



SIGMA

Support for Improvement in Governance and Management

A joint initiative of the OECD and the European Union, principally financed by the EU

KOSOVO (under UNSCR 1244/99)¹

PUBLIC INTEGRITY SYSTEM

ASSESSMENT MAY 2009

¹ In accordance with UN Security Council Resolution 1244, since June 1999 Kosovo has been governed by the UN Interim Administration Mission in Kosovo (UNMIK).

Summary

Main Developments since last year

Besides some improvements in the legal framework and in the capacity of some institutions, corruption continues to be seen as a very serious problem in Kosovo.

Public awareness is increasing regarding the negative effects of corruption in developing Kosovo and in implementing a full democratic regime, where public institutions should be exclusively guided by public interest. If not urgently and properly addressed, social problems could emerge in Kosovo, fuelled by the financial and economic crisis and by high unemployment.

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. Conflict of interest seems to be a rather strange concept in Kosovo.

Main Characteristics (strengths and weaknesses)

As the political and institutional situation in Kosovo remains complex, it is difficult to consistently set clear political priorities. Power is still shared with the international community in several areas and in some parts of the territory it is not exercised with uniformity. Apparently, there is a certain degree of political will to change the situation, but initiatives are often not consistently – or at least not properly – implemented due to the fragility of key institutions and the lack of resources. This is the case, for instance, for the fight against corruption, which seems to be high on the political agenda but where in fact changes are few.

Public awareness regarding the problem of corruption and the need for “clean” institutions served by public officials and public servants above suspicion seems to be increasing in Kosovo. However, the situation is still far from acceptable. The common perception is that many of the administrative decisions on individual cases are taken according to political affiliation and family ties. The borderline between politicians, the administration and the judiciary is unclear, and it seems that there is little political will in doing the required clarification. Lack of trust in institutions, including the judiciary, is widespread.

Legislation is being improved but needs to be completed and implemented. The institutional framework is also being consolidated but needs to be made more effective, and institutions require more co-operative efforts. Although a good legal system could support changes, corruption is a problem of development and culture that cannot be resolved solely by laws or institutions. Much more than a legal system is needed in order to design and implement good policies, improve living conditions, reduce the informal economy, expand the rule of law and develop participative and engaged citizenship. Campaigns to inform the general public and training for public servants on ethics and on required standards of quality of services are needed. However, the best and most effective efforts for changing the situation must come from the top political and administrative positions through practical examples of ethical conduct based on sound values and from more active engagement of civil society.

The disproportion in salaries in some key functions needs to be dealt with in order to increase the sense of fairness and to reach a better balance between officials who perform public functions and responsibilities².

Within those institutions that are in charge of improving integrity and preventing and controlling corruption, better co-ordination and increased co-operation is vital. The lack of sufficient and qualified staff and the budgetary constraints reinforce this recommendation. The Kosovo Agency for Anti-Corruption (KACA) is improving its capacity but lacks power and the staff needs better qualifications.

² More information on the salary system is available in Sigma’s 2008 report on Public Service and the Administrative Framework in Kosovo (<http://www.sigmaweb.org/dataoecd/48/31/41637624.pdf>).

Formally, the system and mechanisms to ensure political and administrative accountability are either in place or in preparation. Nevertheless, misunderstandings regarding the various roles and failure to respect the autonomy or independence of various bodies are undermining trust in the whole system. In particular, the Assembly and the government need to pay closer attention to the reports of the bodies in charge of controlling the system, support their activities through the implementation of their recommendations, and provide feedback.

The judiciary requires improvements and, as the ultimate guardian of the rule of law, needs to demonstrate that it has the capacity to investigate, decide and implement decisions, irrespective of the status of the parties, thereby showing that it is a trustable institution.

The ongoing decentralisation process could provide an opportunity for improvement – as the accountability lines to citizens would be more direct and visible – but it also constitutes a risk in terms of spreading bad practices and corruption. Therefore, close monitoring and effective control need to be implemented.

Recommendations for Reform

As a first priority, the acceleration of legal and institutional reforms in the judiciary, including the assurance of fair working conditions, is vital for building an independent, effective and trustworthy judiciary that is capable of improving the rule of law in Kosovo.

Better and effective co-operation and co-ordination between the various political and administrative institutions is necessary.

Transparency in public life and in the activity of the public administration, including the provision of relevant information, should be increased. Training should be reinforced in this regard.

Political actors and especially managers should consistently and coherently act according to irreproachable ethical standards.

Since decentralisation is progressing, close monitoring and support to the reform process should be in place in order to avoid contamination from a culture and practices that are lacking in integrity.

Introduction

Kosovo declared its independence on 17 February 2008 and in the first year notable progress was made in establishing the framework of functioning for the state. Following Ahtisaari's Comprehensive Proposal for Kosovo Settlement, the Assembly approved 120 laws. More than 50 laws were approved without any proper consultative procedure in the period between the declaration of independence in February and the entry into force of the new Constitution in June 2008. The new Constitution empowers Kosovo institutions with legislative, executive and judicial power, replacing that of the UN Interim Administration Mission in Kosovo (UNMIK). However, the lack of endorsement by the Security Council of all of those developments has created confusion about the continuing role of UNMIK and the power of the newly established EU Rule of Law Mission in Kosovo (EULEX).

The legislative agenda that was set as a result of the declaration of independence of Kosovo also includes several laws that are related to preventing or combatting corruption and other irregularities and that are meant to ensure the functioning of the public integrity system in Kosovo.

However, despite this agenda, the perception of the public and the assessments of independent organisations show that corruption in Kosovan institutions is highly widespread. In recent years the political will and measures to combat corruption have not been sufficient.

This report assesses the legal framework that has been developed in Kosovo by UNMIK and by Kosovan institutions since 1999 with a view to ensuring the public integrity of elected and established institutions. This framework includes the Kosovo Assembly, the executive, political parties and the judiciary, but does not cover the international institutions that have operated in Kosovo under UN Security Council Resolution 1244. This is the first assessment report on the Public Integrity System in Kosovo in accordance with the baselines established by Sigma. The reported information was gathered by mid-April 2009.

1. Integrity in the Assembly

The Kosovo Assembly was first established, in accordance with the Constitutional framework promulgated by UNMIK Regulation no. 2001/9, as the highest legislative body in Kosovo, with its powers derived from UN Security Council Resolution 1244. However, the highest legislative authority in Kosovo under the UNMIK administration has been the Special Representative of the UN Secretary-General (SRSG). The first elections were held in November 2001 and the latest on 17 November 2007. The legal basis of the Assembly is now set in the Constitution of Kosovo, which entered into force on 15 June 2008. The integrity of Members of Parliament (MPs) is covered by a number of laws and UNMIK regulations, including the Constitution, Provisional Criminal Code as amended, Criminal Procedural Code as amended, Law on Preventing Conflict of Interest in Exercising Public Function, Law on Anti-corruption, Regulation no. 2004/12 on Elections replaced by the new Law on General Election and Law on Municipal Elections, Law on Public Procurement, and Law on Financial Management and Accountability. On 2 November 2007 the Assembly of Kosovo adopted the draft Law on Rights and Responsibilities of Deputies. Since the draft law had not yet been promulgated, partly because it did not include an accurate financial impact statement, it has been returned to the Assembly for further consideration. However, the fact that the draft law is still pending shows a lack of political will to regulate such matters more consistently.

1.1 Immunity of MPs

The MPs enjoy immunity, as provided by the Constitution (article 75). Deputies of the Assembly are immune from prosecution, civil lawsuit and dismissal for actions or decisions that are within the scope of their responsibilities as deputies. This immunity does not prevent the criminal prosecution of deputies for actions taken outside the scope of their responsibilities as deputies. A member of the Assembly is not to be arrested or otherwise detained while performing her/his duties as an MP without the consent of the majority of all MPs. The Rules of Procedures of the Assembly regulate (but not in detail) the domain of immunity of Assembly members. The request to waive an MP's immunity is to be made by the competent body in charge of the criminal prosecution, while the decision to

waive an MP's immunity is taken by the Assembly (with a two-third vote of the deputies present at the session), following the recommendation of the Committee for Immunities and Privileges of Deputies³. The MPs whose immunity would be waived are entitled to personally, or through an authorised person, appeal to the Special Chamber of the Supreme Court, which decides on the matter. However, the appeal does not suspend the decision of the Assembly to waive its immunity. In any event, the detention of an MP may be granted, without the prior consent of the Assembly, if he/she is caught in the act of committing a serious crime *in flagranti*, which is punishable by five years or more of imprisonment⁴.

Once an MP has been convicted of a criminal offence in Kosovo and sentenced to serve a prison term for a period of six months or more, he/she lose the status of a member of the Assembly⁵. The loss of the MP's mandate can also occur if he/she is serving a sentence imposed by the International Criminal Tribunal for Former Yugoslavia or is under indictment by the Tribunal and has failed to comply with an order to appear before it.

The draft Law on Deputies goes further in regulating matters of immunity for MPs. Article 9 sets out the procedure for waiving immunity, which may be considered upon the request of the General Public Prosecutor of Kosovo. If a private suit that is not based on the Criminal Procedural Code is filed against a deputy, the court responsible for the case may file the request to waive the immunity of the accused MP.

In the history of the Kosovo Assembly only once has the mandate of an MP been terminated and consequently the MP's immunity waived as well. The cause was the long absence of the MP from the working sessions of the Assembly. Although it was a simple case, the Committee for Immunities and Privileges of Deputies took a long time to decide on the matter⁶. To date not a single request for lifting immunity has been presented to the Assembly.

In general, the immunity of MPs is aligned with common European principles and practices.

1.2 Remuneration of Deputies

The Rules of Procedures of the Assembly clearly specify the right to remuneration of members of the Assembly. Their remuneration must be as a monthly salary and as additional remuneration. After the MP's term of office has terminated normally, he/she is entitled to a monthly salary for 12 months if during this time he/she does not return to the position that he/she held before being elected as an MP or if he/she does not take up other employment. The monthly salary (including work-related expenses) of a deputy is now 2,171 EUR⁷. The additional remuneration of an MP consists of compensation for

³ Rules of Procedures of the Assembly, Rule 13

⁴ Rules of Procedures of the Assembly, Rule 13.2

⁵ Rules of Procedures of the Assembly, Rule 14.1

⁶ The Assembly Committee for Immunities and Privileges of Deputies was established for the first time during the 3rd legislature of the Assembly on 4 January 2008. The founding meeting of this committee was held on 25 February 2008. To date on the recommendation of the Assembly's Committee for Immunities and Privileges of Deputies, based on the Rules of Procedure of the Assembly, one deputy's mandate has been terminated. According to the Rules of Procedure (Rule 14.3), "*If a Member of the Assembly throughout a period of six months attends none of the sessions of the Assembly or of a Committee, of which he/she is a member, and cannot show good cause to the satisfaction of the President of the Assembly, the President shall propose to the Assembly that the Member concerned cease to be a Member.*"

⁷ Following the establishment of the Provisional Institutions of Self-Government (PISG), Administrative Direction no. 2001/23 Implementing UNMIK Regulation no. 2001/9 on a Constitutional Framework set the remuneration rates of the Kosovo Assembly Members. The President of the Assembly receives a monthly salary of DM 1080 (about 540 EUR). In addition, the President of the Assembly is paid a monthly allowance equivalent to 20% of his/her monthly salary to cover expenses related to official duties. Other members of the Assembly each receive a monthly salary of DM 800 (about 400 EUR). In addition, the members of the Assembly are paid a monthly allowance equivalent to 25% of their monthly salary to cover expenses related to official duties.

participation in sessions of the Assembly and of its committees, for acting as chairpersons on committees or in parliamentary groups, and for engaging in activities that are not considered as part of the usual activities of the Assembly, in addition to official duty travel and accommodation expenses. The authorisation of additional remuneration for an MP requires a special decision by the Presidency of the Assembly.

The salary regulation and the authorisation to set the salary level for MPs are not consistently regulated. The Assembly, benefiting from its sovereign right to decide, took a decision on the salaries of MPs and other Assembly staff without consulting the government and without taking into account the general regulation on salaries and the salary levels in other state institutions. This attitude has created some friction with other institutions and generated similar actions (for example, the President of Kosovo increased the salaries of civil servants in the President's Office without consulting the government). All of these situations are expected to be regulated by the new Law on the Incomes of Public Officials. The salaries of deputies, as for all public officials, are subject to taxation based on the Law on Personal Tax Income (03/L-115).

Looking at the regional context, the general level of salaries in Kosovo, and the salaries of some relevant senior officials⁸, the salaries of MPs are very high. Furthermore, additional remuneration for participation in sessions and committees of the Assembly does not seem reasonable, as such participation is part of an MP's usual function. To be paid for a period of 12 months after termination of office is also a supplementary benefit that should be reconsidered.

1.3 Asset Declaration

The obligation for senior officials to declare assets is defined in the Anti-Corruption Law⁹. Senior officials are obliged, within a month of taking up duty, to declare all personal assets and all assets of close relatives to the Kosovo Agency for Anti-Corruption (KACA)¹⁰. Senior officials are considered to be the following: President, Prime Minister, deputies of the Prime Minister, President of the Assembly and MPs, ministers, deputy ministers, permanent secretaries and directors of departments. The assets that should be declared by senior officials are as follows: real property, movable property with high values (more than 5000 EUR), shares and securities, cash or bank deposits, debts and other obligations, and annual income.

The KACA is in charge of requesting senior officials to provide all information on their assets and to provide annual reports on any changes in the status of assets by the end of March of each year. If a senior official fails to report on his/her assets, the KACA can set a further deadline to fulfil the obligation. If that deadline is not met, then the KACA is to report to the authority where the senior official is in office. In this case the employing authority is to reduce the official's monthly salary by one-fifth. If within three months the senior official has still not forwarded to the KACA the declaration of assets, the employing authority is to be requested to start the dismissal procedure. The Anti-Corruption agency has developed a specific form for the declaration of assets of senior officials (including members of the Assembly). With regard to MPs and members of the government, there have been no cases where sanctions were taken. Some MPs from Serb minority parties failed to submit the declarations, but the Presidency of the Assembly did not sanction them. The law is also

⁸ For instance, the monthly salary of the President of the Supreme Court is 666 EUR. However, salaries of other senior political officials are also relatively high for the region (the monthly salary of the President is around 3100 EUR and the monthly salary of the Prime Minister is around 2670 EUR).

⁹ The provisions of the Anti-Corruption Law related to the declaration of assets of senior officials will be replaced by the Law on Declaration and Origin of the Property of Public Senior Officials, which is in the approval procedure in the Kosovo Assembly. This draft law provides in greater detail the procedures for declaration and verification of assets, monitoring system, sanctions, etc.

¹⁰ Anti-Corruption Law, article 40

unclear with regard to the sanctions, as MPs cannot be dismissed for an administrative breach; to terminate an MP's mandate, special requirements are in force¹¹.

Based on the Law on Anti-Corruption, the completed declarations have to be submitted to the KACA by 31 March for assets relating to the previous year. From the Kosovo Assembly the KACA received in 2008 97.5% (123) of the completed forms (from 120 deputies and three senior civil servants – 120 declared their assets and three did not)¹².

It is worth mentioning that in 2008 a total of 747 senior officials in Kosovo were obliged to declare their assets to the KACA; 733 of them (98.1%) declared their assets while 14 did not¹³. The KACA currently has 35 staff members (there were 14 staff one year ago).

After examination of the declarations, it has been found that 280 (37.4%) of the forms were not correctly filled. In 216 (28.9%) of the cases, the annual income was not declared. In 55 (7.3%) of the cases, not enough information was provided about real property, while in 52 (6.9%) of the cases there was a lack of information about cash and movable property or other data.

The legislation on asset declaration follows common European practice (even if there are some misunderstandings related to possible sanctions for elected officials that need to be reviewed). The KACA is improving its capacities for assessing declarations, but it lacks the power to enforce sanctions. Declarations of assets are not available to the public or to the media. If they were made public, the social control could be an additional way of checking the validity of declarations and of improving the effectiveness of this mechanism.

1.4 Conflict of Interest

The Rules of Procedure oblige members of the Assembly to inform the President of the Assembly in writing, within 30 days of the inaugural session of the Assembly, of all the financial interests they or their immediate family may possess and of the financial benefits they may receive from the following: employment, company directorship, consultancy, lecturing and journalism, gifts and hospitality, and financial sponsorship or support received as Assembly candidates or members (other than from the political party to which they belong). The Anti-Corruption Agency is the body responsible for supervising the enforcement of rule and other provisions that are not currently adhered to¹⁴.

The Constitution of Kosovo (article 72) stipulates that a member of the Assembly cannot remain in an executive post in the public administration or in a publicly-owned enterprise or exercise any other executive function. Regarding incompatibilities, the Constitution also stipulates (article 73) that MPs at the same time cannot hold the following positions: judges and prosecutors, members of the Kosovo Security Force or of the Kosovo Police, officials of the Customs Service of Kosovo, officers of State Security, heads of independent agencies, diplomatic representatives, and chairpersons or members of the Central Election Commission. Regarding private activities, there are no restrictions. However, the draft Law on Deputies foresees that MPs will also not be able to hold positions as members of a board in a private company, advisors or representatives of a business or company, editors-in-chief or deputy editors-in-chief in any publishing or broadcast media apart from those belonging to political parties,

¹¹ This is one of the misunderstandings of the current law (the amendment to which is being prepared). Actually, the law treats elected officials as civil servants or as any other public employee, i.e. as if they were also submitted to an employment relationship instead of having a political mandate.

¹² KACA, Annual Report 2008

¹³ Idem

¹⁴ The KACA Annual Report 2008 indicates that, following an examination of the asset declarations of senior officials, to date the Agency has received information based on the existence of conflict of interest involving 45 senior officials: 29 cases in the government, 12 in the Assembly, and one each in the Presidency, the courts, local government and another institution. In 19 cases the Agency sent letters to the senior public officials requesting them to avoid the conflict of interest. Seven cases are being considered, while 19 others were closed as the Agency concluded that the officials had not breached the Law on Anti-Corruption and the Law on Prevention of Conflict of Interest by Senior Officials.

employees in any public or private company, and lawyers or undertake any economic activities that would constitute a conflict of interest with their positions as MPs.

Law no. 02/I-133 on Preventing Conflict of Interest in Exercising Public Functions covers, inter alia, the members of the Kosovo Assembly. The law provides rules, subjects, responsibilities, and competences for identifying, treating, and solving the cases of public and private interests of an official while exercising a public function. It provides principles and limitations in exercising other activities, in addition to exercising the public function, actions that are forbidden to the official, as well as activities that public officials are allowed to exercise while exercising their public functions. The authority responsible for implementing the law is the Anti-Corruption Agency.

During the last legislature and now as well a number of public officials have not respected the rule that a public official may receive only two salaries from the Kosovo Budget – the first a full salary and the second only half the value of a full salary.

Despite the progress in setting up the legal and institutional framework, Kosovan institutions are far from displaying what could be defined as integrity. A number of factors – varying from high politicisation, 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 favoured the development of widespread practices based on nepotism and relationships rather than legal practices. Institutions and senior officials are not taking firm action against these practices and are sometimes a part of them. A number of reports issued by the Office of the Auditor-General, international organisations and NGOs have highlighted the lack of accountability. Unfortunately, these reports are not seriously considered by the Assembly or by the government.

2. Political Party and Electoral Campaign Financing

The legal framework for the political party and electoral campaign financing in Kosovo includes the following: UNMIK Regulation no. 2004/12 on Elections for the Assembly of Kosovo amended by UNMIK Regulation no. 2007/26, UNMIK Regulation no. 2004/11 on Political Parties, UNMIK Regulation no. 2004/09 on the Central Election Commission as amended (legal basis set down in the Constitution, article 139), and Electoral Rules on the Campaign Spending Limit and Financial Disclosure issued before each election in Kosovo. In 2008 the Kosovo Assembly approved the Law on General Elections and the Law on Local Elections, which set the new legal basis for future central and local elections in Kosovo. This assessment will be based on the legislation and institutional set-up that were in force during the last elections in Kosovo; however, the new legislation will be mentioned whenever relevant.

2.1 Expenditures

When discussing the topic of expenditures we should take into account the special complex situation in Kosovo, with the combination of international institutions and the recent involvement of Kosovan institutions. The political financing issue was meant to be addressed in 2001 with the adoption of the Electoral Rule of October 2001 on “Campaign Financial Disclosure and Spending Limits”. The Electoral Rule required political entities to disclose all campaign income and expenditures and the value of owned assets. Section 4 of the rule established the OSCE Political Finance Audit Office and gave it the authority to inspect the financial records of any political entity.

A number of regulations¹⁵ set out the campaign financial disclosure requirements for those political entities contesting the 2007 Kosovo elections. The Central Elections Commission (CEC) is in charge of establishing by electoral rule a limit on the campaign expenditures of certified political entities,

¹⁵ Regulation no. 2007/26 amending UNMIK Regulation no. 2004/12 on Elections for the Assembly of Kosovo, UNMIK Regulation no. 2007/27 on Municipal Elections in Kosovo, UNMIK Regulation no. 2004/11 on the Registration and Operation of Political Parties in Kosovo, and the Central Election Commission Electoral Rule no. 10/2007 on Campaign Spending Limits and Financial Disclosure

which are to be expressed as an amount per registered voter no later than 40 days before the date of the election. For the last elections for the Kosovo Assembly held on 17 November 2007, the campaign spending limit was 500 EUR per 1000 registered voters¹⁶. Therefore, based on the total number of registered voters in Kosovo, the campaign spending limit was 726,000 EUR¹⁷.

For the 2007 elections the following conclusions were highlighted by the OSCE¹⁸:

- The Political Party Registration Office found no evidence that any of the political entities taking part in the elections had exceeded the spending limit for the campaign period. This was due to the fact that the spending limit was cumulative for all elections in which the political entity had participated¹⁹.
- Many of the political entities have still not fully complied with the requirements of financial disclosure (76 complaints were filed against the entities that had failed to meet the requirements for disclosure, which were mainly related to failure to disclose sources of income). The Political Party Registration Office was concerned by the continued resistance, in particular by some larger political parties, to the disclosure of financial records. This resistance was particularly disturbing as the elected representatives of these parties were increasingly responsible at both municipal and central levels for levying taxes, awarding contracts, budgeting, and spending of public funds.

2.2 Reporting and Control

Each political entity that is certified to participate in elections is obliged to submit a Campaign Financial Disclosure Report for the Entity (Regulation no. 2004/12, article 26.1). Political entities are also obliged to appoint a person who will serve as their financial representative. The Central Election Commission, acting through the Registration Office of Political Parties, may audit any Campaign Finance Disclosure Report or Candidate Financial Disclosure Form.

Besides reporting on electoral campaign expenses, political parties are obliged to provide regular reports on their income and expenditures every six months. These reports must be submitted to the Registration Office of Political Parties at OSCE²⁰. The Auditor-General, in the Audit Report of 2006 to the Kosovo Assembly, indicated that nine political parties had delivered their financial report for the year 2006, two political parties had delivered their report only for one period of the year 2006, six political parties had not delivered any reports for the year 2006. The Audit Report on the reports submitted included the amount of revenue provided by the Kosovo Consolidated Budget and by donors²¹.

Although this is the fourth year that the Political Party Registration Office auditors have performed this audit, several political entities and the persons responsible for their financial management experienced auditing for the first time in 2008. This would explain why the audited records and documentation are of a lower quality than required and may contain an undesirable audit risk (OSCE report 2008).

Individual candidates who are members of political parties or independent candidates are also required to provide information on their personal assets through the forms Candidate Personal Income and Asset Statements (CPIAS), which were first introduced by the CEC.

¹⁶ CEC Electoral Rule no. 10/2007 on the Campaign Spending Limit and Financial Disclosure

¹⁷ CEC decision of 11 October 2007

¹⁸ Report on Political Entity Campaign Financial Disclosures for 2007 Kosovo Elections, page 7

¹⁹ For example, a political entity running for the Kosovo Assembly had a spending limit of 726,000 EUR and if the same entity were running in the municipal elections the spending limit for that entity would be increased for the amount of spending-limit established in each municipality. Therefore, for large parties running for the Kosovo Assembly and in many municipalities, the spending-limit was almost doubled.

²⁰ Section 19 of Regulation no. 2004/11

²¹ OAG report on political parties for 2005

In 2002 the OSCE made copies of the CPIAS available for public scrutiny. Access was granted through the OSCE headquarters in Pristina and in each municipality. For the 2004 Kosovo Assembly elections, all candidates were required to submit a completed Candidate Financial Disclosure Form. Completed forms were available for public access on the OSCE website. The same procedure was followed for the elections of 17 November 2007 at central and municipal levels, when information on candidates' assets were published on the OSCE website. No complaints were made following this disclosure.

2.3 Sanctions

The CEC may charge administrative fees of not more than 500 EUR²², in accordance with a schedule set out in the relevant electoral rule, to political entities that submit Campaign Financial Disclosure Reports or Candidate Financial Disclosure Forms after the applicable deadlines. A political entity may appeal a decision of the CEC imposing such a fine to the Election Complaints and Appeals Commission²³.

The Political Parties Registration Office will impose administrative fees for late submission of the Campaign Financial Disclosure Reports based on the Rules on Campaign Spending Limits, as follows:

- 1-5 days' delay: 100 EUR per political party, citizens' initiative or coalition and 20 EUR per independent candidate;
- 6-10 days' delay: 200 EUR per political party, citizens' initiative or coalition and 30 EUR per independent candidate;
- 10-15 days' delay: 300 EUR per political party, citizens' initiative or coalition and 50 EUR per independent candidate (article 6 of the Central Election Commission Rule no. 10/2007).

The Political Parties Registration Office or any certified political entity may file a complaint with the Election Complaint and Appeals Commission if a political entity fails to submit a Campaign Financial Disclosure Report or if it is incomplete or inaccurate²⁴.

For the 2007 elections some political entities did not fully comply with the requirements for financial disclosure. So far, complaints have been filed against 49 political entities for the pre-campaign period, 22 political entities for the campaign period, and five political entities for the campaign period related to the second round of the municipal elections. The fines are decided upon by the Election Complaints and Appeals Commission, and the maximum fine that can be imposed is 200,000 EUR.

In total 168,750 EUR was the amount of fines imposed by the Complaints Commission for the 2007 elections on various political parties and individuals. However, it was not possible to confirm whether or not these fines had been paid.

2.4 Financial Sources

Generally a political party may not receive any funding except for contributions from individuals of no more than 20,000 EUR per calendar year per individual, provided that contributions in cash meet the requirements as provided by the Regulation on the Deterrence of Money-Laundering and Related Criminal Offences²⁵. Political parties can also receive membership fees or dues from members of the party in accordance with the party statute as well as funding and other support from the Kosovo Consolidated Budget. In any event, the contributor to the political party should provide his/her

²² Regulation no. 2004/12, article 30.1

²³ Regulation no. 2004/12, article 30.3

²⁴ Electoral Rule no. 10/2007

²⁵ UNMIK Regulation no. 2004/2 of 5 February 2004, as amended; a new law covering this area was approved by the Kosovo Assembly in 2008.

personal details, address, personal document number (ID, passport if he/she is a foreigner, driving license, etc.)²⁶.

If a registered political party receives a contribution that is not allowed by the applicable regulation, the president of the party is required to return the contribution to the contributor within two weeks of being informed of the contribution²⁷. A registered political party may accept direct funding and other support from the Kosovo Consolidated Budget, provided that such funding or support is: (a) specifically authorised in the applicable law; (b) allocated among recipients based on criteria formalized by the Assembly of Kosovo; and c) allocated in a manner that does not distinguish between those seats set aside for non-Albanian Kosovo communities and the remaining seats in the Assembly²⁸. Access by political entities to public funds is in proportion to the seats held in the Kosovo Assembly. The annual budget for the political parties with seats in the Assembly is 1,901,793 EUR.

The Political Party Registration and Certification Office, recently transferred from the OSCE to the CEC, is responsible for maintaining the registry of political parties, certification of all political entities to be included on a ballot, and the campaign spending-limit and financial disclosure articles of the Law on General Elections (Law no. 03/L073 of 5 June 2008). The proper use of funds allocated for elections and donations is controlled by the Auditor-General of Kosovo.

The Political Party Registration and Certification Office establishes and maintains a public information file containing current copies of the register of donors, indicating personal details of the contributor, the value of the contribution (if it exceeds 100 EUR per year), and the date on which the contribution was made (Law on General Elections).

So far the political parties in Kosovo have neglected rules related to their funding and the funding of electoral campaigns, and the institutions set up to enforce these rules have not been able to do so. It is not clear if any fines were imposed on the parties in this regard. Given the fragile democracy in Kosovo, it is still too early to expect clear reporting from political parties and voluntary enforcement of the sanctions.

3. Integrity of the Government

3.1 Government's and Ministers' Responsibility before Parliament

The government is accountable to the Assembly of Kosovo regarding its work. The Prime Minister, deputy prime minister(s) and ministers are jointly accountable for the decisions made by the government and individually accountable for decisions made in their areas of responsibility (Constitution, article 97.1,2). A motion of no confidence may be presented against the government on the proposal of one-third of all of the deputies of the Assembly (Constitution, article 100).

The Assembly elects simultaneously a new Prime Minister together with a list of ministers that he/she has proposed. Following the election of the Prime Minister, he/she may replace any minister without the consent of the Assembly. However, upon the resignation of the Prime Minister, the entire government is obliged to resign, and the government then continues in a caretaker capacity until the election of a new Prime Minister. Since the creation of the Assembly, there has not been any motion of no confidence against the government. However, in 2008 three parliamentary motions called by the MPs gave a new impetus to the work of the Assembly²⁹.

In accordance with policies set by the government, each minister is to be accountable to the Assembly for matters concerning his/her ministry, including the use of funds, through periodic reporting to the

²⁶ Regulation no. 2004/11

²⁷ Regulation no. 2004/11, section 16.7

²⁸ Regulation no. 2004/11, section 17.1

²⁹ The motion of the Foreign Affairs Minister Skënder Hyseni with the request of the Parliamentary Group AKR, the motion of the Minister of Health Alush Gashi with the request of the Parliamentary Group LDD, and the motion of Prime Minister Hashim Thaçi with the request of the Parliamentary Group of AAK

Assembly and reporting at the request of the Assembly. Since the adoption of the Constitution, a member of the government cannot also be at the same time a member of the Assembly [article 70.3(3)]. However, the transitional provisions of the Constitution allow government members to keep their positions deputies for the existing mandate until new elections take place.

As in most legislatures, the Assembly of Kosovo possesses a mix of mechanisms guaranteed by the Constitution and by Rules of Procedure that allow for oversight of the executive branch. These mechanisms include the question period, questions for written answers, interpellations, investigative committees, budgetary oversight mechanisms, oversight by parliamentary committee, and motion of no confidence.

3.2 *Interpellations and Parliamentary Questions*

Interpellation as an oversight mechanism is not used very often in the Assembly. The Rules of Procedures of the Assembly provide clear procedures that could be used.

Any member of the Assembly may ask a question, to be answered by any member of the government during the question period, provided that such a question is tabled in writing at the Table Office no less than 48 hours prior to the session. The Prime Minister has the discretion to defer the question to one of his/her ministers³⁰. In the legislatures of the Kosovo Assembly covering the period 2004-2007 a total of 16 interpellations were requested and 196 parliamentary questions were submitted. Most of the written questions that were submitted by Assembly deputies were answered by the respective ministers to whom the questions were addressed, while 14 unanswered questions were published in the *Information Bulletin* of the Kosovo Assembly. In 2008 (the most recent legislature), Assembly members did not request any interpellation, while parliamentary questions were the main instrument used by deputies for executive oversight. Based on information provided by publications of the Kosovo Democratic Institute, deputies of the Kosovo Assembly raised 250 parliamentary questions in 2008. The questions are considered to be probably the most effective oversight mechanism in the Assembly. However, many of the answers were considered to be inadequate and in some cases the answers were missing. In many cases ministers who had to answer were absent from the Assembly sessions.

3.3 *Parliamentary Enquiry*

When specific issues are raised, the Assembly may establish an ad hoc committee, which has all of the powers of investigation of a functional committee. Whenever the Assembly decides to establish such an ad hoc committee, its decision includes the establishment of the composition of the committee, in accordance with the relevant provisions of the Rules of Procedure. The Assembly may ask any citizen of Kosovo to testify to the committee and also determines the procedures, time frame for the committee and the funds to be provided for its work³¹. However, investigative committees have also been used very rarely by the Assembly. So far, only two investigative committees have been established³².

3.4 *Criminal and Legal Accountability*

Members of the government are to be immune from prosecution, civil lawsuit and dismissal for actions or decisions that are within the scope of their responsibilities as members of the government (Constitution, article 98). No waiver of immunity of a member of the government has been requested

³⁰ Rules of Procedure of the Assembly, rule 27

³¹ Rules of Procedure of the Assembly, rule 50

³² The first enquiry committee was established by the first Assembly legislature, but it was not functionalised. The only functional enquiry committee of the Assembly, established in November 2006, concerned financial breaches made by the former President of the Assembly and by the Ministry of Economy and Finance. This committee concluded on 23 February 2007 with a report, although no further measures were taken.

to date by the Assembly. Actually, it is not clear whether the Rules of Procedure of the Assembly also apply to members of the government as long as they maintain their positions as deputies.

In 2008, in 37 cases (or 25% of the total number of cases submitted to the KACA) government officials were denounced to the KACA for corrupt acts. Of these, 15 were closed by the Agency and 16 were transmitted to the Prosecutor's Office, while six other cases are still pending in the KACA³³. To date no other information has been provided by the prosecutors on the results of the investigations. On the other hand, the Prosecutor General has confirmed receipt of cases from the KACA, but has complained about the quality of the information and of the evidence collected. In cases where prosecutors had interrogated victims of corruption, they denied the case and gave other explanations. The Prosecutor's Office has been obliged to close a number of cases for lack of evidence³⁴.

3.5 *Conflict of Interest*

Law no. 02/I-133 on Preventing Conflict of Interest in Exercising a Public Function covers, inter alia, the members of the Kosovo Government. The competent authority responsible for implementation of this law is the Anti-Corruption Agency (article 18).

According to its Annual Report of 2008, the KACA has received information on 29 cases of conflict of interest of government officials. In 16 of those cases the conflict of interest has been avoided, four other cases are still in procedure, and nine cases were closed by the KACA due to a lack of evidence. The KACA has not reported any case of conflict of interest of senior level politicians. It is not considered to be a conflict of interest for ministers and other politically appointed officials to lecture in universities.

The draft Law on Government specifies that ministers cannot exercise any other full-time function. With the approval of the government, they can fulfil some unpaid honorific functions. The government will issue a specific regulation on this topic. No restrictions are foreseen regarding post-employment activities.

3.6 *Declaration of Assets*

The Anti-Corruption Agency is the body that supervises the asset declarations of "senior official persons" (including ministers, deputy ministers and members of the Assembly) based on the Anti-Corruption Law and other applicable legislation. If an official has still failed to submit the asset declaration three months after the deadline, the agency is to notify the body responsible for initiating the procedure for termination of office. In 2008 all government officials declared their assets, although in some cases with delays. However, the KACA has no mechanisms to oblige institutions to undertake measures against officials who do not comply with the rules on declaration of assets.

3.7 *Gifts*

According to the Law on Anti-Corruption, an official is not to accept gifts or other benefits except for formal gifts and occasional gifts of small value. All gifts received and their corresponding value must be recorded by the official in the catalogue of gifts kept by the institution in which the official performs his/her functions. If the Anti-Corruption Agency determines that the official is in breach of the rules, it must inform the institution in which the official holds his/her position³⁵.

³³ *New Mandate, New Opportunities: Evaluation of the work of the Assembly of Kosovo and recommendations for further development* (October 2008), Joint Report of National Democratic Institute and USAID, co-financed by OSCE, page 16

³⁴ Information provided by the Head Prosecutor to the Sigma team on 8 April 2009

³⁵ Administrative Instruction on the Registration of Gifts in Kosovo Institutions

3.8 *Remuneration of Government Members*

The applicable legislation does not prohibit deputies who are appointed as ministers from keeping both positions. This is allowed until the current mandate of the Assembly terminates. However, they must choose to receive the salary for only one of the positions. In former governments ministers who were also deputies kept both positions, and even the rules that set out the obligation regarding the primary and secondary salaries was generally not respected. To address this issue, the government issued on 12 February 2008 Administrative Instruction no. 02/2008 on the Wages of Political Appointees Staff, which stipulates that when political appointees also hold the political function of representatives of the Kosovo Assembly, they are entitled to only one salary. Political appointees cannot benefit from double wages if they are members of the board of any public enterprise based on law. The political appointees covered by the instruction are the Prime Minister, deputy prime ministers, ministers, deputy ministers and political advisors.

Currently the Prime Minister's monthly salary is around 2670 EUR and ministers are paid around 1200 EUR per month. Additional remuneration has also been foreseen for ministers, which was mainly related to remuneration for their participation in boards of public companies. Last year the government nevertheless issued a decision that forbids ministers from participating in such boards.

The salaries and other additional income of all public officials and members of legislative, executive, and judicial bodies are subject to taxes based on the Law on Personal Tax Income (Law no. 03/L-115), as are all public employees in the public sector.

During the second mandate and especially after changes in leadership and the initiation of institutional reform, the use of oversight mechanisms by the Assembly over the government has increased. Despite considerable progress, the effectiveness of oversight mechanisms can still be improved through supplements to the Rules of Procedure and through more active MPs and better-supported opposition proposals³⁶.

Rules governing integrity in the government are improving and seem to be adequate. However, the implementation of these rules remains a problem.

4. *Integrity in the Judicial System*

4.1 *Independence of Judges*

The judiciary was an exclusive competence of UNMIK until late 2005, when these powers were transferred to the Ministry of Justice. The final power in justice was nevertheless subject to the final authority of the SRSG until the new Kosovo Constitution came into force in June 2008. With the approval of the new Constitution, the power to appoint, reappoint and dismiss judges was transferred to the President of Kosovo, upon the recommendation of the Kosovo Judicial Council (KJC).

The judicial power is legally described as unique, independent, fair, apolitical and impartial and ensures equal access to the courts (Constitution, article 102, para. 2). According to the Constitution and the law, judges are independent and impartial. They are not allowed to hold any other public office. Judges of all courts in Kosovo must be distinguished jurists of the highest moral character and must have adequate qualifications. The membership of the judiciary should reflect the diversity of the people of Kosovo. The immunity of judges is guaranteed by the Constitution.

In view of the special situation in Kosovo, apart from Kosovan judges there are also international judges and prosecutors who serve within the judicial system. The UNMIK judges and prosecutors have now been replaced by EULEX judges and prosecutors. They are meant to work with the applicable law under the Constitution. However, there is currently a dualism in the application of legislation due to the confusion created after the deployment of EULEX, particularly in the northern

³⁶ *New Mandate, New Opportunities: Evaluation of the work of the Assembly of Kosovo and recommendations for further development* (October 2008), Joint Report of National Democratic Institute and USAID, co-financed by OSCE, page 16,

area of Kosovo where the authority of Kosovan institutions has not yet been exercised. This situation creates an ambiguity in terms of the application of different legislation in different parts of the territory of Kosovo.

4.2 Appointment and Dismissal of Judges

After the deployment of UNMIK, judges and prosecutors were appointed promoted, transferred and dismissed by the SRSG from the lists of candidates proposed and recommended by the Kosovo Judicial and Prosecutorial Council and endorsed by the Kosovo Assembly.

Since the beginning of 2006 the management and supervision of the justice system has been assured by the Kosovo Judicial Council (KJC), established by UNMIK Regulation no. 2005/52. The KJC is an independent professional body composed of local and international judges and a number of experts who are not judges from the executive and legislative branches and from academia. The President of Kosovo now appoints, reappoints and dismisses judges upon the proposal of the KJC. The KJC is also responsible for prosecutors, pending the establishment of the Kosovo Prosecutorial Council.

A transition from the current membership of the KJC to the new membership is foreseen in the transitional provisions of the Constitution. The KJC under the new Constitution will be composed of 13 members for a term of five years: five members are to be judges elected by the members of the judiciary; four members are to be elected by deputies of the Assembly holding seats attributed in the general distribution of seats, with at least two of the four being judges and one a member of the Kosovo Chamber of Advocates; two members are to be elected by the deputies of the Assembly holding reserved or guaranteed seats for the Kosovo Serb community, with at least one of the two being a judge; and finally, two members are to be elected by the deputies of the Assembly holding reserved or guaranteed seats for other communities, with at least one of the two being a judge.

The KJC is responsible for developing policies, setting regulations and guidelines, and providing administrative oversight of the judiciary and the courts. It is responsible for recruiting and proposing candidates for appointment and reappointment to judicial office. The KJC is also responsible for the transfer of judges and disciplinary proceedings concerning them. It determines the criteria and procedures for reappointing judges. In addition, the KJC is responsible for conducting judicial inspections, judicial administration, developing court rules in accordance with the law, hiring and supervising court administrators, developing and overseeing the budget of the judiciary, determining the number of judges in each jurisdiction, and making recommendations for the establishment of new courts.

The Kosovo Judicial Council is a fully independent institution in the performance of its functions.

To be appointed as a judge in Kosovo, an applicant must satisfy the minimum criteria, as follows: be a habitual resident of Kosovo, of high moral integrity, capable of performing full-time duties and work, possess a law degree that is valid in accordance with Kosovo law, have passed the Kosovo Bar Examination or currently be a member of the Bar, have passed the Judicial Entry Examination for judges, have attended and completed the training required by law and other applicable rules, and have a minimum of three years of legal experience.

Applicants for service as lay judges must satisfy the following minimum criteria: have been a habitual resident of Kosovo for five years, be at least 25 years of age at the date of submission of the application for the post, be of high moral integrity and not have been engaged in discriminatory practices, as defined by law and judicial rules and procedures³⁷.

The structure of the courts is to be regulated by law. Pending approval of the Law on the Courts, the current structure is regulated by the constitutional framework, based mainly on the system established by the old legislation, when Kosovo was part of Yugoslavia. The court system consists of the Supreme Court, district courts, municipal courts, minor offence courts, and the High Court of Minor Offences. The Constitution determines the basis for the Constitutional Court, which is an independent body protecting constitutionality; it is the final interpreter of the Constitution (Constitution, article 4,

³⁷ UNMIK Regulation no. 2005/52

paras. 5, 6). The Law on the Establishment of the Constitutional Court has been approved, while the process of establishment of the court is currently underway. A draft Law on Courts has been in preparation for many years now, but has not yet been adopted. Actually 1770 employees are engaged by the KJC, including 302 judges and 89 prosecutors; additional positions have been made available in the 2008 budget to increase these numbers to 392 judges and 92 prosecutors. Support staff currently number 1313, of whom 66 are engaged in the KJC secretariat. EULEX judges will have competences to monitor the judicial system as well as to deal directly with cases (Law no. 03/I-053 on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo).

The review of the suitability of all applicants for permanent appointment as judges and prosecutors (after the initial mandate of three years, in accordance with article 105 of the Constitution) is carried out by the Independent Judicial and Prosecutorial Commission (IJPC), which is an autonomous body of the Kosovo Judicial Council established by UNMIK Administrative Direction no. 2008/2. In the first phase, the IJPC is staffed by international judges and prosecutors and financed by donors. In subsequent phases, local judges and prosecutors will also serve on the IJPC.

4.3 Remuneration of Judges

The monthly salaries of judges at the different levels of the judiciary range between 420 EUR for minor offense court judges and 666 EUR for the President of the Supreme Court. Municipal court judges receive 471 EUR per month, while at the district court level, the judicial salary is 549 EUR per month, and Supreme Court judges are paid 627 EUR per month. Court presidents at each level receive a slightly higher salary. The take-home pay is lower due to income tax and pension deductions. The same remuneration is applied for prosecutors.

Judges are prohibited by the Judicial Code of Ethics from receiving compensation in addition to their salary, except for a small fee for lecturing, if approved by the Kosovo Judicial Council. Judges receive no benefits in addition to salary. UNMIK Administrative Direction no. 2007/6 stipulates the honorarium to be paid to local members of the KJC. The KJC members attending council or committee meetings are paid at the rate of 50 EUR per meeting, up to a monthly amount of 200 EUR. The President of the KJC is paid 200 EUR per month. It is generally considered that the insufficient remuneration received by local judges continues to be a problem and is often the fundamental cause for their acceptance of bribes and succumbing to threats and other forms of corruption. The general deterioration in the standard of living resulting from Kosovo's low salaries and high prices is often cited as a justification for the corrupt practices of some judges.

4.4 Accountability of Judges

The Kosovo Judicial Council (KJC) is responsible for establishing the Judicial Disciplinary Committee (JDC), which initiates and resolves first-instance issues of alleged misconduct of judges and lay judges and determines appropriate sanctions in the event of findings of misconduct. The JDC is composed of the Vice-Chair of the KJC, who serves as chairman of the committee and two members of the KJC, who are appointed to terms of one year on rotation, with no possibility of consecutive appointment. Complaints are to be referred to the Judicial Inspection Unit (JIU) for investigation. Once the JIU completes its investigation, it determines whether charges should be filed with the JDC. The JDC then decides on any disciplinary sanctions other than the removal of judges and lay judges from office; it may recommend their removal but must present any such recommendation, including its rationale, to the KJC in writing. Throughout the disciplinary proceedings the judge or lay judge has the right to represent himself/herself or to be represented by legal counsel, and both the judge/lay judge and his/her legal counsel are to be granted access to the entire disciplinary file.

The JDC may impose sanctions, such as reprimand and warning, suspension from office without pay for up to six months, recommendation of removal from office, or recommendation of removal from the function of lay judge. Judges can be dismissed from their positions in the event of physical or mental incapacity, serious misconduct, or failure to duly execute the office of judge.

Decisions of the Judicial Disciplinary Committee may be appealed directly to the KJC, excluding the Vice-Chair of the KJC and the KJC members who had been part of the original proceeding. The final decision for the dismissal of judges on the proposal of the KJC remains the responsibility of the President of Kosovo. Until the Prosecutorial Council is established and operational, the procedure applied for judges will be applied *mutatis mutandis* for prosecutors as well.

There are two judicial ethics codes in Kosovo, the Code of Ethics and Professional Conduct for Judges and the Code of Ethics and Conduct for Lay Judges. These new codes were adopted by the Kosovo Judicial Council (KJC) in 2006. The Provisional Criminal Code of Kosovo as amended in 2008 includes provisions for dealing with corrupt judges. A judge who has the intent to obtain an unlawful material benefit for himself/herself or another person or to cause damage to another person or who issues an unlawful decision will be punished by imprisonment of six months to five years.

The Ombudsperson Institution has reported several complaints and allegations of corrupt practices within the judiciary. These allegations are usually impossible to prove, so that even if a person complains to the competent Judicial Inspection Unit within the UNMIK Department of Justice, the complaint rarely leads to disciplinary measures or to the removal from office of a judge³⁸. In 2007-2008 the Ombudsperson Institution continued to receive complaints alleging widespread practices of corruption within the judiciary. The existing corruption prevention mechanisms do not appear to have improved the public's confidence in local courts.

Four judges were dismissed by the KJC following corruption cases and another five were suspended and placed under investigation procedures for the same reasons.

In 2008 a total of 33 cases concerned denouncements to the KACA for corruptive acts by judges. The KACA sent 11 of these cases to the Prosecutor's Office, 21 cases were closed for lack of evidence, and one case is still in the procedure of the KACA³⁹.

4.5 Status of Prosecutors

The highest authority for the appointment of prosecutors in Kosovo, as for judges, is the President of Kosovo. The Constitution calls for an independent Kosovo Prosecutorial Council (KPC), but until it is established and operational all of the procedures applying to judges will be applied to prosecutors as well. A draft Law on the Prosecutorial Council as well as a draft Law on the Organisation of Prosecutors' Offices are in the legislative procedure.

Due to the lack of a new law, the organisation and jurisdiction of the Public Prosecutors' Offices in Kosovo are based on the Law of the Public Prosecutor's Office of the Socialist Autonomous Province of Kosovo no. 32/76 and several amendments to that law. The Public Prosecutor is responsible for investigations in criminal matters, economic procedures and minor offence procedures, as required by law. The Public Prosecutor can also take actions for which he/she is authorised by law in the civil procedure, extra-judicial procedure, executive procedure, administrative procedure and special procedure⁴⁰.

The Chief State Prosecutor is to be appointed and dismissed by the President of Kosovo upon the proposal of the Kosovo Prosecutorial Council. The mandate of the Chief State Prosecutor is for seven years, without the possibility of reappointment. Based on the law he/she can give to public prosecutors obligatory instructions for work in his/her domain and can also take over tasks from the competences of the lower Public Prosecutors' Offices. The Public Prosecutors' Offices are represented by a public prosecutor. In 2001 the Kosovo Judicial and Prosecutorial Council approved the Code of Ethics and Professional Conduct for Prosecutors. This code, which remains applicable, was updated in 2006.

³⁸ Ombudsperson Institution, Annual Report 2008

³⁹ KACA, Annual Report 2008

⁴⁰ Law of the Public Prosecutor's Office of the Socialist Autonomous Province of Kosovo no. 32/76, article 12

Law no. 03/L-052 on the Special Prosecution Office of Kosovo provides for the establishment of a permanent and specialised prosecutorial office operating within the Office of the State Prosecutor of Kosovo and composed of Kosovan prosecutors; five additional prosecutors from the EULEX team are also appointed to the Special Prosecution Office and operate under the established EULEX rules. This office is responsible for dealing with cases related to terrorism, organised crime, war crimes, intimidation during criminal proceedings for organised crime, etc.

It is assessed that the Public Prosecutors' Offices are not effective enough in carrying out the anti-corruption activities provided by law. There are a variety of reasons for the ineffectiveness of the Offices. Mention should be made of the lack of specialised prosecutors dealing with specific crimes. Another issue relates to the problems inherited from UNMIK, which acted totally separately from the Kosovan prosecutorial authorities. Co-operation with the investigative police, which is part of the executive, and the financial dependence on the Ministry of Justice have also hampered the effectiveness of the State Prosecutor's work. The State Prosecutor has indicated the ineffectiveness and lack of willingness of the justice system to consider cases related to corruption. The KJC has reported the suspension of two prosecutors following corruption cases. However, the State Prosecutor's reports indicated that approximately 10% of all prosecutors are being investigated in corruption cases⁴¹. The KACA reports five cases related to prosecutors in 2008, two of which were reported to the Prosecutor's Office for further investigation.

The judiciary system in Kosovo (including prosecutors) has until now suffered from instability. In spite of some legal improvements, there are concerns about the ongoing politicisation of judges and about political pressures on prosecutors and judges in some cases. This situation is expected to change with the new draft Law on the Organisation of the Judiciary, but the delays in approving that draft law are prejudicing the system. The continuing role of the President of Kosovo in appointing and dismissing judges raises concerns and must be abolished. Although the nomination process would seem to guarantee the independence of the judiciary, this process contradicts the principle of separation of the three branches of power – executive, legislative and judiciary – and is an obstacle to the establishment of an independent judiciary in Kosovo (Ombudsperson Institution's report of 2008). A better understanding of the content and relevance of an independent judiciary that is coherently assumed and implemented is still needed.

Another issue is related to the number of judges. Although the cases presented in the courts have increased on average at the rate of 25% every year since 2001, the number of judges has not increased at the same pace. This situation creates a large backlog of cases and results in huge delays in solving cases. From these delays derives the dissatisfaction of the general public with the judiciary. Also the allocation of cases to various courts creates problems in terms of workload. The Supreme Court is overloaded with administrative cases (about 38% of the cases) and should be examining those cases on merit, not only procedurally. However, the large number of cases and the low number of judges do not enable the Supreme Court to enter into the merits of the cases examined⁴².

The salaries of judges and prosecutors are low when compared to those of officials belonging to the executive and legislative branches of power. Low salaries are reported as a reason for the unattractiveness, high turnover and corruption in the judiciary. A better balanced level of remuneration must be achieved.

The legal framework related to the organisation of the judiciary needs to be completed and implemented. The capacity of the judiciary to fight corruption and organised crime requires close attention and may need specialised support.

⁴¹ Interview of Sigma team with State Prosecutor on 8 April 2009

⁴² All data was obtained from the KJC Statistics Department.

5. Anti-Corruption Policies and Strategies

5.1 *Anti-Corruption Strategy and Action Plan*

The Government of Kosovo has set as one of its priorities the fight against corruption. The government has the difficult task of establishing integrity in the public sector and improving the image given by the state to the public, both internally and externally.

The previous anti-corruption strategy, which covered the period 2006-2007, had set as objectives new legislation, law enforcement, public awareness and civil society involvement. The Office of Good Governance in the Prime Minister's Office was the central policy co-ordination institution and oversaw the process of implementation of the strategy and action plan. In the meantime, a chapter of the current PAR Strategy focuses on anti-corruption measures. A special working group co-ordinates all of the efforts of the concerned institutions and reports to the Ministry of Public Services, the body responsible for overseeing the implementation of the strategy.

Recently, under the lead of the KACA, the National Strategy on Anti-Corruption was drafted, approved by the government and proceeded to the Assembly for approval. The Assembly returned the draft strategy to the KACA for revision; one of the justifications for this action was that the draft strategy was not accompanied by an action plan. The KACA is now drafting the action plan, which will accompany the draft strategy in the next round. The strategy was drafted in co-operation with the Office of Good Governance and other public institutions, with the support of international organisations.

5.2 *Anti-Corruption as Part of Public Administration Reform in Kosovo*

The Strategy and Action Plan for Public Administration Reform incorporates in a separate chapter measures and activities to combat corruption in the public administration in Kosovo. A sub-working group on anti-corruption in the public administration has been established. This group, chaired by the Office of Good Governance in the Prime Minister's Office, is responsible for co-ordinating activities and measures set out in the section on anti-corruption in the Strategy and Action Plan for Public Administration Reform. This sub-working group will report directly to the Working Group for the Co-ordination of Public Administration Reform, chaired by the Ministry of Public Services. However, apart from undertaking several legislative and other measures, the PAR Strategy has not been effectively implemented by the government. The anti-corruption portion of the PAR Strategy has had the same outcome. Currently, as part of the functional review of the government programme, a team of experts has started to assess the anti-corruption system and will provide recommendations for improvement by mid-2009.

5.3 *Anti-Corruption Legislative Measures and Institutional Framework*

As part of the previous 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 to fight corruption in the area of administrative investigations of public corruption and the publicising of the most serious violations of the law, nepotism in recruitment, conflict of interest, standards on giving and accepting gifts in the public administration, etc. The draft Law on Amending the Anti-Corruption Law has been prepared and is in the approval procedure. This law is expected to address several gaps in the current law, including the issue of the Anti-Corruption Council and its relations with the KACA.

Many pieces of legislation have important relevance for anti-corruption efforts. This legislation includes the following: Criminal Code as amended and new Criminal Procedure Code, both of which entered into force on 1 April 2004; Law on Access to Official Documents; Law on Foreign Investment; Law on Payment Transactions; Law on Standards for Financial Reporting; and Law on Liquidation and Reorganisation of Legal Persons in Bankruptcy. A draft Law on Whistle-blowing and Protection of Witnesses is being prepared. As many allegations of corruption are connected with the procurement procedure, the government has adopted a comprehensive legal package in this area, with

a number of institutions in charge of ensuring the correctness of the procedure, i.e. the Public Procurement Regulatory Commission (PPRC) and the Procurement Review Body (PRB). However, it looks as though the actors in procurement procedures are rather clever, as the Prosecutor's Office has declared that in the cases they investigated for corruption the paperwork had been done correctly and no irregularity could be found. Therefore, it seems that more sophisticated tools and methods are needed for investigating suspicious cases.

The Financial Intelligence Centre (FIC) is mandated to combat money-laundering and the financing of terrorism. The FIC has been established pursuant to the provisions of UNMIK Regulation no. 2004/2 as amended, "On the deterrence of money-laundering and related criminal offences", promulgated on 6 February 2004.

The establishment of the FIC is directed at enhancing law enforcement capacities, particularly in information-gathering and analysis, to deter money-laundering, terrorist-financing and related criminal offences through greater transparency in financial transactions.

The FIC receives and analyses the required reports, ensures compliance and co-operates with its international counterparts and law enforcement agencies in tracing illicit money outside and inside Kosovo. Actually the FIC is run by internationals, but its status has not yet been defined. The FIC has issued a number of administrative directives that set the rules and procedures of the work related to the fight and prevention of corruption or other illegal activities, such as procedures and obligations for electronic fund transfers, lists of persons or entities suspected to be involved in the financing of terrorist activities, money-laundering, etc.

The KACA and the Public Prosecutor's Office complain that the co-operation with FIC is not at the desired level, as they do not receive information in due time and they are sometimes not given access to information.

In the Prime Minister's Office functions the **Office of Good Governance**. While this office was the first anti-corruption structure created by the government, it now has a complex role and a mission varying from human rights' protection to gender equality. The office is nevertheless still the focal point of the government in anti-corruption policies, although with the creation of other institutions its role has narrowed and many of its competences have been transferred.

The most important institution in this area is the **Kosovo Anti-Corruption Agency (KACA)**, which was established in 2006 and started its operations in February 2007 with a very modest budget and number of staff. The director is selected by the Assembly of Kosovo and submits an annual report to the Assembly. The KACA currently has with the number of staff foreseen in the budget plan (35 officials). However, a problem remains, as the staff are inexperienced in the area of anti-corruption and the salaries are very low⁴³. The Agency's scope of competences focuses mainly on the fight against corruption, the prevention of corruption, and the education of citizens and officials in the area of anti-corruption.

The work of the KACA is overseen by the **Council on Anti-Corruption**. The Assembly of Kosovo, in its session of 23 February 2006 and in conformity with article 19.2 of the Law on Anti-Corruption, made a Decision (no. 02-946-1/06) on the appointment of the members of the Anti-Corruption Council, which was given a two-year mandate. The Council consists of nine members, three of whom are appointed by the Assembly and one member each by the President's Office, the Prime Minister, the Supreme Court, the Office of the Public Prosecutor, Local Authorities and Civil Society. The Council scrutinises the work of the KACA on a regular and comprehensive basis and oversees the assets of the officials working for the Agency. The Director of the Agency reports to the Council every six months about Agency findings related to corruption, conflict of interest, completed enquiries and other issues related to its mandate, as provided by law.

However, it is not clear to what extent the Council has the right to interfere in the work of the Agency. Recently there have been debates between the Agency and the Council on the issue of the annual report that the Agency has prepared for submission to the Assembly. The fact that the functioning of

⁴³ 250 EUR is the average monthly salary of investigators in the Agency.

the Anti-Corruption Council is scrutinised closely by one of the committees of the Assembly has created a long reporting line between the Agency and the Assembly. It is expected that these divergences will be resolved by the amendments to the law that have already been prepared.

Another obstacle to success in the work of the Agency is the lack of co-operation with other responsible institutions. The Agency reported that of the 250 documents received concerning corruption cases, 1/3 of these documents were forwarded to the Prosecutor's Office. Very few documents were returned to the Agency from the Prosecutor's Office. Also, no cases or information on cases has proceeded to the court. The Agency's mechanisms for imposing their recommendations when it has identified any breach of law are very weak. This weakness is shown in cases where the Agency found conflicts of interest or where senior public officials failed to declare their assets. The investigations carried out by the Agency cannot be considered as evidence and the risk of overlapping with the competences of the Prosecutor's Office is high. In general, the Agency is weak in enforcing the administrative sanctions foreseen in the law.

As a general remark, officials dealing with corruption and integrity in general benefit from a large amount of training. As the increase of professionalism in key institutions is considered as a prerequisite for effective results in the long-term battle against corruption, the government is investing considerably in capacity increases. A number of institutions operate in this area, i.e. the Kosovo Judicial Institute, in charge of training for judges and prosecutors, the Police Training Centre in Vushtri, which offers specialised training for police, FIC officials and others, and the Kosovo Institute of Public Administration. On the other hand, in a number of institutions deficiencies have been observed – the lack of staff in the judicial and prosecutorial system, the low level of salaries in these sectors, instability in job positions and the obsolete regulation on the judiciary are all factors that implicitly influence negatively the work in these sectors and the satisfaction of the public with the services provided.

The public administration is perceived by citizens as being very permissive with regard to corruption. The government tried to serve as an example in fighting corruption by suspending a number of officials in the last two years. Although these actions represent a step forward, they do not suffice because the investigations are delayed and sometimes abandoned completely, there are no concrete sanctions against the accused officials, and the public considers that the real actors and beneficiaries of corruption are not punished. This situation prejudices the image of the government in the eyes of the public and the general accountability that the government should have to show as an example.

In addition, along with more effective justice (investigation capacity, courts, qualified staff, procedures, etc.), more effective tools to punish perpetrators in corruption cases – confiscation of assets, for instance – are required.

6. Kosovo Police Service

After its 1999 deployment in Kosovo, UNMIK had to develop its security forces from scratch. The main responsibility for setting up and developing the police structure in Kosovo was UNMIK Pillar I on Police and Justice, while OSCE was responsible for the training of police officers. The first generation of candidates for members of the Kosovo Police Service (KPS) began training on 6 September 1999.

The budget for police services in Kosovo is provided by the combined funds of the Kosovo Consolidated Budget and the financial donations and technical assistance of international donors. The Kosovo Consolidated Budget allocated 39.9 million EUR to the KPS in 2003, which was increased to 56.85 million EUR in 2006 and 60.9 million EUR in 2008; this does not include the funds provided by international donors and other contributions. In terms of day-to-day work, operational responsibility in many police stations and regional commands has been transferred from CIVPOL to the KPS. In addition, in early 2006, UNMIK Pillar I was downsized to a co-ordination office, and administrative, financial and technical responsibilities for the KPS were transferred to the Ministry of Internal Affairs.

UNMIK Regulation no. 2005/54 on the Framework and Guiding Principles of the Kosovo Police Service and UNMIK Administrative Direction no. 2006/9 provides for the establishment of the Kosovo Police Inspectorate (KPI) as an executive agency within the Ministry of Internal Affairs, responsible for exercising independent oversight over the KPS. The responsibilities of the KPI are as follows: conduct audits and inspections of the KPS and report on its performance and efficiency in meeting objectives; investigate allegations that police officers or civilian members of the KPS have committed serious disciplinary offences; and recommend to the Senior Police Appointment and Discipline Committee (SPADC)⁴⁴ any disciplinary sanctions that should be imposed. The KPI is composed of an executive director and a group of inspectors who are totally independent from the KPS. It forwards complaints against police officers to either the Prosecutor's Office (if the complaints include criminal allegations) or the Professional Standards Unit. If a complaint concerns a serious violation, including corruptive, the KPI will forward the complaint to the SPADC. The Law on the Police Inspectorate was approved by the Assembly in February 2008.

Within the KPS now there are also permanent units specialised in dealing with organised crime and cases of corruption. The KPS' Directorate of Serious Crimes, under the direct authority of the local Deputy Police Commissioner, has two relevant units in this area: an Anti-Corruption Unit and a Unit for Economic Offences.

The Kosovo Police report indicates that in 2008, internal investigations of 609 cases took place; 170 complaints were filed against the decisions made in those cases and as a result 133 decisions were changed.

The report of the KPI indicates that in 2006 the following disciplinary measures were undertaken against police officers: 48 police officers were dismissed, 87 were suspended with payment, five were downgraded, and 13 were transferred. The report also indicates that 91 other measures and a higher number of complaints had no legal basis, remained pending or had been returned to the local level⁴⁵.

7. International Co-operation to Combat Corruption

The international legal status of Kosovo has been very special since 1999 with the establishment of the United Nations Interim Administration in Kosovo (UNMIK). Despite the establishment of Kosovan institutions, international relations and co-operation up until the declaration of independence in February 2008 was the responsibility of UNMIK. Although the capacity of UNMIK to be a party to international instruments has been limited, many international instruments – mainly on human rights – are directly applicable in Kosovo. International legal remedies and mechanisms are not available to Kosovo due to the fact that Kosovo is not yet a member of any international organisation or mechanism. Thus in the context of combatting corruption and other similar irregularities Kosovo has not legally been able to sign any international convention. In general, Kosovo's participation in regional initiatives related to anti-corruption is still weak. However, the Kosovan and UNMIK institutions have co-operated in several international and mainly regional initiatives. In this context, Kosovo has been involved in the PACO impact project implemented by the Council of Europe and funded by SIDA. Since the beginning, the Kosovo Government has participated in all meetings and activities organised for South East Europe by PACO-IMPACT and also was supported by this project in the establishment of institutional mechanisms and activities related to anti-corruption reforms in Kosovo.

However, several other regional engagements between UNMIK and neighbouring countries were signed to strengthen co-operation on justice and the fight against criminality:

- Interim Protocol on Police Co-operation between UNMIK and Macedonia, 27 November 2002;

⁴⁴ The SPADC is foreseen to be independent of the KPS, and its membership consists of all of the permanent secretaries of ministries and one person nominated by each municipal assembly. Section 22 of UNMIK Regulation no. 2001/36 of 22 December 2001 applies *mutatis mutandis* to the SPADC.

⁴⁵ The report of KPI for 2007 is available at: www.mpb-ks.org.

- Memorandum of Understanding between the International Criminal Police, Organisation-Interpol and UNMIK on Co-operation in Crime Prevention and Criminal Justice, 20 December 2002;
- Memorandum of Understanding on Police Co-operation between UNMIK and Albania, 9 September 2002;
- Protocol on Police Co-operation between UNMIK and Former Republic of Yugoslavia (Serbia and Montenegro), 31 May 2002.

Recommendations for Assistance

Considering that reforms in the judiciary are a key issue for improving integrity in Kosovo, this sector should be the first priority for assistance.

The training of civil servants also requires further assistance. First of all, the operational qualifications of the KACA staff need to be enhanced. Second, training should be provided to civil servants on administrative procedures, transparency, citizens' right to better quality service delivery, etc.

The strengthening of civil society, support to public campaigns to inform citizens of their rights, as well as the development of mechanisms to ensure their protection, are other areas for assistance.