy and Finance – Department of Kosovo Municipalities Budget governs the drafting of the budget at the local level, where one procedure applied to all municipalities. The Effective Municipalities Initiative (EMI) has raised concerns regarding the issue of double salaries of the municipal deputies in some municipalities who are also employed by the municipal administration (which is forbidden by Article 65.2 of the Law on Local Government.<sup>951</sup>) Furthermore, until the drafting of present report, the Ministry of Local Government Administration (MLGA) as the line ministry has in total 97 officials; out of whom 88 are civil servants and 8 are political staff.<sup>952</sup>

A considerable support aimed at raising capacities of this Ministry in general and recently established municipalities in particular was offered by the International Civilian Office (ICO/EUSR),<sup>953</sup> and USAID through the Effective Municipalities Initiative (EMI) and Kosovo

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<sup>947</sup> (ibid), article 40.

<sup>948</sup> (ibid), article 52.

<sup>949</sup> (ibid), article 53.

<sup>950</sup> (ibid), article 58.

<sup>951</sup> Interview of Roland Gjoni with the author, Prishtina, 28 April 2010.

<sup>952</sup> MLGA structure, <http://www.mapl-ks.org/?cid=1,103> (visited on 10 May 2010).

<sup>953</sup> Interview of Minister of MLGA with the author, Prishtina, 14 April 2010.

Municipalities Association (KMA,) UNDP, GTA as well as SDC. Finally, the resources of the local government are governed through a wide spectrum of laws which, depending on the municipality, authorise them to use the three previously mentioned categories of competencies. In Kosovo, several constitutional-legal bases for decentralised services already exist. However, there is a lack of or incomplete secondary legislation (i.e., for municipal public services, and supporting institutions such as, decentralised treasury units) and new practices for policy making in the decentralised environment. Also, at the local level mechanisms and practices of municipal control are lacking and should be further developed. The same could be said for the oversight and management of service providers.

## Resources (practice)

*At what level the local government authorities have adequate resources in practice to effectively carry out their duties?*

There is a perception that the main challenge of local governments are the human resources and finances, both of which are insufficient for the purpose of implementing the wide spectre of functions and responsibilities provided for by the Constitution and relevant legal infrastructure.<sup>954</sup> The Kosovo Budget for 2010<sup>955</sup> has dedicated to the local level a total of 284,504,860 Euros, created from individual revenues and grants from the Government of the Republic of Kosovo. Nevertheless, the low level of monthly compensation (76 Euros for Municipal deputies by the end of 2008) remains an issue of concern. In 2010 it has been increased to approximately 225 Euros.<sup>956</sup>

Despite legislation which has created a considerable degree of local autonomy, referring to the interview of the Minister of MLGA<sup>957</sup> the exercise of competencies based on the Law on Local Self-Government undoubtedly represents a challenge for all Kosovo municipalities, and particularly for municipal officials and civil servants since they have to adapt to the new circumstances and expand their practices, the number of employees, operations and budget, contrary to the former local self-government during the UNMIK administration. According to him, "in practice the territorial size and population are the determining factors of differences of mu-

<sup>954</sup> Interview of Jetmir Bakia with the author, Prishtina, 12 April 2010

<sup>955</sup> Law on the Budget of the Republic of Kosovo for year 2010 (Nr.03/L-177).

<sup>956</sup> See article in the KOHA portal, Deputies of the MA Gjakova request salary increase: <http://www.koha.net> (visited on 20th May 2010)

<sup>957</sup> (ibid).



municipalities regarding human, technical, financial, and infrastructure resources, because for example, the Municipality of Prishtina with its annual budget of approximately 50 million Euros for 2010 is in a much better situation to carry out its municipal activities compared with rural municipalities that lack human, financial and infrastructural resources.” However, according to the Progress Initiative Report – INPO (January - April 2010),<sup>958</sup> the Municipality of Prishtina is far from accomplishing its priorities according to the plans of the newly elected leadership from the 15th November 2009 Elections, and the major stagnations pertain to the transparency of Municipal Assembly work, administrative staff reform, improvement of the drinking water supply, elimination of sources of informal construction and the legalisation of illegally constructed buildings (especially considering the security aspects,) the creation of mechanisms for efficient urban management etc. The final report of the Auditor General in relation to the financial situation of the Prishtina Municipality on December 31st 2009<sup>959</sup> reveals that this municipality failed to spend the overall budget for year 2009 as predicted, and the level of budget implementation was 85%. Approximately 8.5 million Euros of unspent money is significant, despite the fact that the Municipality of Prishtina is overpopulated and the population is still rising. Furthermore, according to the Auditor General sources, if compared with the Audit Report of 2008 where 24 recommendations were given, only five (5) of recommendations were partially implemented, while the rest have remained unaddressed.<sup>960</sup>

Another major problem remains the phenomena of recruitment of civil servants through political criteria. According to the NDI expert on local government,<sup>961</sup> “local government remains affected by this syndrome, in particular prior to or after local elections and the politicised municipal administration has caused major difficulties preventing improved professional capacities and provision of public services.” In his view the Municipality of Kamenica serves as a concrete case where its former Mayor had employed dozens of civil servants under the performance contracts, whereas the newly elected mayor has dismissed 47 civil servants previously hired, thus causing a gap in the municipal government.<sup>962</sup> According to the KMA Executive Director,<sup>963</sup> the crucial problem regarding the resources in practice is the contradiction between the Law on Public Enterprises and the Law on Local Self-Government. This calls

<sup>958</sup> Progress Initiative INPO, Report – Municipality of Prishtina (January – April 2010), [http://www.inpo-ks.org/site/doc/raportet/raporti\\_i\\_vleresimit.pdf](http://www.inpo-ks.org/site/doc/raportet/raporti_i_vleresimit.pdf) (visited on 15 May 2010).

<sup>959</sup> Office of Auditor General, Final Report of Financial Situation for the Municipality of Prishtina for end of year 31 December 2009, <http://www.ks-gov.net/oag/Raportet%20shqip/2009/komunat2009/Prishtina-2009-Alb.pdf> (visited on 10 July 2010), p. 8.

<sup>960</sup> Interview of Jetmir Bakia with the author, Prishtina, 12 April 2010 (ibid).

<sup>961</sup> For more information see article from the KOHA portal, Kamenica: 43 employees hired without advertisement dismissed, <http://www.koha.net/index.php?cid=1,7,10195> (visited on 15 May 2010).

<sup>962</sup> Interview of Sazan Ibrahim with the author, Prishtina, 13 April 2010

<sup>963</sup> Kosovo Municipalities Association, Municipalities request a law that will allow them establish Local Public Enterprises, <http://www.komunat-ks.net/> (visited on 20th June 2010)

for quick harmonisation in order not to prevent municipalities from offering services, especially in the area of waste management, which is seen as a basic municipal need. He also suggests that this problem continues to exist as the consequence of a lack of cooperation between the central level and local one in solving their legal disputes, respectively the municipalities are requesting to be allowed by law to establish some "Local Publicly Owned Enterprises."<sup>964</sup> In this context the Progress Report 2009<sup>965</sup> underlines the absence of effective mechanisms for monitoring and evaluating the quality of public services provided by the municipalities. Additionally, inter-institutional cooperation and coordination by the central level remains weak.

## Independence (law)

*At what level the authorities of local government are independent?*

The activity of local self-government authorities is based on the Constitution and the laws of the Republic of Kosovo, and adheres to the European Charter of Local Self-Government. The Republic of Kosovo takes into account the European Charter of Self-Government at the level required for the member states. The administrative independence of the local government is governed by the Law on Local Self-Government.<sup>966</sup> Relationships between the central and local Government are developed through the MLGA as the ministry with supervisory authority, unless, the responsibility for the review of municipalities is assigned by law to the responsible ministry or institution with respect to a specific field.<sup>967</sup> The supervisory authority has the right to receive and obtain full information on all matters concerned, including the right to visit the municipal offices and municipal facilities and to request access to municipal documents. The Mayor shall be responsible for making this information available to the supervising body. Depending on the level of competency, as stated under Article 79, the review of operations of municipalities in the area of their own and enhanced competencies shall be limited to review of the legality, whereas the administrative review over the operation of municipalities in the area of delegated competences shall include review of the legality and expediency of actions.

Regarding financial independence, the municipalities are entitled to adequate financial resources of their own that they may dispose of freely in the discharge of their municipal com-

<sup>964</sup> Commission of the European Communities, Kosovo under UNSCR 1244/99 2009 Progress Report (Brussels, 15.10.2009), fq.8.

<sup>965</sup> Law on Local Self-Government (Nr.03/L-040), Chapter X

<sup>966</sup> Law on Local Self-Government (Nr.03/L-040), Chapter X

<sup>967</sup> Law on Local Self-Government Finance (Nr.03/L-049), Article 2.

petencies in accordance with the applicable laws of Kosovo. The Municipal Assembly and its executive officers are entitled to autonomously and independently regulate and manage financial resources derived from the municipality's own revenues or provided to the municipality under the General Grant.<sup>968</sup> The financial resources of a municipality consist of its (i) own source revenues as specified in Article 8 of the present law, (ii) operating grants, (iii) grants for enhanced competencies, (iv) transfers for delegated competencies, (v) extraordinary grants, (vi) financial assistance from the Republic of Serbia, and (vii) proceeds from municipal borrowing.<sup>969</sup> The categories of own source revenues consist of any revenues collected or received by a municipality, such as: municipal taxes, fees, user charges, other payments for public services provided by the municipality, regulatory charges and fines authorized by the present law, rents on immovable property situated in the municipality and under the administration or ownership of the municipality, revenues from the sale of municipal assets, revenues from undertakings wholly or partly owned by the municipality, co-payments from consumers of education and health services provided by the municipality, revenues collected by any agency, department or organization of the municipality as a result of the provision of any good or service, interest on municipal deposits, if any, grants and/or donations from foreign governments (except for financial assistance from the Republic of Serbia) or from foreign organizations, including governmental and non-governmental organizations and international and supranational institutions, and any other category of revenue that is designated as municipal own source revenue according to the law of the Republic of Kosovo. The municipality also has the authority through internal regulations to establish a series of municipal taxes and fees, applicable in accordance with legal provisions.<sup>970</sup>

Regarding interference in the appointment process for municipal bodies, according to the aforementioned YIHR report,<sup>971</sup> the general provisions derived from the decentralisation process (which was part of the Ahtisaari Plan) grant extensive powers to the municipal mayor, bringing the civil servants into a less important/credible position regarding their role, less autonomous as per decision making, as well as having less access to information. Furthermore it emphasises that the reform of decentralisation opened the opportunity for the municipal mayors to use this situation and take under their direct control the appointment process by rewarding their party militants by mainly offering them positions of school directors.

<sup>968</sup> Law on Local Self-Government Finance (Nr.03/L-049), Art 2

<sup>969</sup> (ibid). Art 7

<sup>970</sup> (ibid), Chapter II, Art 9, 10, 11, 12, 13, 14, 15, 16.

<sup>971</sup> (ibid), p. 25

Regarding the issue of the interference of private business into the decision making of the local government, the Law on Local Self-Government regulates the area of conflicts of interest for the municipal deputies, mayor, municipality deputy directors, directors of administration and other administrative personnel, respectively Articles 38, 59, 63, and 67.

## Independence (practice)

*At what level the authorities of local government are independent in practice?*

According to the Minister of the MLGA, “in practice the independence of local government is gradually established, however not at a satisfactory level as of yet and not to the level determined by law.” In this regard the local government remains influenced by constellations of political forces (mainly in the sense of appointments, political recruitments, nepotism, favours and prioritisation of the municipal budgets outside of elected municipal structures) be it from the central or local level. This practice was enhanced throughout the last local elections 2009/2010.

In this sense, the Municipality of Prizren is characterised as a multi-ethnic municipality which is directly affected by interference from the executive branch for the purpose of accommodating the local political agreement (Kosovo Democratic Party and Alliance New Kosovo) by designating two (2) deputy chair persons of the Municipality<sup>972</sup> from the majority community as resulted from Local Elections 2009/2010, despite the fact that Article 61 of the Law on Local Self-Government provides that the municipalities where at least 10% of the citizens belong to non-majority communities shall have one deputy mayor for communities. However, from March 2010 the leadership of the Prizren Municipality has created legal confusion by appointing the person who was already the second deputy mayor of the Municipality to the position of senior legal advisor to the Mayor in August 2010.<sup>973</sup> The print media reported that the Mayor, being aware of this infringement, justified that this decision was made “due to the high workload.”<sup>974</sup> Also, the Mayor of Rahovec Municipality, despite the fact that he publicly offered his irrevocable resignation on July 1st, 2010, according to media reports, “he has resumed his position after continuous pressure was exercised by the leader of the executive branch, namely the pres-

<sup>972</sup> For more information see article in the daily newspaper KOHA DITORE, Deputy president of AKR is appointed as senior legal advisor to the mayor Muja, by Fisnik Minci, 15 August 2010.

<sup>973</sup> (ibid).

<sup>974</sup> KOHA portal. Ministry without any stance regarding Qeska, waiting for the decision by the Constitutional Court. <http://www.koha.net> (visited on 3d September 2010)

ident of the PDK.”<sup>975</sup> Nevertheless, the Constitutional Court of Kosovo, upon the motion of the President of Kosovo, explained the competencies regarding this case, on 27 September 2010, by stating that “the constitutional consequences of such an action are the announcement of elections by the President of the Republic in order to ensure that citizens enjoy their right to free and fair elections for the constitution of their local government.”<sup>976</sup>

More specifically, the report of the regional non-governmental organisation Youth Initiative for Human Rights (YIHR),<sup>977</sup> questioned the constitutional balance between the central and local government during the latest local elections where the Kosovo Government, through the Prime Minister who has used his function to promise additional and unbearable millions of Euros of public investment during the next four years if his political party (PDK) wins elections, for example, 170 million Euros for the Municipality of Prizren, 155 million Euros for the Municipality of Peja, 120 million Euros for Ferizaj, and 100 million Euros for Gjilan. Statements of public investments by the head of the central government during local elections was a breach of every legal rule for local finances. Despite the fact that these were only public promises, this has created a dangerous precedent for the relationship between the central and local governments. The phenomena of political interference has caused difficulties in the work of the Municipal Assembly of Gjilan, whose Mayor has threatened to resign because “he is extremely unhappy with his party leadership for not supporting him in the selection of directors because his list was not endorsed.”<sup>978</sup>

Regarding the issue of politically affiliated appointments, a similar instance happened with the Mayor of the Municipality of Gjakova from the political party AAK, who removed the Director of Emergency Planning because the latter publicly voted for the rival candidate,<sup>979</sup> despite the fact that the Mayor legally is allowed to discharge any director, this undoubtedly created situations of exclusion and limitation of the citizens with regards to resources and opportunities, by putting them on the margins of decision making and well-being. Also, there is suspicion that the Kosovo Government has disproportional approach regarding its capital investments and the determining of annual budgets, primarily towards municipalities where

<sup>975</sup> Constitutional Court, Press Release on 27.09.2010, <http://www.gjk-ks.org> (visited on 30th September 2010).

<sup>976</sup> Youth Initiative for Human Rights (YIHR), State of Constriction? Governance and Free Expression in Kosovo, <http://www.civilrightsdefenders.org/downloads/State-of-Constriction-YIHR-Kosovo.pdf> (visited on 29 May 2010), fq.26

<sup>977</sup> For more information see article from the portal of “Express Online”, Qemajl Mustafa resigns from the presidency, <http://www.gazetaexpress.com/web/index.php/artikujt/lexo/30579/C4/C13> (visited on 16 May 2010).

<sup>978</sup> For more information see article from the daily “Zëri”, Fired because of voting for Mimoza, by Besiana Xharra, 8 March 2010.

<sup>979</sup> For more information see article from the portal of TELEGRAF, AAK: Investments in the MTPT shameful – Ministry responds, <http://www.telegrafi.com/?id=2&a=7592> (visited on 16 May 2010).

the current government coalition has not won the majority, as in the Municipality of Deçan, Peja, Gjakova, Suhareka and Junik.<sup>980</sup> Unfortunately, the consequences of lack of cooperation and inter-institutional understanding between the Government of the Republic of Kosovo and the Municipality of Prishtina have caused that the adoption of the Law on the Capital has been postponed for two (2) years and not enacted in 2010.<sup>981</sup>

## Transparency (law)

*At what level there exist regulations in force for ensuring transparency of relevant authorities of the local government?*

The Kosovo Constitution and local government related legislation require municipalities to have fulfilled certain criteria and proclaim transparent policies and procedures. The Constitution, through Article 123.4, provides that the “local self-government is based upon the principles of good governance, transparency, efficiency and effectiveness in providing public services, having due regard for the specific needs and interests of the communities not in the majority and their members”. The legislation on transparency (the Law on Local Self-Government, Article 68.4) provides that “the municipal assembly shall adopt municipal regulations promoting the transparency of the legislative, executive and administrative bodies of the municipalities, enhancing the public participation in the decision making at the local level and facilitating the public access to official documents of the municipalities. The ministry responsible for local government may issue administrative instructions on municipal transparency.” Pursuant to Article 45, municipal assemblies are obliged to hold their meetings and committee meetings open to the public, and make public the notice of the meeting of the municipal assembly.

For the purpose of the participation of citizens in the decision making process, Article 73 of the aforementioned law determines that the municipal assembly shall establish sectoral consultative committees. The membership of the committees should include citizens and representatives of non-governmental organizations, who may: submit proposals, conduct research and provide opinions on municipal assembly initiatives in accordance with the Municipal Statute. This article also regulates instances of limitations in specific situations of public participation to the meetings, namely for situations of the risk of disclosure of information and sensitive documents; when its deemed that an open meeting might lead to public disorder or violence or when it would threaten to disclose information about actual or imminent court proceedings.

<sup>980</sup> Newspaper “Zeri”, Draft law for Prishtina, hostage of coalition, by Fadil Sertolli, 19 July 2010.

<sup>981</sup> Ministry of Local Government Administration, Administrative instruction No.2008/09, on Municipal Transparency, article 5.



The Municipal Assembly may regulate by the Statute and establish rules of procedure for the holding of closed sessions. The MLGA has issued administrative instruction No. 2008/09 "On municipal transparency," whose provisions aim to enhance the transparency of legislative authorities, executive and municipal administration, increase public participation to the decision making at local levels and alleviate public access to the municipality's official documentation. Article 4 of this Administrative Instruction requires of municipalities that all their decisions, regulations and other municipal assembly acts whose publication is not prohibited by the applicable law on access to official documents, be made public within one week from the meeting where such decisions were made, through: public notices at the frequented location within the territory of the municipality, through local print and electronic media and the official municipal website.

Regarding the municipal budget, Article 4.2 of this act determines that the municipal budget and municipal plans are public documents. The municipality (at its own expense) should take measures to make such documents available to the public, media, and interested parties as a full text or summarised if so requested. In light of access to public documents, any person or organisation with an interest in the municipality shall have the right to present a request for information or petition to the municipal assembly about any matter relating to the responsibility and powers of the municipality.

Requests of petitions are reviewed by the Municipal Assembly within 30 days from receiving the petition; no later than 30 days from the day of reviewing the petition the Municipal Mayor or any official authorised by him/her shall inform the applicant/petitioner<sup>982</sup> in writing. Regarding the issue of declaration of property, the Law on Declaration and Origin of the Property and Gifts of Senior Public Officials (Nr.03/L0151), Article 3 requires mayors, deputy mayors and chairpersons, deputy chairpersons of municipal assemblies and directors of administrations and personnel of municipal assemblies to declare their property, income, material gain and financial liabilities<sup>983</sup> to the Anti-Corruption Agency not later than 31 March of each year. According to the ACA 2009 report, in general the local government, respectively the number of official persons at the local level suspected of corrupt activities for the reporting period was 31 cases.

It is worthwhile mentioning, however, that Article 3 of this Law, does not oblige or require municipal assembly deputies to declare their property, which it should the same as it obliges Kosovo Members of Parliament. Until the drafting of the "NIS" Report no legal initiative was

<sup>982</sup> For more information, see provisions of articles 4, 5, and 6 of abovementioned law.

<sup>983</sup> Anti Corruption Agency, Annual Report 2009 (Prishtina, ACA, 2010), p.7.

observed by the MLGA and ACA to incorporate the category of “senior legal officers,” or the posts of municipal deputies. The only legal provision that in general obliges the municipal deputies regarding this issue is Article 38 of the Law on Local Self-Government which requires the following...“Before the first meeting of the Municipal Assembly, members of the Assembly shall record a full and open statement of their financial interests in a public register to be kept by an authorized officer of the municipality. Members shall record any changes in their financial interests as they occur.” The inability of this agency to expand its representation to the municipal/regional levels continues to be an issue of concern, but still the ACA is centralised with its head office in Prishtina, which significantly limits its inspection activity at the municipal level.

## Transparency (practice)

*At what level there exists transparency in relation to the activities of the local government authorities in practice?*

Due to a lack of human and financial resources for maintenance of the municipal assemblies’ website, not every municipality manages to publish its annual municipal budget; therefore the level of publication of documents varies substantially.<sup>984</sup> The MLGA during 2010 has increased its support and made available mechanisms that would enable municipalities to update the information and publish (post) relevant documents onto their website, through the web-portal designed for municipalities.<sup>985</sup> Nevertheless, until the end of September 2010, at least five municipalities websites were not operational in this portal, including: Partesh, Laposaviq, Zvecan, Zubin Potok, and Mitrovica North.

Based on the information from the “INPO” Report,<sup>986</sup> municipalities such as Prishtina, Peja, Ferizaj, and Mitrovica published their annual budgets for 2009 on their official websites which can be downloaded by any citizen that may be interested in analysing them. In the Municipality of Mitrovica, the municipal budget was published at local radio stations, but not at the local TV stations (for which the Director of the Directorate for Economy and Finance of this Municipality complained that such activities were boycotted and prevented publication of the budget through this type of media.) In the Municipality of Gjilan the media similarly covered public hearings including the second part of the drafting and the finalisation of the municipal budget.

<sup>984</sup> Interview of Roland Gjoni with the author, Prishtina 28 April 2010.

<sup>985</sup> Ministry of Local Government Administration, The websites of the Kosovo municipalities, <http://kk.rks-gov.net/> (visited on 15 May 2010).

<sup>986</sup> Progress Initiative INPO [http://www.inpo-ks.org/site/doc/raportet/raporti\\_i\\_vleresimit.pdf](http://www.inpo-ks.org/site/doc/raportet/raporti_i_vleresimit.pdf) (visited on 15 May 2010), p. 12.



According to this report, only the Municipality of Prizren has decided to publish brochures related to the municipal budget.

This report underlines the citizens perception from the survey conducted with them, which is that the Municipality of Mitrovica is the top municipality lacking transparency. 70% of citizens believe that the municipality is not transparent regarding its expenditures. Half of the citizens of Prizren Municipality believe that their municipality is not transparent regarding its expenditures, 20% believe the opposite, whereas 24% believe that it is seldom transparent. In the case of Ferizaj, Gjilan and Peja municipalities, the percentage of citizens that believe that their municipality is not transparent regarding expenses is approximately 45%, with 30% of the citizens these municipalities believe that their municipality is not transparent, whereas the rest of them believe that their municipality is somewhat transparent. In Prishtina Municipality, according to the INPO report 60% of its citizens believe that their municipality is not transparent regarding its expenses.

In general, there is perception that public participation is understood only as a formal requirement and not as a mechanism for improving the lives of citizens and to increase municipal efficiency. From the MLGA perspective, and different from municipalities, there exist defined policies focusing on increasing public participation in the recently established municipalities through informative outreach campaigns for non-majority communities, respectively the MLGA has created an active and digital platform for citizen information through public debates and for the purpose of explaining the decentralisation process and the benefits of such processes for the citizens.<sup>987</sup> This discrepancy between the transparency in the municipalities and the line Ministry has identified several shortcomings, such as: a low level of motivation by citizens for public participation and debate with the municipality, public participation and transparency all too often are not observed by a number of municipal officials which results in public blaming of the whole municipality, and there is a perception that public grievances are not seriously reviewed by the municipal authorities.<sup>988</sup>

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<sup>987</sup> Ministry of Local Government Administration, Information Campaign and Communicating with Citizens, <http://www.decentralizimi.info/?cid=1,11> (visited on 15 may 2010).

<sup>988</sup> Ibid, Local Transparency and Public Participation, Manual (Prishtina December 2009), page, 79

## Accountability (law)

*At what level there exist legal provisions to ensure that municipal officials have to report and be responsible for their actions?*

As a concept, accountability is the other component of transparency which is the explanation before citizens of ones actions, including what and how the actions are taken. In this sense accountability serves as one fair, additional and twofold mechanism: the public has access to the local government which takes decisions on its behalf, and the local government is held responsible for its actions before the public. The overseeing of the local government is mainly linked with the mechanisms of public participation in the direct democracy of the municipality, respectively the right of citizens to directly vote for their Mayor and their municipal deputies, as well as the obligation of each municipality to hold public meetings, at least twice a year, at which any person or organisation with an interest in the municipality may participate.<sup>989</sup> Furthermore, the same law regulates the instruments of local democracy such as: the right to petition, citizen's initiative, and referendum.<sup>990</sup> Local institutions are this way directly accountable before their citizens.

In sense of functionality and efficiency of governance, in addition to the right to administrative review and review of legality of decisions adopted by the municipal assemblies, the central government through its line ministry and base on Law on Local Self-Government, Article 78, provides the supervisory authority the right to receive and obtain full information on all matters concerned, including the right to visit the municipal offices and facilities and request access to municipal documents. In this regard, the local government is legally obliged to conduct an internal audit at least once a year.<sup>991</sup> Municipalities have the right to establish an autonomous in-house audit service or ensure internal auditing by an audit firm accredited in accordance with the law in force in the country.<sup>992</sup>

With regard to the decision making, although the Municipal Mayor is elected through a direct vote of citizens, Article 64 of the aforementioned Law provides that the Government of the Republic of Kosovo may suspend, within thirty (30) days, the municipal mayor if it considers that the Mayor has violated the Constitution and the applicable laws. Such a procedure may be ini-

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<sup>989</sup> Law on Local Self-Government (Nr.03/L-040), article 68.1.

<sup>990</sup> (ibid), article 69, 70, 71.

<sup>991</sup> (ibid), article 26.1.

<sup>992</sup> (ibid), article 26.2.

tiated by a recommendation from the MLGA to the Government. The case is referred to the Constitutional Court and in case the decision on suspension is approved, than the Government may dismiss the Mayor.

Regarding the administrative auditing and financial expense auditing, pursuant to the aforementioned law, the municipalities are subjected to the Auditor General as part of their annual external auditing requirement, and the auditor's report and responses by the municipal authorities must be made public.<sup>993</sup>

## Accountability (practice)

*At what level is effective in practice the supervision of the activities of local government authorities?*

Depending on the political situation, Kosovo is characterised by an apparent asymmetric accountability of municipalities. Based on the interview of the MLGA Minister, excepting the extraordinary situation in Mitrovica North, the municipalities of Zvecan, Leposavic and Zubin Potok continue to refuse cooperation with the Kosovo institutions, respectively with the MLGA as the mandated institution for review of legality of municipal acts and decisions.<sup>994</sup> Also in the 2008 and 2009 reports of the Auditor General, published on its official website, there are no financial reports presented to this institution, therefore it could not perform the required auditing.<sup>995</sup> Other municipalities, based on the information from the official website of the Auditor General regarding municipalities' reports, indicate the existence of underlining structural problems which the municipalities could not improve in 2009. In this regard, according to the auditor, none of the country's municipalities have concluded the last year without any irregularities, furthermore they have committed the same violations or have had the same shortcomings. Regardless of the fact that the auditing process is carried out by at least three companies as authorised by the Auditor General, the final reports that they have submitted mainly indicated problems regarding failures to respect different regulations, including the process of procurement which remains their primary weakness. According to one article in the daily "Express," "...in the vast majority of cases, municipalities have failed to maintain a general registry of property, facilities and equipment. According to the auditors, municipalities

<sup>993</sup> (ibid), article 27.2.

<sup>994</sup> Information about these municipalities in relation to the NIS Report has been insufficient for drawing clear assessments on indicators of local government pillar.

<sup>995</sup> Office of the Auditor General Reports – Municipalities 2008, [http://www.ks.gov.net/oag/shqip/raporte\\_komuna2008.htm](http://www.ks.gov.net/oag/shqip/raporte_komuna2008.htm) (visited on 16 May 2010), also [http://www.ks.gov.net/oag/shqip/raporte\\_komuna2009.htm](http://www.ks.gov.net/oag/shqip/raporte_komuna2009.htm) (visited on 1 July 2010);

lack documentation regarding this issue.”<sup>996</sup> However, according to the executive director of the ACA and the Minister of MLGA, municipalities maintain regular cooperation with the Office of the Auditor General and are open to providing information, which is also their legal obligation.

Regarding the issue of protection of legality and respect for the Law on Local Self-Government, the MLGA in some instances indicated a lack of sustainable capacities; Article 56.3 of this law has been challenged by the Mayor of the Municipality of Skenderaj and the Mayor of the Municipality of Kaçanik.<sup>997</sup> The EULEX Prosecution has recently filed indictment against Mr. Xhabir Zharku, the Mayor of the Municipality of Kaçanik, who is under investigation by the prosecution for the criminal offence of coercion by use of threat against several persons for financial gain.<sup>998</sup>

This Ministry has also failed to clearly address the issue of local democracy in the municipalities with a Serbian majority, namely: Zubin Potok, Leposavic, and Zvecan; mainly, the local election results of November 15, 2009 were totally ignored. According to the final results from the Central Election Commission (CEC),<sup>999</sup> in the Municipality of Zubin Potok the turnout was 6.7% of the voters, whereas in the Municipality of Leposavic 0.7%, and in Zvecan 0.5%. So long as there is no electoral threshold for local elections, these municipalities should have constituted their municipal bodies based on these results, whereas until the drafting of this report no legal initiative was observed as coming from the MLGA in order to find a solution to this unclear situation.<sup>1000</sup> Indeed, the citizens' will in local elections for all three municipalities was not even theoretically evaluated. Consequently, the above municipalities do not exist as legitimate municipal authorities within the political and legal system of the Republic of Kosovo.

While Article 27.2 of the Law on Local Self-Government requires municipalities to make public all auditing reports and responses by the local authorities, until the drafting of this report the municipalities did not publish the latest report (neither the 2008 report nor the 2009 report)

<sup>996</sup> For more information see article in the daily “Express”, Municipalities violate similarly, <http://www.gazetaexpress.com/web/index.php/artikujt/lexo/33425/C4/C15/> (visited on 28 June 2010).

<sup>997</sup> For more information see articles from daily newspaper “Koha Ditore”, Sami Lushtaku in prison for threatening the judge, by Kastriot Jahaj, on May 2010; Court releases Xhabir Zharku from the detention, by Vehbi Kajtazi and Kastriot Jahaj, 9 July 2009.

<sup>998</sup> For more information see article from the daily newspaper “Zëri”, Zharku and six others in the courtroom, by Besa Kalaja, 8 July 2010.

<sup>999</sup> Central Election Commission, Final results from CC, Municipal Statistics, <http://www.kqz-ks.org/SKQZ-WEB/al/zgjedhjetekosoves/materiale/rezultatet2009/komune/StatisticByMunicipality.pdf> (visited on 16 May 2010).

<sup>1000</sup> Central Election Commission, Municipal Results (distribution of seats), <http://www.kqz-ks.org/SKQZ-WEB/al/zgjedhjetekosoves/materiale/rezultatet2009/komune/ResultsByMunicipality.pdf> (visited on 16 May 2010).

onto their website, or the internal auditor report as required under Article 27.1. Also, it's worth mentioning that the reports of this institution are not required by the applicable law to be discussed at the Municipal Assembly.

Regarding functionality and efficiency, the most recent report of the municipalities of the Republic of Kosovo since the ending of local elections until March 2010 and drafted by the MLGA, raises several and serious legal violations that were witnessed by this Ministry.<sup>1001</sup> The report indicates that several municipalities still continue to refuse to send assembly material in due time to the supervising authority, namely to the MLGA as provided for by article 43.5 of the aforementioned law. Additionally, the majority of municipalities fail to respect Article 80 of this law which requires municipal mayors to send the list of all adopted acts by the mayor and the assembly for the previous month, by the 10th of the following month.

Regarding the issue of denunciation of corruption by the local government employees, there are no specific provisions that provide protection against accusations or other negative consequences, except reporting the cases to the police. There exists, however, ways of reporting corruption in a discrete manner through mechanisms of the ACA, such as the 24 hour hotline. Personal contacts are possible at the building of the ACA but also through e-mail and the mailing address of this institution, which keeps every report confidential.<sup>1002</sup>

## Integrity (law)

*At what level are the appropriate mechanisms for ensuring the integrity of the local government authorities?*

The term "local official," pursuant to the Law on Prevention of Conflict of Interest in Exercise of Public Function (Nr.02/L-133), Article 5, includes wide structure of officials such as: the mayors, municipal deputies and members of committees and other municipal assembly bodies, chief executive officers, directors of departments, inspectorates and other municipal institutions and auditors and local level inspectors. At the local level the municipal assembly, as the highest municipal body, is responsible for adoption of the rules of procedure, as one of the acts which set forth rules of order and municipal conduct.<sup>1003</sup> This act regulates relationships be-

<sup>1001</sup> Ministry of Local Government Administration, Report on Municipal Assembly Functioning in the Republic of Kosovo, [http://www.mapl-ks.org/repository/docs/raport\\_janar\\_mars.pdf](http://www.mapl-ks.org/repository/docs/raport_janar_mars.pdf) (visited on 16 May 2010).

<sup>1002</sup> Kosovo Anti Corruption Agency, Procedure of reporting corruption cases, <http://www.akk-ks.org/?cid=1,26> (visited on 16 May 2010).

<sup>1003</sup> Law on Local Self-Government (Nr.03/L-040), article 12.4.

tween the activities of the municipal assembly and subject to interpretation by the chairperson of the assembly. Moreover, in 2010 the Assembly of Kosovo adopted the Law on Civil Service of the Republic of Kosovo (No. 03/L-149,) which regulated for the first time the status of civil servants and their working relationship in the central institutions and local administration. The basic principles of civil service, according to Article 5, are mandatory for all civil servants in order to perform duties based on the principle of: legality, non-discrimination, an obligation to respond to requests, effectiveness and efficiency, accountability, impartiality and professional independence, Transparency, avoidance of conflicts of interest and the principle of equal opportunities for minorities and gender.

Law on Prevention of Conflict of Interest in Exercise of Public Function (Nr.02/L-133,) Article 9, provides that the official should discharge his/her duties honestly, consciously, impartially, maintain the authority of the official and the institution and exercise his/her function in accordance with the law and the code of conduct. Regarding limitations in respect of appointments and transfers of local officials to the private sector, Article 9.6 of aforementioned law provides that the official has no right to receive or ask for remuneration for the services offered except the salary from the institution for which he/she works. Article 10 similarly limits officials in performing other activities outside of his/her function, respectively during the exercise of public function he/she may not exercise another function, except with the consent given by the hiring or appointing institution and when not in contradiction with the present law or any other law. Article 15 of the Anti-Corruption Law (2004/34) foresees an obligation upon local authorities to offer the ACA when requested so, the information needed for the discharge of its duties and allow access for inspection purposes of any relevant document.

For the purpose of determination of procedures for gifts, there is Administrative Instruction (Nr.02/2008) issued by the Ministry of Public Administration, on the Registration of Gifts in the Catalogue of Gifts at the Institutions of Civil Service, which is applicable by all institutions of civil service in Kosovo. Article 4 of this AI provides that civil servant and persons in close relationships with him/her should not accept any gifts by any person related to the discharge of his/her duties. Likewise, Article 6.1 of this AI requires every institution of civil service in Kosovo to maintain the catalogue of gifts registry. Regarding the matter of effective supervision, except the reporting process and appointment/dismissal by the mayor, there are provisions against conflicts of interest which limit the activity of municipal directors,<sup>1004</sup> respectively they are excluded from the decision making also from the administrative procedures pertaining to any matter where he/she or a close family member has any personal or financial inter-

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<sup>1004</sup> (ibid), article 63.



est in. Directors are required to immediately report in writing any conflict of interest, and the statute and the rules of procedure include measures to be undertaken for excluding directors from decision making and administrative procedures if they have conflicts of interests.

The institutional framework of public procurement is established by the Law on Public Procurement in Kosovo (Nr.2003/17 – as amended and supplemented on February 8, 2007) and consists of three institutions: Public Procurement Regulatory Commission (PPRC) as the legislative body, Public Procurement Agency (PPA) as the executive body and the Procurement Review Body (PRB) as the judicial body.<sup>1005</sup> According to this law, all the activities of public procurement should be enforced by the procurement officers who are specifically trained, where all governmental authorities, municipal and public enterprises are included. The procurement at the local level is organised through Municipal Public Procurement Offices. This area is regulated through and governed by five (5) principles of public procurement<sup>1006</sup> which promote: transparency, responsibility, competition, equality and fairness.

Regarding the issue of appeals mechanisms, the PRB is the independent body for administrative review,<sup>1007</sup> and if requested in writing by the contracting authority or any other interested party the OSHP has the authority and responsibility for reviewing and deciding upon the validity of any decision, action, measure, interpretation or issued, used or declared by the Public Procurement Agency or the Public Procurement Regulatory Commission.<sup>1008</sup> However, based on the 2009 Progress Report, regarding the issue of procurement of goods and services, the “situation has deteriorated compared with (the) previous year (2008), except some improvements in the legal framework. Government has adopted a full package of anti-corruption laws.”

<sup>1005</sup> Kosovo Initiative for Stability, *Untying the knot, Political Economy of Corruption and Accountability in Kosovo*, (Prishtina, IKS, 2010), p. 7.

<sup>1006</sup> Progress Initiative INPO, *For impartial and fair procurement*, <http://www.inpo-ks.org/site/doc/tjera/raporti%20per%20prokurim%20te%20pa%20anshem%20dhe%20transparent.pdf> (visited on 17 May 2010), p. 7.

<sup>1007</sup> Law on Public Procurement in Kosovo (Nr.2003/17), article 94.2.

<sup>1008</sup> (ibid), Article 95.2.

## Integrity (practice)

*At what level the integrity of local officials is ensured in practice?*

The interview with the Minister of MLGA<sup>1009</sup> reveals that despite legal provisions that enable appropriate institutional integrity for local officials, the level of implementation of codes and existing regulations in Kosovo is still inadequate, because their implementation at the local level is associated with a variety of core shortages of personnel and the necessary budget for exercising effective supervision.

Regarding implications of private sector to municipalities, based on the information from the Anti-Corruption Agency<sup>1010</sup> in relation to the appropriation of monetary assets during the discharge of duties during 2009, the data has mainly implicated the local government. In this context this report has underlined that this phenomena is connected especially with municipal property, where cases were identified that property was leased contrary to the law in force, by failing to make public announcements as required by the Law on Public Procurement. Conflicts of interest as one form of corruption in local government practice is mainly present because of the connections between the staff at the local level and private enterprises, contributors – mainly financial – during the political campaigns as well as conflicts in granting contracts/tenders. Based on the media report, not excluding other instances, and by quoting the officials of the ACA,<sup>1011</sup> the Mayor of the Municipality of Prishtina is suspected of having violated the Law on Preventing Conflict of Interest in Exercising Public Function (Nr02/L-133), Article 17, since he has violated the percentage of shares that is allowed, respectively this article provides that the "official and the owner of the shares, respectively of the part of the capital exceeding 20% of the capital of enterprise during the exercise of his/her function shall transfer the rights of administering the enterprise to another person (hereinafter: trusted person), but not to persons under Article 6 of the present Law." The Mayor of Prishtina municipality, in addition to his three other businesses where he has shares less than 20% of allowed percentage, in only one of the companies he holds 49% of shares, which is in contradiction with the provisions of this law. According to the statements of the ACA given in August, when this agency collects the final results, it will inform the public about the investigation steps taken on this case.<sup>1012</sup>

<sup>1009</sup> Interview of MLGA Minister with the author, Prishtina April 14th 2010

<sup>1010</sup> Anti Corruption Agency, Annual Report 2009 (Prishtina, AKK, 2010), p.13.

<sup>1011</sup> For more information see the article on the daily newspaper "Express", Law violator, by Lirita Halili, 15 August 2010.

<sup>1012</sup> (ibid).



According to this report, this was done for the purpose of appropriation of rent by the concerned public officials. The cases of conflict of interest that involved local officials according to the ACA pertain to the criminal offence: “misuse of official duty or authority” and “illegal appropriation” that was forwarded for criminal prosecution by the competent public prosecution authorities.<sup>1013</sup> There are thirty-one cases reported during 2009 in connection with local government. Furthermore, cases of conflict of interest are also identified through the media and other secondary sources.

Regarding procurement in practice, according to the interview with the Minister of the MLGA, this institution does not have access to the public procurement activities therefore does not have any information regarding potential procedural abuses in practice. However, based on the report of the non-governmental organisation INPO,<sup>1014</sup> in practice, the offices of municipal public procurement fall within the direct responsibility of the municipal mayor and as such they report directly to him/her. This report has furthermore raised suspicions regarding actions of using the opportunity, implications and political influence of municipal leadership in issues of procurement of goods and services at the local level. The issue of capital projects has not as yet been defined in general, respectively public contracts which are financed by the Kosovo Government in relation to municipalities, which projects are not directed through the offices of public procurement. Instead such projects are processed through tendering by the procurement offices of the respective ministries. There was, however, only a limited number of investigations of suspected corruption cases and the results indicate the need for more resources and sophisticated methods. Special emphasis should be placed on monitoring the enforcement of procurement contracts. Administrative capacities and key mechanisms of coordination of the key actors in the public procurement need further empowerment, especially in order to reduce the opportunities for corruption.”<sup>1015</sup>

According to the daily newspaper “Koha Ditore”, its also clear that procurement officers everywhere are under duress, normative control and supervision are neglected whereas the Agency for Public Procurement has no capacities to fulfil its mandated, therefore the European Commission (EC) has criticised on several occasions this agency for ignoring technical advice provided by the EC, by taking inadequate decisions and by failing to publish them. Consequently, the EC has requested the annulment of several illegal decisions (including the Municipality of Rahovec regarding water-supply tender).<sup>1016</sup> The civil society suggested that because of the sensitivity of the work, legal protection

<sup>1013</sup> (ibid), Table 7: Cases according to specific institutions and years when corruption has occurred, p. 15.

<sup>1014</sup> Progress Initiative INPO, For impartial and fair procurement, <http://www.inpo-ks.org/site/doc/tjera/raporti%20per%20prokurim%20te%20pa%20anshem%20dhe%20transparent.pdf> (visited on 17 May, 2010), p. 13.

<sup>1015</sup> Commission of the European Communities, Kosovo under UNSCR 1244/99 2009 Progress Report (Brussels, 15.10.2009), fq.32.

<sup>1016</sup> For more information see article from the daily newspaper “Koha Ditore”, European Commission seeks new boards in the procurement institutions, by Vatra Qehaja, 3 May, 2010.

of procurement officers should be enhanced significantly, either through the Law on Civil Service which will enter into force in 2011, in order to reduce the sensitivity of their position, or in relation to their relationship with the municipal political leadership which uses its authority against procurement officers through the exercise of political pressure.<sup>1017</sup>

## Local administration (law and practice)

*At what level the authorities of local government are involved and committed in good governance of municipal administration?*

Based on the law in force, the municipal administration is structured in directorates and managed by directors who are appointed and dismissed by the municipal mayor.<sup>1018</sup> Directors of directorates report regularly to the mayor on matters of their responsibility and provide him/her with all information and reports for the decision making process. Likewise the directors are responsible towards municipal civil servants.

The legal framework of Kosovo's local government does not offer incentives and rewards for municipal civilian staff, which could encourage an increase of transparency at the local level, and more comprehensive responsibility and accountability. Furthermore, there are no monitoring policies and scoring/evaluation of local officials that would result in a scoring process based on merit. In general, there is no incentive approach towards local officials for their official performance. The perception from the interview with the Minister of the MLGA is that this Ministry has an insufficient budget for developing incentive mechanisms in relation to the municipal local administration, which would increase levels of transparency, responsibility, integrity and all inclusiveness. Nevertheless, it was a totally different situation regarding the work of the Municipal Preparatory Teams – responsible for carrying out all the necessary preparations for ensuring resources, properties and administrative structures necessary for the establishment and functioning of new municipalities deriving from the decentralisation process in Kosovo, and appointed by the International Civilian Representative during 2009-2010. Representatives of these interim institutions have received a monthly salary of 535€, which reflects higher levels compared to the average salary in Kosovo.<sup>1019</sup>

<sup>1017</sup> See the case of Rahovec Municipality from the Kosovo Initiative for Stability, Untying the knot, Political Economy of Corruption and Accountability in Kosovo, (Prishtina, IKS, 2010), p. 9.

<sup>1018</sup> Law on Local Self-Government (Nr.03/L-040), article 62.

<sup>1019</sup> Kosovo Institute for Policy Research and Development, Kosovo in crossroad: Decentralization and establishment of new municipalities, [http://www.kipred.net/web/upload/Kosova\\_ne\\_udhekryq.pdf](http://www.kipred.net/web/upload/Kosova_ne_udhekryq.pdf) (visited on 17 May 2010), p. 8.

## Fight against corruption

*At what level have the authorities of local government set as priority the public accountability and fight against corruption as a issue of concern?*

There is a perception supported by the experts' perspective that local government as one of the pillars threatened by corruptive phenomena is mostly fighting the war against corruption more at the level of rhetoric.<sup>1020</sup> The local government deriving from recent local elections has, however, one new chance to improve the fight against corruption, especially after the adoption of better legislation in this area. So far, in addition to the Anti Corruption Agency as the specialised institution for fighting and preventing corruption, laws applicable at the local level mainly numerate the following: the Anti Corruption Law, the law amending and supplementing the Law on Prevention of Conflict of Interest in Exercise of Public Function and the Anti-Corruption Strategy and Action Plan. Also, the Law on Declaration, Origin and Control of Property of Senior Public Officials provides for a higher number of senior public officials that are required to declare their property.

The lack of local initiatives against corruption is apparent, including the critical gap of locally based civil society activism; however, it is important to state that the municipalities do cooperate with the European Union Rule of Law Mission throughout this process. Finally, this Mission together with the Kosovo Police and the Anti-Corruption Task Force of the Kosovo Special Prosecution Office have initiated an investigative operation in the Municipality of Skenderaj,<sup>1021</sup> where the premises of this municipality and some private properties of some local functionaries have been searched. This Mission has also completed another search at the municipality of Shtërpçë,<sup>1022</sup> regarding criminal investigations on money laundry, tax evasion and organised crime. One true handicap remains the non-presence of the ACA at the municipal level, and as a consequence it will not be closer to the monitoring and supervision of the decision making process, as well as to encourage cooperation between actors of civil society at the local level.

<sup>1020</sup> Interview of Roland Gjoni with the author, Prishtina, 28 April 2010.

<sup>1021</sup> EULEX Searches underway in Skenderaj/Serbica area, <http://www.eulex-kosovo.eu> (visited on 3 October 2010)

<sup>1022</sup> KOHA portal, EULEX searched PPMD in Shtërpçë, <http://www.koha.net> (visited on 3 October 2010)

## Recommendations

- The municipal administration should not be affected by the developments at the central and local political levels, whereas the issue of employment with the municipal administration should be based on sustainable criteria by avoiding contracts on performance. Political appointments of local leadership should be contained gradually, even if it cannot be completely eliminated. The clear political influence should be limited through developing the civil service and regulations of recruitment at the public sector based on merits.
- The Kosovo Institute for Public Administration, the Association of Kosovo Municipalities and the MLGA in cooperation with other donors, except training programs for newly established municipalities, should increase their presence through raising capacities for civil servants in all Kosovo municipalities.
- In cooperation with the MLGA the municipalities should create conditions for incentives and the equalisation of grades at the local administration, as well as to continue with adequate and specialised training in certain areas, especially for procurement officers.
- Municipalities should make efforts to broadcast municipal assembly sessions through local stations, as well as create opportunities for transcripts and minutes of such meetings to be published on the official website of the municipality. In order to increase the level of transparency, in cooperation with civil society and the Association of Kosovo Municipalities, the municipalities should make efforts to initiate municipal bulletins in order to publish their monthly activities and distribute them free of charge within their respective territories.
- The central government and the MLGA as line ministry should be more focused on the allocation of municipal budgets/grants, by avoiding differentiated budgetary tendencies especially regarding capital investments. A mutual and periodic cooperation should exist also during the review of budgets.
- The census envisioned to take place in 2011 should change the issue of allocation of grants based on the Law on Local Government Finance, in order that municipalities should not be affected as a consequence of accurate data regarding the number of local population.
- The Anti Corruption Agency should have institutional distribution through regional or municipal offices in order to be closer to the executive processes of local government and not be concentrated only in Prishtina.

- In cooperation with the MLGA and the Kosovo Anti-Corruption Agency, municipalities should establish mechanisms for investigation and punishment of cases of conflicts of interest and those of corruption at all levels of local government.
- In cooperation with the MLGA, municipal assemblies should hold specific sessions for reviewing the reports of the Auditor General, in order to identify the irregularities and remarks of this institution, and to set priorities regarding recommendations from this report.
- Civil society with a special focus on local area should be an active part of municipal decision-making by making local partnerships for better governance.



**VIII**

**CONCLUSIONS**

## **The Performance of the Institutional System of Kosovo**

Kosovo Institutional System performance analysis shows that in general performs at a moderate level, primarily due to the lack of capacities to act and the influence from political agents. Such a situation requires to be addressed by political actors, which could also lead to the strengthening of these institutions' capacities. Generally, what remains as a concern and that requires special attention and political will to be solved is the elimination of the political influence over the independent institutions. Also, worth noting is that, although all the pillars of the Integrity System of Kosovo in reality have significant capacities, commitment and power to combat and fight against corruption, in practice their role remains weak. This phenomenon is expressed especially in the executive pillar, which does not act in proportion with its capacities and powers.

### **Without sufficient capacities and full independence of the institutions, there can be no rule of law and effective fight against corruption**

The progress in the fight against corruption depends very much on the rule of law institutions. Unfortunately, in our country these institutions are faced with limited capacities to withstand this phenomenon. In addition, there is significant political influence over the legislative, law enforcement agencies, and media.

Although by law, for the above mentioned institutions the right to act as independent is guaranteed, these institutions have proven that are not sufficiently powerful to govern in an independent way and with integrity. Judges, prosecutors, and the officials of the Fight against Crime and Corruption Unit within the police are unprotected, and as such, it is not expected by them to handle corruption cases of high political profile. Another element that is also limiting the institutions of rule of law to oppose corrupted politicians, are the high appointments in the law enforcement agencies that are politically motivated. In such situation the entire hope to "catch big fishes" remains in the hands of the Rule of Law EU Mission (EULEX), which is also being criticized for not meeting the expectations of citizens in this regard.



### **Anti-Corruption Agency – the institution with the best performance**

According to this study, the institution that has performed the best appears to be the Anti-Corruption Agency. Despite the fact that this institution did not have sufficient capacities in terms of equipments and personnel, as an organisation, has governed very well, especially during 2010. Also, the citizens' confidence in this Agency has increased, taking in consideration that in 2010 there was an increase in the number of corruption cases reported, reaching the number of 430 cases. ACA has made constant efforts to act as an independent institution. This is also confirmed by the declaration of the Director of ACA that in the current Government, the corruption has increased. This achievement of the Agency can be taken as an example for other pillars in setting clear boundaries of institutional interference. Whereas, despite the progress the ACA made in the fight against corruption, the poor functioning of other institutions, such as the Police, Prosecutors, and Judiciary, has hampered the combat against this phenomenon.

### **The weakest institutions of the System – Business, Political Parties, and Central Election Commission**

Other institutions of the integrity system such as the Business sector, political parties, and the Central Election Commission, have issues of poor governance, such as lack of accountability and transparency towards the public. Although, with the current legislation these institutions possess relevant integrity mechanisms, in practice the latter result with a very low integrity.

This study has highlighted that there are many connections among the above mentioned sectors. A concrete example in this direction is the involvement of the business sector in the financing of the political parties, especially of the ruling ones. Possible reward in this case would be the tenders/bids, where the process of selection of winners of tenders is accompanied by high degree of non-transparency and other irregularities are identified by many parties involved (the example from the findings of the Auditor General).

### **Central Elections Commission**

Central Elections Commission also faces other problems, but the lack of capacities and the lack of institutional independence are the most highlighted and the most concerning in the process of guaranteeing the integrity of this institution. CEC is often accused for lack of responsibility in the process of impartial law enforcement. As a result of mismanagement, during the 2009 and 2010 elections CEC has received a lot of criticisms on the non-identification of irregulari-

ties in the voting process. Conditional votes and the Voters' list are considered as the weakest points and the tools of manipulations, which CEC failed to address with responsibility. Also, a concern remains the uncertainty in the laws in power and non-completion of the required legislation, especially the legislation that addresses the process of filing the complaints and appeals. Transparency and accountability of CEC towards the public remain very low. This can be seen in the CEC's unwillingness to make public financial declarations of the political entities, which is a legal obligation of CEC.

## **The integrity of the political parties**

According to this study, the political parties appear to be extraordinarily centralised and non-democratic, as well as the institutions with the least credibility by the public. Limited transparency, accountability, and integrity are the main weaknesses that characterize the political parties from their basic election activities to the exercise of the state power. The weakest point of the parties remains the regular non-declaration, and non-reliable declaration of finances, and the origin of the donations, which are basic requests that derive from the law on the financing of the political parties. This disregard of law comes also as a result of weak legal sanctions as well as non-proper supervision by the CEC which has been almost inexistent in this aspect. This type of supervision has been perceived as a bureaucratic formality, never giving accurate, reliable, and coherent data based on financial declarations of political parties. The approach of political parties in fighting corruption has only been declarative until now. Moreover, political parties could hardly do so when taking into account the extremely negative rate of their assessment to the public.

## **Business sector**

The largest client for Kosovar businesses remains the Government, where above 60 percent of the business contracts are secured through public procurement. Since the sector where the corruption is developed the most remains that of the public procurement, the business sector is likely to be involved in corrupt acts. Political influence and the lack of adequate legislation have made the business sector be a good target of speculations and unfair competition. Forced to operate in such environments, it is understood that the development of competitive markets becomes increasingly difficult. Due to the politicisation of public administration, particularly the procurement sector, favouring certain businesses which have connections with important political actors, continues to present a serious obstacle of the development of sustainable and competitive businesses. Due to the non-functioning of the courts, businesses have

difficulties in realising their rights, where business associations, and also the private connections, remains the sole answer for the realisation of their rights. As it is highlighted throughout this study, the business sector has not found the supportive partner in the Government, which did not show any engagement to improve the climate in which the business operates. Furthermore, such a commitment has also not been observed by the business sector itself, which until now did not raised its voice against corruption, not even using in this way the cooperation that it can have with the civil society in voicing up or objecting this phenomenon.

### **The Public Sector - the corruption generator - the forgotten sector**

The limited capacities of public sector, the low salaries, few benefits and what is more important the political interference, are main factors why corruption blooms in this sector. Moreover, the low transparency, low accountability and low integrity of this sector has only contributed to rise more doubts of the citizens for high scale of corruption, especially in public procurement. On the other hand, until now intentionally or unintentionally, the Government didn't seem to be very much interested to implement any crucial reforms which could decrease corruption in this sector. With that being said, it can be hardly imagined that, public sector will be able to resist corruption phenomenon.

### **The political will of the Government is weak to guarantee institutions with integrity**

This study demonstrates that the Government remains to be one of the most criticised institution, for the fact that besides the poor performance in undertaking its obligations it is also responsible for the non-functioning of other pillars, taking in consideration the interference that it makes in other institutions, in the sense of its hesitation for the allocation of sufficient funds, and its hesitation in drafting the necessary legislation. The Government has not been ready and willing to fight corruption, showing such symptoms as: delays in drafting anti-corruption laws, adoption of several anti-corruption soft laws (laws without teeth), non-implementation of the latter in practice, and the non-provision of new laws which would further complement the against-corruption legal package.

The lack of resources and of the independence of state institutions can be explained with the unwillingness of the Government to provide necessary funds and adequate legislation which would guarantee full independence and improved performance. Although, budgetary constraints contribute to the weak performance of these institutions, the majority of financial years

after the war has been closed with enormous surpluses, raising doubts in the ability of the Government to spend their budget in a rational way. This is due to the fact that each budgetary year starts with complaints and institutional dissatisfactions, which is followed with the reasoning that Kosovo does not have sufficient budget to implement further ahead projects, although always happens that at the end of the year 200 to 250 million euros remain as a surplus. This situation proves that the causes of non-action by the Government to commit the fighting against corruption are not the budgetary limits, but, the lack of political will.

**IX**

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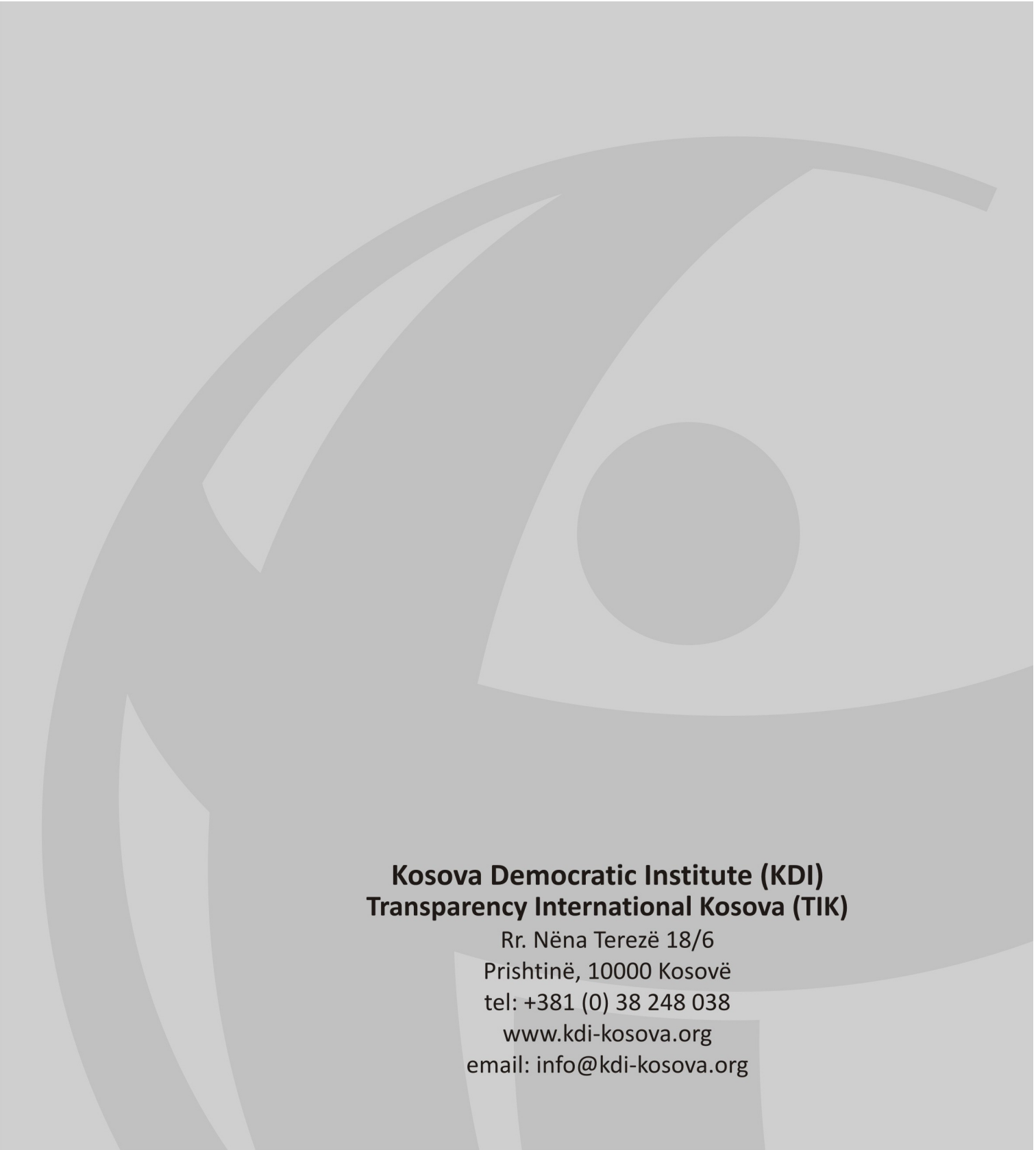
Maureen Taylor - Protocol Journalism as a framework for understanding public relations in Kosovo











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