

# Monitoring and Evaluating the Good Governance in the Kosovo Security Sector



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KOSOVAR CENTRE FOR SECURITY STUDIES (KCSS)

# **MONITORING AND EVALUATING THE GOOD GOVERNANCE IN THE KOSOVO SECURITY SECTOR**

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## LIST OF ABBREVIATIONS

ADL	Anti-Discrimination Law
AoK	Assembly of Kosovo
CBF	Committee on Budget and Finances
CCRIR	Committee for Community Rights and Interests and for Return
CIAS	Committee on Internal Affairs and Security
COMKSF	KSF Commander
DCAF	Geneva Centre for Democratic Control of Armed Forces
EC	European Community
ECHR	European Court of Human Rights
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
FRIDOM	Functional Review & Institutional Design of Ministries
HR	Human Rights
IAU	Internal Audit Unit
ICG	International Crises Group
ICO	International Civilian Office
IKS	Kosovar Initiative for Stability
IT	Information Technology
KCPSED	Kosovar Centre for Public Security, Education and Development
KCSS	Kosovar Centre for Security Studies
KDI	Kosova Democratic Institute
KFOR	The NATO-led Kosovo Force
KGSC	Kosovo Gender Studies Centre
KIA	Kosovo Intelligence Agency
KIPRED	Kosovar Institute for Policy Research and Development
KP	Kosovo Police
KPC	Kosovo Protection Corps
KPI	Kosovo Police Inspectorate

KSC	Kosovo Security Council
KSF	Kosovo Security Force
LDL	Labour Draft Law
LGE	Law on the Gender Equality
LLSG	Law on the Local Self-Government
LPFMA	Law on Public Financial Management and Accountability
LPPRCMK	Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo
MCR	Ministry for Community and Returns
MF	Ministry of Finances
MKSF	Ministry of Kosovo Security Force
MIA	Ministry of Internal Affairs
MP	Members of Parliament
NATO	North Atlantic Treaty Organization
OAG	Office of Audit General
OECD	Organisation for Economic Cooperation and Development
OPM	Office of Prime Minister
OSCE	Organization for Security and Co-operation in Europe
PCPCK	Provisional Criminal Procedure Code of Kosovo
PIK	Police Inspectorate of Kosovo
PPA	Public Procurement Agency
PPRC	Public Procurement Regulatory Commission
PRB	Procurement Review Body
REA	Roma, Egyptian and Ashkalies
SSR	Security Sector Reform
UIA	Unit for Internal Auditing
UN	United Nations
UNDP	United Nations Development Programme
UNMIK	United Nation Mission in Kosovo
USAID	United States Agency for Development Aid
YIHR	Young Initiative for Human Rights



## PREFACE

The security sector in Kosovo remains in its infancy while the completed architecture has emerged only by 2008. Nevertheless, in this period a considerable progress has been made in terms of reforming one part of the institutions that has been build immediately in the post-conflict period (Kosovo Police) and consolidating the institutions that have been build from the scratch (Kosovo Security Force and Kosovo Intelligence Agency). There are a lot of complexities burdening the institutional development in the security sector starting from the political challenges and Kosovo's struggle for statehood; the legacy of the socialist system and, in particular, the legacy of the former Kosovo Liberation Army (KLA) members influencing the security sector; the influential role of the international community which not always represented their role in a proper manner, as well as other internal related problems.

This publication and the research scope do not intend to measure the capability and combat readiness of the security sector, nor does it intend to do so. It primarily aims to evaluate the progress made in terms of good governance of this sector as a precondition for democratisation of the most complex sphere of the public sector. Its scope is narrowed to the three main local security institutions: the Kosovo Police (KP), the Kosovo Security Force (KSF) and the Kosovo Intelligence Agency (KIA). The findings provided throughout the publication are based on the extensive research conducted in the period of 2009-2011 under the auspices of regional think tank consortium "Civil Society Capacity Building to Map and Monitor Security Sector Reform in the Western Balkans". This was probably the first initiative of this kind to bring the competent think tank organisations from the region in one platform and provide their expertise to map and monitor security sector in the Western Balkans (WB). Indeed, the project served as a platform for capacity building of the staffers which will certainly help their respective organisations in the future endeavours.

The researchers were instructed and provided with the generic methodology which was munificently developed by the Belgrade Centre for Security Policy (BCSP). It has been consolidated further in the period of three years and, in fact, it is based on the most contemporary indicators for measuring the good governance of the public institutions. While the efforts for developing the methodology in the social sciences are never enough nevertheless it is fair to say that the findings have been channelled in a well set of structure and indicator which ensures accuracy.

The publication is made of Chapter I providing the reader with the methodology and justification of grading system as well as seven chapters analysing separately the good governance criteria's in the security sector. Chapter II provides the reader with the analysis of the rule of law in the security sector in Kosovo, which is however concentrated in analysing the legal framework in this sector. Chapter III is focused in the executive control of the security sector in Kosovo with the particular focus towards the internal control mechanisms which was analysed against two fields of research: breach of law and human rights and budgetary control. Chapter IV does analyse specifically the progress in terms of financial governance in the security sector split into two parts: budgetary governance and procurement system. Chapter V is designed for analysing the general transparency in the security sector which covers predominantly the access to official documents and protection of personal data. Chapter VI provides the reader with the data on the representation of women and minorities in the security sector in Kosovo.

The last two chapters are dedicated for the external oversight and control actors. Chapter VII provides analyses for the parliamentary oversight of the security sector, whereas Chapter VIII reflects findings about the judicial control of the security sector. One aspect that is crucial in concluding the mapping of the security sector – the role of independent state institutions – was not included in this publication as it has been separately researched in a KCSS publication entitled "Control functions of independent state institutions in the security sector in Kosovo".

The research team would like to acknowledge the support that has been provided throughout the period of three years. We are grateful to the Geneva Centre for Democratic Control of Armed Forces (DCAF) as well as Belgrade Centre for Security Policies (BCSP) for their valuable management, feedback and contribution of the project. We particularly would like to thank: Pëllumb Kallaba, Head of Research of KCSS for the peer review and his support in completion of this research; Skender Përteshi, KCSS Researcher in their valuable assistance throughout the project; KCSS interns from the University of Durham who kindly edited of the English language version of the publication. Finally, we very much hope that this publication will slightly fill the 'niche' in the limited corpus of publication of security related issues in Kosovo and that would be of much help for the students, practitioners, researchers and other interested individuals.





# 1 | METHODOLOGY

## 1.1. BACKGROUND OF METHODOLOGY

This publication is based on the findings and the extensive research conducted in the period of three years (2009-2011) under the auspices of the regional project “Civil Society Capacity Building to Map and Monitor Security Sector Reform in the Western Balkans”. The papers that will be provided are based on the extensive methodology that has been developed by the Belgrade Centre for Security Policy ([www.ccmr-bg.org](http://www.ccmr-bg.org)). The KCSS, as one of the seven regional partners, contributed in the consolidation of methodology throughout three years and supported the efforts of the consortium to summarise the good governance criteria of the security sector in the region.

KCSS has completed an extensive qualitative research on the ground by conducting more than 20 semi-structured interviews with the government representatives, Members of the Parliament, Civil Society representatives and independent experts. In addition, the KCSS research team collected the necessary laws, reports and archive documents to conclude the research. Indeed, the daily participation of the KCSS team in the key security related processes strengthened further the research bases. These papers have been repeatedly subject to peer review of DCAF and BCSP and, lastly, a supplementary peer review has been done by the KCSS Head of Research. The original version of the papers (English language) was subject to language editing of the KCSS English native interns. The publication is translated into Albanian language and was also subject to the quality check.

The findings reflect a period of 2009-2011 however, depending on the availability of data and specific issues, not all the chapters provide information for the entire period of three years. Basically, most of the chapters contain data for the most part of 2009, for the entire period of 2010 and the first half of 2011. While the security sector in Kosovo is subject to prompt dynamic and having in mind the consolidation of the security institution (in particular the

Kosovo Security Force and Kosovo Intelligence Agency) there is a need for the an updated version in the upcoming edition. The writing style combines the academic and journalistic approach. The Harvard System has been used throughout the publication.

## 1.2. SPECIFICITIES OF THE METHODOLOGY

In the period of three year, the methodology has been designed, redesigned and developed in order to adjust the complexities of the project, region and particularly, the security sector. The entire chapters (with the exception of the chapter *rule of law in the security sector*) does follow a same structure and indicators based on which the findings have been provided and analysed. Each of these chapters does contain the following structure and guidelines which directed the researchers in measuring the progress of the good governance in the security institutions:<sup>1</sup>

CONSTITUTIONAL AND LEGAL FRAMEWORK: Lack or existence of key (primary) legislation for that criterion which needs to be in line with international standards of democratic civilian control and protection of human rights. In analyzing primary legislation, we limited our analyses to:

- existence of provisions in Constitution which provide for certain right,
- existence of key/primary laws for that criterion (e.g. for general transparency primary laws are Law on Freedom of Information, Law on Classification of Data, Law on Personal Data Protection) and
- if that criterion was introduced in key laws for actors (e.g. Law on Defence, Law on Police, Law on Civilian Intelligence Service) and public administration legislation (e.g. laws on civil servants, ministries etc.).
- We did not analyse the existence of other legislation which is not essential for introducing relevant norm at the system level or which regulates only part of functioning of actors (e.g. Law on Ammunition).

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<sup>1</sup> The following text of the methodology has been taken from the regional Almanac to be launched under the auspices of this project. The structure and the grading system provided here has been written by Sonja Stojanovic, Executive Director of Belgrade Centre for Security Policies

IMPLEMENTATION: Frequency, quantity and quality of bad/good practice and track record of good practice. In line with this, bad practice can be:

- Frequency: frequent/occasional/exception,
- Quantity: widespread/moderately spread/scarce
- Quality: serious bad practice (e.g. severe cases of violations of rights) or moderately bad practice or minor cases of bad practice.
- In order to give high mark for good practice, we analyze the same indicators as for bad practice: frequency and quantity, as well as track record (duration/continuity of delivery) of good practice.

ADMINISTRATIVE AND MANAGEMENT CAPACITY. We analyze if there are preconditions for efficient and effective management of implementation of good practice. Some of indicators are:

- Existence and quality of secondary legislation and internal regulations (by-laws, instructions, procedures, guidebooks, codes etc.). The secondary legislation and internal regulations should be in line with DCAF and Human Rights standards, and there should be procedures in place for effective provision of service in line with democratic governance.
- Existence of tasks in job descriptions/posts/organizational units in charge of provision of service (e.g. units analysing complaints of citizens) or oversight of implementation of criterion (e.g. Ombudsperson in charge of overseeing protection of human rights). For some criteria, we should not look for specific post/organizational unit, but that the task is recognized either as a responsibility in job description (e.g. liaisoning with civil society). This indicator is important to understand who or which units are tasked to provide certain service.
- Adequate allocation and management of material and human resources necessary for implementation of the criterion: Relevant organizational units should be equipped with adequate quantity and quality of material and human resources necessary to perform their role in effective manner.

VALUES: Within this set of indicators we analyze:

- If the organizational culture has internalized new norms or it provides resistance and impunity for breaches of DCAF/HR norm. The evidence for this is going to be gathered indirectly through analyses of practice (e.g. number of declined requests by citizens, impunity for higher ranks, choice of sanctions for breach of right, politicisation of certain function). Also, key for analyses of change in organizational culture is to analyse change of values nurtured in training (entry-level, in-service), as well as in the criteria and procedures for promotion and sanctions.
- Attitudes/Perceptions of society. If a society Legitimization of new norm with society at large.
- Fulfilment of this set of indicators requires longer period of time, usually necessary for change of generations within state institutions.

### **1.3. GRADING SYSTEM**

We have analysed the data based on that structure and the guidelines against grades from 1 (worst) to 5 (best). Here is the table with the explanation/justification for each grade:

FIELDS OF OBSERVATION		Field 1	Field 2	Field 3	Field 4	Field 5
<b>GRADE 1</b>  Focus is on legal norms and bad practice	<b>Constitutional and Legal Framework</b>  (Constitution, primary laws for criterion, actors and public administration legislation)	<p><u>Indicator existence of primary laws</u>: Primary laws for that criterion have not been adopted (e.g. for general transparency primary laws are Law on Freedom of Information, Law on Classification of Data, Law on Personal Data Protection).</p> <p><u>Indicator contents of primary laws are in line with Democratic Control of Armed Forces and human rights standards</u>: If some primary laws exist, their provisions are not in line with international standards for that criterion, especially standards regarding democratic civilian control and human rights protection. At the same time, if there is a primary law for criterion, it is very likely that the primary laws for actors (e.g. Law on Defence, Law on Police etc.) have not been harmonized with it, so they limit introduction of that criterion in practice.</p>				
	<b>Implementation</b> (results of implementation)	<p><u>Indicator frequency, quantity and quality of bad practice</u>: There is a widespread bad practice. There are systemic and systematic violations of human rights. Systemic violations refer to those induced by institutions, while systematic violations refer to frequent and great number of violations. Cases of serious bad practice are not unusual.</p>				
	<b>Administrative and management capacity for implementation</b>	<p><u>Indicator existence and quality of secondary legislation and internal regulations</u> (by-laws, instructions, guidebooks, codes etc.): As the key legislation is lacking or is not in line with Democratic Control of Armed Forces (DCAF) and HR standards, relevant secondary legislation is either missing or does not contain provisions which would guarantee provision in service in line with democratic governance.</p> <p><u>Indicator</u>: Key posts/organizational units in charge of implementation of criterion are either missing or are not performing their role in line with standards of democratic security governance.</p> <p><u>Indicator adequate allocation and management of material and human resources</u> necessary for implementation of the criterion: Relevant organizational units are not equipped with adequate quantity and quality of material and human resources necessary to perform their role in effective manner.</p>				
	<b>Values</b> (of employees in state institutions and wider society)	<p><u>Organizational (institutional) culture</u> does not stimulate sanctioning violations of human rights. There is active resistance to reforms.</p> <p><u>Attitudes/perceptions of population</u>: Population is lacking trust in state institutions and therefore does not dare to demand for implementation of criterion (e.g. filing complaint with human rights NGO and not with government authority).</p>				

<p><b>GRADE 2</b></p> <p>Focus is on legal norms and practice</p>	<p><b>Constitutional and Legal Framework</b></p>	<p><u>Indicator existence of primary laws:</u> There are a few primary laws, but not all fields of observation have been regulated with primary laws.</p> <p><u>Indicator contents of primary laws are in line with DCAF and human rights standards:</u> Some primary laws are in line with international standards of DCAF and HR protection, while most primary laws for actors are not providing adequate guarantees for protection of HRs and DCAF.</p>
	<p><b>Implementation</b> (results of implementation)</p>	<p><u>Indicator frequency, quantity and quality of bad practice:</u> There is still bad practice and attempts of introducing good practice. Serious bad practice is occasional. Good practice has not yet become a regular phenomenon.</p>
	<p><b>Administrative and management capacity</b> (for implementation)</p>	<p><u>Existence and quality of secondary legislation and internal regulations</u> (by-laws, instructions, guidebooks, codes etc.): As there is lack of adoption of norms of DCAF and HRs in primary legislation, secondary legislation and internal regulations DCAF and HR and/or are not implemented.</p> <p><u>Key posts/organizational units in charge of implementation of criterion</u> are either missing or are not performing their role in line with standards of democratic security governance. Maybe some new bodies were created after the adoption of some of primary laws for observed criterion, but the institutional infrastructure for implementation of criterion is inadequate and not fully functional.</p> <p><u>Resources</u> have either not been allocated at all or insufficient quantity and inadequate quality of material and human resources is allocated for implementation of the criterion.</p>
	<p><b>Values</b> (of employees in state institutions and wider society)</p>	<p>Dominant <u>organizational culture</u> is still undemocratic and there is resistance to reforms.</p> <p><u>Attitudes/perceptions of population:</u> Population is lacking trust in state institutions and therefore does not dare to demand for implementation of criterion (e.g. filing complaint with human rights NGO and not with government authority) or starts selectively asking for some services but not all they are authorized to demand.</p>

<b>GRADE 3</b>  Focus is on the existence of primary laws that are in accordance with DCAF and the beginning of their implementation	<b>Constitutional and Legal Framework</b>	Indicator existence of primary laws: <b>There are primary laws for ALL fields of observation</b> and they contain provisions <b>in line with international standards of DCAF and HR protection.</b>
	<b>Implementation</b>  (results of implementation)	Good practice exists for a while. (In practice this usually means that the laws are being implemented for at least 2 years). There are still examples of bad practice, but serious bad practice is exception.
	<b>Administrative and management capacity</b> (for implementation)	<p>Key preconditions for start of implementation of all primary laws are in place. This means that:</p> <p><u>Key secondary legislation/internal regulations have been adopted</u> so to enable the start of implementation of new legislation.</p> <p>Existing <u>posts/organizational units</u> were tasked to perform duties prescribed with the primary laws for that criteria or new posts/ organizational units were developed for that purpose. In any case, they have started working and performing their duties.</p> <p>Some resources have been allocated so that posts/units in charge of provision of services for this criterion can start functioning.</p>
	<b>Values</b>  (of employees in state institutions and wider society)	<p>There is no resistance to reforms, but dominant <u>organizational culture</u> has not yet internalized all democratic norms.</p> <p><u>Attitudes/perceptions of population</u>: Population has started demanding services from state institutions, but selectively and there is still some lack of trust in their fair treatment.</p>

<p><b>GRADE 4</b></p> <p>Focus is on tionalization and positive values</p>	<p><b>Constitutional and Legal Framework</b></p>	<p>There are all primary laws that are in accordance with DCAF.</p>
	<p><b>Implementation</b> (results of implementation)</p>	<p>There is a notable track record of good practice (minimum 5 years). Good practice has become a rule and bad practice is an exception. Bad practise is regularly proportionally sanctioned.</p>
	<p><b>Administrative and management capacity</b> (for implementation)</p>	<p>There is a <u>horizontal and vertical harmonization of all legal documents</u> necessary for implementation of criterion. This means that new norm has been introduced not only in primary laws for criterion, but also <u>in primary laws for actors and in relevant public administration legislation</u>. Majority of relevant secondary legislation is <u>adopted</u>.</p> <p>The result of harmonisation is that norms in relevant primary legislation are not contradictory and that together with harmonized secondary legislation and internal norms they provide a coherent legal platform for implementation of criterion.</p> <p>The <u>posts/organizational units</u> tasked to perform duties prescribed with the primary laws for that criterion are fully functional and equipped with sufficient resources.</p> <p>If there has been <u>cooperation with CSOs</u> is in implementation of criterion, it is no longer carried out on ad hoc basis, but there is institutionalized in set of procedures and practices.</p>
	<p><b>Values</b> (of employees in state institutions and wider society)</p>	<p>Democratic values are adopted by the institutions. Bad practice is regularly and adequately sanctioned.</p> <p>Citizens are being informed about their rights and about the results of state institutions' work. The special attention is paid to information of citizens about sanctions applied to those who breached rights or norms of DCAF.</p>



<b>GRADE 5</b> Focus is on adopted values	<b>Constitutional and Legal Framework</b>	There are all primary laws that are in accordance with DCAF.
	<b>Implementation</b> (results of implementation)	Significant efforts are invested in preventive and proactive work to diminish opportunities for bad practice. There is a notable track record of good practice (minimum 10 years). Good practice has become a rule and bad practice is an exception. Bad practise is regularly proportionally sanctioned.
	<b>Administrative and management capacity</b> (for implementation)	<p>There is a <u>horizontal and vertical harmonization of all legal documents</u> necessary for implementation of criterion. The <u>posts/organizational units</u> tasked to perform duties prescribed with the primary laws for that criterion are fully functional and equipped with sufficient and adequate resources.</p> <p>The second generation of reforms has taken place after lessons have been learned from initial years of implementation. These reforms address the issue of <u>more efficient and effective management</u>. Therefore, new procedures and practices have been internalized to allow for strategic planning, performance management, budgeting and management of services required for advance implementation of criterion.</p>
	<b>Values</b> (of employees in state institutions and wider society)	<p>Security sector institutions have <u>completely internalised democratic values</u>.</p> <p><u>Citizens</u> have also adopted these values and have <u>recognized that the institutions are functioning in line with democratic governance norms</u>. There are no significant differences between perceptions of majority population and minority/marginalized groups (e.g. youth, ethnic minorities etc.).</p>

## KOSOVO GRADES AS PROVIDED THROUGHOUT THE CHAPTERS:

Criteria	Justification	Grade
Rule of Law in the Security Sector	<i>The entire legal framework on the role of security institutions is in place. The constitution refers implicitly to the mandate of security institutions; democratic control, human rights and transparency. In other words, the security institutions legislation embedded contemporary democratic provisions. However, there is a collision between the pre-independence and post-independence legislation due to the disharmony between the legislation on emergency management and new security actors (such as KSF and KIA).</i>	<b>3.5</b>
Executive Control of Security Sector	<i>The legislation on executive control mechanism is in place for the entire security sector. Whilst there is track of performance in the KP, there is limited experience among the KSF and KIA. In particular, there are serious concerns on the administrative capacities among the internal audit offices in the entire security sector. The financial transparency seems to be an issue of concern with the newly established security institutions. The overall culture of consolidating and obeying the internal control mechanisms is in its infancy (with the exception of police).</i>	<b>2.5</b>
Financial Governance of Security Sector	<i>The legislation for financial management and procurement is in place. However the latter is being repeatedly criticized for only partly aligning with European Commission (EC) directives. While there are solid administrative capacities in the Ministry of Economy and Finances (MEF) and Department of Treasury, the financial, procurement and internal auditing units of the security institutions are still consolidating and it proved inefficiency and ineffectiveness especially in the Ministry of KSF (MoKSF). There is a bad practice especially in the procurement and the frequent application of single source tendering. The transparency of tenders and expenditures is partially in place.</i>	<b>2</b>
General Transparency of Security Sector	<i>The legislation on access to official documents is in place and there is significant progress of transparency by the Kosovo Police. The KSF and KIA remain largely non transparent institutions. The Law on Protection of Personal Data has been adopted in the first part of 2010 but it started to be implemented only in the second part of 2011. Up to the end of 2011, there is no progress reported in terms of consolidating the system of classifying documents</i>	<b>2</b>

Representation of Women and Ethnic Minority	<p><i>Kosovo's institutions adopted the international standards and legal framework of fair representation, for both gender and ethnic components. Despite the fact that it is a relatively new security sector, a satisfactory level of gender and ethnic inclusion can be recognized here. A key example of this is KP as the main security sector mechanism in Kosovo, which has up to 15% of women representation and approximately 14% of ethnic communities (out of which 8% are from the Serbian community). The other key security sector institutions such as KSF and KIA are still in the initial stages of development and it is very difficult to evaluate them at present though the former achieved considerable progress in this regard.</i></p>	<b>3.5</b>
Parliamentary Oversight of Security Sector	<p><i>The legislation for the parliamentary oversight of the security sector is in place. The constitution explicitly refers to the parliamentary oversight and also the primary laws embedded the principles of democratic control. The practice showed limited track of record of the assembly in general in reviewing the budget. There is also the limited practice in discussing the human rights issues though a specific parliamentary committee has been established for this purpose. The research could evidence the discussions over the implementation of some laws and amendments (such as Law on Police) though there is absence of discussions over the security policies. The administrative capacities are limited and it lacks consistency as the result of the political affiliation in the selection of staffers as well as the dependency on the international support.</i></p>	<b>2</b>
Judicial Control of Security Sector	<p><i>The legislation for the judiciary and the use of force by law enforcement officials is in place, though concerns remain with regard to implementation of legal prerogatives. Conditions and treatment in detention do not present a serious concern, while the highest challenge derives from inefficient and unprofessional judiciary. A serious problem is present with regard to legislation and implementation of the use of special investigative measures. The lack of substantial role of judiciary in reviewing the legality of such materials collected from Kosovo Police and the power of Kosovo Intelligence Agency where judiciary is not aware how their relationship should be established raises concern for professionalism and potential abuse of competences from respective authorities.</i></p>	<b>2</b>



# 2 | RULE OF LAW IN THE SECURITY SECTOR

## EXECUTIVE SUMMARY

The overall process of establishing the rule of law in Kosovo faced difficulties that have been triggered by political and social developments. The security sector is regulated by the Constitution and relevant laws. Most of the laws in this sector were drafted and adapted after the Declaration of Independence, in February 2008. The legal framework in the security sector has been based on the provisions of the Comprehensive Proposal for Kosovo Status Settlement (hereinafter the Ahtisaari Plan).<sup>2</sup> Currently, the legal framework regulates only public security and safety matters, as well as the institutions mandated to provide these tasks; however, there is no legislation regulating defence issues since it is still the responsibility of international military presence.

In general, by assessing the rule of law in the security sector in Kosovo, one may summarize that it is still developing, despite the continuing efforts. The current legal framework on the security institutions, on paper, mainly reflects the most contemporary democratic principles. Civilian and democratic oversight is embedded in the constitution and primary legislation; thus, overall their harmonization is satisfactory. However, there are loopholes in the legislation with respect to the competences of certain security institutions which seem to overlap. The Kosovo Police (KP), Kosovo Security Force (KSF), Kosovo Intelligence Agency (KIA) and civil emergency mechanisms are regulated separately by laws. Nevertheless, the legislation covering the emergency mechanisms dates back from the pre-independence period and there is a horizontal and vertical

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<sup>2</sup> It was the United Nations Special Envoy for Kosovo, and former Finnish President Martti Ahtisaari, who recommended in March 2007 that “Kosovo’s status should be independence supervised by the international community”. His plan was presented to the U.N. Secretary General, known as the Comprehensive Proposal for the Kosovo Status Settlement. The Constitution of Kosovo derives from the provisions of this document, it included a vast array of laws to be adopted through accelerated procedures and a considerable part covered laws in the security sector. For more information, see Annex VIII (Kosovo Security Sector), article 3.2 of the CPKSS, available at: [http://www.unosek.org/docref/Comprehensive\\_proposal-english.pdf](http://www.unosek.org/docref/Comprehensive_proposal-english.pdf)

collision with the rest of the laws in the security sector. There is a limited track of enforceability since most of the laws have been approved recently.

## **2.1. CONSTITUTION AND PRIMARY LEGISLATION FOR REGULATING THE SECURITY SECTOR**

The provisions of the Constitution of the Republic of Kosovo reflects the outcome of the final status negotiation of Kosovo, which is based on the content of the Comprehensive Proposal for the Kosovo Status Settlement proposed by UN Special Envoy of Secretary-General in Kosovo, Marti Ahtisaari (Ahtisaari, 2007). In general, the Constitution of the Republic of Kosovo is regarded as an advanced legal base, which requires the promotion of democratic institutions in accordance with international principles as well as embracing international conventions regarding the issues on human rights protection (Constitution 2008: Art 3.2). Concerning the security sector, the Constitution has explicitly foreseen the existence and mandate of statutory actors authorised to deploy coercive means, such as: the Kosovo Security Force (KSF), the Kosovo Police (KP) and the Kosovo Intelligence Agency (KIA). The primary laws regulate the competences and missions of each security sector actor. There is a specific law regulating the KSF, KP and KIA.

## **2.2. REGULATION OF SECURITY SECTOR ACTORS' COMPETENCES, MISSIONS, TASKS AND REGULATION OF CIVIL CHAIN OF CONTROL**

The current legal framework covering the security sector is on its infancy and has been drafted and approved by the Assembly of Kosovo as a package - either simultaneously or after the adoption of the new Constitution, immediately after the Declaration of Independence.<sup>3</sup> Considering that the military tasks remain under the scope of international military presence in Kosovo,<sup>4</sup> currently the domestic security sector mechanisms have the mission to provide only public safety and security for the citizens of Kosovo. In this sense, according to the legal framework of security sector, institution such as: KP, KSF and KIA are

<sup>3</sup> For the purposes of this paper it is worthwhile mentioning that the package of the following legal documents: Law on Establishment of the Kosovo Security Council, Law on Kosovo Police, Law on Kosovo Security Force, Law on Kosovo Intelligence Agency are in place,

<sup>4</sup> NATO Kosovo Force (KFOR)

given competencies only for policing, civil protection and an intra intelligence gathering role.

Based on the current legal state, KP is the only security sector institution which has a purely policing role and maintains the right to use coercive means. Among the main competencies of KP are: to protect the life, safety and property of all individuals; to protect the human rights and fundamental freedoms of all citizens and other persons under its jurisdiction; to maintain public order and safety; crime prevention, traffic safety and border control (Law on Police 2008: 10). The Law on Police started to be amended in 2011 based on the lessons learned, as well as the need for institutional reform. The amendments are expected to include also the new approach of police based on the concepts of intelligence-led policing, as well as community policing.

The KSF is designed to fulfil security functions which are not appropriate for the police or other law enforcement organizations (Law on KSF, 2008: 9.3). Its main tasks are: crisis response operations, including peace support operations; to assist civil authorities in responding to natural and man-made hazards; to conduct explosive ordnance disposal and to assist civil authorities through civil protection operations (Ibid. Art 10.2). According to the current legislation, KSF is entitled to carry and use weapons; however, currently only for the following purposes: authorized ceremonial duties, guarding purposes of places and, for the close protection tasks based on the principle of the minimal use of force (Admin. Instruction, 2008)

The role of KIA is to gather information concerning threats to the security of Kosovo such as: terrorism, espionage against Kosovo, sabotage, organized crime, trafficking of illegal substances, weapons and trafficking of human beings. However, according to law, KIA has no executive power and it shall refrain from the use of direct or indirect force, or power of arresting or being able to initiate criminal proceedings and to compel persons or companies to cooperate with their activities.

One of the most important democratic dimensions in the security institutions, the civil chain of command, is guaranteed by the Constitution (Constitution 2008: 125.4) and is enshrined in each of the primary laws governing the security sector. From the normative point of view, there is a division of tasks between the President and the Prime Minister. For this purpose, the most

prominent example for the civilian chain of command is the Ministry of the Kosovo Security Force (MoFSK). To date, MoFSK is composed of 60% civilian personnel and 40% uniformed staff of KSF (Sogojeva, 2010). Consequently, this reflects an integrated civilian and uniformed staff reporting to a single Minister. Also, the civil chain of command in the KP is regulated according to the law. Regarding KIA, the Director and the Deputy-Director shall be appointed jointly by the Prime Minister and the President, and as such, are directly responsible to the Prime Minister (Law on KIA, 2008: Chapter II).

When it comes to the competences, further problems arise when analysing the legislation from the pre-independence period. To illustrate, the research indicates the laws regulating the concrete areas of the emergency management which yet need to be standardized with the legal framework of the new security architecture in the post-independence period (Haxhiu, 2010). This has caused an overlap between competencies of the emergency management institutions and newly established security mechanisms such as KSF and Kosovo Security Council which have been delegated with crucial competencies regarding the state of the emergency.<sup>5</sup> The newly established institutions are also in the process of amending and adopting relevant secondary legislation; though, a part of the security sector is building capacities from the scratch and more effort is needed to develop the corresponding legislation.

### **2.3. ARRANGEMENT OF DEMOCRATIC CIVILIAN CONTROL AND PUBLIC OVERSIGHT IN ACCORDANCE WITH 'INTERNATIONAL NORMS OF DEMOCRATIC CONTROL OF ARMED FORCES' AND HUMAN RIGHTS PROTECTION**

Democratic control of the security institutions is guaranteed by the Constitution (Constitution 2008: Art 125.4). The Law on KSF specifically mentions that the Kosovo Assembly shall be subject to parliamentary oversight. Similarly, KIA is subject to parliamentary oversight and the law that governs this institution requires a specific parliamentary committee for its oversight to be established. The situation is slightly different when it comes to the police. The Law on Police neither mentions parliamentary control nor does it mention external public oversight however it does not mean that these institutions do not have

<sup>5</sup> For more details see Law on the KSC and Law on KSF



a scrutinizing role over the police (Ibishi, 2010). Indeed the external public oversight by independent state institutions is not mentioned by any current law regulating the security sector. However, since the mandate of independent state institutions<sup>6</sup> and agencies have emerged from the Constitution and does not restrict their role towards any public sector institution, consequently, the security sector mechanisms are also subject to the oversight of these institutions (Jashari & Olofsson, 2010).

The Constitution explicitly notes that security institutions shall operate in accordance with internationally recognized democratic standards and human rights (Constitution 2008: 125.2). Moreover, it states that Kosovo fully respects all applicable international agreements and the relevant international law. In general, the protection of human rights is guaranteed by constitutional provisions. A key law in Kosovo for protecting the human rights in general is the Anti-Discrimination Law. This law aims to protect the entire marginalised groups in Kosovo from any indirect or direct act of discrimination as well as, guaranteeing fair representation and interethnic tolerance (Anti-Discrimination Law, 2004: 2). This law is applied to all natural and legal persons as regards both the public and private sectors, including public bodies, in relation to any action or inaction which violates the rights of the natural or legal persons.<sup>7</sup> The entire primary and secondary legal framework regulating the security sector refers to the Constitution, Anti-Discrimination Law or international human rights conventions.

The Constitution specifies that during the State of Emergency its provisions shall not be suspended and the limitations on the rights and freedoms guaranteed by the Constitution shall only be to the extent as necessary, for the least amount of time and in full accordance with it (Art.131.2). However, the absence of law on the state of emergency marks the shortcomings in the legal framework. The Law on the State of Emergency is expected to regulate the measures, actions and the rights by the time the state of emergency has been declared partially or in the entire territory of Kosovo.

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<sup>6</sup> In the case of Kosovo, we refer to the role of Office of Audit General and Ombudsperson

<sup>7</sup> Such as employment, membership of associations, social protection, education, public services, personal security, participation on public affairs, access in the public places and any other rights guaranteed by other applicable laws

## 2.4. VERTICAL AND HORIZONTAL HARMONIZATION OF THE LEGISLATION IN THE SECURITY SECTOR

Despite that most of the laws in the security sector have been adopted in the post-independence period, yet, there are some areas which continue to be regulated with the legislation adopted during the pre-independence period. Therefore, while the newly adopted legislation seems to be harmonized both vertically and horizontally, the situation differs when it comes to those approved in the pre-independence period. For example, there are still some important laws such as Law on Protection from Natural and Other Disasters, which despite its amendments in 2011, reflects horizontal and vertical disharmony in the security sector. To elaborate further, the Law on Natural and Other Disasters during the state of emergency has foreseen the establishment of an Inter-Ministerial Committee for Protection and Rescue in order to coordinate the disasters; whereas, the new legislation on Kosovo Security Council (KSC) foresaw that the KSC holds the primary role in coordination, as the highest executive authority during the state of emergency (Law on KSC 2008: 12).

Furthermore, the Law on Natural and other Disasters does vest the authority to the Minister of Internal Affairs to declare the emergency situation in a part or entire territory of Kosovo in cases of natural and man-made hazards, while the Constitution<sup>8</sup> refers to the President as the authority that declares the state of emergency in the country during three potential risks: the need for emergency defence measures, threat to constitutional order or to public security and natural disaster affecting a part or the entire territory of Kosovo (Constitution, 2008: Art 131.1).

## 2.5. ENFORCEABILITY OF LAWS

Given the 'massive' approval of laws for the short period in 2008, the primary legislation of the security sector exists and fulfils a solid part of the legal framework in this sector. However, there is still a considerable vagueness in terms of drafting and approving secondary legislation (Manaj, 2010) and more remains to be done in this respect. The clarity of legislation in the security sector might likely be considered an issue of concern since it is believed that

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<sup>8</sup> As well as the Law on Kosovo Security Council

the prompt dynamics within security sector development in Kosovo required accelerated measures in drafting the legislation. Put differently, the process of drafting the new legislation has witnessed a heavily involvement of external assistance which Kosovo institutions constantly received. This assistance came largely from a diverse group of international actors which simultaneously exercised their influence defining main patterns as how the Kosovo security legislation should look like. However, considering that each of these actors 'imposed' their own model, the legal framework regulating the security sector reflects this diverse influence and this, at some extent, leaves space for ambiguity. Furthermore, this has also opened serious disputes over the lack of local context due to the very limited involvement of local experts in the process of law drafting. In this regard, the quality of some laws could be at stake and the need for re-adaption of these laws has already started to unveil. In addition to that, the laws have not been subject to broader discussions, including the civil society, which certainly lacks the link with the local needs.

## RECOMMENDATIONS

- The pre-independence legislation in the security sector needs to be compatible with laws approved in the post-independence period. In particular, the laws related to emergency management needs to be in line with the Constitution and other primary laws;
- Despite the fact that Constitution regulates the bases for the state of the emergency, a specific law regarding this issue should be adopted. This new law should highlight in details whether there should be extraordinary measures during the state of emergency, leaving no space for the ambiguity and legal gap;
- While most of the laws in the security sector have been approved promptly and most of them based on the external models, there is a need for the clarification, both in terms of content and language.



# 3 EXECUTIVE CONTROL OF SECURITY SECTOR

## EXECUTIVE SUMMARY

The executive control in the security sector is either in the process of reform (Police) or it's in early stages of development (Kosovo Security Force and Kosovo Intelligence Agency). While the Kosovo Police (KP) and the Emergency Management Mechanisms represent two of the fully consolidated institutions in Kosovo, it was also not clearly a coincidence that the first tracks of the executive control in security sector were referring specifically only to these two mechanisms. Indeed, the local and international will for developing the executive control have been predominantly addressed towards the Kosovo Police (KP). This state of affairs is understandable considering the police burden? in providing public safety and order, but also the KP primes on the country's scale with the level of efficiency, effectiveness and transparency in comparison to other security mechanisms. There is a different issue with the emergency mechanisms since there are loopholes in the legal framework regulating the emergency sector. Thus, currently the executive control of this sector is regulated under the auspices of the internal control mechanisms in the Ministry of Internal Affairs (MoIA).

A slightly different situation reigns in the newly emerging security institutions which are being consolidated in the post-independence Kosovo. Institutions such as Kosovo Security Force (KSF) and Kosovo Intelligence Agency (KIA) are still in the process of developing its internal capacities; therefore, the executive control of these institutions is still in the initial stage of development. However, as this research found out, the legal framework is in place.

## 3.1. EXECUTIVE LEGAL CONTROL (BREACH OF LAWS AND HUMAN RIGHTS)

### 3.1.1. LEGISLATION

The Constitution of the Republic of Kosovo has given a considerable space to the civilian control of the security sector institutions. The Constitution specifies that *“the Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by constitution”* (Constitution 2008:21.2). Meanwhile, referring to the security sector dispositions, the Constitution specifies that *“the civilian and democratic control over security institutions shall be guaranteed”* (Ibid. Art. 125.4). Although both these Constitutional provisions did not refer to any specific mechanisms or instances of the executive control, these definitions correlatively oblige the local institutions to establish the necessary mechanisms for the internal control embedded in the primary legislation.

The institutionalization of these principles was gradual and it has been simultaneously interdependent with the processes of establishing the security sector infrastructure in Kosovo. The Kosovo Police (KP) represents the first security institution in Kosovo which has adopted a combined model of executive control composed by civilian and uniformed personnel. This means that for the minor disciplinary offences conducted by KP members, the responsibility for investigation is vested to the Internal Disciplinary Unit; whereas, for serious cases the the Police Inspectorate of Kosovo (PIK) is hold responsible for investigation, as civilian body (*Law on KP 2008: 45*). The Law on PK has defined which cases are to be considered as minor disciplinary offences and which cases are serious disciplinary offences (*Law on PK: 46*). The Police Inspectorate of Kosovo is an executive agency under the Ministry of Internal Affairs, independent from the Kosovo Police and under direct subordination of the Minister of MIA (*Law on PIK 2010: 6*). The legal framework on police inspectorate entered into force by the end of 2006, initially as an administrative regulation, based on UNMIK previous legislation. The first law on PIK was adopted in 2008. Though, almost immediately, this law went through modification, a process which was concluded by end of 2010 as the result of the demands raised by respective local and international actors with the argument that the police inspectorate needs to have a more defined power in investigating breach of law cases in the police. The new law provides the inspectorate with new competencies. According to the latter, the PIK is entitled to use all necessary investigation

means towards PK personnel, including the use of interception, integrity tests as well as arresting any of the police officers<sup>9</sup> in cases of unlawful behaviour (*Law on PIK: 2011*).

Regarding the executive control of the newly emerging security mechanisms such as Kosovo Security Force (KSF) and Kosovo Intelligence Agency (KIA), the research found out that the legal framework regulating this domain is now in place. Similarly to the executive control of KP, the executive control of KSF has been designed as an interaction between the civilian and uniformed staff integrated into the Ministry of Kosovo Security Force - MFSK (*Admin. Instruction 2009: 2*). However, while the KSF mandate is currently in the emergency response, the Kosovo Police is held responsible for investigating potential criminal cases of human rights abuses or breach of law (*KSF Disciplinary Code: 7*). Meanwhile, regarding disciplinary offences, all the alleged offences in first instance should be investigated in the unit level. If the offences are considered to be serious and it cannot be dealt on the unit level, the case shall be forwarded to the KSF Police and also the KSF Inspectorate should be informed (*Ibid. Art 6.2*). For the purpose of this paper, it is worth noting that the KSF Inspectorate is a mechanism of control which is subordinated to the Minister. This mechanism cooperates closely with KSF Command (COMKSF) and commanders of the KSF units via conducting inspections.

According to the administrative instruction on the Inspectorate of KSF, this institution is responsible for monitoring and reporting on the performance, efficiency, professional effectiveness and readiness of the KSF, including issues related to personnel, discipline, equipment, infrastructure, capacities, sustainability and deployment.

KIA has also established its internal control mechanisms. The responsibility of the Inspector General is to assist the Director in being kept fully and up-to-date informed about potential problems in the activities of the KIA, aiming to support the promotion of economy, efficiency and effectiveness, and avoiding any violation of law (*Law on KIA 2008: 10.2*). However, by law, "*KIA Director may prohibit the Inspector General from initiating, carrying out, or completing any inspection or audit if the Director determines that it is necessary to protect vital security interests of Kosovo*". *If the Director exercises this power, he or she will report*

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<sup>9</sup> Only the General Director of Kosovo Police retracts immunity from PIK investigations and any investigation towards the General Director should be initiated authorized? directly by the Prime Minister (*Law on PIK: 2011*)

*this action to the Prime Minister and the President of the Republic of Kosovo within seven (7) calendar days” (Ibid. Art.10.6).* This could question the autonomy of the General Inspector to investigate cases in the KIA (KCSS, 2010: 24).

### 3.1.2. IMPLEMENTATION

Besides the police, it is too early to identify potential cases of law and human rights violation in the security sector. In fact, an indicative progress of executive to control the breach of law and human rights cannot be questioned? When analyzing KP and its control mechanism PIK. The PIK as an affirmable control mechanism has conducted fairly regular inspections and investigations and at times has shown readiness to accomplish its mission based on the principles of independent mechanisms. According to the US State Department Report in Kosovo, the PIK investigated 1,647 cases, of which 742 were citizen-initiated complaints and the remaining 905 were initiated by the police (*State Department 2009, 2010*). Of those cases, the inspectorate pursued further investigation up to 1,062 and passed 585 cases over to the directorate for internal investigations. Court decisions were pending in 155 cases. Of the 1,062 cases investigated, 465 of those were allegations of serious police violations: whereby, 22% were serious cases of conducts, 17% involved allegations of inappropriate use of force, 9% involved criminal offenses, 8% were serious insubordination and 2% concerned complaints of corruption.

With reference to the other key security sector actors, the institutions such as KSF, and KIA and their executive controlling mechanisms have not published any of their reports, yet. For more, their reports are considered to contain sensitive information and are thus non-transparent for the public. However, there was no significant complaint that these institutions conduct any significant violation of the law and Human Rights (HR). There is also no report indicating the potential abuse of the civil emergency mechanisms.

### 3.1.3. ADMINISTRATIVE AND MANAGEMENT CAPACITIES

According to official data of 2011, the Police Inspectorate of Kosovo (PIK) is composed of approximately 40 officers (20 investigators and 20 inspectors) that are responsible to monitor and oversee the police. In the field of the breach



of law and HR, PIK Investigators are held responsible for investigating these cases. Considering that the PIK covers the whole central and regional police structures the main concerns is that the inspectorate has an insufficient number of personnel, making it difficult for them to fulfil their tasks.<sup>10</sup> Regarding the professional capacities, the structure of PIK is in general mixed and its personnel consists of people from different backgrounds such as: criminologists, lawyers, economists, social scientists and HR experts (Rrustemi, 2010). This research evidenced that all investigators have initially followed a 6-month-intensive-training related to their respective professional fields prior to start working and after the approval of new law, they have attended a new round of trainings in order to increase the compatability of their professional skills with the newly given competencies.

In comparison with the transparent reports of the PIK, the KCSS research team faced difficulties in obtaining concrete information on the number of investigators within the internal control units of KSF and KIA. Despite our request to the KSF public affairs office,<sup>11</sup> the team did not receive any concrete information on the structure and the number of members in the KSF Police and KSF Inspectorate. Nevertheless, with reference to the KIA, it is understandable that the concrete data on the number of investigators is constrained as the result of the legal provisions which highlight the lack of transparency of this institution.

### 3.1.4. VALUES

Despite the difficulties on implementing the executive control which is based on the lack of the significant practice and experience in the Kosovar security sector, one may note that the human rights violation was one of the issues to be concerned about. Indeed, the main concern is that the executive control might lack neutrality due to alleged political interference and political appointments, especially in structures of the police (EU Progress Report, 2010: 54) and security force.

Likewise, the low transparency level of the new institutions such as KSF and KIA has created great obstacles in measuring any aspect of efficiency exercised by the control mechanisms within these two institutions. Though in practice, the

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<sup>10</sup> As for the 2011, the Kosovo Police encounters around 8.000 police officers which is relatively high number compared to the low number of investigators in PIK

<sup>11</sup> Here we are referring to the second part of 2010

level of transparency is similar; however, more concerning is the case of KSF considering that based on legislation this institutions is supposed to be much more transparent; whereas, KIA is even by law designed to be a less transparent institution.

## 3.2. BUDGETARY EXECUTIVE

### 3.2.1. LEGISLATION

The legal framework defines the budgetary control of the security sector. According to the current security sector legal framework, this control is mainly exercised through inspectorates and internal audits. Additionally, the Constitution has foreseen general guidelines of the executive control of the budget execution. It specifies among others that *“the Government has also competences to proposes the budget of the Republic of Kosovo and it also guides and oversees the work of administration bodies” (Constitution 2008: 93.5)*. However, the executive budgetary control can be considered more as an internal dimension within the Government, Ministries or Agencies.

The executive budgetary control of the MoIA is organized through the Internal Audit Unit (Administrative Instruction: 19.1). The executive control of the KP is exercised through the Internal Audit Mechanism, as well as through PIK as an executive control mechanism which is under the direct subordination of the Minister of MoIA. According to the Law on PIK, the inspectorate has competences among others to inspect: the budget, finances, logistics, procurement management, buildings, infrastructure, human resources management, management of equipments etc. which are owned by the KP (*Law on PIK, 2010: 25*)

The situation is a quite different when analyzing the functioning of the budgetary executive control of the MKSF and KSF. The Administrative Instruction No. 08/2009 on Mission, Organization and Structures of MKSF has specifically regulated the mandate of the Internal Audit Unit (IAU) within the KSF as a control mechanism which is responsible to audit the MKSF and KSF with the aim to ensure appropriate use of public funds (*Administrative Instruction No. 08/2009 on Structure of MKSF: Art.17*). Whereas, the *Administrative Instruction on the Duty and Responsibility of the Inspectorate of KSF* does not specify any

competences of the Inspectorate for the financial or budgetary control (*Administrative Instruction No 02/2010*).

According to the Law on KIA, the executive budgetary executive control of the agency is organized through the Inspectorate General of KIA. The Inspector General is responsible also for financial audits of the activities of the KIA and its results will be made available to the Prime Minister in addition to the KIA Director (*Law on KIA 2008: Art. 10.4*). Upon notification of the KIA Director, the Inspector General shall have the authority to question KIA employees and shall have access to the premises and data of the KIA, where necessary, for the purpose of an internal investigation, inspection, or audit (*Ibid. Art 10.5*).

The KP and KSF remain the only security institutions revealing their financial reports and financial statements. Arguably, the reports of the KIA are non-transparent, as foreseen by law.<sup>12</sup>

### 3.2.2. IMPLEMENTATION

With the exception of Kosovo Police, the process of establishing the budgetary executive control mechanisms is in the early stages of development. KSF has established its internal controlling bodies which have already started to be consolidated. It has also been reported that KIA has built its initial capacities. More progress on establishing the budgetary executive control is considered to be reached by MoIA and KP. The budgetary control functions in the MoIA and PK are exercised by their respective Internal Audit Units. These mechanisms have access to monitoring financial statements and budgetary expenditures. Nevertheless, the research team faced difficulties in measuring the efficiency and effectiveness of this mechanism; though, referring to the AGI findings, there are shortcomings in the performance of MoIA IAU (KCSS: 2010). Apart from IAU, also the police inspectorate has a mandate to conduct financial control functions over the police and in its report, the Inspectorate has identified many shortcomings in managing the budgetary expenditures of the Police. The recent annual report of PIK suggests that during their investigations they have evidenced around 31 cases of serious damage of KP property (PIK Annual Report, 2010: P.112). Further, PIK has also identified trends of the budgetary

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<sup>12</sup> For more details on the financial transparency of the security institutions see KCSS, Financial Transparency in the Security Sector in Kosovo, 2010

expenditures within the KP; as for example: in the statement of expenses for maintenance of facilities, PIK founded out that there were significant variation of trends in some budget lines. Such expenses are the municipal taxes of water which decreased for 37%; telephone expenditures declined for around 45%; central heating expenditures of police stations have decreased for around 47% (Ibid. P. 111).

The budgetary control of the KSF and MKSF is conducted by the IAU of the latter. Compared to the police, only the IAU has mandate within KSF to conduct financial controls; excluding the inspectorate. The former is eligible to conduct auditing of all budgetary expenditures within this ministry. KIA has established an inspectorate with the mandate to oversee the expenditures and budget spending in the institution. However, the researchers faced difficulties in obtaining the empirical data in regard to the performance of the internal financial control mechanisms within KSF and KIA.

### 3.2.3. ADMINISTRATIVE CAPACITIES

Regarding human capacities in the financial departments of the security institutions, arguably in this sector there are limitations which have been reported also by the findings of the Office of Audit General (OAG). While the 2009 Annual Report of the OAG evaluates the financial statements of MoIA and KP jointly, the report concluded that the KP IAU completed 100% of its work plan for 2009; whereas, the performance of MoIA UIA is not satisfactory (OAG, 2010: 20). The report specified as well that KP IAU's is staff more complete whereas, the MoIA IAU solely consists of the Director (2009 Annual Report, OAG: 2010).

The KSF and MKSF has been also criticized for their lack of human capacities and generally for their weak planning. However, this *state of affairs* shall be more objective, given the fact that KSF is a recently established institution and its capacities are still under consolidation. The OAG Annual Report for the financial period 2009 highlighted the shortcomings in consolidating the office of internal audit (General Auditor, 2010: 4). It concluded that the internal control mechanisms within the MKSF did not sufficiently control the budget expenditures in KSF (2010: 15). Additionally, it indicated that the Internal Audit

Unit employed only one auditor and none of the internal control functions were exercised during the entire period of 2009.<sup>13</sup>

As for the KIA, it highlighted that one of the responsibilities of the Inspector General will be to conduct internal financial auditing of KIA activities, which simultaneously need to be reported to the KIA Director and Prime Minister (Law on KIA, 2008: 10.4). However as of 2010/2011 the Office of General Audit did not conduct auditing of the financial statements of KIA.

### 3.2.4. VALUES

There is limited track of expertise among the internal control mechanisms in the security sector as regarding the controlling of the budgetary expenditures which means that the culture of consolidating the internal financial control mechanisms is in the early stages of its development. Perhaps, in many cases the approach towards the internal control of budgetary expenditures may be affiliated with the legacy of the socialist system where the internal control mechanisms were not that emphasized and their performance served only for the purposes of the institutions itself and not as a cross-bridge for creating trust and offering institutional accountability to the citizens as the ultimate taxpayers. Thus, this marks one of the most challenging dimensions of good governance in the above-mentioned institutions.

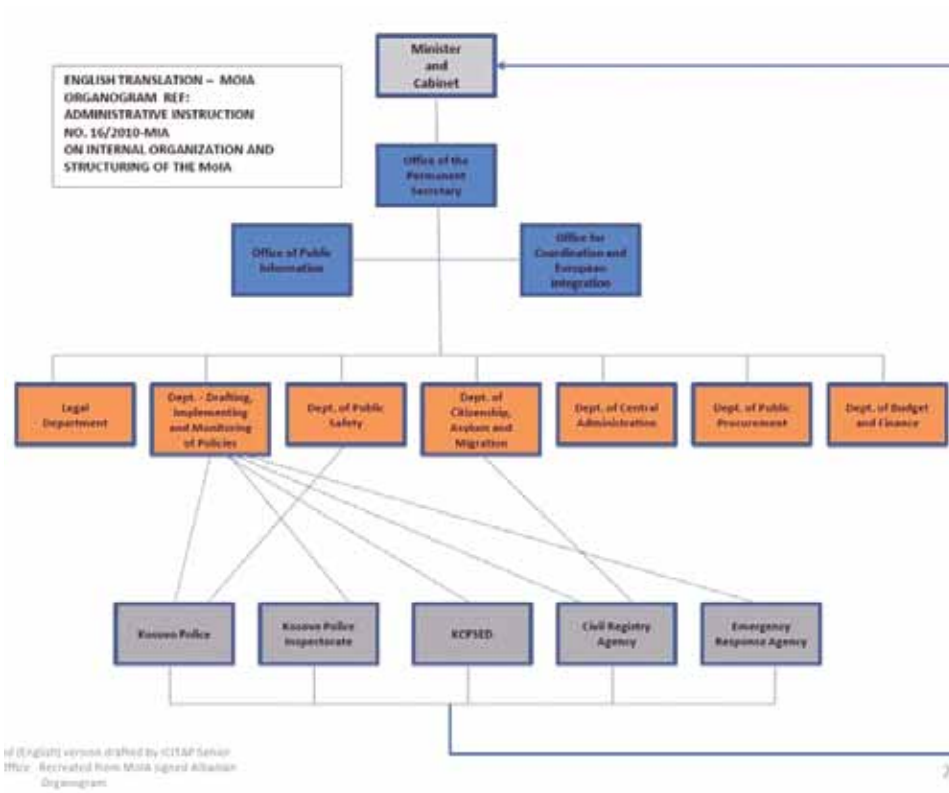
## 3.3. RECOMANDATIONS

- The entire security institutions should increase human capacities both in the control of breach of law and human rights, and financial control. Particularly, PIK shall increase the number of inspectors for being able to accomplish its tasks;
- KSF and KIA should increase their efforts in functionalizing and consolidating the internal control mechanisms;
- The transparency of the security institutions should be extended. In particular, centralized information by the public affairs offices constrains interested parties to obtain direct information by relevant departments;

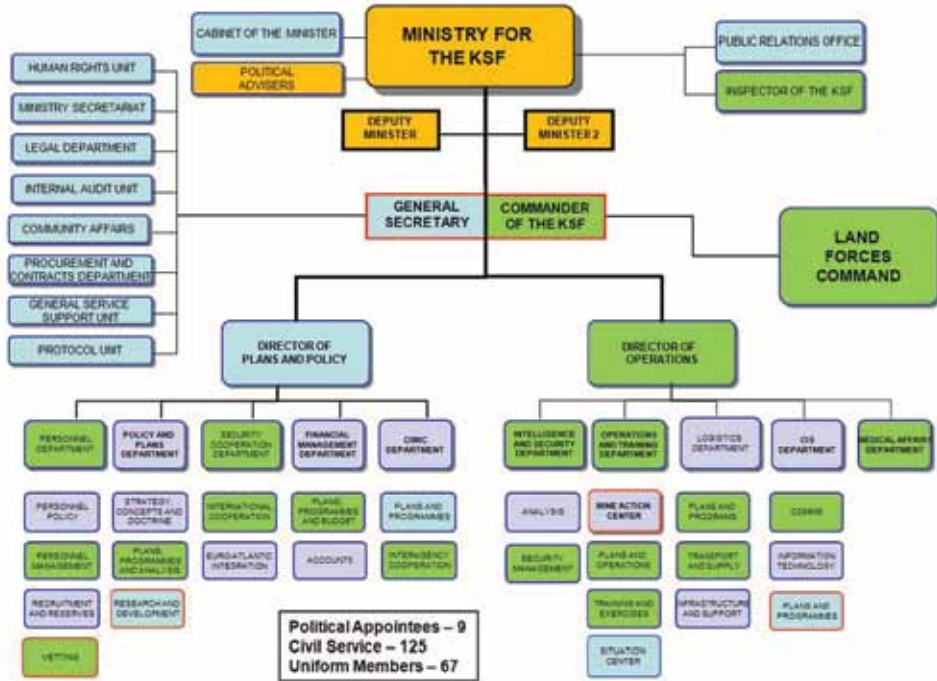
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<sup>13</sup> For more general details on the internal control mechanisms in the security institutions, please see KCSS, Financial Transparency Criteria, December, 2010, Prishtina

Annex 1 - Horizontal and Vertical Structure of MoIA: (<http://www.mpb-ks.org>)



Annex 2 - Structure of MKSF (www.mfsk-ks.org)







# 4 | FINANCIAL GOVERNANCE OF SECURITY SECTOR

## EXECUTIVE SUMMARY

The transparency of public institutions is embedded in the legal framework of Kosovo - in the security related legislation, procurement and public financial management laws. The legal framework on the financial management and procurement is in place, though the procurement has been widely criticized for not being compatible with some of the European directives.

The Law on Public Financial Management and Accountability clearly set up the procedures of budgetary proposal and reporting including deadlines. The procedures related to the budgetary circulars remain transparent and the external actors (such as non-governmental groups, journalists, citizens) can have access to the budget. The administrative capacities in the budgetary departments and procurement raise an issue of concern. In particular, the research evidenced the low level of professionalism amongst the budgetary departments as well as internal control mechanisms.

The security institutions consolidated the procurement and internal control units; however, their performance is far from the desired level. As will be argued throughout the paper, while the Kosovo Police (KP) procurement department and internal audit unit has been praised of being more functional and effective, the Kosovo Security Force (KSF) mechanisms are still in the early stages of development and have not yet managed to perform efficiently. The Kosovo Intelligence Agency (KIA) structures are undisclosed and the research found difficulties in evaluating the internal capacities.

This research has found that the single source tendering<sup>14</sup> procedures highly constrain the efforts to maintain transparent, clear and open procedures in

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<sup>14</sup> Single source tender is award for supply of a good or service that can only be purchased from one supplier because of its specialized or unique characteristics. For more details see <http://www.businessdictionary.com/definition/single-source-procurement.html>

the procurement. In the fiscal period of 2009 alone the KSF and KP procured through negotiated procedures to the amount of € 1,113,788.46 which makes up between 1.7 - 2% of the total budget for these two institutions for the respective year. In addition to that, the argument of applying the undisclosed procurement bids and announcements using the legal disclaimer, *"in case of national and public security"* does not sustain itself, since the Law on Classified Information and Security Clearance was approved in June 2010 and no vetting mechanisms have so far been created to classify either procured information on services or goods.

The overall culture of involving non-governmental actors and citizens in the development of the budget and disclosing the procurement procedures is improving. However, the high level of public mistrust with the financial and procurement management in Kosovo marks the shortcomings in this regard. The procurement system is one of the country's most criticized sectors by the civil society organizations and international community since the high level of corruption is predominantly affiliated with the public financial management and procurement.

## 4.1. TRANSPARENCY OF THE BUDGET

### 4.1.1. LEGISLATION

The Law on Public Financial Management and Accountability (LPFMA) clearly defines phases of budget planning, execution and reporting. According to the legislation in place, the budgetary preparation cycle should pass through different stages through a whole fiscal year highlighting the deadlines for the three budgetary circulars. The first budgetary circular is the proposal of the Ministry of Finances (MF) to the budgetary organizations<sup>15</sup>, which is based on the predetermined policy priorities, the revenue available, the potential sources of finance and macroeconomic stability. After consultations between MF and budgetary organizations, the second budgetary circular concludes the budget proposal and the third budgetary circular marks the submission of the finalized budget proposal to the Assembly of Kosovo (KDI, 2010: 32). The Assembly of Kosovo expects to approve the budget by the end of each year. Despite the

<sup>15</sup> As for the security sector, the budgetary organizations are: the Kosovo Police (KP), the Ministry of Internal Affairs (MoIA); the Kosovo Security Force (KSF) is under the budgetary unit of the Ministry of KSF (MoKSF); the Kosovo Intelligence Agency is a separate budgetary organisation; the Kosovo Security Council (KSC) is not a separate budgetary organization as it is included in the budget of the Office of Prime Minister (OPM).

overall discussions and debates, there is no evidence where the parliament blocked previously the efforts for approving the budget, although it has not been always approved on time due to political crisis.

The LPFMA requires the establishment of the Department of Treasury at MF, which shall be responsible for managing the Kosovo Consolidated Budget (LPFMA, 2008: Art. 4.1). The MEF also has a Central Budget Department with responsibility to prepare the budget proposal ([www.mef-rks.org](http://www.mef-rks.org)). In general, the LPFMA seems to be in compliance with the international standards and the research could not evidence any reporting which criticized the law. The legal framework of the security institutions does not have any specific provisions on the financial expenditures and budget except for the KIA, which allows the accelerated procedures should there be any extraordinary circumstances.<sup>16</sup> The transparency of the emergency expenditures is questionable. The law regulates the budget and reporting system conducted by the public authorities and prescribes the power of the Minister of Economy and Finances and other institutions related to the budgeting process (LPFMA, 2008: 1). Apart from that, there is a guide on Kosovo's Budget and Planning Process which is used by the public authorities (MEF, 2008).

### 4.1.2. IMPLEMENTATION

The pre-budget statements and executive budget proposals are transparent. The available sources indicate the efforts of the government to comply with the deadlines as set out in the LPFMA. While the second and third budgetary circulars were reported to have been completed by the due date<sup>17</sup> (with the exception of the first budgetary circular), nonetheless, it is difficult to measure whether the entire budgetary proposals or reports have reached the deadline on time or not.

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<sup>16</sup> See the procurement section

<sup>17</sup> For more details on the deadlines of budget proposal and reporting see the relevant articles in the Annex

The financial statements<sup>18</sup> of the entire public institutions, including the security institutions, are finalized by the 31st of March of each financial year.<sup>19</sup> The annual financial statements are published regularly at the MEF webpage. Apart from that, the semestral and quarterly budget reports are also published within a year, which provides the interested parties with a statement of the progress made in spending the public funds throughout the year. The reports show the amounts spent in five budget lines: wages and salaries; goods and services; utilities; subsidies and transfers; and capital outlays (MF, 2010). A separate chapter in details present the expenditures based on the types as defined in a generic codes for the entire public institutions.

For this purpose, the expenditures done by the security institutions are also transparent with the exception of KIA, which published the expenditures of the income salaries only for the three disclosed members<sup>20</sup> and not the amounts expended in the other budget lines (MF Semestral Report, 2009: 65). However, having in mind the classified procedures among this institution, it is difficult to confirm whether the disclosed data is realistically presented for the public.

The hearings of the budget proposal for budgetary organizations are held regularly by the MF and relevant security institution. The MF invites the budgetary organizations to discuss the details per budget line in order to agree on the final draft budget proposal. The hearings seem to be transparent; yet, there is no prior notification by the MF or budgetary organizations on the timing of the hearing, which makes it difficult for the interested parties to attend these meetings. The hearings are set to a specific date but only the relevant actors are informed, though there may be exceptions. To demonstrate, one of the non-governmental organizations sent a request to MF to observe the hearings of five budgetary organizations. While the request was approved, the MF did not inform the organization about the timing of the hearing making it impossible for them to take part (KDI, 2010: 37).

18 Financial statements A written report which quantitatively describes the financial health of a company. This includes an income statement and a balance sheet, and often also includes a cash flow statement. Financial statements are usually compiled on a quarterly and annual basis. Read more: [http://www.investorwords.com/1957/financial\\_statement.html#ixzz15SLzS300](http://www.investorwords.com/1957/financial_statement.html#ixzz15SLzS300)

19 By the time of conducting research, the financial statements were available for 2008 and 2009

20 Director, Deputy Director and Inspector General

### 4.1.3. ADMINISTRATIVE CAPACITY AND MANAGEMENT

The administrative capacity of the MF seems not to be an issue of concern. There is no evidence indicating the lack of human resource capacities in the Department of Treasury or Department of Central Budget, though bureaucracy makes this sector one of the most complex in the policy-making processes. As for the human capacities in the financial departments of the security institutions, one may argue that they are limited due to the reported findings of the Office of Audit General (OAG). For 2009, the report concluded that the budget of the KP has been spent in the ceilings of 90% and this marks clear evidence of deficiencies in the budgetary execution (OAG, 2010: 8).

In comparison to the MoIA and KP, the audit report of the MoKSF for 2009 is even more critical; highlighting the fact that only 62% of the planned budget has been spent, marking a significant gap in the budgetary execution (OAG, 2010: 5). The situation in the financial management in the MKSF has improved in 2010. Nevertheless, the internal control mechanisms of the MoKSF have been criticized for their lack of human capacities and, generally, weak planning conducted by the institution. However, this state of affairs shall be more objective given the fact that KSF is a recently established institution and its capacities are under consolidation.

### 4.1.4. VALUES

The practice of transparency in the process of budgeting and reporting is becoming more common. There seems to be no resistance should there is a request for access to budgetary proposal or financial statements, though the situation is different with each institution. The audit reports particularly reveal the challenges, advantages and weaknesses in public financial management as well as broadcasts by the media keeps the citizens informed and raises the awareness about affairs of the state.

## 4.2. TRANSPARENCY OF PROCUREMENT

### 4.2.1. LEGISLATION

The Law on Public Procurement was adopted in 2003, amended in 2007 and the new law has been approved in 2011. This law was a turning point for the public institutions to consolidate its procurement units and implement the provisions for ensuring the most efficient, cost effective, transparent and fair use of public funds and resources in Kosovo (Law on Procurement, 2003:1.1). The previous laws has been widely criticized for not aligning with the European Procurement Standards (EU, 2009: 31). It does not consistently include the EC Directive 2004/18 and, most importantly, the EC Directive 2004/17 on utilities has not been included at all (OECD, 2009: 4).<sup>21</sup> The loopholes in the procurement legislation were considered the main problems of a high level of corruption among the public institutions (Deda, 2010: 284). Whilst the secondary legislation on procurement was completed in 2009, demands to adopt a new legislation in accordance with the above mentioned EC directives were finalised only in the second half of 2011. The pressures of the international community and civil society regarding the shortcomings in the procurement legislation and practice resulted in a first reform. The Kosovo Prime Minister issued an Administrative Instruction No.02/2010 in May 2010, in which the Ministers became the signing party of the medium and high value contracts (Admin Instruction, 2010) consequently, making them directly responsible for the procurement management along with the permanent secretary and procurement department. The current legal framework classifies the public contracts by estimated values: large value contracts,<sup>22</sup> medium value contracts,<sup>23</sup> low value contracts<sup>24</sup> and minimum value contracts.<sup>25</sup> (Law on Procurement, 2003: Art.18.1). The Law explicitly requires the access to information related to public contracts. It clearly indicates that upon the request of the interested party, a contracting authority shall provide such an interested party with immediate access to all records (Art. 9.1).<sup>26</sup>

21 For more details, see the OECD report, 2009

22 A supply or service contract, the estimated value of which is equal or greater than € 100.000 ; works or immovable property contracts equal or greater than € 250.000

23 A supply or service contract equal or greater than € 10.000 but less than € 100.000; works or immovable property contract equal or greater than € 10.000 but less than € 250.000

24 A supply or service contract equal or greater than € 500 but less than € 10.000

25 Any public contract less than € 500

26 In the discussions the team had with the PPA Director, there seems to be no request from a citizens to access the contracts and tender documents apart from the economic operators which were dissatisfied with the winner of bid

The KSF and KP legislation does not have any separate provisions on procurement procedures, meaning that it should comply with the Kosovo Public Procurement Law. However, the Law on KIA has a provision indicating that, “in extraordinary circumstances relevant to the work of KIA, the Director of KIA may expend funds without regard to the provision of the laws relating to the expenditure of government funds” (Law on KIA: 42.1). The next paragraph highlights that should this power be exercised, the KIA Director shall immediately inform the Prime Minister within forty-eight hours (Art. 42.2). These provisions make an exception for KIA in bypassing the regular procurement procedures in case of an emergency. The detailed procedures for the emergency expenditures are not revealed in the primary law.

#### 4.2.2. IMPLEMENTATION

There is a certain degree of confusion about the transparency of tenders and bids announced by the security institutions. By checking the webpage of the MoKSF, one may realise that the announcement for tenders, contracting and re-advertisement are publicly available as well as the entire documents ([www.mksf-ks.org](http://www.mksf-ks.org)). The webpage seems to be updated with the relevant information and procedures regarding the procurement. According to officials, the documents are clear and based on the relevant legislation on procurement in Kosovo (Shala, 2010). Concerning the KP, the announcements are also publicly available but only for the procurement in the KP and mainly in their webpage ([www.kosovopolice.com](http://www.kosovopolice.com)). The MoIA does not publish any procurement activities, including calls for bids, on its webpage. Similarly, while the information of the civil emergency department is on the MoIA webpage, there is no information available on the bids announced for the purposes of emergency structures. The KIA still does not have a webpage and the procurement activities have not been announced in any open source.

However, the announcements made only on the webpage might not be sufficient in implementing the transparency provisions. There is no data indicating that most of the bids have been published in the daily newspapers or other sources in order to diversify the communication options for the interested parties to apply. The security institutions regularly publish the information on contracting, annulling of tenders or calls for bids in the webpage of PPRC ([www.ks-gov.net/krpp](http://www.ks-gov.net/krpp)). Nonetheless, the webpage is not updated regularly and the

publication for all of the contracting authorities is published with approximately three months delay.<sup>27</sup> While this may occur as the result of absence of capacities it further constrains the interested party to access the public contracts in an efficient manner. In the other side, the webpage of PRB regularly publishes the decisions should there be a review of bids. For the purposes of the study, the research team found out that the PRB published twelve decisions for the review of contracts from the security institutions procurement in a period of six months (1 January – 30 June, 2010). Seven of the decisions were made for the MoIA and five for MKSF ([www.oshp-ks.info](http://www.oshp-ks.info)).

The single source tenders is one of the key problems in the public procurement in Kosovo. The award of tender to a single company 'specialized' in a specific service or purchase raises serious concerns due to the avoidance of open competition and the disobedience of the regular procurement procedures. The general figures showed that the tender passing through single source procedures rose from €50 million in 2008 to €164 million in 2009 (EU, 2009: 32) though it marked a slight decrease in 2010 (EU, 2010: 36) and 2011. This evidenced one of the main shortcomings of the procurement system and, presumably, deliberate bypass of the regular procedures. As for the security institutions, the research team sought out the data of two security institutions (KSF and KP) on the application of non-transparent and uncompetitive procedures. According to the data provided by the PPA for the fiscal period of 2009, the KP procured fifteen contracts using the single source tendering to the amount of €892,167.46. The KSF procured seven contracts to the amount of €221,621.00 (PPA Database, 2010). This data does not include the single source procedures used by MoIA, KIA or any other security sector mechanisms. However, according to the statements of APP officials, these amounts are only committed funds and it does not necessarily mean that KP and KSF spent the entire committed amounts on single tendering procurements.

There may be a case where the security institutions applied the article on exceptions, which indicates that should the announcement of tendering or contract be detrimental for the security of Kosovo and its citizens, the relevant authority might classify the tender (Law on Procurement, 2003: Art.3). The law on classified information and security clearance was adopted in June 2010, and research found that the Department of Security Clearance and Vetting was

<sup>27</sup> In other words, by the beginning of September 2010 the KCSS team checked the PPRC webpage on the contracts given and there were announcements only for the contracting up to 31<sup>st</sup> of May.



established in 2011 but not operational until end of 2011, making impossible the right of the security institutions to classify the tender in lieu of a vetting system. The law clearly states that the department will be the final authority to provide the selected public institutions employees with a certificate of security clearance.

The Office of Audit General (OAG) annually audits the MKSF and MoIA. According to the OAG officials, the recommendations launched for the financial year 2008 were not considered and implemented in the following years. In other words, out of fourteen recommendations for improvement in MoIA and KP in 2008, only five were considered (Mehmeti, 2010). Similarly, the MoKSF did not implement the recommendations of the Audit Report for 2008 (Audit Report, 2010: 4). Based on this, one may conclude that the recommendations and instructions from the external audit office are not being implemented by the security institutions in Kosovo. In principle, both reports for the financial period 2008 and 2009 emphasize that the auditing resulted in *unqualified opinion*<sup>28</sup> or *unqualified opinion with emphasizes of matter*, meaning that there was not a serious violation of procurement procedures. However, both reports on MoIA and MKSF display the shortcomings of the organizations: announcement of the winners in the absence of competitive procedures; selection of the employees not fulfilling the criteria; lack of registering the assets and other such deficiencies (Audit Report, 2010: 4, 3). Indeed, the recommendations of the OAG are not legally binding but, having in mind that OAG is an institution derived from the Constitution the government officials needs to consider these recommendations and show commitment in improving the performance as a matter of good will.

The parliament is one of the watchdogs of the high value expenditures in the security sector. While the three relevant committees<sup>29</sup> are obliged to review all projects for supply costs exceeding the amount of €1 million, there is no record indicating the performance of these committees so far. In a meeting of the former KSF Parliamentary Committee, one of the MPs publicly admitted that due to the lack of expertise (and perhaps absence of readiness) there is

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28 Auditor's opinion of a financial statement, given without any reservations. Such an opinion basically states that the auditor feels the company followed all accounting rules appropriately and that the financial reports are an accurate representation of the company's financial condition. Read more: [http://www.investorwords.com/5175/unqualified\\_opinion.html#ixzz0yAkiSK98](http://www.investorwords.com/5175/unqualified_opinion.html#ixzz0yAkiSK98)

29 Committee on Internal Affairs (Kosovo Security Council, Police, Emergency Structures), Committee on Supervision of Intelligence (KIA) and Committee on Supervision of KSF (KSF)

no activity from the parliament or committee to date in reviewing the projects related to KSF (KCSS Obs, 2010). There is also no record on the performance of the Parliamentary Committee for the Supervision of KIA in this regard (KCSS Obs, 2010).

### 4.2.3. ADMINISTRATIVE CAPACITY MANAGEMENT

In general, there are three public procurement mechanisms: Public Procurement Regulatory Commission (PPRC), Procurement Review Body (PRB) and Public Procurement Agency (PPA). The PPRC's main focuses are monitoring, supervising and legal interpretation. The monitoring is done mainly on cases where contracts have already been signed and it does not encompass their implementation phase (EU, 2009: 31). The PRB was established in August 2008 as a quasi-judicial body with a mandate to review the complaints lodged by economic operators, should there be allegations that they have been harmed by contracting authorities (OECD, 2009: 2). The PPA serves as a safeguard institution in ensuring the application of procurement procedures. However, these bodies have been widely criticized of being ineffective in overseeing the misconduct in the public procurement in Kosovo. According to the statements of the officials, these bodies do not have a sufficient number of officials to implement their mandate (Raci, 2010). The administrative capacity is continually weakened by a high turnover among procurement officer at central and local level (EU, 2009: 31). The training provided to the procurement officers is not sufficient and the training organized since 2009 has not been in accordance with applicable law (EU, 2009: 32).

The security institutions consolidated the procurement units and recruited the procurement officers. The MoIA has a Department for Public Procurement organized in two divisions: Division of Services and Goods and Division of Employment and Consultancy ([www.mpb-ks.org](http://www.mpb-ks.org)). The KP also has a department for procurement. As regarding the internal audit control mechanisms, the MoIA and KP created the Unit for Internal Auditing (UIA). While the audit report of OAG for 2009 evaluates the financial statements of MoIA and KP jointly, the report concluded that the KP UIA completed 100% of its work plan for 2009, whereas the performance of MoIA UIA is not at the desired level (OAG, 2010:

20).<sup>30</sup> In other words, the KP UIA completed the staff but the MoIA UIA is only made up of a Director (OAG, 2010).

The KSF, in its structure includes a Department for Procurement and Contracting, which should consist of six civilians and one uniformed officer ([www.mksf-ks.org](http://www.mksf-ks.org)). This composition mirrors the dominance of the civilians in this department and it is in complete accordance with civil control. Also, according to its chart, there needs to be a unit for internal audit. Considering that the Report of the OAG for the financial period 2009 highlighted the shortcomings in consolidating the office of internal audit (General Auditor, 2010: 4), the latter concluded that the internal control mechanisms within the MKSF did not perform sufficiently in controlling the procurement activities in the KSF (2010: 15). Moreover, the report indicates that the unit for internal audit has employed only one auditor and none of the internal control functions were exercised in the entire period of 2009.

The evaluation of KIA internal control functions is likely to be considered impossible as its structure remains undisclosed. However, there might be an assumption for the existence of the department for procurement and, most importantly, it has been publicly announced that the Inspector General of KIA has been appointed, and one of the responsibilities of the Inspector General will be the internal financial auditing of KIA activities, which need to be reported to the KIA Director and Prime Minister simultaneously (Law on KIA, 2008: Art. 10.4). The OAG have not yet audited the financial statements of KIA.

#### 4.2.4. VALUES

In general, the public procurement remains the most controversial domain due to the potential abuses of public funds. One of the main challenges in the public procurement is that the responsible officers are in vulnerable positions due to the political pressures to sign off on contracts or manipulate procurement decisions (IKS, 2010: 40). Some of the procurement officials have been replaced with less qualified or even unqualified individuals, more dependent on political patrons (YIHR, 2010: 5). Moreover, the practice of single source tenders highly compromises the procedures of the procurement system in Kosovo and opens

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<sup>30</sup> The Office of Audit General since 2009 is auditing the financial statements of MoIA and KP jointly although they are separate contracting authorities.

an opportunity for favouring the companies affiliated with the officials. The cases where the EULEX and Kosovo Special Prosecution are investigating the corruption of the officials in the procurement system increase the level of distrust in the performance of the public procurement in Kosovo. Procurement and tendering procedures are partially transparent and some of them are not announced which marks a direct violation of the Law on Public Procurement. The evidence that some of the tender winners are the more expensive bidders (YIHR, 2010: 40) raises a serious concern in the procurement system in Kosovo.

With regards to the security sector, the assumptions of misconduct of procurement procedures have so far been substantiated. In particular, the findings of the OAG report for 2008-2011 for the mismanagement of procurement in the KP and KSF highlights the bad practice of implementing the regular procedures of public procurement.

### 4.3. RECOMMENDATIONS

With regards to the budgetary transparency:

- The Ministry of Kosovo Security Force should develop realistic budgetary planning to avoid a low level of expenditure;
- The hearings of the budget proposal review should be transparent and announced in advance, in order to allow the interested parties to take part;
- The relevant parliamentary committees need to start reviewing the projects exceeding € 1.000.000 in the Police, Security Force and Intelligence Agency;
- The security institutions should immediately consolidate their internal control and auditing units, in order to improve efficiency and effectiveness in scrutinizing the financial and procurement management in these institutions;

With regards to the procurement transparency:

- The government of Kosovo in general, and security institutions in particular, should reduce single source tendering and avoid the appliance of closed tendering procedures;
- Procurement officials, subject to eventual political pressures, should not be affiliated with specific groups of interest while preserving their independency;
- The security institutions should assure to announce the call for bids also in the newspapers or other communication mechanisms in order to increase the scope of transparency;
- The financial statements of the intelligence agency need to be audited by the Office of Audit General as soon as possible;
- The budgetary organizations in the security sector needs urgently to consider the recommendations of the Office of Audit General for the auditing of the previous years;



# 5

## GENERAL TRANSPARENCY

### EXECUTIVE SUMMARY

The transparency of the public institutions in Kosovo is limited and is far from being equal to the best of European practices. Several reports of internationally and locally based organizations repeatedly criticize the conservative approach of the government in refusing the disclosure of certain official documents. The tendency to refer to a document as being 'classified' ran contrary to the approved Law on Classified Information having in mind that this law have not been started to be applied, yet. Concerning the security sector, the findings showed that the police were more efficient in responding to the request for access to the official documents, whereas there are no substantial records for the situation with either the Kosovo Security Force (KSF) or the Kosovo Intelligence Agency (KIA), as these institutions are in the process of consolidation. There are limited capacities among the public institutions and, overall, the current Law on Access to Official Documents is only partially implemented.

The Constitution guarantees the right of the citizens to access official documents; it also highlights the right of data privacy protection, and considers the need for classifying information requiring regulation by specific legislation. The Law on Data Privacy Protection has been approved in April 2010 and the implementation thereof is still on early stage of its development. There is lack of awareness amongst citizens on the right to privacy protection.

## 5.1. ACCESS TO OFFICIAL DOCUMENTS

### 5.1.1. LEGISLATION

The Constitution clearly defines the rights of all citizens to access public information. Art. 41 guarantee the right to access public information unless it

is classified (Constitution 2008). The new Law on Access to Official Documents (LAPD) has been adopted ensuring every natural and legal person to have access, without discrimination on any grounds, following a prior application, to official documents maintained, drawn or received by the public institutions. (Law on Access in Public Documents - LAPD, 2010) This law specifies that all public institutions shall be obliged to establish public relation offices responsible to receive and evaluate separately each request submitted by applicants<sup>31</sup> to access official documents. In case the requested information is publicly available, the Public Relation Office is responsible to prepare all the required documents accordingly to the request of the applicant by respecting the procedure regulated by LAPD. According to article 12 of LAPD any refusal of request for accessing the official document shall be justified proportionally. The refusal of request can take place only if provided with strong argument that the leak of information can directly threaten the national security, foreign policy of the state, economic and monetary state policy or/and public safety.

Each document which has a limited or no public availability should be branded into the respective category as provided by Law on Classified Information and Security Clearance (LCICS) which has been adopted in the first part of 2010 (LCICS: 2010). The law obliges the state institutions to publish the annual report related to their activities (Law on Access in Official Document, Article 20). According to the law, applications for access to documents shall be handled by the public institution which possessed the document. The public authority is obliged within seven (7) days from registration of the application to issue decision, either through granting the access to the documents requested, or through providing them with the written negative reply in which are stated the reason(s) for the total or partial refusal (Law on Access on Public Document: 2010). The law also states that in case of the negative response, the authority is obliged to inform the applicants regarding the complain mechanisms in their disposal. The applicants have on their disposal fifteen (15) days to submit their complaints and ask for the revision of decision. If also in this second instance the applicant fail to get access permission of certain public document requested, the applicant may initiate the procedure through other mechanisms such as Ombudsperson Institution or competent court in accordance with the Law into force (Ibid: Article 9).

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<sup>31</sup> Requests for accessing the classified information can be submitted by civil society, media, academics or other interested parties.



## 5.1.2. IMPLEMENTATION

The transparency of the public institutions is at a basic level, and the government has been criticized for being considerably non-transparent, especially on the issues of strategic importance. This issue has been repeatedly raised by civil society activists and journalists in particular. A good example of this can be seen in a comprehensive report from a locally based organization, which highlighted the lack of implementation of the existing law by noting that journalists cannot gain information about the growing range of central and local government decisions (YIHR 2010: 24). Or, as the finding of this report shows “enquiries and emails meet a wall of silence”.

With regards to the security sector, the Kosovo Police has been considered as an institution which primarily responded positively to the requests for access to information. However, the situation varies from case to case, as those of “high sensitivity” could not be accessed. Two other security institutions, Kosovo Security Force (KSF) and Kosovo Intelligence Agency (KIA), are in the process of consolidation, though the initial enquiries of journalists and civil society activists as to the performance of these institutions are discouraged. This is a result of limited communication and the reluctance of their officials to share information with the public.<sup>32</sup> What is concerning is that in many cases information are kept away from the public not because of being classified as provided by the Law on Classified Information but mainly due to the subjective prejudgment of the certain officials. Indeed this reluctance is applied to those publicly available information which, indeed, according to the respective laws are required to be published in their respective official web-pages.

As regarding the oversight agencies, in its Annual Report 2007-2008, the Ombudsperson has reported 35 cases of complaints filed against the KP, while between 2008 and 2010 a further eight complaints have been filed. Only one complaint has so far been filed against the KSF, while until 2011 there are no complaints against the KIA (KCSS Report, 2010: 96). The complaints filed against the KP primarily concerned alleged excessive use of force by police officers, abuse and maltreatment by police officers and also a case of domestic violence allegedly committed by a police officer however, there is no case recorded on the complaint for the violation of the rights to access official documents. The

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<sup>32</sup> To illustrate, in the KCSS discussion with the journalists, several complaints were revealed for the lack of transparent approach of the Kosovo Intelligence Agency.

Ombudsperson Office admitted that lack of awareness for the rights of citizens in accessing the official documents is one of the main indicators for the low number of complaints of the citizens directed to the Ombudsperson institution (Ombudsperson Report, 2010: 44).

### 5.1.3. ADMINISTRATIVE AND MANAGEMENT CAPACITY

There are limited administrative capacities in place to consider the requests of the interested parties seeking to access official documents. The Kosovo Police (KP) and Kosovo Security Force have established a Human Rights Unit in charge of reviewing the requests for access to official data. The budget of the office of Ombudsperson is low and there are not enough human resources to tackle complaints on potential violation of the law (Vula, 2010). The office of the Ombudsperson cannot act beyond requiring the reasons of potential refusal or non reaction of the public institutions (Vula, 2010). Insufficient human resources, low salaries, lack of proper working conditions and a very limited budget are other factors which adversely affect the functioning of the Ombudsperson Institution (KCSS Report, 2010: 97) Despite increasing activities, the budget of the Ombudsperson Institution has been reduced every year, at least according to representatives of the Ombudsperson Institution (Jashari, 2010).

In addition, the government and the public sector in general have limited human resource capacity and, one part of the institutions cannot be efficient in responding to the requests to access official documents according to the legal deadline. Overall, the Law on the Admission to Official Data is only partially implemented (EU Report for Kosovo 2009: 43).

### 5.1.4. VALUES

The daily newspapers repeatedly criticize the approach of the government, and highlight the lack of transparency from the governmental officials. In particular, regarding some issues of crucial importance, the Government was reluctant to reveal the contracts made with large companies - for road constructions or the process of privatization (Ahmeti 2010). As for the security sector, it is worthwhile noting the reluctance of the institutions to share the draft of the Kosovo security

strategy and the reluctance of the Secretariat of Kosovo Security Council (KSC) to disseminate it.<sup>33</sup> In general, the awareness for allowing the access to official documents has been increased within public administration though it is still in the early stage of development. In particular, the lack of awareness with the rights of the citizens to access official documents raises an issue of concern. The citizens seems not to be informed with the complain mechanisms especially with the role of Ombudsperson.

## 5.2. PROTECTION OF PERSONAL DATA

### 5.2.1. LEGISLATION

There are also clearly defined constitutional provisions, which guarantee the right to data privacy protection as a fundamental right of the citizens of Kosovo (Constitution 2008: Art.36). The law on data privacy protection has been adopted in 2010 after long efforts to draft and develop it. It has been provisionally approved by the Government, although incredibly lengthy discussions occurred amongst Members of Parliament on some of the details and financial implications of the law. The Law on Protection of Personal Data entered into force in April 2010. As part of the pre-accession requirement, it has been adopted in full accordance with the EU Directive 95/46 EC, and the law has been considered by the Government as a priority to start the implementation process. The law foresaw the establishment of the National Agency for Protection of Personal Data responsible to oversee the public agencies as well as private enterprises. It has established in June 2011, by Kosovo Assembly where five state supervisor of the National Agency for Protection of Personal Data have been selected.<sup>34</sup>

### 5.2.2. IMPLEMENTATION

The Law on Data Privacy Protection in Kosovo (LPPD) was adopted in April 2010 however there were some obstacles surrounded regarding the implementation

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<sup>33</sup> Based on the KCSS discussions with the representatives of non-governmental organizations and journalists.

<sup>34</sup> Those having more than 100 employees are supposed to process the data according to this law. For more details see Law on Data Privacy Protection in Kosovo (2010).

of the law (EU Report for Kosovo 2009: 49). The Parliamentary crises which occurred in Kosovo late in the 2010 had a significant role in prolonging the process of the implementation of law. The establishment of the State Agency for Protection of Personal Data (SAPPD) took place with almost a year delays. Within this period the government did not conduct any outreach campaigns to inform the citizens concerning their rights on privacy protection derived from the newly adopted law. Contrarily to that, the government initiated some very important processes of data collection such as Census and Registration of the Owners of the Mobile Numbers without taking under the consideration at all the Law on Protection of Personal Data, creating great indignations among the Kosovo citizens.

It is relatively a very short period to expect any measurable results from the SAPPD. The situation regarding the protection of the personal data continues to remain in its infancy. There is still a major lack of awareness among the public officials and private enterprises as regarding the level of protection of personal data as well as for the procedures for data collection and proceeding.

### 5.2.3. ADMINISTRATIVE CAPACITIES

Currently the administrative capacities of the state agency are quite low. Apart from the five State Supervisors of SAPPD, the agency has a very limited staff. Due to the limited financial capability of the Kosovo Budget the agency is already facing with financial burdens. Considering the lack of expertise in the respective field, is required undergoing the capacity building from scratch, however the capacity development might be difficult considering the limited budget in their disposal, as well as the weak institutional awareness about the importance of this institution.

### 5.2.4. VALUES

Considering the totalitarian heritage from the past, there is a limited understanding of the importance of the data privacy protection. The law and the concept are quite new for the Kosovars and it will need time to be embedded in the Kosovo society. This has been proven by the absolute assistance of the international community in drafting the primary legislation. While the law

officially was drafted by the legal department of the Ministry of Internal Affairs (MoIA), the role of local lawyers were rather facilitating than substantial (KCSS, 2010: Obs). This will cause difficulties in understanding the overall concept of privacy and will make difficult the implementation of the law in a near future.

## 5.3. PROTECTION OF CLASSIFIED DATA

### 5.3.1 LEGISLATION

The Constitution refers to the state secrecy and classification of information, unauthorized disclosure of which would be detrimental for the national security. The Law on Classified Information and Security Clearance (LCISC) has been approved by the Assembly on June 2010. The Law is very important, bearing in mind the consolidation of the institutions, especially the security sector. It is expected to regulate the classification of information based on four levels: Top Secret, Secret, Confidential and Restricted. It requires a detailed secondary legislation over the security and transport of the classified information. Before its adoption, there was a vague provision of the classified information by the governmental authorities embedded in the Law on Access to Official Documents (Law, 2003: Art.8). It does not envisage the level of classification, and neither the procedures. In other words, the legal framework on protection of classified information is insufficient.

The procedure for classifying information or access to classified information requires prior vetting process, for which the Department for Security Clearance is the competent authority. While this Department is within the organizational structure of the Kosovo Intelligence Agency, it is supposed to operate independently from it. According to law the duration of process for issuing the security clearance certificate is contingent upon the level of classification circle from maximum 6 months for information branded as confidential or restricted, up to 9 months for those branded as secret or top-secret. Apart from the general regulation of this subject, the law regulates also the procedure for granting provisional or emergency rights for the certain applicant permitted to access in the classified information.

### 5.3.2. IMPLEMENTATION

Overall, since the post-conflict period, there is no record of the classification of the information by the Government of Kosovo. The absence of the law made the implementation of procedures impossible, though it certainly does not exclude the fact that the Government may have internally adopted unilateral measures to 'self-classify' the information, the unauthorized disclosure of which could be expected to cause exceptional damage to the political, economical and security interests of Kosovo. This could have been based on the vague provisions of Law on Access to Official Documents. On the other hand, the absence of law justified some officials to refuse the enquiries of the journalists and others to access official documents under the auspices of secret documents. The request for access in the public information can be refused if the request is not clear and understandable, and if the information that you want to access is limited by law as classified information.

### 5.3.3. ADMINISTRATIVE AND MANAGEMENT CAPACITIES

There are limited capacities in place to implement the Law on Classified Information and Security Clearance. According to the law, a department for security clearance shall operate independently however it will be under the structures of Kosovo Intelligence Agency. Its mandate is to conduct vetting of the proposed officials in order to provide them with a certificate of security clearance. Based on the certificate obtained, selected individuals are allowed to conduct the classification of information. The financial burden of the law is expected to be high and it clearly requires investments in training of the personnel and other relevant officials. At this stage, there is no evidence indicating the trainings with respect to the classification of information. According to the data up to the end of 2011, the consolidation of this department is in its infancy.

### 5.3.4. VALUES

A lack of tradition in classifying information, according to law and procedures, creates difficulties in assessing the values in this regard. However, the research shows that the implications of classifying information has a more negative

dimension, bearing in mind the conservative approach of certain officials and the tendency not to disclose some official documents.

## 5.4. RECOMMENDATIONS

With regards to Access on Official Documents:

- The public administration in general and the security institutions in particular needs to start immediately the implementation of the new Law on Access to Official Documents (2010);
- The security institutions shall refrain from the refusal of access of official documents under the auspices of ‘national and public security’ unless the document is classified;

With regards to Protection of Personal Data:

- The security institutions needs to create the procedures for ensuring that the personal data are protected in appropriate manner and in accordance with the Law on Protection of Personal Data in Kosovo (2010);

With regards to Data Secrecy:

- The security institutions shall immediately consolidate the system of classifying documents and vetting in accordance with the Law on Classified Documents and Security Clearance (2010);





# 6 REPRESENTATION OF WOMEN AND MINORITY IN THE SECURITY SECTOR

## EXECUTIVE SUMMARY

Despite the constant struggle to develop a satisfactory level of diversity in the public sector, Kosovo's institutions have significantly progressed in creating a relatively suitable environment for marginalized groups such as: ethnic minorities, gender representation, religious communities and other groups.

The entire legal framework covering the public sector's legislation (including security sector legislation) sufficiently regulates the equal rights and the representation of all possible marginalized groups in Kosovo. Furthermore, the international and regional conventions regarding the representation of marginalized groups have been embraced by Kosovo's domestic law. There have also been official campaigns organized by Kosovo's institutions and supported by international community representatives in Kosovo, which continuously encourages members of these groups (especially women and Serbian community) to participate in political processes and to get involved in public institutions. However, alongside the general commitment and willingness, Kosovo environment has faced great challenges for the inclusion of these groups in the public sector, such as: interethnic hatred, archaic mindsets as well as sluggish social development and economic underdevelopment.

Regarding the representation of women and ethnic communities, Kosovo Police (KP) is the leading security sector institution with around 14-15 % of representation of both parties (according to the data by the end of 2010) whereas in Kosovo Security Force (KSF), the level of representation of women and ethnic communities is lower. In some institutions it is impossible to draw conclusions on the representation due to the non-transparent profile, such as the case with the Kosovo Intelligence Agency (KIA).

## 6.1 REPRESENTATION OF WOMEN IN KOSOVO SECURITY SECTOR

Unlike most of the countries in the region where the process of introduction of an adequate representation of women in the security sector has started with the processes of Security Sector Reform, in Kosovo the attempts to implement a satisfactory level of women's representation took place in parallel with the security sector development. Starting from 1999, institutions such as Kosovo Police and the former Kosovo Protection Corps (KPC) began to introduce the importance of women inclusion in the security sector and also promoted an interest to exercise their role in an area that was traditionally considered a 'man's responsibility'. Currently, all security institutions in Kosovo paid special attention regarding the gender representation. The level of this representation depends on institutions, but it varies on the position, whether it is a managerial or an operational one. In this regard, the representation of women in the security sector will be elaborated based on the perspective of access to jobs and career development.

### 6.1.1. LEGISLATION

Based on the current legislation the position of woman in the security sector is quite similar to other areas. In essence, the entire legislation which regulates the non-discriminatory position of women in Kosovo's society is also applicable to the security sector. The legal framework has, given women the necessary protection and has created opportunities to advance their position in the Kosovo society based on fair treatment and equality. The Constitution specifically states that, "the right to work is guaranteed" and that, "every person is free to choose his/her profession and occupation" without any limitation to any particular group or individuals (Constitution, 2008: Art. 49).

The Anti-Discrimination Law (ADL) and the Law on Gender Equality (LGE) regulates access to jobs and career development opportunities in the public sector in general. The ADL represents one of the key legal acts which guarantees equal treatment and non-discriminatory measures in the case of the access to employment for minority groups and women in Kosovo (ADL 2004: Art. 2.). The law states that every natural or legal person should refrain from any discriminatory acts when it comes to conditions for the access to employment;

self-employment, including selection criteria and recruitment conditions, the branch of activity and at all levels of the professional hierarchy, including promotion (Ibid: Art 4.a). Likewise, the LGE calls for the implementation of legal and affirmative measures. These affirmative measures are imposed in attempt to establish the equal gender representation in legislative, executive and judicial bodies of the central and local levels. (LGE 2004: Art.3.1). The law goes on to specify that the equal gender representation is achieved only in cases if the participation of the particular gender in the institutions, bodies or at the authority level is 40% or higher.

To ensure the implementation of its articles, this law has required from the government to establish an Office for Gender Equality as a separate governmental institution, which could monitor and implement the governmental policies for improving gender representation in public institutions (Ibid. Art. 5.1).<sup>35</sup> It also requires the Gender Equality Attorney to be established as an institution, who is nominated by the government but elected by the Assembly of Kosovo – AoK (Ibid: Article Art.6).<sup>36</sup>

Concerns about these two laws can be raised, considering that neither of these laws did draw attention to the specificity of position of women in the security sector. The Law on KP clearly states that it shall be dedicated to the “fair and equal treatment of all persons” and that the KP should also show commitment to merit-based, non-discriminatory hiring, promotion and assignment, which is inclusive, reflecting the multi-ethnic character of Kosovo and recognizing the principles of gender equality and human rights incorporated into the Constitution (Law on Police 2008: Art 2.1). However, in contrast with the LGE, the Law on the KP did not envisage quotas for the level of the representation of women in this institution. According to the provisions of the Law on Police, the procedures for the selection and testing of candidates for positions of Police Officers is based on skills and attributes (Ibid: Art 52). Similarly also the Law on Service in KSF ensures fair and equal treatment irrespective of gender or ethnicity (Law on Service in KSF, 2008: Art 3). It further states that members of the KSF are required to, “on and off duty, treat members of the KSF and all others in accordance with the law and without discriminating or harassing, directly or indirectly on the basis of race, gender, language, religion, etc.” (Ibid Art. 4).

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<sup>35</sup> In 2005 the Office for Gender Equality is transformed into Agency for Gender Equality

<sup>36</sup> Among the tasks given to this institution are monitoring

Until lately, the largest challenge for women's employment and carrier development in the whole public and private sector was the process of drafting the Labor Law. There was a huge debate about the initial draft of this law regarding the regulation of maternity leave which was very short, threatening deeply the position of women regarding the access to job and carrier development. Nevertheless, the civil society pressure concluded the final version of the law embedding the sufficient protection of women when it comes to maternity leave (Law on Labor, 2010).

### 6.1.2. IMPLEMENTATION

Although it seems quite easy to evaluate the legislation regarding gender representation in the security sector, the implementation of these laws is less obvious. So far, the KP is the champion among the Kosovo security sector having the highest level of women representation in its general structures. In 2006, the representation of women in KP was around 14% which, compared to other percentages in the security sector, is considered to be quite high (KGCS, 2007). According to the official statistics of August 2010, in the police the level of women's representation is between 14 and 15 %. Moreover, women in police are substantially promoted and ranked also in the managerial structures. However, on the other hand some sources suggest that there is a trend of a decreasing number of women working in the police (KIPRED 2010: p. 9). Whilst the current level of women representation in the police is satisfactory, the criticism could at least serve as a pressure to keep the consistency of women representation in this institution.

RANK NAME	Total
Police Colonels	2
Police Lieutenant Colonels	2
Police Majors	4
Police Captains	5
Police Lieutenants	26
Police Sergeants	74
Police Officers	779
Police Officer on Practices	5
Security Officers	12
Civil Personnel	341
Female Total	1251

**The level of women representation in managerial and operative positions (KP sources as for August 2010)**

According to the sources as provided by the beginning of 2011, in the Ministry of Kosovo Security Force (MFSK) and KSF, the representation of women is much lower, and it does not go beyond 4.2 %, despite a declared commitment for attaining a higher level of women inclusion. Indeed, the representation of women in the Ministry as civilian control mechanism is quite high however the most concerning issue is the limited representation of women in the uniformed component of KSF which raises the need for further improvements. What is concerning is that in different reports it was noticed the lack of detailed plans which would encourage women to join the KSF or MKSF and be part of the policy making process of this institution (KIPRED, 2010: p.9). Also, when it comes to career development opportunities, so far there is a low number of women holding leading position within this institution and the highest managerial position held by woman currently is the rank of KSF Colonel.

Apart from the security institutions, the research paid special attention also for the level of the gender representation in the other security related state institutions. Thus, it noticed that the lack of sufficient women's representation is evident also the security related parliamentary committees, Office of Prime

Minister (OPM) and, particularly, in the KSC.<sup>37</sup> The worst situation is in the civil emergency structures, especially in the fire-fighters units where women's representation is almost inexistent.

Despite the institutional efforts to improve the gender representation which were materialized through establishing important institutional mechanisms with a mandate to ensure the improvement of the women's position in the public sector such as: Agency for Gender Equality and the Attorney for Gender Equality as well as other offices or departments for gender equality established in the central and municipal institutional level, their performance should be likely considered ineffective and passive. The greatest women's concern is also the reluctance and the lack of consistent governmental policies which could stimulate them into joining the security sector structures. In other words, sometimes the problem of women's representation in the security sector in practice goes beyond the employment problems.

### 6.1.3. ADMINISTRATIVE CAPACITIES

There are no discriminatory procedures in any of the public institutions (including the security institutions) which could prohibit women to access job positions or to disallow career development opportunities. However, there is a common picture that there might be discrepancy between men and women when it comes to the academic and professional skills with regards to the security sector. In the past (until 1999) the education of a Kosovar woman in security sector such as military or police was barely possible due to political and social difficulties that women in Kosovo faced through generations. Sometimes this discrepancy has been drawn even further because of prejudice and stereotyping, which may continue to exist in some circles of Kosovo's society (Demolli, 2010).

Despite these difficulties and problematic issues, due to its specifics the recruitment and promotion of woman in the security sector mechanisms is exclusively based on individual skills. One of the main mechanisms for training the security sector personnel is Kosovo Centre for Public Security, Education and Development (KCPSED). This centre is responsible for providing technical,

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<sup>37</sup> There are no women among the permanent members of KSC and advisors either. However, the research could evidence very few women employees in the Secretariat of KSC and Situation Centre.

administrative and educational support to all public security agencies starting from: KP, Department for Management of Emergencies, Kosovo Correctional Service and others, without any preference or discrimination towards women. The Centre provides a comprehensive approach by training the officials of different branches of law enforcement, emergency management mechanisms by providing different types of courses (FRIDOM, 2010). There is also a similar situation in the KSF, where the entirety of the members of this institution are provided with equal rights to participate in training and promotion based on the individual skills without any gender discrimination.

#### 6.1.4. VALUES

The security sector in Kosovo has made some major steps forward with respect to the representation of women. However, there is still a high level of criticism from experts and activists of the women's associations on the so-called social stereotypes when it comes to the current position of women in public sector (Demolli, 2010).

So far, women have been neglected not only with respect to the access to jobs and career development opportunities in public and security sectors, but also at the political level. Besides the KP, where women play a relatively significant role, in other institutions the encouragement of women to participate in the public life is inflamed mainly because of implementing the quotas.

## 6.2. REPRESENTATION OF ETHNIC MINORITIES IN THE KOSOVO SECURITY SECTOR

The representation of the ethnic minorities in Kosovo's security sector has been considered a contentious issue. One of the pre-requisites for establishing a sustainable security sector in Kosovo was that the local ethnic communities had to be fully integrated into the structures of the security mechanisms and that a decent representation of these communities had to be created in all structures of the public sector. Therefore, below is an elaboration on the current state of the representation of ethnic minorities in Kosovo's security sector by analyzing the access to jobs and career development opportunities.

## 6.2.1. LEGISLATION

The representation of the ethnic minorities has been more emphasized in the legal framework, compared with that of gender representation. Within the Constitution of Kosovo is embedded an entire chapter dedicated to the rights of local ethnic communities (Constitution 2008). Apart from guaranteeing a high level of community rights, the constitution has also regulated their representation in public institution through their employment, by stating that the Communities and their members are entitled to equitable representation within the public bodies and publicly owned enterprises at all levels, including in particular in the police (Constitution 2008: Art. 61).<sup>38</sup> The representation of ethnic communities is also reflected in the constitutional chapter for the security sector (*Ibid.* Art 126 & 127).

The Anti-Discrimination Law (ADL) further develops the protection from any discriminatory acts when it comes to the access to jobs and career development opportunities of minorities and other fragile groups in Kosovo. It represents a key law, which is eligible to guarantee equal treatment and anti-discriminatory measures in case of access to employment also for the ethnic communities (ADL 2004: Art. 2). The ADL specifically states that every natural or legal person should refrain from any discriminatory acts when it comes to equal conditions for access to employment, self-employment and occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion (*Ibid.*: Art. 4.a). Another law which is designed specifically to protect the rights of communities is the Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo (LPPRCMK). According to this law, all forms of discrimination, direct or indirect, on account of national, ethnic, cultural, linguistic or religious identity are prohibited (LPPRCMK: Art 3.3). Therefore, in accordance with the law, Kosovo shall ensure that all members of communities are fully enjoying their fundamental rights and shall take special measures to remedy any situation where these persons are excluded from equal exercise of these rights (*Ibid.*: Art 3.3). This law also specifies that “the Albanian and Serbian languages and their alphabets are official languages in the Republic of Kosovo” and have equal status in its institutions, whereas the

<sup>38</sup> The constitution has guaranteed the representation of the ethnic communities also in the local level government by ensuring that in each municipality where the at least 10% of residents belong to minority groups, the post of Vice President of the Municipal Assembly shall be reserved to these communities, who will be responsible to promote an inter-ethnic dialogue.



Turkish, Bosnian and Roma languages shall have the status of official languages at the municipal level or will be in official use in accordance with the Law on the Use of Languages (Ibid: Art. 4.1).

The importance for the representation of the smaller ethnic communities on the security mechanisms is reflected also by security sector legislation. The Law on Police clearly states that, “the ethnic composition of the Police Officers assigned within a municipality shall, to the greatest possible extent, reflect the ethnic composition of the population within the municipality (Law on Police 2008)”. The Law on Service in KSF defines that members of this organization should be fairly treated, valued and respected as individuals, and should be sustained and rewarded by commensurate terms and conditions of service without any discrimination on the ethnic or gender bases (Law on Service in KSF 2008: Art 3).

Important dispositions dedicated to the ethnic communities are foreseen also by the Law on the Local Self-Government (LLSG). In order to increase the position of the local communities, especially of Serbian community in Kosovo, this law has outlined the possibility of enhanced competences to some municipalities, in which they represent a local majority. In this case, this law guaranteed that in municipalities in which Kosovo Serb community is in a majority shall exercise enhanced participatory rights in the selection of the local station police commanders, in accordance with law on police (LLSG, 2008 Art. 23).

## 6.2.2. IMPLEMENTATION

In practice, the level of representation of the ethnic communities in Kosovo’s security mechanisms depends not only on the level of integration of each ethnic community into Kosovar society, but it also differs from institution to institution. One of the most challenging issues when it comes to integration of ethnic communities into Kosovar society is the accommodation of the Serbian ethnic community. Although the position of Serbian community is exceptionally well regulated, a part of them are reluctant to become member of Kosovo state institutions. Apart from the Serbian community, the position of Roma, Egyptian and Ashkali (REA) communities is also concerning, especially because of their low level of education and the extreme poverty in which these communities are living.

From an institutional point of view, the KP leads in the Kosovo security sector with the highest level of representation of the ethnic communities. According to the data in 2011, up to 14% of police members are from the Kosovo ethnic minorities. Out of this, 9 % of them are from the Serbian community. These figures have been widely applauded by international actors by referencing the “strong Serb and other ethnic minority representation”, making the KP “an exemplary police organization, in the context of the Western Balkans and Europe as a whole” (EULEX Program Report 2009: p. 13).

However, ethnic representation in the KP did not pass without difficulties. The majority of Serb Police officers left their positions after the demands of Belgrade officials, as the result of a reaction towards the declaration of independence in February 2008. By 2009, most of them had returned to their previous positions (ICG, European Report 2009: 14) after the commitment of international presence and the government to announce their positions and recruit new police officers. For this purpose, according to some sources, 307 out of 325 Serb police officers returned to their positions with the KP (UNDP, 2009).

The representation of the ethnic minority communities in KSF is lower compared with that of the police. Until September 2010, up to 8 % of the KSF members came from the ethnic minority communities (Shala, 2010). Nevertheless, by mid 2011 this number is supposed to be increased. In particular, the inclusion of members from the Serbian community is very limited and, also, there are minimal numbers of Serbian community representatives who have expressed their willingness to join this institution. This low representation of the Serbian community in KSF is as a result of the pressure made by the Serbian government officials, labelling it as an illegal and paramilitary force. However, still according to the latest statistic from the MFSK (in September 2010), the KSF have reached some satisfactory quotas of ethnic representation to around 8.3 % of the personnel (Mujota, 2010).

Regarding the promotion of community rights, there are sufficient institutions and mechanisms at the central and local levels. The parliamentary Committee for Community Rights and Interests and for Returns (CCRIR) is a mechanism of the Kosovo Assembly which functions as one of the four permanent parliamentary committees and it is allegeable to promote the rights of ethnic communities in Kosovo. Another important mechanism to promote the issues

related to communities is also the Consultative Community Council, which has been established under the Office of President of Kosovo (Constitution, 2010: Art 60). The Ministry for Community and Returns (MCR) is also an important mechanism, which was founded particularly in order to accommodate the needs of ethnic communities in Kosovo. Also in almost every central or local institution there are internal mechanisms for promoting the rights of the ethnic communities.

### 6.2.3. ADMINISTRATIVE CAPACITIES

The problem of ethnic representation is not due to the lack of mechanisms which are liable to promote and inquire the ethnic representation in public sector or in particular position (including also those in the security sector). In fact, there are sufficient institutions and mechanisms at all levels which are responsible to promote rights of minority community. When it comes to training and promotion, there are no cases reported for the discrimination on a basis of the ethnicity of the applicants as access to job in the security institutions is specifically based on individual abilities<sup>39</sup>. In this regard, training centre in Vushtrri, as one of the main training grounds in Kosovo, has provided technical, administrative and educational support to members of the public security agencies, regardless of ethnic background. Starting with Kosovo Police, Department for Management of Emergencies, Kosovo Correctional Service, and other security mechanisms, all these institutions have a satisfactory level of ethnic representation, suggesting that KCPSD was a good instrument for promoting the ethnic tolerance as basic human values. Also, in KSF the access to job and carrier development is based on anti-discrimination and equality.

The current administrative capacities and infrastructure which is in disposal for Kosovo ethnic minorities in public sector in general and in particular in the security sector are strengthened as a result of the huge international support in this regard. The KP is continually supported by large donors in promoting the interests of minority communities. Similarly, the NATO-led force in Kosovo is strongly committed to providing its expertise and technical facilities for encouraging the minority communities to join KSF.

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<sup>39</sup> Although there are plenty of cases where the affirmative measures and positive discrimination of ethnic communities took place also in the security sector.

## 6.2.4. VALUES

The development of the security sector in Kosovo depends on the level of integration of the minorities in their security structures. However, the problem of the integration of ethnic minorities in Kosovo is sometimes affiliated with external factors. This can be noticed especially when it comes to integration of the Serbian community in Kosovo security sector mechanisms such as the Kosovo Security Force. In this regard, the efforts of the Kosovo authorities and international community should also be concentrated on minimizing the external and political influence as a result of hesitation by the Serbian community to join the Kosovo security institutions.

## 6.3. RECOMMENDATIONS

With respect to women representation in the security sector:

- The new security sector mechanism in Kosovo should carefully analyze the modalities of including the higher representation of women on their structures. The government should run continues campaigns which encourage the participation of women in the security sector;
- The Government needs to conduct serious projects for increasing the representation of women in Kosovo Security Council and civil emergency structures.

With respect to minority representation:

- The Kosovo institutions in cooperation with international actors should continue to promote the importance of the participation of local ethnic communities in the security sector;
- There is a need for a greater attention towards the other smaller ethnic groups, especially of those from Roma, Egyptian and Ashkali (REA) community which because of the lower educational and social-economical development these communities requires to be given additional attention.

# 7 | PARLIAMENTARY OVERSIGHT AND CONTROL OF SECURITY SECTOR

## EXECUTIVE SUMMARY

The principles of parliamentary control and oversight are introduced by the Constitution and have been followed up by the primary laws and secondary legislations. The constitutional provisions guarantee a prominent role of the Assembly in overseeing the budget and policies of the security institutions as provided by law.

The consolidation of the parliamentary oversight was in parallel with the overall development of the security sector meaning that the Assembly of Kosovo exercised limited track of practice in overseeing the dimensions in the pre-independence period such as: budgetary expenditures, implementation of human rights and implementation of government security policies of the state actors. There are a small number of professional staffers supporting the relevant parliamentary committees. The current capacities might be at stake as the result of the gradual reduction of external funds and lack of secretariat policies in selecting non-political staffers. The parliament is constrained by the Constitutional provisions and the Ahtisaari package in scrutinizing the performance of the international military and civil presence in Kosovo.

Overall, the legislation for the parliamentary oversight of the security sector is in place. The constitution explicitly refers to the parliamentary oversight and also the primary laws on actors embedded the principles of democratic control. The practice showed limited track of record of the assembly in reviewing the budget. There is also limited practice in discussing the human rights issues, though a specific parliamentary committee has been established for this purpose. The research could evidence the discussions over the implementation of some laws and amendments (such as Law on Police) though there is absence of discussions over the security policies.

## 7.1. BUDGETARY CONTROL

### 7.1.1 LEGISLATION

The budgetary control by the parliament is embedded in the constitutional provisions. Similarly to elsewhere, the parliament not only approves the budget of the Republic of Kosovo (Constitution, 2008: 65.5), but it also oversees the work of the Government and other public institutions that reports to the Assembly. The constitution also guaranties parliamentary oversight of the budget and policies of the security institutions as provided by law (Art. 125.5).

There are parliamentary committees established particularly for the budgetary control of all public finances. The Committee for Budget and Finances (CBF) functions as one of the four permanent parliamentary committees. According to the legal framework, it shall play crucial role in overseeing the budgetary issues such as: discussing the annual budget, controlling the annual reports and overseeing the finances of Kosovo or other institutions (Kosovo Assembly, 2011). In 2009 the Assembly has established also the Supervision Committee for Public Finances. According to legal framework this committee is responsible to oversee the budgetary expenditures of the public funded institutions including security institutions (Kosovo Assembly, 2011). The Auditor General is responsible to submit its Annual Reports for the final review in front of this committee prior to representing findings in the parliament.

Financial control functions were given also to the parliamentary committees which have been established to scrutinize the performance of security sector. In this regard, the Committee for Internal Affairs, Security and Kosovo Security Force (CIASKSF) oversees the expenditures and financial management of: Ministry of Internal Affairs - MoIA (including Kosovo Police, and Emergency Management); Ministry of Kosovo Security Forces - MKSF (Including the KSF); and Kosovo Security Council (Kosovo Assembly 2010). Also, the Supervision Committee for Kosovo Intelligence Agency (KIA) has competencies to oversee the financial aspects of KIA. The law specified that this committee has competencies to review reports from the Director of KIA regarding the operations and expenditures of the KIA (Law on KIA, 2008: 36.3). Unlike other committees, here the discussions are excluded from the public.

Overall, the security institutions are obliged to inform the relevant parliamentary committees for the projects exceeding one million euro. However this rule applies only for the projects part of the Kosovo Budget and this does not include the international funded projects or donations.

### 7.1.2. IMPLEMENTATION

There is a limited performance of the parliamentary committees in overseeing the budget with respect to security sector. Apart from the CBF other committees are newly established and/or do not exercise any budgetary oversight regarding the security sector which could be dated. Considering the mandate of the CBF which was to control the annual reports and financial oversight of Kosovo Consolidated Budget, in practice, there were several complains directed to this committee with respect to control of public finances. It is repeatedly criticized by the civil society especially when it comes to the discussion of the Annual Reports of Auditor-General as this committee was mainly inconsistent and lacked follow up actions (KCSS, 2010).<sup>40</sup> In order to strengthen the capacities for reviewing the budget expenditures, in 2008 the Kosovo Assembly has established the Supervision Committee for Public Finance, though the reports have shown that this committee has similarly exercised limited performance. More specifically, this committee started to review the financial statements and the Auditor General Reports only in the beginning of 2010. Due to the very low dynamics, both budgetary committees were consistently criticized by civil society requiring from the members of these communities to have a more proactive approach in order to raise the efficiency when monitoring the expenditures of the public finances.

The research could not find any record of the performance of security sector committees in overseeing the budgetary expenditures. The CIASKSF has a mandate to review the budget of KP and KSF though there is no evidence that this committee required any type of accountability for the budgetary expenditures either of the Police, KSF or other security mechanisms. Despite the fact that the relevant committees are obliged to review the procurement procedure for the public funded projects exceeding the amount of 1 million euro, the research could not find any evidence that the procurement contracts

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<sup>40</sup> See also the “*Control Function of Independent State Institutions – KCSS Criteria Paper*”, KCSS, Prishtina, 2010, Page 11.

have been reviewed by the security related committees. In one of the meetings of the former parliamentary Supervision Committee of KSF<sup>41</sup> one of the MP's publicly criticized other members for not reviewing these contracts even though the KSF procured weapons at that time (KCSS Observation, 2010).<sup>42</sup> While there was proactive approach of a part of MPs on the cases of bids related to the road transport, reconstruction and other economic domains, the oversight of the procurement in the security sector is practically almost nonexistent. However, in the fall of 2010 the former parliamentary Supervision Committee of KSF invited the Ministry of KSF to respond to the questions of MP's over the findings of Audit General for the budgetary expenditures in 2009 (Observation, 2010). This was the first step of the budgetary control of KSF. Meanwhile, there are no track records in disposal when it comes to budgetary oversight performed by parliamentary Committee for Supervision of KIA due to the closed sessions for the public.

The plenary sessions serve as arena between the position and opposition parties in arguing for the budgetary expenditures and procurement. However, the discussion did not lead to any development and modification, which further strengthens the argument of the weak role of parliament (EU Progress Report 2009). In general, the transparency of plenary sessions is hampered while the public television continue to broadcast the sessions only until 17:00h since it affects the programme scheme of the television (Report, 2010: 10).

### 7.1.3. ADMINISTRATIVE AND MANAGEMENT CAPACITIES

The administrative capacities of the parliamentary committees are limited in both human and material resources. Most of the MPs do not have any prior experiences on the budgetary or procurement issues, which questions the oversight in this regard. Also, none of the supportive staff of the parliamentary committees with responsibility to security sector has an economic background. Paradoxically, the lack of experience is evident also in the budgetary control committee (KDI, 2009). Based on the findings, most of the MPs in the CBF require special explanation about the content of the financial reports of General-Audit or other reports, since they are not familiar with the professional

41 With new composition of parliament which was inaugurated in March 2011, the Committee on Kosovo Force was merged in with the Committee on Internal Affairs and Security, forming the Committee on Internal Affairs, Security and Supervision of the Kosovo Security Force;

42 Minutes of the meeting of KSF Parliamentary Committee, 15.07.2010



terminology (Venhari, 2010). Moreover, the Assembly of Kosovo relies on the professional support of international and local organisations, which does not reflect the consistency. The international organizations offer support based on the short term projects where the follow up could be questioned as the result of gradual reduce of donations dedicated to Kosovo. For this purpose, there are no significant efforts made by the secretariat and committees to increase and encourage the local expertise in order to assure consistency. In contrary, there are indications that the incomers in some of the parliamentary committees are mostly recruited from the political and other interest groups, the phenomenon which largely politicized the supportive staff of parliamentary committees. Consequently, the turnover of the staffers in each legislature is potentially probable.

#### 7.1.4. VALUES

The parliamentary practice in exercising budgetary control of the security sector is limited, due to the fact that the security mechanisms and, simultaneously, parliamentary control are in the process of consolidation. Moreover, the discussion over the potential corruption among the high rank officials marks the lack of political will to raise the control over the budgetary expenditures and procurement procedures. Also, there is still no practice evidencing the discussions over the budgetary expenditures of the security institutions. The discussions on the expenditures of other public institutions might overshadow the attempts to raise the budgetary and procurement issues with respect to security sector.

## 7.2. CONTROL OF THE COMPLIANCE OF WORK WITH LAWS AND THE RESPECT OF HUMAN RIGHTS

### 7.2.1. LEGISLATION

The parliamentary control of Human Rights (HR) protection in Kosovo is regulated by primary and secondary applicable legislation. The constitution has paid special attention to the parliamentary protection of human rights. Indeed, Kosovo Assembly has two relevant parliamentary committees responsible in overseeing the human rights in general: the Committee for Community

Rights and Interests and for Returns (CCRIR), as well as Committee on Human Rights, Gender Equality, Missing Persons and Petitions (CHRGEMPP). Indeed, the CCRIR is the only permanent committee which has been envisaged by the new constitution. This committee is composed of 1/3 Serbian Community, 1/3 of other non majority community and 1/3 majority community represented in the Assembly. (Constitution 2008: 78.1). According to the Constitution, at the request of any member of the Presidency of the Assembly, any proposed law shall be submitted to the Committee on Rights and Interests of Communities (Art. 78.2).

The protection of HR could be raised directly, which could occur by calling particular sessions regarding the HR protection in the security sector or it could be raised indirectly by one of the parliamentary committees covering the human rights or security sector. For example, in the previous description of tasks given to the former committee on internal affairs and security it is specified that this committee should be involved in the development and supervision of the implementation of security standards, including the issues of minorities (Kosovo Assembly, 2010). However, either laws covering KP, KSF or KIA refer specifically to parliamentary inquiries regarding the human right issues as these laws refers only to parliamentary inquiries for unlawful actions in general.

## 7.2.2. IMPLEMENTATION

There is a limited practice to date regarding the parliamentary control and oversight of the HR in general but it dominantly does not result beyond the deliberative level. The MP's raised the issue of human rights protection in several cases in the plenary sessions but rarely receive the support of a substantial group of MP's. The practice showed that the parliament was active in adopting the relevant legislation however it still lacks dynamic to clearly represent the interests of citizens and protect their rights should there is an evidence of the violation. This state of affairs has been obvious when it comes to the discussions over the Report of Ombudsperson in the past and, particularly, the process of election of new Ombudsperson which it took almost five years for the MP's to agree over the name (KCSS, 2010: 7).<sup>43</sup> Bearing in mind the importance of the

<sup>43</sup> See also the "Control Function of Independent State Institutions – KCSS Criteria Paper", KCSS, Prishtina, 2010, Page 7

Ombudsperson institution in protection of the human rights, the tremendous delays in electing the head of Ombudsperson indicates that the parliament did not provide serious attention to the human rights issues, not only in security sector but in general (Selmani 2010).

With respect to the parliamentary committees covering the security sector, there was barely any discussion from these committees regarding the human rights in this sector. While there is a sense of concern for the potential violation of human rights and the rights of employees of security sector, the performance of the relevant security committees in addressing this issue is far from desirable. To illustrate, the level of HR violation of the employees in the private security industry continues to be alarming (KCSS, 2009) and none of the committees addressed this issue and, inconsistently, there is no record of scrutinizing the role of non-state statutory actors. The civil society and media were among the most active in highlighting several issues of human rights violation however, limited support has been provided by the Parliament. Realistically, having in mind a relatively new security sector (with the exception of police) there is no reporting on the major violation of human rights by the security institutions which could be addressed in the Parliament. There were some complaints towards the police but these issues were addressed and considered only by the Kosovo Ombudsperson. In the period from 2007 to 2010 there were up to 43 cases registered of violation of human rights by the police (KCSS, 2010: 96). Until mid 2011, there was only one violation reported on the rights of KSF employee.

### 7.2.3. MANAGEMENT AND ADMINISTRATIVE CAPACITIES

The administrative capacities are generally weak and, also, with respect to initiating or addressing the human rights issues. Indeed, in comparison, the expertise of MP's is more emphasized on the issues of human rights rather than budgetary control. However, there is no core staff which could support the initiatives in this regard. The MP's are not provided with office space in the Assembly building<sup>44</sup>, which constrains the potential discussion between the MP's and citizens should there is a violation of human rights. The hall of the Parliament and the venues outside the building are frequently used for the

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<sup>44</sup> The MP's use the office of their parliamentary group but they repeatedly complain this does not allow them to properly address some issues

purposes of discussion between MP's and civil society organisation, though it does not necessarily exclude the positive outcome of a part of the discussions even in these circumstances.

## 7.2.4. VALUES

The issue of addressing the HR in the parliament completely rests on the willingness of individual MP's. The HR in some cases is used as political tool, especially by the political parties in the opposition. Indeed the poor performance of the government in protecting the HR and its limited transparent approach is widely criticized, but it never reached the consensus of the majority of MP's in pushing the governmental elite in considering these concerns. The robust presence of the international community deemed the HR as an issue of crucial importance and one may argue that it has been embedded in the practice of the parliaments especially on the issues of minority communities.

## 7.3. CONTROL FUNCTIONS AND OVERSIGHT OVER THE IMPLEMENTATION OF GOVERNMENT POLICIES AND LAW ADOPTED BY THE PARLIAMENT

### 7.3.1. LEGISLATION

The control and oversight of the implementation of governmental policies and legislation is another crucial aspect of the democratic oversight. The constitutional provisions of the security sector specifically refer to the role of Assembly in overseeing the budget and policies of the security institutions as provided by law (Constitution Art. 125.5).

Among the main responsibilities belonging to the CIASKSF are to supervise the public policies and strategies for internal security; initiate and approve the legislation in the Committee's fields of activity and also being in close cooperation with Police Inspectorate. This committee monitors the performance of Kosovo Police and Kosovo Security Force regarding the disciplinary measures towards the police and KSF members (Kosovo Assembly 2010).

CIASKSF has competencies to review strategies, laws, and policy documents submitted by the MoIA and MKSF; to demand the presence of highest officials

from these Ministries and answer questions from MP's into parliamentary session as well as to require budgetary and procurement transparency from them. Also, the competences given to the Supervision Committee for KIA are: to oversee the legality of the work of the KIA, to review the reports from the Prime Minister issued for the KIA based on inspection, audit or investigation; reviewing reports from the KIA Director and Inspector General. Compared with the other committees, the Supervision Committee on KIA works mainly in closed sessions and discussions in this committee are restricted from the access of public (Law on KIA: 37.2).

### 7.3.2. IMPLEMENTATION

The CIASKSF does review the content of the relevant legislation before proceeding with the plenary session and approval. The Committee appoints a referee of the law which organise working groups with the civil society and experts. Should there be a suggestion for major modification of the law, it turns back to the Government for considering the parliamentary suggestions. In most of the cases, the drafters of the laws responded to the requests of the committee by answering the enquiries of the MP's or civil society on certain issues.<sup>45</sup> The research finds out that the committee exercised a proactive approach in reviewing most of the relevant legislation and there is a sense of involving the civil society and media representatives. However, the practice showed that the attempts for reviewing the legislation or scrutinizing the implementation of specific law have been done on ad hoc bases without a clear strategy and approach. The Committee was more active in overseeing the implementation of the Law on Police and less on other mechanisms. The parliamentary committee on the KIA did not oversee the implementation of the legislation until the present time, as well as the legislative agenda reflects no burden for this committee in reviewing the upcoming legislation (Kosovo Government).<sup>46</sup>

The relevant committees exercised a limited role in overseeing the government policies concerning the security sector. The most notable one has to do with

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<sup>45</sup> In the KCSS experience with the work of the Committee, during 2009 and 2010, the drafters positively respond to the invitation for the public hearing or joint working groups.

<sup>46</sup> For instance, for the legislative period 2010, 2011 and 2012 there are no laws expected to be passed in the Committee on KIA

the Government's approach towards the Northern Part of Kosovo and the implementation of the Strategy for North (Mustafa, 2010). The research marks no evidence of the review of the sector based strategies in the security sector. The National Security Strategy (NSS) passed through the CIASKSF and this was the first practice of the committee on reviewing this document. The CIASKSF and the Supervision Committee for KIA are also expected to review the upcoming strategies for the KSF and the KIA respectively. However, there is no track of record on discussing the strategic documents in the security sector. The NSS was approved by the government and by the Parliament, by mid 2011, but it has not been subject to the discussions in the parliamentary sessions. Also, the new police strategy has been approved in October 2010 but there was no discussion from the MP's over the content.

### 7.3.3. MANAGEMENT AND ADMINISTRATIVE CAPACITIES

As explained above, there are limited professional capacities within the assembly in supporting the efforts for review of legislation and policies. Currently, only few MP's have prior experience with the security policies. The supportive personnel rely on the external assistance of the different international organisations and there are only two out of five supportive officers in CIASKSF, who are paid by the budget of Assembly.<sup>4748</sup> This questions the consistency of the parliamentary staffers. Although there was a support from the international organization such as the UNDP, the DCAF, and the OSCE, which occasionally supported the Assembly, especially when it comes to the drafting of new laws and reviewing policies. The CIASKSF staffers occasionally receive trainings which apply mostly for those paid by the international organisations and less for those paid by the Assembly. However, at this stage, overall the external support of parliamentary committees to control and oversee implementation of the governmental policies in the security sector is limited (Monez 2009: 4). Moreover, the other committee on supervision of KIA do not have sufficient supportive staff, though they receive occasional support from the current employees at the CIASKSF.

47 One expert is the support of DCAF and two other are paid by UNDP

48 For more information about the Parliamentary capacities, see Assessment of Institutional Integrity, available at <http://www.kdi-kosova.org/publications/NIS2011en.pdf>

### 7.3.4. VALUES

Despite having considerably sufficient competencies to control and oversee the laws, and governmental policies, the performance of the parliament in scrutinizing the implementation of the legislation and polices is weak. There are relevant committees with responsibility to oversee the security sector. Having the relevant parliamentary committees scrutinizing such a small number of security sector employees do not ensure the proper oversight in light of the limited professional and administrative capacities.

## 7.4. RECOMANDATIONS

To the secretariat of the assembly:

- Design generic policies for recruiting and envisaging the budget line for the additional local staffers to support the security related committees to overcome the reduction of the foreign support;

To the parliamentary committees:

- The relevant parliamentary committees on security as well as the budgetary committee needs periodically to review the budget for the security institutions;
- The Committee on Internal Affairs, Security and Supervision of Kosovo Security Force shall review the human rights of the security sector employees. This applies also to the violation of human rights in the private security industry;
- The security related committee's needs to apply the practice of discussing the security policies by inviting also the representatives of the civil society.





# 8

# JUDICIAL CONTROL OF SECURITY SECTOR

## EXECUTIVE SUMMARY

The independence of judiciary is a fundamental prerogative guaranteed with the Kosovo Constitution and the law. The judicial power is unique and is exercised by courts where no limitations exist with regard to judicial overview of the use of force or other infringements deriving from law enforcement authorities.

The legal infrastructure is not sufficiently implemented in practice due to weak policies in particular within the Kosovo Police structure, where due to the lack of internal performance and monitoring mechanism, the possible use of force from Kosovo Police is difficult to be proved. As observed throughout this chapter, problems in collecting any evidence where citizens may be a victim of use of force by law enforcement authorities is a concerning issue.

With regard to use of special investigative measures, several concerns appear regarding both the legal framework and its implementation. While the judiciary is having full competence to review the legality of evidence gathered from the Kosovo Police, the judiciary in terms of legislation and implementation is not aware how to cope with broad competences of Kosovo Intelligence Agency. Apart from particular problems deriving from both the use of force from the law enforcement authorities and the blurred situation with regard to legality of use of special investigative measures, credible reports that assert the interference on judiciary, corruption, lack of professionalism and huge backlog of cases are making even more difficult to enhance the trust on efficiency of their work.

## 8.1. USE OF FORCE BY LAW ENFORCEMENT OFFICIALS

### 8.1.1. LEGISLATION

There are several law enforcement authorities in Kosovo that may use force in accordance with the law. The Police Officers, Customs Police Officers and Kosovo Correctional Service staff are allowed to use force. Furthermore, the unique legal system established in Kosovo after 1999 (UNSC: Res. No. 1244) and even after the adoption of the Declaration of Independence of Kosovo and its Constitution in 2008, invites the international forces, namely the NATO troops in Kosovo (KFOR) to retain the leadership role of the international military and police presence in Kosovo.<sup>49</sup> The EU police forces in Kosovo (EULEX Police) though having a supervising role, they may also assist the Kosovo Police in performing their tasks. While only few case of intervention from KFOR troops and EULEX Police have been registered, it is worth scrutinizing the way such cases are (not) adjudicated by Kosovo domestic courts in light of immunity of such international actors.

With regard to Kosovo Police, the legal framework concerning the use of force has been finalized only in 2010, when the Kosovo Police Director, as required by the Law on Police, adopted the Administrative Instruction for the Use of Force by Kosovo Police Officers. Additionally, the Law on Police and the Provisional Criminal Procedure Code of Kosovo (PCPCK) guarantees conditions when the use of force can be justified and also the measures and sanctions for exceeding the use of force. A Police Officer may use force to protect a person's life and/or to prevent a criminal act (Law on KP, 2008: 25.2). During such situations however the police officer shall take into account the specific circumstances, the nature of the criminal act, the degree of risk to other persons who are present, and the physical, mental and emotional condition of the person against whom the force is to be used (Law on KP, 2008: 25.3). This prerogative does not differ from international standards and best practices of other developed countries. In addition, the excessive use of force by police officer or the criminal conduct according to the Law on Police is considered serious disciplinary offence (Law on KP, 2008: 46). During other law enforcement actions such as arrest or pursuit, the Police Officer may use force to take a summoned person into custody and bring the person to a police station or any other location only in cases when

<sup>49</sup> See among others Part 5 of the Kosovo Declaration of Independence

the accused person refuses to cooperate with the Police Officer and after the Police Officer has received the court order in accordance with the applicable law. If force is used in such cases, the person summoned shall be informed, in a language he or she understands, of his or her rights and duties, as provided in the PCPCK (Law on KP, 2008: Art. 17.8).

Allegations of serious disciplinary offences involving any Police Officer or other employee of the Police shall be investigated by the Kosovo Police Inspectorate and upon their findings, the Senior Police Appointments and Discipline shall determine whether a disciplinary offence has occurred (Law on KP, 2008: 45.1). That report needs to be handed to the General Director who further has the mandate to determine the disciplinary measure, which may be administratively appealed to the Minister. The decision of the Minister shall be a final administrative decision subject to judicial review only by the competent court (Law on KP, 2008: 45: 3) as the final judicial authority. While for the Customs officers, competences and limits of the use of force are regulated with the Administrative Instruction nr. 83 which presents regulations for supplying and applying of fire weapons, other competences for investigation of customs criminal cases are stipulated with the Code Customs and Excise of Kosovo.<sup>50</sup>

### 8.1.2. IMPLEMENTATION

In 2010 the Kosovo courts have registered only 11 cases against the Kosovo Police officers<sup>51</sup> and no case was filed against Customs officers (Berisha, 2011) or correctional service staff (Bahtiri, 2011). This number of cases before the Kosovo courts can be considered rather small, when knowing the difficulties of victims in proving legal and factual evidence for excessive use of force of police officers, the distrust of Kosovo citizens on judiciary,<sup>52</sup> the huge backlog of cases and the lack of judicial effectiveness (UNDP Early Warning Report Special Ed., 2008).

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50 See in particular Article 302 and 270 on competences to control people, Code No. 03/L-109 Customs and Excise of Kosovo.

51 Mr. Behgjet Shala, the Head of the Council for the Defence of Human Rights and Freedom in Kosovo. See at: <http://www.balkaninsight.com/en/article/policeman-punching-civilian-caught-on-tape>

52 The International Crisis Group Report on Rule of Law in Independent Kosovo, Europe Report N°204 – 19 May 2010 at pg. i.

The lack of evidence or rather difficulties in collecting facts for possible excessive use of force from Kosovo Police present a serious challenge. Experts report that there is no sufficient internal policy within the Kosovo Police that regularly monitors the performance of their staff and thus identify possible violations (Marmullaku, 2011). The unwillingness of Kosovo Police officers to report their colleague's violations makes this problem even more acute. It is to be seen whether the situation will change with establishment of the Kosovo Inspectorate Police with regard to raising the awareness for the consequences of excessive use of force and their involvement in criminal acts. Further, the Kosovo Police Inspectorate will have a mandate to inspect, investigate and in cases of criminal responsibility, arrest the Kosovo Police officers (Law on Kosovo Police Inspectorate, 2010).

With the aim of raising the professionalism, accountability and responsibility of Police Officers, there was an initiative to install cameras inside and outside the Police cars in order to closely observe the police behaviour and where applicable collect the evidence for acts that may follow any event. This initiative however did not manage to be implemented due to financial implications (Marmullaku, 2011). In addition to financial considerations, one may also consider that was not enough willingness to undertake such initiative.

Evidence collected through installed cameras in operation of Kosovo Police has been proven to be of invaluable importance. By the end of 2010 at the Police station in Peja, the installed cameras helped to identify a violent act of a Police officer who was severely beating an innocent citizen while sitting in the corridors of Police station.<sup>53</sup> Before the evidence of that act was released, the Police Officer due to false evidence, claimed to be himself the victim, while the innocent citizen was under detention until that video went to the Court.<sup>54</sup> In light of the foregoing, the video record presented a decisive evidence for starting a new proceeding against the Kosovo Police officer in question (Mr. Marmullaku, 2011).

53 See at: <http://www.kohaditore.com/index.php?cid=1,58,27490>. No official report from Police or the Peja Court was delivered for the public, though the video is circulated in Kosovo official Medias.

54 See concerning the arrest of the Kosovo Police officer at: [http://newmedia-ks.com/index.php?option=com\\_content&view=article&id=9737:arrestohet-polici-pasi-rrahu-nje-qytetar-&catid=2:kronike&Itemid=131](http://newmedia-ks.com/index.php?option=com_content&view=article&id=9737:arrestohet-polici-pasi-rrahu-nje-qytetar-&catid=2:kronike&Itemid=131)

In response to the excessive use of force of Kosovo police, the Human Rights Watch proposed to EULEX to set up an independent review of use of force against activists of local movements ([www.hrw.org](http://www.hrw.org)), however, EULEX and the Kosovo institutions have silently ignored such a proposal.

With regard to excessive use of force of Kosovo Police, majority of such cases appeared during protests organized by Lëvizja Vetëvendosje (Self-Determination Movement) and their later refusal to obey orders of Kosovo Police. In efforts to arrest Mr. Albin Kurti, the leader of the aforementioned movement, now a new political party in Kosovo, the Kosovo Police officers based on the arrest warrant issued by the EULEX led about a dozen members of movement to seek treatment for injuries after Kurti refused to appear on a trial hearing. "The Kosovo Police Service has serious questions to answer about this arrest operation," said Troszczynska-van Genderen from the Human Rights Watch. However as in previous similar cases no direct consequences were addressed against those police officers. Even more concerning is the lack of access to justice for victims of excessive use of force by police officials ([www.ks.undp.org](http://www.ks.undp.org)). Limitation of capacities of legal aid offices to assist victims in criminal proceedings is still limiting access to justice in Kosovo (EU Progress Report on Kosovo, 2010: 14-15).

Apart from cases of Kosovo Police and outside with time scope of this research, there have also been some cases where the international forces in Kosovo have been accused for the excessive use of force. This appeared with regard to riots of February 2007 organized by Lëvizja Vetëvendosje in Prishtina. At a given moment the police used tear gas and rubber bullets.<sup>55</sup> Injuries were sustained by the protesters and the UNMIK police. Mon Balaj and Arben Xheladini were killed; Zenel Zeneli and tens of others were injured (UNMIK Press Release, 1)

Since the UNMIK police operated under the mandate of the UN Security Council Resolution 1244, the acts of UNMIK were attributable to the UN and while the later is ascribed with international immunity no national court could adjudicate such cases. Consequently, the complaint was lodged with the UNMIK *ad hoc*

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<sup>55</sup> The issue of the use of force from international forces is stipulated in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide that authorities shall, as far as possible, apply nonviolent means before resorting to the use of force and firearms. The Basic Principles provide that if the lawful use of force and firearms is unavoidable, then the authorities must use restraint and act in proportion to the seriousness of the offense. Lethal force may be used only when strictly unavoidable to protect life. The Basic Principles also call for an effective reporting and review process, especially in cases of death and serious injury.

Human Rights Advisory Panel on 11 October 2007 and declared admissible on 6 June 2008 (UNMIK Press Release, 2). In order to clarify the facts and the legal issues at stake, the Panel managed to hold a public hearing on the 4<sup>th</sup> of June 2009. So far the decision of the Panel is not known for the public even though few media has presented that the decision has been reached but that was never open for the public. Just recently on the 9<sup>th</sup> of February 2011, The Kosovo Council for Protection of Human Rights and Freedom asked the Kosovo State Prosecutor to re-open the case for adjudication ([www.telegrafi.com](http://www.telegrafi.com)).

Similarly, in the case of Behrami,<sup>56</sup> as confirmed from the European Court of Human Rights,<sup>57</sup> problems of this nature where the international military forces working under the UN Security Council Resolutions goes beyond the Kosovo legal problems due to immunity of the UN. The aforementioned cases suggest themselves that, where as a result of action or omission of international forces installed in Kosovo, the Kosovo courts were not able to adjudicate such cases. Certainly, this present a contemporary challenge for public international law and as such cannot be considered as being unique in the case of Kosovo, however the absence of access to justice, the blurred outcome of these cases and the lack of enforcement mechanism on issues of criminal responsibility have seriously harmed the faith of Kosovo citizens on international forces and international justice in Kosovo.

## 8.2. TREATMENT IN CUSTODY AND DETENTION

### 8.2.1 LEGISLATION

The Kosovo Police is authorized to arrest and detain when necessary.<sup>58</sup> Kosovo Police may also be assisted by its counterparts EULEX Police in fulfilling their duties, including the possibility to arrest and detain in accordance with the Kosovo applicable law ([www.eulex-kosovo.eu](http://www.eulex-kosovo.eu)). With regard to conditions of

<sup>56</sup> The applicant had sought relief against omissions of KFOR forces in Kosovo. Behrami concerned a claim for compensation for the failure of troops of the French KFOR contingent to mark or defuse undetonated cluster bombs in the region of Mitrovica as a result of which two children died and the third one was seriously injured by the explosives.

<sup>57</sup> For further details see ECtHR, Grand Chamber, Behrami and Behrami v. France. Decision on Admissibility 2 May 2007. The Court concluded that reviewing acts or omissions of states parties to the European Convention on Human Rights which, however, had been acting on behalf of the UN would 'interfere with the fulfilment of the UN's key mission in this field including... with the effective conduct of its operations.

<sup>58</sup> See among others, Article 16 and Article 20 of the Law on Police.

detention and the treatment in police custody, 'The detainee on remand and police custody must be treated in a humane manner and his or her physical and mental health must be protected' (PCPCK, 2004: 288.1). Further the PCPCK stipulates that 'only those restrictions which are necessary to prevent escape or communications that might be harmful to the effective conduct of proceeding may be imposed against a person in detention on remand' (PCPCK, 2004: 288.2). With regard to the use of force against the person in custody, even in cases when that is considered necessary, the force that is used must be the minimum and proportionate to its objective (Law on Execution of Penal Sanctions, 2004: 123.1, 123.2). In accordance with Article 214.6 of PCPCK (2004) the arrested person has the right to receive a medical examination and medical treatment, including psychiatric treatment. This right is applied continually for persons in custody (Marmullaku, 2011), which helps them to prove any possible use of force from Kosovo Police.

Detention on remand may be ordered within 48 hours of the arrest (PCPCK, 2004: 212.4), after having heard from the pre-trial judge in presence of the defendant and defence counsel (PCPCK, 2004: 282). Any deprivation of liberty may also place the individual in a vulnerable position and at risk of ill-treatment (Macovei, 2002: 6). While having a full legal guarantee on this matter, the issue of ill-treatment of detainees can take many forms, such as mental and physical ill-treatment by detention staff or other detainees, or in addition their exposure to poor material conditions (OSCE Report, 2010).

In order to address these concerns for judicial review no law prohibits domestic courts to oversee treatment in police custody or any other act of Police Officers. While the Police Officer only executes the orders and directives of the competent prosecutor or judge, the supervision of treatments in Police custody is regulated with dispositive of the PCPCK.

### 8.2.2. IMPLEMENTATION

Despite the fact that Kosovo possesses a modern legal infrastructure, the successful implementation of legal prerogatives is still in its initial stage. While reports overall accept that facilities and treatment in detention centres are progressively reaching a desirable level (OSCE, 2010), problems of judiciary are collaterally effecting also the right of detainees. The OSCE has reported in the

past on the inadequate reasoning of rulings imposing detention on remand.<sup>59</sup> What was noted with concern was the poor justification of rulings on detention, both initial and on extension, despite the fact that both international law and the Kosovo legal framework clearly require full reasoning.<sup>60</sup>

With regard to timing of detention hearings, the OSCE Monitoring Report revealed that in the vast majority of cases (over 95%),<sup>61</sup> detention was ordered within that legally prescribed timeframe. This is a very satisfactory result and the police, prosecutors and pre-trial judges should be commended for it. However the delayed reports from Kosovo Police present a huge obstacle for prosecutors in order to be able to draft adequately-reasoned requests for detention. In this line, in a case before the district court of Peja concerning a murder, the police brought the criminal report to the office of public prosecutor just two hours before the expiry of the arrest term. This happening put the prosecutor under a duty to promptly draft the request for detention and the defendant was brought before a pre-trial judge further one-and-a-half hours later. This of course led to a breach of the then-applicable 72-hour time limit for the issuance of the ruling on detention since 30 minutes are hardly enough for a judge to hold a detention hearing and hand down an adequately-reasoned ruling on detention (OSCE, 2009: 7).

Similar situations where Kosovo Police fails to timely deliver reports to the judiciary are very common in Kosovo. Certainly, the insufficient time for judges and prosecutor to accurately review the police file and draft a well reasoning request for detention, leaves no other opportunity but to draft a template reformulation of the legal grounds without going into circumstances and facts of each case separately. One may justify the prosecutor in order to comply with the time limits prescribed by law; however the insufficient legal reasoning of orders and Courts decisions are seriously harming the professionalism of judiciary. Furthermore, with regard to detention hearings there were some cases when judges imposed detention on remand without holding a hearing involving the defendant or his or her counsel.

59 For further details see also the OSCE Review of the Criminal Justice System (April 2003-October 2004): Crime, Detention and Punishment, (October 2004), page 32; see also the OSCE Review of the Criminal Justice System (1999-2005): Reforms and Residual Concerns (March 2006), page 52.

60 For international law, see *Belchev v. Bulgaria*, ECtHR judgment of 8 April 2004, paragraph 82. For Kosovo's legal framework, see Article 283(1) PCPK and also the Justice Circular 2000/27, of 19 December 2000.

61 These statistics are based on the OSCE's direct monitoring and analysis of 125 cases involving detention on remand proceedings before the Kosovo municipal and district courts, between 1 January 2008 and 30 September 2008. See OSCE Report on The Use of Detention in Criminal Proceedings in Kosovo: Comprehensive Review and Analysis of Residual Concerns.



In a case before the municipal court in Vushtrri on the 18<sup>th</sup> of July 2008 the police arrested a defendant for allegedly having committed three criminal offences of light bodily harm (PCPCK, 2004: 153). On the 21<sup>st</sup> of July 2008, the prosecutor filed a proposal for imposing the measure of mandatory psychiatric treatment in custody, containing a motion to impose detention on remand. On the same date, a three-judge panel without holding a hearing in the presence of the defendant and the defence counsel issued a decision imposing detention on remand for one month (OSCE, 2009: p. 13). This practice is without any doubt contrary to international and national legal framework, though lately we have noticed a little progress with regard to legal reasoning and respect for procedural time frames.

### 8.3. ADMINISTRATIVE CAPACITY AND MANAGEMENT

In a broad and integrated overview of both the judiciary and the competent authorities for the use of necessary force, the administrative capacity seems to present a serious challenge for the judiciary, while the issue of management is a common problem for all the aforementioned institutions.

Though in 2010, the number of judges and prosecutors has been progressively increased,<sup>62</sup> facilities and professionalism still remain a serious concern. Furthermore, the enormous backlog of cases, the limited capacity of legal aid offices to assist victims in criminal proceedings and unexecuted verdicts has dented public confidence in the capacity, professionalism and fairness of the judiciary, thereby limiting effective access to justice.

Concerning the excessive use of force by Kosovo Police, all police have to go through initial training with regard to use of force, human rights and other related issues that might affect the rights of citizens (Marmullaku, 2011). However the absence of internal mechanism to review the performance of Police Officers and the lack of systematic disciplinary measures presents a managerial problem within the Kosovo Police.

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62 266 Judges and 88 prosecutors have been appointed or re-appointed in 2010. Around 146 new judges and 16 prosecutors are to be completed in 2011, participatory observation. Meetings with the President of Kosovo Judicial Council and the USAID at the Government of Kosovo, November 2010

Regarding detention centres, international reports show for improvement of conditions and treatment in custody and arrest, though due to the lack of space in detention centres, there are cases registered when detainees had to share the same room with those who were convicted from crimes (OSCE, 2010).

## 8.4. USE OF SPECIAL INVESTIGATIVE MEASURES

### 8.4.1. LEGISLATION

Pursuant to article 256 of the PCPCK, a covert or technical measure of surveillance or investigation means any of the following measures: Covert photographic or video surveillance; covert monitoring of conversations; search of postal items; interception of communications by a computer network; controlled delivery of postal items; use of tracking or positioning devices; a simulated purchase of an item; a simulation of a corruption offence; an undercover investigation; metering of telephone-calls; and disclosure of financial data.

A Pre-trial judge may on the basis of an application by a public prosecutor issue an order for all kinds of special investigative measures by the Kosovo Police (PCPCK, 2004: 258.2). With regard to the use of special investigative measures by the Kosovo Intelligence Agency, the Supreme Court Judge upon the review of a written application made under oath and approved by the KIA Director or Deputy KIA Director has the authority to issue authorization for permission of any surveillance of the Agency (Law on KIA, 2008: 28.1). This of course, include the opportunity to review the use of special investigative measures by the police, however with regard to supervision or review of Kosovo Intelligence Agency there is no provision that gives a jurisdiction to the court to monitor their actions.

According to the Law on Kosovo Intelligence Agency, the supervision or review of the overall functioning of the Agency can be done by the Assembly Committee which functions under the Kosovo Assembly. The aforementioned Law, stipulate that the parliamentary oversight is responsible among others for overseeing the legality of the work of the KIA. Even though, the KIA Director can review the legality of internal investigations, the lack of judicial overview and access to justice is not well lucid due to undefined role of the Courts.

Pursuant to article 264 (3) of the PCCPK, before the indictment becomes final, the judge who conducts the proceeding on the confirmation of the indictment *ex officio* review the admissibility of the collected materials. Upon receipt of the collected materials together with the indictment, the judge shall issue to the parties a written ruling as to whether the order (investigative) measures and its implementation have been lawful.

It is difficult to observe whether in practice the role of judiciary is rather formal, or indeed it has a substantial importance. The PCPCK provides sufficient legal basis for substantial role of judiciary in reviewing the legality of special investigative measures conducted by Kosovo Police (Law on KIA, 2008: 28.4). However from the case law, one can observe that the lack of professionalism of judges and prosecutors in Kosovo makes the use of such measures rather formal. In majority of cases, the Kosovo judges and prosecutors, simply refer to the PCCPK prerogatives but does not justify in depth the reasoning in orders and decisions of the Court (OSCE, 2009).

#### 8.4.2. ADMINISTRATIVE CAPACITY AND MANAGEMENT

In the field of use of special investigative measures things are so blurred that problems appear from managerial one to that of human resources. The non appointment of Supreme Court Judge who will deal with authorization for the KIA request of surveillance shows that Kosovo's judiciary lacks vision on the approach towards the Agency, and also the judiciary of the country lacks the very reason to appoint a special Judge on it when it has to be considered a routine job for any judge. Furthermore, the law does not stipulate that a special appointment of a judge is needed; it simply requires that a Supreme Court Judge has the authority to issue authorization for surveillance of the Agency.

In terms of management capacities and policies, the use of special investigative measures within the Kosovo Police is serious concern. The directorate of organized crime, who is responsible for surveillance, is at the same time a center of IT and investigation. This concentration of powers creates opportunities for misuse of competences and manipulations. Separation of investigation unit from supportive services division within the Kosovo Police would create a check and balance system, where the power and control will be split within

two departments. The opportunity for abuse of powers will be less apparent and the professionalism will be increased.

Apart from management orientations and capacities, in terms of administrative capacities and facilities, Kosovo can be proud of possessing a very modern infrastructure.

While the relationship between the judiciary and the relevant authorities for the use of special investigative measures is rather concerning, the lack of open dialogue and training in this field is not promising for improvement of the situation in a near future.

### 8.4.3. IMPLEMENTATION

The legal framework with regard to special investigative measures leaves an opportunity for the judiciary to have a very substantial role in reviewing the legality of collected materials from the Kosovo Police. After having issued a judicial order for surveillance or entry into premises, the Judge upon the completion of collected materials from officials, may also require knowing ex post facto the epilogue with regard to legality of those acts (Hasani, 2011). Even though, in practice, there is no clear evidence whether indeed the judiciary is checking the legality of such measures taken from the Police Officer. However bearing in mind the weakness of judiciary in terms of efficiency and well reasoned orders and decisions by analogy, this problem can be present.

A rather blurred situation is with regard to the use of special investigative measures from the Kosovo Intelligence Agency and its relationship with the judiciary. As addressed above in legislation part, there is no lucid prerogative that stipulates and clarifies whether ex post facto judiciary can review the legality of collected materials for surveillance or entry into private premises. This creates confusion to judges whether they have rather a formal role in issuing the authorization for special investigative measures to KIA. Furthermore, the so called emergency surveillance, where KIA Director or Deputy KIA Director without an order of the Supreme Court Judge, grant an oral order for special investigative measures. This in turn makes it even more difficult to understand the fact that at least after the Supreme Court is being informed (Law on KIA, 2008: 29) they can consider it a lawful evidence and whether they can review

the legality of the emergency surveillance. The PCPCK is clear that such exceptions are not permitted, while judges explain that 'normally they can review the legality of acts of the Agency' (Hasani, 2011), but this seems to be rather a wishful thinking.

More concerning is the fact that no case until now has been handled from judiciary with regard to Agency's special investigative measures (Hasani, 2011). One may observe that either the Agency is not doing its job properly or their work is not sufficiently controlled and monitored from the judiciary.

Even though, the Law on KIA exist as of 2008 and the surveillance technology has been installed by mid 2010, only in 2011, the President of the Supreme Court met the KIA Director in order to clarify this concern. The Supreme Court agreed to appoint a Supreme Court Judge who will deal with requests of the Agency's (Law on KIA, 2008: 281).

Overall, though due to the lack of transparency and access to information coupled with unclear relationship between judiciary and the Agency it is difficult to present a very clear picture of the use of special investigative measures, the absent of cases before the Courts and a very strong mandate of the Agency where judiciary has less control on judicial review leaves a room for critics in this sector and a big legal gap.

## 8.5. RECOMMENDATIONS

With regards to the use of force by law enforcement officials:

- The Kosovo Police should establish a functional and efficient internal mechanism to review the performance of its officers, including issues of the use of force.
- Inside and outside the Police cars, the Kosovo Police should install cameras that would serve as an evidence for behaviour of police and/or citizens.
- The Judiciary should pay more attention to increasing concern of use of force from Kosovo Police and thus require an in depth expertise in support of victims claims.

With regards to treatment in custody and detention:

- Increased capacities for detention centres in order to make sure those detainees and convicted criminals not to sit in the same room are needed.
- EULEX should mentor and advise the local judiciary for the best European practices with regard to drafting a well reasoned orders and decisions, respect for procedural time frame and the rights of detainees to be present for the trial hearings.
- Police reports should be delivered promptly to judiciary in order to have time for reviewing carefully the collected materials from Kosovo Police and drafting the order for detention that is based on particular facts and circumstances.

With regard to the use of special investigative measures:

- The Supreme Court should not appoint a special judge who will deal with requests for use of special investigation measures from KIA. Any Supreme Court judge should be able to issue such authorization and thus avoid any potential manipulation.
- Article 39 of the Law on KIA with regard to emergency surveillance order should be amended from 48 hours to 24 hours. The current law is not in compliance with Article 258, paragraph 4 of the PCPCK.
- Joint training for judiciary and KIA officers is needed. The legal gaps and their relationship should be more lucid.
- Regarding the legality of the possible use of special investigative measures, the EULEX Police Component should be more transparent.

## BIBLIOGRAPHY

### INTERVIEWS

1. Ahmeti, Shpend. Executive Director of GAP Institute. Personal Interview. Prishtina. May 2010.
2. Bahtiri, Bedri. Director of Legal Office – Kosovo Ministry of Justice. Email Interview. Prishtina. 16 February 2011.
3. Berisha, Bahri. Director of Law Enforcement – Kosovo Customs. Email Interview. Prishtina. 16 February 2011.
4. Demolli, Lume. Kosovo Gender Studies Centre. Personal Interview. Prishtina. August 2010.
5. Hasani, Fejzullah. President of the Kosovo Supreme Court. Personal Interview. Prishtina. 18 February 2011.
6. Haxhiu, Afrim. Secretary of Kosovo Security Council. Personal Interview. Prishtina. 26 January 2010.
7. Ibishi, Nuredin. Advisor/Expert, Committee on Security, Kosovo Assembly. Personal Interview. Prishtina. 17 February 2010.
8. Jashari, Hilmi. Deputy-Ombudsperson of Kosovo. Personal Interview. Prishtina. 24 February 2010.
9. Manaj, Shkodran. Legal Office of MoIA. Personal Interview. Prishtina. 12 February 2010.
10. Marmullaku, Rifat. Expert of the security sector in Kosovo, former Kosovo Police officer and head of several divisions within the Kosovo Police. Personal Interview. Prishtina. 18 February 2011.
11. Mehmeti, Vlora. Office of Audit General. Personal Interview. Prishtina. 24 February 2010.
12. Olofsson, Lars Lage. General Auditor of Kosovo. Personal Interview. Prishtina. 25 February 2010.
13. Raci, Mursel. Acting Director of Public Procurement Agency. Personal Interview. Prishtina. 23 August 2010.
14. Rustem, Mustafa. Chair of CIAS, Public Television Interview. March 2010
15. Sadriu, Brahim. Kosovo Police (KP) Sources, E-mail Correspondence. August 2010.
16. Selmani, Driton. Kosovo Democratic Institute. Personal Interview. Prishtina. 30 April 2010.
17. Shala, Ibrahim. Head of Communication at MKSF. Telephone Interview. Prishtina. 12 August 2010.

18. Shala, Ibrahim. Head of Communication at MKSF. E-mail Correspondence. August 2010.
19. Sogojeva, Krenare. Legal Office of MKSF. Personal Interview. Prishtina. 5 February 2010.
20. Venhari, Artan. KIPRED. Personal Interview. Prishtina. 19 May 2010.
21. Vula, Veton. Head of the Department for Investigation, Office of Ombudsperson. Personal Interview. Prishtina. May 2010.

## PARTICIPATORY OBSERVATIONS

1. KCSS Observation in the meeting of the Parliamentary Committee for the Supervision of KSF. Prishtina. 15 July 2010
2. Kosovo Assembly. *Workshop on reviewing the Law on Data Privacy Protection*, Organized by DCAF Geneva. (January 2010)
3. Kosovo Assembly. *Workshop on reviewing the Law on Data Privacy Protection*. (January 2010)
4. Rrustemi, Enver. Conference: *External Control of the Independent State Institution in the Kosovo Security Sector*. Acting Chief of Kosovo Police Inspectorate. Organized by Kosovar Center for Security Studies. (September 2010)

## LEGISLATION

1. Kosovo Assembly. *Constitution of the Republic of Kosovo*. Accessed in <http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf> (June 2011)
2. Kosovo Assembly. *Anti-Discrimination Law*. Accessed in [http://www.assembly-kosova.org/common/docs/ligjet/2004\\_3\\_en.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2004_3_en.pdf) (February 2004)
3. Kosovo Assembly. *Customs and Excise Code of Kosovo*. Accessed in: [http://www.assembly-kosova.org/common/docs/ligjet/2008\\_03-L-109\\_en.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L-109_en.pdf) (November 2010)
4. Kosovo Assembly. *Labor Law*. Accessed in: <http://www.assembly-kosova.org/common/docs/ligjet/2010-212-eng.pdf> (November 2010)
5. Kosovo Assembly. *Law on Access to Public Documents*. Accessed in: <http://www.assembly-kosova.org/common/docs/ligjet/2010-215-eng.pdf> (October 2010)



6. Kosovo Assembly. *Law on Classification of Information and Security Clearances*. Accessed in: <http://www.assembly-kosova.org/common/docs/ligjet/2010-178-eng.pdf> (July 2010)
7. Kosovo Assembly. *Law on Courts*. Accessed in: <http://www.assembly-kosova.org/common/docs/ligjet/2010-199-eng.pdf> (July 2010)
8. Kosovo Assembly. *Law on Establishment of the Kosovo Security Council*. Accessed in: [http://www.kuvendikosoves.org/common/docs/ligjet/2008\\_03-L050\\_en.pdf](http://www.kuvendikosoves.org/common/docs/ligjet/2008_03-L050_en.pdf) (March 2008)
9. Kosovo Assembly. *Law on Execution of Penal Sanctions*. Accessed in: <http://www.assembly-kosova.org/common/docs/ligjet/2010-191-eng.pdf> (July 2010)
10. Kosovo Assembly. *Law on Fire Protection*. Accessed in: <http://www.assembly-kosova.org/common/docs/ligjet/Law%20on%20fire%20protection.pdf> (July 2011)
11. Kosovo Assembly. *Law on Gender Equality*. Accessed in: [http://www.assembly-kosova.org/common/docs/ligjet/2004\\_2\\_en.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2004_2_en.pdf) (February 2004)
12. Kosovo Assembly. *Law on Kosovo Intelligence Agency*. Accessed in: [http://www.assembly-kosova.org/common/docs/ligjet/2008\\_03-L063\\_en.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L063_en.pdf) (May 2008)
13. Kosovo Assembly. *Law on Ministry for the Kosovo Security Force*. Accessed in: [http://www.assembly-kosova.org/common/docs/ligjet/2008\\_03-L045\\_en.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L045_en.pdf) (March 2008)
14. Kosovo Assembly. *Law on Police Inspectorate of Kosovo*. Accessed in: <http://www.assembly-kosova.org/common/docs/ligjet/2010-231-eng.pdf> (October 2010)
15. Kosovo Assembly. *Law on Police*. Accessed in: [http://www.assembly-kosova.org/common/docs/ligjet/2008\\_03-L035\\_en.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L035_en.pdf) (February 2008)
16. Kosovo Assembly. *Law on Protection Against Natural and other Disasters*. Accessed in: <http://www.assembly-kosova.org/common/docs/ligjet/Law%20on%20protection%20against%20natural%20and%20other%20disasters.pdf> (September 2011)
17. Kosovo Assembly. *Law on Public Financial Management and Accountability*. Accessed in: [http://www.assembly-kosova.org/common/docs/ligjet/2008\\_03-L048\\_en.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L048_en.pdf) (March 2008)
18. Kosovo Assembly. *Law on Public Procurement in Republic of Kosovo*. Accessed in: <http://www.assembly-kosova.org/common/docs/ligjet/Law%20on%20public%20procurement.pdf> (August 2011)

19. Kosovo Assembly. *Law on Service in the Kosovo Security Force*. Accessed in: [http://www.assembly-kosova.org/common/docs/ligjet/2008\\_03-L082\\_en.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L082_en.pdf) (June 2008)
20. Kosovo Assembly. *Law on the Kosovo Judicial Council*. Accessed in: <http://www.assembly-kosova.org/common/docs/ligjet/2010-223-eng.pdf> (September 2010)
21. Kosovo Assembly. *Law on the Kosovo Security Force*. Accessed in: [http://www.assembly-kosova.org/common/docs/ligjet/2008\\_03-L046\\_en.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L046_en.pdf) (March 2008)
22. Kosovo Assembly. *Law on the Protection of Personal Data*. Accessed in: <http://www.assembly-kosova.org/common/docs/ligjet/2010-172-eng.pdf> (April 2010)
23. Kosovo Assembly. *The Law on Kosovo Prosecutorial Council*. Accessed in: <http://www.assembly-kosova.org/common/docs/ligjet/2010-224-eng.pdf> (September 2010)
24. Kosovo Assembly. *The Law on Kosovo State Prosecutor*. Accessed in: <http://www.assembly-kosova.org/common/docs/ligjet/2010-225-eng.pdf> (September 2010)
25. Kosovo Government. *Administrative Instruction No. 02/2010 for Signature of Medium and High-Value Public Contracts*. Accessed in: [http://www.kryeministri-ks.net/repository/docs/UA\\_2010\\_02\\_PER\\_NENSHKRIMIN\\_E\\_KONTRATAVE\\_PUBLIKE\\_ME\\_VLERE\\_TE\\_MESME\\_DHE\\_VLERE\\_TE\\_MADHE.pdf](http://www.kryeministri-ks.net/repository/docs/UA_2010_02_PER_NENSHKRIMIN_E_KONTRATAVE_PUBLIKE_ME_VLERE_TE_MESME_DHE_VLERE_TE_MADHE.pdf) (June 2010)
26. Ministry of Finance. *Administrative Instruction which presents regulations for supplying and applying of fire weapons*. Accessed in: <http://mef-rks.org/en/download/legislation/590-administrative-instructions> (2010)
27. Ministry of Internal Affairs. *Administrative Instruction No. 16/2010 on Internal Organization and Structuring of MoIA*. Accessed in: <http://www.mpb-ks.org/repository/docs/UA%20per%20Organizimin%20e%20MPB-se%20me%20plotesim%20ndryshime.pdf> (June 2010)
28. Ministry of KSF. *Administrative Instruction No. 04/2008, on the Disciplinary Code of Kosovo Security Force*. Accessed in: <http://www.mksf-ks.org/?page=2,76&offset=40> (December 2008)
29. Ministry of KSF. *Administrative Instruction No. 03/2008 on Carriage and Use of Weapons by Kosovo Security Force Members*. Accessed in: <http://www.mksf-ks.org/?page=2,76&offset=40> (2008)
30. Ministry of KSF. *Administrative Instruction No. 08/09 on Mission Organization and Structure of the Ministry for the Kosovo Security Force*. Accessed in: <http://www.mksf-ks.org/?page=2,76&offset=30> (June 2009)

31. Ministry of KSF. *Administrative instruction No.02/.2010 on the Duties and Responsibilities of the Inspectorate of Kosovo Security Force*. Accessed in: <http://www.mksf-ks.org/?page=2,76&offset=20> (March 2010)
32. UNMIK. *Provisional Criminal Procedure Code of Kosovo*. Accessed in: (2003)

## REPORTS

1. Ahtisaari, Marti. *Comprehensive Proposal for the Kosovo Status Settlement (known as the Ahtisaari Plan)*. UN Special Envoy. Accessed in: <http://www.kuvendikosoves.org/common/docs/Comprehensive%20Proposal%20.pdf> (February 2007)
2. Auditor General. *Final Audit Report of Financial Statements MoIA for the year ended*. Accessed in: <http://oag.rks-gov.net/Raportet%20Anglisht/Ministrit%202008/MPB%20-%202008%20eng.pdf> (December 2008)
3. Deda, I. Transparency International. *Nations in Transit 2010 – Kosovo*. Accessed in: <http://www.freedomhouse.org/images/File/nit/2010/NIT-2010-Kosovo-final.pdf> (2010)
4. ECHR, Grand Chamber. *Behrami and Behrami vs. France. Decision on Admissibility*. Accessed in: [http://www.tjssl.edu/slomansonb/3.1\\_UN\\_attrib.pdf](http://www.tjssl.edu/slomansonb/3.1_UN_attrib.pdf) (2 May 2007)
5. ECHR. *Belchev vs. Bulgaria*. Accessed in: [http://www.eurorights-bg.org/bg/categories/legal/eu\\_courts/39270.html](http://www.eurorights-bg.org/bg/categories/legal/eu_courts/39270.html) (8 April 2004)
6. EULEX. *EULEX Program Report 2009*. Accessed in: <http://www.eulex-kosovo.eu/docs/Accountability/EULEX-PROGRAMME-REPORT-July-2009-new.pdf> (July 2009)
7. European Commission. *2008 Progress Report*. Accessed in: [http://ec.europa.eu/enlargement/pdf/press\\_corner/key\\_documents/reports\\_nov\\_2008/kosovo\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/kosovo_progress_report_en.pdf) (November 2008)
8. European Commission. *Kosovo under UNSCR 12/44 2009 Progress Report*. Accessed in: [http://www.swisspeace.ch/fileadmin/user\\_upload/Media/Countries/South\\_Eastern\\_Europe/European\\_Commission\\_Kosovo\\_under\\_UNSCR\\_124499.pdf](http://www.swisspeace.ch/fileadmin/user_upload/Media/Countries/South_Eastern_Europe/European_Commission_Kosovo_under_UNSCR_124499.pdf) (October 2009)
9. European Union. *Kosovo 2010 Progress Report*. Accessed in: [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) (November 2010)
10. FIQ. *Rule of law: capacities and functioning of Kosovo institutions*. Accessed in: <http://www.fiq-fci.org/?cid=2,12> (2010)

11. Functional Review and Institutional Design of Ministries (FRIDOM). *Functional Review of MoIA*. Accessed in: [http://map.rks-gov.net/userfiles/file/FRIDOM/Fridom\\_en/Vertical\\_Reviews/Functional\\_Review\\_of\\_the\\_Ministry\\_of\\_Internal\\_Affairs\\_112e\\_MIA.pdf](http://map.rks-gov.net/userfiles/file/FRIDOM/Fridom_en/Vertical_Reviews/Functional_Review_of_the_Ministry_of_Internal_Affairs_112e_MIA.pdf) (January 2009)
12. IKS. *Untying the Knot: The Political Economy of Corruption and Accountability in Kosovo*. Accessed in: [http://iksweb.org/Photos/Publikimet/Images/Zgjdhja\\_e\\_Nyj%C3%ABs/enuntying\\_the\\_knot.pdf](http://iksweb.org/Photos/Publikimet/Images/Zgjdhja_e_Nyj%C3%ABs/enuntying_the_knot.pdf) (June 2010)
13. International Crisis Group. *Report on Rule of Law in Independent Kosovo, Europe Report N°204*. Accessed in: [http://www.crisisgroup.org/~media/Files/europe/balkans/kosovo/204%20The%20rule%20of%20Law%20in%20Independent%20Kosovo.pdf](http://www.crisisgroup.org/~/media/Files/europe/balkans/kosovo/204%20The%20rule%20of%20Law%20in%20Independent%20Kosovo.pdf) (May 2010)
14. International Crisis Group. *Serb-Integration in Kosovo: Taking the plunge, Europe Report N°200,; Taking the Plunge*. Accessed in: [http://www.crisisgroup.org/~media/Files/europe/200\\_serb\\_integration\\_in\\_kosovo\\_\\_\\_taking\\_the\\_plunge.pdf](http://www.crisisgroup.org/~media/Files/europe/200_serb_integration_in_kosovo___taking_the_plunge.pdf) (May 2009)
15. KCSS, FPC, IPOL, FOL, GAP Institute and KDI. *Progress Report: Made in Kosovo*. Accessed in: <http://www.gapinstitute.org/repository/docs/KosovarProgressReport.pdf> (October 2010)
16. KCSS. *Assessment of Private Security Sector in Kosovo*. Accessed in: (February 2009)
17. KCSS. *Chronology – Kosovo Case*. Accessed in: <http://www.qkss.org/web/images/content/Chronology%20-%20Kosovo%20Case.pdf> (June 2009)
18. KCSS. *Control Functions of Independent State Institutions in the Security Sector in Kosovo*. Accessed in: <http://qkss.org/web/images/content/Independent%20Agencies%20Report%20-%20Alb,%20Ser,%20Eng.pdf> (July 2010)
19. KCSS. *External Control of the Independent State Institution in the Kosovo Security Sector*. (September 2010)
20. KCSS. *Financial Transparency in the Kosovo Security Sector*. (September 2010)
21. KCSS. *Monitoring Security in Kosovo from a Gender Perspective*. (2007)
22. KDI. *Analyses for drafting process of the budget and public money management*. Accessed in: <http://www.kdi-kosova.org/publications/MonitBuxhet012010.pdf> (January 2010)
23. KIPRED, *Oversight of Public Finance in Kosovo*. Accessed in: [http://www.kipred.net/web/upload/public\\_finance.pdf](http://www.kipred.net/web/upload/public_finance.pdf) (October 2009)
24. KIPRED. *Strengthening rule of law in Kosovo: The fight against corruption and organized crime*. Accessed in: [http://www.kipred.net/web/upload/RoL\\_fight\\_against\\_corruption.pdf](http://www.kipred.net/web/upload/RoL_fight_against_corruption.pdf) (November 2010)

25. KIPRED. *Strengthening women's citizenship in the context of state-building: Kosovo Security Sector and Decentralization*. Accessed in: [http://www.kipred.net/web/upload/Kosovo\\_womens\\_citizenship\\_state\\_builing.pdf](http://www.kipred.net/web/upload/Kosovo_womens_citizenship_state_builing.pdf) (July 2010)
26. Kosovo Assembly. *Kosova Declaration of Independence*. Accessed in: <http://www.assembly-kosova.org/?cid=2,128,1635> (February 2008)
27. Kosovo Government. *Legislative Agenda 2010, 2011 & 2012*. Accessed in: <http://www.assembly-kosova.org/>
28. Macovei, Monica. *The Right to Liberty and Security of the Person. A Guide to the Implementation of Article 5 of the European Convention on Human Rights (Council of Europe Human Rights Handbook (No. 5))* Accessed in: <http://www.echr.coe.int/NR/rdonlyres/D7297F8F-88DB-42B0-A831-FB4D1223164A/0/DG2ENHRHAND052004.pdf> (March 2002)
29. MEF. *Annual Financial Report of Kosovo Consolidated Budget for the year ended 31 December 2008*. (2009)
30. MEF. *Guide to Kosovo's Budget and Planning Process*. (2008)
31. MEF. *Semestral Financial Report for 2009*. (2010)
32. Ministry of Internal Affairs. *Annual Report of Police Inspectorate of Kosovo 2010*. Accessed in: [http://ipk.rks-gov.net/Reports/2.%20Raporti%20Vjeter%202010%20ne%20PDF%20\(anglisht\).pdf](http://ipk.rks-gov.net/Reports/2.%20Raporti%20Vjeter%202010%20ne%20PDF%20(anglisht).pdf) (2010)
33. MUNOZ, Luis Moratinos. OSCE. *Parliamentary Oversight of the Security Sector in Kosovo*. Accessed in: [http://www.google.com/url?sa=t&rct=j&q=parliamentary%20oversight%20of%20the%20security%20sector%20in%20kosovo&source=web&cd=1&ved=0CB8QFjAA&url=http%3A%2F%2Fwww.dcaf.ch%2Fcontent%2Fdownload%2F34696%2F524609%2Fversion%2F1%2Ffile%2FOSCE%252520Mission%252520in%252520Kosovo%252520By%252520Luis%252520Moratinos.pdf&ei=E-f6TszyB8THtAbw-onsDw&usq=AFQjCNF\\_Z1GV52LGaaPwiLFj-IXVVLKgw](http://www.google.com/url?sa=t&rct=j&q=parliamentary%20oversight%20of%20the%20security%20sector%20in%20kosovo&source=web&cd=1&ved=0CB8QFjAA&url=http%3A%2F%2Fwww.dcaf.ch%2Fcontent%2Fdownload%2F34696%2F524609%2Fversion%2F1%2Ffile%2FOSCE%252520Mission%252520in%252520Kosovo%252520By%252520Luis%252520Moratinos.pdf&ei=E-f6TszyB8THtAbw-onsDw&usq=AFQjCNF_Z1GV52LGaaPwiLFj-IXVVLKgw) (April 2009)
34. OECD EU. *Kosovo Public Procurement System*. Accessed in: <http://www.oecd.org/dataoecd/1/44/43910634.pdf> (May 2009)
35. Office of Audit General. *Audit Report on the Financial Statements of Ministry of Internal Affairs for the year ended 31 December 2009*. Accessed in: <http://oag.rks-gov.net/Raportet%20Anglisht/2009/ministri/MPB-2009-Eng.pdf> (June 2010)
36. Office of Audit General. *Audit Report on the Financial Statements of Ministry of Kosovo Security Force for the year ended 31 December 2009*. Accessed in: <http://oag.rks-gov.net/Raportet%20Anglisht/2009/ministri/Raporti%20i%20Auditimit%20MFSK%20Eng.pdf> (June 2010)

37. OSCE *Review of the Criminal Justice System (April 2003–October 2004): Crime, Detention and Punishment*. (2004)
38. OSCE. *Kosovo Review of the Criminal Justice System (1999–2005): Reforms and Residual Concerns*. Accessed in: [http://www.eulex-kosovo.eu/training/material/docs/KR/KR\\_Material/osce2321.pdf](http://www.eulex-kosovo.eu/training/material/docs/KR/KR_Material/osce2321.pdf) (March 2006)
39. OSCE. *The Conditions in Detention Facilities in Kosovo*. Accessed in: <http://www.osce.org/kosovo/73845> (December 2010)
40. OSCE. *The Use of Detention in Criminal Proceedings in Kosovo: Comprehensive Review and Analysis of Residual Concerns*. Accessed in: <http://www.osce.org/kosovo/40584> (November 2009)
41. OSCE/ODIHR. DCAF. *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*. Accessed in: <http://www.osce.org/odihhr/31393?download=true> (2008)
42. Public Procurement Agency, *Database on the single source tenders for KP and KSF for 2009, 2010*
43. Agency France-Press “*New Security Force Angers Serbia*”, AFP Article [http://www.google.com/hostednews/afp/article/ALeqM5hFUhM\\_dkT5VtQb-smvclCbBGZDF9Q](http://www.google.com/hostednews/afp/article/ALeqM5hFUhM_dkT5VtQb-smvclCbBGZDF9Q) January 2009,
44. Express Newspaper Online, “*Pas vitit 2012, FSK me detyra shitesë*” [ *After 2012, KSF with additional responsibilities*, Prishtina : <http://72.10.37.79/?cid=1,16,38234>, (13.09.2010)
45. UNDP. *Access to Justice in Kosovo*. Accessed in: [http://www.ks.undp.org/repository/docs/Eng\\_UNDP\\_Access\\_to\\_Justicereport.pdf](http://www.ks.undp.org/repository/docs/Eng_UNDP_Access_to_Justicereport.pdf) (no year indicated)
46. UNDP. *Early Warning Report 26*. (2010)
47. UNDP. *Early Warning Report Kosovo-Report #20/21 Special Edition*. Accessed in: [http://www.kosovo.undp.org/repository/docs/EWR20\\_eng\\_press.pdf](http://www.kosovo.undp.org/repository/docs/EWR20_eng_press.pdf) (June 2008)
48. United Nations Security Council. *Resolution 1244*. Accessed in: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement> (June 1999)
49. United Nations, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, 1990
50. UNMIK. *Press Release of the Human Rights Advisory Panel*. Accessed in: [http://www.worldcourts.com/unmik\\_hrap/eng/decisions/2010.02.12\\_Balaj\\_v\\_UNMIK.pdf](http://www.worldcourts.com/unmik_hrap/eng/decisions/2010.02.12_Balaj_v_UNMIK.pdf) (February 2010)
51. US State Department. *Human Rights Report: Kosovo 2009*. Accessed in: <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136039.htm> (March 2010)

52. YIHR. *State of Constriction? Governance and Free Expression in Kosovo*. Accessed in: [http://ks.yihr.org/public/fck\\_files/ksfile/STATE%20of%20CON-STRICTION%20read%20only.pdf](http://ks.yihr.org/public/fck_files/ksfile/STATE%20of%20CON-STRICTION%20read%20only.pdf) (May 2010)

## VISITED WEB-PAGES

1. Balkan insight. 2007. 2011. <<http://www.balkaninsight.com/en/article/policeman-punching-civilian-caught-on-tape>>
2. Human Rights Watch. 2011. 2011. <<http://www.hrw.org/en/news/2010/06/15/kosovo-investigate-police-operation>>
3. Kosovo Assembly. Parliamentary Committees. 2011. <<http://www.assembly-kosova.org/?cid=2,110>>
4. Kosovo Police. 2009. 2010. <<http://www.kosovopolice.com>>
5. Ministry of Economy and Finances. 2010. <[www.mef-rks.org](http://www.mef-rks.org)>
6. Ministry of Internal Affairs. July 2010. <[www.mpb-ks.org](http://www.mpb-ks.org)>
7. Ministry of Kosovo Security Force. 2010. <[www.mfsk-ks.org](http://www.mfsk-ks.org)>
8. Ministry of Kosovo Security Force. The oath of the first KSF recruits from the civilian contingent. 2010. 2011. <<http://mksf-ks.org/?page=2,30,69>>
9. Public Procurement Regulatory Committee. 2007. 2010. <[www.ks-gov.net/krpp](http://www.ks-gov.net/krpp)>
10. Public Procurement Review Body. 2010. 2010. <<http://oshp.rks-gov.net/?cid=2,1>>
11. Telegrafi. 2006. 9 February 2011. <<http://www.telegrafi.com/?id=2&a=12826>>

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